

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

WRIT PETITION NO. 7095 OF 2022

Gajanan S/o Vilas Shelwade,
Aged about 30 years, Occ. Labour,
R/o Mohda Taluka Wani, Dist.
Yavatmal

... Petitioner

// VERSUS //

1. Additional Commissioner, Amravati
Division Amravati
2. Additional Collector, Yavatmal, Dist.
Yavatmal
3. Gram Panchayat Mohda, Through its
Secretary Taluka Wani, Dist. Yavatmal
4. Zilla Parishad Upper Primary School,
Mohda, through its Headmaster,
Panchayat Samiti Wani, Zilla Parishad
Yavatmal, Dist. Yavatmal.
5. Haridas S/o Ganpat Kelzarkar,
Age Major, Occ. Agriculturist,
R/o Mohda Taluka, Wani,
Dist. Yavatmal

... Respondents

Ms. Shreya Jain Advocate h/f Shri S.S.Dhengale, Advocate for the petitioner.
Shri D.P.Thakare, AGP for the respondent nos. 1 and 2.
Shri Nitin Trivedi, Advocate for the respondent no.5.

CORAM : ANIL S. KILOR, J.

DATED : 9th JANUARY, 2023.

ORAL JUDGMENT :

In this writ petition the disqualification of the petitioner as a Member of Village Panchayat Mouda, Taluka Wani, Dist. Yavatmal is under challenge.

2. The petitioner was elected as a Member of Gram Panchayat Mouda, Tal. Wani, Dist. Yavatmal in the year 2021 thereupon the respondent no.5 filed an application under Section 14(1)(j)(3) of Maharashtra Village Panchayat Act, 1958 for disqualification on the ground that the petitioner has encroached upon the Government land.

3. Thereupon, the Additional Collector, Yavatmal vide its order dated 8th June, 2022 declared the petitioner as disqualified to be a member of Gram Panchayat. The said order was carried in appeal before the Additional Commissioner, Amravati which came to be dismissed vide impugned order dated 19th October, 2022.

4. Ms. Jain, learned counsel for the petitioner submits that both the authorities have committed error in disqualifying the petitioner as they relied upon the report of the Head Master of the Zilla Parishad School. It is submitted that the said report was prepared by the Head Master behind the back of the petitioner. It is submitted that even otherwise Head of the school of Zilla Parishad is not the authority to determine encroachment if any on Government land but the revenue authority namely Tehsildar is the authority to determine it. Thus, in absence of such report of the Tehsildar, the orders passed by both the authorities below are liable to be quashed and set aside. Learned counsel for the petitioner has relied upon the judgment of the co-ordinate Bench of this Court in the *Ganesh Shankar Landge Vs. Additional Commissioner, Amravati and others*¹.

1 2011(5) ALL MR 666

5. On the other hand, learned Assistant Government Pleader supports the order of both the authorities below.

6. Shri Trivedi, learned counsel for the respondent no.5 original complainant submits that report of the Head Master is sufficiently shows that the petitioner has encroached over the Government land and both the authorities below have rightly considered the report of the Head Master of the Zilla Parishad for disqualifying the petitioner. He, therefore submits that both the authorities have not committed any error. He prays for dismissal of the writ petition.

7. The Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others*² 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.

² 2012(4) SCC 407

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

8. In the present matter the land belongs to Government and it is an admitted fact that there is no report of any of the revenue authorities to point out that the petitioner has made any encroachment over the Government land. Thus, relying upon the report of the Head Master, both the authorities below have rightly committed an error in disqualifying the petitioner.

9. This Court in a judgment in the case of *Ganesh Shankar Landge Vs. Additional Commissioner, Amravati and others* (supra).

6. Having heard the learned counsel for the parties, in my view, considering the facts and circumstances as narrated above, the orders passed by both the Authorities would have to be set aside and the matter would have to be relegated back to the Additional Collector for a de novo consideration after obtaining a report from the appropriate Revenue Officer in that behalf. In my view, it was highly improper on the part of

the Appellate Authority to permit the respondent No. 4 to produce the said report, which has been prepared unilaterally by the Talathi without any notice to the petitioner, if report was to be obtained from the Revenue Officer, it was incumbent on the Authority that the parties are noticed in that behalf and thereafter given an opportunity to deal with the report in question. That having not happened, in my view, the order passed solely on the basis of the said report stands vitiated on the ground of violation of the principles of natural justice. In my view, considering the nature of the controversy involved in the matter, it would be just and proper for the Authorities below to rely upon a report of the concerned Revenue Officer, but definitely not on the report of the Talathi, which has been procured by the respondent No. 4. The above petition would therefore have to be allowed and the following directions are required to be issued.

10. In this case firstly there is no report of encroachment by any revenue authority and secondly even the Head Master's report was prepared behind the back of the petitioner. Thus, in view of the above referred observations, I have no hesitation to hold that the revenue authorities below have committed error in disqualifying the petitioner. Accordingly, I pass the following order.

- i. Writ petition is partly allowed.
- ii. Order dated 8th June, 2022 passed by the respondent no.2 Additional Collector, Yavatmal and impugned order dated 19th October, 2022 passed by the respondent no.1-Additional Commissioner is hereby quashed and set aside and the matter is remanded back to the Additional Collector, Yavatmal for fresh consideration and decision.
- iii. The Additional Collector, Yavatmal shall decide the matter expeditiously on or before **31st May, 2023**.

[ANIL S. KILOR, J.]

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