

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

WRIT PETITION NO. 4235 OF 2021

Jaykumar Mahadeorao Tayade vs. State of Maharashtra and others

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

Court's or Judge's Orders.

Mr. A. S. Thotange, Advocate for petitioner.
Mr. D. P. Thakare, Addl.G.P for respondent Nos.1 to 4.

CORAM : MANISH PITALE J.

DATE : 11/04/2022

By this writ petition, the petitioner has challenged order dated 29/01/2021, passed by the Collector i.e. respondent No.3, whereby an application filed by the petitioner, seeking certain clarification from the respondent No.2 Scrutiny Committee, has been rejected.

2. The petitioner was elected as a Member and then as a Sarpanch of Gram Panchayat, Sirso, Tahsil – Murtizapur, District – Akola in an election held in the year 2021.

3. The respondent No.6 initiated a proceeding against the petitioner under Section 33 of the Maharashtra Village Panchayat Act, 1959,

challenging the election of the petitioner on the ground that the petitioner was elected as a Member in general category, while he stood elected as Sarpanch in the reserve category. One of the issues that has arisen before the Collector in the said proceedings pertains to Section 30-1A of the aforesaid Act. The issue also revolves around the point in time when the petitioner applied before the respondent No.2 Scrutiny Committee for grant of validity certificate. It appears that the petitioner had moved an online application before the Scrutiny Committee and thereafter, an application was also filed physically. There is controversy raised in that regard before the Collector.

4. In this backdrop the petitioner preferred an application before the Collector in the pending proceeding, seeking a clarification from the respondent No.2 Scrutiny Committee as regards proposal submitted on 08/03/2021, regarding validity of the caste claim of the petitioner and also details about online proposal registered before the Scrutiny Committee.

5. By the impugned order dated 29/01/2021, the Collector rejected the application by

observing that report dated 04/03/2021 of the Scrutiny Committee was already on record.

6. Mr. Thotange, learned counsel appearing for the petitioner submitted that the application preferred by the petitioner ought to have been considered and granted in the facts and circumstances of the present case, because a lot would turn on clarification that may be submitted by the respondent No.2 Scrutiny Committee. It was submitted that the Collector erred in rejecting the application by a cryptic order, as a result of which, there is possibility of the petitioner being prejudiced in the pending proceedings. Although the respondent No.6 is represented through counsel, none has appeared on behalf of the said respondent today.

7. Mr. D. P. Thakare, learned Additional Government Pleader appeared for respondent Nos.1 to 4. He submitted that the application filed on behalf of the petitioner does refer to proposal dated 08/03/2021, as also the online proposal and the report of the respondent No.2 Committee, referred to in the impugned order is dated 04/03/2021. It was submitted that these facts could be taken into account by this Court while considering the correctness or otherwise of the impugned order.

8. This Court has perused the application preferred on behalf of the petitioner seeking clarification from the respondent No.2 Scrutiny Committee. It is specifically stated in the application, as well as its title that clarification is sought from the Scrutiny Committee as regards the proposal dated 08/03/2021, as also the online application filed and pending before the Scrutiny Committee.

9. A perusal of the impugned order shows that the application has been rejected only by relying upon report dated 04/03/2021 placed before the Collector by the respondent No.2 Scrutiny Committee.

10. It appears that when the application filed by the petitioner specifically referred to clarification sought as regards the online application made and the case pending in that regard before the respondent No.2 Scrutiny Committee with specific reference to proposal dated 08/03/2021 received by the respondent No.2 Scrutiny Committee, it becomes evident that the Collector could not have relied upon only the report dated 04/03/2021 to reject the application. This is obvious, because report dated 04/03/2021 was prior in point of time to the date of 08/03/2021, specifically referred to and relied upon

on behalf of the petitioner in the aforesaid application filed before the Collector.

11. On this short ground, the impugned order deserves to be set aside and the application filed by the petitioner before the Collector deserves to be allowed.

12. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside.

13. The application filed by the petitioner before the respondent No.3 Collector is allowed in terms of the prayer made therein.

14. Consequently, respondent No.2 Scrutiny Committee shall submit a fresh report/clarification in the context of the prayer made on behalf of the petitioner in the said application before the Collector within 02 weeks from today.

15. Thereafter, the Collector shall proceed further in the matter as regards the proceedings initiated by respondent No.6 against the petitioner.