

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8269 OF 2018

Dnyaneshwar S/o Rambhau Dange,
Age: 49 years, occu: Agril,
R/o Kankuri, Tq. Rahata
Dist. Ahmednagar

Petitioner

Versus

- 1 The State of Maharashtra
through Principal Secretary,
Rural Development,
Mantralaya, Mumbai
- 2 The Collector, Ahmednagar
Office of Collector, A'nagar
- 3 The Block Development Officer,
Panchayat Samitee Rahata
District – Ahmednagar

Respondents

Mr. N.P. Bangar advocate for the petitioner
Mrs. G.L. Deshpande, Assistant Govt. Pleader for respondent-State
Mr. S.T. Shelke advocate for respondent No.3.

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CORAM : **R.M. BORDE AND**
MANGESH S. PATIL, JJ

Date :22nd OCTOBER, 2018

ORAL JUDGMENT

(Per: R.M. Borde, J)

- 1 Heard.
- 2 Rule. With the consent of the parties, petition is taken-up
for final decision at admission stage.

3 The petitioner is a directly elected Sarpanch of village panchayat Kankuri, Tq. Rahata, District Ahmednagar. The petitioner is elected directly amongst the voters entitled to cast votes within the village panchayat area in accordance with section 30A-1A of the Maharashtra Village Panchayat Act. The petitioner is seeking a declaration that he is entitled to cast vote every meeting of the Kankuri village panchayat, Tq. Rahata, Dist. Ahmednagar.

4 The petitioner places reliance on the Judgment delivered by this Court in the group of petitions bearing Writ Petition No. 209/2018 and other matters decided on 6.3.2018. The petitioner contends that by virtue of provisions of section 3(11AAA), the petitioner though elected as Sarpanch in direct elections, is also a Member of village panchayat. Sub-section (11AAA) of section 3 of the Act defines Member as, "a member duly elected as a Member of panchayat under section 11 and include the directly elected Sarpanch of Panchayat under section 30A-1-A." The petitioner contends that since the directly elected Sarpanch is a Member within the meaning of above noted provision, he is entitled to exercise rights exercisable by a Member of village panchayat.

5 It is contended that Sarpanch is entrusted with responsibility of finalizing agenda of panchayat meetings in view of section 38(2)(a). A directly elected Sarpanch is also responsible for preparing the annual budget of panchayat and to exercise all the powers to implement the schemes in consultation with panchayat in view of sub section (2) (b) and (c) of section 38 of the Act. In view of section 49 of the Maharashtra Village Panchayat Act, a Sarpanch shall be the ex-officio Chairman of the village development committee. Section 49 deals with village development committee and by virtue of sub-section 4(i)(a-1), Sarpanch is ex-officio chairman of the committees. In view of section 62 of the Act, a directly elected Sarpanch is entrusted with the responsibility of managing funds of the village panchayat. It is contended that considering the responsibilities of directly elected Sarpanch of village Panchayat, he cannot be denied right to cast vote, exercisable by a Member of Panchayat. It is further contended that sub-article (4) of article 243-C of the Constitution of India provides that the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the panchayat. It is contended that since the constitutional

provision entitles Chairman of Panchayat to exercise right to vote at the meetings, such a right conferred under the Constitution cannot be taken away by adopting an interpretation of statutory provision, which would defeat the object of enactment, as well as violate the mandate of constitutional provision.

6 While dealing with identical issue, the Division Bench has observed in paragraph No.18 of the Judgment cited supra, as quoted below:-

18 The argument advanced by the respondents is devoid of merit for the reason that the casting vote conferred on Sarpanch by virtue of provisions of subsection 4 of section 33 is an additional vote exercisable by the Sarpanch apart from his legal right to cast vote as a member. The contention of the respondent that there is only restricted right conferred on the Sarpanch while presiding over a meeting convened for election of Upa-sarpanch under section 33 is opposed to the constitutional provisions contained in article 243-C(4). The right conferred upon chair-person of the Panchayat under article 243-C(4) is an unqualified right and cannot be construed as a restrictive right as contended by the respondents. If at all the argument advanced by the respondents is to be accepted and provision is construed as the right conferred on a Sarpanch to cast vote at the election of Upa-sarpanch in the meeting convened under section 33 of the Act to be restricted right, it will lead us to draw logical conclusion that the provisions incorporated by virtue of amended Act itself is oppose to constitutional

mandate contained in article 243-C(4). The intention of the legislature while bringing the amendment was clear to confer an additional right on the directly elected Sarpanch. While interpreting legislative provisions, a care shall have to be taken to bring the provisions within the ambit of constitutionality in stead of putting an interpretation which would lead to render the provision itself in conflict with the constitutional provision. If the interpretation put forth by the respondent is accepted, it would render the amended provision conferring right of casting vote on the directly elected Sarpanch to be in conflict with the constitutional provision and such interpretation shall not be accepted.

In para No.20 of the Judgment, it is observed thus:-

“ 20 It is thus clear that merely because Sarpanch has been conferred with casting of votes, it does not take away his entitlement to exercise the right to vote as a Member of the Village Panchayat. Such an interpretation would be in consonance with the constitutional provisions of Article 243-C-4 of the Constitution of India. “

7 On consideration of the observations made in the Judgment referred to above as well as considering the provisions of section 3(11-AAA), it has to be concluded that the petitioner, who is a directly elected Sarpanch of the village Panchayat, is also a member and is entitled to exercise all the rights of Member which would include right to cast vote at the meetings. The analysis of the constitutional provision of Article 243-C sub-article (4) read with the statutory provision of section 3(11-AAA) leads

to irresistible conclusion that the directly elected Sarpanch is entitled to exercise rights conferred upon him as a President as well as the rights conferred as a Member of village panchayat including right to cast vote in the meetings of Panchayat.

8 For the reasons recorded above, writ petition is allowed.

9 Rule is made absolute to the extent specified above.

10 There shall be no order as to costs.

(MANGESH S. PATIL, J)

(R.M. BORDE, J)