

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

WRIT PETITION (WP) NO.7067 OF 2022

Nilesh s/o Vinayakrao Deshmukh
Age about 41 Years, Occ: Sarpanch
R/o Sutala Khurd, Taluka : Khamgaon,
District : Buldhana

.... Petitioner(s)

// VERSUS //

- 1) The Additional Commissioner,
Amravati Division, Amravati Taluka &
District : Amravati
- 2) The Additional Collector, Buldhana
Taluka & District : Buldhana
- 3) Arun S/o Bhimrao Dongre
Age about 45 Years, Occ: Agriculture
R/o Tayde Colony, Sutala Khurd,
Post : G.S. College, Taluka: Khamgaon,
District : Buldhana.
- 4) The Secretary, Gram Panchayat, Sutala
Khurd, Khamgaon, Taluka :
Khamgaon, Dist : Buldhana
- 5) Village Development Officer, Gram
Panchayat Sutala Khurd,
Tah. Khamgaon Distt. Buldhana.

... Respondent(s)

Shri U.J. Deshpande, Advocate for the Petitioner/s
Ms Shamsi Haidar, AGP for the Respondent Nos.1 and 2/State
Shri A.D. Bhate, Advocate for the Respondent No.3

CORAM : ANIL S. KILOR, J.
DATED : 09.06.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties. None appears for the respondent Nos.4 and 5, though served.
3. This is a case of total non-application of mind by the authorities, namely Additional Collector, Buldhana and Additional Commissioner, Amravati Division, Amravati while disqualifying the petitioner, the Sarpanch of the Gram Panchayat Sutala Khurd, under Section 14(1)(g) of the Maharashtra Village Panchayats Act, 1959 (for short “the Act of 1959”).
4. The petitioner is an elected Sarpanch of the Village Panchayat Sutala Khurd, Taluka : Khamgaon, District Buldhana. The respondent No.3 filed a proceeding under Section

14(1)(g) of the Act of 1959, for disqualification of the petitioner, alleging that the amount of Rs.15,000/- was sanctioned towards conference charges/taxi charges for attending the conference and thereby illegally paid Rs.15,000/- to the taxi owner.

5. The Additional Collector, Buldhana allowed the application and disqualified the petitioner vide order dated 21.09.2022 and the same was upheld vide order dated 21.10.2022 by the Additional Commissioner in an appeal carried by the petitioner, by dismissing the appeal and confirming the order of the Additional Collector, Buldhana.

6. Thus, the whole controversy revolves around an interpretation of Section 14(1)(g) of the Act of 1959, which reads thus:

“14. Disqualifications. - (1) No person shall be a member of a panchayat continue as such, who-

(a) to (f) ...

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat or in any

*contract with, by or on behalf of, or employment with or under,
the panchayat; or”*

7. A bare perusal of the above referred provision, leaves no doubt that the said provision attracts only when any elected member of village panchayat has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat or in any contract with, by or on behalf of, or employment with or under the panchayat.

8. Considering the above referred provision, even if the allegations are taken on its face value, it can be said that it does attract Section 14(1)(g) of the Act of 1959. Both the authorities have misinterpreted the said provision in the benefit of respondent No.3. Even the purpose of enacting the said provision does not permit disqualification of any member on the ground as raised by the respondent No.3.

9. Thus, I have no hesitation to hold that it is the case of total non-application of mind by the Additional Commissioner, Amravati and the Additional Collector, Buldhana.

10. In the case of ***Ravi Yashwant Bhoir Vs. Collector***¹, the Hon'ble Supreme Court of India, has held 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 v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly*, and *Ram Beti v. District Panchayat Raj Adhikari*.*

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-

¹ (2012) 4 SCC 407

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."

11. Considering the above referred observations made by the Hon'ble Supreme Court of India and considering the interpretation adopted by the Additional Collector and the Additional Commissioner in this matter, I am of the view that the impugned orders need to be quashed and set aside. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order dated 21.10.2022 passed by Additional Commissioner, Amravati and order dated 21.09.2022 passed by the Additional Collector, Buldhana, are hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]