

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

WRIT PETITION NO.6400 OF 2018

Vasatalbai W/o Shenfadu Koli
Age: 76 years, Occ. Household
R/o.Kusumba Kh., Tq. and
Dist. Jalgaon

...Petitioner

Versus

1. State of Maharashtra
2. Additional Collector
Jalgaon, Dist. Jalgaon
3. Presiding Officer and Tahsildar
Jalgaon, Dist Jalgaon
4. Village Development Officer,
Grampanchayat
R/o Kusumba Khurd, Tq Jalgaon
Dist. Jalgaon.
5. Devidas s/o Kautik Patil
Age 49 years, Occ. Agril
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon
6. Kailash s/o Sitaram Sonawane
Age 41 years, Occ.- Agril.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon
7. Vikas s/o Aatmaram Patil
Age : 27 years, Occ. Agri, household.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.
8. Smt. Yamunabai W/o Hilalsingh Thakare

- Age 45 years, Occ. Household
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.
9. Sushilabai w/o Sharad More
Age-45 years, Occ. Household
R/o Kusumba, Khurd Tq. Jalgaon
Dist. Jalgaon
10. Pravin S/o Dipchand Patil
Age-34 years, Occ. Household
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.
11. Vilas s/o Shantaram Koli
Age 35 years, Occ. Agril.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.
12. Bhaurao S/o Shamsingh Mahajan
Age 39 years, Occ. Agril
R/o. Kusumba Khurd, Tq. Jalgaon,
Dist. Jalgaon
13. Pallavi w/o Radhakishan Chaudhari
Age-39 years, Occ. Agri,
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.
14. Bebabai w/o Yasin Tadv
Age-35 years, Occ. Agri.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.
15. Bhushan s/o Aba Patil
Age-39 years, Occ. Agril.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon
16. Pramilabai w/o Vishnu Patil

Age 39 years, Occ. Agril
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.

17. Ashabai w/o Ramchandra Sable
Age-45 years, Occ. Agril.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon

18. Shital W/o Lotan Patil
Age 22 years, Occ. Agril.
R/o Kusumba Khurd, Tq. Jalgaon
Dist. Jalgaon.

...Respondents

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Advocate for Petitioner : Shri S.D. Hiwrekar
AGP for Respondent Nos. 1 to 3 :Shri A. B. Chate
Advocate for Respdts No.4 to 6 and 8 to 14 :Shri N.P. Deshmukh
Advocate for Respdts No.7, 15, 16 &18: Shri Inamdar Akram h/f
Shri S.S. Kazi
Respondent No.17 - served

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CORAM : PR. BORA, J.

Dated: July 03, 2019

ORAL JUDGMENT :-

1. The petitioner has filed the present petition for setting aside the resolution passed in the meeting held on 24.01.2018 of Grampanchayat Kusumba Kh., Tal. and Dist. Jalgaon, whereby the no confidence motion moved against the present petitioner was held to have been passed by majority and also to set aside the order dated 24.05.2018 passed by District Collector, Jalgaon in Grampanchayat Dispute Application No.13 of 2018, whereby the dispute raised by the present petitioner has been rejected.

2. The petitioner was elected as the Member of Grampanchayat Kusumba Kh., in the general elections held in the year 2015 for the term of five years from 2015 to 2020. Subsequently, the petitioner also got elected as the Sarpanch of the said village on 17.09.2015.

3. On 18.01.2018 nine members of the said Grampanchayat moved a requisition to Tahsildar, Jalgaon for convening a meeting to discuss the no confidence motion against the petitioner. Accordingly, the Tahsildar, Jalgaon convened the meeting on 24.01.2018. Grampanchayat Kusumba Khurd consists of seventeen members. On the date, on which, no confidence motion was moved i.e. on 18.01.2018, two members had stood disqualified and as such were not entitled to sit and vote in the meeting of the Grampanchayat. Out of fifteen members entitled to sit and vote, twelve members of the Grampanchayat attended the meeting on 24.01.2018. When the meeting was to commence, an objection was raised by the present petitioner that, present Respondent No.7 namely Vikas Aatmaram Patil was not entitled to sit and vote in the said meeting, since he had been disqualified by Collector, Jalgaon vide his order dated 06.09.2017 in Grampanchayat Dispute No.14 of 2016 for non-submission of the election expenses within the stipulated period. The

objection so raised by the petitioner was turned down by the Tahsildar and the said respondent was allowed to vote in favour of the said no confidence motion. The no confidence motion was, then, successfully carried out by the majority of ten members, out of twelve, present in the said meeting. Since no confidence motion was carried out by majority of 2/3rd of the total number of members entitled to sit and vote, the Tahsildar declared the no confidence motion to have been successfully passed against the present petitioner. The petitioner filed Grampanchayat Dispute Application No.13 of 2018 challenging the no confidence motion carried against her in the meeting held on 24.01.2018 under Section 35 (3-B) of The Maharashtra Village Panchayats Act, 1958. The learned Collector, however, vide its Judgment and order dated 24.05.2018 dismissed the said dispute. Aggrieved by, the petitioner has filed the present writ petition.

