

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14139 OF 2019

BABURAO GANPATRAO KADAM
VERSUS
THE ADDITIONAL COLLECTOR NANDED AND OTHERS

...
Advocate for Petitioner : Ms. Jadhav A.S.
AGP for Respondents: Mr. Munde S.W.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: December 13, 2019
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PER COURT :-

1. On 4.12.2019, this Court had passed the following order:-

“1. The petitioner, former Sarpanch is aggrieved by the ‘no confidence motion’ passed on 20/08/2019 and the order passed by the District Collector dated 30/10/2019, by which, the motion was confirmed.

2. The learned Advocate for the petitioner submits that the ‘no confidence motion’ was passed by a vote count of 5 : 1. The village panchayat has 6 members. 3 members out of the 5, who have voted against the petitioner, had incurred disqualification on account of their failure to submit their caste validity certificates.

*3. Reliance is placed upon the judgment delivered by the Honourable Apex Court in the matter of **Ganesh Sukhdeo Gurule Vs. Tahsildar Sinnar and Ors., (2019) 3 SCC 211**, in*

which the Honourable Court has concluded that such members would suffer automatic disqualification and their votes need not be counted in the no-confidence motion meeting.

4. It is informed that the meeting to elect a new Sarpanch is scheduled at 2.00 p.m. on 13/12/2019.

5. Issue notice to the respondents, returnable on 13/12/2019. This matter would be listed in the 'urgent admissions category' with liberty to the petitioner to mention this matter if it is not called out by 12.00 noon.

6. The learned AGP waives service for respondent Nos. 1 and 2. Humdast is granted to serve respondent Nos. 3 to 7."

2. All the respondents are served. No appearance is entered on behalf of respondents 3 to 7.

3. In continuation to the earlier submissions canvassed by the learned Advocate for the petitioner, I find that the Honourable Apex Court (Three Judges' Bench) in the matter of Ganesh Sukhadeo Gurule Vs. Tahsildar, Sinnar and others [AIR 2019 SC 465], has considered the law and has concluded in paragraph Nos.15 to 18 as under:-

"15. Learned Counsel for the Appellant in so far as

disqualification of one of the members who had not filed her caste certificate relied on Anant v. Chief Election Commissioner 2017 (1) Mh.L.J. 431, before the Full Bench the issue was raised as to whether on non-submission of caste certificate within six months period disqualification is automatic. Answering the reference Full Bench held that the provision for requiring submission of caste certificate within a period of six months for election is mandatory and disqualification would be automatic. In paragraph 100 of the judgment the Full Bench held the following:

100. In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

Further, in terms of second proviso to Section 9A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly.

16. *It is further relevant to note that this Court in Special Leave Petition (C) Nos. 29874-29875 of 2016 (Shankar s/o Raghunath Devre (Patil) v. State of Maharashtra and Ors.) has approved the view taken by the Full Bench vide its judgment dated 23.08.2018 by holding that the requirement of submitting caste certificate is mandatory.*

17. *Thus, in so far as vote of one member, Smt. Sushila Prakash Darade, the same can neither be computed for the no-confidence motion nor is relevant for computing two-third majority as per the statutory scheme. The words 'not less than' used in Section 35(3) of the Act has to be given meaning and purpose. When majority comes to 5.33 votes "not less than 5.33 votes" have to be given meaning, hence, 5.33 can never be rounded off to 5, fraction has to be treated as one because votes cannot be treated as fraction. Hence, 5.33 votes to be read as 6 votes for passing of the motion as mandated by Section 35(3).*

18. *We are, thus, of the view that no-confidence motion was not validly passed and the order of the Addl. Collector as well as of the High Court are erroneous. It is held that motion of no-confidence was not passed against the Appellant since it was not passed by less than two-third of the total number of the members who were for the time being entitled to sit and vote. The proceedings dated 14.09.2018, order of the Addl. Collector approving the proceedings as well as the judgment of the High Court dismissing the writ petition are set aside. The appeal is allowed accordingly."*

4. It is thus obvious that the three members who have voted against the petitioner have incurred a disqualification and as per the view taken by the Honourable Apex Court in the case of Ganesh (supra), their votes will have to be ignored. Consequentially, the 'No confidence motion' would find two votes in favour and one against. This, therefore, would satisfy the requirement of Section 35(1) as the eligible persons entitled to sit and vote were three and two have voted in favour of the motion, which is, therefore passed by 2/3rd majority.

5. Considering the above, the passing of the 'No confidence motion' even by two votes in favour and one against, would be in tune with Section 35(1) of the said Act.

6. The learned Advocate for the petitioner draws my attention to the record maintained by the Tahsildar, who conducted the special meeting to point out that five allegations were made against the Sarpanch and not a single allegation was discussed in the meeting. Each allegation was called out by the Tahsildar and the members were not willing to make any comment. Finally, he put the motion to vote and it was passed by 2/3rd majority.

7. I find that the above contention of the petitioner cannot be

considered for the reason that there is no law which mandates that each allegation should be considered in the meeting and only if the allegations are true, then alone, could the motion be put to voting.

8. As such, this petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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