

(1997) 05 BOM CK 0027

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 1008 of 1997

Shankar Kamble

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: May 2, 1997

Acts Referred:

- Bombay Village Panchayats Act, 1958 - Section 30(4)
- Bombay Village Panchayats Act, 1965 - Section 30(4)
- Constitution of India, 1950 - Article 243
- Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 - Section 51

Citation: (1998) 3 ALLMR 116 : (1998) 2 BomCR 330

Hon'ble Judges: B.H. Marlapalle, J; A.P. Shah, J

Bench: Division Bench

Advocate: Vivek Dhage, for the Appellant; S.B. Talekar and N.B. Khandare, A.G.P., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.

Heard learned Counsel for the respective parties,

2. Rule made returnable forthwith with the consent of the parties.

3. The petitioner came to be elected as member of Gram Panchayat, Pimpalgaon (Ku), Taluka Biloli from a ward reserved for Scheduled Caste Category. The post of the Sarpanch of village Pimpalgaon (Ku) came to be reserved for Scheduled Caste category and the elections were scheduled for the said post of Sarpanch on 28-8-1995. In all, three members submitted their nomination forms to contest the election of the Sarpanch and they were the petitioner, the respondent No. 6 and one

Shankar Hajiram Gaikwad. However, said Shankar Hajiram withdrew his nomination form and the contest for the post of Sarpanch remained only between the petitioner and respondent No. 6. It is not disputed that respondent No. 6 was elected as member of the Gram Panchayat from Ward No. 2 which was not reserved for any category and was an open category ward.

4. It is the allegation of the petitioner that the respondent No. 6 managed to get bogus caste certificate certifying his caste as Lingder which falls in the category of Scheduled Caste in the State of Maharashtra though the said respondent actually belongs to Lingayat caste which is not included in the Scheduled Caste category. On a complaint received, the Collector, Nanded directed an enquiry in which the Tahsildar Biloli submitted a report. Subsequently the Collector passed an order cancelling the caste certificate issued to the respondent No. 6 by his order dated 13-2-1996 which is annexed as Exhibit P-2 to the petition. The respondent No. 6, it seems, approached the Caste Scrutiny Committee against the order passed by the Collector and his appeal was allowed by the Committee and quashed the order of the Collector and confirmed that respondent No. 6 belonged to the Lingder caste which is listed as Scheduled Caste. Though in this petition we are not required to adjudicate the issue regarding the caste claim of respondent No. 6, that is to say, whether the challenge of the petitioner that the respondent No. 6 does not belong to Scheduled Caste category. Though it is seen from the records that the Tahsildar, Biloli in his report submitted to the Collector, Nanded had stated very clearly that no caste certificate as belonging to Lingder caste was issued to the respondent No. 6 and the said certificate was a fabricated one, the caste scrutiny committee, inspite of the fact finding report submitted by the Tahsildar, has quashed and set aside the order dated 13-2-1996 passed by the Collector at Nanded and has come to its own conclusions for the reasons stated in its order dated 16-2-1996. Be that as it may. The sole point we are required to decide is whether respondent No. 6 was eligible to contest the election of Sarpanch when the said post was reserved for the Scheduled Caste category, faking into consideration the fact that the respondent No. 6 has contested from Ward No. 2 which was an open category Ward and it was not a ward reserved for Scheduled Caste category. This issue is no more res-integra in view of our judgment in the case of Writ Petition No. 846 of 1997 of [Parwatibai Molddewad Vs. The State of Maharashtra and others](#), . Though in the said case our decision pertained to the elections to the post of President of Municipal Council under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the said post of President was reserved and a Councillor elected from open category was allowed to contest the said election in which he was declared to be elected. By our judgment dated 30-4-1997 we have held that a Councillor elected from open category or any other category other than the category for which the post of the President has been reserved is not eligible to contest the said post of President. In pursuance of the 74th amendment to the Constitution, section 51-1A has been introduced in the Maharashtra Municipal Councils Act 1965 making

provisions that the offices of the President shall be reserved for the Scheduled Castes, the Scheduled Tribes, Women and the Backward Class of Citizens in the prescribed manner. Similarly, pursuant to the 73rd amendment to the Constitution of India, section 30 of the Bombay Village Panchayats Act has been amended by Maharashtra Amendment No. 21 of 1994 and the relevant portion of the amended section reads as under:

"30(4) There shall be reservation in the offices of the Sarpanchas in the Panchayats for the members belonging to the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as follows...."

It is thus clear that the provisions of reservations to the post of President of the Municipal Council as set out in section 51-1A of the Maharashtra Municipal Councils Act are materially the same to the provisions of section 30(4) of the Bombay Village Panchayats Act, 1958. In the result, the law laid down by us in the above-cited case is squarely applicable to the present case as a whole and hence the respondent No. 6, who was elected as a member of the Village Panchayat from the ward which was not reserved and which was an open category ward, was not eligible to contest the election to the post of the Sarpanch, which was reserved for the Scheduled Castes category.

5. The petition, therefore, stands allowed and it is hereby declared that the respondent No. 6 was not eligible to contest the election to the post of Sarpanch held on 28-8-1995 in respect of Pimpalgaon (Ku) Gram Panchayat. Rule made absolute in the above terms. No order as to costs.

6. Petition allowed.