

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

Writ Petition (WP) No. 6672 of 2022

Rameshwar Sahebrao Dhore and others

Versus

The Hon'ble Minister for the State of Maharashtra for Rural
Development, Mantralaya 400 032 and others

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

Court's or Judge's Order

Shri R.D.Dhande, Advocate for the petitioners

Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 and
2.

Shri R.D.Karode, Advocate for the respondent nos. 4
and 5.

CORAM : ANIL S. KILOR, J.

DATED : 25th JANUARY, 2023.

Heard.

2. The present petition raises question to the correctness and legality of order passed by the Hon'ble Minister dated 13th October, 2022 setting aside the disqualification of the respondent nos. 4 and 5 as Sarpanch and Upa-Sarpanch of Village Chatari, Taluka Patur, District Akola.

3. Admittedly, the challenge raised in this writ petition and the writ petition no. 6765 of 2022 is to the above referred order of the Hon'ble Minister dated 13th

October, 2022. It is noted that the writ petition no. 6765 of 2022 was disposed of by this Court by judgment dated 25th January, 2023 in following terms by observing thus:

“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).*

1 2012(4) SCC 407

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.

14. In the teeth of above referred observations of the Hon'ble Apex Court and on perusal of the order of the Divisional Commissioner, Amravati, it is evident that he has reproduced the findings recorded by the Chief Executive Officer in its report and without examining the correctness of the same, passed the order of removal of the respondent nos. 4 and 5. There is no mention where the requirement is stipulated for purchase of cement concrete drain, paver block, LED street lights, furniture and goods for health department only by tender process and not from the private sector. There is no mentioned about whether Government e-market portal system is applicable to Gram Panchayat for official purchase. Nothing is mentioned about where the requirement is stipulated in respect of purchase of goods by the Village Panchayat with GST number.

15. Thus, it is abundantly, clear that the Divisional Commissioner, Amravati without applying his mind and without examining the correctness of the findings made by the Chief Executive Officer in his inquiry, by reproducing the remarks, disqualified the respondent nos. 4 and 5. Such casual approach in the case of disqualification cannot be permitted in view of the law laid down by the Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others* (Supra).

16. In view of the above said observations, I am of the opinion that proper inquiry is necessary and the matter needs to be remanded back to the Divisional Commissioner, Amravati for fresh inquiry. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The impugned order dated 13th October, 2022 passed by the Hon'ble Minister, Rural Development/Respondent no.1 is hereby quashed and set aside;
- iii. The Divisional Commissioner, Amravati is hereby directed to decide the complaint filed by the petitioners against the respondent nos. 4 and 5 a fresh."

4. Thus, in the light of the above referred observations made in Writ Petition No. 6765 of 2022, nothing survives in this writ petition. Accordingly, it is disposed of as dismissed.

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[ANIL S. KILOR, J.]