

(2008) 08 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 2210 of 2008

Kondabai Bhaskar Sour and Others

APPELLANT

Vs

Additional Commissioner, Amravati Division and Others

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Citation : (2008) 6 ALLMR 39 : (2008) 6 MhLj 407

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : P.P. Mahalle, for the Appellant; Wasnik, A.G.P. for Respondent No. 1 and S.J. Khandalkar, for the Respondent

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.—Rule. Heard forthwith by consent of learned Counsel for the rival parties.

By the present petition, the petitioners have put to challenge the order made by the Additional Collector, Buldana, on 18-3-2008 and confirmed by the Additional Commissioner, Amravati, on 21-5-2008, whereby election for the post of Sarpanch and Upa-sarpanch of Gram Panchayat Ghatnandra was set aside.

2. Mr. Mahalle, learned Counsel for the petitioners, argued that Gram Panchayat Ghatnandra had in all nine posts of members in accordance with the notification. He further argued that the election was held for seven post out of nine posts because the posts reserved for Scheduled Tribe (woman) and Scheduled Tribe could not be filled as there is no population of Scheduled Tribes in the village and therefore the reservation for two posts of members in that category of Scheduled Tribes was itself basically wrong. According to him, it was impossible to have nine members in the Gram Panchayat in the absence of any person belonging to Scheduled Tribes and therefore only seven members were elected. He further argued that in the election to the post of Sarpanch and Upa-sarpanch, the quorum for the meeting will have to be calculated taking strength as seven

members and not nine members. Since four members were present in the meeting, though notices were served on all the seven members, there was a quorum and therefore the election could not have been set aside by the Additional Commissioner in the election dispute. He referred to Rule 11 of the Bombay Village Panchayats (Sarpanch and Upa-sarpanch) Election Rules, 1964 (For short the Election Rules) and argued that the quorum spoken of by the said Rule will have to be read with reference to the actual members who could be elected in the fact situation of this case.

3. Per contra, Mrs. Wasnik, learned A.G.P., supported the impugned order.

Mr. Khandalkar, learned Counsel for respondents 2, 3 and 4 argued that there is a concurrent finding of fact recorded by the Courts below and there is no need to interfere in the writ jurisdiction and even otherwise the interpretation placed by the Courts below is correct and cannot be faulted. Strictly going by the terms mentioned in Rule 11, total member of Gram Panchayat will have to be taken into consideration for finding out whether quorum was complete or not.

Consideration:

4. After hearing the learned Counsel for the rival parties, at the outset, it would be beneficial to quote Rule 11 of the Election Rules:

Quorum. - (1) The quorum necessary for the meeting called for the election of the Sarpanch or Upa-Sarpanch shall be one-half of the total number of members of the Panchayat.

Explanation. - If the number of members of the Panchayat is odd, in calculating half the number for the purposes of the quorum, fraction of a member shall be counted as one, e.g., if the number of members is seven, the quorum shall be five and so on.

(2) If within thirty minutes from the time fixed for the meeting, there be no quorum, the Presiding Officer shall adjourn the meeting.

(3) If, at any time during the meeting, it is brought to the notice of the Presiding Officer that the number of members present fall short of the required quorum, the Presiding Officer, after waiting for a period of not less than fifteen minutes and not more than half an hour, shall adjourn the meeting.

(4) The meeting adjourned under Sub-rule (2) or (3) of Rule 11 shall be held again on the next day at the same place and hour. A notice of such adjournment shall be fixed on the notice board at the office of the Panchayat and the election shall be held at such adjourned meeting or at any subsequent adjournment thereof whether there be quorum present or not.

The terminology used in the above Rule shows that the quorum necessary shall be one-half of the total number of members of the Panchayat. Undoubtedly the total number of members means the total number of members which is the strength of the Gram Panchayat. In the instant case, it is not a disputed position

that though all the nine posts of the members were notified for election, only seven posts of members were filled in because there were no candidates belonging to Scheduled Tribe (Woman) and Scheduled Tribes category in the village. The averments in the writ petition that there are no persons belonging to Scheduled Tribes category in the village has not at all been seriously disputed. It, therefore, appears that none could get elected from Ward Nos. 1 and 2 of village Ghatnandra for want of persons belonging to Scheduled Tribes category, which were reserved for that category. It is nobody's case that there were persons belonging to Scheduled Tribes in the village but they did not like to contest the elections. On the contrary, it appears from the pleadings that there are no persons belonging to Scheduled Tribes category in the village. Therefore, to say that those two posts of members still have to be counted for counting the strength of Gram Panchayat would be to ask for the performance of impossibility. It will be useful to make reference to the doctrine of impossibility of performance, i.e. *Lex non-cogit ad impossibilia* (The law does not compel a man to do that which he cannot possibly perform) from Herbert Broom's Legal Maxim at page 162-

This maxim or as it is also expressed, *impotentia excusat legem* (g) is intimately connected with that last considered, and must be understood in this qualified sense, that *impotentia* excuses when there is a necessary or invincible disability to perform the mandatory part of the law, or to forbear the prohibitory.

In the above factual background, it will have to be held that even if the said provision of Rule 11 is held to be mandatory, though I do not decide the same here, the quorum ought to have been calculated on the basis of seven members.

5. In the result, writ petition is allowed. Impugned orders dated 18-3-2008 made by the Additional Collector, Buldana, and appellate order dated 21-5-2008 made by the Additional Commissioner, Amravati are hereby quashed and set aside. Rule is made absolute in above terms. No order as to costs.