



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

Writ Petition (WP) No. 7068 of 2022

Sunil S/o Chaitramji Kamdi

Versus

State of Maharashtra, through Minister of Rural Development,
Maharashtra State, Mumbai 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 N.L.Jaiswal, Advocate for the petitioner.

Shri Ganesh Umale, AGP for the respondent nos. 1 and
2/State.

Shri V.A.Dhabe, Advocate and Shri P.K.Raulkar,
Advocate for the respondent no.3.

Shri Aniket Waghdhare, Advocate for the respondent
no.4.

CORAM : ANIL S. KILOR, J.

DATED : 30th NOVEMBER, 2023.

Heard.

2. The order dated 9th November, 2022 passed by the Hon'ble Minsiter reversing the order passed by the Additional Divisional Commissioner, Nagpur Division, Nagpur, removing the respondent no.4 as Sarpanch under Section 39(1) of Maharashtra Village Panchayat Act, 1959 (in short hereinafter referred as 'Act, 1959'), is under challenge in this writ petition.

3. The brief facts of the present case are as under:

On a direction of the Civil Court to shift the fish, mutton and chicken market within two months, the Gram Panchayat Kelwad constructed the market. Thereupon, the petitioner made a complaint that it was constructed without following due procedure of law and it was constructed by using scrap material and thereby petitioner sought removal of respondent no.4 and all other elected members of the Gram Panchayat, Kelwad under Section 39 of the Act of 1959.

4. On filing of such application, the Chief Executive Officer made an inquiry and confirmed the fact that there are procedural irregularity and the scrap material was used for construction of market.

5. Placing the reliance upon the said report, the Additional Divisional Commissioner, Nagpur removed the respondent no.4 as Sarpanch.

6. As far as the complaint in respect of other members of Gram Panchayat is concerned, the same was rejected holding that the Secretary and Sarpanch are responsible under Section 38 of the Act of 1959 for the due fulfillment of the duties imposed upon the Panchayat by or under the Act of 1959 vide order dated 17th August, 2021.

7. The respondent no.4 feeling aggrieved by the same preferred an appeal before the Hon'ble Minister under Section 39(3) of the Act of 1959. The same was allowed by the Hon'ble Minister vide order dated 9th November, 2022. Hence, this petition.

8. In the present matter, admittedly, there was a resolution for construction of market of fish, mutton and chicken in pursuance to the decision of the Civil Court whereby the village panchayat was directed to shift the market within two months. The said resolution was passed on 16th January, 2018 and it was signed by the Sarpanch and all members of the Village Panchayat.

9. The allegation is that in the meeting dated 16th January, 2018 the quotation dated 18th January, 2018 submitted by one New Lal Diwan Trader was accepted. It is submitted that date of quotation i.e. 18th January, 2018 is sufficient shows that the illegality was committed and thereby even before the quotation was submitted on 18th January, 2018, it was shown to be accepted on 16th January, 2018.

10. The other allegations are that, for the construction of the market, the scrap material was used and certain procedures were not followed.

11. In the above referred backdrop it is pertinent to note that the petitioner has not raised any challenge

to the order passed by the Additional Divisional Commissioner rejecting the prayer for removal of other members of the Gram Panchayat.

12. As far as Section 38(1) of the Act, 1959 is concerned, it says that Sarpanch is having executive power, for the purpose of carrying out the provisions of the Act of 1959 and the resolutions passed by a panchayat, vests in the Sarpanch who shall be directly responsible for the due fulfillment of the duties imposed upon the panchayat by or under this Act.

13. There is no doubt that the Sarpanch is having executive power for the purpose of carrying out the resolution passed by the Panchayat. However, the fact remains that the resolution was passed by the Sarpanch and all the members. Therefore, if there is any illegality committed while passing the resolution dated 16th January, 2018, for that only the Sarpanch cannot be held responsible.

14. Moreover, there are no allegations of misappropriation of money or any benefit received by the respondent no.4-Sarpanch.

15. As far as the alleged irregularities are concerned neither in the inquiry report of Chief Executive Officer or in the order of Additional Divisional Commissioner, there is no mention of any

guidelines of the Government which were breached or not followed.

14. 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. 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

1 2012(4) SCC 407

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.

15. In the present matter for the alleged illegality committed in passing the resolution dated 16th January, 2018, the Sarpanch i.e. respondent no.4 was held sole responsible by misinterpreting Section 38 of the Act, 1959.

16. In the circumstances, I do not find any error committed by the Hon'ble Minister in reversing the order of the Additional Divisional Commissioner, removing the respondent no.4 as Sarpanch. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]