IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4909 OF 2013

Manishabai w/o Jivan Kambale,
Age: 35 years, Occu. Household &
Member of village Panchayat,
R/o: Aurad (Shah), Tq. Nilanga,
Dist. : Latur ...PETITIONER

VERSUS

1) The State of Maharashtra,
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai

2) The Additional Divisional Commissioner,
Aurangabad

3) The Additional Collector,
Latur

4) Deepak s/o Bankatlal Chandak,
Age: Major, Occ: Business,
R/o: Aurad (Shah), Tq. Nilanga,
Dist. : Latur

5) Govind s/o Tulshiram Waghmare,
Age: Major, Occu. Sarpanch,
R/o : As above

6) Block Development Officer,
Panchayat Semitee, Nilanga

7) The Village Panchayat,
Aurad (Shah), Tq. Nilanga,
Dist : Latur
Through it's Secretary ...RESPONDENTS

Mr Shrikishan S. Shinde, Advocate for petitioners;
Mrs B. B. Gunjal, A. G. P. for respondents No.1 to 3;
Mr R. K. Ashtekar, Advocate for respondent No. 4;
Mr Sandip Swami, Advocate holding for Mr V. D. Gunale, Advocate for respondent No. 5;
Mr R.R. Deshmukh, Advocate holding for Mr V. R. Sonwalkar, Advocate for respondent No. 6 & 7

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2015

ORAL ORDER

The petitioner was elected as a member of the Village Panchayat on 27th October, 2010. Subsequent thereto, the petitioner was disqualified by the order of the Collector dated 23rd January, 2013, under section 14 (1) (g) of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as "Panchayats Act", for the sake of brevity), which order was upheld in an appeal preferred by the petitioner before the Additional Commissioner, by an order dated 23rd January, 2013. Thus, the present petition.

2. The cause for ordering disqualification of the petitioner was that, for a social function, at the behest of the petitioner, an amount of Rs.3,000/- was donated from the funds of Village Panchayat as is reflected in the entry dated 29th April, 2011, in the cash book of the village panchayat Aurad (Shahajani), Taluka Nilanga, District Latur.

3. While questioning the legality and validity of both the orders, the learned Counsel appearing on behalf of the petitioner would strenuously urge that the order passed by the Additional Collector and Additional Commissioner, which are impugned in the present petition, are not sustainable as they are contrary to the scheme of section 14 of the Panchayats Act. He would further urge that the iota of evidence that is required to be placed on record while ordering disqualification which is penal in nature, should have been strictly construed. According to him, what is taken into account by the authorities below was withdrawal of the amount, however, the connection of the petitioner with the said withdrawal is not established.

4. In support of his contention that there has to be a direct nexus of the petitioner as a Grampanchayat member with that of cash withdrawal and in absence of establishment of such such nexus, disqualification cannot be ordered, learned Counsel appearing on behalf of the petitioner has placed reliance on the judgments of this Court in **Writ Petition No.691 of 2011**, **dated 8th March, 2011** and in the matter of **Jyotitai Vikas Gawande vs. Additional Commissioner, Amravati & ors**., reported in **2009 (5) Mh.L.J. 486**. He would further urge that the amount which was donated by the Grampanchayat was to a trust and the said trust has hardly any connection with the petitioner herein.

5. While countering the above referred submissions, learned Counsel appearing on behalf of respondent no.4 would urge that there is a clear entry of withdrawal of cash of Rs.3,000/- on 29th April, 2011, as is reflected in the accounts of the Grampanchayat, which amount was paid to the husband of the petitioner. He would further urge that the Grampanchayat is not duty bound to donate any amount for such social cause, particularly in the wake of the statutory provisions and it is but for the official position of the present petitioner, the amount was withdrawn in cash and paid to the husband of the petitioner. He further urged that the said amount has gone to the personal coffers of the present petitioner and her husband as is reflected in the orders impugned and as such, according to him, the orders impugned are sustainable and the petition deserves to be dismissed.

