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

WRIT PETITION NO. 3418 OF 2014

1. Namdeo S/o Kashinath Titkare,
Age- Major Occu. Agril.,
R/o Mauje Ambhol, Tq. Akole,
District -Ahmednagar.

2. Vilas S/o Raghunath Sable,
Age- Major, Occu. Agril.,
R/o As above.
Tq. Sangamner, Dist. Ahmednagar.

3. Dattatraya, S/o Rangnath Sable,
Age- Major Occu. Agril.
R/o As above.

4. Mrs. Alka W/o Suresh Sable,
Age- Major Occu. Agril.,
R/o as above.

5. Uttam S/o Ramchandra Talekar,
Age- Major Occu. Agril.,
R/o As above. ...PETITIONERS

versus

1. Gajanan S/o Babu Sable,
Age- Major Occu. Agril.,
R/o Mauje Ambhol, Tq. Akole,
District -Ahmednagar.

2. Mrs. Asha W/o Ramnath Sable,
Age- Major Occu. Agril.,
R/o Mauje Ambhol, Tq. Akole,
District -Ahmednagar.

3. Mrs. Nanda W/o Balasaheb Chaudhari,
Age- Major Occu. Agril.,
R/o- As above.

4. Gramsevak,
Gram Panchayat,
R/o Mauje Ambhol, Tq. Akole,
District Ahmednagar.

5. The Tahsildar, Akole,
District Ahmednagar.

6. The District collector,
Ahmednagar.

7. Divisional Commissioner,
Nashik Division, Nashik.

8. The State of Maharashtra,
through its secretary,
Rural Development Department,
Mantralaya, Mumbai.

9. Maharashtra State Election Commission,
Through its Commissioner. ...RESPONDENTS

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Mr. A.N. Nagargoje, Advocate for Petitioners
Mr. S.K. Shinde, Advocate for respondent No. 1
Mr. R.V. Dasalkar, A.G.P. For respondents No. 5 to 8
Mr. S.T. Shelke, Advocate for respondent No. 9

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CORAM : SUNIL P. DESHMUKH, J.

RESERVED ON : 28th OCTOBER, 2015

PROUNCED ON : 24th NOVEMBER, 2015

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for appearing parties finally with consent.

2. This writ petition was earlier heard, while the matter appeared on board on 28th October, 2015, the parties wished to clarify on certain factual aspects and also wished for further opportunity of hearing. Accordingly, the parties were heard and the matter had been reserved for judgment.

3. The petitioners are elected members of village panchayat Ambhol, in taluqa Akole, District Ahmednagar. Elections to said village panchayat were held in the month of October, 2012 and result of elections was declared on 22-10-2012, in which the petitioners as well as respondents No. 2 and 3 were declared elected as members of said village panchayat.

4. Respondent No. 1 – Gajanan Bapu Sable moved dispute bearing No. 8 of 2013 purportedly referring to section 14B of the the Maharashtra Village MVP Act, 1958 (hereinafter referred to as "MVP Act" for short) before the District Collector alleging non submission of return/ account of election expenses before due date. It was contended that after declaration of result on 22-10-2012, it was imperative to have submitted return/account of election expenses before 21-11-2012. It was alleged that petitioners No. 1 to 4 had submitted return/account of election expenses on 03-12-2012, whereas respondents No. 2 and 3 had not submitted return/account of election expenses at all. Thus, alleging non-compliance of requirements under section 14B of the MVP Act was primary and dominant ground on which dispute had been raised against the present petitioners and respondents No. 2 and 3.

5. It would be worthwhile to refer to the text of provisions of section 14B of the MVP Act, initially, itself, which reads thus: -

> ***"14B Disqualification by State Election Commission- (1) If the State Election Commission is satisfied that a person-***

(a) has failed to lodge an account of election expenses within the time limit and in the manner required by the State Election Commission, and

(b) as no good reason or justification for such failure.

the State Election Commission may, by an order published in the official Gazette, declare him to be disqualified and such person shall be disqualified for being a member of Panchyat or for contesting an election for being a member for a period of five years from the date of this order.

(2) The State Election Commission may, for reasons to be recorded, remove any qualification under-Sub-Section (1) or reduce the period of any such disqualification]

6. In the proceedings before the District Collector, it is contended by the petitioners that village Ambhol is in remote area and there are no proper facilities of communication and travel. They had not received any notice from the offices of Tahsildar or Collector for submission of return/account of election expenses. It has been contended that directions/ circulars had not been brought to the notice to the petitioners. Even there is no such contention on behalf of the respondents that the circular that would govern them, had been brought to their knowledge. It was on account of their ignorance they could not file return of election expenses in prescribed format before 21-11-2012. No sooner they were made aware about such requirement, than they had immediately on 03-12-2012 submitted returns/accounts of election expenses in format. The delay, if any, caused in submission of returns/accounts of

election expenses was not deliberate or intentional. It was contended that on such technical ground, the petitioners shall not be unseated, particularly, when they had been elected by following due democratic process.

