

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 4213 OF 2017**

Shri Sandip Keru Katkade

..Petitioner

Vs.

State of Maharashtra & ors

..Respondents

Mr. H. M. Inamdar i/b Mr. A. S. Pandire for the Petitioner

Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1 and 2

Mr. D. K. Mishra for the Respondent No.5

Mr. T. P. Rajmane for the Respondent Nos.4 & 8

CORAM : R. M. SAVANT, J.

DATE : 21st MARCH, 2017

P.C.

1 The order dated 2-2-2017 passed by the Additional Collector, Nashik, rejecting the Dispute Application filed by the Petitioner, is taken exception to by way of the above Petition.

2 The Petitioner herein was elected as the Sarpanch of Grampanchayat Kepa Nagar, Taluka Sinnar, District Nashik. The Grampanchayat consists of 7 members out of whom one i.e. the Respondent No.8 has been disqualified on the ground that he has not submitted his caste validity certificate within the time stipulated in Section 10(b) of the Maharashtra Village Panchayat Act 1958 (for short the said Act). A requisition was moved by 4 members of the Grampanchayat requesting the Tahsildar to convene a meeting to pass a motion of no confidence against the Petitioner as

the said 4 members had lost the confidence in the Petitioner. After the receipt of the said requisition, the Tahsildar fixed the special meeting of the Grampanchayat on 24-11-2016. The notice of the said meeting was served on all the 7 members of Grampanchayat including the Respondent No.8 who had stood disqualified as on the date of the requisition. On the date of the meeting the Respondent No.8 remained present and requested that he may be permitted to participate in the meeting and also vote. The said request of the Respondent No.8 was rejected by the Tahsildar on the ground that the Respondent No.8 has already been disqualified and though the Respondent No.8 had filed an Appeal, there is no stay obtained by the Respondent No.8 in respect of his disqualification. After rejecting the request of the Respondent No.8 the meeting proceeded to conduct its business. The motion of no confidence came to be passed against the Petitioner by a majority of 4 : 2, since the requirement in terms of the said Act is that such a motion has to be passed by 2/3rd majority, the said requirement was fulfilled. The Tahsildar accorded his approval to the passing of the said motion of no confidence against the Petitioner. In view of the passing of the said motion of no confidence against the Petitioner, he stood removed as Sarpanch.

3 The Petitioner aggrieved by the passing of motion of no confidence in the meeting held on 24-11-2016, filed the Dispute Application invoking Section 35(3-b) of the said Act. In the said Dispute Application, the

main contention of the Petitioner was based on the factum of Respondent No.8 herein being not allowed to vote. The said contention urged on behalf of the Petitioner was rejected by the Additional Collector, Nashik on the ground that since the Respondent No.8 had not obtained any stay in respect of his disqualification in the Appeal filed by him before the Appellate Authority, the action of the Tahsildar refusing the Respondent No.8 to participate and vote in the meeting, could not be faulted with. The Additional Collector accordingly dismissed the Dispute Application filed by the Petitioner by the impugned order dated 2-2-2017.

4 The Learned Counsel for the Petitioner would seek to reiterate the case of the Petitioner as urged in the Dispute Application before the Additional Collector. The Learned Counsel would contend that since the judgment of the Full Bench of this Court in respect of the issue as to whether the period within which a candidate is to produce his caste validity certificate is mandatory or directory, which the Full Bench held to be mandatory, has been stayed by the Apex Court pending the Special Leave Petitions before it, it was wrong on the part of the Tahsildar to refuse permission to the Respondent No.8 to participate and vote in the meeting.

5 In my view, the said submission of the Learned Counsel is misconceived. Firstly the Apex Court has passed the order some time in

January 2017, staying the said Full Bench judgment of this Court in Writ Petition No.1478 of 2014 dated 9-12-2016 i.e. after the meeting was held on 24-11-2016. Secondly the Respondent No.8 has filed an Appeal which is pending, however the Respondent No.8 has not been granted stay of his disqualification. If that be so, the action of the Tahsildar not allowing the Respondent No.8 to participate and vote in the meeting dated 24-11-2016, cannot be faulted with. In my view, therefore, the order passed by the Additional Collector, rejecting the Dispute Application filed by the Petitioner, cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]