

Mrs. Indira Vijay Tagde Vs The State of Maharashtra and others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Dec. 4, 1997

Acts Referred: Bombay Village Panchayats Act, 1958 " Section 35, 39

Citation: (1998) 1 ALLMR 773 : (1998) 4 BomCR 98 : (1998) 1 MhLj 663

Hon'ble Judges: R.M.S. Khandeparkar, J; A.V. Savant, J

Bench: Division Bench

Advocate: C.N. Adgaonkar, for the Appellant; Mujumdar, A.G.P. and B.R. Gawai, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.V. Savant, J.

Heard all the learned Counsel. The only point for consideration is whether the provisions of section 35 of the Bombay

Village Panchayats Act, 1958 can have no application in case of scheduled caste woman candidate who is elected as a Sarpanch and was the only

Scheduled Caste woman in the Gram Panchayat. Few facts to appreciate the controversy in the matter, may be stated as under :

2. The petitioner was elected as the Sarpanch of Pimpalkhuta Gram Panchayat on 28th August 1995. She assumed charge of the office of

Sarpanch on 4-9-1995. On 12th December 1995, a requisition was submitted by respondents No. 6 to 11 who are represented before us by the

learned Counsel Shri Gawai. Pursuant to the said requisition, for considering the no confidence motion against the petitioner, a meeting was held on

18-12-1995. The Gram Panchayat consists of 9 members, out of whom 6 were present. All of them voted in favour of the motion being passed.

As a result, the motion of no confidence was passed against the petitioner by the requisite majority. Section 35 of the Bombay Village Panchayats

Act, as it stood at the relevant time, required the motion to be carried by majority of not less than 2/3rd of the total number of members who are

for the time being entitled to sit and vote at any meeting of the Gram Panchayat. There is no controversy before us that the motion was passed by

the requisite majority.

3. The petitioner raised a dispute before the Collector in accordance with subsection (3-B) of section 35 of the Act. The only point that was raised

before the Collector and which is raised by Shri Adgaonkar before us is that, since the petitioner was the only woman candidate belonging to the

scheduled caste and since the post of Sarpanch is reserved for a scheduled caste woman candidate, the provisions of section 35 can have no

application at all. The Collector rejected the said contention and held that, since the motion for no confidence was carried by the requisite 2/3rd

majority, the petitioner had ceased to be the Sarpanch. In the result, the reference was rejected by the Collector on 29-2-1996.

4. Being aggrieved by the said order, the petitioner preferred an appeal before the Commissioner under sub-section (3-C) of section 35 of the

Act. The same contention was reiterated before the Commissioner, who, by his judgment and order dated 3-6-1996, rejected the contention. It is

these concurrent findings that are challenged before us by the petitioner.

5. Shri Adgaonkar, the learned Counsel for the petitioner, reiterated the said contention that the provisions of section 35 of Bombay Village

Panchayats Act can have no application whatsoever to a scheduled caste woman candidate if she was the only scheduled caste woman in the

Gram Panchayat. He further contended that, if at all the petitioner had to be removed, she could be removed from the office by following the

procedure laid down in section 39 of the said Act and in no other manner.

6. In the first place on a plain reading of the provisions of section 35, it is not possible to accept the contention of Shri Adgaonkar. There is nothing

in the scheme of the provisions of section 35 to suggest that, merely because the petitioner is the sole scheduled caste woman candidate, no motion

of no confidence can ever be moved against her, though all the requisite formalities are completed. Secondly, if Shri Adgaonkar is right in his

contention that the provisions of section 35 can have no application to a sole scheduled caste woman candidate, we fail to understand why the

provisions of section 39 should be made applicable to a sole scheduled caste woman candidate. In our view, when the provisions of section 35 are

clear, it is not necessary for us to consider the alternate submission that action could have been taken only u/s 39 of the Act. If there is any

hardship resulting to the sole scheduled caste woman candidate as a result of the clear provisions of section 35, it is for the Legislature to consider

whether any exception can be carved out in favour of a sole scheduled caste woman candidate excluding her from the purview of section 35 of the

Act. On the material that has been placed before us, it is not possible for us to accept the contention that the provisions of section 35 should not be

applied where the Sarpanch is the sole scheduled caste woman candidate. There is no error of law in the impugned judgments and orders. We find

no merit in the contention raised before us.

7. Incidentally ,we may mention that, a similar contention was raised before this Court in Writ Petition No. 2489/97 decided on 27-8-1997 and

has been rejected.

8. In the result, writ petition fails. Rule is discharged. Ad interim order granted on 26th July 1996 to stand vacated forthwith. There shall be no

order as to costs.

9. Petition dismissed.