



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4323 OF 2024

1. Manoj s/o Vitthalrao Wanjari, Aged about 52 years,
Occ:Agriculturist, R/o. Ward No.5, Paradshinga,
Tahsil-Katol, District-Nagpur.
2. Pramod s/o Parasramji Tijare, Aged about 50 years,
Occ:Agriculturist, R/o. Paradshinga,
Tahsil-Katol, Dist-Nagpur.

PETITIONERS

VERSUS

1. The Maharashtra State Election Commission,
through its Election Commissioner, 1st Floor,
New Administrative Building, Hutatma Chowk,
Madam Cama Road, Mumbai-400 032.
2. Collector Nagpur, District-Nagpur, Collectorate
Compound, Civil Lines, Nagpur.
3. Sub-Divisional Officer, Sub-Division, Katol,
Tahsil-Katol, Nagpur.
4. Tahsildar Katol, Tahsil-Katol, District-Nagpur.
5. Zilla Parishad, Nagpur, through its Chief Executive
Officer, Civil Lines, Nagpur.
6. Panchayat Samiti Katol, through Block Development
Officer, Katol, Tahsil-Katol, District-Nagpur.

RESPONDENTS

Shri S.V. Deshmukh, counsel for the petitioners.
Shri A.M. Kukday, counsel for the respondent no.1.
Shri N.S. Rao, Assistant Government Pleader for the respondent nos.2, 3 and 4.
Shri Manoj Sable, counsel for the respondent nos.5 and 6.

WITH

WRIT PETITION NO. 4330 OF 2024

Rashmi w/o Shyamkumar Barve, (Rina d/o Somraj Sonekar,
name before marriage), Aged about 37 years, Occ : Zilla
Parishad Member, R/o. Ward No.6, Shankar Nagar,
Tah.Parseoni, Kanhan, Dist.Nagpur-441401.

PETITIONER

VERSUS

1. State Election Commission, New Administrative
Building, Madam Cama Road, Hutatma Rajguru
Square, Mumbai, Maharashtra-32.
2. The District Collector, Collector Office, Akashwani
Square, Civil Lines, Nagpur.

RESPONDENTS

Shri S.P. Sonwane, counsel for the petitioner.
Shri A.M. Kukday, counsel for the respondent no.1.
Shri D.V. Chauhan, Government Pleader for the respondent no.2.

WITH
WRIT PETITION NO. 4334 OF 2024

Uddhav s/o Kashinath Hage, Aged about 44 years, Occupation:
Agriculturist, R/o. Khamkhed, Tah. Balapur, District-Akola.

PETITIONER

VERSUS

1. Maharashtra State Election Commission, Through its
Secretary, 1st Floor, New Administrative Building,
Madam Cama Road, Mumbai-400 032.

2. The Collector, Akola, Tah. and District-Akola.

RESPONDENTS

Shri J.B. Gandhi, counsel for the petitioner.
Shri A.M. Kukday, counsel for the respondent no.1.
Shri D.V. Chauhan, Government Pleader for respondent no.2.

WITH
WRIT PETITION NO. 4339 OF 2024

Salil s/o Anil Deshmukh, Aged 43 years,
Occ:Agriculturist, R/o. Wadvihera, Post-Datewadi,
Tq.Narkhed, Dist. Nagpur.

PETITIONER

VERSUS

1. The State of Maharashtra, through its Secretary,
General Administration Department, Mantralaya,
Mumbai-400 032.
2. The State of Maharashtra, through its Secretary,
Department of Rural Development,
Mantralaya, Mumbai-400 032.
3. The State Election Commission of Maharashtra-
through Secretary the State Election Commissioner,
New Administrative Building, Opposite Mantralaya,
Madam Cama Marg, Mumbai-400 032.
4. The Collector, Nagpur, Civil Lines, Nagpur.
5. Panchayat Samiti, Katol, through its Secretary,
Tq. Katol, District-Nagpur.

