

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6892 OF 2021

Geeta w/o Prashant Khachne,
Age 31 years, Occ. At present
Sarpanch,
R/o. Waradsim, Tq. Bhusawal,
District Jalgaon.

... **Petitioner.**

VERSUS

- 1) Alka w/o Janakiram Sapkale,
Age 42 years, Occ. Service,
R/o. Village Waradsim,
Tq. Bhusawal, Dist. Jalgaon.
- 2) The State of Maharashtra,
Through the Secretary,
Department of Rural Development,
M.S. Mantralaya, Mumbai.
- 3) The Additional Divisional Commissioner,
Nasik, Division Nasik, Tq. & Dist. Nasik.
- 4) The Additional District Collector,
Taluka and District Jalgaon.
- 5) The Chief Executive Officer,
Zilla Parishad Jalgaon, Tq. & Dist. Jalgaon.
- 6) The State Election Commission,
Maharashtra, 1st Floor, New
Administrative Building, Opposite
to Mantralaya, Hutatma Chowk,
Madam Cama Road, Mumbai.
- 7) The Gram Panchayat Through
its Gram Sevak, Waradsim,
Tq. Bhusawal, Dist. Jalgaon.
- 8) The Medical Officer,
Primary Health Centre,
R/o. Waradsim, Tq. & Dist.
Bhusawal.

... **Respondents.**

...

Advocate for the Petitioner : Mr. Govind Kulkarni.
 Advocate for the Respondent No. 1 : Mr. M. M. Bhokarikar.
 A.G.P. for the Respondent Nos. 2 to 4 : Mr. K. B. Jadhavar.
 Advocate for Respondent No. 5 : Mr. G.D. Jain h/f Mr. Sonwane.
 Advocate for Respondent No. 6 : Mr. A. B. Kadethankar.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	31.08.2021.
PRONOUNCED ON	:	08.09.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Bhokarikar waives service for the respondent No. 1. Learned A.G.P. waives service for the respondent Nos. 2 to 4. Learned advocate Mr. Jain h/f Mr. Sonwane waives service for the respondent No. 5 and learned advocate Mr. Kadethankar waives service for the respondent No. 6. At the request of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is questioning legality, propriety and correctness of the order passed by the respondent No. 3 Divisional Commissioner on 17.05.2021 in Gram Panchayat Appeal No. 34/2020 thereby declaring election of the petitioner as a Sarpanch of Grampanchayat Waradsim Tq. Bhusawal Dist. Jalgaon cancelled, she having incurred disability under Section 14(1)(j1) of the Maharashtra Village Panchayat Act, 1959 (hereinafter 'the Act') on an appeal preferred by the respondent No. 1, whose complaint seeking such disqualification was dismissed by the District Collector Jalgaon.

3. The learned advocate for the petitioner would submit that the petitioner has two daughters born on 11.10.2014 and 17.07.2016. She has never given birth to third child leave alone after the crucial date 12.09.2001. She has taken this stand consistently before both the Authorities below. She

is the legally elected Sarpanch and even if she has incurred some disqualification, the facts touching that disqualification will have to be proved strictly. She cannot be unseated by resorting to conjectures and surmises. The whole reliance that has been placed by the respondents is on Reformative Child Health Report (R.C.H. report) allegedly generated by the health worker and barely a photo copy of it was produced before the Collector and he had rightly refused to jump to the conclusion based on such unauthenticated report to draw any inference about birth of third child. There was no evidence before the Collector as to who had made these entries in that R.C.H. report and therefore the respondent No. 4 Collector had rightly dismissed the complaint.

4. The learned advocate would then submit that after respondent No.1 preferred an Appeal under Section 16(2) of the Act that the respondent No. 3 Divisional Commissioner, relied upon the report of the Medical Officer who had informed about the petitioner having been registered at the time of third pregnancy at the Deputy Health Centre Waradsim. She was allotted a dedicated MSTC/Reh number. A Health Worker Smt. Kaviti Hari Pandhare had made that entry as also the entry regarding next two visits and lastly had also taken an entry about the petitioner having delivered the third child at Chandrapur on 21.07.2018. He would submit that the Divisional Commissioner himself did not conduct any enquiry and simply relied upon a report of the Chief Executive Officer of Zilla Parishad Jalgaon who in turn obtained a report from the concerned Block Development Officer and based on all such material the respondent No. 3-Divisional Commissioner has passed the impugned judgment and order. No pains were taken to ascertain if and who had made these entries on the Government portal. No enquiry was made with the Health Worker and ASHA who had taken those entries and had maintained some diary.