6. Having considered rival contentions of the parties and having gone through the observations made by the Additional Collector and Additional Commissioner confirming disqualification of the petitioner, it is required to be noted that the husband of the petitioner, namely, Jivan was permitted by the authority under the Bombay Public Trusts Act, to collect the donations as is reflected from the document annexure “A”, dated 30th March, 2011. The said amount was for a social cause, i.e. celebration of birth anniversary of Dr. Babasaheb Ambedkar. So far as the condition incorporated in the said order authorizing said Jivan to collect the

donations is concerned, in express terms it provides for passing of appropriate receipts and getting the accounts audited.

7. Once it is brought on record before the Additional Collector that the amount was paid to the husband of the petitioner and the said amount, in fact, was given to the husband of the petitioner by virtue of official position of the petitioner, the fact remains that having admitted the receipt of the said amount, the burden shifts on the petitioner to disprove the said fact, i.e. the petitioner is not a beneficiary under section 14 (1) (g) of the Panchayats Act.

8. In the present case, based on the complaint, the Additional Collector had called for a report from the Block Development Officer, Panchayat Samiti, Nilanga, who in his report, in an unequivocal terms, has mentioned that the amount was received in cash and no receipt acknowledging the said payment was passed. Receipt of the said amount by the petitioner or her husband in cash, as such, was clearly established. It was expected of the petitioner to discharge the said burden by placing on record the appropriate receipt to that effect from the trust on whose behalf the said amount was received. In reference to the above referred observations, what is noticed by both the authorities is that the petitioner has failed to demonstrate any such documentary evidence wherein trust has acknowledged the receipt of the said donation. Based on above, both

the authorities have concluded that the amount in cash withdrawn from the account of the village panchayat has gone to the coffers of the petitioner.

9. If the above referred conduct of the petitioner is tested in the light of the provisions of section 14 (1) (g) of the Panchayats Act, which provides for the interest of the elected member directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat, or in any contract with, by or on behalf of, or employment with or under, the panchayat, needs to be read down to the extent of covering the above referred illegal act of the petitioner and her husband.

10. One more aspect of which this Court must take note is that the petitioner got elected as a village panchayat member on 27th October, 2010 and alleged donation of Rs.3,000/- was parted by the panchayat on 29th April, 2011, i.e. after the election of the petitioner as a member of the village panchayat. The petitioner has not brought on record any iota of evidence so as to discharge her burden that the village panchayat, prior to her election, but for the donation dated 29th April, 2011, has regularly donated the amount to the said trust. As such, the said fact also takes the authorities to the conclusion that the amount withdrawn from the account of village panchayat has been utilized by the petitioner for her personal gain as said fact was well established before the Lower Authority and the petitioner has failed to discharge the burden by placing on record the

acknowledgment of payment of amount or any documentary evidence to demonstrate that the amount has gone to the account of said trust.

11. In the light of above, the amount is utilized by the petitioner for her direct or indirect gain or interest, for which there was oral agreement, if any, as regards withdrawal of the said amount and in view thereof, the orders passed by both the authorities, disqualifying the petitioner, in my opinion, do not call for any interference.

12. So far as the reliance placed by the learned Counsel appearing on behalf of the petitioner on the judgment dated 8th March, 2011, rendered by this Court in Writ Petition No.691 of 2011 is concerned, in the said judgment the fact that the village panchayat member was having interest in view of the provisions of section 14 (1) (g) was not established, so also in the judgment in the matter of Jyotitai (cited supra), whereas in the present case, upon an inquiry report submitted by the Block Development Officer, what is noticed by the authorities is that the amount was withdrawn in cash in the name of the husband of the petitioner and no appropriate receipt, to that effect, is passed and the amount as such, has gone to the coffers of the petitioner and her husband. Thus, the reliance placed by the petitioner on both the judgments (cited supra) is wholly misplaced.

13. In that view of the matter, no case for interference is made out. The writ petition fails and the same stands rejected with no order as to costs.

14. At this stage, Mr Shinde, learned Counsel appearing on behalf of the petitioner, would urge that the interim relief ordered by this Court be continued for a period of four weeks. The prayer is opposed by Mr Ashtekar, learned Counsel appearing on behalf of respondent no.4. However, having regard to the fact that the interim relief is in operation in the present proceedings since 24th June, 2013, the same is continued for a period of four weeks from today.

(N.W. SAMBRE, J.)

amj