

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1631 OF 2017

Babasaheb Kisan Mohite,
Age : 40 yrs. Occu. Agri.
R/o : Pimpagaon (Alwa),
Tq. Jamkhed, Dist.
Ahmednagar.

... PETITIONER
(Orig. disputant)

VERSUS

1. The Additional Collector,
Ahmednagar.
2. The Tahsildar,
Jamkhed, Dist. Ahmednagar,
3. The Grampanchayat,
(Pimpalgaon (Alwa),
Tq. Jamkhed, Dist.Ahmednagar,
Through its Gramseva.
4. Vinod Hausarao Baradkar,
Age : 35 yrs. Occu. Agri.
5. Sau. Kantabai Sahebrao Borate,
Age : 40 yrs. Occu. Agri.
6. Smt. Laxmibai Chandrakant Mohite,
Age : 80 yrs. Occu. Household.
7. Mahirunbee Dastagir Shaikh
Age : 50 yrs. Occu. Household

Resp. No. 4 to 7 R/o. Pimpalgaon
(Alwa), Tq. Jamkhed,
Dist. Ahmednagar

8. Laxmibai w/o Chandrakant Mohite,
Age : 85 years, Occup : Agriculturist,
R/o : Pimpalgaon Alwa. Tq.Jamkhed,
Dist. Ahmednagar.**RESPONDENTS**
(Resp. No. 2 to 7 org. opponents)
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Advocate for the Petitioner : Shri N. V. Gaware
AGP for respondent Nos. 1 and 2 : Shri S. R. Yadav-Lonikar.
Advocate for respondent Nos. 3 to 8 :- Shri D. J. Patil h/f.
Shri N. B. Suryawanshi
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CORAM : RAVINDRA V. GHUGE, J.
DATED : 13th AUGUST, 2018.
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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and by the consent of the learned Advocates for the respective sides, heard finally.

2. The petitioner is aggrieved by the order dated 19/12/2016, by which, the "No Confidence" motion has been passed against him and the order of the learned Additional Collector, Ahmednagar dated 17/01/2017 in Grampanchayat Dispute No. 126/2016, by which, the grievance of the petitioner against the "No Confidence" motion has been rejected.

3. I have considered the strenuous submissions of the learned Advocate for the petitioner, the learned AGP on behalf of the State and the learned Advocate on behalf of respondent Nos. 3 to 8.

4. The contention of the petitioner is that the "No Confidence" motion passed on 19/12/2016 is rendered invalid since one elected member Smt. Laxmibai Chandrakant Mohite-respondent No. 8 herein, was a disqualified person. Grievance is that Laxmibai who was elected as against the reserved category position, had not submitted her Caste Validity Certificate within six months as is required under Section 10-1A of the Village Panchayats Act.

5. Reliance is placed upon the circular issued by the State Election Commission dated 16/12/2016 providing for a disqualification of such a candidate and setting aside of the election with retrospective effect, from the date of the election. Further reliance is placed upon the judgment of the learned Full bench of this Court in the matter of *Honourable Anant H. Ulahalkar and others Vs. Chief Election Commissioner and*

others (Writ Petition No. 10478/2014), wherein a similar issue under Section 9A of the Municipal Councils-Nagar-Panchayats And Industrial Townships Act-1965 mandating submission of a Caste/Tribe Validity Certificate within 6 months from the date of declaration of results has been held to be mandatory and non furnishing of such a certificate would render the disqualification of an elected candidate.

6. When called upon to state as to what is the present position in law, the learned Advocate for the petitioner submits that the judgment in *Anant H. Ulahalkar and others's case (supra)*, has now been stayed by the Honourable Apex Court and identically situated candidates have been protected against their disqualification. It is further submitted that as on 19/12/2016, Smt. Laxmibai could not have been granted this protection.

7. I find from the record that after the elections to the Grampanchayat Pimpalgaon Alwa, Taluka Jamkhed, District Ahmednagar were held, 7 members were elected. Three Members were returned from the categories which were

reserved for particular categories. By orders dated 15/09/2016 in Grampanchayat Dispute Application No. Jamkhed/20/2016 and 21/2016, the District Collector declared two elected candidates, namely, Sambhaji Tukaram Pawar and Smt. Induai Vishnu Bobde as being disqualified since they had failed to submit their Caste Validity Certificates within six months. Therefore, these two candidates were not present in the special meeting.

8. Four candidates out of the seven (one being the petitioner sarpanch and two having been disqualified) moved, the requisition on 13/12/2016 proposing the "No Confidence" motion against the petitioner. The Tahsildar issued a notice on the same day and the meeting was convened on 19/12/2016. In the meeting, after the motion was tabled and put to voting, four out of the five candidates present and voted, supported the motion and the petitioner was ousted by a majority of 04:01 votes.

9. In so far as the contention of the petitioner that Laxmibai stood automatically disqualified, is concerned, no

proceedings were initiated against her and there was no order of disqualification issued by the competent authority.

10. A practically identical situation was dealt with by this Court by judgment *Dated 04/01/2017 delivered in Writ Petition Nos. 12826 and 12827 of 2016 (Ashok Rambhau Kalane Vs. Gram Sevak, Gram Panchayat, Limpangaon and others)*. This Court has concluded that the disqualification of a member cannot be presumed, much less on the basis of an allegation. The procedure laid down for causing the disqualification of such a candidate is found under the Maharashtra Village Panchayats Act read with the Circular dated 16/12/2016.

11. Merely because the petitioner contends that Laxmibai Chandrakant Mohite can be presumed to be disqualified, is of no consequence, notwithstanding the fact that even if the vote of Laxmibai is deleted and it is presumed that she was not entitled to participate in the meeting as being a disqualified member, there were four members present and eligible to vote in the meeting and three have cast their votes as against one,

in favour of the motion. On this count also the motion stands passed by 3/4th majority.

12. It also cannot be ignored that the judgment in *Anant H. Ulhalkar (supra)* has been stayed by the Honourable Apex Court and protection has been granted to all such candidates, who may not have submitted their Tribe/Caste Validity Certificate within six months from the date of the results.

13. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merit is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-