

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4110 OF 2014

Kisan Yashwant Jorvekar,
Age 63 years, Occ. Agriculturist
and Journalist, Occ. Sarpanch
Takli P.C., Chalisgaon,
District Jalgaon.

..Petitioner

Versus

1. The State Election Commission,
1st Floor, New Administrative Building,
Hutatma Rajguru Chowk,
Madam Kama Road, Mumbai
Through Election Commissioner.

2. The Collector, Jalgaon.

3. The Tahsildar, Chalisgaon
District Jalgaon.

4. Mrs. Vimalbai Sheshrao Patil,
Age 49 years, Occ. Household
work, Kodgaon, Post Beldarwadi,
Tq. Chalisgaon, Dist. Jalgaon.

5. The Police Inspector,
Police Station, Chalisgaon,
District Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Patil Pradip R.
Advocate for Respondent 1 : Shri Shelke Shivaji T.
AGP for Respondents 2, 3 & 5 : Shri Sangle S.G.
Advocate for Respondent 4 : Shri Dhorde R.N., Sr. Advocate
h/f Shri Suryawanshi Nitin B.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 21, 2015

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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 9.4.2014, delivered by the Collector, Jalgaon - respondent No.2 herein.
5. The submissions of Shri Patil, learned Advocate for the petitioner can be summarised as under:-
 - (a) Respondent No.4 filed her nomination form on 20.1.2012, for contesting the elections of Zilla Parishad, Jalgaon from Takali P.C. and Kodgaon Gut No.65 as she is the resident of village Kodgaon.
 - (b) The petitioner is an agriculturist, journalist and presently working as a Sarpanch of Village Panchayat Takali P.C.
 - (c) The petitioner alleges non-disclosure of assets, suppression of ownership of certain properties and non-disclosure of election expenditure by respondent No.4, who has been elected to the Zilla Parishad.

(d) The petitioner, therefore, preferred a Complaint on 10.10.2013 before respondent No.1 - Election Commissioner, State of Maharashtra.

(e) The State Election Commission by its communication dated 28.8.2013, delegated its powers to respondent No.2 - Collector to consider the complaint filed by the petitioner.

(f) Respondent No.2 Collector is said to have further delegated the authority to respondent No.3 - Tahsildar, Taluka Chalisgaon, District Jalgaon to hold an enquiry.

(g) The report of the said Tahsildar, dated 1.1.2014 is pointed out to indicate that respondent No.4 had appeared through her Advocate and her husband was present in the hearing afforded by the Tahsildar, though no notice was issued to the petitioner to participate in the hearing.

(h) The impugned order dated 9.4.2014 is pointed out to indicate that the petitioner was not given any opportunity of hearing by the Collector before passing the impugned order.

(i) Respondent No.4 deserves to suffer 'disqualification' in the light of Section 15B of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961.

(j) Certain documents are indicated to suggest that respondent No.4 and her husband have prepared an ante dated application, which is dated 4.6.2011 so as to create a record that the concerned house property not disclosed in the affidavit annexed to the nomination form, as it had been transferred in the name of the married daughter of respondent No.4.

(k) Reliance is placed upon the ratio of the Apex Court in the case of Kisan Shankar Kathore Vs. Arun Dattatray Sawant and others [(2014) 14 SCC 162] to support the contention that a voter has a right to know the assets of a candidate contesting elections and non-disclosure of such material information shall lead to the disqualification of the elected candidate.

6. Shri Dhorde, the learned Sr. Advocate on behalf of respondent No.4 submits that the property at issue has already been gifted to the married daughter of respondent No.4. Election expenditure has been properly explained. No advertisement was sought to be published during the elections in the news paper Daily Gramastha of which the petitioner is the owner as well as the Editor. Fabricated documents have been produced by the petitioner in order to indicate that an advertisement was published in his news paper and the expenditure towards such advertisement has not been furnished.

7. Shri Dhorde further submits that the petitioner, as a voter, may be said to have espoused his cause by filing a complaint before the first respondent. His role as a voter ends with the lodging of the complaint since the Collector has to resort to a fact finding exercise and for which purpose the Collector may utilise the machinery available at his disposal by way of an assistance in order to locate the truth. The petitioner seems to have a personal grievance / animosity towards respondent No.4 and for the said purpose, he has also lodged an FIR with a Police Station. Respondent No.4 has preferred Criminal Writ Petition No.388 of 2014. Same was pending as

on date of filing of this petition. The said Writ Petition has been subsequently allowed.

8. I have considered the submissions of the learned Advocates for the respective sides, as have been recorded as above.

9. I am not required to advert to the detailed submissions of the learned Advocates for the reason that the petitioner has specifically contended that he was not heard by the Tahsildar of Taluka Chalisgaon. I find from the report of the said Tahsildar, dated 1.1.2014 that notice was issued to respondent No.4, dated 10.12.2013. Respondent No.4 was represented by her husband and an Advocate who participated in hearing. No such notice was issued to the petitioner.

10. The petitioner has also raised an issue of "*delegatus non potest delegare*" to support his contention that once the authority was delegated by respondent No.1 to respondent No.2, the said respondent No.2 Collector could not have further delegated his authority to respondent No.3 - Tahsildar of Chalisgaon.

11. I have also gone through the impugned order of the Collector, dated 9.4.2014. It does not appear that the petitioner was heard by the Collector. It is categorically averred by the petitioner that no opportunity of hearing, much less, fair hearing was afforded to the petitioner.

12. Considering the above, I find it appropriate to set aside the impugned order and refer the matter to the Collector, so as to ensure that the litigating sides are given a fair hearing. All contentions of the litigating sides are kept open inasmuch as the contention of the petitioner that the Collector could not have delegated his authority to the Tahsildar and the contention of the respondent No.4 that the proceedings initiated by the petitioner are aimed at persecuting the fourth respondent, are kept open.

13. In the light of the above, this petition is partly allowed. The impugned judgment dated 9.4.2014 is quashed and set aside on account of violation of the principles of natural justice. The Complaint bearing No. 7490 / 2014 is remitted back to the District Collector, Jalgaon with the following directions :-

(A) The litigating sides shall appear before the Collector on 5.10.2015 at 11.00 AM and thereafter, shall abide by the dates of hearing on which the Collector may decide for hearing in the matter. Formal notices to the litigating sides need not be issued by the Collector.

(B) All contentions of the litigating sides are kept open including those as are recorded herein above in paragraph No.12.

(C) The litigating sides are at liberty to file written notes of submissions along with documents on which they may place reliance, besides addressing the Collector, in person, or through an authorized representative.

(D) The Collector shall decide the complaint filed by the petitioner on its own merits and without being influenced by any observations recorded in the impugned order.

(E) Considering the pendency of this dispute, the Collector shall endeavour to decide the complaint filed by the petitioner as expeditiously as possible and preferably on/or before the 16th day of January, 2016.

14. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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