

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11143 OF 2019

CHAMPABAI AMBARSINGH TAJI
VERSUS
THE COLLECTOR AURANGABAD AND OTHER S

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Advocate for Petitioner : Shri Khande Avinash A
AGP for Respondent 1 : Shri Bhagat N.T.
Advocate for Respondent 2 : Shri Shete S.S.
h/f Shri Deshmukh R.M.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 25, 2019
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PER COURT :-

1. On 9.9.2019, I had passed the following order:-

" 1. The learned advocate for the petitioner submits that petitioner has been illegally disqualified by the impugned order passed by the District Collector, Aurangabad, dated 20.08.2019. She claims to be holding the charge of Sarpanch.

2. The primary issue raised in this matter is that the petitioner claims that she was never served with any notice of hearing issued from the Office of District Collector in case No. प्रकरण क्र. २०१८/ सा.प्र./ ग्रा. पं. अ./मौ. बेंदवाडी ता. वैजापूर /कलम- १६/सी आर -९४. The learned advocate appearing for the original complainant-respondent No.2 submits that the petitioner was served with the notice of hearing and as she refused to accept the notice, the District Collector had no option but to proceed in her absence. The learned AGP submits that he can not make a

statement until he goes through the record.

3. *The learned advocate for the petitioner submits that the petitioner is still in-charge as the Sarpanch. I find his submission to be quite surprising. When the impugned order instantaneously disqualifies the petitioner as a Sarpanch, no such person can continue in the position of Sarpanch by applying the law of handing over of charge and taking over of charge by the Upsarpanch.*

4. *Stand over to 25.09.2019 in the urgent admissions category.*

5. *The learned AGP shall keep the record available. If time permits, this matter will be heard finally at admission stage.*

6. *Until then the Upsarpanch shall officiate as a Sarpanch of the village Bendwadi.*

7. *Election to the position of Sarpanch would be deferred until further orders in this petition."*

2. Though learned Advocate for respondent No.2 submits that this petition be dismissed with heavy costs, he has perused the record and states that there is no formal evidence of service of notice upon the petitioner in so far as the proceedings before the District Collector are concerned.

3. The learned AGP concedes, on the basis of the record, that there is no proof of service of notice. However, the outward register indicates that the notice was dispatched on 7.12.2018. The learned Advocates have perused the outward register and confirm that the movement of the letter is visible.

4. It, therefore, appears in this case that as there is no service report, the benefit of doubt will have to be given to the petitioner. The learned Advocates agree that the matter may be referred to the District Collector with a time bound programme so that he can decide the proceedings within a stipulated period, after the State Assembly Elections.

5. In view of the above, this petition is partly allowed. The impugned order of the District Collector dated 20.8.2019 shall be kept in abeyance and the proceedings before him shall stand remitted to his office for a rehearing.

6. All the parties would appear before respondent No.1 on 5.11.2019. The petitioner shall submit her written say as well as her written arguments, if so advised. Legal assistance is permitted. The District Collector would conclude the hearing in the proceedings on/or before 8.11.2019 and shall pass a reasoned order on/or before

30.11.2019 at 3.00 PM. The parties are obliged to remain present on the said date and copies of the order would be kept ready to be supplied to the parties.

7. The direction that the Up-Sarpanch shall officiate as a Sarpanch would continue and the impugned order dated 20.8.2019 shall merge in the order of the District Collector to be delivered on 30.11.2019.

8. Needless to state, if the petitioner succeeds before the District Collector, she shall be entitled for all allowances and perquisites as are normally admissible to a Sarpanch from the date of her disqualification till the order of the District Collector.

(RAVINDRA V. GHUGE, J.)

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