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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1629 OF 2015

Bhagwat Maroti Ghuge.

..Petitioner

-Versus-

The State of Maharashtra and others.

..Respondents

.....

Mr.B.V.Thombre, Advocate for the Petitioner.

Mr.V.G.Shelke, AGP, for the Respondents/State.

Mr.M.S.Deshmukh a/w Mr.U.L.Momale, Advocates for the Respondent No.6.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th February, 2015

Per Court:

1 The Petitioner is aggrieved by the impugned judgment of the Additional Collector, Latur dated 13.11.2014 thereby, disqualifying the Petitioner as a Sarpanch of the Group Gram Panchayat, Sandol-Mahandol, Taluka Chakur, District Latur.

2 The Petitioner is also aggrieved by the impugned judgment of the Additional Commissioner, Aurangabad dated 05.01.2015 thereby, rejecting his Appeal under Section 16(2) of the Maharashtra Village Panchayats Act, 1958 (for short “the said Act”).

3 The issue is as regards the effect of Section 14(1)(g) and Section 14(1)(j-3) of the said Act. However, the impugned judgments have

been delivered under Section 14(1)(g) of the said Act, which reads as under:-

- “14. *Disqualifications:-*
(1) *No person shall be a member of a Panchayat continue as such, who:-*
(g) *has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the Panchayat, or in any contract with, by or on behalf of, or employment with or under, the Panchayat; or”*

4 The Petitioner was elected as a Sarpanch on 26.11.2012. The complaint was preferred before the Additional Collector, Latur by the Respondent No.6 which was registered as Complaint No.DB/D-2/ZPVP/A/CR-190/2014/L. The Complainant had alleged malfeasance and misfeasance against the Petitioner so as to attract Section 14(1)(g) of the said Act.

5 The contentions, as regards illegal and irregular payments made, against the Petitioner were enumerated in paragraph 3 and 4 of the complaint. The amounts of alleged irregular payments are as under:-

- (a) Rs.92,000/- towards “self payment” dated 23.02.2013,
- (b) Rs.18,000/- by bearer cheque dated 24.07.2013,
- (c) Rs.1,20,000/- on 07.08.2013,
- (d) Rs.50,000/- on 11.12.2013,
- (e) Rs.49,000/- on 28.02.2014,
- (f) Rs.49,000/- on 26.02.2014,
- (g) Rs.25,000/- on 04.04.2013,
- (h) Rs.50,000/- on 13.04.2013,
- (i) Rs.10,000/- on 12.10.2013,
- (j) Rs.1,00,000/- on 25.04.2013,

- (k) Rs.1,96,000/- on 04.05.2013 and
- (l) Rs.50,000/- on 22.04.2013.

6 With regard to the above said payments, the contentions set out in paragraphs 3 and 4 of the complaint indicate that some of the payments were made to certain persons whose names are mentioned, through bearer cheques and sometimes through account payee cheques.

7 The Petitioner has replied to the said complaint dated 10.04.2014 and has explained various development projects which have been undertaken by the Group Gram Panchayat and for which the payments were made. It is also tried to be explained that the resolution was passed by the Group Gram Panchayat and since the payments could not have been made without the signature of the Petitioner, he has affixed his signature on the said cheques.

8 It needs mention that the Additional Collector has not gone into the entire instances of payment made. Since the said Authority found enough evidence as regards a single instance of payment of Rs.92,000/- by issuing a cheque towards “SELF” payment, that he has not inquired into the rest of the instances.

9 The Petitioner has specifically stated in ground No.XIII below

paragraph 7 in the memo of the petition that *“the said cheque of Rs.92,000/- is given to Dnyandeo Kendre who has done work of water development scheme. Therefore, it can not be called as misappropriation”*.

10 The learned Advocate appearing for the Petitioner has primarily raised an issue that the phraseology used in Section 14(1)(g) of the said Act mandates that the Complainant should prove that the Petitioner has directly or indirectly, by himself or through his partner, any share or interest in any work done by the order of the Panchayat or in any contract with, by or on behalf of, or employment with or under, the Panchayat.

11 The submission, therefore, is that mere withdrawal of amount by a cheque by the Petitioner himself, would not mean a misdeed within the meaning of Section 14(1)(g) of the said Act. Similarly, the payments made by bearer cheques to other persons, having not been dealt with by the learned Additional Collector and consequentially by the learned Additional Commissioner, would not be an issue which would fall within the ambit of this Court in this Writ Petition.

