

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7271 OF 2014**

Shri Gajanan Posha Nagaonkar	]	
Age : 48 years, Occu : Service	]	
R/at. Agrav, Post – Chaul	]	
Tal. Alibaug, Dist. Raigad	]	 Petitioner.

Versus

1]	Shri Uday Dnyaneshwar Bhagat	]	
	Age : 35 years, Occu : Business	]	
	R/at Agrav, Post – Chaul	]	
	Tal. Alibagu, Dist. Raigad	]	
		]	
2]	The Additional Collector,	]	
	Raigad District, Alibaug.	]	
		]	
3]	The Additional Commissioner,	]	
	Konkan Division	]	
	Old Secretariat Building, Mumbai.	]	 Respondents.

Mr. Pratap Patil for the Petitioner.

Mr. C G Gavnekar for the Respondent No.1.

Mr. S D Rayrikar, AGP for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT, J.

DATE : 25th June, 2015

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The order dated 21/07/2014 passed by the Appellate Authority i.e. the Additional Commissioner, Konkan Division, Mumbai dismissing the Appeal filed by the Petitioner and thereby confirming the order dated 13/05/2014 passed by the Additional Collector, Raigad-Alibaug is taken exception to by way of the above Petition.

3 The issue which arises in the above Petition is, whether the Petitioner stands dis-qualified under Section 14(1)(a)(i) of the Bombay Village Panchayats Act, 1958. The Petitioner was elected as the member of the Gampanchayat, Chaul, Tal. Alibag, District Raigad. The Respondent No.1 herein Shri Uday Bhagat was also elected to the same Gampanchayat. The Respondent No.1 on the ground that the Petitioner was an employee of the Maharashtra State Road Transport Corporation (MSRTC for short) stood dis-qualified under Section 14(1)(a)(i) of the said Act, filed the instant Application for his dis-qualification. After going through the gamut of the process of replies being filed by the parties etc, the Additional Collector, Raigad by his order dated 13/05/2014 allowed the said Application. It seems that before the Additional Collector, a circular issued by the said MSRTC was relied upon which circular contemplates that the employee should obtain the permission of the Corporation before contesting election to any local body. It is relying upon the said circular that the Additional Collector came to a conclusion that since in fact permission was not obtained, though applied for, the Petitioner stood

dis-qualified under Section 14(1)(a)(i) of the said Act.

4 The Petitioner aggrieved by the said order dated 13/05/2014 passed by the Additional Collector, took exception to the same by filing the Appeal under Section 16 of the said Act before the Commissioner, Konkan Division, Mumbai. Since the powers have been delegated to the Additional Commissioner, the said Appeal was heard by the Additional Commissioner. Before the Additional Commissioner reliance on behalf of the Petitioner was sought to be placed on the judgment of the Division Bench of this Court in the matter of Anil Tatyrao Solunke v/s. State of Maharashtra¹ in support of the contention that the MSRTC is neither government nor a local authority . The Division Bench in the said case has tested as to whether an employee of the MSRTC would qualify as government employee or as the employee of a local authority and on such consideration the Division Bench has recorded a finding that the MSRTC is neither government nor a local authority and the employee of the MSRTC therefore cannot be disqualified under the provisions of Section 16(1)(g) of the said Act. The Additional Commissioner in so far as the said judgment is concerned has very brusquely observed that the said judgment has no application. The Additional Commissioner also adverted to the circular issued by the MSRTC governing the contesting of elections by its employees and thereafter dismissed the Appeal. As indicated above it is the said order dated 21/07/2014 which is taken exception to by way of the above Petition.

1 2000(1)MhLJ 457

5 Heard the learned counsel for the parties. The adjudication of the instant Petition is not required to be detained in view of the fact that there is an authoritative pronouncement of the Division Bench of this Court holding that the MSRTC is neither government nor a local authority. A reading of Section 14(1)(a)(i) of the said Act discloses that the said provision postulates that the contesting candidate has to be an employee of the government or local authority so as to stand dis-qualified under the said provision. Both the authorities below have unfortunately glossed over the said aspect and by referring to the circular which has no relevance in so far as the dis-qualification under Section 14(1)(a)(i) of the said Act is concerned have dis-qualified the Petitioner. If the required permission under the circular is necessary and has not been obtained by the concerned employee the MSRTC in the said case can obviously proceed against him departmentally but that cannot be a ground to disqualify him under Section 14(1)(a)(i) of the said Act. However, it is clarified that this Court has not expressed any opinion as regards whether such a permission is necessary or not necessary.

6 In my view, the orders passed by the authorities below suffer from an error of jurisdiction as the authorities have chosen to disqualify the Petitioner when no such ground existed. In my view, therefore, impugned order dated 21/07/2014 as also the order dated 13/05/2014 would have to be

quashed and set aside and accordingly quashed and set aside. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]