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

WRIT PETITION NO. 2317/2022

KRUSHNA S/O GULAB GHODESWAR
VS
DIVISIONAL COMMISSIONER, NAGPUR DIVISION, NAGPUR AND OTHERS

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr A.S. Dhore, advocate with Shri S.S. Rahimuddin, advocate for the petitioner.
Ms H.N. Jaipurkar, AGP for the respondent No.1.
Mr Bhojraj Dhandale, advocate for the respondent No.4.

CORAM : ANIL S. KILOR, J.
DATED : 25/01/2023

1. Heard.

2. In this writ petition, a challenge is raised to the order passed by the Divisional Commissioner, Nagpur, disqualifying the petitioner under Section 16(1)(k) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short 'the Act of 1961'), as a Member of the Panchayat Samiti for non-payment of taxes within the statutory period.

3. Shri A.S. Dhore, learned advocate for the petitioner submits that the demand notice of tax issued under Rule-8 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960, was not as per the provisions of Rule-8, as no separate amount for four quarterly installments i.e.

from 01[st] April, 1[st] July, 1[st] October and 1[st] January is mentioned in the demand bill. But consolidated amount for complete year is mentioned and therefore, the said demand bill itself is illegal.

4. It is further argued that, the learned Commissioner did not consider the period when the default was committed, was the pandemic period and thereby committed an error in disqualifying the petitioner.

5. On the other hand, learned AGP points out that, it is an admitted fact from the record that the petitioner did not pay the taxes within the statutory period and committed a default and because of the same, he has been disqualified under Section 16(1) (k) of the Act of 1961.

6. It is submitted that, the point as regards the pandemic that was never raised by the petitioner. She, therefore, submits that the disqualification is as per the law and it needs no interference.

7. Learned advocate for the respondent No.4 reiterates the submission of the learned AGP.

8. In the light of the rival submissions, I have perused the documents filed along with the petition and the impugned order.

9. After perusal of the record, it is evident that the petitioner was served with the demand notice dated

01/08/2020 for the financial year 2020-2021. The petitioner is not disputing that the payment was made after the statutory period and thereby a default was committed.

10. In the circumstances, it is relevant to refer to the provision of Section 16(1) (k) of the Act of 1961, which reads thus:-

> *"16 (1) (k) -- if he has failed to pay any tax or fee due to any Panchayat in the District or to the Zilla Parishad within six months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him ."*

11. From the above referred provision, it is clear that any Member commits any default in payment of taxes after receipt of demand notice, within the statutory period, he attracts disqualification under Section 16(1) (k).

12. The Division Bench of this Court while answering a reference, wherein similar issue was involved, whether the provisions of Rules mandates to issue demand notice mentioning separate amount for each quarter, it has answered as follows :-

> *"Upon the discussion, we now proceed to answer the questions formulated in the order of reference -*
> *Re :1 The view expressed by the learned Single Judge in the decision in the case of Angha Ajit Bhatkar, reported in 2006(6) Mh.L.J. 13 is not the correct position of law.*

Re :2. In terms of Rule 8 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960, the Gram Panchayats are not required to demand and collect taxes on properties in four quarterly instalments, beginning from the 1st of April, 1st of July, 1st of October and 1st of January if tax is leviable on such properties on the 1st of April of the relevant year.

Re :3. In terms of Rule 8, the Gram Panchayats would be required to demand and collect tax in quarterly instalments only if the tax is not leviable at the beginning of the financial year and becomes leviable after the 1st of April."

13. As far as the ground raised as regards the pandemic, it is evident from the copy of appeal, that it was not raised and there is nothing to point out that the time limit for payment of tax provided under the statute was extended.

14. In the circumstances, I do not find any error committed by the Divisional Commissioner in disqualifying the petitioner, as Panchayat Samiti Member. Accordingly, the writ petition is **dismissed.**

JUDGE