



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 3813 of 2023

Sau. Usha W/o Satish Kathole,
Aged about 39 years,
Occupation : Household/Sarpanch
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, Distt – Akola

.... Petitioner

VERSUS

- (1) The Collector, Akola.
District Akola.
- (2) Returning/Presiding Officer-cum-
Tahsildar, Akot, Dist. Akola.
- (3) Dipak Gajanan Shete
Aged major, Occ : Member,
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, District – Akola.
- (4) Supriya Nilesh Dhande
Aged major, Occ : Member,
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, District – Akola.
- (5) Sheela Jagdeo Avchar
Aged major, Occ : Member,
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, District – Akola.
- (6) Chaya Pravin Ambhore
Aged major, Occ : Member,
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, District – Akola.
- (7) Sujit Purushottam Dandale
Aged major, Occ : Member,
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, District – Akola

(8) Sanjay Devidas Ingale
Aged major, Occ : Member,
Gram Panchayat Jaulka,
R/o. Jaulka, Tq. Akot, District – Akola

(9) Gram Panchayat, Jaulka,
Tq. Akot, District – Akola,
Through its Secretary.

.... Respondents

Mr. Ram Karode with Mr. Abhay Thorat, Advocates for the petitioner
Mr. S. B. Bissa, A.G.P. for respondent nos. 1 and 2
None for respondent nos. 3 to 9

CORAM : ANIL L. PANSARE J.

DATED : 18-06-2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. Section 10-1A of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as ‘the Act of 1958’) reads as under :

“[10-1A. Person contesting election for reserved seat to submit Caste Certificates and Validity Certificate.

Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribe or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes

and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000:]

[Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2023, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of twelve months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee :

Provided further that, if such person fails to produce the Validity Certificate within a period of twelve months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member.]”

3. As could be seen, the second proviso requires the elected person to produce the validity certificate within a period of twelve months from the date on which he is declared elected, else his election is deemed to have been terminated retrospectively and he stands disqualified from the member. In other words, the election itself stands terminated retrospectively and the elected member stands disqualified

from being a member, if he fails to produce validity certificate within a period of twelve months from the date on which he is declared as elected.

4. In the present case, respondent nos. 4, 6, 7 and 8 were declared elected on 18-2-2021. They were thus duty bound to produce caste validity certificate by 17-2-2022. Admittedly, none of them have produced the caste validity certificate within the stipulated period. Therefore, on 17-2-2022, these four respondents stood disqualified in terms of Section 10-1A of the Act of 1958.

5. On 16-2-2023 i.e. one year after being disqualified, a special meeting was called in which no confidence motion was initiated and passed against the petitioner – Sarpanch. The respondents, who otherwise stood disqualified, participated in the meeting and voted in favour of motion. In all seven members attended the meeting of which six including respondent nos. 4 to 6 have voted in favour of the motion. The petitioner was accordingly removed from the post of Sarpanch.

6. The petitioner approached the Collector in terms of Section 35(3B) of the Act of 1958 with a case that the entire meeting has been vitiated because of participation of respondent nos. 4, 6, 7 and 8, who stood disqualified much prior to the date of the meeting.

7. Learned Collector vide order dated 25-3-2023 had rejected the challenge raised by the petitioner to the no confidence motion and upheld the resolution. The petitioner approached this Court in Writ Petition No. 2465/2023. This Court had passed following order on 3-5-2023.

“1] Heard Mr. Karode, learned counsel for the petitioner.

2] The petition challenges the order dated 25.3.23 passed by the respondent no.1/Collector, Akola, rejecting the dispute raised by the present petitioner against the ‘no confidence motion’ dated 16.2.2023 against the present petitioner (pg.46).

3] It is contended that Gram Panchayat, Jaulka, Tq. Akot, Dist. Akola, comprised of 7 persons including the Sarpanch and since motion of ‘no confidence’ was moved against the Sarpanch, the same ought to have been in consonance with the provisions of law applicable thereto. It is contended that 4 members of the Gram Panchayat were elected from reserved category and therefore in view of mandate of Section 10-1A of the Maharashtra Village Panchayat Act and specifically the second proviso, the caste validity certificate ought to have been submitted within the period of twelve months from the date of declaration of the result of the election, which period has been extended till 17.1.2023. It is contended that respondent nos. 4, 6, 7 & 8, who are elected to the reserved constituency did not submit their validity certificates to the Authority and therefore, as on 16.2.2023, the date of the meeting to consider the ‘no confidence motion’, the status of the respondent nos. 4, 6, 7 & 8 could no longer be said to be that of elected members, as the effect of the second proviso

to Section 10-1A was to have a deemed effect of termination of the election retrospectively and disqualification from being a member. It is therefore contended that since the Respondent nos. 4, 6, 7 & 8 were disqualified, that left only three members, which could not complete the quorum for such a meeting and therefore, the entire proceedings conducted in the meeting dated 16.2.2023 were non-est and the resolution passed therein also was of no effect. It is contended that this position was brought to the notice of the Collector, which is reflected from the memo of the dispute under Section 35(3B) of the MVP Act, where this ground has been raised in para 6 (pg.32), however the same has not been considered by the Collector at all while passing the impugned order.

4] When Mr. Chopde, learned counsel for respondent nos. 3 to 8 was asked to make a statement as to on what date the caste validity certificates were submitted to the Tahsildar, as it is contended by Mr. Karode, learned counsel for the petitioner that they were so done on 21.2.2023, he is unable to point out the date.

5] In that view of the matter, the impugned order cannot be sustained and is hereby quashed and set aside and the matter is remanded back to the respondent No.1 to pass an order afresh after taking into consideration the aforementioned plea regarding the effect of the second proviso to Section 10-1A of the MVP Act.

6] The parties shall appear before the respondent no.1 on 8.5.2023.

7] The proceedings before the respondent no.1 shall be decided by him within the period of 30 days thereafter.

8] The petition is allowed in above terms. No costs."

8. Thus, the proceedings were remanded back to the respondent no. 1 - Collector to pass an order afresh after taking into consideration the plea mentioned in order regarding effect of the second proviso to Section 10-1A of the Act of 1958.

9. The Collector has reproduced the order passed by this Court but has not considered the case in terms of the order so passed. The challenge has been ignored by quoting one line that there is no merit in the challenge. The Collector has not assigned any reason of whatsoever nature as to why is there no merit in the challenge when the facts indicated otherwise.

10. As stated above, respondent nos. 4, 6, 7 and 8 stood disqualified, which appears to be automatic disqualification for failure of the elected members from the reserved constituencies to produce the caste validity certificate within stipulated time. Despite such a position, when it was so apparent that four members, despite being disqualified, have attended the meeting, the learned Collector, by ignoring the provisions of law as also the directions given by this Court, has passed impugned order.

11. It will be appropriate, at this stage, to refer to the judgment of Full Bench of this Court in ***Writ Petition No. 9628/2010 (Popat s/o***

Vithal Pund & ors. Vs. The Divisional Commissioner, Nasik Division, Nasik and ors.) wherein the Full Bench has answered the reference made to it and declared that the second proviso to Section 10-1A is mandatory and consequences as contemplated by the proviso shall ensue.

12. The consequence in the present case is that election stands terminated retrospectively and elected members stand disqualified.

13. The order impugned therefore has been passed in patent violation of the provisions of law as also the order passed by this Court remanding the matter back.

14. The impugned order is, therefore, quashed and set aside. No confidence motion passed against the petitioner in the special meeting dated 16-2-2023 is also quashed and set aside.

15. Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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