

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12762 OF 2018

JAYABAI PRALHADRAO DESHMUKH AND OTHERS
VERSUS
SHANKARRAO PRALHADRAO DESHMUKH AND OTHERS

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Advocate for Petitioners : Shri Deshmukh Sachin S.
Advocate for Respondents 1 & 2 : Shri Kanade Angad L.
AGP for Respondents 3 & 4 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2019

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PER COURT :-

1. On 28.11.2018, this Court (Coram : N.M.Jamdar, J.) had passed the following order:-

"1. Learned counsel for respondents 1 and 2 seeks time to file reply affidavit.

2. Learned counsel for petitioners submits that twelve members out of fifteen had given a requisition expressing their no confidence in respondents 1 and 2 in view of various lacuna in functioning of the Panchayat. It is their case that pursuant to the meeting held, no confidence motion was passed with the requisite majority. It is their contention that the Collector, on technical grounds, which are held to be directory, set aside the no confidence motion. Learned counsel for petitioners has relied upon decision of the Division Bench of this Court in *Nimba Rajaram Mali Vs. Collector, Jalgaon and others* .

3. *Learned counsel for respondents submits that though requisition was given by twelve members, three members could not have voted because they have not submitted their caste validity certificates. Even these three are kept aside, there is majority of nine against one.*

4. *In these circumstances, considering the fact that majority of the members have expressed their lack of confidence in respondents 1 and 2, till further orders are passed in this petition, respondents 1 and 2 will not attend meeting of the Panchayat.*

5. *Stand over to 19 December 2018."*

2. After this matter was heard at length on 15.1.2019, I had called upon the learned Advocates to address the Court on the point of, whether the Chairperson of the special meeting will have to table two separate motions as against the Sarpanch and the Up-Sarpanch and both the motions will have to be put to voting separately.

3. It is pointed out today that this Court (Coram : A.B.Choudhari, J.), has taken a view in the case of Ashabai Ashok Shinde Vs. Additional Commissioner [2009 (2) Bom.C.R.880], that when no confidence motion is proposed against the Sarpanch and Up-Sarpanch, there cannot be a common voting. The motions have to be subjected to two independent voting.

4. Though Ashabai (supra) was not cited before this Court, subsequently, when this Court decided the matter in between Ashok Rambhau Kalane and Gram Sevak, Gram Panchayat [2017 (4) All M.R.880], it was concluded that though a common requisition motion was moved, no fault can be found if a common motion was tabled as long as an independent discussion and voting was conducted as against the Sarpanch and Up-Sarpanch. No fault can be found in the manner in which the motion was tabled.

5. Learned counsel for the petitioners, who have voted against the Sarpanch and Up-Sarpanch submits that the motion was carried by 12 votes against 1, out of the total membership of 15 elected Gram Panchayat members. For the mistake committed by the Chairperson of inviting common voting, the rule of democracy would stand defeated, if the Sarpanch and Up-Sarpanch are to be reinstated. It is pointed out that by virtue of the order dated 28.11.2018, both of them are not participating in any proceedings.

6. Learned AGP, therefore, submits that if the rule of democracy is to be upheld and on technical ground an elected representative ought not to be reinstated, it would be appropriate to direct the Tahsildar to convene a special meeting on the date which this Court may settle. Learned Advocate for the petitioners agrees that this is the only way by

which rule of democracy would prevail. The learned Advocate for the Sarpanch and Up-Sarpanch is not in a position to make a statement.

7. In view of the above, this petition is disposed off, with the direction to respondent No.4 Tahsildar to issue a notice on 28.1.2019 for convening a special meeting on the 7th day, which would be 4.2.2019. Since all the 12 members, as well as the Sarpanch and Up-Sarpanch are before this Court, no notice is required to be served on these petitioners and the Sarpanch and Up-Sarpanch, in whose presence this order is passed. However, the Tahsildar would serve respondent No.6 - Anjali, who has not appeared in this proceedings. Needless to state, the same requisition motion dated 28.8.2018 shall be the basis of the said special meeting. It is made clear that the Chairperson shall table the motion independently as against the Sarpanch and the Up-Sarpanch and shall conduct independent voting as is permissible in law.

8. The Tahsildar would ensure that those elected representatives, including the Up-Sarpanch Ramesh Vishwanath Deokar, who are elected to the positions reserved for the backward classes, will not be permitted to participate in the said special meeting, if they attract the disqualification considering the bar under Section 10(1A) including the third proviso, by which, the extension by six months period making it one year has been made effective only from 31.3.2016.

9. Needless to state, earlier orders passed by this Court shall remain in operation till the declaration of the result on 8.2.2019.

(RAVINDRA V. GHUGE, J.)

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