



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

WRIT PETITION NO. 7741 OF 2022

Sau. Nandabai Shankar Kanhekar,
Aged @ Yrs. Occ. -Member, G.P. Kanha,
R/o Village Kanha, Tq. Mahagaon,
Dist. Yavatmal

PETITIONER

VERSUS

1 The Additional Commissioner,
Amravati Division, Amravati

RESPONDENTS

2 The Additional Collector, Yavatmal
Dist. Yavatmal

3 The Secretary, Gram Panchayat, Kanha,
Tq. Mahagaon, Dist. Yavatmal

4 Anant Dattarao Pimpale,
Age @ Adult, Occ. Politician,
R/o Kanha, Tq. Mahagaon Dist. Yavatmal

Mr. S.M. Vaishnav, Advocate for petitioner

Mr. Alap Palshikar, AGP for Respondent / State

Mr. S.D. Dharaskar, Advocate for Respondent No.4

CORAM : BHARAT P. DESHPANDE, J.

DATE : 6th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard both
the parties.

2. The petitioner being aggrieved by the order passed by the respondent Nos.1 and 2 under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, thereby disqualifying the petitioner from the post of elected Member of the Grampanchayat Kanha, preferred the present petition with the following prayers :

“i) Quashed and set aside the order passed by resp.no.1 dtd. 14/11/2022 in Appeal No. 40/BVP 16(2)/Kanha/2022 Annexure-A and the order passed by resp.no.2 dtd. 24/05/2022 in proceeding no. 110/69/14(J-3)/2021 Annexure B, with kind consideration and in the interest of justice and fair play.

ii) Allow the writ petition thereby quashing the order passed by resp.no.1 dtd. 14/11/2022 in Appeal No. 40/BVP 16(2)/Kanha/2022 Annexure-A and the order passed by resp. no.2 dtd. 24/5/2022 in proceeding no. 110/69/14(J-3)/2021 Annexure B, and further rejecting the application filed by resp.no.4 before the resp. no.2, with kind consideration and in the interest of justice and fair play.

iii) Grant interim relief thereby staying the execution and operation of the impugned order passed by resp.no.1 dtd. 14/11/2022 in Appeal No. 40/BVP 16(2)/Kanha/2022 Annexure-A and the order passed by resp.no.2 dtd. 24/5/2022 in proceeding no. 110/69/14(J-3)/2021 Annexure-B, with kind consideration and in the interest of justice and fair play.

iv) Grant ex-parte interim in terms of prayer clause iii, with kind consideration and in the interest of justice and fair play.

v) Any other relief which this Hon'ble Court deems

fit and proper be granted in favour of the petitioner, in the interest of justice.”

3. The petitioner was elected as a Member of the Grampanchayat Kanha for the period of five years on 29/01/2021. The respondent No.4, who is ex-Sarpanch of the said village and rival of the petitioner, filed false Complaint before the respondent No.2, claiming that firstly, the petitioner encroached upon the Government land and secondly, the father-in-law of the petitioner failed to pay house tax. Since the Secretary of the village Panchayat was supporting the respondent No.4, a panchanama was prepared to that effect by manipulating the dockets and accordingly adverse report was placed before the respondent No.2. No notice was issued to the petitioner about such inspection. Similarly, the inspection note is not appended with any sketch or map so as to prove *prima facie* that there is encroachment made by the petitioner on the Government land.

4. On receipt of the notice of the said Complaint, the petitioner appeared before the respondent No.2 and filed a detailed reply denying of any encroachment in the Government land and secondly, claiming that she is not residing in the

common house, which is owned and possessed by her father-in-law. However, the respondent No.2 failed to appreciate the specific defence and passed the impugned order, thereby disqualified the petitioner.

5. The petitioner then filed an appeal before the respondent No.1 – Additional Commissioner, Amravati, however, the said authority again failed to consider the contentions raised by the petitioner and thereby rejected the appeal, which is challenged in the present petition.

6. A reply affidavit is filed on behalf of the respondents denying all the allegations and claimed that the enquiry was conducted properly and disqualification order is legal in all respects.

