

(2012) 07 BOM CK 0235

In the Bombay High Court

Case No : Letters Patent Appeal No. 110 of 2012 with and Civil Application No. 7529 of 2012

Rohini Bhosale

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35(3)

Citation : (2012) 07 BOM CK 0235

Hon'ble Judges : Sunil P. Deshmukh, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : D.G. Nagode, for the Appellant; K.B. Chaudhari, Additional Govt. Pleader for respondent State/Authorities, Mr. Sandeep S. Deshmukh, Advocate for respondent Nos. 6 to10, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Heard Advocate Nagode for the appellant, Mr. Choudhari, Additional Govt. Pleader for respondent Nos. 1 to 4 and Advocate Deshmukh, for respondent Nos. 6 to 10. Perused the order. Shri Nagode has raised two contentions, first one is, the matter was fixed on 6.1.2012, while the Additional Commissioner, who passed the appellate order, had already prepared that order on 4.1.2012. Hence, hearing extended on 6.1.2012 was only a farce.

2. Second contention is, interpretation by learned Single Judge and by authorities below on 1st Proviso to Section 35(3) of the Bombay Village Panchayat Act, 1958 (hereinafter referred to as "the Act of 1958") is not in accordance with the spirit thereof. It is submitted that intention of the legislature is to provide extra security to women office bearers and hence, the requirement of 3/4th majority while accepting the motion of no confidence, has been provided for.

3. Learned counsel submits that use of "comma sign" after the word, "women" and before the word "is", must be treated as disjunctive so as to read the

requirement of holding office of Sarpanch by women independent of the requirement of same being reserved for women.

4. Learned AGP, as also, Advocate Deshmukh, opposed the petition. They submit that contention about date on which order is passed, is a finding of fact. It is further submitted that if contention of counsel for petitioner about interpretation of first proviso to section 35(3) is accepted, it would be adding a word "or". Such an exercise is not permissible.

5. After hearing the respective counsel, we find that the Additional Commissioner has come up with specific case that date 4.1.2012 was erroneously mentioned. The learned Single Judge has considered the rival contentions in this respect and has accepted the same.

6. We, therefore, do not see any error or perversity in it. Even if it is presumed that order was kept ready on 4.1.2012, order cannot be said to be bad on merits. No confidence motion has been passed against the appellant by requisite majority and that fact is not in dispute. Only effort is to show to this court that instead of 2/3rd majority, it has to be 3/4th majority. If it has to be 3/4th majority, the appellant has to show that the first proviso to Section 35(3) of the Act of 1958, is squarely attracted. The proviso is very specific and it requires (1) an office of Sarpanch which is reserved for woman and (2) A woman holding that office. Thus, both these ingredients are complimentary and cannot be severed from each other. If contention of learned counsel for appellant is to be accepted, the requirement of office of Sarpanch being reserved for woman, is rendered nugatory and that particular part of proviso is required to be deleted or always overlooked. This cannot be done. The learned Single Judge has therefore correctly appreciated the controversy. No case is made out for interference. Appeal is rejected. No costs. Civil application for stay is also rejected.