



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9488 OF 2023

Sangita w/o Achutrao Patharkar,
Age 38 yrs., Occ. Household,
R/o Umarthadi, Tq. Palam,
Dist. Parbhani.

... Petitioner

... **Versus** ...

- 1 The Chief Electoral Officer,
State of Maharashtra,
Madam Kama Road,
Hutatma Rajguru Square,
Mantralaya, Mumbai – 400 032.
- 2 The Collector,
Collector Officer, Parbhani,
Tq. & Dist. Parbhani.
- 3 The Sub Divisional Officer,
Sub Division Office, Gangakhed,
Dist. Parbhani.
- 4 The Tahsildar,
Tahsil Office, Palam,
Tq. Palam, Dist. Parbhani.
- 5 Bhagwat Rameshwar Khonde,
Age 40 yrs., Occ. Agri.,
R/o Umarthadi, Tq. Palam,
Dist. Parbhani.

... Respondents

...

Mr. V.D. Sapkal, Senior Counsel i/b Mr. P.U. Gujrathi, Advocate for petitioner

Mr. A.B. Kadethankar, Advocate for respondent No.1

Mr. V.M. Jaware, AGP for respondent Nos.2 to 4

Mr. D.A. Madake, Advocate for respondent No.5

...

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 13th JUNE, 2024

PRONOUNCED ON : 25th JUNE, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner takes exception to order dated 19.07.2023, passed by respondent No.1 – Chief Electoral Officer, Mumbai in ELR-2023/CASE NO.414/23/33, confirming the order passed by District Collector, Parbhani in File No.2023/GAD/VPE-2/CASE No.4 dated 22.05.2023.

3 Mr. V.D. Sapkal, learned Senior Counsel appearing for the petitioner submits that on 19.09.2022, petitioner has been elected as Sarpanch of Grampanchayat Umarthadi, Tq. Palam, Dist. Parbhani against the seat earmarked for OBC category. Respondent No.5 moved an application

dated 07.09.2022 before District Collector, Parbhani alleging that the petitioner's name has been included in the voters list of village Umarthadi based on false declaration. She is resident of village Ghoda, Tq. Palam. Her name appears in the voters list at Sr.No.168 dated 05.01.2022. She holds Ration Card at village Ghoda. She was a member of group village Panchayat Ghoda-Someshwar during term of 2012-2017. However, when the post of Sarpanch for village panchayat Umarthadi declared reserved for OBC - Women, petitioner secured inclusion of her name in voters list and got elected.

4 The Respondent No.5 filed one more application dated 15.11.2022, asserting disqualification of the petitioner in terms of Section 14(1)(k) r/w Section 11, 12 and 13 of Maharashtra Village Panchayat Act, 1958 (for brevity hereinafter referred to as "**MVP Act**"). While said application was pending, respondent No.5 filed Writ Petition No.12332 of 2022 in this court which was disposed of with direction to decide same, as early as possible and in any case within a period of 12 weeks from the date of order i.e. 06.12.2022. The petitioner submitted reply to the application pending before Collector. After hearing all concern, learned Collector partly allowed the application directing removal of petitioner's name from the voters list for village Umarthadi and sought compliance report from the Sub

Divisional Officer, Gangakhed vide order dated 22.05.2023.

5 The petitioner assailed the order of District Collector – respondent No.2 before Chief Electoral Officer, Maharashtra State in appeal U/S 24(b) of Representation of the People Act, however, appeal suffered dismissal vide order dated 19.07.2023, confirming order dated 22.05.2023 passed by District Collector/District Election Officer, Parbhani with further observation that action shall be taken by following due process prescribed under Section 18, 31 and 22 of the Representation of People Act, 1950.

6 Mr. V.D. Sapkal, learned Senior Counsel submits that the proceedings was moved before District Collector seeking disqualification of petitioner to continue as Sarpanch u/s 14(1)(k) of the MVP Act, however, the ultimate order of removal of petitioner's name from the voters list has been passed under representation of People Act, 1950, without following due process of law. He would submit that the disqualification prescribed under Section 14(1)(k) of the MVP Act has no application in the facts of the case. In a proceeding for disqualification under MVP Act, 1958, District Collector could not have passed order u/s 22 of the Representation of People Act, 1950 without following due process prescribed for that purpose. The procedure adopted by the District Collector as well as the Chief Election Officer, is inconsistent with the statutory provisions.

7 Per contra, Mr. D.A. Madake, learned Advocate appearing for respondent No.5 submits that the petitioner is guilty fraud against the constituency. Although her name was appearing in the voters list of village Ghoda, on the basis of false declaration, she got included her name in the voters list of village Umarthadi and grabbed reserved seat earmarked for OBC women, since she was knowing well that in Umarthadi constituency, OBC voters are not available. He would submit that Section 18 of the Representation of People Act, 1950 prohibits registration / inclusion of any voter in more than one constituency. The record depicts that the petitioner's name appears in the voters list for Ghoda constituency as well as Umarthadi constituency. She is, therefore, liable to be prosecuted u/s 31 of the Representation of the People Act for making false declaration, punishable with imprisonment of one year. He would, therefore, justify the directions given by the Collector as confirmed by State Election Officer u/s 22 of the Representation of People Act, 1950.

