

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.W. NO.1271/2018
IN
WRIT PETITION NO.2970/2018

Jyotiram S/o Babusing Rathod
 ..Vs..
 The Collector, Washim and others
Applicants : Lokchand S/o Gobra Rathod and others

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri A.V. Band, Advocate for petitioner.
 Ms. M.A. Barabde, A.G.P. for respondent.
 Shri S.D. Chopde, Advocate for intervenors.

CORAM : **B.P. DHARMADHIKARI AND Z.A.HAQ, JJ.**
DATED : 13.6.2018.

1. As petitioner has no objection, we permit applicants to be added as intervenors from serial No.4 onwards. Necessary amendment be carried out immediately. Shri S.D. Chopde, Advocate waives notice for added respondents.

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2. Heard Advocate Band, learned A.G.P. and Advocate Chopde.

3. Advocate Band submits that post of Sarpanch for village Ramgad has been reserved for scheduled caste category, however, after general elections as there is no member from scheduled caste category to be elected as Sarpanch, respondent No.1 - Collector has directed respondent No.2 to follow the provisions of law. Instead

of following provisions of Section 30 of Maharashtra Village Panchayats Act the said Tahsildar has drawn a chit by including even open category into it. After drawl of lots, the seat has been shown as earmarked for open category. His contention is drawl of lots is regulated by Rule 2-A(4-A) of the Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964. As per said Sub-rule the open category could not have entered zone of consideration at all. He has relied upon order passed by this Court in Writ Petition No.813/2018 on 15th February, 2018 for said purpose.

4. Learned A.G.P. as also counsel for intervenors submit that in said village there is not a single person belonging either to scheduled caste or scheduled tribe. With the result, reservation prescribed was of no consequence. Learned counsel for intervenors submits that when Writ Petition No.813/2018 was decided on 15th February, 2018 attention of this Court was not invited to the Maharashtra Village Panchayats (Amendment and Continuance) Ordinance, 2018 which has come into force from 19th July, 2017. As per said Ordinance provisions of Section 30 have been amended and vide Section 30A-1A provision has been made for direct election to the post of Sarpanch. Therefore, the elected ward members of Grampanchayat became irrelevant. As they became irrelevant Sub-rule 4-A also ceases to apply. He contends that in this situation, the drawl of lots for the post of Sarpanch has to be after considering the entire constituency which consists of

entire village and hence open category (general candidates) are also entitled to be included in said exercise. He, therefore, prays for dismissal of writ petition.

5. After hearing respective counsel, we find that though the Ordinance mentions that it shall be deemed to have been come into force from 19th July, 2017, the fact that post was earlier earmarked for scheduled caste is not in dispute. The general elections of Grampanchayat of Ramgad have been held in October, 2017 and the post of Sarpanch was then earmarked for scheduled caste. In absence of scheduled caste candidate, the chits have been drawn.

6. The perusal of Ordinance particularly, Section 10 and Section 11 which amend Section 30 and insert Section 30A-1A into main Act reveals that post of Sarpanch is now to be filled by direct election. Earlier it was an indirect election and, therefore, members of Grampanchayat already elected were to elect a Sarpanch from amongst themselves. Because of amendment now the post is to be filled in directly and any resident within village, who meets the requirement, is eligible to contest.

7. It is, in this backdrop, that after absence of scheduled caste candidate, chits have been drawn. The provisions of Amendment Act do not stipulate any procedure expressly in this respect. The effort of Advocate Chopde is to urge that the provisions of Rules will have to be construed harmoniously with the amendment and the Rules therefore, should be held to

be modified and will be applicable *mutatis mutandis*.

8. The fact that post of Sarpanch of Ramgad is reserved for scheduled caste was never in dispute. It was not in dispute even after coming into force of Ordinance. Procedure to be followed if the person from that category is not available is stipulated only in Sub-rule (4-A) of Rule 2-A. That procedure does not permit respondent No.2 - Tahsildar to put any open category also while drawing chits. Zone of consideration in such event is restricted only to categories for whom post can be reserved under Section 30. It is not in dispute that even after amendment, under Section 30 post can be reserved for scheduled caste or other categories and there cannot be any reservation for general / open category.

9. We, therefore, find that view taken by this Court on 15th February, 2018 while deciding Writ Petition No.813/2018 needs to be followed here also.

10. Accordingly, we quash and set aside the communication dated 6.3.2018 and direct respondents to draw chit afresh as per stipulation in Sub-rule (4-A) read with Section 30.

11. Petition is, thus, allowed and **disposed of**.
No costs.

12. We direct the respondents to complete this procedure within four weeks from today.

JUDGE

JUDGE

Tambaskar.