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

WRIT PETITION NO.13373 OF 2017

Khandu s/o Vanji Bhil,
Age: 55 years, Occupation: Agri.,
R/o At Pimpri, Post Chimthane,
Tal. Shindkheda, Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Village Development
Water Conservation Department,
Mantralaya, Mumbai-32
2. The State of Election Commission,
New Administrative Building,
In front of Mantralaya, Mumbai
3. The Divisional Commissioner,
Nashik Division, Nashik
4. The District Collector,
Zilla Parishad, Dhule
5. The Chief Executive Officer,
Zilla Parishad, Dhule
6. The Block Development Officer,
Panchayat Samiti, Shindkheda
At Shindkheda
7. The Tahsildar,
Shindkheda, Tal. Shindkheda,
District Dhule
8. The Desk Officer,
Village Development Department,
Bandhkam Bhavan, 25,
Marzbanpath Fort, Mumbai

..RESPONDENTS

(2)

Mr D. B. Thoke, Advocate for petitioner;
Mr S. Y. Mahajan, A.G.P. for respondent Nos.1, 3, 4 & 7;
Mr S. T. Shelke, Advocate for respondent No.2;
Mr N. N. Desale, Advocate for respondent No.5

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 16th October, 2018

ORAL ORDER:

Heard Mr Thoke, learned Counsel appearing on behalf of the petitioner.

2. Mr Thoke, at the outset, orally prays for an amendment to the petition. He submits that inadvertently, a reference to the date of the impugned letter/communication is missed to be mentioned in prayer clause (C). Though the petitioner challenges the letter/communication dated 1st November, 2017, which is placed on record at Exh.'C', the oral prayer of learned Counsel for the petitioner is allowed. Amendment be carried out forthwith.

3. The petitioner challenges the order dated 1st November, 2017, whereby though the petitioner was permitted to exercise his right of casting vote, he was prevented from participating in the voting process as a member of village panchayat.

4. Mr Thoke, learned Counsel for the petitioner submits that an identical issue was raised in the bunch of petitions. Our attention is invited to the

(3)

judgment and order dated 6th March, 2018, passed by the Division Bench of this Court in Writ Petition No.209 of 2018 and other companion writ petitions. Perusal of the said order shows that the prayer in the bunch of petitions and particularly in lead petition i.e. Writ Petition No.209 of 2018 is referred to in para 4 of the order, which reads thus :-

“4 The petitioner, in Writ Petition No.209/2018 is praying for declaration that she is entitled to cast her vote in the capacity of a member in addition to her right to exercise casting vote in the event of equality of votes in the meeting for election of Upa-sarpanch of Bansarola, Tq. Kaij, Dist. Beed. It is also prayed by the petitioner to declare the communication dated 1.11.2017 issued by the Department of Rural Development, Mumbai to be illegal and violative of provisions of Maharashtra Village Panchayat Act, 1958 as amended by Ordinance No.18 of 2017.”

5. The contention of the petitioner is also referred to and the same is reflected in para 9 of the order, which reads thus:-

“9 It is the contention of the petitioner that since the Sarpanch has been bestowed with the casting votes, that itself does not dis-entitle him from exercising his right to cast vote at the election of Upa-sarpanch. It is contended that the Sarpanch is a member of the village Panchayat by virtue of section 3(11-AAA) of the Act. It is also contended that the constitutional right conferred upon Sarpanch or Chairman of the village Panchayat to cast vote at the meeting of Panchayat cannot be taken away.”

(4)

6. Then there is also a reference to the relevant provisions, namely, Section 33 of the Maharashtra Village Panchayats Act, 1958 (for short 'the Act'), Rules 10 of Maharashtra Village Panchayats (Sarpanch and Upa-sarpanch) Election Rules, 1965, Section 357 of the Act and more particularly Section 33 and sub section (4) of Section 33 of the Act.

7. The rival submissions of the parties and a reference to the relevant provisions is reflected in para Nos.20, 23 and 24 of the order dated 6th March, 2018, which read 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.

23 A statute or an enabling provision therein, must be so construed as to make it effective and operative on the principle “Ut Res Magis Valeat Quam Pereat”. It is on application of this principle that every effort should be made by a Court to find a meaning, looking at substance and not mere form, and that difficulties in interpretation do not make a provision bad as not being capable of interpretation, so long as a definite meaning can properly be extracted.

24 In the instant case, if the construction as canvassed by

(5)

the respondents is to be accepted, the interpretation would lead to a conclusion that the amended provisions restrict the right of the Sarpanch to cast vote at the meeting of village Panchayat which would obviously be in conflict with the provisions of Article 243-C-4 and such an interpretation shall have to be avoided. A statute has to be interpreted in such a manner so as to bring it within the realm of constitutionality. Any interpretation which renders the provision futile or in conflict with the constitutional provision shall be avoided.”

8. The Division Bench of this Court, thus, by recording its reasons, ultimately allowed the petitions. The communication impugned in the petitions was quashed and set aside and the declaration was also given by this Court to the effect that a directly elected Sarpanch is entitled to exercise right conferred upon an elected member of Panchayat including the right to cast vote at the meeting convened to elect Upa-sarpanch of village Panchaya and the Rule was accordingly made absolute.

9. In view of above referred facts, we see no reason to take any other view than the view adopted by the Division Bench of this Court in the judgment and order dated 6th March, 2018. In the result, the petition is allowed in terms of prayer clauses (C) and (E).

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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