

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

WRIT PETITION NO. 2126 OF 2015

Smt. Ashabai W/o Balu Patil ... Petitioner

VERSUS

The State of Maharashtra
& others ... Respondents

.....
Mr. U.A. Bhadgaonkar, Advocate for petitioner
Mr. V.G. Shelke, A.G.P. for respondent Nos. 1 to 4 / State
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 2nd MARCH, 2015

PER COURT :

1. The petitioner is aggrieved by the impugned order dated 17-01-2014 passed by the District Collector, Jalgaon and the order dated 28-11-2014 passed by the Additional Divisional Commissioner, Nashik in Grampanchayat Appeal No. 49 of 2014.

2. Shri Bhadgaonkar, learned Advocate for the petitioner vehemently submitted that the petitioner had constructed a toilet and was using the said facility in the premises wherein the petitioner along with other close relatives reside as a joint family.

3. The petitioner was elected in December 2012 as a Sarpanch Village Panchayat Waghare, Tq. Parola, District Jalgaon. It is submitted that by the impugned orders, the petitioner has been disqualified as a Sarpanch under Section 14 (1) (j-5) of the Maharashtra Village Panchayat Act (MVP Act).

4. The petitioner vehemently disputes the statement recorded by the Additional Collector in the first paragraph on the 2nd page of the impugned order dated 17-01-2014, wherein it has been held that though the petitioner was constructing a toilet, she was unable to use the said facility since there was no such toilet constructed.

5. Shri Bhadgaonkar, therefore, submits that the Additional Divisional Commissioner committed the same error as was done by the District Collector and the petitioner's appeal was rejected. It is reiterated that the petitioner has a toilet facility and was using the same.

6. Reliance is placed upon a common order passed by this Court dated 23-11-2014 in Writ Petition No. 10372 of 2014 and connected matters to canvas that the matter could be remanded

back to the Additional Collector for rehearing by quashing and setting aside the impugned orders.

7. Learned A.G.P. has pointed out that there is a distinguishing factor between the present case and all those cases decided on 21-11-2014. He indicates from the first paragraph on page No. 2 of the impugned order passed by the District Collector, wherein the District Collector has referred to the report of the Gramsevak of Village Waghare dated 31-12-2014 which clearly indicates that the petitioner did not have a toilet till the date of filing of the report and she used to answer the call of nature by going to the agricultural field. Learned A.G.P., therefore, submits that the order passed by this Court on 21-11-2014 would be no assistance to the case of the petitioner.

8. Section 14 (1) (j-5) of the MVP Act reads as under :-

“(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 Gramsabha 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 Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (second Amendment) Act; or]”

9. In the order dated 21-11-2014 passed by this Court, I have concluded that the phraseology of sub section (j-5) indicates that the elected representative has to file a certificate of the Gramsevak along with a resolution passed by the Grampanchayat to indicate the existence of a toilet and that the candidate is utilising the said facility prior to being elected. Paragraph Nos. 10 to 18 of the order dated 21-11-2014 read as under :-

10. Section 14 of the Maharashtra Village Panchayats Act, pertains to disqualification. Sub section 1 indicates that “No person shall be a member of a Panchayat or continue as such”. This part of sub section (1) is to be read conjointly with sub section (j-5) which reads as “fails to submit a certificate of the concerned panchayat, along with the resolution of 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:”

11. This would clearly indicate that a person shall not be a member of the Panchayat and if he is a member, then he shall not continue to be as such, if he fails to produce a certificate from the Grampanchayat as regards having and using a toilet, along with the resolution of Gram Sabha.

12. The proviso below sub section (j-5) reads as under :-

“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 Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (second Amendment) Act; or”

13. Going by the phraseology used in the said proviso, such disqualification is prohibited if the member of the Grampanchayat submits a certificate, as required under sub section (j-5) (i) within 90 days from the date of commencement of the Bombay Village Panchayats Act and Maharashtra Zila Parishads and Panchayat Samitis (Second Amendment) Act, 2010.

14. In my view, there is no ambiguity in the said proviso. It is self-explanatory. Member of the panchayat shall not be disqualified if he produces such a certificate within 90 days from the date of commencement of the Act of 2010. Therefore, in my view, this proviso is in connection with those members of the Grampanchayat who have already been elected prior to the introduction of sub section (j-5) by the said Act dated 23-12-2010.

15. This is, therefore, a provision which protects only the existing members of the Grampanchayat from being disqualified for a period of 90 days, so as to enable them to submit such a certificate mandated by the introduction of sub section (j-5). It is given to understand that sub section (j-5) was further given an extension of one year so as to enable the existing elected members of the Grampanchayat to submit such certificates. As such in my view, the proviso to sub section (j-5) will not apply to those members of the Grampanchayat who have been elected after the introduction of sub section (j-5).

16. Admittedly, all these petitioners have been elected as members of the Grampanchayat in the year 2013. There is no doubt that sub section (j-5) was applicable. Section 14(1), therefore, prohibit a person from being a member of the Panchayat, if he fails to submit the certificate of the concerned Panchayat, along with the resolution of the Gram Sabha, certifying that he resides in a house having his own toilet and he uses the said facility or he uses a public toilet or he resides in a house not owned by him but which has a toilet.

17. A similar issue was dealt with by this Court in the case of **Vijay Ramchandra Raut Vs. Divisional Commissioner, Amravati Division & others**, 2014 (3) *Mh.L.J.* 641, wherein this Court has held in paragraph Nos. 4, 5, 6 and 7 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 sub-clause (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 sub-section (1) of Section 14 of the BVP Act.”

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).

10. In the said decision dated 21-11-2014 by which I have decided the group of petitions, the District Collector had observed in every impugned judgment that the elected representative had sought permission to construct toilet during the pendency of the proceedings before the District Collector. In the instant case, as is rightly pointed out by the learned A.G.P. that the Gramsevak has submitted a report dated 31-12-2013 clearly indicating that the petitioner had no toilet facility as on the date of the report.

11. It is not the defence of the petitioner that a certificate of the Gramsevak and a resolution passed by the Grampanchayat as required under Section 14 (1) (j-5) was filed along with the nomination papers of the petitioner while contesting the election to the position of member of Village Panchayat Waghare. The resolution was admittedly passed on 28-01-2014 after the Additional Collector delivered the impugned order. Certificate of the Gramsevak is still not issued.

12. I have considered a similar situation in my order dated 03-02-2015 in Writ Petition Nos. 1272 of 2015 and 1273 of 2015, *Nimba Dashrath Koli Vs. The State and others and Kailas Talathi*

Mahajan Vs. The State and others, wherein I have held that the requirement of Section 14 (1) (j-5) of the MVP Act, is mandatory and the said certificate of the Gramsevak as well as the resolution of the Grampanchayat should be on record along with the nomination form.

13. This Court has thus observed in paragraph Nos. 12 & 13 in the *Nimba Dashrath Koli* case (supra) as under :-

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, I do not find that the impugned orders could be termed as perverse or erroneous. Petition is, therefore, dismissed.

15. No costs.

(**RAVINDRA V. GHUGE, J.**)