

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1117 OF 2019

Sou. Shobha Pradeep Patil (Gaikwad)

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr.Prajakt M. Arjunwadkar for Petitioner.

Mr. C.D.Mali, AGP for State/ Respondent No.1 to 3.

Mr. P. S.Dani, Sr. Counsel i/b. Mr.Nagesh Y. Chavan for Respondent No.4.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 19, 2019

P.C. :

. Heard Mr.Prajakt M. Arjunwadkar, learned counsel for the petitioner; Mr. P. S.Dani, learned Sr. Counsel i/b. Mr.Nagesh Y. Chavan for Respondent No.4; and Mr. C.D.Mali, learned AGP for Respondent No.1 to 3- State.

2. By filing this petition under Article 227 of the Constitution of India, petitioner seeks quashing of order dated 29.10.2018 passed by respondent No.2 and further seeks a direction to respondent Nos.1 to 3 to restore her to the post of *Sarpanch* of *Grampanchayat* Kalamb.

3. Facts are not in dispute. However, for the purpose of examining the grievance of the petitioner the same may be briefly stated.

4. Sometime in the year 2015, petitioner was elected as member of *Grampanchayat* Kalamb which is situated within Taluka Indapur in the District of Pune. Subsequently, elected members of the said *Grampanchayat* elected from amongst themselves the petitioner as *Sarpanch* of the said *Grampanchayat*.

5. A complaint was made by two persons Shri. Manohar S. Ghodke and Shri. Gorakh R. Khandgale that husband of the petitioner had encroached Government land and thus had attracted Section 14(1)(j-3)) of The Maharashtra Village Panchayats Act, 1958 and, therefore, she should be disqualified. Said complaint was lodged before Additional

District Collector, Pune. Additional District Collector passed an order dated 10.01.2017, rejecting the said complaint. Against the order dated 10.01.2017, the complainants preferred appeal before the Additional Divisional Commissioner, Pune Division, Pune which was registered as Appeal No.2 of 2017. After hearing the matter, Additional Divisional Commissioner passed order dated 05.08.2017 allowing the said Appeal and quashing the order dated 10.01.2017. Additional Divisional Commissioner held that the petitioner had incurred disqualification under Section 14(i)(j-3) read with Section 16 of the said Act and thus she was held to be disqualified.

6. Aggrieved by the said order of disqualification dated 05.08.2017, petitioner alongwith three others who were also disqualified as members of the *Grampanchayat* like the petitioner approached this Court by filing Writ Petition which was registered as Writ Petition No. 14073 of 2017. This Court by Judgment and Order dated 24.02.2018 allowed the Writ Petition by setting aside the order passed by the Additional Divisional Commissioner dated 05.08.2017.

7. Petitioner thereafter filed an application dated 01.03.2018 before the Collector, Pune i.e. respondent No.3 to restore her to the office of *Sarpanch* following the aforesaid Judgment and Order passed by this Court.

8. Since there was no response from the office of the Collector, Petitioner moved the office of the Divisional Commissioner, Pune by filing an application dated 04.10.2018. By the order dated 29.10.2018, Divisional Commissioner held that in view of the Judgment and Order of this Court Petitioner's membership of *Grampanchayat* stood restored but not to the office of *Sarpanch*. It was observed that in case of dispute regarding election of *Sarpanch*, necessary steps as provided under the Act may be taken. Further, it was clarified that there was no provision under the Act to accede to the request of the petitioner.

9. It is against this order that petitioner has preferred the present Writ Petition.

10. Respondent No.4 has filed affidavit-in-reply. Stand taken by respondent No.4 is that her election as *Sarpanch* is legal and valid. Nobody has challenged her election as *Sarpanch*. This Court had refused interim relief to the petitioner when election was declared for the post of *Sarpanch*, following disqualification of the petitioner. She has stated that order dated 29.10.2018 passed by the Divisional Commissioner is legally correct and no interference is called for.

