

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO.5619/2018

Priti w/o Nandu Dhandrave

Vs.

Additional Collector, Yavatmal and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M.P.Kariya, Advocate for petitioner.

Shri A.M.Balpande, Assistant Government Pleader for respondent nos. 1 & 2.

Shri A.R.Chavhan, Advocate for respondent no.3.

Shri R.R.Rathod, Advocate for respondent nos. 4 to 9.

CORAM : A.S.CHANDURKAR, J.

DATED : June 18, 2019

The petitioner was elected as Sarpanch of Gram Panchayat, Dhamangaon Dev in the elections that were held in December, 2016. A no confidence motion was sought to be moved by the respondent nos. 4 to 9 by invoking provisions of Section 35 of the Maharashtra Village Panchayats Act, 1958 (for short, 'the said Act'). In the special meeting that was held on 26.04.2018, the motion came to be passed with six members in its favour and three against it. The proceedings were challenged in an appeal filed by the petitioner under Section 35(3) of the said Act. The Additional Collector has dismissed the said appeal. Being aggrieved, the said order has been challenged in the present writ petition.

Shri M.P.Kariya, learned counsel for the petitioner has raised twofold contentions. According to him, since the petitioner was a woman Sarpanch, the motion of no confidence was required to be carried by majority of not less than three fourth of the total number of members. Referring to the third proviso to Section 35(3) of the said Act, it was submitted that since the motion was passed only by two third majority, the petitioner was not liable to be so removed. He placed reliance on the decisions in *Shri Tanaji Bhauso Mane & Ors Vs. Smt. Ushatai Balkrushna Mane & ors*, 2013(5) ALL MR 604 and *Smt. Lilabai w/o*

Manohar Lothe Vs. Collector, Bhandara & Ors, 2017(2) ALL MR 45 in that regard. The other contention is that there was a dispute with regard to one of the votes that was wrongly treated as valid. According to him, there was a dispute with regard to one vote and if that vote was excluded from consideration, the motion cannot be treated as validly passed. He submitted that these grounds were not properly considered by the Appellate Authority.

Shri A.M.Balpande, learned Assistant Government Pleader for the respondent nos. 1 and 2 and Shri R.R.Rathod, learned counsel for the respondent nos. 4 to 9 supported the impugned order. It was submitted that the post in question was merely reserved for members of the Scheduled Caste category and the same was not reserved for women. In such contingency, there was no requirement that the motion ought to be passed by three fourth majority. By relying upon the decision in **Sambhaji Babaji Sakure Vs. The Collector, Ahmednagar & Ors, 2017(4) All MR 770**, it was submitted that the motion passed with two third majority was valid. As regards, the validity of one vote which was sought to be questioned by the petitioner, it was submitted that no objection in that regard was raised in the special meeting which could be seen from the minutes thereof. Referring to the memorandum of appeal preferred by the petitioner, it was submitted that specific ground in that regard was also not raised. On these counts, it was submitted that the Appellate Authority has rightly considered the appeal and there was no reason to interfere with the impugned order.

Heard the learned counsel for the parties and perused the proceedings of the special meeting. Insofar as the post of Sarpanch is concerned, the same was reserved for members from the Scheduled Caste category. As per the provisions of Section 35(3) proviso thereof, it is only when the office of the Sarpanch is reserved for woman and is held by a woman Sarpanch that motion of no confidence is required to be carried by majority of not less than three fourth of the total number of members. The

decision in *Sambhaji Babaji Sakure* (supra) considers this provision and it has been observed that if a woman became Sarpanch when the post is not so reserved for women there is no requirement of the motion of no confidence being passed by three fourth majority. The ratio of the decisions relied upon by the learned counsel for the petitioner does not lay down that even if the post of Sarpanch is held by the woman Sarpanch though not reserved for women, the motion is required to be carried by three fourth majority. In any event, the third proviso to Section 35(3) of the said Act is clear and the same will apply where the office of the Sarpanch is reserved for woman and the post is held by a woman. In the present case, the post of Sarpanch it was not so reserved for women.

As regards validity of one vote which is sought to be challenged by the petitioner, such objection was not raised in the special meeting as can be seen from the minutes thereof. The Presiding Officer has noted that the votes were counted in presence of the members and it was found that the motion was carried with six members in its favour and three against it. Though there is a reference to one vote in para 4 of the memorandum of appeal, it is seen that the Appellate Authority has rightly gone by the decision of the Presiding Officer and has proceeded to accept the same. In absence of any other material to indicate that such vote was invalid that contention cannot be accepted.

The petitioner having lost confidence of the members and the proceedings having been conducted in accordance with law, I do not find any reason to interfere in writ jurisdiction. The writ petition is therefore dismissed with orders as to costs.

JUDGE

Andurkar.