



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

WRIT PETITION NO.8210/2023

Sunil Chaitramji Kamdi .Vs. Additional Commissioner, Nagpur and Ors.

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

Court's or Judge's orders

Mr. N. L. Jaiswal, Advocate for petitioner.
Mr. S. B. Bissa, A.G.P. for respondent Nos. 1 and 2.
Mr. Aniket Waghdhare, Advocate for respondent No.4.

CORAM : ANIL L. PANSARE, J.
DATE : SEPTEMBER 25, 2024

Heard.

Petitioner, the then Member of Gram Panchayat, Kelwad, Tahsil Saoner, District Nagpur, is aggrieved by order dated 12.09.2023 passed in Appeal No. 66/2023, by respondent No.1 – Additional Commissioner, Nagpur Division, Nagpur as also order dated 14.07.2023 passed by respondent No.2 – Additional Collector, Nagpur.

Both the authorities have rejected the application dated 17.04.2023 filed by the petitioner seeking declaration that respondent No.4 has incurred disqualification to be a member of the Gram Panchayat, Kelwad.

On 26.08.2024, this Court has passed the following order.

“The challenge is to order dated 12-9-2023 passed in Appeal No. 66/2023 by respondent no. 1 – Additional Commissioner, Nagpur Division, Nagpur as also order dated 14-7-2023 passed by respondent no. 2 – Additional Collector, Nagpur.

Both the authorities below have rejected the application filed by the petitioner under Section 14(1)(d) of the Maharashtra Village Panchayats Act, 1958 (for short 'the Act of 1958').

The petitioner, by filing said application, has sought disqualification of respondent no. 4 on the ground that she was removed from the post of Sarpanch in terms of sub-section (1) of Section 39 of the Act of 1958 vide order dated 17-8-2021 passed in earlier proceedings.

Learned counsel for the petitioner submits that the effect of said order would be that respondent no. 4 cannot contest the election for the period of six years from the date of said order as provided under Section 14(1)(d) of the Act of 1958.

It appears that the respondent no. 4 was elected as Sarpanch of Village Kelwad for the period from 2017 to 2022. The petitioner approached the Commissioner, Nagpur Division, Nagpur for removal of respondent no. 4 from the Office of Sarpanch in terms of Section 39 of the Act of 1958 on the ground that she committed misconduct. The Commissioner allowed the application so preferred by the petitioner which came to be challenged by respondent no. 4 before the Hon'ble Minister under Section 39(3) of the Act of 1958 and the Hon'ble Minister was pleased to set aside the order passed by the Divisional Commissioner, Nagpur and, thus, respondent no. 4 continued to work as Sarpanch.

The petitioner approached this Court in Writ Petition No. 7068/2021 challenging the order passed by the Hon'ble Minister. On 14-11-2022, this Court granted interim relief to the petitioner and stayed the order passed by the Hon'ble Minister.

The term of respondent no. 4 as Sarpanch concluded on 16-11-2022. In December, 2022, fresh elections were held. Respondent no. 4 contested the election for Member and was elected.

It is the contention of the petitioner that since this Court vide order dated 14-11-2022 has stayed the effect and operation of the order passed by the Hon'ble Minister, the order of Commissioner, Nagpur Division came to be restored, meaning thereby the respondent no. 4 stood disqualified to be elected as Member of the panchayat in terms of Section 14(1)(d) of the Act of 1958. Accordingly, the petitioner approached respondent no. 2 – Additional Collector, Nagpur seeking disqualification of respondent no. 4. The Additional Collector, however, rejected the request. The petitioner then approached the respondent no. 1 – Additional Commissioner, Nagpur Division, Nagpur who was also pleased to not entertain the appeal. The authorities below were of the view that disqualification under Section 14(1)(d) will be attracted only to the elected Member of the panchayat and not to the directly elected Sarpanch in terms of Section 30A-1A of the Act of 1958.

Learned counsel for the petitioner has invited my attention to definition of Member as provided in Section 3(11AAA) of the Act of 1958 which reads thus :

[(11AAA) “member” means a member duly elected as a member of panchayat under section 11 and include the Sarpanch of panchayat elected directly under section 30A-1A;]

As could be seen, the definition of member, includes the Sarpanch of panchayat elected directly under Section 30A-1A.

The question, therefore, is whether granting interim stay would restore the order passed by the Commissioner removing respondent no. 4 from the Office of Sarpanch and consequently the disqualification to become a member in terms of Section 14(1)(d) of the Act of 1958.

Learned counsel for respondent no. 4 seeks time to have research on the point particularly the effect of amendment in the Act of 1958 which provides for direct election of Sarpanch in terms of Section 30A-1A and the definition of member. Stand over to 5-9-2024.”

Thus, the only question that requires answer is whether granting interim stay would restore the order passed by Commissioner, removing respondent No.4 from the office of Sarpancha and consequential disqualification to become a member in terms of Section 14(1)(d) of the Act of 1958.

Counsel for respondent has relied upon judgment passed by Supreme Court in the case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, AIR 1992 SC 1439**, wherein the effect of interim order has been explained. The Court held thus:

“10.While considering the effect of interim order staying operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of order results in restoration of the position as it stood on the date of passing of order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order, which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from the existence....”

Thus, the Supreme Court, in clear words has distinguished the effect of interim order staying the operation of the order under challenge viz-a-viz quashing of the order. Unless the order impugned is quashed, it will be not open to the

persons like the petitioner to contend that by granting interim stay to the effect and operation of the order under challenge, the judgment/order passed by the authority below will stand restored. There is thus no merit in the petition. The petition is accordingly dismissed.

(Anil L. Pansare, J.)

Kahale