RESPONDENTS

Shri R.R. Dawda, counsel for the petitioner.
Shri N.S. Rao, Assistant Government Pleader for the respondent nos.1, 2 and 4.
A.M. Kukday, counsel for the respondent no.3.
Shri Manoj Sable, counsel for the respondent no.5.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : JULY 26, 2024

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule is made returnable forthwith and heard finally with consent of the parties.

2. The petitioners are claiming to be the voters of Panchayat Samiti, Paradsinga Block, Katol based on which they are claiming to have a statutory right to vote in the elections of Panchayat Samiti, Katol in 11-Paradsinga constituency.

3. The petitioners through these petitions are questioning the election programme dated July 19, 2024 issued by the respondent-Maharashtra State Election Commission (for short, 'the respondent-Commission') whereby the bye-election for the vacant post of Paradsinga Constituency of Panchayat Samiti, Katol is declared. The said impugned communication contemplates that the nomination forms are to be filed from July 23, 2024 to July 29, 2024.

4. Since the petitioners have questioned the said election programme based on the provisions of Section 63 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short, 'the Act of 1961'), this Court by a reasoned order dated July 23, 2024 caused notices to the respondents and made the said election subject to outcome of the writ petitions.

5. The factual matrix which is relevant for adjudication of the issue involved is that the member, who was elected against the said seat of Panchayat Samiti, expired on February 09, 2024 thereby resulting into a casual vacancy. Such casual vacancy is to be filled in, in accordance with the provisions of Section 63 of the Act of 1961.

6. The common issue involved in all these writ petitions is about the interpretation of Section 63 of the Act of 1961. The petitioners have questioned the election programme on the ground that after the vacancy had occurred on February 9, 2024, instead of notifying the said vacancy immediately and holding the bye-election, the elections are sought to be held which gives the tenure of less than six months to the elected member.

7. In this background, it is the contention of the learned counsel for the petitioners that if the proviso to Section 63 of the Act of 1961 is appreciated and purposive interpretation is given, the decision of notifying the election can be said to be not sustainable as the same goes contrary to the scheme of Section 63 of the Act of 1961. The tenure of the elected member of Panchayat Samiti, who had died, would have ended on January 16, 2025 as the first meeting pursuant to the provisions of Section 59 of the Act of 1961 which prescribes the term of Office of members of Panchayat Samiti was held on 17th January, 2020.

In the aforesaid background, drawing support from the judgments of the Division Bench of this Court in **Writ Petition No.1986 of 2024** [*Anil*

Shivkumar Dube Versus Election Commission of India & Others], decided on March 26, 2024 and **2019 (5) Mh.L.J.722** [*Sandip Yashvantrao Sarode Versus Election Commission of India & Others*], it is claimed that the election programme is liable to be set aside as the elected candidate in bye-election will get less than six months tenure as member of Panchayat Samiti.

8. According to the counsel for the petitioners, *pari materia* provision of Section 151A of the Representation of the People Act, 1950 were interpreted in the aforesaid judgments. It is held in the said judgments that “the remainder of the term” has to be interpreted to mean the term that an incoming candidate will get from the date of notifying the result of the bye-election. It is urged that this provision can be said to be *pari materia* with the provisions of Section 63 of the Act of 1961. In this background contentions are, if purposive interpretation is given to Section 63 of the Act of 1961 which was earlier done in the aforesaid two judgments in relation to Section 151A of the Act of 1950, the net result would be that the elections cannot be held for a vacancy where the tenure left is less than six months.

9. As against above, Shri A.M. Kukday, learned counsel for the respondent-Commission would urge that the interpretation which is sought to be given by the counsel for the petitioners cannot be accepted as the provision is not ambiguous. According to him, the words which are used in Section 151A of the Act of 1950 cannot be equated or considered *pari materia* with that of Section 63 of the Act of 1961. The learned

counsel would emphasize that from the language of Section 63 of the Act of 1961, the relevant issue which warrants consideration is the date of occurrence of the vacancy and not the tenure. In case where the tenure left of the post of which the vacancy has arisen is more than six months, the proviso which is sought to be relied on by the learned Counsel for the petitioner will not be attracted. According to him, even if the tenure that an elected candidate gets by virtue of bye-election is less than six months still the tenure of vacancy warrants consideration.

