

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3615 OF 2020

Atmaram Dnyaneshwar Fokane,)
Age 36 years, Occ. - Agri., R/at Post)
Ghoti (Kh), Taluka Igatpuri,)
District Nashik ... **Petitioner**

Vs.

1. The State of Maharashtra)
2. The Collector, District Nashik)
3. The Gram Panchayat, Ghoti (Kh.))
Taluka Igatpuri, District Nashik)
through its Gramsevak ... **Respondents**

Mr. Sachin Gite, for the Petitioner.

Ms. S. D. Vyas, 'B' Panel counsel for the Respondent - State.

**CORAM : S. J. KATHAWALLA &
VINAY JOSHI, JJ.**

RESERVED ON : 11TH FEBRUARY, 2021

PRONOUNCED ON : 10TH MARCH, 2021

JUDGMENT [PER : VINAY JOSHI, J.]

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Writ Petition, the Petitioner is seeking direct appointment to the post of Sarpanch of the Gram Panchayat- Ghoti (Kh), Taluka- Igatpuri, district Nashik. It is the Petitioner's case that due to the disqualification of the Sarpanch (Smt. Kokane) the post of Sarpanch became vacant hence he be appointed to the said post.

3. The facts of the Petition can be narrated in brief that the post of Sarpanch of Gram Panchayat- Ghoti (Kh) was reserved for the Other Backward Class ("OBC") category from the year 2019 to 2024. The Petitioner belongs to the Hindu Kunbi caste, which is recognised as OBC. Smt. Kokane (disqualified Sarpanch) also claimed to belong to the Kunbi caste i.e. of the OBC category. The Petitioner as well as Smt. Kokane contested the election for the post of Sarpanch of village Ghoti (Kh), which was held on 26th June, 2019. The Petitioner lost the election, whilst Smt. Kokane got elected for the post of Sarpanch, reserved for the OBC category.

4. At the time of the election, Smt. Kokane had not submitted her caste validity certificate. However, she gave an undertaking that she would submit her caste validity certificate within a period of one year from the declaration of the election result. Smt.

Kokane approached the Caste Scrutiny Committee for the issuance of the caste validity certificate. According to the Petitioner, Smt. Kokane does not belong to the OBC category, hence he raised an objection before the Scrutiny Committee for the issuance of the caste validity certificate in favour of Smt. Kokane.

5. The Caste Scrutiny Committee, after holding an inquiry has rejected the caste claim of Smt. Kokane for the OBC category, vide its Order dated 25th June, 2020. Consequently, the Caste Scrutiny Committee cancelled the caste certificate of Smt. Kokane for the OBC category. Being aggrieved by the said decision, Smt. Kokane filed Writ Petition (St.) No. 5573 of 2020 challenging the rejection of her caste claim. This Court vide its Order dated 27th October, 2020 dismissed the Petition and confirmed the decision of the Caste Scrutiny Committee in rejecting the caste claim of Smt. Kokane.

6. Consequent to the Order dated 25th June, 2020 passed by the Caste Scrutiny Committee, the Collector, Nashik in terms of Section 30-1A of the Maharashtra Village Panchayats Act, 1959 (for short the “Act”) vide Order dated 14th July, 2020 had disqualified Smt.

Kokane from the post of Sarpanch. The Petitioner states that he was the only other candidate from the OBC category, who contested the election for the post of Sarpanch. According to the Petitioner, as the post of Sarpanch fell vacant due to disqualification of Smt. Kokane, he should be appointed as the Sarpanch.

7. The State resisted the Petition vide Affidavit in Reply dated 8th February, 2021. So far as the factual aspect is concerned, there was no dispute about the disqualification of Smt. Kokane for the post of Sarpanch. It is not denied that the Petitioner also belongs to the OBC category and was the only other candidate, contesting the election of Sarpanch from the OBC category. Moreover, it is not in dispute that due to the disqualification of Smt. Kokane, the post of Sarpanch of village Ghoti (Kh) fell vacant. However, the State resisted the Petition by contending that in terms of amended second proviso to Section 43 of the Maharashtra Village Panchayats Act, the post of Sarpanch is to be filled by way of an election from amongst the members of the *panchayat*. Hence, the State contended that as the Petitioner was not a member of the Panchayat, he cannot be declared as the Sarpanch of the Gram Panchayat.