4. Shri Hiwrekar the learned counsel appearing for the petitioner submitted that, Respondent No.7 namely Vikas Aatmaram Patil had been disqualified from holding the post of the member of Grampanchayat Kusumba Kd vide order passed by Collector, Jalgaon on 06.09.2017 in Grampanchayat Dispute No.14 of 2016. The aforesaid Grampanchayat dispute was filed by one Sambhaji Govind

Patil against respondent nos.5 to 10 and 18 under Section 14 of The Maharashtra Village Panchayats Act, 1958 for their failure in submitting the election expenses within the stipulated period. The learned counsel further submitted that, six out of seven members filed an appeal under Section 16 of The Maharashtra Village Panchayats Act, 1958 before the Divisional Commissioner at Nashik. The learned counsel further submitted that, vide order dated 30.10.2017 the learned Divisional Commissioner allowed Grampanchayat Appeal No.322 of 2017. The learned Divisional Commissioner set aside the order dated 06.09.2017 passed by Collector, Jalgaon and gave a direction to Collector, Jalgaon to conduct a fresh enquiry in the matter and to pass the appropriate orders. The learned counsel further submitted that, Respondent No.7 namely Vikas Aatmaram Patil, since did not prefer any appeal. Order dated 06.09.2017 passed by the Collector attained finality insofar as his disqualification is concerned. The learned counsel further submitted that, Respondent No.7 was, thus, not eligible to sit and vote in the meeting of the Grampanchayat held on 24.01.2018.

5. The learned counsel further submitted that, when the meeting commenced to discuss the no confidence motion against the petitioner, she raised an objection that, Respondent No.7 since had

seized to be the Member of Grampanchayat w.e.f 06.09.2017, was not entitled to sit and vote in the said meeting. The objection raised by the petitioner was, however, turned down by the Tahsildar by observing that, the order dated 06.09.2017 passed by Collector, Jalgaon has been set aside by the Divisional Commissioner, Nashik on 30.10.2017. It was observed by the Tahsildar that, even though respondent no.7 Vikas Aatmaram Patil had not preferred any appeal against the order dated 06.09.2017, since the said order was set aside in the appeal filed by the other members of the Grampanchayat, the said decision was applicable for Respondent No.7 also.

6. The learned counsel further submitted that, since Respondent No.7 was permitted to sit and vote in the meeting, the no confidence motion was held to be successfully carried against the petitioner by the majority of ten members out of fifteen members eligible to sit and vote at the relevant time. The learned counsel submitted that, the petitioner though challenged the resolution of no confidence motion passed against her by filing the Grampanchayat Dispute No.13 of 2018 before the Collector, Jalgaon, the same has been dismissed vide the order passed by him on 24.05.2018.

7. The learned counsel submitted that, since Respondent

No.7 had not challenged his disqualification, Tahsildar, Jalgaon could not have allowed the said respondent to sit and vote in the meeting held on 24.01.2018. The learned counsel further submitted that, the number of persons, who cast their vote in favour of the no confidence motion was, thus, liable to be reduced to nine members. The learned counsel submitted that, at the relevant time, two out of seventeen members had already stood disqualified and subsequently Respondent No.7 also stood disqualified with effect from 06.09.2017 and, thus, only 14 members were entitled to sit and cast their vote in the meeting held on 24.01.2018. The learned counsel submitted that, in the meeting held on 24.01.2018, twelve members were present including Respondent No.7 - Vikas Aatmaram Patil and ten out of them voted in favour of the no confidence motion including said Vikas Patil. The learned counsel submitted that, having regard to the fact that only fourteen members were eligible to sit and vote on 24.01.2018, the no confidence motion was not liable to be carried out by nine votes. The learned counsel submitted that, since no confidence motion was carried out by the majority of less than $2/3^{\text{rd}}$ members entitled to sit and vote, the resolution passed in the meeting dated 24.01.2018 holding the no confidence motion to have been successfully passed by majority of $2/3^{\text{rd}}$ of the total members is liable to be set aside and quashed.

8. The learned counsel Shri Hiwrekar submitted that, the Tahsildar as well as the Collector both have failed in appreciating that, the order of disqualification passed against Respondent No.7 by Collector, Jalgaon on 06.09.2017 was not liable to be set aside by the order dated 30.10.2017 passed by the learned Divisional Commissioner in Grampanchayat Appeal No.322 of 2017 in view of the fact that, Respondent No.7 was not the appellant in the said appeal. The learned counsel, in the circumstances, prayed for setting aside the resolution passed in the meeting held on 24.01.2018 as well as the Judgment and order passed by the Collector, Jalgaon in Grampanchayat Dispute No.13 of 2018.