10. The learned counsel for the respondent-Commission would submit that though the elected member had expired on February 09, 2024, the Block Development Officer has communicated the vacancy on June 26, 2024. He would claim that after such communication of the existence of the vacancy, the respondent-Commission has taken immediate steps to fill in the vacancy by ordering bye-election. Drawing support from the judgment of the Apex Court in *Pramod Laxman Gudadhe Versus Election Commission of India & Others* [(2018) 7 SCC 550], he would claim that the issue about the public expenses incurred in conduct of bye-election will hardly be of any consequence as the holding of bye-election is the statutory duty of the State Election Commission. He would further draw support from paragraph 37 of the Apex Court judgment in *Nasiruddin & Others Versus Sita Ram Agrawal* [(2003) 2 SCC 577] so as to claim that the Court should give strict interpretation to the provisions of the statute and shall not substitute the wordings of the statute in the election matters. That being so, he would claim that the writ petitions are liable to be dismissed.

11. Shri M.A. Sable, learned counsel appearing for the respondent-Zilla Parishad would urge that in view of the elections to the Lok-Sabha, the vacancy was not communicated immediately as is contemplated under Section 63 of the Act of 1961 because of the operation of Model Code of Conduct. According to the said communication, the existence of vacancy was communicated on June 26, 2024, i.e. after the Model Code of Conduct for the elections of Lok-Sabha had come to an end. As such there is no failure to discharge the duty under Section 63 of the Act of 1961.

12. Shri D.V. Chauhan, learned Government Pleader and Shri N.S. Rao, Assistant Government Pleader appearing for the respondent-State, would adopt the aforesaid arguments and submit that the Court may pass appropriate orders in the matter.

13. From the factual matrix narrated hereinabove, the vacancy for the post of Member of Paradsinga Block, Panchayat Samiti, Katol occurred on February 09, 2024. Such vacancy was communicated by the Block Development Officer to the respondent-Commission on June 26, 2024. The tenure of the elected member of the Panchayat Samiti would expire on January 16, 2025 pursuant to the provisions of Section 59 of the Act of 1961. After the bye-election is held and results are declared on August 14, 2024 as scheduled, the returned candidate in the bye-election would admittedly get a tenure of less than six months.

14. Based on the aforesaid undisputed facts, we are now required to appreciate the decision of the respondent-Commission as to whether it

was justified in ordering the bye-election for the seat which fell vacant wherein the tenure of the returned candidate would have been less than six months. If we carefully peruse the relevant provision which deals with the issue i.e. Section 63 of the Act of 1961, the said provision reads thus :

“63. Casual vacancies how to be filled up

In the event of any vacancy occurring on account of death, resignation, disqualification or removal of a member of a Panchayat Samiti or through a member becoming incapable of acting previous to the expiry of his term of office or otherwise, the Block Development Officer shall forthwith communicate the occurrence to the State Election Commission, and the vacancy shall be filled in, as soon as conveniently may be, by election of a person, thereto, who shall hold office so long only as the member in whose place he is elected would have held it, if the vacancy had not occurred :

Provided that, notwithstanding anything contained in section 57, if the vacancy occurs within six months preceding the date on which the term of office of members expires, the vacancy shall not be filled.”

Section 57(5) of the Act of 1961 in express terms provide that the Block Development Officer shall be the Ex-Officio Secretary. Upon plain reading of the first part of Section 63 of the Act of 1961, it is clear that the same contemplates holding of bye-election in case if the vacancy has occurred on account of death, resignation, disqualification or removal of a member of Panchayat Samiti.

15. In the case in hand the vacancy has occurred because of death of the sitting Member of Panchayat Samiti. If such vacancy occurs, Section

63 of the Act of 1961 further provides that the Block Development Officer, the Ex-Officio Secretary of the Panchayat Samiti, under Section 57 of the Act of 1961 is duty bound to forthwith communicate the same to the respondent-Commission.

