

(1998) 12 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 3748 of 1998

Vinayakrao Gangaramji Deshmukh

APPELLANT

Vs

P.C. Agrawal and Others

RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 30
Constitution of India, 1950 — Article 16(4), 243D, 243D(4)

Citation : AIR 1999 Bom 142 : (1999) 2 ALLMR 71 : (1999) 1 MhLj 582

Hon'ble Judges : N.P. Chapalgaonkar, J; D.D. Sinha, J

Bench : Division Bench

Advocate : S.U. Baghel, for the Appellant; D.N. Kukday, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Chapalgaonkar, J.—Heard Shri Baghel, the learned counsel for the petitioner and Shri Kukday, the learned Government Pleader, who accepts notice for the State.

2. The respondent No. 4 was elected as a Sarpanch of the Village Panchayat Sanglood in Tahsil Daryapur, District Amravati. The post of Sarpanch of this Village Panchayat was reserved for the Scheduled Caste women category. Admittedly, the respondent No. 4 is lone member belonging to eligible category. The other members of the Village Panchayat brought a motion of no-confidence against the respondent No. 4 u/s 25 of the Bombay Village Panchayats Act, 1958 and removed her. The vacancy was notified and now it is being filled in.

3. The petitioner makes a grievance that since the post of Sarpanch is reserved for the Scheduled Caste women category and the respondent No. 4 is a lone member belonging to that category. Her election is merely a formality. The petitioner further contends that a person, who is removed by expressing an opinion by vote of no-confidence, should not be allowed to contest the same post again, because it is likely that she will be again removed from the post after her

election. It is further contended that the post of Sarpanch is a singular post in the structure of the Village Panchayat and therefore, it cannot be reserved for any category like Scheduled Caste, Scheduled Tribe or other Backward Class, since this would be an 100% reservation, depriving other sections of the Society from contesting this post.

4. Shri Baghel, the learned counsel appearing on behalf of the petitioner, invited our attention to the judgment of the Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, . The matter considered by the Supreme Court in the aforesaid case was relating to the reservation in the public employment and interpreting the provisions of Articles 15(4) and 16(4) of the Constitution of India, the Supreme Court ruled that a single post cannot be reserved, neither directly nor by device of rotation of roster points. The reservation in public bodies like Panchayats and Municipalities was hereinbefore governed by the relevant Statutes, which the State Legislature has passed and it was held to be permissible. Now, after the seventy-third and seventy-fourth Constitutional amendments, the constitution of local bodies has been granted a constitutional protection and Article 243D mandates that a seat be reserved for the scheduled Caste and Scheduled Tribe in every Panchayat and Sub-article (4) of the said Article 243D also directs that the offices of the Chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. Therefore, the reservation in the local bodies like the Village Panchayat is not governed by Article 16(4), which speaks about the reservation in the public employment, but a separate constitutional power directs the reservation in such local bodies. It is natural that in every local body, the post of Chairperson shall be only one. Observation of the Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, , cited supra, that the single post cannot be reserved even by rotation of roster point, is not applicable.

5. The second point raised in the petition and advanced by Shri Baghel, he learned counsel for the petitioner, is that unless reservation is cancelled or altered to some other category, members of Panchayat will have to elect a candidate to whom they have already condemned. Removal of a Sarpanch of Village Panchayat by expression of opinion by vote of no-confidence u/s 25 of the Bombay Village Panchayats Act, 1958 cannot be equated with the removal of a person under the provisions of Section 39 of the said Act of 1958, which authorizes the Standing Committee of the Zilla Parishad to remove any Sarpanch or Upa-Sarpanch, who has been found guilty of misconduct in discharge of his duties. Removal u/s 39 is for misconduct, negligence in duty or incapacity to perform the duty. It is followed by disqualification for certain period and its consequences to follow Removal by vote of no-confidence is just one of the popular tricks in the democratic set up and it is in no way stigma on a person. We, therefore, do not find any merit in this submission also.

6. In the result, the petition stands rejected in limine.