

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

WRIT PETITION NO. 7053 OF 2017

Alka Ganpat Misal,
Age : 40 years,
Occupation : Agriculture,
R/o Majleshahar, Tq.Shevgaon,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through the Secretary of
Rural Development and Panchayat
Raj Department, Mantralaya,
Mumbai-32.
Through Secretary of Tribal
Development Department,
Social Justice and Special Assistance
Department, Mantralaya,
Mumbai-32.
- 2 The State Election Commission,
Mumbai.
- 3 The Additional Collector,
Ahmednagar.
- 4 The Tahsildar,
Shevgaon, Tq.Shevgaon,
District Ahmednagar.

...RESPONDENTS

...

Advocate for the Petitioner : Shri Jaju Nikhil S.
AGP for Respondents 1, 3 and 4 : Shri S.R.Yadav.
Advocate for Respondent 2 : Shri M.B.Bharaswadkar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th August, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is aggrieved by the order dated 15.09.2016 delivered by the Additional Collector, Ahmednagar in Gram Panchayat Dispute Application No.Shevgaon/ 119/2016 by which, the disqualification proceedings under Section 10-1A of the Maharashtra Village Panchayats Act, have been allowed and the election of the Petitioner as a member of the Village Panchayat has been set aside with retrospective effect.

3 I have considered the submissions of the learned Advocates appearing for the respective sides.

4 Considering the short point involved, I am not required to advert to the entire submissions of the learned Advocates. Suffice it to say that this Petitioner has contested the election to the membership of the Gram Panchayat from Ward No.2, which was the ward reserved for the Women Category (Open). There was no reservation on the caste/ tribe basis. She was, therefore, elected from the ward reserved for Women (Open). Subsequently, she was elected as a Sarpanch of the said Village

Panchayat, which was reserved for the Scheduled Tribe category.

5 The issue is as to whether, this Petitioner could be disqualified as a member of the Gram Panchayat by the impugned order for having failed in submitting the tribe validity certificate within six months of the date of the results of the elections, when she had not contested the election to the membership of the Gram Panchayat from any reserved category.

6 I have perused the record with the assistance of the learned Advocates and the learned AGP.

7 The copy of the Gram Panchayat election results dated 06.08.2015 is placed on record. The Petitioner has been elected from Ward No.2 from the "Open" category, but reserved for "Women". Admittedly, there is no caste/ tribe reservation applicable and the Petitioner had also not contested the election on the basis of any caste/ tribe.

8 It is, therefore, glaringly obvious that the Additional Collector, Ahmednagar failed to notice this aspect and disqualified the Petitioner as a member of the Village Panchayat under Section 10-1A of the Maharashtra Village Panchayats Act by which, her election stands set aside with retrospective effect from the date of the election.

9 In the light of the above, the impugned order dated 15.09.2016 is unsustainable and is quashed and set aside. This Writ

Petition is allowed on this solitary ground.

10 An issue was raised in this petition by the Respondents that this Petitioner has subsequently contested the election to the position of the Sarpanch, which was reserved for the Scheduled Tribe category. The Petitioner claimed to be belonging to the Scheduled Tribe and contends that her claim for validation is pending with the Scrutiny Committee.

11 The learned Advocate for the Petitioner, therefore, seriously apprehends that the concerned Revenue Authorities would now initiate the proceedings against the Petitioner for her disqualification as a Sarpanch for having failed in submitting the tribe validity certificate within six months from the date of her election as a Sarpanch u/s 30-1A, on the basis of the judgment delivered by the learned Full Bench of this Court in the matter of *Anant H. Ulahalkar and another vs. Chief Election Commissioner and others, 2017 (1) Mh.L.J. 431 (FB)*.

12 In *Saraswati Devi vs. Shanti Devi, AIR 1997 SCW 106 : AIR 1997 SC 347*, the Honourable Supreme Court had concluded that a candidate, who has entered the Municipality as a member from the Open category, cannot contest the position of the President, which was reserved for a particular reserved category.

