

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

WRIT PETITION NO. 2319 OF 2022

Rushikesh Babanrao Jagtap,
Aged 33 years, Occ.: Agriculturist,
R/o. Juna Dhamangaon,
Tq. Dhamangaon & District :
Amravati.

.... **PETITIONER.**

// VERSUS //

1. Collector, Amravati,
Tq. and District : Amravati.
2. Tahsildar/ Returning Officer,
Dhamangaon Rly, Tq. Dhamangaon
Rly, District : Amravati.
3. Secretary, Grampanchayat,
Juna Dhamangaon, Tq.
Dhamangaon Rly, District :
Amravati
4. Sarpanch, Grampanchayat,
Juna Dhamangaon, Tq.
Dhamangaon Rly, District :
Amravati
5. Gopal Shyamrao Mokalkar,
Aged 33 years, Occ. : Agriculturist,
Juna Dhamangaon, Tq.
Dhamangaon, District : Amravati.

.... **RESPONDENTS.**

Shri P.R.Agrawal, Advocate for Petitioner.
Ms Shamsi Haider, A.G.P. for Respondent Nos.1 & 2.
Shri Alok Daga, Advocate for Respondent No.5.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 11, 2023.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The disqualification of the petitioner as a member of the Gram Panchayat under Section 14-B of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as “the Act of 1959”) for not submitting the account of expenses of election within stipulated time, is under challenge in the present writ petition.
4. The petitioner was elected as a Member of the Gram Panchayat, Juna Dhamangaon on 18/01/2021 and thereafter on 19/07/2021 the application under Section 14-B of the Act of 1959 was

filed by the respondent No.5, seeking disqualification of the petitioner for not submitting the account of expenses of election. Thereupon, the Collector vide order dated 26/11/2021 disqualified the petitioner by allowing the said application. Being aggrieved by the same, an appeal was preferred before the Divisional Commissioner, which came to be dismissed vide order dated 31/11/2021.

5. In fact, there is no appeal provided against the disqualification before the Commissioner. Be that as it may, the whole controversy, therefore, now revolves around the question whether the Collector has rightly exercised his jurisdiction while disqualifying the petitioner.

6. In the circumstances, before considering the matter on merit, it would be appropriate to refer to Section 14-B, which reads thus :

“14B. Disqualification by State Election Commission. -
(1) If the State Election Commission is satisfied that a person,-
(a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and
(b) has no good reason or justification for such failure,
the State Election Commission may, by an order published in the Official Gazette, declare him to be

disqualified and such person shall be disqualified for being a member of panchayat or for contesting an election for being a member for a period of five years from the date of the order.

(2) The State Election Commission may, for reasons to be recorded, remove any disqualification under subsection (1) or reduce the period of any such disqualification.”

7. The above referred provision makes it clear that if the State Election Commission is satisfied that a person has failed to lodge an account of election expenses within time and in the manner required by the State Election Commission and has no good reason or justification for such failure, the State Election Commission may, by an order, declare such person to be disqualified.

8. In the present matter, even without going into the merits of the matter and considering the contents of the impugned order passed by the Collector, it is evident that without recording any reason to the effect that, why the explanation offered by the petitioner for not submitting account of expenses of election within stipulated time, was not found as satisfactory or good reason. The Collector has only observed that he did not find the explanation offered by the petitioner as satisfactory, but no reasons are given for arriving at such conclusion.

9. The Hon'ble Supreme Court of India, while dealing with the issue regarding removal of an elected member in the case of *Ravi Yashwant Bhoir ..vs.. Collector*, reported in (2012) 4 SCC 407 has held thus:

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

*35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly*, and *Ram Beti v. District Panchayat Raj Adhikari*.*

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory

provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion', etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

46. The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."

10. From the above referred observations, it is evident that in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. It is further observed that the proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

11. In the present matter, after considering the impugned order passed by the Collector, I have no hesitation to hold that the Collector has not applied its mind to the explanation furnished by the petitioner. In the circumstances, I am of the opinion that the impugned order needs to be quashed and set aside and the matter needs to be remanded back for deciding it afresh. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The order dated 26/11/2021, passed by respondent-Collector, is hereby quashed and set aside.

- iii) The matter is remanded back to the Collector for deciding the same afresh.
- iv) The parties shall appear before the Collector on 19/04/2023 at 12:00 noon.
- v) The Collector is directed to decide the application within two months from the date of appearance of the parties.

The Writ Petition is disposed of accordingly. No order as to costs.

JUDGE

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