5. Mr. Kulkarni would then submit that all such exercise was undertaken by the learned Divisional Commissioner behind petitioner's back. She was

not extended any opportunity to contest the appeal after filing of the say by her advocate. She was not given any further notice for final disposal. There was no concrete proof about she having delivered a third child. Besides this evidence that was before the Divisional Commissioner was in the form of copies of some electronic record. However, there was no certificate as is required by Section 65-B of the Indian Evidence Act to vouch for its correctness and having been maintained in the regular course by some one. He would therefore submit that the impugned judgment and order is not based on sufficient material and has been based on some inferences drawn on the basis of facts which were not proved.

6. Learned advocate Mr. Bhokarika for the respondent No. 1 would submit that the record that has been relied upon by the respondent No. 3 Divisional Commissioner was maintained in the regular course by a Health Worker of Waradsim. She had maintained a diary to that effect. The entries were made in the regular course of her official duties and was certainly admissible under Section 35 of the Indian Evidence Act, 1872. He would submit that no fault can be found with the impugned order when such record is relied upon to conclude about petitioner having incurred the disqualification. He would submit that the authenticity of the record was beyond reproach. Medical Officer of that hospital had under his signature submitted the report disclosing the name of the Health Worker. Since such record was maintained prior to the election in question, that itself is sufficient to rule out any allegations regarding manipulation. Even the photographs were produced on the record. In one such photograph the third child could be seen sitting in the lap of petitioner's husband. Appreciating all these circumstances the respondent No. 3 Divisional Commissioner has reached a reasonable conclusion based on the facts which stood proved and the impugned order cannot be questioned.

7. The learned A.G.P supports the impugned judgment and order.

8. I have carefully considered rival submissions and perused the record. It would be necessary to bear in mind at the outset that the consequence of non seating a publicly elected candidate is inherently harsh and drastic. It is only after a minute scrutiny and undertaking a thorough enquiry and only in the event of there being clinching evidence of facts which are necessary to incur a disqualification are proved that such an elected candidate should be disqualified. To put it simply, the facts need to be proved strictly. The consequences are indeed penal and therefore the authorities conducting enquiries into the allegations regarding disqualification must be on guard and can disqualify if the facts are proved beyond a mere preponderance of probability. Mere preponderance of probability in my considered view is not sufficient to prove the facts if the disqualification is to be attached. One need not delve much and simply bear in mind following observations the Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others; (2012) 4 Supreme Court Cases 407.**

30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide Indian National Congress (I) v. Institute of Social Welfare]. This view stands further fortified by the Constitution Bench judgments of this court in Bachhitar Singh Vs. State of Punjab and Union of India v. H.C. Goel. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected officer-bearer.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how how an elected office-bearer can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure

prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.

33. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in Tarlochan Dev Sharma v. State of Punjab and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the

provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.”

9. Taking up the matter in issue, the petitioner has been flatly disputing the fact of having given birth to a third child after the cutoff date 12.09.2001 as is prescribed under Section 14(1)(j1) of the Act. Needless to state that she cannot be expected to lead negative evidence. She has also filed her affidavit in this matter denying the fact of having given birth to a third child. It is in view of such state of affairs, it was incumbent for the respondent No. 3 Divisional Commissioner to have insisted for a strict proof regarding birth of the child after the cutoff date. As can be seen from the papers he relied upon a report submitted by the Chief Officer Zilla Parishad Jalgaon dated 27.06.2019, who in turn relied upon an enquiry conducted by the concerned Block Development Officer Panchayat Samiti Bhusawal.

