



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

WRIT PETITION NO. 1651 OF 2023

Smt. Bharti D/o. Manohar Sherkar @
 Sau. Bharti W/o. Giridhar Deogade,
 aged about 30 years, Occ :- Service,
 R/o. Pandhurna, Tahsil Kamptee,
 District Nagpur

.. **Petitioner**

Versus

1. The Additional Collector, Nagpur
2. The Sub-Divisional Officer, Katol,
Dist. Nagpur
3. The Tahsildar, Kamptee, Nagpur
4. Additional Block Development
Officer, Kamptee, Nagpur

.. **Respondents**

Mr. S. P. Bhandarkar, Advocate for Petitioner.

Mr. A. A. Madiwale, AGP for respondents.

CORAM : A. S. CHANDURKAR AND
ABHAY J. MANTRI, JJ.

DATED : **09/11/2023**

ORAL JUDGMENT (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally
 by consent of the learned counsel appearing for the parties.

(2) The petitioner, an elected 'Sarpanch' of Gram
 Panchayat, Khedi, is aggrieved by the order dated 10/03/2023 passed
 by respondent No.4 Additional Block Development Officer, Panchayat

Samiti, Kamptee, who thereby, held that the petitioner is not eligible for the post of Sarpanch on the ground that the caste claim of the petitioner belonging to '*Mana*' Scheduled Tribe has been invalidated. Therefore, he removed the petitioner from the post of Sarpanch.

(3) The petitioner is a permanent resident of Pandhurna, District Nagpur. She belongs to the '*Mana*' Tribe which is recognized as a Scheduled Tribe in the State of Maharashtra. The petitioner was elected as Sarpanch in Gram Panchayat, Khedi. Vide order dated 28/12/2022, the Caste Scrutiny Committee, Nagpur has invalidated the caste claim of the petitioner. In pursuance of the same, respondent No.4 has passed the impugned order. Being aggrieved by the said order, the petitioner has preferred this petition.

(4) Learned counsel for the petitioner submitted that respondent No.4 has no authority to pass the impugned order and therefore, passing of the order by respondent No.4 is arbitrary and against the provisions of the law. Respondent No.4 exceeded his jurisdiction and acted on his own without waiting for the appropriate orders from the Competent Authority. Respondent No.4 has not taken into consideration the order dated 16/01/2023, passed by this Court in Writ Petition No.433 of 2023, and therefore, the impugned order is *per se* illegal and liable to be set aside.

(5) Respondent No.1 by filing a reply denied the contents of the petition in toto. It is further contended that the averments made in the petition are inconsistent with each other. As per Section 30-1A of the Maharashtra Village Panchayats Act, 1959 the person contesting the election for the reserved seat has to submit a caste validity certificate within 12 months from the date the candidate was declared elected. One Sanjay Gawande applied for respondent No.4 under Section 30-1A of the said Act, accordingly respondent No.4 had conducted the proceeding, however, in view of the order dated 16/01/2023 passed in Writ Petition No.433 of 2023 by this Court, the said proceeding was continued against the husband of the petitioner only and he was declared as disqualified and the proceeding against the petitioner has been kept in abeyance till further orders. Therefore, it is contended that the petitioner is not entitled to grant any relief, hence prayed for rejection of the claim of the petitioner.

(6) Having heard the rival contentions of the parties and perusal of the record, it seems that on 28/12/2022, the Caste Scrutiny Committee, Nagpur invalidated the caste claim of the petitioner, which was challenged by the petitioner by Writ Petition No.433 of 2023. It is pertinent to note that in the said writ petition this Court vide order dated 16/01/2023, has granted protection to the petitioner that "*The petitioner shall not be disqualified on account of the order of*

invalidation until further orders.” Despite said protection, vide order dated 10/03/2023, respondent No.4 held that the petitioner is not eligible to act as a Sarpanch as the Caste Scrutiny Committee has rejected her caste claim and therefore, she was removed from the post of Sarpanch. The said order is under-challenge in this petition.

(7) Moreover, Vide order dated 16/03/2023, in para 4, in this petition, this Court has observed as under:-

“4] In the light of the ad-interim order passed in Writ Petition No.433/2023, the impugned communication dated 10/03/2023 shall not be acted upon until further orders.”

(8) It is to be noted that despite passing an order by this Court on 16/01/2023 in Writ Petition No.433 of 2023, respondent No.4 has passed the impugned order. In fact, it could not have passed the impugned order. The said conduct of respondent No.4 denotes that he failed to follow the mandate of this Court, in Writ Petition No.433 of 2023, and erred in passing the impugned order.

(9) It is pertinent to note that while deciding the Writ Petition No.433 of 2023, preferred by the petitioner, this Court has already held that the petitioner proved that she belongs to the '**Mana**' caste Scheduled Tribe and directed the Caste Scrutiny Committee, Nagpur to issue Caste Validity Certificate in her favour within a period of four weeks. Thus it reveals that this Court has quashed and set aside

the order dated 28/12/2022 passed by the Caste Scrutiny Committee, Nagpur.

(10) In the aforesaid background and having regard to the fact that the order of the Caste Scrutiny Committee has been set aside by this Court in Writ Petition No.433 of 2023, as a sequel the impugned order does not survive. It further appears from the impugned order that respondent No.4 has removed the petitioner from the post of Sarpanch. In fact, as per Section 39 of the Maharashtra Village Panchayats Act, 1959, the said powers are vested with the Commissioner only. However, nothing has been brought on record to show that the said power was delegated to respondent No.4 by any order. As per Section 39 of the said Act, the Commissioner may remove Sarpanch or Up-Sarpanch from the Panchayat. The mandate of said Section does not empower respondent No.4-Additional Block Development Officer to pass the order of removal of Sarpanch or Up-Sarpanch. In the absence of any power, the passing of such an order itself shows that respondent No.4 has exceeded his jurisdiction and thereby committed an error.

(11) Thus, it seems that respondent No.4 has exceeded his jurisdiction and without following the order of this Court passed the impugned order, which is against the provisions of the law. Therefore,

the impugned order does not survive in the eyes of the law. *Per contra*, respondent no.4 was duty bound to follow the order passed by this Court in Writ Petition No.433 of 2023.

(12) As a result, in our view, the impugned order passed by respondent No.4 is illegal, arbitrary, and without following the provisions of law, therefore, the same is liable to be quashed and set aside. Consequently, we are inclined to allow the writ petition in terms of prayer clause (i) which reads as under :-

“(i) By an appropriate writ, order and/or direction hold and declare that the impugned order dated 10/03/2023 (“ANNEXURE – H”) passed by the respondent no.4 – Additional Block Development Officer, Kamptee is per se illegal, arbitrary and against the law and in furtherance thereof be pleased quash and set aside impugned order dated 10/03/2023 (“ANNEXURE – H”) passed by the respondent no.4 – Additional Block Development Officer, Kamptee in the interest of justice”.

The Rule is made absolute in above terms. No Costs.

[ABHAY J. MANTRI, J.]

[A. S. CHANDURKAR, J.]

KOLHE