

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9538 OF 2017

Sau. Rekha w/o Magan Rathod
Age: 45 years, occ: Agri., & social Service,
R/o village Takali Tq. Muktainagar,
Dist. Jalgaon

...Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai
2. The Collector, Jalgaon,
Dist. Jalgaon.
3. Shri Vasudeo s/o Mango Chavan
Age: 51 years, Occ: Agri.,
R/o village Takali, Tq. Muktainagar,
Dist. Jalgaon.
4. Ramesh s/o Prabhuda Jadhav
Age: 35 years, Occ: Agri.,
R/o village Takali, Tq. Muktainagar,
Dist. Jalgaon
5. The Village Panchayat,
Takali, Tq. Muktainagar,
Dist. Jalgaon.
6. The Tahsildar,
Muktainagar, Tq. Mukatainagar
Dist. Jalgaon.

7. Smt. Laxmibai Vasudeo Chavan
Age- village Takali, Tq. Muktainagar,
Dist. Jalgaon ...Respondents

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Mr. Mobin Shaikh , Advocate h/f Mr. V. R. Dhorde,
Advocate for the petitioner

Mr. S. B. Pulkundwar, Assistant Government Pleader for
respondents no. 1, 2 and 6

Mr. A. R. Sayyed, Advocate for respondents no. 3 and 4

Mr. U. B. Deshmukh, Advocate for Respondent no. 7

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 3rd January, 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard
learned counsel for the appearing parties finally with
consent.

2. Petitioner is aggrieved by order dated 13th July,
2017 passed by the Collector, Jalgaon in Village Panchayat
Dispute bearing no. 160 of 2016, declaring petitioner to
be disqualified from continuing as *Sarpanch* of
Grampanchayat, Takli Tq. Muktainagar Dist. Jalgaon and
from further being elected as *Sarpanch* or *Upa-Sarpanch*

for the remaining term.

3 Briefly referred to, it is petitioner's case that political aspirations of elected candidates competing, coming from different political parties has led to proceedings before respondent no. 2 – Collector which culminated into order of disqualification of the petitioner under section 36 of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as "the Act").

4. It appears that respondent no. 3 had filed complaint application dated 13th October, 2016 before the Chief Executive Officer, Zilla Parishad, Jalgaon stating that the petitioner being the *Sarpanch* of village panchayat is not looking after the affairs of the village panchayat and is not taking regular monthly meetings. The Chief Executive Officer, forwarded said complaint to the Block Development Officer and directed him to take necessary action. Accordingly, the Block Development Officer submitted a report through Chief Executive Officer to the Collector, Jalgaon purporting to notice certain breaches of the provisions of the Act. Pursuant to the report, notice had been issued to the petitioner mentioning that certain

monthly meetings, Gram Sabha and meetings of Women were not held by her and, thus, there is dereliction of duty by *Sarpanch* of village panchayat. Proceedings accordingly were initiated for disqualification.

5. During the course of hearing, learned counsel for petitioner, based on noting as appearing on the process sheet at pages no. 24 and 25 of present writ petition, states that while the petitioner had demanded copy of the complaint by respondent no. 3 and the report submitted by the Block Development Officer, to submit reply in the proceedings, those had never been supplied. It is further claimed that while the matter had never been heard, impugned order records that petitioner never submitted any written explanation or given oral submissions and merely refers to contention of petitioner in his statement before the Block Development Officer that it was the Gram Sevak, who is to be blamed. He further points out final report by Chief Executive Officer to Respondent no. 2 – Collector, referring to report of the Block Development Officer about Gramsevak as well being irregular, and he contends, yet, petitioner alone is blamed for the breaches.

Some breaches occurred owing to non-compliance of requirement under provisions of sections 7 and 36 of the Act.