13 However, the Honourable Supreme Court (three Judges Bench) in the matter of *Kasambhai F. Ghanchi vs. Chandubhai D. Rajput, AIR 1998 SC 815*, dealt with the issue of whether, a candidate,

who is primarily elected to the membership of any Municipality from the Open Category, could contest the position of a President, which was reserved for backward category. The Three Judges Bench of the Honourable Supreme Court overruled the view taken in *Saraswati Devi (supra)* and concluded that the candidate entering the Municipality from the Open Category, can as well contest the election to the post of the President, which may have been reserved for a particular reserved category. It would be apposite to reproduce paragraphs 11 to 19 of the said judgment as under :-

- "11. *Before referring to Saraswati Devi's case (1997 AIR SCW 106), it will be appropriate to examine the provisions of the Constitution as well as the Act the Rules for their true import and effect. As is evident from the provisions quoted earlier the municipalities are required to be represented by members belonging to all sections of the society. Keeping in line with the Constitutional mandate there is now provision for reservation of seats in the municipalities in favour of the Scheduled Castes, Scheduled Tribes, Backward Classes and the women. In addition thereto the post of the President of the Municipality, which has a tenure of only one year, is to be filled by rotation from amongst the persons belonging to different classes. Though, the term of office is only for one year but Section 33 envisages that the Provisions of sub-section (3) which provides for reservation of the office of the President to be filled by different categories by rotation. There is no indication or suggestion in Article 243 T or in the Act that in case the office of the President is required to be filled by a member who is a Scheduled Caste, Schedule Tribe, Backward Class or a woman, then only a member who has been elected from a reserved seat can stand for election. In*

other words, for the purpose of election to the post of President the reservation which is contemplated by the act is only to the effect that the person elected should belong to the category of Schedule Caste, Schedule Tribe, Backward Class or woman, as per the roster. Conceivably, as in the present case, an elected member may fall within two or more categories and, in this way, may be in a position to seek re-election as envisaged by Section 33 of the Gujarat Municipal Act. If this is not so, and with the category changing every year, as per the roster, Section 33 will become redundant. The legislative intent, therefore, clearly is that one person, whether elected from reserved or general seat, but who belongs to the category out of which the President is to be elected, can seek re-election as envisaged by Section 33 of the Act.

12. The rules framed under the Act also do not contain any provision that only members elected to the reserved seats will be eligible to stand for election of the President when, as per the roster, the office is required to be filled by a person belonging to a particular category.
13. By providing for the officer of the President to be filled from different categories of persons by rotation the effect is that, as per the roster point, the office of the President is required to be filled from a specified or particular class, e.g. the Scheduled Caste, or Scheduled Tribe or Backward class or woman, then all other members of the municipality who do not fall under that category, are all excluded from contesting the election. The eligibility, and corresponding exclusion, of others is determined on the basis of the candidate answering to the description of the category or caste for whom the post is reserved as per roster and not the nature of constituency from which the person is elected. For example when as per roster the candidate for the President's post has to be a Scheduled Caste then the Act and the Rules do not provide that it is only that Scheduled Caste candidate who has been elected from Scheduled Caste ward who can stand for election and the other Scheduled Castes candidates are not eligible even though they were

- popular enough to get elected from unreserved wards.
14. The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is also can effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. When the idea is promote the weaker sections of the society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in any way suggest, expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred from contesting the election of the President when that office is to be filled only be a reserved category person.
15. In *Saraswati Devi's* case the appellant therein belonged to a Scheduled Caste category and had been elected as a member of the Loharu Municipality Committee from the ward reserved for Scheduled Caste woman while the respondent therein, who was also a Scheduled Caste woman, had been elected as a member of the general category. The office of the President, by virtue of the rotation, was required to be filled from amongst the members belonging to Scheduled Caste woman category. *Saraswati Devi* being the solitary candidate elected from the ward reserved for Scheduled Caste woman was declared as having been elected unopposed as President. This

