

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10169 OF 2023

Swati w/o Raghunath Ghodake,

...Petitioner

VERSUS

1. The State of Maharashtra
2. The Tahsildar, Ioha,
3. Shivkanta w/o Shivdas Gaykar,
4. Meenabai w/o Ankush Rathod,
5. Pooja w/o Balaji Kadam,
6. Bhagyashri w/o Govind Ganpolwad,
7. Parvati w/o Dashrath Manade,
8. Soni w/o Pralhad Yerame,
9. Hakim s/o Ambir Shekh,
10. Gramsevak, Grampanchayat Karegaon. ...Respondents

...

Advocate for the Petitioner : Mr. R.S. Patil
AGP for Respondents/State : Mr. S.B.Pulkundwar
Advocate for Respondent No. 4 : Mr. V.D.Salunke and Mr.
Mayur V. Salunke.

...

CORAM : KISHORE C. SANT, J.

DATE : 17.08.2023.

PER COURT :

1. Heard the learned Advocates for the parties. Taken for final disposal by consent of the parties, at the stage of admission.
2. The learned Advocate Mr. Salunke, appears for Caveator/Respondent No. 4.
3. The learned AGP appear for respondent Nos. 1 & 2.
4. The petition is against an order passed by the learned Collector, Nanded dated 08.08.2023. The dispute raised by the petitioner came to be rejected. The dispute was against the resolution passed by the Grampanchyat, Dhanora Makta, Tq. Loha, Dist. Latur, whereby, no confidence motion came to be passed against the petitioner in meeting dated 17.05.2023. Pursuant to the said resolution she was declared disqualified to hold the post of Sarpanch. The petitioner had approached the Collector for setting aside the said resolution. The main grievance raised is that there were earlier eleven (11) members

elected to the Grampanchyat. Considering the number of members the resolution is passed by 3/4th majority. It is submitted that out of 11 members, though 3 members were declared as disqualified, still no vacancy under Section 43 of the Village Panchyat Act were declared and thus, the office of those members was not vacant. He submits that in this case, out of eight (8), six (6) members, though voted in favour of no confidence motion, there should have been at least 8 votes in favour of the said motion.

5. The learned Collector, however, has held that 3 members were declared disqualified on 13.03.2023 and therefore, 3/4th majority needs to be considered out of 8 members as only 8 members participated in meeting and voting. Three (3) members were already disqualified prior to the passing of the resolution and there was no question of those (three) 3 members participating and voting in the meeting. The declaration of vacancies under Section 43 of the Act is not material, once the members were declared as disqualified. He submits that the wording of Section 35 (1) of the Maharashtra Village Panchyat Act, it is very clear, which reads as below :

*“35. **Motion of no confidence.**- (1) A motion of no confidence may be moved by not less than (one-third) of the total number of the members, who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. (Such notice once given shall not be withdrawn).”*

6. He, thus, submits that what needs to be seen at the time of meeting is that whether the members are entitled to sit and vote at any meeting of the panchyat. Thus, on the date of passing of the resolution only 8 members were entitled to sit and vote in the said meeting and thus, the declaration of vacancies is not material.

7. The learned AGP supports the order passed by the learned Collector. He submits that the learned Collector has rightly considered the submission and has rightly appreciated the law in this regard and therefore, no interference is required.

8. Considering the submissions, this Court finds that in view of Section 35 (1) of the Act, what needs to be seen is as to how many members are entitled to sit and vote in the meeting. Since 3 members were already declared disqualified on

13.03.2023 itself, they were certainly not entitled to vote and as such there was no question of their being entitled to sit and vote in the meeting. This Court finds that no illegality is committed by the learned Collector while passing the order. No case is made out for calling any interference at the hands of this Court. Thus, the petition deserves to be dismissed and the same is dismissed with no order as to the costs.

(KISHORE C. SANT)
JUDGE

mahajansb/