

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8993 OF 2014**

Nandakumar Sharad Parab)
Age 48 years, Occupation Agri)
Residing at Tulas, Taluka Vengurla)
District Sindhudurg) ..Petitioner

Vs.

1 Shri Nhanu Sahadeo Savant)
Age Adult, Occupation -)
Residing at Tulas, Taluka Vengurla)
District Sindhudurg)

2 The Chief Executive Officer)
Zila Parishad Sindhudurg)
Sindhudurnagari, Oros,)
Taluka Kudal, Dist Sindhudurg)

3 The Block Development Officer)
Panchayat Samitee Vengurla,)
District – Sindhudurg) ..Respondents

Mr. Milind Parab i/b Milind Parab & Associates for the Petitioner
Mr. A. S. Khandeparkar i/b Khandeparkar & Associates for the Respondent
No.1
Mr. R. D. Rane for the Respondent Nos.2 and 3
Mr. S.D. Rayrikar AGP for the Respondent No.4

CORAM : R. M. SAVANT, J.
DATE : 5th AUGUST, 2015

ORAL JUDGMENT

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

2 The Writ Jurisdiction of this Court is invoked against the order dated 27-8-2014 passed by the Additional Commissioner, Konkan Division, by which order, the Appeal filed by the Respondent No.1 herein came to be allowed and resultantly the order dated 18-2-2014 passed by the Additional Collector, Sindhudurg, came to be set aside.

3 The Petitioner contested the elections to the Grampanchayat Tulas Talluka Vengurla, District Sindhudurg, which elections were held on 26-11-2012. The Petitioner was elected in the said elections. The Petitioner therefore came to be elected as Upa Sarpanch of the Grampanchayat on 24-12-2012. Prior to the elections of the Grampanchayat, the Petitioner who is a Civil Contractor was awarded the contract of repairs to the residential quarters of the drivers attached to the primary health center. The work under the said contract was to be completed within 3 months of the award of the contract, the Petitioner it seems informed the Grampanchayat on 24-5-2012 that the work is complete. It appears that on inspection being carried out, it was found that work was not complete and accordingly an extension came to be granted to the Petitioner up to 15-3-2013 to complete the work. It is pursuant to the said extension that the work was recommenced and in terms of the measurement book which was maintained, the work was completed on 12-3-2013. The Petitioner has been paid for the said work an amount of Rs.1,47,104/- on 14-6-2013, which the Petitioner has accepted.

4 The Respondent No.1 in view of the fact that the Petitioner was awarded the contract by the Grampanchayat and in respect of which the work was completed on 12-3-2013, filed an application for disqualification of the Petitioner as a member of the Grampanchayat invoking Section 14(1)(g) of the Maharashtra Village Panchayats Act. The said Section 14(1)(g) for the sake of ready reference is reproduced hereinunder:

“14. Disqualification:-

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

(a)

(b)

(c)

(d)

(e)

(f)

(g):- has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the Panchayat, or in any contract with, by or on behalf of, or employment with or under, the Panchayat.”

The Respondent No.1 in his Dispute Application averred the facts which have been stated hereinabove.

5 On behalf of the Petitioner a defence was taken that the work was

awarded prior to the elections taking place to the Grampanchayat i.e. 26-11-2012 and in fact the said work was also completed prior to the elections. However, the extension was granted by the Grampanchayat for the work which was commenced prior to the elections and the payment having been received for the said work, the provisions of Section 14(1)(g) could not be invoked. The Additional Collector, Sindhudurg before whom the Dispute Application was filed, held that the provisions of Section 14(1)(g) are not attracted in the present case, the defence taken by the Petitioner commended acceptance to the Additional Collector and the gist of the reasoning of the additional Collector was that since the work was awarded prior to the elections and since the payment was in respect of the said work, the Petitioner could not be disqualified by having recourse to the said provisions. The Additional Collector accordingly by order dated 18-2-2014 dismissed the said application.

