

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION 2079 OF 2022

Smt. Bharti w/o.Someshwar Uikey,
aged 32 yrs, Occ. Agriculturist,
r/o.Kesalwada (Wagh),
Tahsil Lakhani, District Bhandara

....PETITIONER

VERSUS

1. Prakash s/o. Rambhau Uikey,
aged 40 yrs, Occ. Agriculturist,
r/o.Kesalwada (Wagh),
Tahsil Lakhani, District Bhandara
2. Dinesh s/o. Dildar Wasnik,
aged 33 yrs, r/o.Kesalwada (Wagh),
Tahsil Lakhani, District Bhandara
3. The Additional Commissioner,
Nagpur Division, Commissionerate Building,
Civil Lines, Nagpur
4. The Chief Executive Officer,
Zilla Parishad, Bhandara,
Tahsil District Bhandara
5. The Secretary,
Grampanchayat, Kesalwada (Wagh),
Tahsil Lakhani, District Bhandara
6. District, Social Welfare Officer,
Zilla Parishad, Bhandara,
Tahsil and District Bhandara

.... RESPONDENTS

Mr. J.K. Matale, counsel for the petitioner.
M. T.H. Khan, AGP for respondents 3 & 6/State.

CORAM : ROHIT B. DEO, J.
DATED : 19th APRIL, 2022

ORAL JUDGMENT :

The petitioner is assailing the order dated 31.3.2022, rendered by the Additional Commissioner, Nagpur, in Case 39(1)/02/2020-21, whereby the petitioner is held disqualified to hold the office of Sarpanch and member of the Kesalwada (Wagh) Grampanchayat. The order impugned is appealable under section 39(3) of the Maharashtra Village Panchayat Act, 1959 ("Act" for short).

2. According to the learned counsel, notwithstanding the availability of alternate statutory remedy, the petition deserves to be entertained in writ jurisdiction since the order impugned is passed in breach of the principles of natural justice.

3. I have perused the averments in the memo of petition. Prima facie, I do not find that a case is made out for making an exception to the self imposed limitation that writ jurisdiction shall not be exercised if an alternate and equally efficacious statutory remedy is available.

4. The order impugned is passed by the Additional Commissioner after considering the Enquiry Report, submitted by the

Chief Executive Officer, on 16.12.2021. The allegation which is held proved in the Enquiry Report, and which report is confirmed by the Additional Commissioner, is that the petitioner issued false certificates to the residents of the village to enable them to undeservedly secure the benefits of the Post Matric Scholarship Scheme of the Government. The petitioner appeared before the Additional Commissioner, Nagpur and also filed on record written submissions. Interestingly, in the written submission, the petitioner has blamed the concerned clerk of the Grampanchayat for placing before her incorrect or false certificates. It appears that the petitioner claimed in the written submissions that the concerned clerk acted hand in gloves with her political opponents. The petitioner disclaimed any knowledge or memory of the relevant facts. In the written submissions, the petitioner questioned the procedural aspects of the enquiry conducted by the Chief Executive Officer on certain grounds.

5. The Additional Commissioner has by a reasoned order held the petitioner disqualified. I need not make any positive observation on the procedural aspects and the enquiry conducted by the Chief Executive Officer since the petitioner may be prejudiced if the statutory remedy of appeal is availed. However, since the learned counsel is insisting that writ jurisdiction may be exercised without relegating the petitioner to the alternate and equally efficacious statutory remedy, and

support is drawn from the decision of the Supreme Court in ***Radha Krishan Industries vs. State of Himachal Pradesh and Others, (2021)6 SCC 771***, I am constrained to note that there does not appear to be such fundamental error or defect in the conduct of the enquiry as would impel the High Court to exercise writ jurisdiction.

6. In any event, the Additional Commissioner is not bound by the Enquiry Report and the order impugned, therefore, is not rendered vulnerable, even if it is assumed arguendo that there is any procedural lapse or even a substantive lapse in the enquiry conducted by the Chief Executive Officer. I find that the Additional Commissioner has independently considered the material on record and has disqualified the petitioner on the ground of issuing false and bogus certificates to the villagers to enable them to secure monetary benefits under the Post Matric Scholarship Scheme of the Government.

7. The petition is dismissed.

8. It is clarified that the petitioner is at liberty to avail the statutory remedy of appeal.

9. The observations which are made in this order shall be considered only as prima facie observations which are made in view of

the insistence of the learned counsel for the petitioner that writ jurisdiction may be exercised despite existence of the alternate and equally efficacious statutory remedy.

JUDGE

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