



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1997 OF 2024

(AMBADAS KESHAV DHARGAVE..VS.. ADDITIONAL COMMISSIONER, NAGPUR DIVISION & OTH)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Tejas Deshpande, Adv. a/w Shri Alpesh Deshmukh, Adv. for Petitioner.
Ms Sangeeta Jachak, Addl.G.P. for Respondent Nos. 1 to 3.
Shri Bhojraj Dhandale, Advocate for Respondent No.5.

CORAM : ANIL S. KILOR, J.

DATED : MAY 03, 2024.

1. Heard.
2. The Collector disqualified the respondent No.5 as Sarpanch of Gram Panchayat, Palora (Chauras), Tahsil : Paoni, District : Bhandara under Section 14(1)(j-3) and Section 16 of the Maharashtra Village Panchayats Act, 1958. It is alleged that the father of the respondent No.5 has encroached upon the Government land and the Gram Panchayat record viz. Gao Namuna-8, shows encroachment made and also penalty paid by the father of the petitioner. The basis to hold that the respondent No.5 is residing with his father is the Ration Card issued under the Public Distribution Scheme.
3. The respondent No.5, feeling aggrieved by the order of the Collector, filed an appeal before the Additional Commissioner, who has reversed the order of the Collector dated 12/07/2023 and remanded the matter back for fresh consideration.

4. After remand, the Collector decided the matter afresh vide order dated 26/02/2024 and maintained his earlier order of disqualification which was again reversed by the Additional Commissioner vide order dated 14/03/2024. The same is under challenge in this writ petition.

5. In the matter at hand, as far as encroachment by the father is concerned, there is certain material available on record to that effect i.e. Gao Namuna-8 of the year 2015-16 showing that the father of the respondent No.5 has made an encroachment over 600 sq.ft. land. However, in absence of any evidence to show that the respondent No.5 is residing with his father in the joint family and also enjoying the property in dispute with his father, in view of the judgment of the Hon'ble Supreme Court of India in the case of *Jana Bai ..vs.. State* the Additional Commissioner set aside the order of the Collector dated 26/02/2024.

6. In the circumstances, the issue involved in the present writ petition, whether there is any evidence to show that the respondent No.5 is residing with his father or there is a joint family of the respondent No.5 and his father.

7. Except the Ration Card there is no other evidence produced by the petitioner or the respondent-

authority, which is not sufficient to either hold that the petitioner is residing with father on an encroached land or there is a joint family.

8. The Hon'ble Supreme Court of India in the case of *Janabai ..vs.. Additional Commissioner and others*, reported in **(2018) 18 SCC 196** has observed thus :

“30. We may note here with profit that the word "person" as used in Section 14(1)(-3) is not to be so narrowly construed as a consequence of which the basic issue of "encroachment" in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorised occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision. Thus analysed, we are of the view that the

decision in Sagar Pandurang Dhundare does not lay down the correct position of law and it is, accordingly, overruled.”
(Emphasis supplied)

9. The Hon’ble Supreme Court of India, while dealing with the issue regarding removal of an elected member in the case of *Ravi Yashwant Bhoir ..vs.. Collector*, reported in **(2012) 4 SCC 407** has held thus:

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

*35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly*, and *Ram Beti v. District Panchayat Raj Adhikari*.*

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office- bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion', etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

46. The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural

justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.”

10. From the above referred well settled legal position, it can be said that in absence of any evidence against the respondent No.5 that he is residing with his father or he is in occupation of the land in question, I am of the opinion that the Additional Commissioner has rightly set aside the order of disqualification passed by the Collector, dated 26/02/2024.

11. Accordingly, the Writ Petition is **dismissed**. No order as to costs.

JUDGE