6 The Respondent No.1 aggrieved by the said order dated 18-2-2014 filed an Appeal before the Additional Commissioner, Konkan Division. The Additional Commissioner, Konkan Division, has by the impugned order dated 27-8-2014 has allowed the Appeal filed by the Respondent No.1 and set aside the order passed by the Additional Collector dated 18-2-2014. The gist of the reasoning of the Additional Commissioner as can be seen from the impugned order is that the extension of time to complete the said work was granted after the Petitioner became a member of the Grampanchayat pursuant to the

election held on 26-11-2012. The Additional Commissioner held that the work was also completed in terms of the measurement book on 12-3-2013 I,e, much after the elections were held and that the Petitioner has also been paid on 14-6-2013. The Additional Commissioner accordingly set aside the order order passed by the Additional Collector dated 18-2-2014 and in turn allowed the Dispute Application filed by the Respondent No.1.

7 The Learned Counsel appearing for the Petitioner Mr. Parab would seek to reiterate the case of the Petitioner before the authorities below namely that the work was awarded to the Petitioner prior to the elections to the Grampanchayat and therefore merely because the extension was granted after the elections and payment was made to the Petitioner also after the elections, the same would not result in the disqualification of the Petitioner under Section 14(1)(g). This was the principal contention urged on behalf of the Petitioner.

8 Per contra, the Learned Counsel for the Respondent No.1 Mr. Khandeparkar and the Learned Counsel appearing for the Respondent Nos.2 and 3 Mr. Rane would support the impugned order. It was the submission of the Learned Counsel appearing for the Respondents that after the elections that took place on 26-11-2012, the Petitioner ought to have disassociated himself from the said work, as in view of the extension granted to the Petitioner to

complete the work by 15-3-2013, the Petitioner was in fact not eligible to contest the elections in terms of Section 14(1)(g). The Learned Counsel would contend that though the work was awarded prior to the elections, the said fact would be of no avail having regard to the fact that the extension was granted and was for a period during which the Petitioner was a member of the Grampanchayat and in fact the Upa Sarpanch and therefore the order passed by the Appellate Authority could not be faulted with.

9 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that arises for consideration in the present Petition is as to whether the Petitioner stands disqualified on the touchstone of Section 14(1)(g) of the said Act. The said provision is a part of the disqualifications which are contained in Section 14. The disqualification under the said provisions is for being a member of the Grampanchayat on the ground that the member has directly or indirectly by himself or his partner any share or interest in any work done by the order of the Panchayat or in any contract with or on behalf of, or employment with or under, the Panchayat. In the instant case, it is an undisputed position that the Petitioner was granted the contract for repairs to the residential quarters of the drivers of the primary health center, run by the Grampanchayat. Hence the Petitioner was having a direct interest in the said work awarded by the Grampanchayat. In so far as the said work is concerned, it is an undisputed position that the said work was

awarded prior to the elections of the Grampanchayat which took place on 26-11-2012. However, an extension was granted for the completion of the said work up to 15-3-2013, by a resolution passed by the Grampanchayat. The work has been completed as per the measurement book on 12-3-2013 and the Petitioner has been paid for the said work an amount of Rs.1,47,104/- on 14-6-2013. Hence the extension as well as the completion of the work and the payment has indisputedly been made after the Petitioner became a member of the Grampanchayat. The object behind the said Section 14(1)(g) is to see to it that there is no conflict of interest between the business interest of a member of the Grampanchayat and the functioning of the Grampanchayat. In the instant case as the facts disclose the decision to grant extension to complete the work was taken by the Grampanchayat and for a period when the Petitioner was a member of the Grampanchayat and in fact the Upa Sarpanch, as also the payment was made to the Petitioner when he was a member. Hence this is a case where one can say that there is a conflict of interest as it can be said that a decision has been taken by the Grampanchayat of which the Petitioner is a part, which decision furthers the business interests of the Petitioner, the same therefore strikes at the very root of the democratic principle enshrined in the said provision i.e. Section 14(1)(g).

10 In my view therefore, the order passed by the Additional Commissioner cannot be said to suffer from any illegality or infirmity for this

Court to exercise its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed. Rule discharged with no order as to costs.

[R.M.SAVANT, J]