12 Nevertheless, the learned Advocate for the Petitioner submits that if any detailed inquiry is to be caused in all other alleged instances of

irregular payments, the Petitioner is willing to cooperate. However, he submits that the Petitioner be reinstated as a Sarpanch and pursuant thereto, such an inquiry may be conducted.

13 Insofar as the issue of “SELF” payment of Rs.92,000/- by cheque No.977151 dated 23.02.2013 from the Group Gram Panchayat Account No.31488697141, State Bank of India, Branch Chakur is concerned, the Petitioner submits that the said amount was deposited in the Group Gram Panchayat account under the 13th Finance Commission sponsored project. The said amount was withdrawn not by the Petitioner, but was paid to one Dnyandeo Kendre who is said to have performed the project work of water development scheme in the said village. The contention, therefore, is that this does not amount to any misappropriation and as such, would not fall within the ambit of Section 14(1)(g) of the said Act despite the manner in which the money has been withdrawn.

14 The Petitioner has relied upon the judgment delivered by this Court (Coram : B.PDharmadhikari, J.) in **Writ Petition No.691/2011 dated 08.03.2011** in the matter of *Latabai Ramprasad Thorat vs. State of Maharashtra and others*, to contend that this Court has concluded that mere withdrawal of amount by the Sarpanch is not sufficient to infer his

share or interest. Something more is required to establish the conduct of the Petitioner so as to be covered by Section 14(1)(g). It is also pointed out that this Court while delivering the said judgment has relied upon the reported judgment of this Court in the case of *Jyotitai Vikas Gawande v/s Additional Commissioner and others* reported in **2009(5) Mh.L.J. 486**.

15 The Petitioner, therefore, submits that the impugned judgments are perverse and erroneous. It has unduly weighed on the minds of the Authorities below that mere withdrawal of Rs.92,000/- is sufficient to conclude that the Petitioner incurs disqualification under Section 14(1)(g).

16 The learned AGP on behalf of the Respondent Nos.1, 2 and 3 and Mr.M.S.Deshmukh, learned Advocate on behalf of the Respondent No.6, submit that as the Additional Collector was convinced from the very first instance as regards the withdrawal of Rs.92,000/- by the Petitioner, that the said Authority has not gone into the other issues. According to them, though the Additional Collector could have inquired into each of the instances put forth by the Respondent No.6, he has refrained from inquiring into those instances as the Petitioner was found guilty of the first instance itself.

17 They further submit that the Additional Collector has exonerated the Petitioner under Section 14(1)(j-3) of the said Act since the allegation of encroachment on the Government land was not established by the Respondent No.6. The said conclusion has not been called in question by the Respondent No.6 before any superior authority and as such, the said conclusion has attained finality.

18 The learned Advocates have relied upon the judgment of the Apex Court in the case of *Zelia M. Xavier Fernandes E. gonsalves v/s Joana Rodrigues and others* reported in **(2012) 3 SCC 188**. Reliance is placed upon paragraphs 15, 17 and 18 of the said judgment in support of the contention that the word “interest” needs to be given a wider meaning. It would be apposite to reproduce the said paragraphs as follows:-

“15. There is no dispute that Respondent 4 and the appellant are husband and wife and are governed by the provisions of the 1860 Code. By virtue of Article 1098 and Article 1108 thereof, in the absence of any contract, the marriage between the appellant and Respondent 4 is governed by the system “*communiao dos bens*” i.e. community of property. Accordingly, on marriage, the property of the spouses gets merged. Each spouse, by operation of law, unless contracted otherwise, becomes 50% shareholder in all their properties, present and future and each spouse is entitled to a one-half income of the other spouse.

16.

17. In *P. Ramanatha Aiyar's The Law Lexicon*, 2nd Edn. (Reprint 1999) the term “interest” is explained thus:

“Interest.—Legal concern, right, pecuniary

stake the legal concern of a person in the thing or property or in the right to some of the benefits or use from which the property is inseparable; such a right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings. The word is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied. It may have even the same meaning as the phrase 'right title and interest' but it has been said also to mean any right in the nature of property, but less than title. The word is sometimes employed synonymous with estate, or property.

'Interest means concern, advantage, good; share, portion, part, or participation.'

A person interested is one having an interest; i.e. a right of property, or in the nature of property, less than title.

The word 'interest' is the broadest term applicable to claims in or upon real estate, in its ordinary signification among men of all classes. It is broad enough to include any right, title, or estate in or lien upon real estate. One who holds a mortgage upon a piece of land for half its value is commonly and truly said to be interested in it."

