IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 1836 OF 2016

Hemraj S/o Yuvraj Patil,
Age: 38 years, Occu: Agriculture,
R/o : Sukwad, Post Vishwanath,
Tq. and District Dhule. **....Petitioner.**

-Versus-

1 The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32

2 The Divisional Commissioner,
Nashik Division, Nashik.

3 The Collector,
Dhule, District Dhule.

4 Chandrakala Yuvraj Patil,
Age : Years, Occu.: Household,
R/o : Vishwanath, Tq. and Dist. Dhule. **....Respondents.**

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Mr. Vishnu B. Madan, Advocate for petitioner.

Mr. S.N. Kendre, AGP for respondent/State Nos. 1 to 3.

Mr. V. P. Raje, Advocate for respondent No.4.

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CORAM : T.V. NALAWADE, J.
DATED : 18th October, 2016.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge the order made by learned Divisional Commissioner, Nashik Division, Nashik in Appeal No. 75 of 2015. This appeal was filed against the decision of Dispute Proceeding bearing No. 09 of 2015, which was pending before the District Collector, Dhule and which was filed under section 14-B of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as 'the Act' for short).

3) The Collector had allowed the proceeding and on the ground of not filing of returns of expenditure of election within prescribed time, respondent No.4 -Smt. Chandrakala Patil, was declared as disqualified by the Collector. The decision is set aside by the learned Divisional Commissioner and so the decision of the learned Divisional Commissioner is challenged in the present proceeding. The dispute proceeding was filed against the three members and the Collector made order against all of them. The decision of the Collector was challenged by Smt. Chandrakala Patil only.

4) The learned counsel for the petitioner submitted that the provision of section 14-B shows that the candidate needs to file returns in respect of expenditure in time and if the expenditure returns are not filed within the prescribed time and

no good reason or justification for such failure is given, such person automatically stands disqualified for being the member of Panchayat or for contesting elections also for the period mentioned in the section. He produced copy of notification issued by the State Government, in which the State Government has mentioned the period as thirty days from the date of result of the election and the State Government has made it clear that the provision is applicable even against the candidate who is declare elected unopposed.

5) The provision of section 14-B of the Act runs as under:-

> **14B. Disqualification by State Election Commission :-** (1) If the State Election Commission is satisfied that a person,-
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> (a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and
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> (b) has no good reason or justification for such failure,
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> the State Election Commission may, by an order published in the *Official Gazette*, declare him to be disqualified and such person shall be disqualified for being a member of *panchayat* or for contesting an election for being a member for a period of five years from the date of this order.
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> (2) The State Election Commission may, for

> reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification.

6) Admittedly, in the present matter the elections were held in the year 2012. The returns were not submitted by respondent Smt. Chandrakala Patil and when inquiry was made by the present petitioner, who had filed proceeding before the Collector, it was informed to him that till 31-12-2014, the returns were not filed. In view this circumstance, notice was issued by the learned Collector Dhule against respondent Smt. Chandrakala Patil. In reply, she contended that she had tried to file the returns by visiting the office of Tahsildar on 02-11-2012 and 05-11-2012, but the Returning Officer was not present in the office and so, she could not file the returns. She also contended that when she had made inquiry with the Returning Officer, he had informed that as she was declared elected as unopposed, there was no need to file such returns to her. It appears that she filed returns on 28-04-2015 after more than two and half years of the date of the election.

7) In view of the aforesaid circumstances, the Collector declared respondent Smt. Patil as disqualified under aforesaid provision. The Commissioner set aside the decision by observing

that other candidates had also not filed the returns, but no complaint was made by the present petitioner against them. The circumstance that on 28-04-2015 the returns were filed is taken in to consideration and on that basis, the order of the Collector set aside.

8) The learned counsel for the respondent Smt. Patil, placed reliance on the observation made by the **High Court of Jammu & Kashmir** in the case of reported as **E. L. R. 323** (**Kacho Mohd Ali Khan Vs. Shri Kushok Bakula) decide on 21-12-1967.** The facts of that case were totally different. Election Petition was filed under Chapter II of the Representation of the People Act, 1951 to challenge the election of respondent of that matter, who had got elected to the Parliament as unopposed. Thus, the provisions of the Representation of the People Act, 1951 were considered for making some observation in favour of the returned candidate. The learned counsel for the respondent Smt. Patil placed reliance on the order made by this Court **at Principle Seat At Bombay in Writ Petition No. 11547 of 2015 with other petitions (Smt. Vaijayata Deepak Warke and others Vs. State Election Commission and others) decided on 11-12-2015.** In those matters, this Court had given interim relief for the period during which the matters were pending before the

learned Divisional Commissioner. The returned candidates were already disqualified by the Collector and the matters were before the Commissioner. Thus, the order was of interim nature. For giving such interim relief the observations made by Jammu & Kashmir High Court in the case cited supra of **Kacho Mohd Ali Khan** were referred by this Court.

9) On the other hand, the learned counsel for the petitioner placed reliance on the order made by this Court in **Writ Petition No. 9508 of 2013 of this Bench (Balasaheb Kashinath Tambe and others Vs. Nanasaheb Janardhan Khade and others) decided on 13-02-2014.** In that case also, the returns were not submitted within thirty days as provided under section 14-B of the Act. In that matter, there was contest in the election. However, that will not make difference in view of the wording of provision of section 14-B of the Act. Every person, who filed nomination is covered under the provision. The expenditure needs to be considered right from the date of nomination and so, there is such requirement. There was the opportunity to give good reason or justification, but the say filed by the respondent does not show that good reason was given or justification was shown by her. The reason given cannot be accepted in view of the wording of section. This Court has no hesitation to hold that the

Commissioner has committed error in setting aside the decision given by the Collector.

10) In the result, the petition is allowed. The decision given by the Divisional Commissioner, Nashik Division, Nashik in Appeal No. 75 of 2015 is hereby set aside. The order made by the Collector, Dhule is hereby restored. The learned counsel for the respondent No. 4 requested for giving stay to this decision. But it is refused.

Rule is made absolute. In aforesaid terms.

[T.V. NALAWADE, J.]

pnc/