

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4238 OF 2013

Prabhakar s/o Kisan Tambe,
Age: 36 years, Occu : Agril.,
R/o. Bavi, Tq. and Dist. Osmanabad

...PETITIONER

VERSUS

- 1) The Additional Commissioner,
Aurangabad Division,
Aurangabad
- 2) The Additional Collector,
Osmanabad
- 3) Bapusaheb s/o Fulchand Unde,
Age: 36 years, Occu : Agril.,
R/o. Bavi, Tq. and Dist. Osmanabad
- 4) Gram Panchayat Bavi,
Tq. and Dist. Osmanabad,
Through its Gram Sevak

...RESPONDENTS

Mr Pravin S. Dighe, Advocate for petitioner;
Mr S. K. Tambe, Asstt. Govt. Pleader for respondents No.1 & 2;
Mr A. M. Kulkarni, Advocate for respondent No. 3;
Mr G. J. Gore, Advocate for respondent No. 4

CORAM : N.W. SAMBRE, J.

DATE : 9th March, 2015

ORAL ORDER

The order dated 25th March, 2013, passed by the Additional
Collector, Osmanabad, under section 14 (1) (g) of the Bombay Village

Panchayats Act, 1958 (hereinafter referred to as “Panchayats Act”, for the sake of brevity), disqualifying the petitioner from the post of Sarpanch as he has indulged into activity of allotment of contract, benefit of which was passed to the petitioner and the order dated 14th May, 2013, passed by Additional Commissioner, Aurangabad, confirming the order of Additional Collector, are impugned in the present petition.

2. Mr Dighe, learned Counsel appearing on behalf of the petitioner would urge that, the allegations made against the petitioner in the complaint are completely explained from the record of the Village Panchayat including that of passing of various resolutions, from time to time. In support of his contention, he has taken me through the orders passed by both the authorities below. According to him, the Additional Commissioner though has not given a definite finding as regards pointing out the guilt of the petitioner, the said order is based on presumption that the act of the present petitioner is contrary to the mandate of provisions of section 14 (1) (g) of the Panchayats Act.

3. Mr Kulkarni, learned Counsel appearing on behalf of respondent No. 3/original complainant, while strenuously opposing the prayer of the petitioner, has invited attention of this Court to the report dated 3rd September, 2013, which was tendered by the learned Asstt. Govt. Pleader during the hearing of the present petition and taken on record by an order

of this Court dated 30th April, 2014, The said report was submitted to the Block Development Officer Class-I by the Extension Officer of Panchayat Samiti having jurisdiction over the Village Panchayat. The said report, in detail, has considered and dealt with the conduct of the petitioner on each of the counts as regards execution of the work, withdrawal of the amount, etc. He would urge that the said report, to some extent, points out the illegalities committed by the petitioner.

4. After considering the submissions made by the respective parties, it is noticed that the report dated 3rd September, 2013, on which reliance is sought to be placed by the respondents, is admittedly, subsequent to the order of disqualification passed by the Additional Collector. The Additional Collector has passed the order of disqualification on 25th May, 2013, whereas the report of the Extension Officer is dated 3rd September, 2013, which was neither served on the petitioner nor brought to the notice of the respondents - authorities, as the same inquiry was later in point of time.

5. Perusal of the order passed by the Additional Collector, reflects that he has proceeded to consider each withdrawal and the head under which same was done. Upon considering the submissions of the parties, the Additional Collector noticed that, the cheque for Rs. 10,000/- was deposited in the account of the petitioner and as such, has incurred disqualification under section 14 (1) (g) of the Panchayats Act. It was also

noticed by the Additional Collector that certain amounts were shown to have been deposited as security deposit and certain amounts were withdrawn from the head of repairs of the school.

6. So far as the order of the Additional Collector disqualifying the petitioner is concerned, but for three entries, i.e. Rs.10,000/-; Rs.1,85,750/- and Rs.50,200/-, he has not independently dealt with and recorded a finding, that the amount was withdrawn by the petitioner for his personal gain, contrary to the mandate of section 14 (1) (g) of the Panchayats Act. Similar appears to be the position while deciding the appeal by the Additional Commissioner. It was expected of the Additional Commissioner to evaluate the evidence brought before him and give findings by independently applying his mind as regards disqualification of the petitioner. The Additional Commissioner has ordered disqualification of the petitioner on the basis of withdrawal of the amount from the account of the village panchayat, towards repairs of the school, however, the satisfaction and finding *qua* the establishment of the said fact, which was required to be discussed and observed, is conspicuously absent from the order of the Additional Commissioner.

7. Perusal of the orders passed by the Additional Collector, as also Additional Commissioner reflects that, no inquiry was conducted in the matter as regards the funds alleged to have been usurped by the present

petitioner for his personal gain by showing interest into direct or indirect contract, in relation to the Village Panchayat.

8. One more facet of the order impugned is non-availability of the report dated 3rd September, 2013, submitted by the Extension Officer to the Block Development Officer.

9. In view of above, in my opinion, this is a fit case for remand, warranting re-consideration of the matter by the Additional Collector.

10. In the light of above observations, I pass the following order :-

The order dated 25th March, 2013, passed by the Additional Collector, Osmanabad and the order dated 14th May, 2013, passed by Additional Commissioner, Aurangabad, are quashed and set aside.

The matter is remanded back to the Additional Collector, Osmanabad with a direction to consider the allegations against the present petitioner in the light of the report dated 3rd September, 2013 and shall record findings on each of the heads before ordering disqualification or otherwise, against the petitioner.

In view of the fact that the present proceedings are pending since 10th December, 2012, it will be in the fitness of the things that the Additional Collector shall expedite the proceedings and shall make endeavour to decide the same within a period of two months from today.

The parties agree that the report dated 3rd September, 2013 and the other record is available with them and they shall submit their written notes of arguments on 23rd March, 2015 and shall argue the matter on the date fixed by the Additional Collector. They also undertake that no further adjournment would be sought in the matter.

The writ petition stands partly allowed in above terms with no order as to costs.

The arrangement made in the present petition, *qua* powers to be exercised by the petitioner as Sarpanch, shall continue to remain in force till the decision of the Additional Collector, Osmanabad.

(N.W. SAMBRE, J.)

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