

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4311 OF 2014

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|---------------------------------------------|----|-------------|
| Manohar Nagu Barkade                        | .. | Petitioner  |
| VS.                                         |    |             |
| The Additional Collector, Solapur<br>& Ors. | .. | Respondents |

Mr. Dilip Bodake for Petitioner.  
Mr. A. D. Kango – AGP for Respondent Nos. 1 and 2.  
Mr. Sharad Bhosale for Respondent Nos. 4 to 8.

**CORAM : M. S. SONAK, J.**  
**DATE : 23 FEBRUARY, 2015**

**P.C. :-**

1] This petition takes exception to the order dated 11 December 2013 made by the Additional Collector, Solapur dismissing the petitioner's dispute with regard to the no confidence motion passed against him in the Panchayat's especially convened meeting dated 30 July 2013.

2] Perusal of the impugned order would indicate that each of the objections raised by the petitioner have been duly considered and answered by the Additional Collector. There is neither any jurisdictional error nor perversity in the findings recorded by the Additional Collector. Further, there is no dispute that in the especially convened meeting dated 30 July 2013, motion of no confidence was passed against the petitioner by five votes to two,

in a Panchayat which comprised in all seven members. Accordingly, there is no reason to interfere with the impugned order.

3] Mr. Bodake, the learned counsel for the petitioner however urged a new contention before this Court. He submitted that in the present Panchayat the post of Sarpanch has been reserved for candidates belonging to the OBC. He further submitted that the petitioner is the only OBC candidate and in such circumstances, there is no question of any resort to the provisions contained in Section 35 of the Maharashtra Village Panchayat Act, 1958 ("said Act") in order to oust the petitioner. The learned counsel submitted that if the ouster of the petitioner is held a valid, then the Up Sarpanch would take over as a Sarpanch. The Up Sarpanch, is admittedly not a member belonging to the OBC. Therefore, the very purpose of providing reservations and reserving the post for a member of the OBC will stand frustrated. For all these reasons, the learned counsel submitted that the motion of no confidence in the present facts and circumstances of the case, was void ab initio.

4] The aforesaid contention, is no longer *res integra*. In the case of *Mrs. Indira Vijay Tagde vs. The State of Maharashtra & Ors.*<sup>1</sup>, upon which reliance was placed by Mr. Sharad Bhosale, a Division Bench of this Court has rejected such contentions by observing thus :

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1 1998 (1) ALL MR 773

*“6. In the first place, on a plain reading of the provisions of Section 35, it is not possible to accept the contention of Shri Adgaonkar. There is nothing in the scheme of the provisions of Section 35 to suggest that, merely because the petitioner is the sole scheduled caste woman candidate, no motion of no confidence can ever be moved against her, though all the requisite formalities are completed. Secondly, if Shri Adgaonkar is right in his contention that the provisions of Section 35 can have no application to a sole schedule caste woman candidate, we fail to understand why the provisions of Section 39 should be made applicable to a sole scheduled caste woman candidate. In our view, when the provisions of Section 35 are clear, it is not necessary for us to consider the alternate submission that action could have been taken only under Section 39 of the Act. If there is any hardship resulting to the sole scheduled caste woman candidate as a result of the clear provisions of Section 35, it is for the Legislature to consider whether any exception can be carved out in favour of a sole scheduled caste woman candidate excluding her from the purview of Section 35 of the Act. On the material that has been placed before us, it is not possible for us to accept the contention that the provisions of Section 35 should not be applied where the Sarpanch is the sole scheduled caste woman candidate. There is no error of law in the impugned Judgments and orders. We find no merit in the contention raised before us.*

*7. Incidentally, we may mention that, a similar contention was raised before this Court in **Writ Petition No. 2489/97 decided on 27.08.1997** and has been rejected.”*

5] In view of the aforesaid, it is not possible to entertain Mr. Bodake's contention.

6] Petition is liable to be dismissed and is so dismissed. There shall be no order as to costs.