

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

WRIT PETITION NO. 7451 OF 2022

Babita w/o Santosh Olambe,
Age-40 years, Occ. Agriculturist,
R/o Lakhonda Bk.,
Tq. and Dist. Akola.

.... **PETITIONER.**

// VERSUS //

1. Collector, Akola,
Collector Office,
Tq. & Dist. Akola.
2. Tehsildar/Election Officer, Akola,
Tq. & Dist. Akola.

.... **RESPONDENTS.**

Shri P.U. Kavishwar, Advocate for Petitioner.
Shri Dharmadhikari, A.G.P. for Respondent Nos.1 and 2.

CORAM : **ANIL S. KILOR, J.**
DATED : **31.01.2023**

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by

consent of the learned counsel for the parties.

3. In this writ petition, a challenge is raised to the disqualification of the petitioner as a member of village panchayat, Lakhonda Bk, Tahsil and District : Akola, by the Collector, Akola vide his order dated 29/09/2022, on the ground of non-submission of expenditure of election within stipulated time. By the impugned single order dated 29.09.202 without recording the reasons and without dealing with the submissions of the respective members of the village panchayats, including the petitioner, the Collector disqualified 198 members of various village panchayats in Akola District, including the petitioner.

4. 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 Barely, 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.

46. The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."

5. In this case, the learned counsel for the petitioner points out that the Collector never issued any notice to the petitioner but the Tahsildar issued notice calling explanation. It is further submitted that no opportunity of being heard was granted by the Collector and without hearing the petitioner and without referring the reasons, the impugned order came to be passed.

6. The learned A.G.P. appearing for the respondent Nos.1 and 2 supports the impugned order and prays for dismissal of the present

petition.

7. The Hon'ble Supreme Court of India, in the above referred case has held that an elected member can be removed only by prescribed procedure known to law or procedure established under law.

8. In the above backdrop of the present case, I have no hesitation to hold that the Collector Akola has acted in casual manner and without giving any notice, disqualified 198 members of the respective village panchayats in Akola District, including the petitioner.

9. As the impugned order was passed without hearing the petitioner and as without recording reasons for disqualification, against the petitioner, the impugned order needs to be quashed and set aside to the extent of the petitioner. Accordingly, I pass the following order:

i) The writ petition is **partly allowed**.

ii) The impugned order dated 29.09.2022 passed by the learned Collector, Akola is hereby quashed and set aside.

iii) The Collector Akola, is at liberty to issue notice to the petitioner, calling explanation from her and after hearing the petitioner to pass an appropriate order, as per the provisions of law.

Rule accordingly. No costs.

(ANIL S. KILOR, J)

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