

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

WRIT PETITION NO. 2770 OF 2022

Sau. Nikita Prashant Makode,
Aged about 34 years, Occ.: Agriculturist
& Member of Gat-Gram Panchayat,
Sanghavi, R/o. Sanghavi Khurd,
Tq. & Dist. Akola.

.... **PETITIONER.**

// VERSUS //

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. The Collector, Akola,
Tq. & Dist. Akola.
3. Gat-Gram Panchayat Sanghavi
Khurd, through its Secretary,
Tq. & Dist. Akola.
4. Vivek S/o. Ramraoi Gawande,
Aged about 50 years, Occu. : Member
of Gat Gram Panchayat Sanghavi
Khurd, Tq. & Dist. Akola.

.... **RESPONDENTS.**

Shri S.D.Chopde, Advocate for Petitioner.
Ms H.N.Jaipurkar, A.G.P. for Respondent Nos.1 and 2.
Shri Rishabh Khemuka, Advocate for Respondent No.3.
Shri Ved R. Deshpande, Advocate for Respondent No.4.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 09, 2023

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. In this writ petition the challenge is raised to the disqualification of the petitioner as a Member of Village Panchayat, Sanghavi Khurd, Tahsil and District : Akola by the Collector vide his order dated 14/03/2022 and confirmed by the Divisional Commissioner, Amravati in appeal carried by the petitioner against this disqualification.
4. The learned counsel for the petitioner submits that the documents as regards measurement relied upon by both the authorities are false and bogus. He further submits that the said measurement was carried out behind the back of the petitioner and no opportunity was given to explain the case of the petitioner by remaining present at the

time of measurement, by issuing prior notice of measurement to the petitioner. He further submits that even no proper reasons are recorded by the Divisional Commissioner as well as the Collector, which ought to have been recorded considering that disqualification is a serious issue and in a casual manner, no member can be disqualified. He, accordingly, prays for quashing and setting aside both the impugned orders.

5. The learned counsel for the respondent No.4 submits that the notice of measurement was served upon the family member of the petitioner and therefore, the petitioner cannot raise any demur about non-service of notice. It is submitted that the report sufficiently shows encroachment on the government land to the extent of 8167 Sq.Ft. land and therefore, both the authorities below have not committed any error in disqualifying the petitioner.

6. The learned A.G.P. appearing for the respondent Nos.1 and 2 supports the impugned orders. The learned counsel for the respondent No.3-Village Panchayat reiterates the submissions of the learned counsel for the respondent No.4 and prays for dismissal of the present petition.

7. 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."

8. After going through the record, it is evident that at the time of measurement carried out to ascertain the encroachment made by the petitioner, the petitioner was not present. It is informed that the notice was served upon one of the family members of the petitioner. However, considering the fact that the disqualification is sought on the ground that the petitioner has allegedly encroached the land belonging to the Gram Panchayat, appropriate and sufficient prior notice ought to have been given to the petitioner and in his presence the land ought to have been measured.

9. Even after going through the order passed by the Divisional Commissioner it can be seen that without recording proper reasons and the submissions of the petitioner, he has confirmed the order of disqualification passed by the Collector. In the circumstances, I am of the opinion that the matter needs to be remanded back for consideration afresh after measuring the land in dispute in presence of the petitioner. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.

- ii) The impugned order dated 09/05/2022 passed by learned Divisional Commissioner, Amravati and impugned order dated 14/03/2022 passed by the Collector, Akola are hereby quashed and set aside.
- iii) The matter is remanded back to the Collector, Akola to decide the same afresh according to law.
- iv) The parties shall appear before the Collector, Akola on 25/01/2023 at 11:00 a.m.
- v) The Collector shall fix a date of measurement, which should be informed to the petitioner and the land in dispute should be measured through the Competent Authority and on receiving report of the same, the Collector shall decide the matter afresh, according to law, after hearing both the parties, within two months thereafter.

Rule accordingly. No costs.

(ANIL S. KILOR, J)

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