

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1546 OF 2015

Vidya W/o Murlidhar Pokale ... Petitioner
VERSUS

The State of Maharashtra
& others ... Respondents

.....
Mr. S.K. Savangikar, Advocate for petitioner
Mr. V.G. Shelke, A.G.P. for respondent / State
Mr. A.S. Usmanpurkar, Advocate holding for
Mr. G.B. Kulkarni, Advocate for respondent Nos. 4 to 9

.....
CORAM : RAVINDRA V. GHUGE, J.

DATE : 18th FEBRUARY, 2015

PER COURT :

1. I have heard Shri Savangikar, learned Advocate for the petitioner, learned A.G.P. on behalf of the State and Shri A.S. Usmanpurkar, learned Advocate holding for Shri G.B. Kulkarni, learned Advocate for respondent Nos. 4 to 9, for quite some time.

2. Contentions of the petitioner are as follows :-

a] The petitioner is a lady Sarpanch of Village Grampanchayat Salegaon (Ner), Tq. & Dist. Jalna.

b] There are in all seven members elected to the Grampanchayat.

c] A requisition dated 05-11-2014 was moved by members to the Tahsildar without the proposer and a seconder as is required under Rule 17 of the The Bombay

Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975.

d] The Tahsildar issued a notice dated 05-11-2014 thereby convening a special meeting as required under Section 35 of the Maharashtra Village Panchayat Act (MVP Act).

e] In the meeting dated 11-11-2014, the 'no confidence' motion was carried by 6 : 0 vote count.

f] There was no proposer or seconder to the requisition.

g] reasons mentioned in the requisition notice are vague and unsubstantiated.

h] Respondent No. 5 elected member of the Grampanchayat whose caste claim not yet validated, therefore, cannot be said to be occupying the position of a member.

i] The seat occupied by respondent No. 5 deserves to be termed as being a vacant seat.

j] The impugned judgment of the District Collector dated 29-12-2014 deserves to be quashed and set aside.

3. It was submitted on behalf of respondent Nos. 4 to 9 that even if respondent No. 5 is held to be not occupying the seat of a member and the said seat be termed to be vacant, the 'no confidence' motion can be said to have been passed by 5:0, going by maximum number of members elected to the Grampanchayat. He, therefore, opposes the petition and prays for its rejection.

4. Learned A.G.P. appearing on behalf of the State submits that there has been no complaint as against respondent No. 5. The competent caste scrutiny committee has still not invalidated the caste claim of respondent No. 5 and the reasons for moving the motion cannot be gone into by this Court. He, therefore, prayed that this petition is devoid of merit and same deserves to be dismissed.

5. In so far as compliance of Section 35 of the MVP Act is concerned, the dates of requisition and notice of convening a special meeting indicate that the special meeting was convened within seven days from the date of requisition.

6. The 'no confidence' motion is carried by six is to zero vote count. Issue as regards respondent No. 5 has not been raised before any authority and there has been no verdict on the same. It is admitted fact that the caste claim of respondent No. 5 is not validated. Even if it is presumed that that only six members were elected to the Village Grampanchayat and one post is vacant, the 'no confidence' motion can be said to be carried out by five is to zero vote count. It is pertinent to note that the petitioner Sarpanch, herself did not vote against the motion though she was present in the meeting.

7. In so far as effect of Rule 17 of the Rules is concerned, the Full Bench of this Court in the matter of *Tatyasaheb Ramchandra Kale Vs. Shri Navnath Tukaram Kakade & others* decided on 09-10-2014, has laid to rest the controversy about Rule 17. Paragraph 21 of the said judgment indicates that Rule 17 is directory in nature and not mandatory.

8, The said paragraph 21 reads as under :-

“21. Finally to put the matter in perspective, the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has been otherwise been passed by fulfilling the requirement of Section 35 (3) of the Bombay Village Panchayats Act, 1958. The infraction that has occurred on account of the motion if the same has been passed by fulfilling the requirements of Section 35 (3) of the BVP Act, as the said infraction does not affect the merits of the case. Hence we hold that Rule 17 is directory, and the test laid down in Section 44 (3) of the BVP Act namely whether the defect affects the merits of the case, would have to be applied, if a challenge is raised to such motion. We accordingly answer the reference and remit the matter back to the Division Bench for the above Letters Patent Appeal being decided on merits.”

9. In the light of the above, I do not find any merit in this petition. The Writ Petition is, therefore, dismissed.

(**RAVINDRA V. GHUGE, J.**)