decision was challenged by Shanti Devi on the ground that she was also a Scheduled Caste woman, though elected to a seat reserved for general category and was entitled to contest the election for the President. The writ petition was allowed by the High Court who held that Shanti Devi was also entitled to contest the election to the post of the President even though she had been elected to a seat reserved for general category. In allowing the appeal filed by Saraswati Devi the court had to construe the provisions of Rule 70(4) of the Haryana Municipal Election Rules 1978 which, inter alia, provided that offices of the President in the municipalities shall be filled up from amongst the members belonging to the general category. Scheduled Castes, Backward Classes and women by rotation and that not less than one-third of the total number of offices of the President in the municipalities shall be reserved for women including the offices reserved for Scheduled Castes and Backward Classes women. It also provided that in case the office is required to be filled by woman of a reserved category but such women are not available, then the office of the President shall be filled up from the male member of the said reserved category. Section 10(5) of the relevant act provided that the offices of President in the municipalities shall be filled up from amongst the members belonging to general category, Scheduled Castes, Backward Classes and women by rotation and by lots in the manner prescribed. Interpreting these provisions it was observed at page 128 as follows:

"On a combined reading of Article 243 T of the Constitution of India, Sections 10(5) and 18 of the Act and sub-rule (4) of Rule 70 of Election Rules, it becomes clear that Parliament as well as the legislature have enacted these provisions in order to provide for reservation of office of the President for members of Scheduled castes, Scheduled Tribes, Backward Classes and women in rotation. A bare reading of section 10(5) and Rules 70(4) shows that the offices of the Presidents are to be filled from amongst members belonging to different categories by

rotation and by lots. It is not disputed that the post of President of Loharu Municipal Committee at the relevant time was reserved for Scheduled Caste women. So far as the appellant is concerned, she has been elected from Ward No.5 on a seat reserved for Scheduled Caste women. Therefore, in that category she is the sole though by coincidence she also belongs to Scheduled Caste but she was not elected on a seat reserved for Scheduled Caste women, but on a seat reserved for General category women from Ward No.11 It is not in dispute that in that ward there were other contesting women, not belonging to General category. Therefore, respondent No.1 is a member who is elected on the seat earmarked for General category women; she cannot be said to be a member elected on a seat reserved for Scheduled Caste women. In Ward No.5 from where the appellant contested, and only Scheduled Caste women could have contested and in that context the appellant emerged a Scheduled Caste and not belonging to the category of women to which Respondent No.1 belongs, Consequently both of them cannot be treated to form a part and parcel of the same category of seats on which they have got elected. It is true as contended by learned counsel for Respondent No.1 and which contention has appealed to the High Court that Rule 70(4) mandates that the offices of Presidents of the Municipalities shall be filled up from amongst of the Municipalities shall be filled up from amongst the members belonging to the categories concerned mentioned in the Rule. But the said phraseology does not imply that the members must belong to a particular caste like Scheduled Castes, Backward Classes etc. because the general words "members belonging to" are followed by different types of classes like General category, category of Scheduled Caste, category of Backward Classes and category of women as mentioned in the said Rule. It is obvious that General category has nothing to do with castes, similarly Backward Classes having nothing to do with castes and the category of women is also separately indicated. That is also not having any nexus with the

castes. When the thrust of the Rule is that offices of the Presidents in Municipalities must go by rotation to members belonging to the specified categories, it would necessarily mean in the context of the parent Article 243 T of the Constitution of India and Section 10(5) of the Act that the elected members concerned of the Municipal Committee must have got elected on the seats available to General category candidates or Scheduled Castes category candidates or Backward Classes category candidates General women category candidates rotation. The very concept of rotation presupposes that for the context of Presidentship once by rotation a reservation is made for members elected from a particular category only those members can contest for Presidentship. As admittedly the post of President, Loharu Municipality is subjected to double reservation of being available only to an elected member who is a Scheduled Caste woman she must have been elected on the Scheduled Caste seat from the ward reserved for such Scheduled Caste candidates. As admittedly only three wards, namely, 1,4 and 5 are reserved for members belonging to Scheduled castes and even out of three wards only ward No.5 from which the appellant was elected was reserved for Scheduled Caste women and as President's post is reserved for being filled up by a member belonging to the category of Scheduled Caste women who has been elected on such a seat, Respondent 1 who is elected as a member not on any seat reserved for Scheduled Caste women but on a seat reserved for general category of women from Ward No.11 is obviously out of the arena of contest for the post of Presidentship of Loharu Municipality."

