

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

WRIT PETITION NO. 8731 OF 2014

1. Rajaram s/o Ganpati Gonshetwad,
Age: 37 years, occu: Agril,
R/o. Badur, Tq. Biloli, Dist. Nanded.
 2. N. Govardhan Gound Basa Gound,
Age: 52 years, Occ: Agril,
R/o Badur, Tq. Biloli,
Dist. Nanded.
- ...Petitioners

versus

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
 2. Zilla Parishad, Nanded,
Zilla Parishad Office, Nanded,
Through its President.
 3. Anand s/o Balasaheb Jadhav,
Age: 35 years, Occ: Agril,
R/o Badur, Tq. Biloli, Dist. Nanded.
- ...Respondents

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Mr. G. L. Awale, Advocate for petitioners.
Mrs. Y. M. Kshirsagar, A.G.P. for respondent/State.
Mr. R. R. Banger, Advocate h/f Mr. V. S. Panpatte, Advocate for
respondent No.2.
Mr. N.G. Kale, Advocate for respondent No.3.

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CORAM : N.W. SAMBRE, J.

DATE : 2ND MARCH, 2015

ORAL ORDER :

. The petitioners were elected as Grampanchayat Members. The respondent No. 3 herein filed an application for disqualification of the petitioners in view of provisions of Section 40 of

the Bombay Village Panchayat Act, 1958 (hereinafter shall be referred to as 'the Act' for sake of brevity) for disqualification, as the petitioners have not attended six consecutive monthly meetings of panchayat and no leave was sought by them.

2. In response to such application for disqualification in relation to the Members, Block Development Officer submitted report, thereby pointing out that after election of Sarpanch i.e. on 26/10/2010, the petitioners have not attended single meeting of Panchayat. It was also informed by the said report that the petitioners have not participated in no confidence meeting by attending the said meeting.

3. Based on same and upon giving opportunity of hearing to the petitioners, President of Zilla Parishad, Nanded respondent herein passed an order of disqualification against the petitioners, in exercise of powers under Section 40(1) of the said Act. The said order was subject matter of the appeal before the Additional Commissioner, Aurangabad Division, Aurangabad, in view of provisions under Section 40(2) of the Act. The appellants suffered the fate of dismissal by order dated 11/09/2014 in appeal. As such, present petition.

4. Learned Counsel for the petitioners raised two-fold contentions to resist the order passed by the President, Zilla

Parishad, Nanded and that of Additional Commissioner, Aurangabad of disqualification under Section 40; (a) that the application moved by stranger who has no authority to seek disqualification under Section 40, (b) no opportunity of hearing was given to the petitioners by President, Zilla Parishad, Nanded.

5. Perusal of record shows that, respondent No. 3 has filed complaint against the petitioners sometime in March 2012 alleging therein that, he is resident of village Badur, Tq. Biloli, Dist. Nanded, in which he has further alleged that, the petitioners remained absent to the Grampanchayat meetings from 03/11/2010 till 17/01/2012.

6. The power to decide the said application since vest in the President of Zilla Parishad, Nanded, report was called from the Block Development Officer, who has in express terms mentioned that, the petitioners have failed to attend the Grampanchayat meetings as was alleged against them.

7. The petitioners, based on the said report, have submitted their explanation to the President of Zilla Parishad, Nanded on 29th August 2013, who has proceeded to pass an order of disqualification on 30/10/2013 in exercise of the powers under Section 40 of the Act.

8. In the said order, the President of Zilla Parishad, Nanded noted that, the petitioners and respondents were given opportunity of

hearing and were heard in the matter. The petitioners have failed to file written notes of arguments, however, noticed that, the petitioners remained absent in the Grampanchayat meetings and as such, proceeded to pass an order of disqualification.

9. The said order was subject matter of challenge before the Additional Commissioner, Aurangabad Division, Aurangabad under Section 40(2) of the Act. The Additional Commissioner noted that, it was brought on record that, the petitioners remained absent in the Grampanchayat meetings from 03/11/2010 to 17/01/2012 and as such, have violated the provisions of Section 40 of the Act. The Additional Commissioner also noted that, in view of provisions of sub-section (2) of the Section 40 of the Act, the President of Zilla Parishad, Nanded was duty bound to decide the matter after giving opportunity of hearing to the petitioners within period of 60 days. He further noted that, the matter was adjourned at the behest of the petitioners for more than 10 times before the President and as such, he was left with no other option but to pass an order. He has observed that, the petitioners remained absent for more than 10 meetings and as such, have incurred disqualification.

10. Having perused both the orders, it is noticed that, both the issues raised by learned Counsel for petitioners are required to be answered against them. So far as the right of respondent No. 3 to

move an application for disqualification against the petitioners is concerned, perusal of the language of Section 40 of the Act reflects that, the issue of disqualification is required to be gone into by the President at its level irrespective of, who has brought the said issue before the said authority. What is required to be established is, absence for 6 consecutive meetings, which was very much established as is apparent from the above discussion. It is required to be noted that, the respondent-complainant, who has brought the said act to the notice of the President of Zilla Parishad, is a voter of Grampanchayat. The petitioners are elected members of Panchayat representing will of such voters and if the elected representatives like the petitioners keep themselves away from the proceedings of the village panchayat, then the petitioners are not discharging their duty though are representing the will of the people in the Grampanchayat who have elected them. In view thereof, the locus of respondent-complainant in bringing the action against the petitioners, in my opinion, does not call for any doubt.

11. So far as the second contention as regards the denial of opportunity of hearing is concerned, it is not disputed that the President of Zilla Parishad has adjourned the matter for about 10 times at the behest of the petitioners. The petitioners submitted their explanation and also objection to the report submitted by the Block Development Officer. The said report is taken into account by the

President, Zilla Parishad, Nanded before passing the order and in fact, it is reflected in the order of disqualification that the petitioners were heard. In the wake of provisions of sub-section (2) of Section 40 of the Act, since the President was duty bound to decide the proceedings within period of 60 days. In my opinion, the President has rightly proceeded to pass an order based on the evidence available on record. As such, in my opinion, the petitioners have failed to demonstrate that they were not heard by the President.

12. Both the fact findings authorities once having noticed that, the petitioners remained absent for consecutive 6 meetings and incurred disqualification under sub-section (2) of Section 40 of the Act, no contrary evidence is brought to my notice, so as to show any perversity. As such, present petition which sans merits fails and stands rejected.

[N.W. SAMBRE, J.]