

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11330 OF 2019

ZINGARJI BAJABA MISAL
VERSUS
THE STATE OF MAHRASHTRA AND OTHERS

Mr.B.R.Kedar, Advocate for the petitioner.
Mr.S.W.Munde, AGP for respondent No.1.
Mr.S.J.Salunke, Advocate for respondent Nos. 2 and 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2019

PER COURT :

1. This matter was heard on 16/09/2019 and again today. The learned AGP has produced the record.

2. The petitioner, who is a practicing Advocate, was elected as a Sarpanch of Village Mandwa in 2017. He was disqualified by the District Collector, Jalna vide order dated 04/07/2019 for indulging in acts of making payments to the close relatives interested in the work of the Gram Panchayat and who are believed to have a close nexus with the petitioner. Pursuant to the disqualification, the petitioner approached the Additional Divisional Commissioner. Interim protection was granted. Subsequently, by an order dated

30/08/2019, the disqualification of the petitioner has been sustained.

3. The record reveals that the petitioner in his capacity as a Sarpanch, has made payments to his 2 sons and his biological brother involving lakhs of rupees. On the basis of such record, the District Collector as well as the Divisional Commissioner found it appropriate to disqualify the petitioner u/s 14(1)(g) of the Maharashtra village Panchayat Act.

4. The learned Advocate for the petitioner has raised an issue that he was not served with notice and he appeared on 07/05/2019 before the District Collector on hearsay information.

5. The learned AGP relies upon the record and submits that notice was issued to the petitioner on 29/01/2019 on his permanent address at Mandwa. As the petitioner did not appear, a further notice was issued on 22/02/2019 informing the next date as being 15/03/2019. These notices were sent by registered post. However, acknowledgement copies are not placed on record.

6. A further notice was issued on 26/04/2019 to the petitioner

and the said notice was forwarded to him on his cell phone by a Whatsapp message dated 04/05/2019. The petitioner appeared before the District Collector on 07/05/2019 and made a grievance that the notice was not properly served upon him. He moved an application on the same date under his signature and through his Advocate praying for time to submit his say. It is canvassed on the basis of the Roznama that the matter was closed for orders by the District Collector on 07/05/2019 and the impugned order was passed on 04/07/2019.

7. I find from the record, which has not been properly maintained by the Office of the District Collector that though the notices were dispatched in January and February, the acknowledgement receipts have not been maintained in the record which would have been a clear indicator of notice being served upon the petitioner. On this technical ground, he is being given the benefit of doubt. If the Office of the District Collector would have maintained such record, it would have clearly established that the petitioner was served with notice and yet he chose to remain absent. On account of this deficiency, there is no option but to give the benefit of doubt to the petitioner.

8. Mr.Salunke, the learned Advocate appearing on behalf of the

original complainants / respondent Nos. 2 and 3 has vehemently opposed this petition contending that the petitioner had received both the notices issued on 29/01/2019 and 22/02/2019 (wrongly dated as 29/09/2019). It is under fortuitous circumstances that he would benefit from a deficiency which is attributable to the Office of the District Collector, who failed to maintain the record of service of notice.

9. In the peculiar facts and circumstances of the case, I find that the ends of justice would be made by passing an equitable order.

10. This petition is, therefore, partly allowed. The order of the District Collector dated 04/07/2019 and the Additional Divisional Commissioner dated 30/08/2019 are quashed and set aside. The proceeding bearing No.2019/Sasha/Gra.Pan.Ni./CR-107 are restored to the file of District Collector, Jalna.

11. All the litigating parties would appear before the District Collector on 30/09/2019 at 3.00 p.m. The petitioner shall submit his written explanation as well as written notes of arguments alongwith citations, if any, on the same date in the proceedings and shall not seek an adjournment for any reason whatsoever, including

a probable reason that the District Collector is not in his Office.

12. The contesting respondent/original complainants shall receive their copy of the reply as well as written notes and shall submit their counter arguments on 04/10/2019 before the District Collector at 3.00 p.m. Opportunity of rebuttal would be granted by the District Collector on the same day and the proceedings would be closed for orders on the same day.

13. The District Collector shall thereafter deliver its reasoned order on 21/10/2019 at 3.00 p.m. and the litigating sides are directed to remain present on the said time and date. Copies of the orders would be kept ready to be supplied to the litigating sides forthwith.

14. Until 21/10/2019, the petitioner shall be restrained from officiating as a Sarpanch. The Up-Sarpanch shall officiate as the In-charge Sarpanch and there shall be no elections for filling in the post of Sarpanch till the District Collector decides the proceedings.

(Ravindra V.Ghuge, J.)