

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12639 OF 2016

SHILPA RAM DUDHATKAR
VERSUS
THE STATE OF MAHARASHTRA & ORS

...
Advocate for Petitioner : Shri Shinde Ram S.
AGP for Respondents 1 to 3 : Shri Tiwari S.P.
Advocate for Caveator : Shri Pawar P.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11, 2017
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PER COURT :-

1. The petitioner is aggrieved by the passing of the no confidence motion dated 29.7.2016 by a vote count of 10 in favour and 1 against, thereby, resulting in the ouster of the petitioner as the Sarpanch of village Rohilagad, Taluka Ambad. The petitioner is also aggrieved by the order dated 17.12.2016 delivered by respondent No.2, by which, the petitioner's Village Dispute C.R.No.107 has been rejected.

2. The submissions of the petitioner can be summarized in brief as follows:-

(a) The post of Sarpanch of village Rohilagad was reserved for a lady candidate belonging to the Other Backward Classes.

(b) The petitioner fulfilled all the required conditions and was thus elected as Sarpanch of the said village on 15.11.2015.

(c) On 12.5.2016, the petitioner brought it to the notice of the competent authority that 5 elected members out of 13 members, belonged to the reserved categories and they have failed to submit their caste / tribe validity certificates within the period of six months from the date of the elections.

(d) Being aggrieved, these 5 members along with few others moved a requisition dated 25.7.2016 signed by ten persons and requested the Tahsildar to call for a special meeting for considering the motion of no confidence against the petitioner.

(e) The Tahsildar, upon receipt of the requisition, issued the notice dated 25.7.2016 and convened a special meeting on 29.7.2016.

(f) In the special meeting, one member was absent, one was neutral and ten members voted in favour of the motion.

(g) The motion was carried by 10 : 1 vote count.

(h) If the 5 members mentioned in the communication of the petitioner dated 12.5.2016 are deemed to be disqualified, the petitioner succeeds.

3. The learned AGP appearing on behalf of respondents 1 to 3 has supported the impugned order of the Collector dated 17.12.2016.

4. I have considered the submissions of the learned Advocates.

5. The learned Full Bench of this Court in the matter of Anant H. Ulhalkar Vs. Chief Election Commissioner and others [2016 SCC OnLine Bom 9862], has concluded that a member elected by virtue of his claim of belonging to a particular reserved category, is duty bound to produce his caste validity certificate within a period of six months from the date on which he is elected. Failure to produce the said certificate would lead to his disqualification which would be automatic and would relate back to the date of his election.

6. Paragraph Nos.98 of 104 of said judgment reads as under:-

“98. In the context of the phraseology employed in Section 10(4) of the Caste Act 2000, including in particular the deeming fiction therein, the Supreme Court in Kalpana Dilip Bahirat v. Pune Municipal Corporation and others (2014) 15 SCC 654, has observed thus :

"The consequence is that the election of a person who has contested on a seat reserved for the aforementioned categories on false caste certificate as belonging to such caste, tribe or class "shall be deemed to have been terminated retrospectively". The deeming provision in sub-section (4) of Section 10 of the 2000 Act is a statutory fiction which has to be given effect to and the Commissioner of the Municipal

Corporation has given effect to the deeming provision and has thus acted in accordance with law."

99. *In the present case also the legislature in enacting Section 9A has provided for a statutory fiction, which is evident from the use of expression "his election shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councillor". The statutory fiction must be allowed to have its full play. No other provision or reason has been pointed out to take the view that consequences prescribed under second proviso to Section 9A are not automatic or would require any further adjudication once it is established that the person elected has failed to produce the Validity Certificate within a stipulated period of six months from the date of his election.*

100. *The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to Section 9A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.*

101. *In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act,*

within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

102. Further, in terms of second proviso to Section 9A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

103. Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

104. The questions raised, stand answered accordingly.”

7. In the light of the law as above, it needs to be considered as to whether the concerned 5 members have been disqualified by an order passed by a competent authority. The petitioner / Sarpanch is not empowered to disqualify these 5 members. The source of the power to disqualify them is not with the Sarpanch. There is no dispute that no order has been passed by the competent authority disqualifying 5 members on the ground of failing to produce the caste validity certificate. As such, it cannot be deemed or presumed that these five members have been disqualified.

8. It is submitted by the petitioner that if it is presumed for a moment that these 5 members are disqualified, it would leave the Village Panchayat with 8 members. One was absent and it would, therefore, reduce the strength to seven. One remained neutral and one vote was cast against the motion. The vote count therefore, would be 5:1. 75 per cent, equal to $3/4^{\text{th}}$ majority would amount to 5.25 members. The fraction 0.25 cannot be rounded off to 1. As such, had there been 7 members in the village panchayat, the vote count of 5:1 would amount to passing the motion by $3/4^{\text{th}}$ majority.

9. The above calculations are based on assumptions. The fact remains that there was no official order passed by the competent authority disqualifying 5 members.

10. In the light of the above, since the motion was passed by a vote count of 10:1, I do not find that the impugned order dated 17.12.2016 and the passing of the motion could be termed as being illegal.

11. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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