

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

WRIT PETITION NO. 10621 OF 2017

SAYALI ROSHAN JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Thoke Dhananjay B.
AGP for Respondents 1 to 3/ State : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st September, 2017

Oral Order :

1 After considering the strenuous submissions of the learned Advocate for the Petitioner and the learned AGP on behalf of Respondent Nos.1, 2 and 3, I had observed in my order dated 24.08.2017 in paragraphs 2 to 12 as under:-

- "2. *The election program for the election to the Jalgaon District Planning Committee has been published on 05/08/2017. The nomination papers have been scrutinized from 16/08/2017 and 18/08/2017 was the day for publication of the list of valid nominations.*
3. *The petitioner is aggrieved by the rejection of her nomination paper by the District Collector of Jalgaon which was earlier accepted by the Returning Officer.*
4. *As per the election program, the elections were to be held for two constituencies, namely, Rural Area Constituency and Small Urban Area Constituency. In so far as the reserved post for Scheduled Caste and*

Scheduled Tribe in the said election is concerned, Rule 16 (3) Maharashtra District Planning Committee (Election) Rules, 1999 framed under of the Maharashtra District Planning Committee (Constitution and Functions) Act, 1998, require a certificate from the authority certifying that the candidate is elected to the respective body against the reserved seat. The authorities prescribed are C.E.O. of the Zilla Parishad or the C.O. of the Municipality or Nagar Panchayat and the Commissioner of the Municipal Corporation.

5. The petitioner makes a statement on oath that she has been elected against the reserved seat for the Scheduled Caste – Women from the Nagar Parishad, Chalisgaon. The certificate issued by the C.O. of the Nagar Parishad, Chalisgaon is at page No. 20.
6. Respondent No.4 herein, Asmita had approached the District Collector against the rejection of her nomination. She has not challenged the acceptance of the nomination of the petitioner. She has only quoted the example of the petitioner in paragraph No. 2 E of the appeal to indicate that when the petitioner was elected against the Scheduled Caste post from the Pachora Municipal Council, her nomination paper was accepted and the nomination paper of respondent No. 4 was rejected, though she was elected to the position reserved for Scheduled Caste. She has cited the example of the petitioner, only to canvass a point that she being identically placed, her nomination paper should have been accepted.
7. Grievance of the petitioner is that the matter pertaining to Asmita/respondent No. 4 has nothing to do with the case of the petitioner and the petitioner obviously not being a party to the proceeding being initiated by Asmita, finds her nomination form rejected by the District Collector by the impugned order passed in the case of Asmita.
8. Rule 16 (3) reads as under :
In the case of a reserved seat, a candidate qualified to contest the election to

such seat, should produce certificate from the respective Authority certifying that he is elected to the respective body against; the reserved seat. (Authority – Chief Executive Officer of the Zilla Parishad or Chief Officer of the Municipality, or the Nagar Panchayat and Commissioner of the Municipal Corporation.)

9. There is no dispute as regards the Rule that a person must primarily be elected to the post reserved for a particular Caste or Tribe in the elections of the Municipal Council or Nagar Panchayat or Municipal Corporation and then he or she would be entitled for contesting the elections under the Elections to the District Planning Committee.
10. Page No. 20 indicates that the petitioner was elected to the Chalisgaon Municipal Council from the reserved category of Scheduled Caste. Learned AGP, on the basis of the record and the Rules, submits that if this aspect is true, then the petitioner would be eligible for contesting the election to the District Planning Committee from the Small Urban Area Constituency reserved for the Scheduled Caste category.
11. Considering the above, issue notice to the respondents, returnable on 01/09/2017. Matter shall appear in the supplementary board. Besides Court notice, petitioner shall serve respondent No. 4 personally, as well as by Speed Post A.D. and file a service affidavit and a copy of the tracking report of from the Post and Telegraph Website. Learned AGP waives service for respondent Nos. 1, 2 and 3.
12. Pending the decision in this Writ Petition, the impugned order dated 23/08/2017, to the extent of the petitioner herein, shall stand stayed and the nomination form of the petitioner shall be provisionally accepted. Needless to state, this petition would be considered on 01/09/2017 and no adjournment would be granted. This ad-interim order would not create any equities in favour of the petitioner.”

2 The Petitioner has tendered the service affidavit sworn on oath dated 30.08.2017 stating therein that the notice was served by hand delivery on Respondent No.4 (Asmita). A tiny signature, appearing on page 3 accompanying the service affidavit, is said to be the signature of Respondent No.4 (Asmita), according to the Petitioner.

3 Learned AGP has tendered an affidavit in reply dated 31.08.2017 filed by the Returning Officer/ Respondent No.3 herein. Based on the said affidavit, learned AGP submits that as the Petitioner was elected as a Councillor on the post reserved for the Scheduled Caste (Women) category, she cannot contest the election for the post reserved for the Scheduled Caste general as the said post is not reserved for Scheduled Caste (Women). Further contention is that the Councillors, who have been elected in the Municipal Councils to the posts reserved for Scheduled Caste (Women/Female) or Scheduled Caste (Male), would not be eligible for the election to the District Planning Committee as the post is reserved for Scheduled Caste and there is no reference as to whether, it would be open for all candidates falling in the Scheduled Caste category to contest for the said post.

