

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

WRIT PETITION NO. 4 OF 2015

Indubai w/o Shantaram Dhangar

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. A.R. Rathod, advocate for petitioner.
Mr. S.S. Tope, GP for the State.

**WITH
WRIT PETITION NO. 5 OF 2015**

Sanjay s/o Onkar Dhiwar

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. A.R. Rathod, advocate for petitioner.
Mr. S.S. Tope, GP for the State.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.
DATE : 6th JANUARY, 2015.**

PER COURT :

1. Petitioners have been disqualified to hold the office of member of Village Panchayat under section 14(1)(j-5) of the Bombay Village Panchayat Act, 1958. Admittedly, petitioners did not fulfill the requirements under the aforesaid provisions and as such, they are declared to have incurred disqualification by the Collector in view of order passed on 17.01.2014. Appeals preferred by petitioners to the Additional Commissioner, Nasik Division, Nasik came to be dismissed on 28.11.2014 thereby confirming the

order passed by the Collector. The findings of fact based on appreciation of evidence recorded by both the authorities below need not be interfered with in exercise of powers under section 226 of the Constitution of India. It has not been pointed out to us that the findings recorded by the authorities below are perverse or are unsustainable. Petitioners are questioning constitutional validity of the provisions of section 14(1)(j-5) of the Act which read thus :

14. Disqualification : (1) No person shall be a member of a Panchayat continue as such, who -

(j-5) fails to submit a certificate of the concerned panchayat, alongwith the resolution of the Gram Sabha certifying that -

(i) he resides in a house owned by him and has a toilet in house and he regularly uses such toilet; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet :

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate, within ninety days from the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010;

2. The law mandates a member of the Village Panchayat who resides in a house owned by him to have a toilet and that he shall regularly make use of such toilet or in circumstances where a member occupies a rented premises, he shall regularly use a toilet set up in the rented premises or make regular use of public toilet. It has been further provided that the mandate of section 14(1)(j-5) which has been brought on Statute on

05.01.2011 shall not be made applicable to such of the classes of members who are holding the office as on 10.01.2011 and it has further been provided that a member of Village Panchayat shall not be deemed to have incurred disqualification and shall continue to hold the office for a period of one year unless disqualified under any of the provisions of the Act. Thus, applicability of the mandate contained in the aforesaid provision has been deferred for a period of one year so as to enable members of the Village Panchayat to comply with the deficiencies.

3. In the instant matter, the provisions questioned by petitioners cannot be said to be either arbitrary or unreasonable. The legislative competence of the Legislature also cannot be questioned. A representative of people i.e. member of the Village Panchayat is expected to abide by the basic norms of cleanliness and public health. In a civilized society, a representative of people not using private toilet or public toilet and is moving around in the vicinity of the village is beyond reasonable expectation of the society. We do not find the mandate laid down under section 14(1)(j-5) of the Act to be arbitrary or unreasonable or violative of any constitutional provision. The challenge raised by petitioners in the instant petitions is devoid of substance.

4. For the reasons recorded above, both the petitions stand rejected.

(P. R. BORA)
JUDGE

dyb

(R. M. BORDE)
JUDGE