IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7833 OF 2014
WITH
CIVIL APPLICATION NO. 10453 OF 2014

1. Sau Jayashree Navnath Tajne PETITIONERS
Age – 29 years, Occ – Household

2. Ramdas s/o Vitthal Salve
Age – 31 years, Occ – Agriculture

3. Haribhau s/o Dattatraya Tajne
Age – 55 years, Occ – Agriculture

4. Subhash Punja Barde,
Age – 46 years, Occ – Agriculture

5. Sau. Shobha Rajendra Godge
Age – 43 years, Occ – Household

6. Bharat Sopan Jarad,
Age – 33 years, Occ – Agriculture

7. Jankiram Baban Gaikwad
Age – 36 years, Occ – Agriculture

8. Sau. Surekha Sunil Gaikwad
Age – 29 years, Occ – Household

All R/o Ashwi (Bk) Taluka – Sangamner
District - Ahmednagar

VERSUS

1. The Divisional Commissioner, RESPONDENTS
Nashik Division, Nashik

2. The Collector, Ahmednagar
District – Ahmednagar

3. The Tahsildar, Sangamner
   And The Election Officer,
   Ashwi (Bk) Gram Panchayat
   Taluka – Sangamner, District – Ahmednagar

4. Gram Panchayat, Ashwi (Bk)
   Taluka – Sangamner,
   District – Ahmednagar
   Through its Gram Sevak

5. Santosh Trimbak Mhase
   Age – 46 years, Occ – Agriculture

6. Gitaram Dashrath Gaikwad
   Age – 46 years, Occ – Agriculture

7. Bhaurao Chandrabhan Kangune,
   Age – 53 years, Occ – Agriculture

   R. Nos. 5 to 7 R/o Ashwi (Bk)
   Taluka – Sangamner,
   District – Ahmednagar

8. The State Election Commission,
   Maharashtra State,
   Madam Kama Road, Mumbai -32

9. Block Development Officer,
   Panchayat Samiti,
   Sangamner, Taluka – Sangamner
   District – Ahmednagar

10. Shri. J. T. Sonwane,
    Extension Officer,
    Panchayat Samiti, Sangamner
    Taluka – Sangamner,
    District – Ahmednagar

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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Adv. for petitioners
Mr. S. P. Daund, AGP for respondent State
Mr. U. U. Wagh, Advocate for respondent No.4
Mr. P. B. Shirsath, Advocate for respondents No. 5 to 7
Mr. S. T. Shelke, Advocate for respondents No. 9 and 10

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[CORAM : SUNIL P. DESHMUKH, J.]

RESERVED ON : 28th OCTOBER, 2015
PRONOUNCED ON : 24th NOVEMBER,2015

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

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. Petitioners are elected members of Gram Panchayat Ashwi (Bk), Taluka-Sangamner, District - Ahmednagar for a term of five years 2012-2017. They were declared to have been elected on 24th December, 2012.

4. According to the petitioners, there were two panels at the time of elections of the Gram Panchayat and the petitioners' panel came to be elected in the same and aggrieved by the same, or rather with vengeance, proceedings are being initiated against them, one after the other, initially, criminal prosecution at the behest of respondents No.5 to 7 and later the dispute.

5. Respondents No. 5 to 7 in the writ petition had moved district collector, Ahmednagar lodging dispute bearing No. 16 of 2013 purportedly referring to section 14B of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as "MVP Act") alleging that the petitioners had failed to submit accounts of election expenses within time and in the manner required by the State Election Commission.

6. The petitioners had countered the allegations referring to that they had in fact submitted election expenses, as required on 23rd January, 2013 to the returning officer, albeit, affidavit had not been filed under ignorance. According to the petitioners, taking disadvantage of the situation, respondent Tahsildar had been moved for launching criminal prosecution against the petitioners. On being made aware that the elections expenses are required to be lodged before Sub Divisional Officer and not before the Returning Officer, the petitioners had submitted the accounts of election expenses to the Sub Divisional Officer in proper format along with requisite affidavit. In the circumstances, it is contended by them that the allegation that account of election expenses have not been submitted within time, does not bear any substance and the allegations in respect of criminal prosecutions launched against them, are at the

behest of respondents No.5 to 7, who are trying to harass the petitioners.

