



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

Writ Petition No.6495 of 2023
SHESHRAO S/O NANAJI JUWARE
VS

THE COMMISSIONER, NAGPUR DIVISION, NAGPUR AND OTHERS

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

Court's or Judge's Order

Ms (Dr) R.S. Sirpurkar, Advocate for the Petitioner/s
Shri I.J. Damale, AGP for the Respondent Nos.1 to 3/State
Shri I.K. Daudasare, Advocate for the respondent No.4

CORAM : ANIL S. KILOR, J.
DATED : 21.02.2024

1. Heard.
2. The petitioner was disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 (for short "the Act of 1959") on the ground that his father has encroached upon the government land, by the Collector, Gadchiroli, vide order dated 07.09.2022. The said order was upheld by the Additional Commissioner, Nagpur vide order dated 25.07.2023. Hence, this petition.
3. The respondent No.4 filed a proceeding for disqualification of the petitioner as a member of the Grampanchayat, Maroda under Section 14(1)(j-3) of the Act of 1959. Thereupon, a report was called from the Tahsildar about the alleged encroachment. In the first report submitted by the Tahsildar, it has observed that the encroachment has been made by the father of the petitioner

and there is also an entry as regard such encroachment in the record of the Grampanchayat.

4. Thereafter, second report was called, which was submitted on 29.06.2022, wherein the Tahsildar has observed that the petitioner along with his family members have encroached the government land.

5. Thus, on the basis of the Grampanchayat entry as regards the alleged encroachment and two reports of the Tahsildar dated 01.09.2021 and 29.06.2022, the petitioner came to be disqualified.

6. Since beginning, it is the case of the petitioner that, he is residing separately from his father and he is no way connected with the alleged encroachment or he is not in possession of the land in question. However, the Collector, by relying upon the above referred two reports and encroachment entry in the Grampanchayat, disqualified the petitioner and it has been upheld by the Commissioner.

7. Admittedly, the first report shows that the father of the petitioner has encroached upon the land in question about 45 years back. In the first report of the Tahsildar, there is no mention about the joint possession of the petitioner with his father. However, in the second report, without disclosing any basis and in a cryptic way, recorded the finding that the petitioner and his family members have encroached over the land in question.

8. In the circumstances, it is an imperative to find out, whether the petitioner shared possession with his father, who has encroached upon the land in question and whether the petitioner cultivated the land in question to attract disqualification. This needs to be found out because the Hon'ble Supreme Court of India in the case of *Janabai Vs. Additional Commissioner and others*¹, has observed that, when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. The Hon'ble Supreme Court of India, has further held that, such interpretation subserves the real warrant of the provision.

9. In the present matter, there is no discussion by the Collector and the Additional Commissioner about any such material which shows that the petitioner is jointly in possession over the land in question. On the contrary, there is no finding recorded by both the authorities below as regards the case put up by the petitioner that, he is residing separately from last 15 years and he is not in possession and he is not cultivating the land in question.

10. Thus, having held that the report of the Tahsildar, dated 29.06.2022, is cryptic and without any basis, the observation came to be made that, the petitioner along with his family members have encroached upon the land in question, such finding cannot be relied upon for the reason that, the respondent No.4 is seeking disqualification of the petitioner, who is an elected member of the Grampanchayat and therefore, he cannot

1 (2018) 18 SCC 196

be removed in a casual manner, unless there is a sufficient evidence.

11. The Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir ..vs.. Collector*², 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 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

² (2012) 4 SCC 407

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 officebearer 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."

12. From the above referred observations, it is evident that in a democratic institution, 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. It is further observed that 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.

13. From the above referred observations of the Hon'ble Supreme Court of India, it is amply clear that it is not the only elected member who suffers but the whole constituency suffers in the case of disqualification and therefore, unless the mode prescribed under the Act is followed, no elected member can be

removed before completion of his/her term. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The order dated 25.07.2023 passed by Additional Commissioner, Nagpur and the order dated 07.09.2022, passed by the Collector, Gadchiroli, are hereby quashed and set aside.
- (iii) The matter is remanded back to the Collector, Gadchiroli for deciding the same afresh, considering the observations made herein above and the law laid down by the Hon'ble Supreme Court of India in the case of ***Ravi Yashwant Bhoir*** (supra).
- (iv) The parties shall appear before the Collector, Gadchiroli on **15.03.2024 at 11.00 am**.
- (v) The Collector, Gadchiroli shall take a fresh decision after hearing both the parties and after giving them sufficient opportunity, within a period of five months from the date of appearance of the parties.

[ANIL S. KILOR, J.]