7. It transpires that respondents No. 2 and 3 had not submitted returns/accounts of election expenses as required under the relevant provisions and circulars.

8. The District Collector, allowed the dispute under order dated 31-10-2013 and declared the petitioners to be disqualified from continuing to be members of village panchayat, Ambhol.

9. The District Collector appears to have considered that it was incumbent upon petitioners to submit accounts of election expenses within a period of one month, however, accounts of election expenses were submitted on 03-12-2012 and that respondents No. 2 and 3 have not submitted the same at all. The District Collector has considered that in support of the contentions, oral or documentary evidence had not been produced. Under the circumstances, having regard to the reports by Tahsildar, Akole and Sub-Divisional Officer, Sangamner, there had been failure on the part of the petitioners to submit account of election expenses within one month from 22-10-2012, he had exercised the powers under section 14B of the MVP Act, disqualifying the petitioners and respondents No. 2 and 3 and also disqualified them for a period of

five years from the date of decision.

10. Against aforesaid decision dated 31-10-2013 by the District Collector, Ahmednagar, petitioners preferred appeal bearing No. 16 of 2013 before the Divisional Commissioner, Nashik. Along with appeal, stay to execution and operation of order dated 31-10-2013, passed by the District Collector, Ahmednagar had also been sought. Accordingly, stay had been granted by the Divisional Commissioner on 13-11-2013, which was extended from time to time till final disposal of the appeal, Subsequently, Divisional Commissioner, Nashik under order dated 21-03-2014 purportedly dismissed the appeal of the petitioners and confirmed order dated 31-10-2013, passed by the District Collector, Ahmednagar.

11. The appellate authority has referred to reasons given by the District Collector in its order and dismissed the appeal adverting to that the accounts of election expenses were submitted by the petitioners on 03-12-2012. It appears that appellate authority has believed the arguments on behalf of respondents No. 1 to 3 about communication and travelling facilities and passed the order holding that reasons recorded by the District Collector cannot be said to be not satisfactory. The appellate authority has referred to the judgment in the case of *Sahebrao Dashratrao Patole Vs. State of Maharashtra* reported in *2010(5) Mh.L.J. 462* and has said that said authority is distinguishable on the facts and does not apply to the facts and circumstances of this case.

12. The petitioners are before this court questioning propriety, legality and validity of order dated 21-03-2014 passed by the Divisional Commissioner, Nashik, in Appeal No. 16 of 2013 and order dated 31-10-2013 in dispute No. 8 of 2012 passed by the District Collector, Ahmednagar, disqualifying the petitioners under section 14 of the MVP Act.

13. According to learned counsel for petitioners Mr. Ankush N. Nagargoje, order passed by the District Collector does not at all reason out as to why reasons given by the petitioners, for, submission of account in proper format on 03-12-2012 are not proper save and except cursorily referring to that reasons are not supported by any evidence oral and documentary. The District Collector as such mechanically, according to learned counsel, went on to pass order disqualifying the petitioners.

14. Learned counsel submits that appellate authority - Divisional Commissioner, Nashik although has referred to reasons given by the petitioners, it has cursorily and casually dealt with the same without verifying factual position simply relying on the order of the District Collector and submission of respondent No. 1 about connectivity. According to the petitioners, the Divisional Commissioner is in error in distinguishing the decisions of the courts cited on behalf of the petitioners.

15. He contends, that it cannot be said that petitioners have ever

incurred disqualification under the provisions of section 14B of the MVP Act, for, they, in fact had submitted returns/accounts of election expenses, albeit, may not by last due date, however, returns/accounts of election expenses in proper format had been submitted on 03-12-2012 which is belated only by seven days. He submits that it should be deemed to have been submitted within the period, for it had been immediately submitted after getting knowledge of such requirement. Explanation for such marginally belated submission has not received due attention nor circumstances which ought to be considered, have been applied mind to by the authorities. According to the petitioners, authorities have misinterpreted the provisions of Section 14B of the MVP Act and have decided the matters by taking hyper technical view.

16. It is submitted by the learned counsel that, having regard to language employed in the provisions, it is apparent that, provisions cannot be said to be mandatory in nature. It is submitted that the word “may” having been employed, it is clear that legislature has given discretion to the authorities to condone the delay caused in filing the return of election expenses, if sufficient cause is made out. In spite of cause being shown, the authorities have not applied their mind to the same and had perfunctorily passed the orders.

17. He submits that regard shall be had to that there is only marginal delay of seven days reasons for which is duly explained, against which no counter arguments have been advanced in the

matter. Decisions do not justify non invocation of discretion available to the authorities.

18. Mr. Nagargoje, the learned counsel further goes on to submit that situation grossly emerges that there has been non application of mind to the reasons given for non- submission of election expenses within prescribed time, which is ordained to be taken into account, and is *sine quo non* having regard to clause (b) of Section 14B of the MVP Act.

