

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6145 OF 2024

Sharda Sampat Khairnar ...Petitioner
Versus
State Election Commission, Maharashtra & ors. ...Respondents

Mr Bhushan Deshmukh , *for the Petitioner.*
Ms S S Bhende, AGP, *for the Respondent-State.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 21st June 2024

PC:-

1. Heard learned counsel for the parties.
2. The Petitioner seeks an appropriate writ to direct the Respondents to proceed with the election program dated 6th October 2023 and hold elections to fill the vacancy created by the disqualification of Panch member/sarpanch Ms Jyoti Prabhakar Khairnar.
3. Mr Deshmukh, learned counsel for the Petitioner, submits that the said Jyoti Khairnar was disqualified as a member of the Panchayat and consequently as a sarpanch for violating the provisions of Section 14(1)(g) of the Maharashtra Village

Panchayats Act, 1958 for directly or indirectly holding a share or interest in the work done by Panchayat or in any contract with the Panchayat. He pointed out that the Additional Collector, Nashik, disqualified the said Jyoti Khairnar and such disqualification was confirmed by the Additional Commissioner, Nashik Division, Nashik, by order dated 19th May 2023.

4. Mr Deshmukh submitted that even though this Court, by its order dated 11th October 2023, may have set aside the disqualification orders made by the Additional Collector and the Additional Commissioner still, this Court, by the judgment and order dated 11th October 2023, did not direct the reinstatement of the said Jyoti Khairnar as a member or sarpanch of the Panchayat. Mr Deshmukh, therefore, submitted that the election program dated 6th October 2023, as declared by the State Election Commission, must proceed, particularly since the same has not been withdrawn by the State Election Commission to date.

5. Ms. Bhende, learned AGP for the Respondent-State, points out that this Court, by order dated 11th October 2023, had set aside the orders of disqualification against the said Jyoti Khairnar, and the consequence of such setting aside is that she stands reinstated as a member/sarpanch. She refers to paragraph 7 of the order of this Court dated 11th October 2023 to support her contention.

6. The rival contentions now fall for our determination :

7. At the outset, this Petition must be rejected because the Petitioner has not bothered to implead the said Jyoti Khairnar, who was an absolutely necessary party Respondent to this Petition. The

reliefs as prayed for in this petition, if granted, would affect the said Jyoti Khairnar directly. Yet, the Petitioner has chosen not to implead such a necessary party.

8. However, there is yet another fundamental reason why this Petition deserves to be dismissed. Admittedly, the said Jyoti Khairnar was disqualified by the orders of the Additional Collector and the Additional Commissioner. But the learned Single Judge of this Court set aside those disqualification orders by its order dated 11 October 2023 in Writ Petition No.8310 of 2023 instituted by the said Jyoti Khairnar.

9. The learned Single Judge of this Court has held that the orders disqualifying the said Jyoti Khairnar were perverse and deserved to be set aside. Paragraph 7 of the order of this Court dated 11th October 2023 is relevant and reads as follows:-

“7. Accordingly, the Writ Petition is allowed by setting aside the order dated 19th October 2022 passed by the Additional Collector, Nashik in Gram Panchayat Dispute Application No.87 of 2021 as well as order dated 19th May 2023 passed by learned Additional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No.177 of 2022 and said Gram Panchayat Dispute Application No.87 is dismissed.”

10. From the above, it is apparent that the disqualification orders were set aside, and the logical corollary to such setting aside is that the Petitioner stood qualified and consequently reinstated to the position of member of the said panchayat. In such circumstances, it cannot be said that any vacancy has arisen in the member's position, which was required to be filled by holding fresh elections.

11. Therefore, even though the election program may have been announced by the State Election Commission on 6th October 2023, the State Election Commission has not insisted on going ahead with such an election program. The mere and alleged circumstance that there is no formal notification withdrawing the election program or that there is no formal order reinstating the said Jyoti Khairnar cannot be a ground to direct the Respondents to proceed with the election schedule when it is established that there is no vacancy in the member's position to which such election can be held.

12. The jurisdiction under Article 226 must be exercised to advance substantial justice. Therefore, relief cannot be readily granted based on some technical pleas. In this case, if the writ as claimed by the Petitioner is issued, the same would be most unjust to Jyoti Khairnar, whom the Petitioner has not bothered to implead and, moreover, whose disqualification is already set aside by this Court.

13. For the above reasons, we dismiss this Petition.

14. There shall be no order as to costs.

(Kamal Khata, J)

(M.S. Sonak, J)