6. Order dated 13th July, 2017 has been passed declaring the petitioner disqualified. Learned counsel for petitioner submits that petitioner had gone by the legal advice and had filed revision before Hon'ble Minister challenging aforesaid order of Collector. However, when she sought to withdraw the same, being not proper remedy, the Hon'ble Minister decided the same as not maintainable. He submits, looking at that petitioner hails from mofussil area, it would be proper to give due to the same for occurrence of seeming breaches of rules and dereliction in duty but those were unintentional. He submits, revisional authority has particularly emphasised getting swayed by the fact that the order passed by the Collector is not in breach of principles of natural justice or without opportunity to petitioner defend herself. He submits that the impugned order is rendered disregarding factual position on record and, thus, is illegal. He, therefore urges to quash and set aside order passed by

Collector dated 13th July, 2017 and the order by revisional authority dated 6th October, 2017 confirming said order of Collector and dismissing revision by petitioner.

7. Learned counsel appearing for respondents Mr. U. B. Deshmukh, Mr. A. R. Sayyed and Mr. G.O. Wattamwar, Assistant Government Pleader, however, submit that petitioner can be disqualified on account of her own statement made before the Block Development Officer during the preliminary enquiry. Learned counsel further purport to submit that similar submission is appearing in the present writ petition in paragraph no. 12.

8. In the circumstances, according to them, it emerges that there is breach of provisions of the Act, by not holding monthly meeting. Learned counsel refer to that while initially petitioner did not succeed in getting interim relief in present writ petition against impugned order dated 6th October, 2017, by skipping the reference to the writ petition, appeal/revision has been filed and interim relief had been obtained from the Hon'ble Minister. The High court had vacated the same, proceeding before

minister being not maintainable. It is, thus, sought to be emphasised that the petitioner has indulged into unfair activities and, thus, it would not be proper to grant discretionary and equitable relief to her. Learned counsel, therefore, urge not to intervene in the writ petition.

9. After having heard learned counsel for parties as aforesaid, one may have to refer to factual aspects. According to the petitioner, she has not been given proper opportunity to defend herself as she has been neither served with copy of the report of the Block Development Officer nor has she been informed about the matter being taken up before the authority for decision. These aspects have not been seriously disputed on behalf of respondents.

10. Perusal of impugned order would show that the same is based on the report submitted by the Block Development Officer, copy of which has been claimed not to have been served on the petitioner during relevant period and the petitioner had not been given proper opportunity to defend herself. These aspects as submitted

on behalf of petitioner to quite a large extent would be borne from record. It appears that the Block Development Officer's report has been to quite a large extent relied on. Impugned order depicts the same. It also emerges that all that is being contended on behalf of the respondents as can be seen from paragraph no. 7 of the reply is that the petitioner has admitted position about not holding monthly meeting being the *Sarpanch*, yet, it reveals that petitioner is purporting to reason out lapses. These aspects would have to be properly considered and proper opportunity to parties, therefore, would be necessary.

11. So far as writ petitioner's breaches of provisions of the Act and orders by revenue authorities on application in that respect thereon are concerned, it is being contended that writ petitioner is not adequately educated and she has studied up to 4th standard and, as such, she was not aware of the legal proceedings, and remedy to be adopted against order. The execution to its proceedings before the minister has been explained accordingly. Since petitioner is being faced with disqualification from the post of *Sarpanch* which is a serious matter. Proper opportunity,

since, there appear to be dispute about the factual aspects, be would be expedient.

12. In view of aforesaid, impugned order is set aside. Matter is remitted to the Collector, Jalgaon for fresh decision making it clear that present state of affairs in the matter is not appreciable. The excursion seeking other remedy may be compensated with costs. It had been made clear that election of present *Sarpanch* would be subject to outcome of this writ petition. In the circumstances, present *Sarpanch* would continue subject to outcome of complaint by respondent no. 4.

13. As such, matter stands remanded to the Collector, Jalgaon for giving opportunity to the parties with costs of Rs. 10,000/-. Costs to be deposited with the Collector, Jalgaon within four weeks from the date of receipt of writ of this order and said amount be equally distributed among private respondents. The Collector would decide the proceeding as expeditiously as possible preferably within a period of four months from the date of receipt of this order.

14. It is further made clear that the observations appearing in this order have limitation efficacy for decision in the writ petition. The Collector, Jalgaon shall decide the matter uninfluenced by the same.

15. Rule made absolute in aforesaid terms. Writ petition stands disposed of accordingly.

[SUNIL P. DESHMUKH, J.]

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