In the present case, though the vacancy has occurred on February 09, 2024, the same was communicated by the Block Development Officer on June 26, 2024 to the respondent-Commission. There is a *bonafide* attempt to explain the failure of the Block Development Officer to immediately communicate the occurrence of vacancy viz. the operation of the Model Code of Conduct in view of the election to the Lok-Sabha.

16. Once the vacancy is communicated by the Block Development Officer, it is for the respondent-Commission to consider as to whether the vacancy can be filled through a bye-election pursuant to Section 63 of the Act of 1961. For the remaining period of tenure, the rider provided under said Section is required to be satisfied. Said Section further provides for filling in the vacancy as soon as possible, by conducting a bye-election, whereby the returned candidate in the bye-election shall hold the office for a term the member would have held the post, if the vacancy had not occurred.

The fact remains that in the present case the vacancy has occurred on February 09, 2024 and the same could have been filled in immediately as is contemplated under Section 63 of the Act of 1961 provided same was communicated by the Block Development Officer immediately after the

vacancy was caused. In such case, the elected member could have got tenure of more than six months, if the elections were held forthwith.

17. If the tenure of the vacancy to be filled in by holding a bye-election is of six months or less, the proviso to Section 63 of the Act of 1961 is attracted. The proviso to Section 63 of the Act of 1961 opens up with a *non-obstante* clause. It provides that in case the vacancy occurs within six months preceding the date on which the term of office of member expires, the vacancy shall not be filled in.

18. If we consider the aforesaid proviso, it has to be read to understand that if the vacancy has occurred within a period six months preceding the date on which the term of the office of member expires, viz. in this case January 16, 2025, the bye-election cannot be held. The fact remains that if we consider the said proviso and compare the same with the last part of Section 63 of the Act of 1961, it can be noticed that the Section provides for holding of the office for such a period for which the member who was earlier elected would have held the office. The proviso restricts the application of the main Section by putting an embargo on the decision of holding a bye-election if the tenure of the returned candidate elected in the bye-election is six months or less. In view of above, in the case in hand, the proviso to Section 63 of the Act of 1961 shall apply and not the first part of the Section because the tenure which the returned candidate elected in the bye-election will be getting is less than six months as the date of declaration of result of a bye-election is notified as August 14, 2024.

In case, if we continue to accept the argument of the counsel for the respondents, same would result in negation of the proviso thereby defeating the object which is sought to be achieved.

19. The Division Bench of this Court had an occasion to consider the interpretation of Section 151A of the Representation of the People Act, 1951 in *Sandip Yashwantrao Sarode* (supra). The Division Bench has interpreted the word 'remainder term' to mean the remaining term an incoming Member would get after declaration of result of bye-election from out of total term which in this case is provided under Section 57 of the Act of 1961. The Division Bench had proceeded to reject the contentions canvassed by the counsel for the Election Commission of India to interpret the 'remainder of term' which has to be determined from the date of occurrence of vacancy and not from the date on which the incoming Member elected in the bye-election assumes Office. The net inference of the aforesaid interpretation is the 'remainder of term' has to be calculated from the date the elected candidate gets elected in the bye-election. What is required to be taken into account is the intention of the legislature which in this case is to ensure that a Member who is elected in the bye-election for filling in the casual vacancy is assured of the reasonable term and not something which is ineffective. The proviso to Section 63 has put an embargo on filling in the vacancy if the term which the elected candidate in a bye-election is getting is less than six months. So the term 'office of the Member expires' used in proviso has to be read to mean that the term of an elected Member in the bye-election to be less

than six months. As such, the term has to be calculated from the date of notifying the result of the elected Member in the bye-election or bye-poll so as to achieve the very object of Section 63 of the Act of 1961. It is not that we are applying the common law or the principles of equity to the matters of election but we are interpreting the statute providing for the bye-election in case of an occurrence of a casual vacancy.

20. Though Shri A.M. Kukday, counsel for the respondent-Commission has relied on the judgment of the Apex Court in *Nasiruddin & Others* (supra), particularly paragraph 37, so as to claim that there is unambiguity in the statute and there need not be interpretation of the same to mean that if in a bye-election the elected candidate would get the term of less than six months, the elections should not be held or the vacancy shall not be filled in.

