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

WRIT PETITION NO. 8369 OF 2023

(SHAIKH YUNUS SHEIKH SATTAR..VS.. STATE OF MAH. THR. DEPT OF RURAL DEVELOPMENT & PANCHAYAT RAJ & OTH.)

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

Shri N.Z.Mirza, Advocate for Petitioner.
Shri A.A.Madiwale, A.G.P. for Respondent Nos. 1, 2 and 4.
Shri V.B.Bhise, Advocate for Respondent No.3.
Shri S.D.Dharaskar, Advocate for Respondent No.5.

CORAM : ANIL S. KILOR, J.
DATED : MAY 08, 2024.

1. Heard.

2. The disqualification of the petitioner as Sarpanch on the ground that he failed to convene monthly meetings from April 2021 to August, 2021, October, 2021, November, 2021 and January 2022, is under challenge in this writ petition.

3. The learned counsel for the petitioner raises a challenge to the said disqualification on the ground that it was a Covid-19 period and despite the fact that medical documents depict that the villagers were suffering from Corona Virus and there was a fear in the minds of the villagers including the petitioner who himself and his brother suffered by the said disease, insistence on holding the meetings during the said period and because of default in it disqualification was imposed.

4. It is submitted that the inquiry, conducted by the Block Development Officer, was behind the back of the petitioner, without giving sufficient opportunity to the petitioner to point out reasons for failure to hold meetings. It is therefore, submitted that the petitioner is not at fault and therefore, the disqualification is unwarranted.

5. On the other hand, the learned A.G.P. points out the Circular dated 15/01/2021 to show that the restrictions imposed in view of the Covid-19 were relaxed and the Gram Panchayat was permitted to hold Gram Sabhas on regular basis. It is submitted that despite the said circular the petitioner failed to hold the meetings.

6. In light of the rival contentions of the parties, I have perused the record and the impugned order passed by the Collector.

7. From the record, it is evident that there is a material produced by the petitioner, particularly medical reports showing that villagers of village Wakodi had suffered because of Covid-19 they were hospitalized in Vasantrao Naik Government Medical College, Yavatmal.

8. Such documents of the period from March 2021, June 2021 are produced on record. It is also pointed out that the petitioner himself suffered and he was hospitalized. In the circumstances, it was obligatory on the part of the Collector to conduct an inquiry as regards the

situation in the village at the relevant time to find out whether there was a situation where the villagers were under fear and because of which even the villagers had blocked the roads of the village, not allowing anyone to enter into the village.

9. From the record, it appears that no such enquiry was conducted by the Collector. The report of the Block Development Officer is not in respect of Covid-19 situation in the village at the relevant time. But, it only speaks about defaults committed by the petitioner.

10. The petitioner is also not disputing that for the above referred period the meetings were not held. However, the strong reasons behind not holding such meetings have been cited. The said facts were in the knowledge of everyone, including the Collector. Therefore, the inquiry in respect of the same ought to have been conducted by the Collector.

11. The Hon'ble Supreme Court of India, while dealing with the issue regarding removal of an elected member in the case of *Ravi Yashwant Bhoir ..vs.. Collector*, reported in **(2012) 4 SCC 407** has held 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 Barelly, 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 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.*

12. Considering the fact that the petitioner is entitled to hold the office for a term for which he has been elected he cannot be removed in a casual manner unless the prescribed procedure, known to law, is followed. Moreover, the removal of the elected person has serious repercussions, namely, it is not only the elected member suffers, but the whole constituency suffers in case of his disqualification.

13. In the circumstances, as no proper enquiry was conducted by the Collector as regards Covid-19 situation in the village at the relevant time, I am of the opinion that the matter needs to be remanded back to the Collector to hold such enquiry and take a decision afresh.

14. Accordingly, I pass the following order :

i) The Writ Petition is partly allowed.

ii) The impugned order dated 24/11/2023, passed by Respondent No.2-Additional District Collector, Yavatmal, is hereby quashed and set aside.

iii) The matter is remanded back to the Collector, Yavatmal for taking decision afresh, after hearing the petitioner and after considering the observations made herein above.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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