

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

Writ Petition No.9653 of 2016

Dilip s/o Arjun Tribhuvan.

.. Petitioner.

Versus

The Tahsildar, Srirampur
And Others.

.. Respondents.

Shri. H.V. Tungar, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent No.1.

Shri. Y.R. Shinde, Advocate, for respondent No.2.

Shri. Sandeep Mundhe, Advocate, holding for Shri. R.R.
Karpe, Advocate, for respondent Nos.3 to 9.

CORAM: T.V. NALAWADE, J.

DATE : 22 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Additional Collector, Ahmednagar in appeal filed by the present petitioner, Sarpanch, to challenge the resolution of no confidence motion passed against him. Both the sides are heard.

2) The village panchayat consists of 11 members. On 30-6-2016 seven members gave requisition. The Tahsildar called meeting of the members on 5-7-2016. Present petitioner attended the meeting. Necessary procedure was followed. No confidence motion was moved. Discussion took place on the resolution and the resolution was passed by majority of 8 versus 1. Nine members attended the meeting and two members remained absent. As the resolution was passed by majority of two-third, the Tahsildar declared that the resolution was passed.

3) The resolution was challenged only on ground that the procedure which was required to be followed for calling the meeting was not followed and the minutes of the meeting were not correctly recorded. Grievance was also that most of the members did not participate in the discussion and grievance was that vague allegations were made against the petitioner, Sarpanch about his work. Allegation was made that as the Sarpanch had made complaint to the Tahsildar against three members that they were not taking steps for getting their caste validity

certificate, they had become angry with him.

4) There are minutes of the meeting in the present proceeding and there is also copy of requisition and notice. This record is sufficient to infer that necessary procedure was followed and the meeting was called within 7 days, statutory period. The petitioner had participated in the meeting and the minutes show that opportunity was given to him also to have his say. On merits the petitioner has no case.

5) During arguments learned counsel for the petitioner produced photo copy of so called objection submitted before Tahsildar on 5-7-2016. In the appeal filed before the Collector there was no mention about this letter. Even during arguments which was advanced before the learned Additional Collector there was no mention of this letter. The letter does not bear inward number of the office of the village panchayat but on the basis of this letter learned counsel for the petitioner submitted that the Tahsildar ought not have allowed the members like Pratibha and Mangal to vote as they had not submitted

caste validity certificates within six months from the date of election. It is clear that this stand is after thought.

6) Learned counsel for the petitioner placed reliance on some observations made by Full Bench of this Court in **Writ Petition No.10478/2014 (Anant H. Ulahalkar v. Chief Election Commissioner & Others)**. Learned counsel for the petitioner submitted that similar provision like section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 was under consideration and following three questions were considered by the Full Bench.

"(i) Whether the time limit prescribed u/s 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected Councilor is mandatory in nature ?

(ii) Whether the failure on the part of person elected as Councilor to produce the caste validity certificate within the period of six months from the date on which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce validity certificate would automatically result into termination of his election with retrospective effect ?

(iii) Whether the validation of caste claim of elected Councilor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councilor with retrospective operation ?"

7) Leaned counsel for the petitioner submitted that in view of the decision given by the Full Bench that there is automatic disqualification, it needs to be presumed that the aforesaid two members were not eligible to vote on no confidence motion as they were elected in the year 2013. Even if the best possible case available to the petitioner is accepted as it is, it can be said that the interpretation made by this Court on 9-12-2016 cannot be used in favour of the present petitioner. This Court holds that it is not possible to interfere in the order made by the learned Additional Collector. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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