
(2023) 06 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 707 Of 2023

Vikas And Others

APPELLANT

Vs

Collector, Akola And Others

RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Citation : (2023) 06 BOM CK 0035

Hon'ble Judges : A. S. Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : S.A. Dutonde, A.S. Fulzele

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J

1. RULE. Rule made returnable forthwith and heard the learned counsel for the parties.
2. Respondent No.4 despite service has not chosen to contest the present proceedings.
3. Petitioner No.1 and respondent No.4 were the candidates for the post of Up-Sarpanch of the Gram Panchayat, Jogalkhed, Tah. - Balapur, District – Akola. The said elections were to be held on 4/1/2023. One of the Members of the Gram-Panchayat had challenged the communication dated 30/9/2022 by which the Sarpanch had been granted right of voting in the elections for the post of Up-Sarpanch. The said Member had preferred Writ Petition No. 12/2023 and by an interim order dated 3/1/2023, direction No.1 in the communication dated 30/9/2022 to the extent it permits the Sarpanch to vote in the election of Up-Sarpanch in the first round was held to be non-operative. In the elections that were held on 4/1/2023, respondent No.4 was elected with a difference of one vote. Subsequently, the said Writ Petition came to be withdrawn and by relying upon the order passed in Writ Petition No. 23/2023 (Pradip s/o Tekchand

Shahare and others Vs. The State Election Commission through its Secretary and another) decided on 4/1/2023, the ad-interim order was vacated. It was stated that the consequences would accordingly follow. In this backdrop, the petitioners have raised challenge to the minutes of the Special Meeting dated 4/1/2023 to the extent respondent No.4 has been held to be elected as Up-Sarpanch.

4. It is submitted by the learned Counsel for the petitioners that the Sarpanch could not have been restrained from voting in the election of Up-Sarpanch which aspect has been considered and clarified in Writ Petition No. 23/2023. Since a direction was issued in Writ Petition No. 12/2023 by vacating the ad-interim order that consequences would follow, it is submitted that had petitioner No.2 voted in the said election, there would have been equality of votes. It is thus prayed that a fresh meeting to elect Up-Sarpanch be conducted by setting aside the minutes of the Special Meeting held on 4/1/2023.

5. On hearing the learned Counsel for the parties, we find that legal position is clear in view of the decision in Salma Bi Vs. Collector, Buldana and Others [(2022) 2 Bom CR 337] wherein the effect of restoring status-quo ante has been considered as a consequence of the ad-interim order being vacated. It is seen that petitioner No.2 could not vote in the elections of Up-Sarpanch in view of the interim order. Since that interim order has now been vacated with a direction that consequences would follow, it is clear that the right of respondent No.4 to continue as Up-Sarpanch is under a cloud. Since petitioner No.2 has categorically submitted that had she been permitted to vote, there would have been equality of votes and casting vote would have been in favour of petitioner No.1, we find that the interests of justice would require a fresh election to be held for the post of Up-Sarpanch. As a consequence of the interim order being vacated, the minutes of the Special Meeting dated 4/1/2023 to the extent the Up-Sarpanch has been elected are thus quashed.

6. Accordingly, it is directed that respondent No.4 would cease to hold the office of Up-Sarpanch. Respondent Nos. 1 and 2 shall take necessary steps to hold fresh election for the post of Up-Sarpanch within a period of ten days from today.

7. Rule is made absolute in the aforesaid terms. No costs.

8. An authenticated copy of this order be supplied to the learned Counsel for the parties.