10. Pertinently, the self-same report that was collected by the respondent No. 4 Collector was not relied upon by the latter while dismissing the

respondent No. 1's complaint. He had concluded that entries in the R.C.H. report were not conclusive proof and cannot be relied upon to establish the fact of birth of third child. Conspicuously, the learned Divisional Commissioner has not explained in his impugned order as to how and why the approach of the respondent No. 4 Collector was incorrect. The entire emphasis in the impugned order and of the learned advocate for the respondent No. 1 has been on the record maintained on a Government portal when the petitioner was allegedly pregnant with the third child. A reference is made to the R.C.H. ID and the child register number.

11. However, there is no evidence as to who actually had made these entries. It turns out that a Health Provider Kavita Hari Pandhare had allegedly taken those entries and had also made an entry about the delivery having taken place at Chandrapur. However, no statement of that Health Worker has ever been recorded may be to prove that she had made those entries at the instance of the petitioner and that too in the ordinary course of her official duty. If the inferences were to be drawn based on a record maintained by her, a care ought to have been taken not only by the respondent No. 3 Divisional Commissioner but also by the respondent No. 4 Collector to see to it that such an enquiry was made with her personally to prove the record maintained by her. Besides, some such record pertains to a Government portal and must have been maintained in electronic form. But as has been rightly pointed out by the learned advocate for the petitioner no certificate under Section 65-B of the Indian Evidence Act was annexed with the printouts of the electronic record allegedly maintained as per the information either furnished by the petitioner or at her instance, by the Health Worker concerned.

12. In view of such state of affairs, I am embolden to state that the Authorities below have grossly erred in not insisting for clinching proof of the facts on the basis of which the respondent No. 1 has been alleging the petitioner to have incurred disqualification. If respondent No. 3 Divisional

Collector has erred in believing in the record maintained by the Health Worker to draw the inference, which he has, without there being strict proof about it, even the respondent No. 4 Collector had grossly erred in not insisting for a better proof.

13. To my mind, though an elected people's representative cannot be unseated without insisting for strict proof, simultaneously, it is equally important that a disqualified candidate should not function as a people's representative. If at all there was some material before the respondent No. 2 Collector, he should have undertaken a detailed probe and should have sought some further evidence may be in the form of recording a statement of the Health Worker and soliciting the original record to be produced. It was not expected of him to have decided the matter as if he was sitting as an umpire to take a decision either way.

14. To sum up, both the Authorities below have not taken into consideration the effect and consequences of incurring a disqualification and have not taken initiative to go into the details seeking proof of the facts, refused to be relied upon by the respondent No. 4 Collector and readily accepted by the respondent No. 3 Divisional Commissioner.

15. In view of such state of affairs, it would be just and proper to quash and set aside both the orders, one passed by the respondent No. 4 Collector and the other passed by the respondent No. 3 Divisional Commissioner and to remand the matter to the former for decision afresh by undertaking thorough enquiry in the light of the observations made herein above.

16. The Writ Petition is partly allowed. The order passed by the respondent No. 4 Collector dated 08.10.2020 and that of the respondent No. 3 Divisional Commissioner dated 17.05.2021 are quashed and set aside.

(a) The respondent No. 4 Collector shall now undertake the enquiry into the complaint filed by the respondent No. 1 afresh by extending opportunity

to both the sides to participate.

(b) He shall also enquire with the Health Worker Kavita Hari Pandhare touching the diary maintained by her and the entries made by her in the Official record to ascertain as to on the basis and whose information furnished to her that she had made the entries in the record maintained by her.

(c) The learned Collector shall also ascertain as to on what basis she had taken entry regarding the third delivery of the petitioner at some place in Chandrapur and then make enquiry even in that respect.

(d) He may also enquire into the facts and circumstances as may be revealed during the process of the enquiry and then decide the matter afresh.

(e) The petitioner and the respondent No. 1 shall be entitled to file additional affidavits/documents in support of their stand.

(f) The petitioner shall further make a statement in the affidavit touching the fact as to if the child to be seen sitting in the lap of her husband in one of the photographs is her third child or not.

(g) The entire exercise shall be completed by the learned Collector within three months of this order.

17. The parties shall appear before him on 20.09.2021 and there shall be no need for the Collector to issue any notice to them.

18. The Rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-