7. Shri Vaishnav, learned counsel for the petitioner would submit that the inspection of the said spot where the alleged encroachment exists was carried out in absence of the petitioner. No notice of such inspection was given to her and thus such report prepared by the Secretary of the village Panchayat, who is supporting the case of the respondent No.4 could not have been

accepted. He would submit that on this count itself, the impugned order needs to be quashed and set aside.

8. Mr. Vaishnav, learned counsel for the petitioner would then submit that the second ground regarding non-payment of house tax by the father-in-law of the petitioner is again false and unconnected ground for disqualification for the simple reason that the petitioner is not occupying the said house of her father-in-law and the same is already allotted to other family member.

9. While placing reliance in the case of **Sau. Lalita Dilip Khandalkar Vs. Additional Commissioner and others** reported in **2019 SCC OnLine Bom 13129** and in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in **(2012) 4 SCC 407**, he would submit that the matter needs to be remanded to the first authority i.e. the respondent No.2 for the purpose of carrying out proper inspection of the spot in presence of the petitioner, wherein the alleged encroachment exists and then to decide it afresh.

10. The learned Assistant Government Pleader while supporting the impugned order would submit that there is no

illegality or infirmity in the impugned order and the petitioner violated the said provision by encroaching upon the Government land and, therefore, deserves disqualification.

11. Rival contentions filed for determination.

12. Admittedly, the petitioner was elected as a Member of the village Panchayat Kanha in the year 2021 for a period of five years. The aspect of removal of such elected office bearers must be in accordance with law as laid down under the Maharashtra Village Panchayat Act. For that purpose, the provisions of Section 14 of the Act needs to be complied with strictly.

13. An application was filed by the respondent No.4 before the respondent No.2 under the provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayat Act.

14. Section 14 of the said Act deals with disqualification. The Section starts with the words “no person shall be a member of the Panchayat continue as such who encroached upon Government land or public property or who fails to pay any tax or fee due to the Panchayat within three months from the date on which amount of such tax or fee is demanded and bill for the

purpose is duly served on him”.

15. Thus, the application filed by the respondent no.4 is basically invoking Section 14(1)(h)(j-3) of the Maharashtra Village Panchayat Act.

16. In order to ascertain whether the petitioner or a Member of the Panchayat encroached upon the Government or public land as alleged, it is necessary for conducting a spot inspection / panchanama and that too in presence of the complainant as well as the person against whom such Complaint is lodged.

17. In the present matter, the copy of such panchanama is placed at page No.29, dated 17/05/2021. This panchanama shows that it was conducted by the Secretary of the village Panchayat in presence of pancha members and some witnesses. However, it nowhere refers about the presence of the petitioner during the said panchanama. Secondly, there is no sketch or any plan attached to such panchanama to show the exact encroachment as alleged. The panchanama show and read that one Shri Shankar, who is husband of the petitioner erected a shed of 10 X 10 sq.mtr., which is adjacent to the road near four

road junction and appears to be an encroachment. Surprisingly, the distance of the shed from the tar road or from the four road junction is not disclosed. Similarly, the other details such as property adjacent to it, including the survey number / gat number are also not disclosed. This panchanama was conducted without issuing notice to the petitioner in her absence.

18. In **Lalita Dilip Khandalkar Vs. Additional Commissioner** (supra), the learned Single Judge of this Court, in a similar situation observed that such report / panchanama does not show any conclusion or findings that there has been indeed an encroachment on the Government land. Similarly, such report was prepared in absence of the petitioner and more specifically without giving any notice to her. In para 12, the learned Single Judge of this Court observed that there is nothing on record to show that the spot inspection and measurement was carried out in presence of either the complainant or the person against whom the complaint was lodged and who was likely to be adversely affected by the findings in the said report. These observations are clearly applicable to the facts and circumstances of the matter. The report prepared by the Secretary of the village

Panchayat dated 17/05/2021, is clearly in absence of the petitioner and the fact that it nowhere conclusively disclosed that such encroachment is in Government land. Besides, the petitioner in her reply filed before the respondent no.2 clearly disclosed that she had no connection with the shed existing by the side of the road, including that of her husband and the shed is being operated by one Samadhan Ramrao Pate, who was permitted to erect it in the year 2015-16.

