

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1655 OF 2017

Jitendra Ramsing Rajput

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.S.S.Deve, Advocate for the petitioner.

Mrs.M.A.Deshpande, Assistant Government Pleader for
Respondents No.1 to 3.

Mr.P.R.Patil, Advocate for Respondent No.5.

**CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.**

DATE : 13th December, 2018

PER COURT:

1 The petitioner had filed a Petition before the Collector seeking disqualification of the Respondent No.5 – Sangitabai Vasudeo Rajput, under the Section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1959. The petitioner had alleged that a third child was born to Respondent No.5 – Sangitabai Rajput after the cut-off date, due to which she had incurred a disqualification for functioning as a member of the village panchayat. By an order dated 20.03.2014, the Additional Collector, Dhule – Dr.Ashok Karajkar, allowed the petition and declared the Respondent No.5- Sangitabai Rajput as disqualified. The Respondent No.5 – Sangitabai filed an appeal against the said order to the Commissioner. By an order dated 02.01.2015, the Additional Commissioner, Nasik Division, Nasik dismissed the appeal, forwarding copy of the same to the Additional Collector, Dhule, for taking appropriate action. During the course of hearing, it was

submitted that Respondent – Sangitabai had challenged the orders passed by the Additional Collector and Additional Commissioner by filing a writ petition no. 9658 of 2016, which, by an order dated 29.06.2017, came to be dismissed.

2 Mr.Deve, learned Counsel appearing for the petitioner, submits that in spite of the order passed by the Additional Collector declaring the Respondent – Sangitabai to be disqualified and order being confirmed by the Additional Commissioner, Respondent No.5 continued to discharge functions as a Deputy Sarpanch and none of the authorities bothered to take any action to restrain her from participating in the functioning of the Panchayat and holding the office of the Deputy Sarpanch.

3 The petitioner has, thus, approached this Court with the present petition filed on 25.01.2017 mainly with the following prayers:

(B) By issuing a writ of mandamus or any other appropriate writ, order or directions, the respondent No.1 and 2 be directed to conduct the enquiry of respondent No.3 authority for not taking steps for holding the election for the post of Up-Sarpanch of village panchayat, Nanthe, Tq. Shirpur, District Dhule after disqualification of respondent No.5 and for that purpose necessary directions be issued.

(C) By issuing a further writ of mandamus or any other appropriate writ, order or directions, the respondent No.3 authority be directed to hold the election for the post of Up-Sarpanch of village panchayat Nanthe, Tq. Shirpur, District Dhule forthwith and to restrain the respondent No.5 from holding the post of Up-Sarpanch and

for that purpose necessary directions be issued.

4 An affidavit-in-reply is filed on behalf of the Respondent No.3 by Mr.Gauravkumar Dileeprao Khairnar, Naib Tahsildar, Shirpur. In paragraphs no.5 and 6, the deponent says:

“5 In this context this is to submit that as per the Rules of Mumbai Village Panchayat Sarpanch and Deputy Sarpanch Elections, 1964, - Section 5 of the said Rules states that when the seat of Deputy Sarpanch becomes vacant due to section of 40(3) or Section 43(1), the Sarpanch of the Village Panchayat has to call the meeting of members of the Village Panchayat to elect the Deputy Sarpanch among the members of the panchayat.

6 As per the directions of Rules of Mumbai Village Panchayat Sarpanch and Deputy Sarpanch Elections 1964, it is the responsibility of Sarpanch of the Nanthe Grampanchayat to call the meeting of the members to elect Deputy Sarpanch of Nanthe Grampanchayat.

5 We have heard learned Counsel for the respective parties.

6 It is informed that now new Panchayat is constituted. It is, however, a matter of great surprise that the Respondent No.5 – Sangitabai Rajput was permitted to function as a member of the Village Panchayat and to hold the office of the Deputy Sarpanch in spite of being disqualified under the order passed by the Additional Collector and confirmed by the Additional

Commissioner. In the affidavit-in-reply filed on behalf of the Collector, in para 6, the deponent says that it is the responsibility of Sarpanch of the Village Panchayat to call the meeting of the members to elect Deputy Sarpanch. In another words, the Collector wants to say that it is not his responsibility and duty to take action and resort to take appropriate steps to implement the order passed by the Additional Collector, which was confirmed by the Additional Commissioner.

7 The Collector should have taken steps at least when he was called upon to file an affidavit in this petition and which came to be filed by the Naib Tahsildar on behalf of him on 27 February 2017. Still, thereafter the Respondent No.5 – Sangitabai continued to function as a Deputy Sarpanch till the fresh elections were held on 26.09.2018. The Collector should be more diligent so that such instances do not occur again. The Collector shall take necessary steps, and be more careful and responsible to implement law in its letter and spirit.

8 The Registrar (Judicial) to forward copy of this order to the Principal Secretary, Rural Development Department, Mantralaya, Mumbai.

9 In view of the subsequent development, that is, that a new Panchayat is now constituted, writ petition is disposed of.

N.M.JAMDAR, J.

CHIEF JUSTICE