



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

WRIT PETITION NO. 2089 OF 2024

Sanjay s/o Bhimrao Saudar
A/a 63 years, occ. Cultivator,
R/o Sawargaon Teli, Post Bhumrala,
Distt. Buldana

PETITIONER

VERSUS

1 Jagarao s/o Raising Ade,
a/a 53 years, Occ. Cultivator,
R/o Sawargaon - Teli, Post Bhumrala,
Tq. Lonar, Distt. Buldana

RESPONDENTS

2 The Secretary,
Grampanchayat, Sawargaon Teli,
Tq. Lonar, Distt. Buldana

Mr. C.A. Joshi, Advocate for petitioner
Mrs. S.S. Jachak, Addl. GP for Respondent No.2

CORAM : BHARAT P. DESHPANDE, J.

DATE : 28th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard with consent for final disposal.

2. The petitioner is Upsarpanch of Panchayat Sawargaon Teli, Tah. Lonar, District Buldhana. By the impugned order dated 05/3/2024, the petitioner was disqualified for the

misconduct of signing of the notice along with the Secretary under Section 39(1) of the Maharashtra Village Panchayat Act.

3. The petitioner filed appeal against the said decision before the Government / Minister as per Section 39(3) of the said Act, however, it is reported that the said appeal is not entertained till date and since elections are declared, the possibility of entertaining such appeal till declaration of results is blink.

4. The learned counsel for the petitioner would submit that the same complaint was lodged for the illegal encroachment against Sarpanch Jagarao Ade, claiming that his relatives encroached upon the Government land and, therefore, the Sarpancha is required to be disqualified. Such complaint was forwarded to the Panchayat by the Block Development Officer for taking necessary action. The Secretary vide notice dated 20/8/2023, issued show cause notice to Vitthal Ratan Ade and Sahebrao Ratan Ade, relatives of Sarpanch to show cause as to why action should not be taken for encroachment.

5. The learned counsel for the petitioner would submit that since original complaint was against the relatives of Sarpanch, he

was reluctant to sign such notice though duty bound and accordingly the petitioner being Upsarpanch signed the said notice.

6. The learned counsel for the petitioner would then submit that only because the petitioner signed notice dated 20/8/2023, along with the Secretary, Sarpanch lodged the complaint before the Commissioner, Amravati, claiming that the petitioner committed mischief and misuse the powers. The Commissioner after conducting necessary enquiry passed the impugned order dated 05/03/2024 and accordingly disqualified the petitioner.

7. The learned Additional Government Pleader would submit that the report clearly goes to show that when the matter was taken up before the Panchayat, the Sarpanch wanted to settle the matter amicably and he refused to sign the notice though he was duty bound to sign it. Accordingly notice was signed by the petitioner being Upsarpanch.

8. The learned Addl. G.P would submit that as per Section 38(4) of the said Act, the powers and duties of the Sarpanch and other competent persons are mentioned.

9. I seems that though the appeal is filed by the petitioner, there is no likelihood that the appeal will be heard by the Rural Development Minister, till the elections are over. The petitioner, therefore, approached this Court for relief.

10. Considering the above fact that the complaint was lodged against the relative of the Sarpanch and that attempt was made by Sarpanch to settle the matter amicably and thereafter refusal to sign the notice, prima facie, show that Sarpanch itself is involved in the said proceedings. The directions were issued by the BDO to decide the complaint filed by one Ganpat Amru Rathod and accordingly Sarpanch was duty bound to issue show cause notice to the relative of the Sarpanch by name Vitthal Ratan Ade and Sahebrao Ratan Ade. In fact, Sarpanch ought to have signed the notice. On his failure, the petitioner signed such notice.

11. The contention that the appeal is pending and likely to be taken till the election is over, directions could be issued to the appellate authority to dispose of the appeal as early as possible, however, till that time, the petitioner needs to be protected.

12. The impugned order is with regard to disqualification only on signing of the show cause notice by the petitioner.

13. This Court has not dealt with the grounds raised in the present petition as well as in the appeal and it is left open to the appellate authority to decide such appeal in accordance with law and by giving opportunities to both the parties, however, till disposal of the said appeal, the impugned order dated 05/03/2024 shall be stayed.

14. Needless to mention this Court has not gone into the merits of the matter. The appellate authority shall decide it on its own merits in accordance with law. No costs.

Rule is made absolute in above terms.

(BHARAT P. DESHPANDE, J.)

MP Deshpande