4 I have perused the Election Notification in Form 1-A under Rule 13 placed on record. It is not in dispute that the Councillors or Corporators, who are elected to the respective bodies, are eligible for contesting the election to the District Planning Committees. The feeding

channel of such eligible candidates is from amongst the Councillors/ Corporators. Insofar as the Small Urban Constituency is concerned, one post is reserved for Scheduled Tribe, one for Scheduled Caste and out of the two posts reserved for Backward Class Citizens, one was reserved for Women.

5 It, therefore, is indicative that a single post reserved for Scheduled Caste in the election programme, does not prescribe that only those candidates, who were elected from the Scheduled Caste category to the Municipal Councils, would be eligible and those candidates, who were elected to the posts reserved for Scheduled Caste (Women) and Scheduled Caste (Male), would not be eligible.

6 Learned AGP submits that this may be an ambiguity, but has been interpreted by the Collector as being prohibitive for the candidates elected from Scheduled Caste (Women) and Scheduled Caste (Male) categories.

7 I find, on a plain reading of the election programme, that a single post reserved for the Scheduled Caste would be available to all candidates elected to the posts reserved for the Scheduled Caste, notwithstanding whether, they are for Scheduled Caste (Male) or (Female/ Women) in the respective Municipal Councils. Unless a specific exclusion is prescribed, there cannot be an implied exclusion. Such aspects are to be considered by giving a broader meaning. There may be an

implied inclusion, but there cannot be an implied exclusion.

8 Section 4 of the Maharashtra District Planning Committees

(Constitution and Functions) Act, 1998 reads as under:-

"4. Reservation of seats.

(1) In the seats to be filled in by election in the District Planning Committee, there shall be seats reserved for persons belonging to the Scheduled Castes, Schedule Tribes, Backward Class of Citizens and women, as provided in sub-sections (2) and (3) in the prescribed manner.

(2) The number of seats to be reserved for the persons belonging to the Scheduled Castes in each constituency shall bear, as nearly as may be, the same proportion to the total number of Scheduled Caste members in that constituency as the population of the Scheduled Castes in the district bears to the total population of the District:

Provided that, one-half of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes:

Provided further that, where the number of seats reserved for Scheduled Castes is only one, then no seat shall be reserved for woman belonging to the Scheduled Caste.

[(2A) One seat shall be reserved for the Scheduled Tribes in a District Planning Committee where the constituency of such district is having the largest number of elective seats in the general category, and where such district does not have a separate District Planning Committee exclusively for the Tribal Sub-Plan:

Provided that, no seat shall be so reserved if there is no member belonging to a Scheduled Tribe amongst the members of the Constituencies of the District Planning Committees.]

(3) The number of seats to be reserved for the persons belonging to Backward Class of Citizens shall be

thirty per cent, of the total number of seats to be filled-in by election in the District Planning Committee:

Provided that, one-half of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of Citizens.

- (4) *One-half (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Class of citizens) of the total number of seats to be filled in by election from the urban area or rural area in a District Planning Committee shall be reserved for women."*

9 Section 4(1) specifically mentions that for the seats to be filled in by election to the District Planning Committee, there shall be reservation of seats for persons belonging to Scheduled Caste, Scheduled Tribe, Backward Class of Citizens and Women. The second proviso to Section 4(2) indicates that where the number of seats reserved for Scheduled Caste is only one, then, no seat shall be reserved for a Woman belonging to Scheduled Caste. This would, therefore, indicate that those male and female candidates elected as Councillors from the Scheduled Caste category, would be eligible to contest the solicitory post reserved for the Scheduled Caste in the District Planning Committee. When there is no reservation with regard to male or female, both would be entitled to contest the election having been elected from the Scheduled Caste category in the respective Municipal Councils.

10 Learned AGP informs, on instructions, that the list of
contesting candidates has been finalized and the voting is scheduled on
07.09.2017.

11 Learned Advocate for the Petitioner submits that insofar as
the Petitioner is concerned, the Returning Officer, by the declaration dated
29.08.2017 published under Rule 23(1), has declared the Petitioner to be
the only contesting candidate for the post reserved for Scheduled Caste.
He, therefore, submits that the Petitioner would stand elected unopposed.

12 The said declaration dated 29.08.2017 tendered by Shri
Thoke is taken on record and marked as "X" for identification.

13 Considering the above, this Writ Petition is allowed. The
impugned order dated 23.08.2017 passed by the District Collector,
Jalgaon is quashed and set aside to the extent of the Petitioner herein,
who has challenged the said order. Her nomination for contesting the
election to the concerned post stands accepted.