

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

902 WRIT PETITION NO. 9429 OF 2014

LATA GULABRAO DHARPADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Kale M.P.
AGP for Respondents 1 and 2 : S.K. Tambe
Advocate for Respondents 4 to 6 : S.J. Salunke
Advocate for Respondent 7 : K.U. More
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CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Additional Collector, Ambajogai in disqualification proceeding bearing No. 2014/VP/1/Appeal/02. Both the sides are heard.

2. The proceeding was started on the basis of report given by the Chief Executive Officer of Zilla Parishad to Collector. The inquiry was made by the Chief Executive Officer on the basis of complaint made by villagers like Ashok Balasaheb Solanke on 17.6.2013. Firstly inquiry was conducted through Block Development Officer (BDO) and then Chief Executive Officer of Zilla Parishad on the basis of inquiry report of BDO submitted report to Collector for taking action under section 7 (1) of the

Village Panchayats Act, 1953 against the petitioner. Notice of the proceeding was issued by the Collector, but the petitioner, Sarpanch did not turn up. The Collector decided the matter on the basis of report of Chief Executive Officer and BDO. The Collector has held that the mandatory special Gramsabhas which were to be held on 26.1.2013 and 1.5.2013 were not held by the Sarpanch and so, Sarpanch had incurred disqualification.

3. The learned counsel for petitioner submitted that notice was actually not served on the petitioner and no opportunity was given to the petitioner to show cause and to show that there was sufficient cause for not holding the meetings. This Court allowed the learned counsel for petitioner to show the record, if any, available to show that the special Gramsabhas of 26.1.2013 and 1.5.2013 were actually held. In the present proceeding the record of Gramsabha dated 24.1.2015 is produced. As per section 7 (1) of the Act, there are four general mandatory Gramsabhas which are required to be held and in addition to that, there need to be special Gramsabhas on 26.1.2013 and 1.5.2013. The learned counsel for petitioner submits that there is no such record. Then the learned counsel was asked to show that the reply, if any, filed before BDO, but that record is also not available with the counsel.

4. In the present proceeding, the learned counsel submitted that this Court has granted stay to the operation of order made by the Collector on 28.10.2014. The submissions made show that due to the stay granted by this Court, the election to post of Sarpanch was not held. Though the present petitioner incurred disqualification and order was made against him, it cannot be believed that the necessary record till today in respect of Gramsabhas dated 26.1.2013 and 1.5.2013 was not handed over to the learned counsel for petitioner. In section 7, it is made clear that it is joint responsibility of the Sarpanch and Gramsevak to create and maintain the record of Gramsabhas and so, it cannot be said that the said record is still not available with Sarpanch. Even after expiry of two years, the record is not with the counsel of the present petitioner.

5. The learned counsel for petitioner submitted that it is also the responsibility of Up-Sarpanch to maintain that record. When there is Sarpanch, Up-Sarpanch is not expected to act. Up-Sarpanch can act only when Sarpanch is not available. Thus, there is no force in this submission which was made first time in the present proceeding by the learned counsel for petitioner in that regard. This Court holds that it is not possible to interfere in

the order made by the learned Additional Collector.

6. The learned counsel placed reliance on the case reported as 2010 **(4) ALL MR 728 [Sow. Pratiba w/o. Sanjay Hulle Vs. The Additional Collector, Latur and Ors.]**. The necessity of informing the charge etc. in notice given in proceeding under section 7 is discussed. In the present matter, when the Collector has observed that notice was served and Sarpanch did not appear, there is no question of considering the case that no sufficient opportunity was given to Sarpanch in that regard. The observations made by this Court are of no use in the present matter.

7. In the result, the petition stands dismissed. Interim relief, if any, granted by this Court is vacated. The learned counsel for petitioner requested for continuation of interim relief. It is unfortunate that for about two years matter remained pending with interim relief. There is no possibility of continuation of interim relief. The said relief is refused.

[T.V. NALAWADE, J.]

SSC/