

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

WRIT PETITION NO.6344 OF 2017

Govind s/o Gulabrao Wanjari
Age about 42 years, Occ Agricultrist,
R/o Kolambi, Taluka and Dist. Yavatmal. **...PETITIONER**

---VERSUS---

1. Tahsildar cum Election Officer,
Gram Panchayat, Kolambi,
General Election 2017,
Office at Tahsil Office at Yavatmal.
2. Shamrao Bhagwan Kalaskar
Aged about 50 years, Occ: Agriculturist,
R/o Kolambi, Taluka and Dist. Yavatmal.
3. Ganesh s/o Dattaji Aaglawe
Aged about 30 years, Occ: Agriculturist,
R/o Kolambi, Taluka and Dist. Yavatmal. **...RESPONDENTS**

Shri M.P. Kariya, Advocate for the petitioner.
Ms H.N. Jaipurkar, AGP for respondent no.1.
Shri R.S. Gode, Adv. h/f Shri V.D. Darne, Advocate for respondent nos.2 and 3.

CORAM : AMIT B. BORKAR, J.
DATED : 21st JUNE, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties.

2. By the present writ petition, the petitioner challenges the order dated 25.09.2017 passed by the Returning Officer, rejecting the nomination paper of petitioner for the post of Member of the Gram Panchayat. The election program for holding election of Gram Panchayat, Kolambi was declared on 07.09.2017. The petitioner filed his nomination for the post of Member of Gram Panchayat. The respondent no.3 raised objection to reject nomination of petitioner on ground that the petitioner was disqualified in view of order of Divisional Commissioner by virtue of order dated 22.02.2016 in exercise of power under Section 39(1) of the Maharashtra Village Panchayat Act (for short, “the said Act”). The said objection of the respondent no.3 has been upheld by the impugned order. The petitioner has therefore filed present writ petition challenging the said order.

3. This Court on 28.09.2017 issued notice and directed the respondent no.1 to provisionally accept petitioner’s nomination form and allow him to contest the election of Gram Panchayat by allotting symbol. However, this court directed returning officer not to declare the result of the petitioner.

4. On 16.01.2018, this Court directed the Returning Officer to declare the result and made result of election subject to further order passed in the present writ petition.

5. The learned Advocate for the petitioner by placing reliance of this Court on the cases of **Narayan Atmaram Borase Vs. State of Maharashtra and others¹** and **Shri Sunil Balaram Roy Vs. The Divisional Commissioner and others²** submitted that the disqualification under Section 14(1)(d) is not automatic and in absence of adjudication in relation to disqualification of the petitioner, the returning officer has no power to disqualify the petitioner. According to him, the order passed in exercise power under Section 39(1) of the said Act disqualifies him for remainder of the term and therefore the disqualification under Section 14 (1) (d) is not at all attracted. He therefore prayed that he be allowed to continue as a Member of the Gram Panchayat.

6. *Per contra*, learned Advocate and AGP for respondents vehemently opposed the said submissions. According to them, the disqualification under Section 14(1)(d) of the said Act is attracted moment order under Section 39(1) is passed. According to them, no adjudication is necessary as the ingredients of the Section

¹ 2005 (3) ALL MR 410

² 2006(6) ALL MR 215

14(1)(d) of the said Act are fulfilled. According to them, nature of enquiry to be conducted by the returning officer is summary in nature and returning officer *prima facie* needs to be consider whether the petitioner is eligible for being appointed as a Member of Gram Panchayat or not.

7. Rival contentions fall for my consideration.

8. To adjudicate the issue involved, it is necessary to consider the relevant provisions of Maharashtra Village Panchayat Act, which read as under:

“39. Removal from office.

(1) The Commissioner may, -

(i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat; or

(ii) remove from office the member, Sarpanch or, as the case may be Upa-Sarpanch, if not less than twenty per cent of the total number of voters in the village who have paid all dues of the panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the panchayat

on the development activities are not placed before the Gram Sabha; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1A) of section 8:

Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned, through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:

Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.

14. Disqualification

(1) No person shall be a member of a panchayat continue as such, who convicted –

(d) has been removed from office under sub-section (1) of section 39 and a period of six years has not elapsed from the date of such removal, unless he has, by an order of the State Government notified in the Official Gazette, been relieved

from the disqualification arising on account of such removal from office;"

9. The undisputed facts in relation to issue involved are as under:

(a) By order dated 22.02.2016 the petitioner was disqualified in exercise of power under Section 39(1) by competent authority under said Act.

(b) Period of six years had not lapsed on the date of scrutiny of nomination from the date of removal of petitioner under Section 39(1) of the said Act.

10. The submission of the petitioner is that the disqualification of petitioner is not automatic. It is submitted that unless there is adjudication as to whether the petitioner is disqualified under Section 14(1)(d) held by the Collector, the returning officer in its summary power had no jurisdiction to disqualify the petitioner. In my opinion, it is the duty of returning officer to adjudicate as to whether a person is qualified or disqualified under the provision of the said Act by holding summary enquiry. Since the petitioner was a candidate, his right to contest election is a statutory right which would be governed by the provisions of Statute. The candidate has no inherent right to

contest election. Principle of common law right is alien to election law. It is well settled that the candidate who is contesting an election has to be qualified and should not be disqualified under the provisions of the said Act on the date of his election. While holding summary enquiry, it is the duty of the returning officer to ascertain, either on objection or *suo motu*, as to whether the candidate is qualified or disqualified under the provisions of the said Act.

11. Having considered the Section 14(1)(d), in view of fact of removal of petitioner from office under sub-section 1 of section 39 and period of six years had not elapsed from the date of removal, the returning officer was justified in rejecting the nomination of the petitioner. The fact of removal of petitioner under 39(1) has been proved to the satisfaction of returning officer by respondent no.3 by producing copy of judgment of competent authority under the provisions of Maharashtra Village Panchayat Act. From the said judgment it is also clear that the period of six years had not elapsed on the date of election.

12. Accepting the submission of the petitioner that unless there is adjudication by Collector, the returning officer had no power to disqualify would lead to absurdity. It is well settled

principle of interpretation of statute that the interpretation which creates absurdity should be avoided. If the submission is accepted, then Returning Officer would not be in a position to adjudicate whether a person is qualified or not or he is disqualified. Therefore, in my opinion there is no substance in the submission of the petitioner that the disqualification is not automatic and the returning officer has no power to disqualify.

13. For the reasons stated above, I am of the opinion that there is no merit in the petition. The petition is therefore **dismissed**. Rule is discharged. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh