

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 4538 OF 2022**

Amarsing Bhimrao Rathod, Aged
about 74 Years, Occ. Agriculturist
R/o At Pardi Churmura Post Sukali
(Jahagir) Tq. Umarkhed, Dist.
Yavatmal

...Petitioner

// VERSUS //

1. State of Maharashtra, through Rural
Department Panchayat Raj Department
through its Secretary
2. The Additional Collector, Yavatmal,
Dist. Yavatmal
3. Grampanchayat Churmura,
Tq. Umrakhed, Dist. Yavatmal
through its Secretary
4. Arjun Kisanrao Jadhav,
Aged Major, Occ. Not Known
R/o Churmura, Tq. Umarkhed,
Dist. Yavatmal
5. Kiran Ganesh Davane,
Aged Major, Occ. Not known
R/o Churmura, Tq. Umarkhed, Dist.
Yavatmal

... Respondents

Shri H.V.Dhage, Advocate for the petitioner.

Shri K.L.Dharmadhikari, AGP for the respondent nos. 1 and 2.

Shri U.P.Dable, Advocate for the respondent No.4.

CORAM : ANIL S. KILOR, J.

DATED : 1st FEBRUARY, 2023.

ORAL JUDGMENT :

This writ petition, raises a question as regards the correctness and legality of the impugned order dated 26th July, 2022 passed by the

Collector disqualifying the petitioner as Sarpanch of village Churmura, Tq. Umarkhed, Dist. Yavatmal under Section 36 of the Maharashtra Village Panchayat Act, 1958 (in short referred as 'Act, 1958') for not holding the monthly meeting of August, 2021.

2. The brief facts of the present case are as under : The petitioner was elected as Member of Gram Panchayat on 18th January, 2021 and thereafter he was elected as Sarpanch.

3. After becoming Sarpanch he regularly held the meeting on 19th April, 2021 except in the month of August for the reason that on 19th August, 2021 his mother died.

4. Thereafter, the respondent no.4 filed a proceeding before the Collector under Section 36 of the Maharashtra Village Panchayats Act for disqualification of the petitioner on the ground that the petitioner failed to hold the monthly meeting of August, 2021. Thereupon, the Collector made an inquiry and on findings that the petitioner failed to hold the meeting of August, 2021, the petitioner was disqualified by the impugned order dated 26th July, 2022.

5. Learned counsel for the petitioner submits that because of death of the mother on 19th August, 2021 he could not hold monthly meeting of August, 2021. It is pointed out that on 28th August, 2021 the intimation was given to the Block Development Officer and it was requested to ask Upa-Sarpanch to hold the meeting in his Chairmanship. He therefore submits that as the sufficient cause was shown for not

holding the meeting, the Collector ought not to have disqualified the petitioner.

6. On the other hand, Shri Dharmadhikari, learned Assistant Government Pleader supports the impugned order and submits that as the petitioner is not disputing that he did not hold the monthly meeting of August, 2021, this reason is sufficient to disqualifying him.

7. Shri Dafle, learned counsel for the respondent no.4 reiterates the submission of the learned Assistant Government Pleader and prays for dismissal of the present writ petition.

8. In the light of the rival submissions of the respective parties, I have perused the documents filed alongwith the writ petition and the impugned order.

9. Undisputedly, the mother of the petitioner died on 19th August, 2021 and thereafter he intimated the said fact to Block Development Officer with a request to the Secretary and Upa-Sarpanch to hold the monthly meeting of August, 2021 under the Chairmanship of the Upasarpanch.

10. It is also evident that during the tenure of petitioner as Sarpanch except the meeting of August, 2021, there is no default committed by the petitioner as Sarpanch to hold any monthly meeting. In the above referred admitted facts at this stage, it is necessary to refer Section 36 of Act, 1958 reads thus:

36. Time and place of sitting of panchayat and procedure at meetings. -The time and place of sitting, and the procedure at a meeting, of the panchayat shall be such as may be prescribed:

[Provided that, if the Sarpanch, or in his absence the Upa-Sarpanch, fails without sufficient cause, to convene the meeting of the panchayat in any financial year according to the rules prescribed in that behalf, he shall be disqualified for continuing as Sarpanch or, as the case may be, Upa-Sarpanch or for being chosen as such for the remainder of the term of office of the members of the panchayat. The decision of the Collector on the question whether or not there was sufficient cause shall be final.]

11. From the above referred provisions, it is evident that only in case where the Sarpanch or in his absence the Upa-Sarpanch fails without sufficient cause to convene the meeting, the Sarpanch or the Upa-Sarpanch as the case may be shall be disqualified. It is further clear from the above referred provision that the decision whether there was sufficient cause shall be taken by the Collector. Therefore, before disqualifying any Sarpanch or Up-Sarpanch as the case may be, it is bounden duty of the Collector to first arrive at a conclusion that the meeting was not convened without any sufficient cause and if the Collector comes to such conclusion then only under Section 36 of the Act, 1958, Sarpanch or the Up-Sarpanch as the case may be disqualified can be disqualified.

12. In this case there is no findings recorded by the Collector that the petitioner fails to convene the meeting without any sufficient cause. Thus, without fulfilling the requirement of Section 36 of the Act, 1958, the petitioner was disqualified.

13. The Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others*¹ has observed 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 & Ors. v. Debi Ghosal & Ors.*, AIR 1982 SC 983; *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly & Ors.*, AIR 1993 SC 2042; and *Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors.*, AIR 1998 SC 1222).*

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

¹ 2012(4) SCC 407

from the office and further declared disqualified to contest the election for a further stipulated period.

14. From the above said observations of the Hon'ble Supreme Court of India, it is made clear that the disqualification cannot be made in the casual manner but it must be strictly as per the provision of law.

15. Admittedly, in this case without making any observations by the Collector in his order that the petitioner without sufficient cause fails to convene the meeting he disqualified the petitioner under Section 36 of the Act of 1958.

16. In the circumstances, I am of the opinion that the order of the Collector disqualifying the petitioner needs to be quashed and set aside. Accordingly, I pass the following order.

- i. Writ petition is allowed;
- ii. Impugned order dated 26th July, 2022 passed by the Collector disqualifying the petitioner as Sarpanch of village Churmura, Tq. Umarkhed, Dist. Yavatmal under Section 36 of the Maharashtra Village Panchayat Act, 1958 is hereby quashed and set aside.

The Rule made absolute in above terms.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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