If we appreciate the said contention, we are required to be sensitive to the object which is sought to be achieved by Section 63 and the proviso thereto of the Act of 1961. It does not appear to be the intention of the legislature while enacting the statute to mean that the bye-elections have to be held so as to fill in the vacancy even if the elected candidate in the bye-election would get the term of less than six months. To be more precise, it cannot be said that Section 63 of the Act of 1961 contemplates holding of the bye-elections even if the elected candidate in the bye-election would get the term of less than six months as the vacancy had occurred when the tenure left was more than six months.

21. We have taken the aforesaid view thereby interpreting the provisions of Section 63 of the Act of 1961 by applying purposive interpretation. The doctrine of 'Purposive Interpretation' is propounded by the catena of decisions. Recently, the Apex Court in *Vivek Narayan Sharma & Others (Demonetisation Case-5 J.) Versus Union of India & Others [(2023) 3 SCC 1]* has at length discussed the said doctrine in paragraphs 133 to 148 and particularly in paragraphs 138, 139, 146 and 148. Paragraphs 138, 139, 146 and 148 of the said judgment read thus:-

“138. Aharon Barak, the former President of the Supreme Court of Israel, whose exposition of "doctrine of proportionality" has found approval by the Constitution Bench of this Court in Modern Dental College and Research Centre, to which we will refer to in the forthcoming paragraphs, in his commentary on "Purposive Interpretation in Law", has summarized 'the goal of interpretation in law' as under:

“At some point, we need to find an Archimedean foothold, external to the text, from which to answer that question. My answer is this: The goal of interpretation in law is to achieve the objective - in other words, the purpose - of law. The role of a system of interpretation in law is to choose, from among the semantic options for a given text, the meaning that best achieves the purpose of the text. Each legal text - will, contract, statute, and constitution - was chosen to achieve a social objective. Achieving this objective, achieving this purpose, is the goal of interpretation. The system of interpretation is the device and the means. It is a tool through which law achieves self-realization. In interpreting a given text, which is, after all, what interpretation in law does, a system of interpretation must guarantee that the purpose of the norm trapped in the - in our terminology, the purpose of the text - will be achieved in the best way. Hence the requirement that the system of interpretation be a rational activity. A coin toss will not do. This is also the rationale - which is at the core of my own views - for the belief that purposive interpretation is the most proper system of

interpretation. This system is proper because it guarantees the achievement of the purpose of law. There is social, jurisprudential, hermeneutical, and constitutional support for my claim that the proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion. A comparative look at the law supports it, as well. I will discuss each element of that support below.

139. The learned Judge emphasized that purposive interpretation is the most proper system of interpretation. He observed that this system is proper because it guarantees the achievement of the purpose of law. The proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion.

146. In State of Gujarat v. R.A. Mehta, this Court held as under: (SCC pp.47-48, para 98)

“98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. ‘The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.’ The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated

unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and 'to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico'. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide M. Pentiah v. Muddala Veeramallappa, S.P. Jain v. Krishna Mohan Gupta, RBI v. Peerless General Finance and Investment Co. Ltd., Tinsukhia Electric Supply Co. Ltd. v. State of Assam, SCC at p.754, para 118; UCO Bank v. Rajinder Lal Capoor and Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys)."

148. *It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."*

While applying the aforesaid purposive interpretation to the present case, we are sensitive to the fact that the provisions in relation to the election matters are required to be given strict interpretation and the Courts are not permitted to read down the provision to facilitate the candidature or the views of a political party.

22. In the aforesaid background, it has to be held that the decision of the respondent-Commission of notifying the bye-election impugned in the present writ petitions goes contrary to the proviso to Section 63 of the Act of 1961. That being so, the present writ petitions, in our opinion, need to be allowed. Hence, we pass the following order :

(A) The election programme dated July 19, 2024 published by the respondent-Maharashtra State Election Commission thereby declaring bye-election for the vacant post of Paradsinga Constituency of Panchayat Samiti, Katol is quashed and set aside.

23. The writ petitions are allowed. Rule is made absolute in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)