7. It was contended on behalf of respondents No. 5 to 7 that there are no plausible reasons given for non submission of accounts of election expenses within the prescribed period and those have been filed way beyond that on 23rd March, 2013 and under the circumstances, they have incurred disqualification under section 14 (b) of the MVP Act.

8. It transpires that the returning officer has acknowledged on 23rd January, 2013 that the accounts of election expenses had been submitted to him, although without proper affidavit in format and the petitioners thereafter submitted accounts in proper format on 23rd March, 2013 to the sub divisional officer, Sangamner.

9. The collector has referred to the contentions as well as citations relied upon on behalf of the petitioners i.e. *2010 (5) ALL MR 846 "Sahebrao Dashrathrao Patole V/s State of Maharashtra*" referring to that pursuant to the same, whether the explanation given by the candidates in respect of belated submission of accounts of election expenses, is sufficient and proper, is to be looked into. The collector has referred to two other decisions relied upon on

behalf of the petitioners.

10. The collector appears to have considered report of the sub divisional officer and the written explanation given by the returning officer considering that the submission of accounts of election expenses had not been within prescribed time, before the competent officer and on account of the same, criminal prosecution had been lodged. Under the circumstances, it had been considered that despite sufficient time being available, yet accounts of election expenses had not been submitted within time and there is no reason given for such a belated submission. In the circumstances he went on to allow the dispute disqualifying the petitioners and further disqualifying them for a period of five years.

11. The appellate authority – divisional commissioner, Nashik has referred to that it has been contended that the petitioners had submitted accounts of election expenses to the returning officer under the belief that it was so required. The commissioner, in his decision has observed that the returning officer had acknowledged submission of accounts of election expenses on 23rd January, 2013, however, has also considered that it was not before the competent officer and further that it

was not accompanied by requisite affidavit and thereafter submission of accounts had been before the sub divisional officer only on 23rd March, 2013, along with requisite affidavit. In the interregnum, the Tahsildar had initiated criminal prosecution for non submission of accounts of election expenses.

12. The Commissioner further has referred to that the petitioners had relied on the case of "*Sadanand Gauda V. State Election Commission*" however, said case is distinguishable. The Commissioner further has considered that under ignorance the accounts of election expenses were not submitted to the competent officer, but to the returning officer, is not a plausible reason. Although the petitioners have relied upon a decision in case of "*Election Commission of India V. N. G. Ranga" 1978 AIR (SC) 1609*, wherein it has been considered that the State Election Commission has power to condone the delay, but he appears to have considered that for the same there should be proper and sufficient reason. The Commissioner has further referred to criminal prosecution lodged against the petitioners and he went on to dismiss the appeal, however, reduced the period of disqualification from five years to three.

13. Mr. Hon, learned senior advocate appearing for the petitioners vehemently submits that having regard to the legislative intent appearing from provisions of the MVP Act, it cannot be said that there can be delegation of powers by State Election Commission under Section 14B of MVP Act. According to him, wherever legislation intended so, it has done so specifically. He for said purpose relies on sections 27 and 28 and in particular section 16 of said enactment. He submits that even if it is assumed for the sake of arguments that the collector can be delegated with powers under section 14B of the MVP Act, yet submission of account of election expenses is supposed to be to the State Election Commission and the collector does not intervene. As such, he would not be a proper authority to disqualify a person in respect of compliance required to be made to State Election Commission.

14 . He further submits that it cannot be gainsaid in the present matter that the petitioners have in fact submitted daily expenditure to the returning officer as required under the 1995 order of the State Election Commission and merely for failure to submit account of election expenses within a prescribed period in terms of Annexure 1, it cannot be said to be a reason sufficient for disqualification.

15. Learned counsel for petitioners submits that the collector has acted as authority under section 16 of the MVP Act and not as a delegate of the State Election Commission under Section 14B of the MVP Act. Powers under section 14B of the MVP Act are required to be exercised *suo motu* and not on an initiation by third party. This submission is being advanced for first time before this court and as such the treatment has been given by the parties to the proceedings to be proceedings under provisions of the MVP Act and have conducted the proceedings accordingly.

