

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

WRIT PETITION NO.1684 OF 2019

DARUBAI MUKUNDA SONAWNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Shri Syed Azizoddin R. and Shri Brahme
Shailesh P.

AGP for Respondents 1 to 4 : Shri N.T.Bhagat
Advocate for Respondents 6 to 9 : Shri Dixit Sushant V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd October, 2019

Per Court:

1 I have heard the strenuous submissions of the learned advocates for the respective sides on 19.09.2019 and today. None has caused an appearance on behalf of respondent nos.5 and 10, though served.

2 The learned advocates appearing on behalf of the petitioner and respondent nos.6 to 9, submit that the impugned order dated 11.01.2019 passed by the Additional Collector, Dhule contains a mistake in paragraph 8 wherein, it is noted that the no confidence motion was passed by 06 votes in favour and 04 votes against the motion. It is clarified that there are in all 07 posts. One position fell vacant, leaving

only 06 elected members competent to sit and vote. The no confidence motion was passed by 04 votes in favour and 02 votes against the motion.

3 I deem it appropriate to record that respondent no.3/Additional Collector, Dhule appears to have blindly signed the impugned order.

4 The contention of the petitioner/ Sarpanch is that out of 04 votes cast in favour of the no confidence motion, 02 candidates elected against the reserved category, are deemed to be disqualified as they had not tendered their caste validity certificates. It would, therefore, be 02 votes in favour of the motion and 02 against the motion.

5 The learned advocate for respondent nos.6 to 9 submits that the petitioner/ Sarpanch was also elected to the post of Sarpanch, which was reserved for the backward category. Section 30-1A of the Maharashtra Village Panchayats Act with its recent amendment prior to the special meeting held on 30.08.2018, indicates that when a person is elected to the post of the Sarpanch, which is reserved for the backward category, he has to tender the caste validity certificate within 12 months from the date of the election. As such, even the petitioner/ Sarpanch will have to be disqualified and this petition would be rendered infructuous.

6 The learned advocate for the petitioner/ Sarpanch submits that an ordinance has been introduced by the State Government, on two occasions under the Maharashtra Village Panchayats Act, the last being

14.02.2019, which protects such candidates upto 14.05.2019.

7 The learned advocate for respondent nos.6 to 9 submits that the same ordinances would be applicable to them.

8 I find that these questions are raised for the first time in this petition and were not raised before the Additional Collector. So also, the Additional Collector appears to have mechanically signed the impugned order keeping in view the conclusions drawn in paragraph 8 of the impugned order that the motion was passed by 06 votes in favour of the motion.

9 In the above backdrop, it would be appropriate to remit this matter back to the Additional Collector, who can investigate into these allegations and after collecting sufficient material and hearing the parties, he would be in a position to conclude as to whether, the petitioner and 02 members are protected by the State Government ordinance or whether, the petitioner as well as the 02 members stand disqualified.

10 In view of the above, this Writ Petition is partly allowed only to the extent of setting aside the impugned order dated 11.01.2019 and remitting the proceeding Gram Panchayat/Dispute Application/Mahalpur/35/2018 to the office of respondent no.3. The parties appearing before the court shall appear before respondent no.3/ Additional Collector on 04.11.2019 at 03:00 pm. Notice can be issued to respondent nos.5 and 10, who have not appeared in this petition.

11 Needless to state, respondent no.2/ District Collector shall appoint the Tahasildar, Sindkheda, District Dhule as the authorized person to manage the affairs of the Gram Panchayat until respondent no.3/Additional Collector decides the proceeding.

12 Respondent no.3/ Additional Collector shall hear all the parties on the additional issue of whether, the petitioner and 02 members have incurred the disqualification and shall, thereafter, consider the proceedings on their own merits and pass a reasoned order expeditiously and in any case, on or before 31.12.2019.

13 In the event, the petitioner/ Sarpanch succeeds and is reinstated as the Sarpanch, she shall be entitled for all consequential benefits as may be payable to her. However, until the decision of the Additional Collector, she shall not be reinstated as the Sarpanch.