16. Neither the provisions of Article 243 T nor of Section 10(5) of the Haryana Act seem to suggest to us that Rule 70(4), which provides that offices of the President of municipalities must go on rotation to members belonging to specified categories, must necessarily mean "that the elected members concerned of the municipal committee must have got elected members concerned of the municipal committee must have got elected to the seats available to general

category candidates or Scheduled Castes category candidate or Backward Classes category candidate or general women category candidates by rotation." There seems to be no warrant for such compartmentalisation and nor do the words of the act or the Rules indicate that the concept of rotation presupposes that for the contest of President it is to be from amongst the members elected from a particular category from the seats reserved for that category. This inference which is sought to be drawn does not flow from the plain language of Article 243 T or from the provisions of the Act or the Rules framed thereunder and it also does not promote the object of reservation. The legal provisions provide that office of the President of the municipality should go by rotation to members belonging to specific category and no more. These provisions do not provide that those members, though falling in the category of Scheduled Castes, Scheduled Tribes, backward Classes or women must be only those who have been elected from the seats reserved for that category of persons. Reservation is with reference to the category/caste to which the person belongs and not the nature of constituency from which he/she was elected.

17. The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or clarifications made ward wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the backward classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the

municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.

18. In our opinion, therefore, the conclusion which was arrived at in Saraswati Devi's case did not flow from the language of the relevant provisions and, it is not consistent with the concept of reservation. With respect, it does not lay down the correct law.
19. From the aforesaid discussion it follows that the appellant who belongs to the Backward Class was eligible to stand for the office of President even though he had been elected as a member of the municipality not from a reserved seat but from a general seat. As per the roster it is a Backward Class member who in the year 1997 is to be the President of the Jambusar Municipality. The appellant, who admittedly belongs to a Backward Class could not be regarded as being ineligible merely because he had not been elected to a seat which had been reserved for a Backward Class candidate."

(Emphasis supplied).

14 It is, therefore, well settled that the Petitioner can become the Sarpanch of the Village Panchayat, which was reserved for the Scheduled Tribe Category, although she has entered the Village Panchayat from the Open category, since the Petitioner belongs to the Scheduled Tribe.

15 In **Anant Ulahalkar (supra)**, the effect of the failure to submit a caste/ tribe validity certificate under Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act was considered and it was concluded that if such a validity certificate of belonging to a particular caste/ tribe is not tendered within six months from the date of the results, such candidate would stand automatically disqualified with retrospective effect.

16 In *Petition (s) For Special Leave to Appeal (C) Nos.29874-29875 of 2016 (Shankar Raghunath Devre (Patil) vs. State of Maharashtra and others)*, the Honourable Supreme Court vide order dated 13.02.2017, while dealing with a group of petitions, has stayed the judgment in *Anant Ulahalkar (supra)* and such candidates, who have failed to submit their caste/ tribe validity certificates within six months, are protected and they would continue to remain in their respective positions until further orders.

17 In view of the above, it would be appropriate to protect the Petitioner for failing to submit her tribe validity certificate within six months from being elected as a Sarpanch u/s 30-1A, since in identical cases, the Honourable Supreme Court has protected such candidates. Obviously, if the view taken by the learned Full Bench of this Court in *Anant Ulahalkar (supra)* is sustained by the Honourable Supreme Court, the State Authorities can proceed against the Petitioner for disqualification. But, if the view taken in *Anant Ulahalkar (supra)* is not approved and a different view is taken by the Honourable Supreme Court, the statutory authorities can then consider, whether, the Petitioner would

incur any disqualification under Section 30-1A of the Maharashtra Village Panchayats Act.

18 This Writ Petition is, therefore, allowed in terms of prayer clause B, which reads as under :-

"B) *To quash and set aside the common order dated 15.09.2016 passed in Dispute Application No.119/2016 by the learned Additional Collector, Ahmednagar by issuing writ of certiorari or any other writ or order or direction.*"

19 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)