



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

Writ Petition (WP) No. 2098 of 2024

Jagdish S/o Uttamrao Wankhede

Versus

The Divisional Commissioner, Amravati Division, Amravati and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Manoj Sable, Advocate for the petitioner.

Shri K.R.Lule, AGP for the respondent nos. 1 to 3 and 6

Shri N.A.Gawande, Advocate for the respondent no.8.

CORAM : ANIL S. KILOR, J.

DATED : 1st APRIL, 2024.

Heard.

2. The order of disqualification passed under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 against the petitioner as Up-Sarpanch of Village Panchayat Karajgaon, by the Additional Collector and confirmed by the Divisional Commissioner, is under challenge in this writ petition.

3. Both the authorities have disqualified the petitioner on the ground that in Gaon Namuna 8 the open land is shown in the name of petitioner and as such there is an encroachment on the Government

Land. Hence, by giving effect to the provision Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959, the petitioner is disqualified.

4. However, there is not a single finding recorded by both the authorities based on the revenue record, to the effect whether such entry in the Gaon Namuna 8 was taken at the request of the petitioner and after verifying title document.

5. If there is an entry in the revenue record in the name of the petitioner, it is necessary to verify on what basis such entry was taken and at whose instance such entry was taken.

6. Moreover, land in question is an open land, there is no construction or any structure over such land and it is not the case of any authorities below that the petitioner is residing on the said land. Thus, in the peculiar facts of the present case and for the reasons recorded herein above, only on the basis of mutation entry disqualification cannot be based.

7. The Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others*¹ has observed 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

¹ 2012(4) SCC 407

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 & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Bareilly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).

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.

8. Thus, from the above referred observations, it is evident that in a casual manner, the disqualification cannot be made.

9. In the circumstances, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 15th March, 2024 passed by the Divisional Commissioner, Amravati and 10th March, 2023 passed by the Additional Collector, Amravati are hereby quashed and set aside;
- iii. The Additional Collector, Amravati is at liberty to make afresh inquiry, if he so desires.

[ANIL S. KILOR, J.]