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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10308 OF 2019

Kalpana Gangaram Chaudhari ... Petitioner
Vs.
Tahsildar,
Taluka Haveli, District Pune & Ors. ... Respondents

Mr. Chaitanya Nikhte, for the Petitioner.
Mr. A. P. Vanarse, AGP for Respondent Nos. 1, 3 and 12.
Mr. G. S. Godbole a/w Aditya P. Shirke, for Respondent Nos. 5 to 10.

CORAM : C. V. BHADANG, J.
DATE : FEBRUARY 25, 2020

ORAL JUDGMENT :

1. Rule made returnable forthwith. Learned AGP waives notice for Respondent Nos. 1, 3 and 12; the learned counsel Mr. Godbole waives notice for Respondent Nos. 5 to 10. By consent of parties, petition is taken up for final disposal.

2. The challenge in this petition is to the judgment and order dated 13th September, 2019 passed by the Collector, Pune in Dispute Application No. 62 of 2019. By the impugned order, the learned Collector has confirmed the no confidence motion dated 16th July, 2019 carried against the Petitioner, and the consequent declaration

dated 16th July, 2019 granted by the Tahsildar.

3. The brief facts are that on 9th April, 2018, the Petitioner was elected as a Upsarpanch of village Gram Panchayat Naigaon, Tahsil Haveli, district Pune. The Gram panchayat consists of nine members and the Petitioner secured 5 votes in a secret ballot in the polling, held on 9th April, 2018 for election of Upsarpanch. Subsequently, the Respondent Nos. 4 to 11 moved a motion of no confidence against the Petitioner, which was considered in a meeting dated 16th July, 2019. The said motion was passed by a majority of 6 votes against 3 and consequently, the Petitioner ceased to be the Upsarpanch of the said village. The Petitioner unsuccessfully challenged the same before the Collector. Hence, this petition.

4. I have heard the learned counsel for the parties. Perused record.

5. It is submitted by the learned counsel for the Petitioner that one of the members Sau. Sunita Gaikwad (Respondent No. 8) was disqualified from being a member of the panchayat, as she had failed to produce a caste validity certificate within time, as prescribed. She was belonging to a Scheduled Tribe category, and the learned counsel points out that in fact the Caste Scrutiny Committee had rejected her

claim. It is submitted that once the caste validity certificate is not produced within time, the disqualification is automatic. The learned counsel points out that in the voting by show of hands, admittedly, Respondent No. 8 had voted in favour of the no confidence motion.

6. It is submitted that if the vote of Respondent No. 8 is excluded, then the no confidence motion, which was carried by 5 votes against 8 votes (inasmuch as Respondent No. 8 was disqualified from being a member and from participating in the voting), cannot be said to have been carried by 2/3rd majority, as required by law. For this purpose, reliance is placed on the decision of the Supreme Court in the case of ***Ganesh Gurkule Vs. Tahsildar, Sinnar & Ors.***¹. He therefore, submits that the no confidence motion has not been legally carried and the learned Collector was in error in refusing to set it aside.

7. Mr. Godbole, the learned counsel for Respondent Nos. 5 to 10 in all fairness did not dispute that Respondent No. 8 had voted in favour of the no confidence motion. However, it is submitted that Respondent No. 8 had voted in favour of the Petitioner when she was elected as Upsarpanch on 9.4.2018. The learned counsel points out that the Petitioner was elected as Upsarpanch by a margin of one vote,

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as she had secured 5 votes as against 4 votes, secured by her rival. It is submitted that if the vote of Respondent No. 8 is excluded as she was disqualified, the very election of the Petitioner as Upsarpanch becomes illegal. The learned counsel submitted that this Court would not issue a writ or set aside an order (even assuming it to be illegal), if it has the effect of reviving or affirming, an otherwise invalid order or a situation. In short, it is submitted that even assuming that the no confidence motion was not carried with the required 2/3rd majority, still this Court should refrain from interfering with the impugned order, as it will have the effect of restoring the Petitioner as Upsarpanch, when her election as a Upsarpanch is illegal, as both Petitioner and her rival would have secured 4 votes (after exclusion of vote of Respondent No. 8). It is submitted that Respondent No. 8 has filed an affidavit stating that she had voted in favour of the Petitioner in her election as Upsarpanch, to which there is no counter.

8. I have carefully considered the rival contentions of the parties. It is not in dispute that the impugned no confidence motion against the Petitioner was carried by 6 votes out of total 9 members present and voting. It is also undisputed that the said motion was carried by open voting i.e. by show of hands, in which Respondent No. 8 had voted in favour of the no confidence motion. It is also not in

dispute and in fact it is a matter of record that Respondent No. 8 had failed to produce her cast validity certificate within time after her election, her caste claim has been rejected by the Caste Scrutiny Committee. It is now well settled that requirement to submit such caste validity certificate, within prescribed period is mandatory, and failure to do so results in disqualification, which is automatic. The reasoning articulated by the learned Collector that there is no declaration of such disqualification, and therefore, it cannot be acted upon, to my mind, cannot be accepted. Thus, for all practical purposes, Respondent No. 8 was disqualified from being a member or from voting on the no confidence motion. If her vote is excluded, then the situation which emerges is that out of 8 members (after exclusion of Respondent No. 8), there were only 5 votes polled in favour of the no confidence motion, which falls short of 2/3rd majority for carrying such no confidence motion. In my considered view, the decision of the Supreme Court in the case of **Ganesh Gurukule** (*supra*) is on all fours and is applicable in the present case. Thus, the no confidence motion cannot be said to have been passed or carried by 2/3rd majority and in accordance with law, and therefore, the same deserves to be set aside.

9. This takes me to the contention based on the election of the Petitioner as an Upsarpanch. There can be no manner of doubt that

this Court would not issue any writ or set aside any order (even if illegal), if it has the effect of restoring or reviving an illegal order or a situation. Thus, the question is whether the Court can refuse to interfere in the matter on the ground that the election of the Petitioner as an Upsarpanch is otherwise illegal. Now, that election is not and could not be a subject matter of challenge in this petition. That apart, except the affidavit filed by Respondent No. 8, there is nothing on record to show that she had voted in favour of the Petitioner at the election of the Petitioner as an Upsarpanch.

10. At one stage, it was submitted by the learned counsel Mr. Godbole that this Court may call for the record of the secret ballot at the election of the Petitioner as an Upsarpanch to verify this aspect. However, it is undisputed that the said election was conducted by secret ballot, and therefore, even after calling such record, it would not be possible to ascertain whether Respondent No. 8 had indeed voted in favour of the Petitioner. The possibility of Respondent No. 8 now filing affidavit, raising a challenge to the very election of the Petitioner as Upsarpanch to get over an otherwise indefensible situation, cannot be ruled out. In that view of the matter, it is not possible to accept the contention based on the indefeasible election of the Petitioner as a Upsarpanch on 9.4.2018 being illegal.

In the result, the following order is passed.

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgment and order dated 13th September, 2019 passed by the Collector, Pune in Dispute Application No. 62 of 2019, and the declaration by the Tahsildar, dated 16th July, 2019, are hereby set aside.
- (iii) The Petitioner continues to be the Upsarpanch of village Naigaon, Tahsil Haveli, district Pune.
- (iv) Rule is made absolute in the aforesaid terms, with no order as to costs.

Vinayak
P.
Halemath

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by Vinayak P.
Halemath
Date: 2020.02.29
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Sd/-
C. V. BHADANG, J.