

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

WRIT PETITION NO. 5722 OF 2022

Subhash Krushnarao Khartadkar, : **PETITIONER**
Aged about 60 years, Occu. Retired,
R/o Sirso, Tq. Murtizapur, Dist. Akola

VERSUS

- 1 The Divisional Commissioner, Amravati :
Division, Amravati
- 2 The Village Development Officer, :
Grampanchayat, Sirso, Tq. Murtizapur,
Dist. Akola
- 3 The Deputy Superintendent of Land
Records, Murtizapur, Tq. Murtizapur, : **RESPONDENTS**
Dist. Akola
- 4 The Tahsildar, Murtizapur, Tq. Murtizapur, :
Dist. Akola
- 5 The Collector, Akola :
- 6 Jaikumar Mahadeo Tayde, :
Aged about 38 years, R/o Sirso,
Tq. Murtizapur, Dist. Akola

Mr. A.J. Gilda, Advocate for petitioners

Mr. N.R. Rode, AGP for Respondent Nos.1, 3, 4 and 5

Mr. N.A. Gawande, Advocate for Respondent No.6

CORAM : MANISH PITALE, J.

DATE : 16th SEPTEMBER 2022

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for rival parties.

2. Heard Mr. A.J. Gilda, learned counsel appearing for the petitioner, Mr. Gawande, learned counsel appearing for the contesting respondent No.6 on caveat and Mr. N.R. Rode, learned Assistant Government Pleader appearing on behalf of the respondent Nos. 1, 3, 4 and 5. The respondent No.2 being the Village Development Officer of the Grampanchayat is not a contesting respondent and, therefore, service of notice on the said respondent is dispensed with.

3. Although, this petition has been listed for the first time before this Court, since the contesting respondent has appeared on caveat, the petition is heard finally.

4. In the present case, the petitioner was elected as Member of Grampanchayat Sirso in the elections held in the year 2021.

5. The respondent No.6 filed a Complaint / Application for disqualification of the petitioner from the aforesaid elected office for allegedly having incurred disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959, which prescribes disqualification for having encroached upon Government land or public property. It was alleged that the petitioner had encroached upon Government land located in Plot No.552 at Sirso, Tahsil Murtizapur, District Akola. The petitioner denied any such encroachment on his part.

6. The respondent No.5 – Collector, before whom the said proceeding was initiated, called for a report from the respondent No.3 i.e. the Deputy Superintendent of Land Records after conducting spot inspection. After receiving said report and hearing the parties by order dated 10/06/2022, the respondent – Collector allowed the application filed by respondent No.6, holding that the petitioner had indeed incurred disqualification under Section 14(1)(j-3) of the aforesaid Act and accordingly held that the petitioner stood disqualified.

7. Aggrieved by the same, the petitioner filed appeal under Section 16(2) of the aforesaid Act before the respondent No.1 – Divisional Commissioner. Initially, the Commissioner granted stay to the order of the respondent – Collector, but, eventually, by the impugned order dated 24/08/2022, the Commissioner dismissed the appeal, thereby confirming the order of disqualification passed against the petitioner.

8. Mr. Gilda, learned counsel appearing for the petitioner submitted that in the present case, the documents on record would show that while the Deputy Superintendent of Land Records, did submit a report dated 08/06/2022, before the respondent – Collector making certain observations upon spot inspection, it was specifically recorded that the report of the Tahsildar should also be called in the matter. The petitioner throughout stoutly denied any encroachment on

Government land and it was submitted that even in respect of plot No.552, the cousin of the petitioner had merely erected barbed wire fencing, only to ensure that cattle and other animals do not stray into the agricultural field belonging to the aforesaid cousin of the petitioner.

9. The respondent – Collector held against the petitioner on the basis of the material available on record. The Commissioner specifically granted stay to the order passed by the Collector, calling for a report from the Tahsildar. It appears that there was indeed a report received from the Tahsildar in the proceedings before the Commissioner, but, according to the learned counsel appearing for the petitioner, the report prepared by the Tahsildar was behind the back of the petitioner and, therefore, there was clear violation of principles of natural justice when the Commissioner erroneously confirmed the order of disqualification passed by the Collector. The learned counsel appearing for the petitioner placed reliance on the judgment of this Court in the case of **Lalita Dilip Khandalkar Vs. Additional Commissioner and Others** reported in (2019) 3 AIR Bom R 382.

10. On the other hand, Mr. Gawande, learned counsel appearing for the respondent No.6 submitted that the report prepared by the Deputy Superintendent of Land Records upon spot inspection in the presence of the rival parties sufficiently indicated encroachment upon

Government land on the part of the cousin of the petitioner and applying the position of law laid down by the Hon'ble Supreme Court in the case of **Janabai Vs. Additional Commissioner and others** reported in **2018(5) Mh.L.J. 921**, applying purposive interpretation on Section 14(1)(j-3) of the aforesaid Act, the Collector was justified in passing the order of disqualification of the petitioner. It was submitted that the contention raised on behalf of the petitioner as regards report submitted by the Tahsildar did not deserve consideration in the light of the report already on record authored by the Deputy Superintendent of Land Records. It was further submitted that the material on record clearly demonstrated that the petitioner had clearly incurred disqualification.

