

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Writ Petition No. 4824 of 2015

[Shri Sadashiv Kisanrao Jaibhave Vs. Additional Collector, Buldhana and ors.]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri P. A. Kadu, Advocate for the petitioner
Shri S. B. Bissa, AGP for the respondent no. 1
Shri R. D. Karode, Advocate for the respondent no. 2
Ms. Nazia Pathan, Advocate for the respondent no. 3

CORAM : Prasanna B. Varale, J.

DATE : 22-2-2016.

Heard learned counsel for the parties.

By the present petition, the petitioner has challenged the order passed by the Additional Collector, Buldhana dated 13-7-2015.

The sum and substance of submissions of Shri Kadu, learned counsel for the petitioner is that the Additional Collector failed to appreciate the material in its proper perspective and passed an erroneous order. Shri Kadu, learned counsel for the petitioner referred to and relied on two reports, one by Extension Officer and Enquiry Officer other by Block Development Officer.

The Additional Collector was moved by one Kachru Mahadu Sanap, resident of Village Ardav, Tahsil Lonar seeking disqualification of the Sarpanch i.e. respondent no. 2. It was submitted that Sarpanch Smt. Maltabai Sarkate assumed charge on 11-11-2012 and failed to conduct the Gram Sabhas as required. The respondent no. 2 herein and the

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respondent before the Additional Collector i.e. Smt. Maltabai Sarkate submitted reply by denying the allegations. It was submitted that necessary Gram Sabhas were conducted. It was also submitted that on 15-8-2013, though the Gram Sabha was conducted, due to disruption and disturbance, the Gram Sabha could not be conducted properly. It was submitted that a news item in respect of the disruption and disturbance was also published. It was submitted that the said Gram Sabha was then postponed to 29-9-2013 and again, it was postponed due to non-compliance of coram on 29-9-2013. It is interesting to note that Shri Kachru Sanap who initiated the proceedings, sought withdrawal of the proceedings. The petitioner submitted an application to the Additional Collector. It was stated that Shri Kachru Sanap in connivance with the Sarpanch submitted an application for withdrawal and it was further requested that the competent authority may decide the proceedings on merits. The Additional Collector on hearing the parties and on perusal of the material rejected the application seeking disqualification. The Additional Collector called the report from the Block Development Officer. The Additional Collector on perusal of the report found that though a complaint was made to the effect that the same subject was discussed in the meetings dated 24-4-2013 and 3-5-2013, but on perusal of the record, it was found that the proceedings of these two meetings and the subjects of these two meetings

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were different. The Additional Collector also found that the Gram Sabha Register was showing the signatures of the Up-Sarpanch and other Members of the Gram Panchayat. On perusal of the material, the Additional Collector arrived at the conclusion that the Sarpanch had conducted the necessary meetings in the financial year 2012-13.

Shri Kadu, learned counsel for the petitioner submitted that the petitioner stepped in the shoes of Shri Kachru Sanap and contested the proceedings and as such, the petitioner is having a locus to challenge the order passed by the Additional Collector. Shri Kadu, learned counsel further submitted that the Additional Collector ought to have considered the aspect that there were two reports namely a report issued by the Enquiry Officer/ Extension Officer and Block Development Officer. He submits that as there is no reference of the meeting dated 15-8-2013 in the report of the Extension Officer, the Additional Collector ought not to have rejected the application.

Shri Karode, learned counsel appearing for the respondent no. 2 vehemently submits that the petitioner is having no locus to challenge the order passed by the Additional Collector. He then submits that the order passed by the Additional Collector is on the basis of the material placed before the Additional Collector. Thus, Shri Karode, learned counsel supports the order passed by the Additional Collector.

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On the backdrop of the submissions of the learned counsel appearing for the respective parties, I have gone through the material placed on record. It is interesting to note that though the petitioner claims that he has locus to challenge the order passed by the Additional Collector being a villager and the act being a piece of beneficial legislation, if there is a contravention of the provisions of the Act, the petitioner is entitled to raise his grievance as a villager. Though the submission of Shri Kadu looks attractive at first blush, I am unable to accept his submission. Firstly, Shri Kachru Sanap approached the Additional Collector seeking disqualification of the Sarpanch and thus, the petition was already raised before the competent authority. The petitioner entered on the scene by presenting an application to the Additional Collector when Shri Kachru Sanap sought withdrawal of the proceedings. It will be again interesting to note the contents of the application moved by the petitioner. The petitioner submitted that the withdrawal is sought by Shri Kachru Sanap in connivance with the non-applicant. It is submitted that the Additional Collector may peruse the material and pass order on the merits of the proceedings. The Additional Collector refers to the submissions. Perusal of the order of the Additional Collector shows that the parties have placed on record the written submissions. The Additional Collector refers to the written submissions and also refers to the report of

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the Block Development Officer, Panchayat Samiti, Lonar called by him. The Additional Collector on perusal of the material and on his assessment of the material found that as the required meetings were conducted by the Sarpanch in the financial year 2012-13, the objector failed to establish any material against the non-applicant Sarpanch seeking disqualification of the non-applicant Sarpanch under Section 7(1) of the Maharashtra Village Panchayats Act, 1958. Thus, if the petitioner had approached the competent authority with a request to decide the proceedings on perusal of the material and on merits of the proceedings, the petitioner now cannot take a somersault and approached this Court by submitting that the material assessed by the Additional Collector is not as per the satisfaction of the petitioner. If the competent authority arrived at a conclusion on its independent assessment of the material, no fault can be found in the order passed by the Additional Collector. The submission of Shri Kadu was that as there was a report of the Extension Officer and Enquiry Officer wherein there is no reference of meeting conducted on 15-8-2013, the Additional Collector arrived at a erroneous conclusion. Merely, because the petitioner submits that the Extension Officer referred nothing about the meeting dated 15-8-2013, the conclusion arrived at by the Additional Collector on the basis of other independent material cannot be faulted with. The submission then would led to the extent that the

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Additional Collector ought to have considered the only material on which the petitioner placed reliance. This submission also cannot be accepted for the reason that the petitioner himself prayed the Additional Collector to decide the proceedings on its own merits.

Thus, in view of the above, I see no reason to interfere the order passed by the Additional Collector. The petition is, thus devoid of merits, deserves to be dismissed and it is, accordingly, dismissed.

JUDGE

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