

**HIGH COURT OF BOMBAY****Bench: Justice Urmila Joshi-Phalke****Date of Decision: 21<sup>st</sup> May 2024**

WRIT PETITION NO. 3212 OF 2024

**Sau. Sushma Bharat Thorat and Another .....Petitioner****Versus****Additional Commissioner, Amravati and Others .....Respondents****Legislation:****Maharashtra Village Panchayat Act, 1958**

**Subject:** Writ Petition challenging the communication issued by the Collector, Amravati, regarding the election for the vacant post of Sarpanch of the Grampanchayat at Kandli, Taluka Achalpur, District Amravati. The petition involves allegations of financial irregularities and misuse of power by the previously elected Sarpanch and Upsarpanch.

**Headnotes:**

Election Law – Challenge to Holding Elections for Sarpanch Post – Allegations of Financial Irregularities and Misuse of Position – Continuation of Administrative Charge – High Court’s Interim Relief Pending Decision by Additional Commissioner

Context and Allegations – Election and Appointment of Officials – Misconduct During Tenure – The elections for the village panchayat were held on 15.01.2021, leading to the election of respondent Nos. 4 and 5 as Sarpanch and Upsarpanch respectively. Allegations of financial irregularities and misuse of position were made against them by petitioner No. 1. An inquiry by the Assistant Block Development Officer confirmed the allegations [Paras 2-6].

Statutory Requirements and Delays – Section 39(4) of the Maharashtra Village Panchayat Act, 1958 – Failure to Decide Application – Petitioners argued that the application for the removal of respondent Nos. 4 and 5 should have been decided within two months as per Section 39(4) of the Maharashtra Village Panchayat Act, 1958. Despite this, the application

remained undecided, raising concerns about the timely resolution of the matter [Paras 7-8].

Interim Relief – Continuation of Administrator’s Charge – Prevention of Financial Misconduct – Given the allegations and the ongoing investigation, the High Court granted interim relief to the petitioners, directing that the charge of the Sarpanch remain with the Administrator until the Additional Commissioner’s decision. This was to prevent any further financial misconduct by respondent No. 4 [Paras 9-13].

Decision – Notice Issued and Interim Relief Granted – Continuation of Administrator’s Charge Pending Final Decision – The High Court issued notice to the respondents, with the AGP waiving service for the State. The Court recognized the severity of the allegations and the need to prevent further financial irregularities, thereby continuing the Administrator’s charge of the Sarpanch’s post until a final decision was made by the Additional Commissioner [Paras 11-14].

**Referred Cases: None**

**Representing Advocates:**

**Shri N.A. Gawande, Advocate for the Petitioners**

**Shri Harshal Futane, AGP for the Respondent Nos. 1 and 2**

.....  
DATED : 21/05/2024.

1 Heard.

2 By this writ petition, the petitioners have challenged the communication dated 16.05.2024 issued by the respondent No.2/Collector, Amravati, to hold the elections for the vacant post of Surpanch of Gram panchayat at Kandli, Tq. Achalpur, Dist. Amravati.

3 The elections for the post of the membership of the respondent No.3/village panchayat, were held on 15.01.2021 in which the petitioner No.2 and the respondent Nos.4 to 18 participated and got elected on the post of the membership and thereafter the respondent No.4-Savita Dashrath Aahake and respondent No.5-Dilip @ Ganga Nimichand Dhandare were duly elected on the post of Sarpanch and Upsarpanch of village panchayat, respectively. While holding the post of Sarpanch

and Upsarpanch, the respondent Nos.4 and 5 allegedly acted against the interest of the villagers and the village panchayat and they allegedly misused their post by committing the financial irregularities and run affairs of village panchayat for personal gain.

- 5 Therefore, the petitioner No.1 moved representation before the various authorities. In view of the complaint filed by the petitioner No.1, a direction was issued to the Assistant Block Development Officer to conduct an inquiry into the matter and submit the report and accordingly, the Assistant Block Development Officer conducted the detail inquiry after giving due hearing opportunity to the petitioner No.1 and the respondent Nos.4 and 5 and submitted the report before the Deputy Chief Executive Officer, Zilla Parishad, Amravati.
- 6 On perusal of the aforesaid report, it reveals that the respondent Nos.4 and 5 committed financial irregularities while holding the post of Sarpancha and Upsarpanch and therefore, the petitioner No.1 filed the application before the respondent No.1-Additional Commissioner, Amravati, sought removal of the respondent Nos.4 to 7 from the post of membership of the respondent No.3 village panchayat.
- 7 It is submitted by learned counsel for the petitioners that as per the provision of Section 39(4) of the Maharashtra Village Panchayat Act, 1958, it is incumbent to decide the application by the Additional Commissioner within two months, from filing of the application, however, till date the Chief Executive Officer did not file his/her report though it is required to be filed within a period of one month.
- 8 He further submitted that considering the nature of the allegation against the respondent Nos.4 to 7, the authority below is expected to decide the application in a time bound manner, which is not decided in a time bound manner.
- 9 At present the charge of the Sarpanch is with the Administrative Officer (Administrator) and till the Additional Commissioner decides the application/representation of the petitioner No.1, the charge should be kept with the administrator.
- 10 The learned counsel for the petitioners submitted that at present the respondent No.4 is the only eligible candidate to hold the post of Sarpanch, which is reserved for Scheduled Tribe (ST) and if she is elected as Sarpanch, there will be imputation of the irregularities and financial gain and therefore, till the Additional Commissioner decides

the application, the charge of the Sarpanch be continued with the Administrator.

11 Issue notice to the respondents, returnable after vacation.

12 The learned AGP waives service of notice for the State and raised objection to the petition and submitted that the elections of the Sarpanch and Upsarpanch are scheduled on 28.05.2024 and if the charge is kept with the Administrator, then purpose of holding the elections could not be satisfied. In view of that, he prays for rejection of the prayer.

13 After hearing both the parties on perusal of the report of the Assistant Block Development Officer it reveals that, there was financial irregularities committed by the respondent Nos.4 and 5 during their tenure. The representation filed by the petitioner No.1 is under consideration before the Additional Commissioner. At present the entire charge of the post of Sarpanch is with the Administrator. Considering the allegations which are severe in nature, it would be in the interest of justice to continue the charge of the post of Sarpanch with the Administrator.

14 In view of that, relief is granted in view prayer clause- 'd', by directing that the financial charge of the post of Sarpanch, be continued with the Administrator.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.