

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO.:9338 OF 2016

BEBIBAI SUDAM WAKALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. P. P. More, Advocate for Petitioner.

Mr. A. P. Basarkar, A.G.P. for Respondent Nos.1 and 2.

Mr. D. M. Shinde, Advocate for Respondent Nos.4 to 6.

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CORAM : **T. V. NALAWADE, J.**

DATE : 24th October, 2016.

ORDER:

. The petition is filed to challenge the order made in Appeal No.39 of 2016 by the learned Additional Collector, Aurangabad. Both the sides are heard.

2 The aforesaid appeal was filed by the Respondent Ashruba Kamble to challenge the order made by the learned Additional Collector, Hingoli, by which the proceeding of the meeting of Village Panchayat of the present Petitioner dated 29th August, 2015, was set aside. In the said meeting, Sarpanch and Upa-Sarpanch were elected. Proceeding was filed before the Collector by three members of Village Panchayat like Bebitai, Kakunbai and Kaushalyabai. It is the case of these three ladies that on the date of election, chaos was created by

three members of the Village Panchayat like Sumitrabai, Ashruba and Arvind and their supporters had also entered the office of Village Panchayat. It was contended that they had requested for taking voting by show off hands and avoid secret ballot, but the Returning Officer took the election by secret ballot and in the chaos attempt was made to show that two ballot papers were blank, votes were invalid. They contended that due to aforesaid chaos, the Returning Officer, Respondent Matpallu, Revenue Officer, issued other notice of election and informed that the meeting of Village Panchayat will be held on 30th August, 2015 for the election to the post of Sarpanch and Upa-Sarpanch. They contended that when they went to the office on 30th August, 2015, they found that no such arrangement was made. It is their contention that they learnt that false record of election dated 29th August, 2015, was created and the Respondents were shown to be elected as Sarpanch and Upa-Sarpanch. It was contended that the Returning Officer joined hands with other Respondents, the opposite group and created false record and declared Ashruba Kamble and Arvind Pole as elected as Sarpanch and Upa-Sarpanch. By making these allegations prayer was made to set aside the proceeding of the said election.

3 In the proceeding, Gram Sevak and Returning Officer were parties. Gram Sevak filed say that due to the chaos, the Returning Officer had decided to take meeting on 30th August, 2015 and accordingly notice was issued. He contended that on 31st August, 2015, Tahsildar called him to his residential place and there false record of election dated 29th August, 2015, was created and due to the pressure exercised, he signed on that proceeding. He contended that the proceeding which was written about election dated 29th August, 2015 was destroyed.

4 The Returning Officer filed reply and he contended that the election was taken by secrete ballot and even counting was done and in the counting Respondent Nos.6 and 7 were declared as elected as they got three votes each. The other candidates got two votes each and two votes were declared as invalid as they were blank. He contended in the reply that after declaration of the result, the Applicants of the proceeding like Babibai and their supporters entered the office and they created chaos, they torn the record of the proceeding and by using force, they compelled him to issue notice of meeting dated 30th August, 2015. He contended that due to this incident, he gave report to the police and informed to the Higher

Officers.

5 The learned Additional Collector, Hingoli quashed the proceeding of meeting dated 29th August, 2015, by holding that the proceeding was not properly conducted, the meeting was cancelled and the meeting was called on 30th August, 2015.

6 The learned counsel for the Petitioners submitted that there are seven members in the Village Panchayat and out of the seven members, four are of one side, side of present Petitioners and three were on the other side, side of the Sarpanch and Upa-Sarpanch shown to be elected. The learned counsel submitted that due to this circumstance, false record was created. It appears that before the Collector only three members had filed proceeding, but in the present proceeding, Baliram has also joined with the present Petitioners to challenge the decision given by the learned Additional Commissioner in appeal.

7 The learned counsel for the Petitioners took this Court through the record like copy of FIR and copy of representation given by the villagers. Copy of FIR shows that the Returning Officer had reported the incident to the police, but he had informed that election

had taken place and the result was declared and only after that chaos was created. He had also informed that the record was destroyed by this group and due to their pressure, he had issued notice of meeting dated 30th August, 2015. This report was given on 30th August, 2015. It is true that the proceeding of meeting dated 29th August, 2015, is signed by the Government Officers and only by Ashruba Kamble, who was declared as elected to the post of Sarpanch. The Returning Officer, is not disputing that there was a chaos but contends that it was after the declaration of election result and record was torn. Even if it is presumed that the minutes, which were written were torn and recent minutes were written subsequently, the fact remains that the Returning Officer had filed say that election had taken place.

8 It can be said that it is difficult for passing no confidence motion due to circumstance that at present there are four members on one side and three members on other side, the side of Sarpanch. Due to this circumstance, it appears that the group, which got defeated in the election had created chaos and they had challenged the election. Anything can happen in politics. There is no reason to disbelieve the Revenue Officer, the Returning Officer, who contended that two persons did not give votes and their ballot papers were blank. It can

be said that at the relevant time these two persons were not supporting the three ladies, who had filed proceeding before the Collector. The circumstance that present Petitioner No.4 Baliram had also not joined with the said ladies shows that anything can happen in politics. If the elections are set aside on the basis of allegations made of aforesaid nature, the persons concerned will always create such show and it will be difficult for the Returning Officers to discharge their duties. The Additional Commissioner has rightly believed the Returning Officer and has set aside the order of the learned Additional Collector. This Court sees no reason to interfere in the order made by the learned Additional Commissioner. In the result, the petition stands dismissed.

[T. V. NALAWADE, J.]

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