19. The learned counsel submits that impugned orders are hyper technical in nature and without application of mind to the facts of the case and without realizing its serious repercussion on democratically elected persons.

20. It is submitted that persons like the petitioners cannot be unseated as members of village panchayat in such summary proceedings. It is contended that election of members cannot be set aside except by the election petition. It is being submitted that orders passed by the authorities are not in accordance with principles of justice, equity and good conscience and those are cryptic and not supported by any reason or rationale.

21. The learned counsel for petitioners during the course of hearing has submitted that it is State Election Commission alone which has been invested with the powers to pass an order of disqualification of an elected member for non-submission of election

expenses within prescribed period and in the manner prescribed in this respect by the State Election Commission. Powers cannot be delegated by the State Election Commission to any other authority especially the quasi-judicial powers, unless and until penal provision itself does not refer to delegation of powers and/or assignment of proceedings to other authority, as such, is not possible and any such delegation/assignment, in the present case is legally infirm and untenable. In the submissions of learned counsel for petitioners, District Collector does not have jurisdiction to decide the dispute and further that the dispute raised by respondent No. 1 was not maintainable and tenable. As such, the impugned orders deserve to be quashed and set aside.

22. Learned advocate for the State Election Commission, however, submits that it cannot be said that submission of account of election expenses had been to the competent authority, particularity it being not to the collector pursuant to clause 7 of 1995 Order / directions.

23. Perusal of the orders depicts that said aspect neither appears to have weighed with the authorities nor said issue had been addressed to by giving opportunity to parties concerned. Said aspect will have to be properly considered by the authorities concerned.

24. However, affidavit in reply filed on behalf of the State Election Commission refers to that in regard to Gram Panchayat elections,

accounts to be submitted within the prescribed time to the Collector of the district concerned or to the officer not below the rank of deputy collector, who is authorized to give acknowledgement of the receipt of the same.

25. Learned counsel for respondents - Election Commission has relied on the decision reported in *2014 AIR SCW 4127 in the case of Ashok Shankarrao Chavan Vs. Dr. Madhavrao Kinhalkar and ors.* Whether its extrapolation is possible can be examined as well.

26. In the appeal, the petitioners have contended that though they had given reasons about non availability of the proper infrastructure, dearth of communication and travelling facilities, the same have been ignored and upon considering the arguments on behalf of respondent No. 1 that village Ambhol has been connected by road to headquarter – Akole and that there is facility of S.T. Bus and further that petitioners have their own vehicles, impugned order had been passed. It is being submitted that there is no reference to the reason given by the petitioners in the reasonings recorded by the District Collector. It was contended before the appellate authority that requirement of submission of account of election expenses within one month had not been brought to their notice and only on technical ground that those have been submitted beyond period of limitation, decision had been rendered.

27. The authority of the first instance as well has brushed aside the contentions on behalf of the petitioners about non availability of proper infrastructure. Contention of availability of the same as sought to be pleaded in appeal by respondent No. 1, however, appears to have weighed with appellate authority. On the whole, it appears that although the petitioners have contended that there is lack of infrastructure and that there are no proper communication and travelling facilities for their village coupled with they had not been aware of the such requirement and further that contention on behalf of respondent No. 1 about petitioners possessing vehicles and that village Ambhol is connected by road do not appear to have been verified by the authorities. In the circumstances, if accounts are submitted beyond prescribed period, in the manner prescribed, whether the reasons given by the petitioners are proper or not and there is sufficient reason or justification for such failure is required to be examined on facts and circumstances. In the circumstances, there does not appear to be of objective appreciation of circumstances involved in the matter, a situation which calls for remanding of the matter for proper appreciation of the facts and circumstances.

28. So far as contention with regard to delegation of powers is concerned, situation is no longer *res-integra* and the subject-matter squarely covered by the decision of learned Single Judge of this court in the case of *Suchita Murlidhar Kewati (Sarpanch) and others Vs. State of*

Maharashtra and others reported in *[2013(6) Mh.L.J. 414* and another decision dated 13th February, 2014 of learned Single Judge of this court in Writ Petition No. 9508 of 2013. Having regard to aforesaid, the petition on said point at this stage does not call for reconsideration of said point/ground.

29. In the circumstances, impugned order dated 21-03-2014 passed by the Divisional Commissioner, Nashik, in Appeal No. 16 of 2013 and the order dated 31-10-2013 in dispute No. 8 of 2013 passed by the District Collector, Ahmednagar stand set aside. Dispute No. 8 of 2013 is restored to its position for hearing. The District Collector, Ahmednagar to reconsider the dispute objectively by letting opportunity to the parties to address themselves on the issues, as expeditiously as possible, preferably within a period of two months from the date of receipt of writ of this order.

30. The parties to the dispute shall appear before the District Collector, Ahmednagar on 30-11-2015 and thereafter to abide by the schedule by the authority.

31. Writ Petition accordingly is allowed. Rule is made absolute in aforesaid terms.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK