

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	Writ Petition No.5390/2017
Parties Name	Kalicharan Vaidh Vs. State of Madhya Pradesh and others
Date of Order	26.07.2018
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Petitioner: Shri Suyash Mohan Guru, Advocate. For Respondent Nos.1 & 2: Shri A.P. Singh, Government Advocate. For Respondent No.3: Shri Sanjay Ram Tamrakar, Advocate.
Law laid down	(1) When Section 36 of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhinyam, 1993, can be invoked by the Collector. (2) Whether a stranger having no locus can move application under Section 36 of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhinyam, 1993, for removing the existing office bearer.
Significant paragraph numbers	8, 9, 10, 11, 12, 13 and 14

**(O R D E R)
(26.07.2018)**

At the request of parties, the matter is heard finally.

By the instant petition, the petitioner is questioning the validity of the order dated 05.10.2016 (Annexure-P-4) passed by respondent No.1-Collector Balaghat, by which, the application preferred by the petitioner under Section 36 of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhinyam, 1993, (hereinafter referred to as the

‘Adhiniyam, 1993’) has been rejected on the ground that he has no jurisdiction to entertain the application.

2. As per the facts of the case, respondent No.3 was elected as Sarpanch of Gram Panchayat, Bori, Janpad Panchyat, Lalbarra, District Balaghat. She contested the election of Sarpanch in the year 2015 and the said Gram Panchayat (Bori) was reserved for a candidate of OBC category, in which, she was declared elected. But, as per the petitioner, respondent No.3 does not belong to OBC category and on the basis of forged caste certificate issued by respondent No.2, she contested the election and, therefore, the petitioner moved an application under Section 36 of the Adhiniyam, 1993, for declaring respondent No.3 disqualified and also for her removal from the post of Sarpanch of Gram Panchayat, Bori.

3. Learned counsel for the petitioner has submitted that in view of the law laid down by this Court in the case of *Sajid Khan Vs. State of M.P. and others* passed in *W.P. No.12442/2016* that the Collector has committed illegality rejecting the application of the petitioner whereas, he should have referred the matter to the State Level High Power Scrutiny Committee (for short the ‘Committee’) for examining the validity of the caste certificate issued in favour of respondent No.3 on the basis of which, she contested the election as an OBC candidate and if it is found by the Committee that the said

certificate is bogus then, appropriate direction for removal of respondent No.3 had to be passed.

4. *Per contra*, Shri Tamrakar submits that the petitioner had no locus to move an application under Section 36 of the Adhiniyam, 1993, before the Collector and his application as well as this petition is liable to be dismissed only on the ground of locus. He further submits that the application under Section 36 of the Adhiniyam, 1993, was rightly rejected by the Collector as the same was not maintainable before him. He has contended that in view of the provisions of Section 36(1)(k) of the Adhiniyam, 1993, application can be moved before the Collector only when a candidate is already declared disqualified under any law for the purpose of election to the State Legislative Assembly even though he/she is elected as an office bearer of Panchayat concealing his/her disqualification then only the Collector can take cognizance of application filed under Section 36 of the Adhiniyam, 1993, that too by an aggrieved person but as per respondent No.3, the petitioner is not the aggrieved person in any manner because he has neither contested the election, nor he was voter of the said Gram Panchayat, also not the resident of that village and even does not belong to OBC category.

5. Shri Tamrakar relied upon a decision reported in **(2013) 4 SCC 465**, parties being ***Ayaaubkhan Noorkhan Pathan Vs. State***

of Maharashtra and others, saying that the Supreme Court has observed in paragraph-9 of the said decision that it is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/Court that he falls within the category of aggrieved person. The Supreme Court further observed that as to who would be treated ‘an aggrieved person’ and also observed what would be the “legal right”. According to Shri Tamrakar, the petitioner is neither aggrieved person nor any of his legal right is being affected, therefore, he has no locus to move such application. He further relied upon the law laid down by this Court reported in *2005 (1) MPLJ*, parties being *Roshanlal Maravi Vs. Shambhoo Singh and others*, in which, it is held by the Division Bench that if a concealment regarding a caste by a candidate contesting the election is done and such act comes within the concealment of disqualification then, a representation can be made even under Section 36 of the Adhiniyam, 1993, without filing any election petition under Section 122 of the Adhiniyam, 1993. He has further relied upon a decision reported in *2012 (2) MPLJ 324*, parties being *Sarvesh Patel Vs. State of M.P. and others*, in which this Court has observed that as to whether a stranger can question the validity of caste certificate issued in favour of a person without disclosing any prejudice caused to him. As per respondent No.3, unless any disqualification is concealed, the provision of Section 36

of the Adhiniyam, 1993, cannot be invoked and the Collector is not the authority to determine whether the caste certificate issued in favour of respondent No.3 is false or fabricated and, therefore, he has rightly rejected the application under Section 36 of the Adhiniyam, 1993.

