

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

904 WRIT PETITION NO. 9469 OF 2016

DEVIDAS SAMBHAJI LOKHANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. G.R. Syed, Advocate, for petitioner.

Shri. B.A. Shinde, Assistant Government Pleader, for respondent Nos.1 to 3.

Shri. A.M. Gaikwad, Advocate, for respondents 5,6 & 9.

CORAM: T.V. NALAWADE, J.

DATE : 30 NOVEMBER 2016

ORDER:

1) The petition is filed to challenge the decision given by the learned Additional Collector Nanded in File No. 2016/GB/Desk/1/VPE/Appeal-97 by which proceeding filed by the present petitioner, the then Sarpanch, is dismissed. No confidence motion was moved against him and it was passed and the said resolution was challenged in the aforesaid proceeding. Both the sides are heard.

2) The submissions made show that Village Panchayat Shambargaon/Jambhrun, Tahsil Loha, District Nanded has 7 members. On 26-5-2016 five members gave

requisition against the present petitioner to the Tahsildar that they wanted to move no confidence motion against the petitioner. The Tahsildar called the meeting on 1-6-2016. The meeting was held on 1-6-2016. Five members attended the meeting and the motion was moved. After the discussion motion was passed by majority of 5 versus zero. The petitioner and one more member did not attend the meeting.

3) The aforesaid resolution was challenged by filing proceeding before the Collector by the present petitioner and contention was made that notice of the meeting was not served on the petitioner. In view of the record, this contention cannot be believed. It was also contended that the subject was not discussed in the meeting. Admittedly the petitioner remained absent. Provisions of section 35 of the Maharashtra Village Panchayats Act 1958 can help only when the Sarpanch remains present in the meeting. Provision of section 35 further shows that subjective satisfaction of the Collector is involved in the matter and his decision needs to be treated as final. Learned counsel for the petitioner argued

on one more circumstance and he submitted that disqualification proceeding was started against respondent Nos.7 and 8 on the ground that they had not produced caste validity certificates when they had contested the election from reserved category. He submitted that on 30-9-2016 these two members came to be disqualified in view of the provision of Section 10-1A of the Act and it needs to be treated that the disqualification relates back to the date of election and so their votes could not have been counted in the no confidence motion and the meeting itself needs to be treated as illegal. This submission is not at all acceptable. Provision of section 16 of the Act shows that until the Collector decides the proceeding, the member shall not be disabled under sub-section (1) from continuing to be a member. In view of this position of law it cannot be said that on 1-6-2016 these two members had no right to vote or they had no right to give requisition. Thus, there is no force in the submissions made by the learned counsel for the petitioner. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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