

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12373 OF 2019

Kalpana Mahadu Sante and others ... Petitioners
Vs.
Sunita Sunil Gaikar and others ... Respondents

Mr. D. S. Pagare for Petitioners.
Mr. Sanjay Patil for Respondent Nos.1 and 2.
Mr. N. C. Walimbe, AGP for Respondent Nos.3 and 4-State.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 11, 2019

P.C. :

Heard Mr. Pagare, learned counsel for the petitioners and Mr. Patil, learned counsel for respondent No.1; also heard Mr. Walimbe, learned AGP for respondent Nos.3 and 4-State.

2. Short point for consideration in the present writ petition is whether the appellate authority i.e. Additional Commissioner, Konkan Division, Mumbai, respondent No.4 herein, was justified in allowing the appeal of respondent No.1 thereby disqualifying the petitioners as members of *Grampanchayat* under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act, 1958.

3. Petitioners were elected as members of Manivali *Grampanchayat* in the year 2015. Respondent No.1 filed Grampanchayat Dispute No.12 of 2018 before Additional Collector, Thane i.e. respondent No.3 alleging that petitioners did not have toilets in their houses and therefore, they should be disqualified under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act, 1958 (briefly the Act hereinafter). By the order dated 24.01.2019, respondent No.3 dismissed the dispute.

4. Aggrieved by such dismissal, respondent No.1 preferred appeal before respondent No.4 which was registered as Grampanchayat Appeal

No.126 of 2019.

5. This time the Appellate Authority accepted the contention of respondent No.1 and allowed the appeal vide order dated 17.08.2019. By the said order, petitioners have been disqualified as members of the *Grampanchayat*.

6. Aggrieved, present writ petition has been filed.

7. A perusal of Section 14(1)(j-5) of the Act would indicate that as per the statutory mandate, no person shall be a member of a *Panchayat* or continue as such who fails to submit a certificate of the concerned *Panchayat* along with the resolution of the *Gram Sabha* or of the Chief Executive Officer or an officer designated by him or a self-certificate certifying that he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet. There are two provisos below sub-section (j-5) but these two provisos are not very relevant for the purpose of the present petition.

8. Learned counsel for the petitioner submits that he could not submit resolution of the *Gram Sabha* as there was no meeting of the *Gram Sabha*. Therefore, disqualifying the petitioners on the said ground was not justified.

9. On the other hand, learned counsel for respondent No.1 has placed reliance on a decision of this Court in *Karishma Gautam Pagare Vs. Suman Madhukar Kharat*, **2019 (2) ALL MR 544** to contend that resolution of the *Gram Sabha* was necessary or in the absence of such resolution, petitioner ought to have obtained certificate from the Chief Executive Officer or even a self-certificate which he failed to do. When a law requires a thing to be done in a particular manner, it has to be done

in that particular manner and in no other manner. This principle has to be followed and non-observance of the said principle has vitiated the election as well as continuation of the petitioners as members of the *Grampanchayat*.

10. Learned AGP supports the order passed by the Appellate Authority. However, he submits that it is upto the Court to take a view one way or the other.

11. Submissions made by learned counsel for the parties have been considered.

12. The objective behind the provision contained in Section 14(1)(j-5) of the Act is quite laudable. As per the statutory mandate, persons who intend to be members of *Grampanchayat* are required to use either private toilet or public toilet on regular basis. This is in tune with the national objective of making the country an open defecation-free country. In fact, many districts of the country have been declared as open defecation-free districts.

13. Having said that, it may be noted that as per amendment introduced in the year 2017 with effect from 31.01.2017, a person to be a member of the *Grampanchayat* has either to submit a certificate of the concerned *Panchayat* along with resolution of the *Gram Sabha* (or a certificate of the Chief Executive Officer or an officer designated by him or a self-certificate) certifying that he regularly uses the toilet in his house or in the house where he resides or a public toilet. Appellate Authority has taken the view that since petitioners failed to produce resolution of the *Gram Sabha*, their election and continuance as members of *Grampanchayat* was rendered untenable, failing to notice the amendments introduced with effect from 31.01.2017.

14. In such circumstances, Court is of the view that it would be just

and proper if the matter is remanded back to the Appellate Authority for a fresh decision in accordance with law. Consequently, order dated 17.08.2019 passed by respondent No.4 is set aside. Matter is remanded back to respondent No.4 for a fresh hearing and decision in Grampanchayat Appeal No.126 of 2019 in accordance with law.

15. Since the matter has been remanded back, petitioners would be at liberty to produce additional materials as may be considered necessary in which event appellant i.e., respondent No.1 would have right to contest the same.

16. Let the contesting parties appear before respondent No.4 on 23.12.2019 at 11.00 a.m. whereafter respondent No.4 shall proceed with the appeal and decide the same within a period of 4 weeks from the date of appearance.

17. Writ petition is disposed of.

(UJJAL BHUYAN, J.)

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