6. After hearing the arguments advanced by learned counsel for the parties and also after perusing the material available on record, it is proper for this Court to examine whether the petitioner had any locus to move an application under Section 36 of the Adhiniyam, 1993, and any locus to file this petition.

7. As contended by learned counsel for respondent No.3 that the objection of locus has been raised by her before the Collector and the Collector has taken note of her objection but not rejected the application filed by the petitioner under Section 36 of the Adhiniyam, 1993, on the ground of locus.

8. I have perused the order of the Collector, in which, the objection of respondent No.3 regarding locus is also considered by the Collector but no finding in that regard has been given. Although, in this petition the reply submitted by respondent No.3, she has very categorically raised this objection in paragraph-11 saying that the petitioner cannot be treated to be an aggrieved person as he does not belong to respective Gram Panchayat, Bori; does not belong to OBC category and also not taken part in the

election of Sarpanch. Despite raising specific objection, no rejoinder to that effect has been filed by the petitioner. Learned counsel for respondent No.3 has drawn attention of this Court towards the cause title of the petition, in which, he has shown himself to be permanent resident of Tehsil Lalbarra. It clearly indicates that the petitioner is neither the resident of respective Gram Panchayat nor a candidate contested the election of Sarpanch, in which, respondent No.3 was elected and he does not belong to OBC category as well.

9. In view of the law laid down by Hon'ble the Apex Court in the case of *Ayaaubkhan Noorkhan Pathan (supra)* in paragraphs-9 and 10 has observed as follows :-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is

implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.....

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized.....”

10. Likewise, in the case of *Sarvesh Patel (supra)* this Court in paragraph-5 has observed as follows:-

“The petitioner has failed to disclose the prejudice caused to him by the issuance of said Caste Certificate. Petitioner admittedly is not the “Katiya” by Caste. Besides, the petitioner has failed to establish his locus to question the issuance of Caste Certificate in favour of respondents.”

11. In view of the fact situation of the instant case, it is apparent that the petitioner cannot be considered to be an aggrieved person and having any locus in the matter to move an application under Section 36 of the Adhiniyam, 1993, questioning the election of respondent No.3 on the post of Sarpanch and asking the Collector to invoke power under Section 36 of the Adhiniyam, 1993, for removing respondent No.3 from the post of Sarpanch.

12. Learned counsel for the petitioner submits that in the case on which respondent No.3 has relied upon, Hon'ble the Apex Court has very categorically said the point of locus would be applicable only in the matter of writ petition preferred before the High Court under Section 227 of the Constitution of India but looking to the observations made by Hon'ble the Apex Court in paragraph-9, the contention of the petitioner has no substance as the Apex Court very categorically observed that **“in any proceeding”** before the authority, meaning thereby, in the proceeding before the Collector, the question of locus is also required to be seen. Thus, I have no hesitation to say that the present petition is liable to be dismissed on the ground of locus and that the Collector has not specifically rejected the application on the ground of locus moved by the petitioner under Section 36 of the Adhiniyam, 1993, but the same is also liable to be rejected on the ground of locus.

13. It is worth mentioning that as far as invoking the power conferred under Section 36 of the Adhiniyam, 1993 is concerned, the law laid down by this Court is very specific in the case of Roshanlal Maravi (supra) wherein the Hon'ble Division Bench very clearly laid down that if any disqualification is concealed then, the Collector can invoke the power provided under Section 36 of the Adhiniyam, 1993 otherwise not. As per the Hon'ble Division Bench, if a concealment regarding disqualification of caste

certificate is made then, such question can also be raised without filing election petition before the Collector invoking Section 36 of the Adhiniyam, 1993. However, in the present case, the allegation made by the petitioner that the caste certificate issued in favour of respondent No.3 is false and forged but there is no declaration by any of the competent authority saying that such caste certificate issued by respondent No.2 is not valid and unless such declaration is made, it cannot be considered that there is any concealment on the part of respondent No.3 while contesting the election of Sarpanch of Gram Panchayat, Bori, and, therefore, the Collector has rightly observed that under such circumstance he cannot invoke the power provided under Section 36 of the Adhiniyam, 1993, and application submitted by the petitioner has rightly been rejected.

14. In view of the aforesaid, I do not find any merit in this petition and, therefore, it merits dismissal and is accordingly **dismissed** on the count of locus as well as non-applicability of Section 36 of the Adhiniyam, 1993, in the available circumstances.

15. Parties shall bear their own costs.

(Sanjay Dwivedi)
Judge