11. Mr. N.R. Rode, learned AGP appearing for respondent Nos. 1, 3, 4 and 5 and defended the impugned orders passed by the authorities.

12. Having heard the learned counsel appearing for the rival parties, this Court is of the opinion that since the question of disqualification of the petitioner holding elected office is subject matter of consideration, it is expected that the authorities and this Court consider the material available on record in a strict manner, although purposive interpretation of the provision as laid down by the Hon'ble Supreme Court has to be followed. In the light of the law laid down by the Hon'ble Supreme Court, if there is material to indicate that the cousin of the petitioner

had indeed encroached upon Government land, the petitioner would indeed incur disqualification under Sections 14(1)(j-3) of the said Act. But, the crucial question is, as to whether the procedure as expected from the authorities below was followed to the hilt demonstrating satisfaction of the principles of natural justice to indicate that factual findings were correctly rendered on the question of encroachment. In such situations, the spot inspection reports are called from responsible Officers, wherein it is expected that all parties remain present so that no allegation is levelled against the concerned Officer who actually conducts the spot inspection for verification of the allegations levelled against the elected representative.

13. In the present case, the Deputy Superintendent of Land Records indeed submitted a report to the respondent – Collector. While making comments upon the ground situation pursuant to spot inspection, the Deputy Superintendent of Land Records also indicated that in his opinion, a report from the Tahsildar also ought to be called to ascertain the factual matrix.

14. It is an admitted position that no report was called from the Tahsildar while the proceedings were pending and decided by the respondent – Collector. As noted above, according to the petitioner, neither he nor his cousin had encroached upon or were in occupation of

Government land and that, therefore, there was no question of the petitioner incurring disqualification under Section 14(1)(j-3) of the said Act.

15. It is significant that while granting stay in favour of the petitioner, at the stage of entertaining the appeal filed by him, the respondent – Commissioner specifically called for a report from the Tahsildar. The material on record shows that the Tahsildar did submit a report before the Commissioner. It is specifically alleged by the petitioner that the Tahsildar prepared the report without putting the petitioner to notice and that the report was prepared behind his back. A perusal of the report also does not indicate that the Tahsildar had actually put the petitioner and all other relevant parties to notice before conducting the spot inspection and submitting report to the Commissioner. Yet, the Commissioner proceeded to hear the matter finally and dismissed the appeal, thereby confirming the order of disqualification passed by the Collector. The learned counsel appearing for the petitioner has vehemently submitted that once the Commissioner had directed the Tahsildar to submit a report as regards the allegation of encroachment while granting stay in favour of the petitioner, it was expected that the petitioner would be put to notice when the Tahsildar undertook the aforesaid exercise as directed by the Commissioner.

16. In this regard, reliance placed on the judgment in the case of **Lalita Dilip Khandalkar Vs. Additional Commissioner** (supra), is appropriate. In the said case also, it was found that during the process of conducting spot inspection, in the backdrop of a similar allegation of encroaching on Government land, the elected representative was not put to notice and that the report was prepared behind her back. It was specifically held in the said judgment that when the report rendered adverse findings, the fact that it was prepared without notice to the petitioner therein completely vitiated the said report and such an exercise could not be held as a basis for disqualifying the elected representative.

17. In the present case also, this Court is satisfied, on the basis of the material available on record, that the principles of natural justice stood violated and that the Tahsildar could not have proceeded to submit his report to the Commissioner without putting the petitioner to notice, while conducting the spot inspection or verifying the allegations made against the petitioner as regards the encroachment. Therefore, the order disqualifying the petitioner appears to be vitiated. The report of the Deputy Superintendent of Land Records appears to be tentative in nature, for the reason that the said Officer specifically recommended that a report also be called from the Tahsildar. In such a situation, the

Collector ought not to have passed the order of disqualification, which obviously has drastic consequences, solely relying upon the report of the Deputy Superintendent of Land Records.

18. In the light of the above, this Court is convinced that the order of disqualification issued against the petitioner, as it stands, cannot be sustained. At the same time, the allegation regarding encroachment on the Government land needs proper verification, in order to examine whether the petitioner has indeed incurred disqualification under Section 14(1)(j-3) of the aforesaid Act. In such a situation, it would be appropriate that the impugned orders are set aside and matter is remanded to the respondent – Collector for fresh consideration in accordance with law.

19. In view of the above, the writ petition is partly allowed. The impugned orders passed by the respondents - Collector and Commissioner, are quashed and set aside. The matter is remanded to the respondent No.5 – Collector, Akola, for fresh consideration.

20. The parties shall remain present before the respondent No.5 – Collector on 26/09/2022.

21. The Collector shall proceed strictly in accordance with law and in consonance with the principles of natural justice. The spot inspection

that the Collector shall cause to be carried out, shall be undertaken in the presence of the petitioner and respondent No.6. Thereupon, ample opportunity will be granted to the parties to respond to the said report and thereafter, final orders shall be passed by the Collector on the application for disqualification moved by respondent No.6.

22. It is made clear that the respondent No.5 – Collector shall not be influenced by the observations in the present judgment while deciding the application for disqualification and he shall decide the application in accordance with law.

23. The respondent – Collector shall decide the application filed by the respondent No.6 finally within a period of three months from the appearance of the parties before the Collector. No costs. Rule is made absolute in above terms.

JUDGE

MP Deshpande