



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5160 OF 2022**

Sangita Raosaheb Bhavar,
Age: 47 years, Occupation: Sarpanch,
R/o: At and Post Aasarkheda,
Taluka Badnapur, District: Jalna.

..Petitioner

Versus

1. The Additional Divisional Commisser,
Aurangabad, Aurangabad.
2. The District Collector,
Jalna, Taluka and District Jalna.
3. Uddhav Digambar Hiwale,
Age: 36 years, Occupation: Agriculture,
R/o: At and Post Aasarkheda,
Taluka Badnapur, District: Jalna.
4. Gram Sevak,
Grampanchayat Aasarkheda,
At and Post Aasarkheda,
Taluka Badnapur, District: Jalna.

..Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for
Petitioner.

Mr. S. N. Kendre, AGP for Respondent Nos.1 and 2.

Ms. Pradnya Talekar i/by M/s Talekar and Associates, Advocate for
Respondent No.3.

Mr. V. B. Kulkarni, Advocate for Respondent No.4.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 22nd JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner impugns the order dated 22.03.2022 passed by the District Collector, Aurangabad in Grampanchayat Dispute No.284/2021 as well as order dated 26.04.2022 passed by the Divisional Commissioner, Aurangabad in Appeal No.49/2022, by

which the disqualification of the petitioner has been upheld in terms of Section 14(G)(J) of the Maharashtra Village Panchayat Act, 1958 (for short 'Act of 1958').

3. Mr. Hon, learned Senior Advocate appearing for the petitioner submits that the petitioner came to be elected as Sarpanch of Village Aasarkheda. The respondent no.3, who is political opponent raised Grampanchayat Dispute No.284/2021 seeking disqualification under Section 14 (G)(J) of the Act of 1958 alleging that the petitioner's husband has encroached upon the Government land/road. Mr. Hon would invite attention of this Court communication dated 30.08.2021 issued by Deputy Executive Engineer, P.W.D., Badnapur, by which he informed District Collector, Jalna asserting encroachment by the petitioner's husband on Aasarkheda-Nivdunga highway. He would submit that in fact there is voluminous evidence in the form of panchanamas conducted by the Grampanchayat authorities, Tahsildar and Block Development Officer, Panchayat Samiti indicating that there is no encroachment is discernible as alleged. He would further submit that only on the basis of communication dated 30.08.2021 inference is drawn about encroachment made by the petitioner's husband and disqualification order has been passed. The Appellate Authority i.e. Divisional Commissioner, Aurangabad without looking to the grounds of Appeal, mechanically confirmed the order. Mr. Hon would submit that in absence of joint measurement, no inference can be drawn as regards to the encroachment on public road.

4. He would further submit that elected representative cannot be unseated by executive action in absence of impeccable evidence. He would further point out that this Court granted stay to the execution of disqualification order after recording detailed reasons

and the petitioner is continued as Sarpanch. He would, therefore, urge to allow the Writ Petition and set aside the impugned order. To buttress his submissions, he relies upon the judgment of this Court in ***Writ Petition No.69/2020 (Prashant S/o. Eknath Ghule Vs. The Additional Commissioner and Ors.)*** dated ***15.01.2020***.

5. Per contra, Ms. Talekar, learned Advocate appearing for respondent no.3, vehemently submits that District Collector caused independent enquiry into the complaint made by respondent no.3. In pursuance of the directions given by the District Collector, vide his communication dated 20.08.2021, the Deputy Executive Engineer, P.W.D., Badnapur caused spot inspection and drawn panchanama, which records existence of construction of petitioners husband admeasuring 10 x 8 feet, having encroachment upto 7 feet on the public road. Ms. Talekar, learned Advocate would further submit that both the authorities have concurrently recorded findings of facts leading to the disqualification of the petitioner. She would further submit that the Authority, who considered the complaint is not expected to render full-fledged enquiry like Civil Suit or Criminal matter. The finding of the fact is based on sufficient evidence. The petitioner has not rebutted the material on record to prove her innocence. She would further point out that after spot inspection by the Deputy Executive Engineer, P.W.D., Badnapur, the petitioner has removed encroachment with intention to vanish evidence. To buttress her submissions she relies upon the judgment of this Court in case of ***Shobha Pradeep Patil (Gaikwad) and Others Vs. Additional Divisional Commissioner, Pune and Others***¹ and judgment in case of ***Nikhil Uttam Undre Vs. State of Maharashtra and Others***².

