

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2005 OF 2023

Jaykumar Mahadeo Tayade __ Vs. __ The Collector, Akola and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Preeti Rane, Advocate for petitioner
Mr. N.R.Patil, AGP for respondent nos. 1 and 2

CORAM : AVINASH G. GHAROTE, J.
DATE : 28/03/2023

1] Heard Ms.Rane, learned counsel for the petitioner and Mr. Patil, learned AGP for respondent nos.1 & 2.

2] Rule. Rule made returnable forthwith.
Learned AGP waives service of notice for respondent nos. 1 and 2.

Heard finally by consent of learned counsel appearing for the parties.

3] The petition challenges the order dated 31.1.2023 passed by the respondent no.1 disqualifying the petitioner from the post of Sarpanch under Section 30(1)A of the Maharashtra Village Panchayat Act for non submission of the caste validity certificate, with retrospective effect.

4] Ms. Rane, learned counsel for the petitioner submits that the caste claim of the petitioner was under consideration before the Scrutiny Committee in pursuance to the application filed for that purpose on 3.2.2021 (pg.27), which has been rejected on 19.9.2022 (pg.35) by invalidating the caste claim. A challenge to the same before this Court in Writ Petition No. 6610/2022 has resulted in issuance of a notice to the respondents for final disposal at the stage of admission, however the prayer for interim relief has been declined. Relying upon **Benedict Denis Kinny vrs. Tulip and others, AIR 2020 SC 3050**, it is submitted that the scope of judicial review under Article 226 of the Constitution of India would still be available to the petitioner, to interdict the impugned order and therefore, the same needs to be stayed.

5] The contention is opposed by the learned AGP, contending that in light of the order dated 20.10.2022 in W.P. No. 6610/2022, this is not permissible.

6] No doubt, **Benedict Denis Kinny** (supra) holds that the power of judicial review is not abridged or taken away by any statutory provision and on the contrary override such provision, in view

of which it was permissible for this Court to have interfered in the order of the Collector dated 31.1.2023 (pg.83), however, that is not the only position here, inasmuch as the challenge to the invalidation of the caste claim of the petitioner by the Caste Scrutiny Committee by the order dated 19.09.2022 has been raised in W.P.No. 6610/2022, wherein the learned Division Bench of this Court by the order dated 20.10.2022 has rejected the prayer for grant of interim relief. This was obviously taking into consideration the consequence of such refusal for grant of interim relief, which would naturally result in the disqualification of the petitioner, which has now occurred because of the impugned order dated 31.1.2023.

7] In light of this position, the impugned order dated 31.1.2023 which merely is a consequence of the order dated 20.10.2022 passed by the learned Division Bench in W.P. No. 6610/2022 cannot be interfered with, specifically when the learned Division Bench has declined to grant interim relief. I therefore do not see any reason to interfere in the impugned order. The petition is therefore dismissed. No costs.