11. Detailed submissions have been made by learned counsel for the parties, which have been duly considered.

12. Before proceeding further, it would be apposite to note that under the provisions of the Act, which were in force at the relevant point of time, election as member of *Grampanchayat* was direct but election to *Sarpanch* was indirect; meaning thereby that firstly the members were directly elected by the voters and thereafter the elected members from amongst themselves used to elect the *Sarpanch*.

13. Having noted the above, it may now be mentioned that at the appellate stage, Additional Divisional Commissioner had disqualified the petitioner under Section 14(i)(j-3) of the Act. As already noted, disqualification of the petitioner was interfered with by this Court in the earlier round of litigation and the appellate order was set aside.

14. On going through the Judgment and Order dated 24.02.2018, it is seen that during the pendency of the earlier Writ Petition, Tahasildar of Indapur decided to hold the election to the post of *Sarpanch* which had fallen vacant following disqualification of the petitioner. Decision was taken on 19.09.2017. Meeting of the members of the *Grampanchayat* was convened on 20.09.2017. It was declared in the meeting that respondent No.4 was elected as *Sarpanch* and on such election she is now holding the post of *Sarpanch*.

15. During the earlier round of litigation, on leave to amend the writ petition being granted, petitioner had amended the Writ Petition by impleading present respondent No.4 as respondent No.14. However, in the course of hearing of the writ petition, on the request of the

petitioner name of respondent No.14 (present respondent No.4) was deleted vide order dated 24.02.2018. In the Judgment and Order dated 24.02.2018 this Court in para-58 thereof after coming to the conclusion that the order of disqualification was not justified, had considered the prayer of the petitioner for restoration to the post of *Sarpanch*. This Court noticed that following disqualification of the petitioner fresh election to the post of *Sarpanch* was held where after respondent No.4 was elected as the *Sarpanch*. Though she was impleaded as respondent No.14 in the earlier Writ Petition, on the request of the petitioner her name was deleted from the cause title. This Court also noted that appointment of respondent No.4 as the *Sarpanch* was not challenged by the petitioner. Therefore, this Court declined to pass order of restoration to the post of *Sarpanch* while setting aside the disqualification order dated 05.08.2017. It was left to the authority to consider the effect of setting aside of the order of disqualification of the petitioner.

16. Setting aside of an order, be it administrative or quasi-judicial, by the superior Court would mean erasing of such order from

the record. It would mean that such order did not exist at all. If this is the position then following setting aside of the disqualification order petitioner ought to have been restored back to the position which she was holding at the time of her illegal disqualification. But as noticed above, considering the subsequent development this Court while setting aside the order of disqualification deliberately did not restore the petitioner to the position she was holding on the date of disqualification. The said order of this Court has attained finality. As a coordinate bench this Court would, therefore, refrain from going behind the Judgment and Order dated 24.02.2018. It may also be mentioned that when the present Writ Petition was moved, this Court by the order dated 28.01.2019 while issuing notice declined to grant stay by observing that no case was made out for ad-interim relief.

17. On due consideration, what is discernible is that holding of the post of *Sarpanch* is not automatic. It is incumbent upon election by the elected members of the *Grampanchayat* amongst themselves. Disqualification of the petitioner on ground of encroachment of public property was as member of the *Grampanchayat*. It is as member of

Grampanchayat that she was holding the post of *Sarpanch*. Upon the order of disqualification being set aside by this Court, Petitioner has been restored to the post of member of *Grampanchayat*. Because of the intervening developments which this Court did not interdict, Court is of the view that in the facts and circumstances of the case there is no automatic restoration to the post of *Sarpanch*; restoration being limited to membership of the *Grampanchayat*.

18. Therefore, on a thorough consideration of the matter, Court is unable to accede to the prayer made by the petitioner. Consequently, Writ Petition is dismissed.

(UJJAL BHUYAN, J.)