1 2018 (4) Mh.L.J. 433.

2 (2023) 6 Mah LJ 454.

6. Having considered submissions advanced by the learned Advocates for the respective parties and after going through the documents tendered into service, it can be observed that the petitioner is elected Sarpanch of the Grampanchayat, Aasarkheda. The respondent no.3 made representation to Deputy Engineer, P.W.D., Jafrabad alleging encroachment by the petitioner's husband on Aasarkheda-Nivdunga road. In pursuance to respondent no.3's representation, Deputy Executive Engineer, P.W.D., Jafrabad informed him that subject portion of road falls within the jurisdiction of the Deputy Executive Engineer, P.W.D., Badnapur. Consequently, respondent no.3 made representation to Deputy Executive Engineer, P.W.D., Badnapur, who addressed communication dated 23.05.2021 to petitioner confirming such encroachment. Relying on the aforesaid communication, respondent no.3 raised Grampanchayat Dispute, alleging disqualification of the petitioner under Section 14(1)(J-3) of the Act of 1958. In pursuance of the dispute filed by respondent no.3, District Collector, Jalna issued communication to Tahsildar and in turn to Deputy Executive Engineer, P.W.D., Badnapur to conduct spot inspection and submit report regarding alleged encroachment. On 30.08.2021, Deputy Executive Engineer, P.W.D., Badnapur submitted his letter confirming encroachment upto 7 feet on Aasarkheda-Nivdunga Highway by petitioner's husband. The District Collector-respondent no.2 relying upon the communication dated 30.08.2021 concluded that the petitioner encroached upon public road and consequently, declared her to be disqualified. The petitioner filed Appeal before the Divisional Commissioner, however, the same has been dismissed.

7. Perusal of the findings recorded by the District Collector in his order dated 22.03.2022 shows that he based decision only on communication dated 30.08.2021 issued by the Deputy Executive

Engineer, P.W.D., Badnapur. The contents of document annexed with the said communication are not discussed. The collector has not independently assessed material on record. No independent conclusion is arrived after applying his own mind to the material tendered before him by various Authorities.

8. Perusal of communication dated 30.08.2021 merely record that on spot inspection, encroachment on public road by the petitioner's husband has been noted. Pertinently, communication states photo print and satellite print was attached. However it does not refer to panchanama drawn on the spot. Copy of panchanama placed by respondent no.3 alongwith affidavit in reply does not seem to be the part of communication dated 30.08.2021. The list of annexures or contents of said communication nowhere refers to such panchanama. The panchanama is undated. If the panchanama would have been prepared in presence of Technical Officer like Deputy Executive Engineer, relevant technical details and map of measurement containing width of road, alignment from center, location of encroachment could have been set-out with perfection. The language and manner of panchanama clearly depict that it has been prepared by non-technical person. Pertinently, there is no reference of such panchanama even in the order passed by the District Collector. There is nothing to show that the petitioner was served with notice before drawing panchanama. Although panchanama refers that the husband of the petitioner and the other family members refused to accept the notice, no particulars of person who attempted such service are given. Independent panchanama depicting refusal to accept notice is not carried. The very panchanama becomes unacceptable and doubtful document.

9. Pertinently, there was no notice by the PWD Authorities to the petitioners husband asserting encroachment on public road or asking him to remove the same at any point of time. The so called letter is given only when respondent asked for it. The finding of District collector as regards to the encroachment by petitioner's husband is not sustainable for want of acceptable material.

10. Although there is force in contention of Ms. Talekar that Quasi Judicial Authorities discharging functions under the Village Panchayat Act are not expected to hold expertise like Civil or Criminal Courts or principals of evidence act cannot be strictly applied in such proceeding, it cannot be ignored that when it comes to removal of elected representative from the office by executive action, the concrete evidence must come on record in support of facts constituting disqualification. It is trite that, removal of the elected representative has serious repercussion on the person in office. Further it takes away valuable right of representation of the respective Constituency by the person of their choice. Therefore, in such cases reasonable standards of procedure and proof are needs to be adhered. Removal from public office without impeccable material and sufficient reasons cannot be countenanced. In light of the aforesaid observations, the impugned orders are not sustainable in law. Consequently, Writ Petition deserves to be allowed. Hence, the following order:

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (B).
- b. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE