

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

WRIT PETITION NO. 1579 OF 2018

SUKUMAR ANKUSH WALVE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioners : Shri Kore Ganesh J.
AGP for Respondents 1 to 3 : Shri S.R.Yadav Lonikar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th February, 2018

Per Court:

1 The Petitioners are aggrieved by the order dated 27.02.2017 passed by the Additional Collector, Osmanabad disqualifying the Petitioners as members of the Gram Panchayat under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act, as well as by the order of the Additional Commissioner dated 19.11.2017 sustaining the disqualification.

2 The learned Advocate for the Petitioners submits that insofar as Petitioner No.1 is concerned, she is not pressing this petition. As such, this petition is dismissed to her extent.

3 Insofar as Petitioner No.2 is concerned, it is stated that she is a member of the joint family living in the same village. The head of the

joint family is the beneficiary under the Swaccha Bharat Mission (Rural), Ministry of Drinking Water and Sanitation. The said head happens to be the nephew of Petitioner No.2. The entire family is using one toilet block, which is said to be constructed by him under the Swaccha Bharat Mission.

4 The learned Advocate for the Petitioners has strenuously criticized the impugned orders and submits that an elected representative should not be so easily disqualified. Unless it is proved conclusively that an elected representative is not using the toilet block either owned by himself or herself or a public toilet, there cannot be a disqualification.

5 The learned AGP, on the other hand, has defended the impugned orders.

6 Section 14(1)(j-5) mandates that an elected representative must submit a certificate of the concerned Panchayat along with the resolution of the Gram Sabha certifying that a candidate has a toilet block in such house owned by him and regularly uses it or if he resides in any other accommodation, the said accommodation has a toilet block or he is regularly using the public toilet.

7 This Court, in the matter of Nimba Dashrath Koli vs. State of Maharashtra and others, 2015 (3) Mh.L.J. 598 and in the judgment delivered on 20.09.2016 in the matter of Savita Sonkamble vs. State of Maharashtra, Writ Petition Nos.9704/2016 and 9705/2016, has concluded that these two documents are mandatory. It is, therefore, settled that the

certificate issued by the Gram Panchayat and the resolution of the Gram Sabha should be produced on record.

8 The Nagpur Bench of this Court by the judgment dated 25.03.2014 in Writ Petition No.1564/2014 (Vijay Ramchandra Raut and others vs. Divisional Commissioner and others, 2014 (3) Mh.L.J. 641), has concluded that the certificate of the concerned Gram Panchayat has to be produced along with the resolution of the Gram Sabha certifying that the candidate is having a toilet block or is using the public toilet on regular basis. The Gram Sabha has to pass the resolution to indicate this fact. Unless such resolution and the certificate of the Gram Panchayat are not produced, an elected candidate cannot continue to be a member of the Gram Panchayat.

9 In the instant case, it is admitted that no resolution of the Gram Sabha has ever been produced by Petitioner No.2. The certificate dated 16.07.2015 produced by Petitioner No.2 is under the signature of the Gramsevak. Nevertheless, the absence of the resolution passed by the Gram Sabha would justify the passing of the impugned orders.

10 In the light of the above, I do not find that the impugned orders could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.