8 Mr. V.M. Jaware, learned AGP appearing for respondent Nos.2 and 4 supports the impugned orders.

9 Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of the documents tendered into service, apparently respondent No.5 appears to have moved application

dated 07.09.2022 objecting illegal inclusion of petitioners name in the voters list for Umarthadi constituency, alleging that she is resident of village Ghoda and her name is included in franchise for Ghoda constituency. Similarly, on 15.11.2022 the representation/application is made to District Collector seeking disqualification of petitioner to continue as Sarpanch in terms of Section 14(1) of MVP Act. Respondent No.5, in pursuance of the aforesaid applications filed Writ Petition No.12332 of 2022 before this Court alleging inaction on the part of Collector to take further steps. The said writ petition was listed before Division Bench of this Court on 06.12.2022 and disposed of as under :

“ Heard the learned advocate for the petitioner and the learned A.G.P

2 The petitioner has submitted an application purportedly under Section 16 of the Maharashtra Village Panchayat Act, 1959 on 15.11.2022 seeking disqualification of a Sarpanch under the provisions of Section 14(1)(k) read with Section 11 to 13 of the Act, is merely seeking a direction that the proceeding shall be decided expeditiously.

3 We dispose of the writ petition with a direction to the respondent No.2-Collector to decide the petitioner's application (Exhibit 'G') dated 15.11.2022 on its own merits, as early as possible and in any case within 12 weeks from today.”

It is apparent that the petitioner persuaded this Court for issuance of direction against District Collector to decide disqualification proceeding pending since 15.11.2022 under Section 16 of the MVP Act read with Section 14(1)(k) and Section 11 to 13 of the Act. Accordingly, this Court directed District Collector to decide application dated 15.11.2022. The petitioner filed reply to the application tendered by respondent No.5 refuting the averments therein. Even order dated 22.05.2023 passed by District Collector shows that proceeding was taken up under the provisions of MVP Act, however, learned District Collector referring to Sections 18, 20, 22 and 31 of the Representation of People Act, issued directions to delete the petitioner's name from the list of voters for village Umarthadi. The same order appears to have been confirmed by the Chief Election Officer in exercise of appellate jurisdiction under Section 24(b) of the Representation of People Act

10 Pertinently learned District Collector was ceased with the proceedings under MVP Act in pursuance of the application dated 07.09.2022 or 15.11.2022 submitted by respondent No.5 seeking disqualification under the provisions of MVP Act. This Court in order dated 06.12.2022 directed District Collector to dispose of proceedings of disqualification under Section 16 read with Section 14(1)(k) and Section 11 to 13 of the Act. The

petitioner was therefore, expected to defend said proceedings. However, District Collector passed ultimate order u/s 22 of the Representation of People Act, directing removal of petitioner's name from voters list of village Umarthadi.

11 Pertinently, Section 22 of the Representation of People Act, 1950 deals with 'correction of entries in electoral rolls' which states as under

"22. Correction of entries in electoral rolls. - If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency -

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry [after proper verification of facts in such manner as may be prescribed]:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him [after proper verification of facts in such manner as may be prescribed.]”

Although the Electoral Registration Officer is empowered to delete the name of any person from electoral rolls on the ground that he is otherwise not entitled to the registration in electoral rolls of that constituency, such action can be taken after indicating the reasons for such action proposed against the person and after giving him the opportunity to be heard. In present case, there is nothing to show that the procedure contemplated under Section 22 of the Act was independently initiated by the Electoral Registration Officer for that constituency against the petitioner. It cannot be disputed that Section 18 of the Representation of the People Act mandate that no person can be registered for more than once in an electoral roll for any constituency and Section 31 provides for penal provisions for making false declaration. However in present case no proceedings had been initiated against the petitioner by Electoral Registration Officer under the Representation of the People Act. The procedure adopted by the respondent

authorities and consequential order of removal of petitioner's name from the voters list appears to have been passed in disqualification proceeding. Unfortunately both the authorities have failed to exercise jurisdiction vested with them in judicious manner. As per Section 22 of the Representation of the People Act, the proceedings could have been initiated before Electoral Registration Officer for the constituency by making appropriate application for that purpose. The Collector could have relegated the application tendered before him to the authorized person under Section 22 of the Representation of the People Act. The show cause notice ought to have been issued to the petitioner by such officer and then the proceedings could have been taken up to the logical end. The Collector is not expected to exercise jurisdiction vested under two different enactments in one and the same proceedings. Resultantly, the order impugned cannot be sustained under law. Hence, following order.

ORDER

1 The Writ Petition is allowed.

2 The impugned order passed by District Collector, Parbhani in Sr.No.2023/GAD/VPE-2/Case No.4 dated 22.05.2023 and confirmed by the Chief Electoral Officer, Mumbai in ELR-2023/CASE NO.414/23/33 dated

19.07.2023 are hereby quashed and set aside.

3 However, the authorities under the Representation of the People Act are at liberty to take appropriate steps in accordance with law pursuance to the representations made by respondent No.5.

4 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR)
JUDGE

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