

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1965 OF 2024

VAIBHAV
RAMESH
JADHAV
Digitally signed by
Vaibhav Ramesh
DN: cn=Vaibhav Ramesh
17.14.09 +0530

Minatai Bhimrao Kamble ... Petitioner

V/s.

The District Collector Kolhapur & Anr. ... Respondents

Mr. Drupad S. Patil with Mr. Prasad G. Keluskar for the
petitioner.

Mr. Y. D. Patil, AGP for the State/respondent No.1.

Mr. Aditya Raktade i/by Mr. Avinash Reddy for the
Intervener.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 12, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- The petitioner is elected Sarpanch who has been disqualified in exercise of power under section 36 of the Maharashtra Village Panchayat Act, 1959. The reason for disqualification is failure to hold meeting in the month of April 2021.
- The petitioner was served with notice of proposed action. He submitted a reply pointing out that the Collector in the month of 2021 had issued a notification under section 144 of the Criminal Procedure Code, 1973 prohibiting assembly of more than five persons. The petitioner was under the bona fide belief that such

notification applies to Gram Panchayat meeting and, hence, refused to convene the meeting.

4. The Collector by the impugned order dated 25th January 2024 refused to accept cause shown by the petitioner as “sufficient cause” within the meaning of proviso to section 36 of the Maharashtra Village Panchayat Act, 1959.

5. The petitioner is elected Sarpanch. Proceedings for disqualification of elected Sarpanch need to be construed by taking into consideration the fact that he is representing the electorate. The interpretation in favour of disqualification must be strictly construed. At the relevant time of COVID-19, the issuance of notification under section 144 of the Criminal Procedure Code, 1973 may not strictly apply to the meeting. However, it is sufficient to make bona fide belief amongst the citizens that it prohibits assembly of more than five persons. Such doubt created by issuance of such notification should be held in favour of the petitioner as “sufficient cause” within meaning of proviso to section 36 of the Maharashtra Village Panchayat Act, 1959. Hence, the impugned order cannot be sustained.

6. The intervener has filed intervention application seeking permission to intervene. The Apex Court in the case of **Ravi Yashwant Bhoir vs. Collector, (2012) 4 SCC 407**. has considered similar application filed by voter. The Apex Court reviewed distinction between the person who is entitled to bring illegality to the notice of Collector and the person who is entitled to get opportunity of hearing or opportunity to hear in the matter. At the

most, such person can bring illegality to the notice of statutory authority. However, such person cannot be elevated to the status of person aggrieved. The intervener needs to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. Therefore, intervener's application cannot be entertained.

7. Since the petitioner has made out a sufficient cause, the impugned order cannot be sustained.

8. Rule is made absolute in terms of prayer clause (a). No costs.

9. All pending interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)