

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

WRIT PETITION NO.1423 OF 2014

Shivaji s/o Dashrath Vaidya,
Age 45 years, Occu. Agriculture
r/o Vaidyawadgaon, Taluka Mantha,
District Jalna

.. Petitioner

Versus

1. The Additional Commissioner,
Aurangabad
2. The Additional Collector,
Jalna, District Jalna
3. The Block Development Officer,
Panchayat Samiti, Mantha,
Taluka Mantha, District Jalna
4. Gramsevak,
Grampanchayat, Vaidya-wadgaon,
Taluka Mantha, District Jalna
5. Ganesh Nagorao Nalge,
Age 40 years, Occu. Agriculture/
Gram Panchayat member,
R/o Vaidyawadgaon, Taluka Mantha
District Jalna

.. Respondents

Mr G.S. Pahilwan, Advocate h/f Mr R.V. Gore, Advocate for petitioner
Mr D.R. Korde, A.G.P. for respondents No.1 and 2

CORAM : N.W. SAMBRE, J.

DATE : 13th April 2015

PER COURT

1. The respondent No.5 suffered disqualification under the provisions of Section 14 (1) (g) of the Bombay Village Panchayats Act, 1958, as he being Sarpanch, recommended for selection and execution of the work of water well in his field. The order of

disqualification was passed by the Additional Collector, Jalna on 29th June 2013 based upon the complaint made by the present petitioner. The said order was upset by the Additional Commissioner, Aurangabad on 10th February 2014 in an appeal filed by the present respondent No.5 under the provisions of Section 16 of the Bombay Village Panchayats Act, as such the present petition.

2. Learned Counsel for the petitioner-complainant has raised a ground that the view taken by the Additional Commissioner while allowing the appeal of respondent No.5 herein is contrary to the law laid down by this Court in the matter of **Ashabai Laxman Gawande Vs. Additional Commissioner, Amravati Division & Ors.**, reported in **2005 (4) Bom.C.R. 335**. He has placed reliance upon the observations made in paragraph 11 of the said judgment which read thus :

11. Bare perusal of application made by respondent No. 2 before Additional Collector reveals that grievance made is that petitioner cannot take benefit of scheme for herself. It is further mentioned that the authorities have extended benefit of scheme to husband of petitioner because of her influence. It also mentions about the opinion given by Secretary of Gram Panchayat and also about financial benefit to the beneficiary. In prayer clause and also in its body (paragraph 2) it mentions disqualification under Section 14(1)(g) of the Act. Petitioner has given her reply after fully understanding the case against her. Additional Commissioner has found that petitioner has direct interest in the work of construction of house done through the Panchayat. He has found that agency to select beneficiary

is Panchayat and Gramsabha is supreme in the matter. He has therefore held that petitioner is disqualified under Section 14(1)(g) read with Section 16(2) of Bombay Village Panchayats Act, 1958. This finding is sufficient to sustain said order. The other discussion by Additional Commissioner about legality or otherwise of Gramsabha held on 2nd October, 2002 or misuse of her office by petitioner while selecting her husband as beneficiary do not really have any bearing on the issue of disqualification as answered by him and eligibility of her husband for claiming benefit under the scheme is also not relevant. The grievance of respondent No. 2 in reply affidavit that husband of petitioner already has house in the village or has agricultural land are disputed question on facts and also not germane here. Same holds good even for allegations of mala fides made by petitioner against said respondent. The Gram Panchayat selects beneficiary who contributes 15% of cost of construction and house is constructed for him by government agency by spending balance 85% through government funds. Thus, petitioner has got material interest in construction of house of her husband and said construction is being done as per order/resolution of Gram Panchayat selecting him as beneficiary. She has interest in the work done as per the order of Gram Panchayat and hence she has incurred disqualification. The petitioner has been given due notice and opportunity by respondent No. 2 and also by Additional Commissioner. There is no breach of principles of natural justice and Additional Commissioner has not considered any new case. No jurisdictional error or any apparent mistake is demonstrated by the petitioner before this Court. There is no merit in the petition. Hence, the same is dismissed with no order as to costs.

3. Prima facie, from the reading of the observations made in the above referred judgment, it is required to be noted that the case of the respondent No.5 is not dealt with in the light thereof though his selection as beneficiary for allotment of the well in his field was done by him being Sarpanch of the village panchayat.

4. The observations made by respondent No.1-Additional Commissioner, Aurangabad prima facie appears to be contrary to the above referred view expressed by this Court. In view thereof, in my opinion, the said order dated 10th February 2014 is not sustainable.

5. As such, the order dated 10th February 2014, passed by the Additional Commissioner, Aurangabad in Appeal No.CR/75/2013 is hereby set aside. The said appeal stands restored to the file of Additional Commissioner, Aurangabad.

6. The parties to appear before the Additional Commissioner, Aurangabad on 27th April 2015 along with relevant affidavit, documents, or if required additional written notes of arguments.

7. The Additional Commissioner, Aurangabad is directed to decide the said appeal within a period of four weeks thereafter.

8. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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