19. The impugned orders passed by both the authorities with respect to inspection report is too casual and both these authorities failed to consider even specific case put-forth by the petitioner in her reply. It is surprising to note that some photographs were relied upon by the authorities showing that there is a shed in existence. Even otherwise, the petitioner in her reply filed to the show cause notice admitted about the existence of shed, however, she also explained that the said structure is not at all connected to her or her husband in any manner.

20. The requirement of Section 14 of the Act is that the Member should be disqualified if he is involved in encroachment of any Government land. Thus the authority is duty bound to

consider whether the shed in question was erected by the petitioner or her husband and that too in the Government land. Since the panchanama is defective / faulty and nowhere discloses about the presence of the petitioner while conducting it, such document could not have been considered as evidence against the petitioner for invoking Sections 14 of the said Act.

21. The second aspect for which the petitioner was disqualified is non-payment of house tax which stands in the name of father-in-law of the petitioner. In this regard, the impugned orders are clearly silent. Only because the house no. 445 stands in the name of father-in-law of the petitioner and there are some dues, the petitioner cannot be simply disqualified unless it is shown that she is responsible for paying such dues.

22. The petitioner disclosed in her reply that the said house is occupying by other family members, which was allotted to them, whereas the petitioner is occupying the house constructed by her husband in separate area. There is absolutely no discussion on this aspect by the concerned authorities.

23. In **Ravi Bhoir Vs. Collector** (supra), the Hon'ble Apex Court

discussed and expressed the word “misconduct”, but it is observed that the expression ‘misconduct’ has to be understood as transgression of some established and definite rule of action or forbidden act or unlawful behaviour or wilful in character. In a particular case, the negligence or carelessness may also be a misconduct. The expression “misconduct” has to be construed and understood in the reference to the subject matter and continue wherein the term occurs, the scope and object of the statute which is being construed.

24. The Hon’ble Apex Court further observed that the removal of an elected office bearer of the municipality / Panchayat requires a necessary proof and only thereafter such orders could be passed. The democratic set up of the country is recognized as the basic feature of our constitution. It is not permissible to destroy such basic features even by imagination by the executives on its whims and without any reasons. The executives must operate within its powers and if any action is found beyond such powers, the same needs to be interfered with.

25. In the present matter, the first step of conducting panchanama is itself appears to be faulty. Thus the orders passed

on such panchanama are required to be interfered with. The complaint filed by the respondent no.4 cannot be simply rejected for the inaction or improper action on the part of the executives. Thus both the orders require to be quashed and set aside and the matter needs to be remanded to the concerned Authority i.e. respondent No.2 with direction that proper panchanama of the spot where the alleged encroachment is carried out, shall be conducted and that too in presence of the petitioner and respondent No.4 and only thereafter the Complaint filed by the respondent No.4 shall be decided afresh. While doing so, the respondent no.2 shall grant an opportunity to both the parties to put-forth their case.

26. Having said so, the petition needs to be partly allowed.

27. The petition is partly allowed. The impugned orders are quashed and set aside. The Complaint filed by respondent No.4 is remanded to the respondent No.2 / Additional Collector, Yavatmal for the purpose of adjudication afresh. The respondent No.2 shall direct the concerned Authority i.e. respondent No.3 to carry out fresh panchanama of the said spot and that too in the presence of the petitioner and respondent No.4 and then decide

the Complaint filed by the respondent No.4 in accordance with law on its own merits. Such Complaint shall be disposed of within a period of three months from the date of appearance of the parties before it. The petitioner and respondent No.4 are directed to appear before the respondent No.2 on 02/04/2024 at 11:00 AM.

28. No order as to costs. Parties to act on the authenticated copy of this order.

Rule is made absolute in the above terms.

(BHARAT P. DESHPANDE, J.)

MP Deshpande