The word "interest" has a basic meaning of participation in advantage, profit and responsibility. "Interest" is a right, title or share in a thing.

18. *Section 10(f) speaks of monetary interest. The general rule that the wife's interest is not necessarily the husband's interest has no application where the husband and the wife are governed by the system "community of property" because under that system, on marriage, each spouse is entitled to a one-half income of the other spouse unless contracted otherwise. During the subsistence of marriage, the husband and the wife each have a share in the corpus as well as the income of communion property."*

has been conclusively proved is enough to apply Section 14(1)(g) to the Petitioner. Therefore, the conclusions drawn by the Authorities below are sustainable and can in no way be termed as perverse or erroneous.

20 Having considered the submissions of the learned Advocates appearing for the respective sides, the record as it emerges from the petition paper book and the judgments cited, I find that the entire issue turns upon the interpretation of the words “share or interest in any work done” and effect of the words “has directly or indirectly, by himself or his partner” appearing in Section 14(1)(g) of the said Act.

21 Insofar as the words “directly or indirectly” are concerned, the Petitioner appears to have drawn an advantage indirectly. The first instance of misappropriation is as regards “self” payment of Rs.92,000/- by the Petitioner. This aspect has to be viewed from the angle given by the Petitioner himself vide Ground No.XIII below paragraph 7 in the memo of the petition. It is specifically contended that the said amount of Rs.92,000/- which is withdrawn by “self” payable cheque has been given to Dnyandeo Kendre who is said to have performed the work of the water scheme.

22 In this backdrop, the conduct of the Petitioner is to be viewed

from the angle of issuing a “self” cheque. The reasons for doing so are unexplained and therefore, beyond comprehension. The issue rests on the fact that the Petitioner has withdrawn the said amount through a “self” payment. The explanation put forth is through the ground raised in the petition that the amount was paid to Dnyandeo Kendre.

23 The Apex Court, in Zelia M. Xavier (supra), has considered the meaning of “share/ interest”. The Apex Court has referred to the Law Lexicon, 2nd Edition, Reprint 1999 and has, therefore, considered the meaning of “interest” as being legal concern, right, pecuniary stake or right to some of the benefits or use, right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings. It is also considered that the said word “interest” would mean advantage, share, portion or part. Taking into account the aspect of interest in relation to money, the Apex Court concluded that direct or indirect monetary or pecuniary interest has to be given a wider meaning.

24 This Court (Coram : S.S.Shinde, J.) in Writ Petition No.8004/2013 and other connected petitions in the case of *Ravindra Prasad v/s Prakash* decided on 04.12.2013, has placed reliance upon the judgment of the Division Bench in the case of *Balaji Ganpati Manmode v/s*

State of Maharashtra in **Letters Patent Appeal No.6/2013 in Writ Petition No.6533/2012.** In Balaji Manmode (supra) the issue was that the appellant has made a show of payment in cash and then had recovered the amount by cheque from the Panchayat.

25 In the instant case, the issue is as regards the Petitioner having resorted to “self payment” of Rs.92,000/- and then taking a stand that the said amount was paid to Dnyandeo Kendre for performing the developmental work. The Bank statement, as regards such payment having been made through the account of the Group Gram Panchayat held with the State Bank of India, is also placed on record. A bare reading of the entry as regards the said payment at issue indicates that the surname of the Petitioner “Ghuge” is encircled and in front of the said surname, the name “Kendre D.S.” is mentioned. There is no explanation forthcoming as regards the said interpolation.

26 Taking into account the fact situation as presented by the Petitioner, the said cheque was issued by the Petitioner towards “self payment” and, therefore, his surname “Ghuge” was mentioned in the said entry in the passbook to indicate that he had withdrawn the said amount from the Bank.

27 In the light of the above, I find that the Authorities below have committed no error while delivering the impugned judgments thereby concluding that the Petitioner has incurred disqualification under Section 14(1)(g) of the said Act.

28 In fact, I could have directed investigation into each of the instances narrated by Respondent No.6 in his complaint as have been adverted to in the impugned order of the Additional Collector dated 13.11.2014. However, Respondent No.6 has not raised any grievance about the Additional Collector having not drawn any conclusion on the said instances.

29 Notwithstanding the above, since I have concluded that the impugned judgments are not perverse and erroneous, this Writ Petition is devoid of merits and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)