8. In view of that, the limited controversy arose as to whether upon the post of Sarpanch falling vacant due to disqualification, another candidate could be directly appointed without election. The answer can be certainly in the negative, simply for the reason that the relevant statute does not permit so. For the purpose of ready reference, we may reproduce Section 43 of the Maharashtra Village Panchayats Act, which reads as under:

“43. Filling up of vacancies. - (1) Any vacancy of which notice has been given to the [Collector] in the prescribed manner due to the disablement, death, resignation, disqualification, [confirmation of no confidence motion,] absence without leave or removal of a *Sarpanch* or *Upa-Sarpanch*, shall be filled, by the election of a *Sarpanch* or *Upa-Sarpanch*, who shall hold office so long as *Sarpanch* or *Upa-Sarpanch*, in whose place he has been elected, would have been elected, would have held office if the vacancy had not occurred:

[Provided that, the post of the *Sarpanch* or *Upa-Sarpanch*, as the case may be, fallen vacant under this sub-section shall be filled in within thirty days from the date of such vacancy.]

[Provided further that, the post of directly elected Sarpanch fallen vacant under this sub-section shall be filled in by election in the manner laid down in Section 30A-1A, within six months from the date of such vacancy.]

(2) The meeting for the election of a *Sarpanch* under sub-section (1) shall be convened by the [Collector] in the manner described in sub-section (1) of section 33.”

9. It is pertinent to note that, by virtue of Section 8 of the Maharashtra Village Panchayats (Amendment) Act, 2020, Section 43 of the principal Act has been amended by way of substituting the second proviso, which reads as under:

“Provided further that, the post of directly elected *Sarpanch* fallen vacant, then such post shall be filled in by election from amongst the members of the *panchayat themselves* within thirty days from the date of such vacancy.”

The said amendment introduced by Maharashtra Act No. II of 2020 came into force on 5th March, 2020.

10. Section 43 of the principal Act provides a mechanism for filling up vacancies for the post of Sarpanch or Up-Sarpanch after their disablement, death, resignation, disqualification, removal, etc. Formerly, the second proviso to Section 43 of the Act provided a remedy for filling up the vacant post by way of an election in the manner laid down in Section 30A -1A of the Act. By way of an amendment to the second proviso, the statutory remedy for filling up the vacant post of Sarpanch is by way of holding an election from amongst the members of the Panchayat within the stipulated period.

Thus, the substituted proviso itself is a complete answer to the Petitioner's claim of his automatic declaration for the post of Sarpanch.

11. At the cost of repetition we reiterate that Smt. Kokane (Sarpanch) was disqualified on 14th July, 2020 i.e. after introduction of the amendment to Section 43 of the Act which came into force on 5th March, 2020, hence, it would squarely apply. The learned counsel for the Petitioner was unable to show any provision in support of his contention that on post of the Sarpanch falling vacant, the other contesting candidate would get the right to declare himself as elected for the said post. In short, statutory mandate completely bars the Petitioner's claim of his automatic appointment to the vacant post of Sarpanch. In other words, the vacant post of Sarpanch has to be filled in terms of the substituted second proviso to Section 43 of the Act i.e. by way of holding an election.

12. Moreover, there is one more difficulty in the way of the Petitioner; that he is not a member of the Gram Panchayat. As per the amendment to Section 43 of the Act, the requirement for becoming a Sarpanch is that a person should be a member of the Panchayat and for

this reason also, the Petitioner's claim is not sustainable. At any rate, the Petitioner's claim of his declaration to the post of Sarpanch without election is against the statutory requirement. In that view of the matter, the Petition being devoid of merits, stands dismissed. Rule is accordingly discharged.

[VINAY JOSHI, J.]

[S. J. KATHAWALLA, J.]