

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

WRIT PETITION NO. 7333 OF 2022

Sheikh Yunus Sheikh Sattar,
Aged about 65 years, Occ.
Agriculturist, R/o Wakodi, Tq.
Mahagaon, Dist. Yavatmal

...Petitioner

// VERSUS //

1. The State of Maharashtra,
through its Principal Secretary,
Department of Rural Development &
Panchayat Raj.
2. The Additional Commissioner,
Amravati Division, Amravati
3. The Additional District Collector,
Yavatmal
4. Secretary, Grampanchayat, Wakodi,
P.O.Morath, Tq. Mahagaon, Dist.
Yavatmal
5. Block Development Officer,
Panchayat Sasmiti, Mahagaon,
Dist. Yavatmal
6. Hrishikesh Ramdas Shirnath,
Aged About Major, Occ. Business
R/o Wakodi, P.O.Morath, Tq.
Mahagaon, Dist. Yavatmal

... Respondents

Shri Naquid Z. Mirza, Advocate for the petitioner.

Shri A.N.Darunde Advocate h/f Shri B.N.Jaipurkar for the respondent nos. 4
and 5.

Shri K.S.Narwade, Advocate for the respondent no.6.

CORAM : ANIL S. KILOR, J.

DATED : 27th FEBRUARY, 2023.

ORAL JUDGMENT :

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

2. In this writ petition, the challenge is raised to the order dated 10th November, 2022 passed by the respondent no.3 – the Additional District Collector, Yavatmal; the notice dated 8th September, 2022 issued by the respondent no.3 – the Additional District Collector, Yavatmal; and order dated 15th November, 2022 passed by the respondent no.2 – the Additional Commissioner, Amravati Division, Amravati, disqualifying the petitioner from the post of Sarpanch under Section 36 of the Maharashtra Village Panchayat Acts, 1958 (in short referred as ‘Act, 1958’) on the ground that he has failed to hold the meeting during the period from April, 2021 to August, 2021 and thereafter from October, 2021 till 1st November, 2021 and thereafter from January, 2022.

3. The brief facts of the present case are as follows.

The respondent no.6 has filed a proceeding under Section 36 of the Act, 1958 against the petitioner for disqualifying him for not holding the meeting from April, 2021 to August, 2021 and thereafter from October, 2021 till 1st November, 2021 and thereafter from January, 2022. The petitioner filed its reply and also note of argument pointing out that during the alleged period the restrictions were imposed owing to outbreak of Covid-19 Pandemic and because of such restrictions the meetings could not be held.

4. The respondent no.3-Additional Collector, Yavatmal after hearing both the parties, passed the order dated 10th November, 2022, disqualifying the petitioner as Sarpanch of Wakodi, Tq. Mahagaon, District Yavatmal.

5. Feeling aggrieved by the same, the petitioner carried an appeal before the Additional Commissioner, Amravati who dismissed the appeal, on the ground that there is no statutory appeal provided against the order of disqualification under the provisions of Act, 1958, passed by the Collector. Hence, this writ petition.

6. Learned counsel for the petitioner submits that it is a right of Sarpanch to hold the elected post of Sarpanch for a term of five years. It is submitted that the Collector has not recorded any reason or finding to the effect how the cause shown by the petitioner for not holding the meetings, is not the sufficient cause for not holding the meeting. He, therefore, submits that in absence of any reason recorded by the Collector, the disqualification is contrary to the law. For this purpose, he has placed the reliance of Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others*¹

7. Learned Assistant Government Pleader supports the order of the Collector, disqualifying the petitioner under Section 36 of the Act, 1958. He submits that sufficient reasons are recorded by the Additional Collector, therefore, no interference is warranted.

1 2012(4) SCC 407

7. Shri Narwade, learned counsel for the respondent no.6 reiterates the submission of the learned Assistant Government Pleader and submits that in this case the burden lies on the petitioner to prove his case that during the alleged period there were restrictions and because of such restrictions he could not hold the meetings. It is submitted that, the petitioner has failed to bring any material on record that during the alleged period there were restrictions and therefore, the Collector has rightly disqualified the petitioner.

8. It is further submitted that in between the alleged period, the petitioner held two meetings which sufficiently shows that there were no restrictions and if he can hold two meetings during the said period, he could have held every monthly meeting and as he failed to do so without any sufficient cause, the Collector has rightly disqualified him.

9. In the light of rival submissions, I have perused the writ petition, documents and the impugned orders.

10. Though the petitioner in his reply and written notes of argument has categorically pointed out the sufficient cause for not holding meetings namely because of restrictions imposed by the Government owing to pandemic, no findings are recorded by the Collector rejecting the said argument. It is a matter of record that such restrictions were imposed by the Collector in every district and it was well within the knowledge of the respondent no.3.

11. Moreover, though it was argued by the learned counsel for the respondent no.6 that the petitioner held two meetings during the said period of restriction, it will not attract disqualification if the restrictions were there if the next meetings were not hold because of such restrictions.

12. 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. District Magistrate, Rai Bareilly & Ors.*, AIR 1993 SC 2042; and *Ram Beti etc. etc. v. District Panchayat Rajadhipari & 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

² 2012(4) SCC 407

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.

13. The Hon'ble Supreme Court of India in clear terms has observed that 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. 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. Hence, the 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 the 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.

14. In this case, though all the orders imposing the restrictions were issued by the Collector without making any reference to such instructions, the order of disqualification came to be passed.

15. In that view of the matter, I have no hesitation to hold that in casual manner the Collector has disqualified the petitioner contrary to law. In the circumstances, I pass the following order.

- i. Writ petition is allowed;
- ii. Order dated 10th November, 2022 passed by the respondent no.3 – the Additional District Collector, Yavatmal, the notice dated 8th September, 2022 issued by the respondent no.3 – the Additional District Collector, Yavatmal and order dated 15th November, 2022 passed by the respondent no.2 – the Additional Commissioner, Amravati Division, Amravati are hereby quashed and set aside;
- iii. The matter is remanded back to the Additional District Collector, Yavatmal to decide it afresh after hearing both the parties and after recording the reasons in light of the decision of the Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others* (supra).
- iv. Both the parties are directed to remain present before the Additional District Collector, Yavatmal on **10th March, 2023** at 12 noon, thereupon the Collector shall decide the application under Section 36 of the Act, 1958 filed by the respondent no.6 within one month thereafter.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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K NAIR
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