16. Learned counsel for respondents vehemently submits that two authorities have recorded concurrent findings and there is non-compliance within prescribed period referable to section 14B of the MVP Act, in the circumstances, there is nothing further required to be looked into. He further submits that the authorities have found that the petitioners have indulged into criminal penal activities and accordingly prosecutions were required to be launched. It was thereupon required compliance is shown to have taken place and under the circumstances, orders impugned cannot be faulted with.

17. It is being contended on behalf of State Election Commission that returning officer is not competent authority as per the directions / order of 1995.

18. In the present case, it appears that on 23rd January, 2013 on which date the petitioners claim to have submitted the accounts of election expenses purportedly explaining that it was under ignorance that they had submitted account of election expenses to the returning officer and they were not aware requirement of the affidavit, and as soon as they were made aware of such requirement, required compliance had been made and thus according to petitioners, the reason for delay had been explained for consideration pursuant to section 14B (1) (b) of the MVP Act.

19. Learned Senior Advocate for petitioners heavily relies on the decision reported in *2010(5) Mh.L.J. 462 in the case of Sahebrao Vs. State of Maharashtra*. In said decision, it appears to have been considered thus :-

> *"8. The perusal of section 16(1D) shows that it requires respondent No. 2 to record a finding if there is failure to lodge account of election expenses within time prescribed and in the manner required by State Election Commission. It further requires respondent No. 2 to find out whether explanation given by the*

> *petitioners for not complying with these requirements is reasonable or sufficient to justify his failure. The said provision uses the word "may" and thus discretion is conferred upon respondent No. 2.* ***Prima facie, it appears that mere failure to furnish accounts within time or in the manner prescribed may not constitute disqualification. Here, the relevant facts placed on record by the petitioners are not gone into by respondent No. 2 at all. He has acted mechanically and has declared the petitioners disqualified.*** *The discretion appears to have been conferred deliberately with a view to maintain the election of a person, who has been democratically elected as a Municipal Councillor as far as possible. Disqualification is a serious stigma and hence the necessary requirements to be fulfilled before holding a person disqualified are already indicated in that sub-section. The impugned order does not meet the standards prescribed for said purpose by State Legislature.***"**

20. The respondents are not in a position to dispute that the submission of accounts of election expenses before the due date to the returning officer and subsequently on 22-03-2013 to the sub divisional officer with requisite affidavit and also that the same is sought to be accounted for as required under the provisions. 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.

21. 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.

22. Although learned advocate for the State Election Commission, 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. 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.

23. Perusal of the impugned orders in the present matters however, do not depict that reasons given by the elected members for non submission of accounts of election expenses in proper format before proper authority within prescribed period, although purportedly have been alluded to, yet those have not been adequately dwelt upon. Learned collector, although has considered that till 23rd January, 2013 accounts of election expenses were not submitted to the competent officer, he has not referred to at all while giving reasoning for decision to the aspects pleaded by the petitioners about submission of accounts to the returning officer and whether that would matter while sub-section (b) is invoked. He appears to have gone by non submission within time.

24. Perusal of orders as referred to above coupled with reading of paragraph No. 8 of the decision relied by the petitioners in *2010(5) Mh.L.J. 462 (cited supra),* this appears to be a case wherein the matters will have to be appropriately looked into looking at the facts and circumstances of the case objectively and then decided on merits.

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 view of the same, the petition is allowed. Impugned orders dated 31-07-2014 in Gram Panchayat Dispute No. 16 of 2013, passed by the collector Ahmednagar and order dated 26-08-2014 passed by the Divisional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No. 23 of 2014 stand set aside. Dispute No. 16 of 2013 is restored to its position for hearing. The collector, Ahmednagar to reconsider the dispute No. 16 of 2013 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.

27. The parties to the dispute shall appear before the District collector, Ahmednagar on 30th November, 2015 and thereafter to abide by the schedule by the authority.

28. Rule is made absolute accordingly.

29. Civil application accordingly stands disposed of.

Sd/-

[SUNIL P. DESHMUKH, J.]

MTK