

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

WRIT PETITION NO. 8610 OF 2015

Dharma Nathu Zalte
Age 58 years, Occu-Agril.
R/o Deobhane, Taluka and
District Dhule

Petitioner..

VERSUS

- 1] The State of Maharashtra
Through the Secretary
Rural Development Department,
Mantralaya, Mumbai
- 2] The Collector,
Dhule, Taluka & District Dhule
- 3] The Tahsildar,
Dhule, Taluka and District Dhule
- 4] Sunita Sanjay Desale (Patil)
Age 40 years, Occu-Agriculturist,
R/o Deobhane, Taluka and
District Dhule.
- 5] The Grampanchayaat
Deobhane, Taluna and District Dhule
Through its Gramsevak.

.. Respondents

....
Shri Amol S. Sawant, Advocate for petitioner
Shri V.M.Kagne, AGP for respondents no.1 to 3.
Shri C.K.Shinde, Advocate for respondents no.4 and 5.

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**CORAM : A.V.NIRGUDE &
V. L. ACHLIYA, JJ.**

DATE : 26TH APRIL, 2016.

ORAL JUDGMENT [PER A.V.NIRGUDE,J.]:

Rule. Rule returnable forthwith. With consent of parties, Petition is taken up for final disposal.

2] This Writ Petition was disposed of earlier, vide judgment dated 24/8/2015 which was challenged by respondent no.4 by filing SLP [C] No.28081/2015 contending therein that respondent no.4 was not made party and heard in the matter before passing the said order. In view of contentions raised that respondent no.4 was not made party to Petition, the Hon'ble Apex Court set aside the order dated 24/8/2015, and remanded back the matter with direction to hear the matter afresh. Pursuant to the order passed, respondent no.4 as well as Village Panchayat, Deobhane are joined as respondents no.4 and 5. After due notice to respondents no.4 and 5, Petition is taken up for hearing and all the parties are heard.

3] The facts leading to the litigation are as under :

Village Deobhane in District Dhule has a village panchayat and election of this village panchayat took place on 24/4/2015. As per Section 30 of Maharashtra Village Panchayats Act, election of Sarpanch for this village panchayat was required to be held. In view of provisions of Section 30, office of Sarpanch of this Gram Panchayat was required to be subjected to reservation to various

categories. As per sub-section 5 of this Section, in a prescribed manner the office of Sarpanch of Deobhane village was allotted by rotation to Scheduled Caste women. This decision was taken on 8/6/2015. Unfortunately, amongst elected members of this village panchayat, no woman from Scheduled Caste category was elected. Due to this peculiar circumstance, representations were made to the Collector. The petitioner made a request to the Collector that in view of Rules of Bombay Village Panchayats (Sarpanch And Upa-Sarpanch) Election Rules, 1964, in this situation, the post should be reserved for Scheduled Caste. Respondent no.4 made representation that now the post should be reserved for woman in general category. The Collector accepted the contention of respondent no.4 and ordered that the post of Sarpanch would be filled up from women general category. This decision is being challenged before us. The question before us is whether the decision of Collector is in consonance with the Rules referred to above. Rule [(4-A)] of [2-A] of The Bombay Village Panchayats (Sarpanch And Upa-Sarpanch) Election Rules, 1964 reads as under :

"[(4-A)] Notwithstanding any thing contained in these rules, if the office of the Sarpanch is reserved for the Scheduled Castes, or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including Vimukta Jatis and Nomadic Tribes), and no elected member belonging to such Cases, Tribes or as the case may be, the category of Backward Class of citizens is available, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch

may be reserved under Section 30 of the Act :

Provided that, in case where there is only one elected member belonging to a particular category for which such office has been reserved and has, filed the nomination form, then such office shall be declared for such member and if there are one or more elected members of such category and none of them have filed the nomination form, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved under Section 30 of the Act :

Provided further that, in a case where the office of the Sarpanch is reserve for women belonging to the Scheduled Castes or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including Vimukta Jatis and Nomadic tribes), and no elected women member belonging to such Castes or Tribes or as the case may be, the category of Backward Class of citizens, is available then the office of the Sarpanch, for the same tenure, shall be treated as : (i) if originally reserved for women belonging to the Scheduled Castes, then for the Scheduled Castes, (ii) if originally reserved for women belonging to the Scheduled Tribes, then for the Scheduled Tribes and, (iii) if originally reserved for women belonging to the Backward Class of citizens, then for the Backward Class of

citizens.]"

4] Going by the rational of this Rule, it appears to us that the Collector had no other choice but to allot the office of Sarpanch of this village panchayat to candidate from Scheduled Caste category alone. However, the Collector while passing the impugned order assigned peculiar reason as to why he did not abide by the Rules referred to above. He contended that from 2010 to 2015 the office of Sarpanch of this village was allotted to general women category but instead of electing a woman from general category, a man from general category was elected. He therefore, submits that opportunity and reservation given to women from general category was denied to them. Injustice was thus caused to this category. Such injustice meted out to such category was required to be redressed and according to the learned Collector, he ordered allotment of the office to women general category. He also opined that Scheduled Caste category women would get allotment of this office in the next block. In short, the Collector devised a different method of carrying forward reservation category of 2010-2015 to 2015-2020 and postponed the allotment of the office for Scheduled caste women category to 2020-2025. The learned counsel for respondent no.4 supported the decision and argued that the decision was taken because of peculiarity of facts of the case. He pointed out that a little anomaly occurred in 1995. In cases of two villages it was Deobhane and other was Malane. He also pointed out that the Collector passed similar order in case of allotment of reservation to the post of Sarpanch from Malane village and such decision was upheld by this Court in Writ Petition No.9551/2015. He then argued out that if the decision of the Collector was upheld in one case, we should also follow the suit. We are not accepting

this contention at all. Case of Malane village is independent and we are not concerned about the facts of the case of Malane village.

5] Apart from this, the decision in Writ Petition No.9551/2015 was taken on the basis of decision in SLP[C] No.28081/2015 by order dated 30/11/2015. The earlier order was set aside for the reason the respondent no.4 was not heard. The case was remanded back for fresh decision. Hence the decision in Writ Petition No.9551/2015 has no bearing upon the decision of present petition. We have to decide this case on the basis of facts of this case. We are aware of the facts of this case. In 1994, Section 30 of the Act got amended and the legislature prescribed reservation for office of Sarpanch in village Panchayats. In 1995 it so happened that the election had taken place in this village. The Sarpanch was elected and therefore thereafter reservation policy was implemented and therefore, no allotment to the reserved category was made during the block 1995-2000. The learned counsel for the respondent no.4 pointed out that for the block of 1995-2000, the reservation was in fact allotted to Scheduled Caste but the same was not implemented then. The Collector in order to correct this anomaly, allotted reservation to Scheduled Tribe category for the next block of 2000-2005 and therefore, the learned counsel tried to suggest that whatever is done now is for correcting the anomaly that crept in earlier. This could be a reason for the impugned order, but going by the provisions of the Rules quoted above, discretion to the Collector is not available. In the affidavit filed in support of Collector's decision, suggesting that the Collector passed the impugned order in the light of equity. What is required to be done in a particular manner must be done in that manner. The Collector was not empowered to pass impugned order. The petition should therefore, succeed.

6] Rule made absolute in terms of prayer clauses "A" and "B-1".

[V. L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]

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