

(2025) 07 BOM CK 0222

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 7383 Of 2025

Usha Arjun Pawar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 01-07-2025

Acts Referred:

Maharashtra Village Panchayat Act, 1959 — Section 33, 33(5)

Citation : (2025) 07 BOM CK 0222

Hon'ble Judges : S. G. Chapalgaonkar, J

Bench : Single Bench

Advocate : J. V. Patil, P. D. Patil, A. A. Fulfagar

Final Decision : Dismissed

Judgement

S. G. Chapalgaonkar, J

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.

2. The petitioner impugns order dated 12.06.2025 passed by Additional Divisional Commissioner, Nashik Division in Gram Panchayat Appeal No.1/2025, thereby upholding order dated 30.12.2024 passed by District Collector, Jalgaon in Gram Panchayat Dispute Application No.57/2022, thereby setting aside petitioner from holding post of Sarpanch of Village Panchayat Shirsoli, Taluka Jalgaon in exercise of powers under Section 33 of the Maharashtra Village Panchayat Act, 1959 (for short 'Act, 1959').

3. The petitioner was elected as Member of Village Panchayat Shirsoli from General Women Category in the Election held in 2021. On 27.02.2014, special meeting was convened for election of Sarpanch. The post of Sarpanch was specifically reserved for OBC Category. The meeting for election was scheduled on 05.03.2024. The petitioner was declared as elected as Sarpanch.

4. The respondent no.7 filed Gram Panchayat Dispute Application No.57/2024

under Section 33(5) of Act, 1959 alleging that petitioner presented fabricated caste validity certificate alongwith her nomination for election of Sarpanch against reserved post. Eventually, her acceptance of nomination was vitiated by fraud. It was contended that validity certificate issued in the name of one Suraj Jagtap was manipulated and used by petitioner. The learned Collector, Jalgaon called report from Tahsildar, so also called information as to validity certificate presented by petitioner from concerned Department i.e. Caste Scrutiny Committee at Dhule, who certified that Validity Certificate No.3354 dated 02.03.2024 was not issued by that Authority. Eventually, learned Collector allowed Dispute Application and declared petitioner as disqualified in terms of Section 33 of Act, 1959.

5. The petitioner filed Gram Panchayat Appeal No.01/2025 before Additional Divisional Commissioner, Nashik Division, who affirmed order of District Collector, while dismissing Appeal.

6. Mr. J. V. Patil, learned Advocate appearing for petitioner in his endeavour to assail impugned order made twofold submissions. Firstly, petitioner was elected as Open Women. However, when she submitted her nomination for post of Sarpanch, which was reserved for OBC Category, she had submitted token/ acknowledgment of pending proposal for caste validity submitted to competent Scrutiny Committee and later on, on 01.10.2024 Competent Committee accepted her caste claim and issued caste validity certificate in her favour. As such, allegation of fraud are baseless. Secondly, he contends that her nomination was accepted without any demur. The process of election was conducted in accordance with law. The objection as to her nomination on the ground of presentation of false validity certificate cannot be raised under Section 33 of Act, 1959. The proceeding for disqualification on such ground would not fall within ambit and scope of jurisdiction of District Collector under Section 33 of Act, 1959.

7. Per contra, Mr. P. D. Patil, learned AGP for respondents-State and Mr. Fulfagar, learned Advocate for respondent no.7 justifies impugned order.

8. Having considered submissions advanced, it is not in dispute that petitioner was elected as Member of Village Panchayat Shirsoli from Open Women Category. Later on, she submitted her nomination for post of Sarpanch, which was reserved for OBC Category. Section 33 of the Maharashtra Village Panchayat Act provides for procedure of Election. Sub-Clause (5) of Section 33 reads thus:

"33. Procedure for election of Sarpanch and Upa-Sarpanch.

(5) In the event of a dispute arising as to the validity of the election of a Sarpanch or Upa-Sarpanch under sub-section (1) 9[the Officer presiding over such meeting or any member 10[* * * *] may, within fifteen days from the date of the election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may, within fifteen days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within

sixty days of the receipt of the reference, or as the case may be, appeal.]”

9. Plain reading of aforesaid provision depicts that Collector is empowered to deal with “dispute arising as to validity of election” of Sarpanch and Up-Sarpanch. In present case, dispute is raised as to validity of election of petitioner on the reserved post of Sarpanch on the ground that she exercised fraud by filing fake validity certificate depicting herself to be Member of Other Backward Caste/ Reserved Category for which post of Sarpanch was earmarked. In this background, it is difficult to accept contention of Mr. J. V. Patil, learned Advocate appearing for petitioner that Collector sans jurisdiction to entertain such dispute under Section 33(5) of the Act. Opening words of Sub-Clause (5) of Section 33 clearly refers to jurisdiction of Collector to deal with “dispute arising as to the validity of the election”. If person who is not belonging to particular reserved category represents himself as belonging to that category on the basis of fake document, which leads to acceptance of nomination and such false representation/fraud is revealed after election, it is always open to Collector to declare such nomination/election as vitiated by fraud. Except Section 33(5) of the Act there is no other provision under Maharashtra Village Panchayat Act enabling Collector or any other Authority to Rule on such dispute. Therefore, term “dispute arising as to the validity of election” has to be interpreted to mean entire election process from the stage of submitting valid nomination till declaration of result.

10. In case of Durga Shankar Mehta Vs. Raghuraj Singh AIR 1954 SC 520, Supreme Court observed as under:

“When a person is incapable of being chosen as a member of a State Assembly under the provisions of the Constitution itself but has nevertheless been returned as such at an election, it can be said without impropriety that there has been noncompliance with the provisions of the Constitution materially affecting the result of the election. There is no material difference between "non-compliance" and "non-observance" or "breach" and this item in clause (c) of sub-section (2) may be taken as a residuary provision contemplating cases where there has been infraction of the provisions of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause. When a person is not qualified to be elected a member, there can be no doubt that the Election Tribunal has got to declare his election to be void. Under section 98 of the Act this is one of the orders which the Election Tribunal is competent to make. If it is said that section 100 of the Act enumerates exhaustively the grounds on which an election could be held void either as a whole or with regard to the returned candidate, we think that it would be a correct view to take that in the case of a candidate who is constitutionally incapable of being returned as a member there is non-compliance with the provisions of the Constitution in the holding of the election and as such sub- section (2)(c) of section 100 of the Act applies.”

11. In present case, petitioner got elected on reserved seat on the basis of false representation of holding validity certificate of OBC Category. Eventually, her

election is void. Such declaration can be definitely made in exercise of powers under Section 33(5) of the Act by Collector. There is no reason to restrict meaning of "dispute arising as to validity of election" and accept contention that jurisdiction of Collector is limited and does not cover dispute as raised in this matter.

12. So far as contentions of petitioner that she had submitted only token of his pending caste validity claim before Competent Authority, learned Advocate appearing for respondents placed before this Court noting of Election Officer made at the time of scrutiny of nomination, which clearly records that petitioner had presented validity certificate alongwith her nomination form and, therefore, her nomination was accepted to be valid, whereas candidates, who could not produce validity certificates, their nominations were rejected. The aforesaid noting clearly indicates that petitioner had presented fake validity certificate at the time of submission of nomination, which lead to acceptance of her candidature at election. It is not in dispute that candidates who failed to produce validity certificates alongwith nominations suffered rejection of their candidature. If petitioner had not produced certificate, her nomination had suffered same fate.

13. In view of aforesaid observations, there is no merit in Writ Petition. Hence, Writ Petition stands dismissed.

14. Rule stands discharged.