

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

996 WRIT PETITION NO. 3766 OF 2018

BUSHRA WASIM PATEL

VERSUS

THE STATE OF MAHARASHTRA & ORS.

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Mr. Sk.Mazhar A.Jahagirdar, Advocate
for Petitioner.

Mr. S.K.Tambe, A.G.P. for R – 1.

Mr. V.D.Hon, Senior Counsel i/b

Mr. A.V.Hon, Advocate for R – 2.

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CORAM : V.L.ACHLIYA, J.

DATE : 13th APRIL, 2018

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ORAL ORDER :

1. By this petition under Article 227 of Constitution of India, the petitioner has challenged the order dated 23/03/2018 passed by District Collector, Ahmednagar in Village Panchayat Dispute No. 65/2017. By the impugned order, learned District Collector dismissed the Dispute filed u/s 135 (3-b) of Maharashtra Village Panchayat Act, 1958 thereby challenging no confidence motion passed in the specially convened meeting held on 14/12/2017 of village

panchayat, Hasnapur, Taluka Rahata, District Ahmednagar.

2. Learned counsel for the petitioner assailed the order with contention that the no confidence motion passed in the meeting dated 14/12/2017 is bad in law for the sole reason that it was passed less than 2/3rd majority of members entitled to participate and vote in the meeting. It is contended that one Yasmin Sultana Shaikh the member of village panchayat was not allowed to caste her vote in said meeting though she was entitle to participate and vote in view of order passed in Writ Petition No. 4090/2017. It is contended that as the no confidence motion passed against petitioner was passed by less than 2/3rd members present and participate in the meeting, the entire process is vitiated in law.

3. In my view, the challenge raised in the petition is devoid of merit. There is absolutely no perversity in the order passed by learned District Collector, Ahmednagar. There is no dispute as to the fact that Yasmin Sultana Shaikh who was earlier elected as a member of village panchayat, Hasnapur was declared disqualified on 30/08/2016 on account of non submission of caste validity certificate within a statutory period of six months from the date of her election. The fact is also not in dispute that till 14/12/2017, there was no order passed by this Court or any other authority under the law to set aside her disqualification and to restore her position as a member of village panchayat, Hasnapur. So far as reference made by the learned counsel for the petitioner of order passed in

Writ Petition No. 4090 of 2017, the order is not passed in the matter of petitioner but the order is passed in the matter of some other person. There is no order passed in the matter of petitioner to set aside her disqualification and restore her status as a member of village panchayat, Hasnapur. By the order dated 08/06/2017 passed in Writ Petition No. 4090/2017, the Division Bench of this Court has taken note that the Full Bench decision of this Court holding section 10 [1-a] of Maharashtra Village Panchayat Act, 1958 as mandatory being challenged before the Apex Court and by way of interim order, the Apex Court has stayed the effect and implementation of Full Bench Judgment, the Court has made following observations in paragraph Nos. 7 and 8 of the order :

"7. In the State of Maharashtra, there is spate of such proceedings and considerable judicial time of this Court is wasted in only issuing notices to the public bodies and staying the effect of the disqualification order until the proceedings before the Hon'ble Supreme Court are disposed of.

8. We would, therefore, expect all the Divisional Commissioners to issue appropriate orders and directions and hold their hands so that they themselves, the District Collectors and other officials would realize that until and unless the legal position is settled, it would not be appropriate to commence, initiate or conclude the proceedings or give effect to the

orders passed therein. Ultimately, this is an issue of interpretation of a legal provision. The question raised in the petition has far reaching consequences. The provisions and the substantive sections have been interpreted by the Full Bench and which interpretation is under scrutiny of the Hon'ble Supreme Court. We would therefore expect reasonable, fair and just approach by the State and its officials so that we save our precious judicial time and utilize it for better and deserving cases. "

4. In my view, the order referred above no way automatically restore back the status of Yasmin Sultana Shaikh as a member of village panchayat, Hasnapur, so as to entitle her to attend, participate and caste vote in the meeting of village panchayat held on 14/12/2017. In absence of any order passed by the competent Court setting aside her disqualification and restoring her status as a member of village panchayat, she was not entitled to participate and caste vote in meeting dated 14/12/2017. In this view, as the notice of no confidence was passed with the majority of 2/3rd persons present and entitled to vote in the meeting dated 14/12/2017, the District Collector is fully justified in rejecting the dispute. In my view, there is absolutely no perversity, arbitrariness and jurisdictional error in the order to interfere with the order passed in exercise of writ jurisdiction. Accordingly, the Writ Petition stands dismissed.

5. At this stage, learned counsel for the petitioner requested to direct the Collector, Ahmednagar not to hold the meeting to elect Sarpanch for the period of one month from the date of this order. Since the petition is devoid of merit and substance therein, I am not inclined to entertain the request.

[V.L.ACHLIYA, J.]

KNP/W.P. 3766.2018