

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

WRIT PETITION NO. 6765 OF 2022

1. Rameshwar Sahebrao Dhore,
Age 32 Years, Occupation :
Agriculturist/Upa-Sarpanch
 2. Jyoti Rajesh Jadhav
Aged
Occupation : Household/Sarpanch
- ...Petitioners

// VERSUS //

1. The Hon'ble Minister for the State of
Maharashtra for Rural Development,
Mantralya-400 032
2. The Divisional Commissioner,
Amravati Division, Amravati
3. The Gram Panchayat, Chatari, through
its Secretary Taluka-Patur, Dist. Akola
4. Navita Vinod Sadar,
Aged 27 Years, Occ. Household,
resident at Village Chatari, Taluka
Patur, Dist. Akola
5. Sonu Mangesh Lakhade,
Aged 28 Years, Occ. Household
resident at Village Chatari,
Taluka Patur, Dist. Akola
6. Dipali Anil Bochare,
Aged : Occ. Houshold
7. Vishwanath Tulaji Sadar,
Aged : Occ. Agriculturist
8. Pramila Ganesh Hirulkar,
Aged : Occ. Household,
9. Sandip Uttam Manjare,

Aged : Occ: Agriculturist
Petitioner Nos. 5 to 9 are all residing at
Village Chatari, Taluka Patur, Dist.
Akola

... Respondents

Shri Rahul 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.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, a question is raised to the legality and correctness of the order dated 13th October, 2022 passed by the Hon'ble Minister, Rural Development/Respondent no.1, allowing the appeal preferred by the respondent no.4 and setting aside her disqualification as Sarpanch of Gram Panchayat Chatari, Taluka Patur, District Akola under Section 39(3) of the Maharashtra Village Panchayat Act, 1958 (in short referred as "Act of 1958"), as recorded by the order dated 19th May, 2022 passed by the Divisional Commissioner, Amravati.

3. The facts in brief are as under: The election for Sarpanch took place on 15th January, 2021 and the respondent no.5 was elected as Sarpanch thereby the petitioner filed a complaint under Section 39 before the Divisional Commissioner, Amravati seeking removal of the petitioner as well as respondent no.5 on the ground of misuse of funds and misappropriation amount pertaining to 15th Pay Commission.

4. Thereupon, the Chief Executive Officer held an inquiry and submitted a report under Section 39(1) of the Act of 1958.

5. The Divisional Commissioner, Amravati thereafter, passed the order dated 19th May, 2022 allowing the petition under Section 39 of the Act of 1958 and disqualified the respondent nos. 4 and 5.

6. Feeling aggrieved by the same, the respondent no.4 preferred an appeal before the Hon'ble Minister under Section 39(3) of the Act of 1958, which came to be allowed by the Hon'ble Minister vide impugned order. Hence, this petition.

7. Shri Dhande, learned counsel for the petitioners submits that the Hon'ble Minister failed to appreciate the provisions of the Central Goods and Service Tax Acts, 2017 and further the findings recorded by the Divisional Commissioner in his order while disqualifying the respondent nos. 4 and 5.

8. It is submitted that where elected member being disqualified due to some acts which are illegal, causing loss or damage, then such conduct will be covered under the expression of 'misconduct' and therefore the Divisional Commissioner has rightly disqualified the respondent nos. 4 and 5 holding that they committed misconduct.

9. It is further submitted that the Hon'ble Minister has committed error in setting aside the well reasoned order of the Divisional

Commissioner which was based on the inquiry conducted by the Chief Executive Officer.

10. On the other hand, Ms. Jaipurkar, learned Assistant Government Pleader for the respondent nos. 1 and 2 submits that after considering the material available on record, the Hon'ble Minister has rightly held in favour of the respondent nos. 4 and 5. Accordingly, she prays for dismissal of the present writ petition.

11. Shri Karode, learned counsel for the respondent nos. 4 and 5 supports the order of the Hon'ble Minister and prays for dismissal of the present petition.

12. I have perused the documents filed alongwith the petition and the impugned order.

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

¹ 2012(4) SCC 407

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 Rajadrikari & 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 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.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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