

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR

Misc. Civil Application No. 428 of 2017

IN

Writ Petition No. 6568 of 2015 [decided on 14th June, 2016]
[Sau. Meena Dilip Aware Vs. The Addl. Commissioner, Amravati
Division, Amravati & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. J. B. Kasat, Adv., for the Applicant.
Mr. S. Bissa, Astt. Govt. Pleader for respondent nos. 1 and 2.
Mr. Raj Wakode, Adv., for respondent no.4.

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CORAM : A. S. CHANDURKAR, J.

DATE : 02nd August, 2017

By this application, review of judgment dated 14th June, 2016 has been sought. According to the applicant, while rejecting the Writ Petition, this Court had relied upon the judgment of learned Single Judge in **Mahadeo Rambhau Athawale and others Vs. Addl. Divisional Commissioner, Aurangabad & others** [2010 (5) Mh. L.J. 513]. However, this judgment of learned Single Judge was subsequently reversed in a Letters Patent Appeal and the judgment of the Division Bench is reported in 2012 (3) Mh.L.J. 381 [**Mahadeo Rambhau Athawale and others Vs. Addl. Divisional Commissioner, Aurangabad & others**] which fact went unnoticed when the matter was heard. Thus,

according to the applicant, as the judgment of learned Single Judge that was relied upon while rejecting the Writ Petition has itself been set aside, a ground for reviewing the judgment is made out. It is, thus, urged that the Returning Officer had no jurisdiction to declare the respondent no.4 as duly elected.

In the affidavit filed on behalf of the respondent no.4, it has been stated that presently respondent no.4 is holding the charge of the post of Sarpanch. It is then submitted that even if the judgment of learned Single Judge in the case of *Mahadeo Athawale* [supra] has been reversed, same would not alter the adjudication considering the facts of the present case.

I have heard the learned counsel for the parties.

While considering the challenge to the order passed by the Additional Commissioner who had held that the respondent no.4 had secured five votes, while the petitioner had received four votes, reference was made to the observations of learned Single Judge in *Mahadeo Athawale* [supra] that the power to declare the correct result can be read within the scheme of Section 33 (5) of the Maharashtra Village Panchayats Act, 1958. Perusal of the judgment of the Division Bench while reversing the judgment of learned Single Judge indicates that in the facts of that case, despite the secrecy of ballot being breached, the Returning Officer proceeded

to declare two votes as invalid. This consideration by learned Single Judge was held to be bad in law in the light of the finding that the election itself was vitiated due to breach of secrecy.

I find that nothing much turns on the reversal of judgment of learned Single Judge in *Mahadeo Athawale* [supra] by the Division Bench. The facts of the present case indicate that the decision of the Returning Officer of validly counting the votes afresh did not vitiate his decision of declaring the respondent no.4 to be duly elected.

Hence, I do not find any case for invoking the review jurisdiction. Application is, therefore, dismissed.

Judge