9. The learned counsel appearing for the respondents supported the order dated 24.05.2018 passed by the Collector in Grampanchayat Dispute No.13 of 2018. The learned AGP submitted for passing appropriate orders.

10. I have given due consideration to the submissions made by the learned counsel appearing for the parties and the learned AGP appearing for the State authorities. I have also perused the impugned judgment and the other material placed on record. The question, which falls for my consideration in the present petition is, “whether

the Tahsildar, Jalgaon could have allowed Respondent No.7 - Vikas Aatmaram Patil to sit and vote in the meeting of the Grampanchayat held on 24.01.2018 to discuss the no confidence motion against the petitioner and Upsarpanch of the Grampanchayat.” It is not in dispute that, vide the common order dated 06.09.2017 passed by Collector, Jalgaon in Grampanchayat Dispute No.14 of 2016, along with other six members Respondent No.7 Vikas Aatmaram Patil was disqualified from holding the post of Grampanchayat on account of failure on his part in submitting the account of election expenses. There is further no dispute that, Respondent No.7 did not challenge the said order before any higher authority as was challenged by the other six members of the Grampanchayat, who were also held disqualified by Collector, Jalgaon vide order dated 06.09.2017 passed in Grampanchayat Dispute No.14 of 2016. It is the matter of record that, six members of the Grampanchayat filed appeal before the Divisional Commissioner at Nashik bearing Grampanchayat Appeal No.322 of 2017 and the learned Divisional Commissioner vide order dated 30.10.2017 has set aside the order dated 06.09.2017 whereby the Collector, Jalgaon had held the said members to be disqualified from holding the post of the members of the Grampanchayat.

11. It was the contention of the learned counsel appearing

for the respondents that, since Respondent No.7 was disqualified along with the other six members vide order dated 06.09.2017 passed by the Collector, Jalgaon and when the said common order was set aside by the learned Divisional Commissioner, Nashik, even though Respondent No.7 had not preferred any appeal against the said order, his disqualification must also be held to have been set aside and he was, therefore, eligible to sit and vote in the meeting held on 24.01.2018. The Tahsildar has also recorded the same opinion and on the said ground had rejected the objection raised by the petitioner and has eventually allowed Respondent No.7 to sit and vote in the meeting held on 24.01.2018. To the utter dismay of the petitioner, in Grampanchayat Dispute No.13 of 2018 filed by her, even the Collector Jalgaon upheld the finding recorded by the Tahsildar.

12. The finding recorded by the learned Tahsildar which has been confirmed by the learned Collector, Jalgaon, is apparently unsustainable. Respondent No.7, since, did not challenge the order dated 06.09.2017 whereby he was disqualified from holding the post of member of the Grampanchayat, it has attained finality and consequently he ceased to be the member of Grampanchayat w.e.f. 06.09.2017. On 24.01.2018, Respondent No.7 was, thus, not eligible

to sit and vote in the meeting of the Grampanchayat convened for discussing the no confidence motion against the petitioner. The learned Tahsildar as well as the learned Collector both have failed in appreciating that, the order passed by the learned Divisional Commissioner in Grampanchayat Appeal No.322 of 2017 was applicable only to the cases of the appellants, who have preferred the said appeal and in no case could have been applied in favour of Respondent No.7, who was neither the appellant in the said appeal nor has preferred any separate appeal.

13. The Judgment and order passed in Grampanchayat Appeal No.322 of 2017 by the learned Divisional Commissioner, Nashik was not a judgment *in rem*, but was a judgment *in personam* and hence was applicable only in favour of six members who were appellants therein. I reiterate that, since Respondent No.7 was not the appellant in the said appeal, the order passed in the said appeal cannot be made applicable in his favour. Respondent No.7 was, thus, not eligible to sit and vote in the meeting held on 24.01.2018.

14. There is no dispute that, including Respondent No.7 ten members voted in favour of the no confidence motion. If the vote cast by Respondent No.7 is kept out of consideration, the number of

votes cast in favour of the no confidence motion is reduced to nine. The motion was, thus, not carried by the majority of not less than 2/3rd of the total number of the members, who were at the relevant time entitled to sit and vote in the meeting of the panchayat. In the circumstances, the alleged no confidence resolution alleged to be passed against the petitioner in the meeting dated 24.01.2018 is liable to be quashed and set aside and it is accordingly set aside. Needless to state that, the decision rendered by Collector, Jalgaon in Grampanchayat Dispute No.13 of 2018 also consequently stands set aside.

15. The petitioner is restored to the post of Member and in turn the Sarpancha of Grampanchayat Kusumba Khurd with immediate effect.

16. Writ Petition stands allowed in the aforesaid terms.

(P.R. BORA, J.)

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