

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3988 OF 2017

AMILA VINOD VASAVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Savale Amit S
AGP for Respondent Nos. 1 and 2: Mr. S.N. Kendre
Advocate for Respondents : Mr. P.A. Bhosale h/f Mr. A.B. Kale

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CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2018

PER COURT:-

1. With consent of the parties, heard finally at admission stage.
2. The elections of Sarpanch and Up-Sarpanch of Roshmap (Kd) village Panchayat were held and respondent No.3 came to be elected as Sarpanch. The petitioner has preferred Gram Panchayat dispute application before respondent No.2 by invoking the provisions of sections 13, 14 and 16 of the Maharashtra Village Panchayat Act 1958 (hereinafter for the sake of brevity referred to as "the Act of 1958"). The petitioner has contended in the said dispute that respondent No.3 is born on 20.11.1996 and she has not completed 21 years of age at the time of election held on 20.7.2016 and as such respondent No.3 has incurred disqualification to continue as a member of the Gram Panchayat. By order dated

14.10.2016, respondent No.2 has disposed of the Gram Panchayat dispute application for the reasons that the election petition was required to be filed within 15 days from the date of election, before the Civil court as provided under Section 15 (1) of the Act of 1958. Respondent No.2 has also observed that since dispute pertains to the validity of elections, the same does not come under the purview of the Section 16 of the Act of 1958. Being aggrieved by the same, the petitioner has preferred Gram Panchayat Appeal on 25.10.2016 before respondent No.1 under Section 16 of the Act of 1958. However, respondent No.1 has also dismissed the appeal with the same observations. Hence, this writ petition.

3. Learned counsel for the petitioner submits that in terms of section 14 (1) (a-1) of the Act of 1958, respondent No.3 cannot continue as member since she has not attained the age of 21 years as on the date of elections. Learned counsel submits that the said ground has been specifically incorporated in Section 14 of the Act of 1958. Learned counsel submits that by any stretch of imagination, the aforesaid dispute cannot be termed as election dispute so as to attract the provisions of section 15 of the Act of 1958 wherein determination of validity of the election is required to be inquired by a Judge.

4. Learned counsel for the petitioner in order to substantiate his submissions placed reliance on the judgment of this court in the case of ***Popat Bajirao Gaikwad vs. Dinkar Bhagwanrao Gaikwad and others, reported in 2014 (2) AIR Bom R 117.***

5. Learned counsel for respondent No.3 submits that respondent No.3 came to be elected as Sarpanch and by filing petition, the petitioner has raised election dispute which is required to be dealt with by a Judge as provided under Section 15 of the Act of 1958. Both the authorities below have therefore, rightly refused to consider the dispute filed by the petitioner under Section 16 of the Act of 1958. There is no substance in the petition and the same is liable to be dismissed.

6. I have also heard learned A.G.P. for respondent Nos. 1 and 2.

7. It appears that both the authorities below have not considered even the dispute raised by the petitioner mainly on the ground that the petitioner ought to have raised the dispute under Section 15 of the Act of 1958 for determination of validity of the election and the same is required to be inquired into by a Judge, as provided under Section 15 of the Act of 1958. The relevant provisions of Section 14 of the Act of 1958 reads as under:-

“14. Disqualification.- (1) No person shall be a member of a Panchayat or continue as such, who-

- (a)
- (i)
- (ii)

(a-1) has been disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the Maharashtra State:

Provided that, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty one years;”

8. In terms of the aforesaid ground, as contemplated under section 14 (1) (a-1) of the Act of 1958, it is the case of the petitioner that as on the date of election, respondent No.3 has not attained the age of 21 years. The petitioner has annexed various documents alongwith his dispute petition, wherein the date of birth of respondent No.3 is mentioned as 20.11.1996. Both the authorities below have not considered the same in the light of provisions of Section 14 (1) (a-1) of the Act of 1958.

9. In terms of provisions of Section 15 (1) of the Act of 1958, if the validity of any election of a member of a Panchayat is brought in question by any person qualified to vote at the election to which such

question refers, may, at any time within fifteen days after the date of declaration of the result of the election, apply to the Civil Judge, (Junior Division), and if there is no Civil Judge (Junior Division) then to the Civil Judge, (Senior Division) having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question. In the instant case, I do not think that validity of the election is in question.

10. In the case of ***Popat Bajirao Gaikwad vs. Dinkar Bhagwanrao Gaikwad and others (supra)***, this court in identical facts held that the proceedings under Section 14 r.w. Section 16 of the Act of 1958 after the elections, are maintainable and refused to accept the contention that the only remedy available is to file the election petition under Section 15 of the Act of 1958.

11. In view of above, this court left with no other choice but to remand the matter to respondent No.2 Additional Collector, Nandurbar to consider the dispute raised by the petitioner afresh in the light of relevant provisions of section 14 of the Act of 1958 by registering the said petition under Section 16 of the Act of 1958. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby partly allowed. No costs.
- II. The impugned order dated 14.10.2016 passed by the respondent No.2 Additional Collector, Nandurbar in Gram Panchayat Dispute application dated 23.8.2016 and the order dated 27.10.2016 passed by the Additional Divisional Commissioner, Nashik in Gram Panchayat Appeal dated 25.10.2016 are hereby quashed and set aside. The matter is remanded to respondent No.2 Additional Collector, Nandurbar with following directions:-
 - a) Restore the Gram Panchayat Dispute application filed by the petitioner and register it under Section 16 of the Maharashtra Village Panchayat Act 1958 and after giving opportunity of being heard to the parties, decide the same afresh, as expeditiously as possible, preferably within a period of three months from today.
- III. Writ petition is disposed of.

(V. K. JADHAV, J.)

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