

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.6878 of 2018
(Sau. Chaitali Sameer Thakare .vs. Divisional Commissioner, Amravati
Division and others.)

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

Mr. A.S. Band, Advocate for Petitioner.
Mr. A.D. Sonak, Advocate for Respondent no1.
Mr. B.M. Lonare, Advocate for Respondent No.3.

CORAM : Manish Pitale, J.
DATED : April 08, 2019.

By this writ petition, the petitioner - an elected Member of the Panchayat Samiti, has challenged order dated 06.08.2018 passed by the respondent no.1- Divisional Commissioner, Amravati, whereby the petitioner has been declared as disqualified from holding the post of Member of Panchayat Samiti, on the ground that she failed to attend meetings of the Panchayat Samiti for three months consecutively and that she remained absent in the meetings without permission of the Panchayat Samiti. The respondent no.1 exercised power under Section 61(1)(b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

2. The said order was passed by the respondent no.1 on an appeal filed by the respondent no.2 who was the complainant against the petitioner. In the writ petition filed before this Court, certain specific grounds

have been raised on behalf of the petitioner indicating that due to her medical condition pursuant to pregnancy and delivery of child, she could not attend meetings during the relevant period. In support of the said grounds, a medical certificate is also placed on record before this Court.

3. It is also pointed out by the learned counsel appearing for the petitioner that perusal of the impugned order dated 06.08.2018 and the Roznama of the respondent no.1 while considering the appeal filed by the respondent no.2, shows that initially the petitioner (respondent no.1 before the Divisional Commissioner) was represented by an Advocate. But, later the said Advocate submitted a pursis before the Divisional Commissioner stating that he would not be representing the petitioner. It is the case of the petitioner that her counsel did not inform her about withdrawing his power of representing her before the Divisional Commissioner and that the respondent no.1 Divisional Commissioner also did not issue any notice to her to give her an opportunity of engaging another counsel or remaining personally present before the respondent no.1 Divisional Commissioner on 03.05.2018 when the appeal filed by the respondent no.2 was heard and the matter was closed for orders.

4. A perusal of the impugned order and the Roznama indeed shows that at the time when the appeal filed by respondent no.2 against the petitioner was heard on merits, the petitioner was not represented

through her counsel. The record also shows that the respondent no.1 Divisional Commissioner did not issue any notice to the petitioner to engage another counsel or to remain personally present when the matter was finally heard. In this situation, it becomes evident that the petitioner lost a valuable opportunity of placing her side of the case before the respondent no.1 Divisional Commissioner and that the impugned order was passed in the absence of proper hearing being granted to the petitioner.

5. Since the appeal filed by the respondent no.2 concerned disqualification of the petitioner, who was an elected Member of the Panchayat Samiti, the respondent no.2 Divisional Commissioner was expected to follow principles of natural justice to ensure that an elected person like the petitioner was given ample opportunity of hearing before drastic action of disqualifying her was taken.

6. In view of the above, it would be in the interest of justice that the petitioner is given proper opportunity to place her case before the respondent no.1 Divisional Commissioner, in order to explain as to why she ought not to be disqualified as Member of Panchayat Samiti under Section 62(1)(b) of the aforesaid Act.

7. Accordingly, the present writ petition is partly allowed. The impugned order dated 06.08.2018 is quashed and set aside and the respondent no.1

Divisional Commissioner is directed to give proper opportunity to the petitioner either in person or through her counsel to place her case before taking any decision on the appeal filed by the respondent no.2. The petitioner as well as the respondent no.2 will be at liberty to file such additional pleadings and documents, as may be advised, before the respondent no.1 Divisional Commissioner. The parties shall appear before the respondent no.1 Divisional Commissioner on 16.04.2019. The respondent no.1 Divisional Commissioner shall give proper opportunity to the rival parties to place their case before him and the appeal of respondent no.2 shall be finally decided by respondent no.1 Divisional Commissioner , expeditiously and in any case within a period of three months from today.

JUDGE

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