

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

Writ Petition No. 11444 of 2015

District : Beed

Kadubai w/o. Dadarao Gaikwad,
Age : 70 years,
Occupation : Household,
R/o. Parbhani (Kesa),
Taluka & District : Beed.

.. Petitioner.

versus

1. The Collector, Beed,
District : Beed.
2. The Tahasildar, Beed,
District : Beed.
3. Gangadhar s/o. Govind Tangde,
Age : Major,
Occupation : Agriculture,
R/o. Parbhani (Kesa),
Taluka and District : Beed.
4. The State Election Commission,
Maharashtra State.

.. Respondents.

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*Mr. Shailendra S. Gangakhedkar, Advocate, for
the petitioner.*

*Mrs. M.A. Deshpande, Asst. Government Pleader,
for respondent nos.1 and 2.*

Mr. D.A. Sasane, Advocate, for respondent no.3.

Mr. S.T. Shelke, Advocate, for respondent no.4.

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 17TH FEBRUARY 2016

COURT'S ORDER (Per S.V. Gangapurwala, J.) :

1. Mr. Gangakhedkar, the learned Counsel for the petitioner, submits that the elections in respect of Grampanchayat, Kesapuri [Taluka & District : Beed] were held in 2012. The seat of Ward No.3 was reserved for Scheduled Caste (Woman) category. One Smt. Sarjabai Baliram Tangade was elected from Scheduled Caste (Woman) category. However, she passed away on 8th February 2015. Bye-poll was ordered in respect of the said seat. However, while mentioning reservation, the seat was shown to have been reserved for Scheduled Caste category and not for Scheduled Caste (Woman) category. The said illegality has affected the validity of the election. According to the learned Counsel, in the bye-poll, the reservation could not have been changed by the respondents - authorities. In view of that, the election of respondent no.3 is illegal as the said seat is meant for Scheduled Caste (Woman) category only. According to the learned Counsel, when such illegality is committed, this Court under Article 226 of the Constitution of India can intervene. The learned Counsel relies on judgment of Division Bench of this Court in the case of ***Baburao Kalu Koli Vs. The State of Maharashtra & others***, reported in ***2007(6) Bom.C.R. 6***.

2. The State has filed affidavit in reply. We have heard the

learned Asst. Government Pleader for respondent nos.1 and 2. The learned Asst. Government Pleader submits that the petitioner contested the election from the said ward itself and having been defeated, has approached this Court. The election can be questioned only by way of Election Petition and not otherwise.

3. Mr. Shelke, the learned Counsel for respondent no.4, also submits that the reservation was made as was reported. The petitioner without any demur contested the election and now cannot assail the same.

4. It is not disputed that the bye-poll was the result of the death of Smt. Sarjabai Baliram Tangade who was elected from Scheduled Caste (Woman) category. Even the notification of the election of 2012 showed that one post in Ward No.3 was reserved for Scheduled Caste (Woman) category. Said Smt. Sarjabai Tangade having died on 8-2-2015 in the midst of the term, bye-poll was ordered and the same was held in the year 2015. While holding the election of bye-poll, the said seat was shown to have been reserved for Scheduled Caste category instead of Scheduled Caste (Woman) category. Certainly mistake has been committed in that regard. However, it would be seen that the petitioner at the relevant time did not raise any objection. On the contrary, without any demur, contested the election and after having lost the election, subsequently has filed present Writ Petition. The results are declared on 30th October 2015 and thereafter the present petition is filed on 16th November 2015. We could have accepted the case of the petitioner, had the petitioner approached the Court before the elections were conducted or the petitioner had raised objection to the said reservation.

5. Moreover, there is another facet to the matter. The proviso to Section 10-1A of the Maharashtra Village Panchayats Act 1958, was in force up to 31st December 2015. The said proviso is not extended further. By virtue of the said provision, even if a person did not possess validity certificate, the said person was allowed to contest on the basis of caste certificate with undertaking to produce the validity certificate within the stipulated period. It is also nowhere stated that the petitioner possesses the validity certificate so that the petitioner can be said to be eligible to contest if the elections are held now. Moreover, the term of the elected office bearers of the said Grampanchayat has also remained of not more than one year.

6. Considering the aforesaid conspectus of the matter, the Writ Petition is disposed of. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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