IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 261 OF 2014

1. Changdeo s/o Kisan Waghmare PETITIONERS
Age – 30 years, Occ – Agriculture
R/o A/P Deodaithan,
Taluka – Shirgonda,
District – Ahmednagar

2. Sanjay s/o Dattatray Kouthale
Age – 32 years, Occ – Agriculture
R/o A/p Deodaithan,
Taluka – Shrigonda
District – Ahmednagar

VERSUS

1. Vishwas Vishnu Gunjal, RESPONDENTS
Age – Major, Occ – Agriculture
R/o A/ p Deodaithan,
Taluka – Shrigonda
District – Ahmednagar

2. Lankabai Balu Waghmare
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka - Shrigonda
District – Ahmednagar

3. Sambhaji Nanap Kouthale,
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

4. Mangal Prakash Kouthale
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

5. Meerabai Sarjerao Kouthale
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

6. Nikhil Ramdas Vetal
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

7. Pravin Laxman Lokhande,
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

8. Shobha Subhash Waghmare
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

9. Dattatray Baban Gaikwad,
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

10. Indumati Santosh Bankar
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

11. Ranjana Ramdas Bankar
Age – Major, Occ – Agriculture
R/o A/p Deodaithan, Taluka – Shrigonda
District – Ahmednagar

12. Gramsevak,
Gram Panchayat, Deodaithan,
Taluka – Shrigonda,
District – Ahmednagar

13. The Returning Officer,
For holding Elections of Deodaithan
Grampanchayat,
C/o Tahsil Office, Shrigonda,
District – Ahmednagar

14. The Collector, Ahmednagar

15. The Divisional Commissioner,
Nashik Division, Nashik.

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

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Mr. P. B. Shirsath h/f Mr. A. G. Ambetkar, Advocate for petitioners
Mr. S. P. Daund, AGP for respondent State
Mr. D. M. Mane, Advocate for respondents No. 1 to 10
Mr. S. T. Shelke, Advocate for respondents No. 13 & 16

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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. This writ petition has been moved by petitioners – original disputants challenging order dated 16th November, 2013 in Appeal No. 5 of 2013, passed by the Commissioner whereby the order dated 4th July, 2013 in Gram Panchayat Dispute No. 3 of

2013 passed by the District Collector, Ahmednagar disqualifying respondents No. 1 to 11 under the provisions of section 14B of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as " MVP Act") for non submission of accounts of election expenses within prescribed period of 30 days pursuant to direction / order of State Election Commission of 1995, came to be reversed.

4. There is no dispute about the fact that respondents No. 1 to 11 are declared as elected members of Gram Panchayat Deodaithan, Taluqa Shrigonda, District Ahmednagar. However, it is the contention of the petitioners that accounts of election expenses were not submitted by them in the prescribed manner until 05-02-2013 and in the circumstances have incurred disqualification under section 14B of the MVP Act, whereas it is the contention of respondents No. 1 to 11 that they have, in fact, submitted accounts of election expenses on 16-01-2013, albeit, without affidavits. This had occurred under ignorance, however, no sooner they were made aware about said requirement, than they had submitted the same on 05-02-2013. Under the circumstances, there is requisite compliance and that having regard to the powers pursuant to section 14B (1) (b) of the MVP Act looking at the marginal delay and the same has

been given proper treatment to condone the delay.

5. The Collector allowed the dispute. However, in appeal by respondents No. 1 to 11, under order dated 16th November, 2013 the Commissioner reversed the decision dated 4th July, 2013 rendered by the District Collector, Ahmednagar in Gram Panchayat Dispute No. 3 of 2013 disqualifying respondents No. 1 to 11.

6. Perusal of order by the Collector depicts that it had been contended by respondents No. 1 to 11 that requisite accounts of election expenses had been submitted before due date to the returning Officer, however, affidavit had not been filed under ignorance and as soon as they were made aware of said requirement, the same had been submitted. The Collector appears to have considered that since requisite accounts of election expenses along with affidavit appears to have been submitted only on 05-02-2013 that being beyond period of 30 days under the directions / orders dated 07-02-1995 by the Election Commission, respondents No. 1 to 11 had incurred disqualification under section 14B of the MVP Act.

7. Perusal judgment and order dated 16th November, 2013 in Appeal No. 5 of 2013 passed by the Divisional Commissioner

shows that it has been considered, there appears submission of accounts of election expenses on 16-01-2013, however, requisite affidavit had been filed on 05-02-2013. In the circumstances, there appears marginal delay and that has been sufficiently explained by respondents No. 1 to 11.

8. Learned counsel Mr. Shirsat for petitioners vehemently submits that looking at the scheme of section 14B of the MVP Act it has to be considered that the Collector is only authorized person under the rules, who can invoke the powers on behalf of State Election Commission. However, said provision does not provide any appeal from an order by collector. As such, appeal preferred by respondents No. 1 to 11 before the Divisional Commissioner and decision rendered by said authority is without jurisdiction and nullity in the eye of law. However, this submission has been advanced for the first time before this Court. The parties have treated the proceedings pursuant to provisions under the MVP Act and, particularly, disqualification pursuant to section 14(1) (j-4) of the MVP Act and section 16 of MVP Act refers to remedies against such disqualification. There is no challenge to the provisions. Having regard to treatment given to the proceedings by parties, it would be expedient that issues by parties before the authorities are dealt with by the

authorities.

9. Mr. Mane, learned counsel for respondents submits that it cannot be said that there is enormous delay in submission of accounts of election expenses. Delay is only marginal and is neither intentional nor deliberate one and the same is purely circumstantial. He submits that it has been given a proper treatment by the Commissioner which does not call for any interference. He supports the impugned order.

10. Learned advocate for the State Election Commission, however, submits that it cannot be said that submission of accounts of election expenses had been to the competent authority, particularity it being not to the collector pursuant to clause 7 of 1995 Order / directions.

11. Perusal of the orders depict that said aspect neither appears to have weighed with the authorities nor said issue had been addressed to by giving opportunity to parties concerned. Said aspect will have to be properly considered by the authorities concerned.

12. 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.

13. 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.

14. 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 05-02-2013 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.

15. As such, the matter will have to be appropriately looked into looking an the facts and circumstances of the case objectively and decided on merits. It would be appropriate that

in the facts and circumstances, all facets involved in the matter be properly addressed.

16. In view of the same, the petition is allowed. The orders dated 4th July, 2013 in Gram Panchayat Dispute No. 3 of 2013 passed by the District Collector, Ahmednagar and dated 16th November, 2013 in Appeal No. 5 of 2013, passed by the Commissioner stand set aside. Dispute No. 3 of 2013 stands restored to its position for rehearing. District Collector, Ahmednagar to reconsider the dispute No. 3 of 2013 objectively by letting opportunity to the parties to address themselves all the facets, as expeditiously as possible, preferably within a period of two months from the date of receipt of writ of this order.

17. 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.

18. Rule is made absolute accordingly.

Sd/-

[SUNIL P. DESHMUKH, J.]

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