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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 9296 OF 2024

SAVITRABAI MAROTI NILEWAR

....Petitioner

VERSUS

THE COLLECTOR AND OTHERS

.....Respondent

Mr. Umakant B. Deshmukh, Advocate for the petitioner
Mr. Vaibhav B. Kulkarni, Advocate for respondent No.3
Mr. V. S. Badakh, AGP for the respondents/State
Mr. S. B. Pulkundwar, Advocate for respondent No.4

CORAM : KISHORE C. SANT, J.

DATE : 29th AUGUST, 2024

P. C.

1. Heard the parties.
2. Short grievance of the petitioner elected as Sarpanch, Rajapur was held disqualified on the ground of non-conducting of monthly meetings as required under the Maharashtra Village Panchayat Act without giving sufficient opportunity to go through record and prepare his defense.

3. Facts, in short are that, the petitioner came to be elected as a member of Grampanchayat, Rajpaur in February, 2021 and thereafter, also came to be elected as Sarpanch. On 13-09-2022 respondent No.3 raised a dispute before the learned Collector, Nanded. The learned Collector called for report from the Block Development Officer. On the basis of said report, the learned Collector decided the dispute and declared the petitioner as disqualified. Grievance of the petitioner was that copy of report of Block Development Officer was not made available to the petitioner. The petitioner, therefore, filed the writ petition No.1398/20222. This court by order dated 06-03-2024 partly allowed the writ petition and remanded the matter back with direction to the learned Collector to make the record available to the petitioner and more specifically the report of the BDO.

4. After remand, the learned Collector, observed that record is made available to both the parties and again allowed the dispute. Grievance now is that the learned Collector had

heard the parties on 21-05-2024 observing that record was made available to both the parties. However, it is specific contention of the petitioner that record was received by the office, after the matter was closed for orders on 21-05-224. He points out that even the endorsement of receipt of report by the office of the Collector is of 22-05-2024 and thus, there was no question of making said record available to the parties. He thus, prays for quashing and setting aside the order of the learned Collector dated 01-08-2024.

5. Learned AGP submits that record was received by the office of the Collector on 21-05-2024. The parties were given opportunity to see the record. Hearing was going on for long hours. It is, therefore, record could not be sent to inward section on the same day. It is for this reason that endorsement of receipt by inward section appears of 22-05-2024. As a matter of fact, it was very well made available to the parties before hearing. He has also placed on record the communication received from the office of the Collector in response to telephonic communication

dated 28-08-2024, wherein it is stated that both the parties were given time to go through the record. It is stated that since hearing was going on for long time, entry of record on register is of 22-05-2024.

6. Learned advocate for respondent No.3 also submits that in fact record was very much made available. He pointed out certain averments from the written submission in support of his submission showing that the petitioner was aware of the contents of the report. He prays for rejection of the petition.

7. On going through the record, it is seen that there is reference in Roznama dated 21-05-2024 that record was received and was made available to the parties. Even in the judgment the learned Collector has observed that record was made available to the parties. This court by order dated 06-03-2024, in the earlier writ petition had specifically directed the learned Collector to allow the parties to go through the record and make submissions. When record was received on 21-05-

2024, it was open for the learned Collector to wait for a day or two to facilitate the parties to go through the record minutely. Assuming that record was made available on 21-05-2024, it needs to be kept in mind that sufficient time needs to be given to the parties to minutely see the record and then make submission. Principle of natural justice does not only require making available of the record, but it would also require sufficient time to think over the report and material.

8. Considering all above, the following order:

ORDER

i] The matter is remanded back for fresh decision to the learned Collector, Nanded. The learned Collector, shall give at least two days time to the parties to go through the record and the report by the B.D.O. & thereafter make submission.

ii] The learned Collector, Nanded shall decide the dispute within two weeks from today.

iii] Parties are at liberty to file written submission on the basis of report of BDO.

iv] It is informed that election to the post of Sarpanch is scheduled tomorrow. In view of this order, same shall be deferred till hearing of the learned Collector of a dispute.

v] The parties to appear before the learned Collector, Nanded on 03-09-2024.

vi] The parties to ensure that record/report of the BDO is retained by the learned Collector, Nanded till its decision.

vii] The learned AGP to communicate this order to the concerned.

[KISHORE C. SANT, J.]