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

**WRIT PETITION NO.1272 OF 2015
WITH
WRIT PETITION NO.1273 OF 2015**

Nimba Dashrat Koli. (wp/1272/2015)
Kailas Tathu Mahajan. (wp/1273/2015) ..Petitioners
-Versus-
The State of Maharashtra and others. ..Respondents

.....
Mr.PB.Patil, Advocate for the Petitioners.
Mr.K.M.Suryawanshi and Mr.D.R.Korde, AGPs, for the Respondents/State.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd February, 2015

Oral Order:

1 A common question as regards the applicability of Section 14(1)(j-5) of the Maharashtra Village Panchayats Act is involved in these two petitions.

2 Both the Petitioners were elected Members of the Gram Panchayat, Lasur, District Jalgaon. Admittedly, both of them did not have their own toilets and were not using the said facility on the date of the

filing of the nomination papers as well as on the date of the results of the said elections. Admittedly, both of them have constructed the toilets on 23.01.2014, have started using it and have obtained the certificates from the Gram Sevak.

3 Disqualification proceedings were initiated against the Petitioners before the Collector, Jalgaon seeking their disqualification under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act.

4 The Petitioners contended that they had requested the learned Collector for some breathing time since their toilets were under construction. Such request was not accepted and by the impugned judgment and order dated 17.01.2014, the Collector, Jalgaon concluded that both the Petitioners are disqualified for continuing as members of the said Gram Panchayat.

5 Both the Petitioners preferred Appeals before the Additional Divisional Commissioner and by the impugned judgment and order dated 05.12.2014, the Appeals of both the Petitioners have been rejected.

6 The Petitioners contend that Section 14(1)(j-5) intends to achieve an object of every villager in this country having his own toilet

which can be used by the family. The construction of toilet is, therefore, significant. The fact that since both the Petitioners got the certificates from the Gram Sevak that they had constructed their toilets as on 23.01.2014, the Appellate Authority should have considered the said aspect. The Collector as well as the Appellate Authority have adopted a pedantic approach and have not considered the fact that the object of Section 14(1)(j-5) has been achieved by the construction of toilets by both the Petitioners. It is, therefore, prayed that the impugned judgments be quashed and set aside and the Petitioners be restored to their position as elected members of the Gram Panchayat.

7 Upon considering the submissions of the learned counsel appearing for the Petitioners and upon going through the petition paper books, it appears that the Petitioners are canvassing the point that Section 14(1)(j-5) of the Maharashtra Village Panchayats Act is directory in nature and not mandatory.

8 In my view, the said contention is fallacious for the reason that this Court in the case of *Vijay Ramchandra Raut v/s Divisional Commissioner, Amravati Division and others* reported in **2014 (3) Mh.L.J. 641**, has taken a view that the resolution and the certificate signifies that the candidate, desirous of contesting the elections of the Gram Panchayat,

has a toilet and is using the said facility as on the date of the filing of the nomination papers.

9 Paragraph Nos.4, 5, 6 and 7 of the Vijay Ramchandra Raut judgment (supra) reads as under:-

“4. *Shri Gawande, the learned counsel appearing for the petitioners has urged that the petitioners were elected on 25.04.2010, the provision of Section 14(1)(j-5) came into force w.e.f. 10.01.2011, which will operate prospectively and therefore, the provision will not apply to the petitioners who are elected prior to that date. He has further invited my attention to a copy of the resolution said to have been passed by the Gram Panchayat on 11.05.2011 in respect of existence and user of toilets by the petitioners. He submits that there were certificates produced on record also indicating the existence and user of toilets by the petitioners prior to the cut-off date 09.01.2012. He, therefore, submits that the Commissioner has committed an error in holding that the petitioners are disqualified under the said clause.*

5. *Clause (j-5) of sub-section (1) of Section 14 of the BVP Act, reads as under:-*

"(j-5) fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha certifying that, -

*(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or
(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet.*

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate, within ninety days from the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis

(Second Amendment) Act, 2010."

The present petition pertains to sub-clause (i) above under which the petitioners are disqualified.

6. *The provision was brought into force on 10.01.2011 and the period of 90 days prescribed under the proviso was extended by further period of one year i.e. upto 09.01.2012, are not the facts in dispute. Though the petitioners were elected on 25.04.2010, they were working as the Members of the Gram Panchayat or as Sarpanch and Upa-Sarpanch, when the provision was brought into force on 10.01.2011. In view of this, it cannot be said that the provision is not applicable to them. The question of retrospective operation of the aforesaid provision does not arise. The provision operates prospectively and applies to all such members, who continue to hold the post on the date when the Act came into force on 10.01.2011. Hence, the contention is rejected.*
7. *So far as the compliance of condition under subclause (i) of clause (j-5) of sub-section (1) of Section 14 of the BVP Act is concerned, the petitioners were required to produce a certificate of the concerned Gram Panchayat along with the Resolution of the Gram Sabha, certifying that they reside in a house owned by them, having toilet in such houses which are being used regularly. The resolution dated 11.05.2011 said to have been passed by Gram Sabha, brought to my notice, was not referred to in the reply filed in response to the show cause notice of disqualification. There is a dispute raised about the existence and passing of such resolution and also the certificates produced on record. There is a finding recorded by the Commissioner, that the resolution dated 10.05.2013 and the Certificates issued on 11.05.2013 were beyond cut-off date of 09.01.2012. Thus, there was no compliance of sub-clause (i) of clause (j-5) of subsection (1) of Section 14 of the BVP Act ."*

reads as under:-

“14. *Disqualifications:-*

(1) *No person shall be a member of a panchayat continue as such, who*

(j-5) *fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha certifying that:-*

(i) *he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or*

(ii) *he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet:*

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate, within ninety days from the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010.”

11 In the instant case the proviso is of no assistance to the Petitioners because they were not elected members of the Gram Panchayat on the date of introduction of clause (j-5) below Section 14(1).

12 This Court, (to which I am a party) in the case of *Subhash Trimbak Wadhe v/s State of Maharashtra and others* in **Writ Petition No.10372/2014** and other connected petitions vide judgment dated 21st November, 2014, has taken a view that a certificate of the Gram Sevak and the resolution of the Gram Panchayat indicating a constructed toilet and being under use, needs to be filed along with the nomination papers.

No elected member of the Gram Panchayat could continue as such without compliance of Section 14(1)(j-5). This Court in this judgment has observed as under:-

“18. *In the light of the above legal position, in my view, such a certificate and resolution needs to be filed before any person is elected as a member of the Panchayat. I have arrived at this conclusion, since the phraseology in Section 14(1) indicates that “no person shall be a member of the Panchayat if he fails to submit such a certificate”. A person is said to be member of the Panchayat on his election as such and after the appropriate authority declares the result of the election and issues a certificate to that effect. Hence, even on the first day of being a member of the Panchayat, such elected member must be equipped with a certificate and resolution as expected under sub section (j-5). None of the parties before this Court have placed on record any judicial pronouncement, which could indicate that a different view has been taken as the one which I have taken in this order and by placing reliance upon the Vijay Ramchandra Raut judgment (supra).”*

13 In such circumstances this issue as regards the effect and operation of Section 14(1)(j-5) is no longer res integra. It is now settled that the toilet should be constructed prior to the filing of the nomination papers and the certificate and the resolution of the Gram Sevak and the Gram Panchayat respectively needs to be filed along with the nomination papers.

14 In the light of the above, both the impugned judgments of the Collector as well as the Appellate Authority call for no interference. Both the Writ Petitions being devoid of merits are, therefore, dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)