
(2006) 07 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 2083 of 2006

Sunil Balaram Roy

APPELLANT

Vs

Divisional Commissioner and Others

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14(1), 16, 39, 39(1), 39(1A)

Citation : (2006) 6 ALLMR 215 : (2007) 1 BomCR 217 : (2006) 5 MhLj 612

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : V.G. Dhage, for the Appellant; Assistant Government Pleader for respondent Nos. 1 and 2 and N.N. Motghare, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard respective counsel. Grievance made by Advocate Motghare, is that matter was circulated in vacation behind the back of respondents and interim orders were obtained, therefore, I have also considered the merits of the controversy. During hearing it has become apparent that, considering of all controversies at this stage, is final hearing of the matter itself. Hence, with the consent of the parties and in view of the grievance made by Advocate Motghare, the matter is finally heard.

2. The petitioner before this Court has been removed u/s 39(1) of the Bombay Village Panchayat Act, 1958 by resolution dated 18-12-2001, passed by the Standing Committee of Zilla Parishad, Gadchiroli. It appears that he was elected as Member and Sarpanch of Gram Panchayat, Gauripur. Subsequently and in view of his removal u/s 39, the present respondent No. 3 moved Collector for disqualification u/s 14(1)(d) of Bombay Village Panchayat Act. That application was allowed by the Collector and the appeal preferred by the petitioner u/s 16 was also dismissed. Thereafter he approached this Court.

3. This Court on 21-4-2006 has issued notice before admission and granted liberty to the petitioner to move in vacation. As the election to fill in the vacancy caused by removal of the petitioner were scheduled in vacation, the petitioner

moved in vacation and on 8-5-2006, this Court issued Rule and also protected his post as Sarpanch.

4. Advocate Dhage, for petitioner states that the petitioner has been removed only from the post of Sarpanch by the resolution of the Gram Panchayat and as he has not been removed from the office of the Member, as contemplated by Section 39(1), disqualification u/s 14(1)(d) will not apply. In order to explain the Court all these provisions he relied on Division Bench judgment of this Court reported at Narayan Atmaram Borase Vs. State of Maharashtra and Others,

5. Advocate Motghare, appearing for respondent No. 3 on the other hand states that the petitioner was removed u/s 39(1), and therefore, the provisions of Section 14(1)(d) are squarely applicable and he should not have been re-elected because at the time when he submitted the nomination paper, period of 5 years from the order of disqualification had not expired. He states that the Division Bench in its judgment has not considered the provisions of Section 14(1)(d).

6. Learned Assistant Government Pleader, for respondent Nos. 1 and 2 have adopted the arguments advanced by Advocate Motghare, and has contended that, no interference is called for in writ jurisdiction, and the impugned orders needs to be maintained.

7. The issue is squarely concluded by the Division Bench judgment of this Court (cited supra). Perusal of provisions of Section 39(1) reveals that the said section contemplates removal from office of Member or Sarpanch or Up-Sarpanch. The provisions of Section 39(1A) specifically stated that when a person is removed from office of Sarpanch or Up-Sarpanch, he shall not be eligible for re-election as Sarpanch or Up-Sarpanch during the remainder of his term of office of members of the Panchayat. It is therefore, apparent that Section 39(1) and 39(1A) clearly makes distinction between office of Member, Office of Sarpanch and office of Up-Sarpanch. When a person is removed from office of Sarpanch or Up-Sarpanch, in view of the provisions of Section 39(1A), he cannot be re-elected as Sarpanch or Up-Sarpanch during remainder of the term of office of Members of the Panchayat. When in this background the provisions of Section 14(1)(d), are looked into the said provision clearly state that a person is not eligible to be elected or to continue as Member of Panchayat if he has been removed from the office under Sub-section (1) of Section 39 and period of 5 years has not elapsed from the date of such removal. Thus, the office contemplated u/s 14(1)(d) is office of Member and not the office of Sarpanch or Up-Sarpanch. The disqualification for removal of Sarpanch or Up-Sarpanch is already prescribed u/s 39(1A) of the Act. Section 14(1)(d) provides for disqualification of a Member. The petitioner has not been removed from the post of Member, he was only removed from the post of Sarpanch.

8. The Division Bench ruling (cited supra), considers the provision of Section 39(1) and 39(1A) of the Act, and expressly observes that Section 39(1) and 39(1A) do not permit any action against Sarpanch or Up-Sarpanch beyond the

period of term for which they were elected as Members of Gram Panchayat. In view of this, it is apparent that the orders of disqualification passed by Authorities is unsustainable and the same are accordingly quashed and set aside. Rule is accordingly made absolute with no orders as to cost.