

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9704 OF 2016

Savita Mhasnaji Sonkamble,
Age-40 years, Occu-Household,
R/o at Dhosni, Post.Kawalgaon,
Tq.Degloor, Dist.Nanded

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development and
Water Conservation Department,
Mantralaya, Mumbai,
2. The Divisional Commissioner,
Aurangabad Division Aurangabad,
3. The Collector,
Nanded,
4. Bhaskar Pandharinath Patil,
Age-Major, Occu-Agriculturist,
R/o At Dhosni, Post : Kawalgaon,
Tq. Degloor, Dist.Nanded

-- RESPONDENTS

WITH
WRIT PETITION NO.9705 OF 2016

Malanbi w/o Husensab Shaikh,
Age-50 years, Occu-Household,
R/o at Dhosni, Post.Kawalgaon,
Tq.Degloor, Dist.Nanded

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development and
Water Conservation Department,

Mantralaya, Mumbai,

2. The Divisional Commissioner,
Aurangabad Division Aurangabad,

3. The Collector,
Nanded,

4. Bhaskar Pandharinath Patil,
Age-Major, Occu-Agriculturist,
R/o At Dhosi, Post : Kawalgaon,
Tq. Degloor, Dist.Nanded

-- RESPONDENTS

Mr.A.S.Bayas, Advocate for the petitioner.

Mr.P.N.Kutti, AGP for respondent Nos. 1 to 3.

Mr.U.B.Deshmukh, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/09/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Since the petitioners in both these petitions are identically placed and the respondents are also the same authorities, both these petitions have been taken up together.

3. In both these petitions, the petitioners are aggrieved by the order dated 27/07/2016 passed by the Additional Commissioner, Aurangabad, by which both the petitioners have been disqualified

u/s 14(1)(J-5) of the Maharashtra Village Panchayat Act.

4. The strenuous submissions of Mr.Bayas, learned Advocate for the petitioners can be summarized as under :-

- [a] The elections were held on 27/07/2015.
- [b] One of the petitioners namely Malanbi Shaikh is presently the Sarpanch of the village and belongs to the reserved category.
- [c] Both the petitioners are elected as members of the Village Panchayat, Dhosni, Tal.Degloor, Dist.Nanded.
- [d] One of the petitioners namely Savita M.Sonkamble had filed an undertaking alongwith her nomination form that she would construct a toilet.
- [e] The other petitioner namely Malanbi Shaikh already had a toilet constructed in 2012.
- [f] Since, due to wear and tear, the toilet in the house of petitioner Malanbi was in a dilapidated condition, a reconstruction was undertaken in August 2015.
- [g] The Gram Sevak has given a certificate to both the petitioners on 16/10/2015 that the toilet is found in the house of the petitioners and is being used.
- [h] A panchanama was also prepared on 16/10/2015.
- [i] Respondent No.4 in both these matters lodged a complaint on 14/09/2015 to the District Collector alleging that both the petitioners do not have toilet blocks and hence deserve to be disqualified.
- [j] Written statements were filed by the petitioners on 14/12/2015.
- [k] No resolution of the Gram Panchayat was annexed to the

nomination forms by the petitioners.

- [l] The documents placed on record were duly considered by the District Collector, who rejected the complaint filed by respondent No.4.
- [m] The Appellate Authority has erroneously concluded that both the petitioners do not have toilet blocks and hence deserve to be disqualified.
- [n] Both the petitioners are illiterate persons and belonging to the reserved categories who have been democratically elected. They cannot be unseated on trivial grounds.
- [o] A hyper technical view has been taken by the Appellate Authority while upsetting the order passed by the Collector.
- [p] Both the petitions deserve to be allowed by setting aside the impugned order dated 27/07/2016.

5. The learned AGP appearing on behalf of respondent Nos. 1 to 3 has defended the impugned order. It is submitted that the law u/s 14(1)(J-5) has been crystallized by this Court and a toilet block needs to be in existence and in use prior to filing the nomination papers by the concerned candidate. He prays for the dismissal of the petition.

6. Learned Advocate for respondent No.4 Mr.Deshmukh relies upon the detailed affidavit in reply filed in both these petitions. His submissions can be summarized as under :-

- [a] It is an admitted position that the certificate of the Gram

Panchayat indicating existence of the toilet block and it being in use, was not filed by both the petitioners.

- [b] The petitioner Savita has filed an undertaking that a toilet block will be constructed indicating that there was no toilet block on the date of filing of the nomination papers.
- [c] The petitioner Malanbi Shaikh has filed a certificate of the Gram Sevak contending that there is a toilet block.
- [d] The Block Development Officer was directed by the Collector to carry out an inspection as regards existence of toilet blocks.
- [e] In his inspection visit on 14/10/2015, the Gram Sevak alongwith other members of the Village were present and it was noticed that both the petitioners had undertaken the construction exercise and the toilet blocks were not ready.
- [f] On 15/10/2015, which is one day after the report of the Block Development Officer, the Gram Sevak issues a certificate that the toilet blocks are ready and in use.
- [g] A panchnama is prepared on 16/10/2015 indicating existence of the toilet blocks.
- [h] The above factors are therefore indicative of a cover up act by both the petitioners.
- [i] The Appellate Authority has rightly located the truth and has disqualified both the petitioners.

7. I have considered the submissions of the learned Advocates and have gone through the voluminous record through the pleadings of the parties.

8. In so far as the first petition is concerned, there is no dispute

that she did not have a toilet block as on the date of filing of her nomination paper. This Court, in the matter of Nimba Dashrat Koli and another Vs State of Maharashtra and others, [2015(3) Mh.L.J. 598], by placing reliance upon the earlier judgment of this Court in the matter of Vijay Ramchandra Raut Vs. Divisional Commissioner, Amravati Division and others, [2014(3) Mh.L.J. 641], has concluded that the toilet block has to be constructed and has to be in use by the candidate prior to the filing of his / her nomination papers and the certificate of the Gram Sevak as well as the resolution of the Gram Panchayat are necessarily to be filed alongwith the nomination papers.

9. It is undisputed that in both these cases, the resolution of the Gram Panchayat was not placed on record. The first petitioner had not even filed the certificate of the Gram Sevak. The Second petitioner had filed the certificate of the Gram Sevak.

10. The sequence of events gain significance in these matters. The election results are declared on 27/07/2015. The second petitioner claimed to have a toilet from 2012 since her husband had taken the benefit of the “*Swaccha Bharat Mission Target*”. However, it is stated that the construction was undertaken in August 2015 for the reason

that the toilet block used by the second petitioner Malanbi was in a dilapidated condition. It, therefore, means that within 20 days from the date of election, the purported toilet block of Malanbi was in shambles.

11. On 14/10/2015, when the Block Development Officer has carried out an inspection under the directions of the Collector, both the toilet blocks were under construction. The Gram Sevak has issued a certificate on 15/10/2015 stating that the toilet blocks of both the petitioners are ready and are in use. Even if it is presumed that the toilet blocks were constructed in August 2015, it leads to a presumption that on the date the results of the elections were declared, there may not be a toilet block in the house of the second petitioner Malanbi.

12. Considering the above, in my view, the Appellate Authority has rightly placed reliance upon the inspection report of the Block Development Officer dated 14/10/2015 which indicates that the toilet blocks were not ready and obviously were not in use. Considering the law as is laid down in the Nimba Dashrath case (supra) and in the Vijay Ramchandra case (supra), I do not find that the order passed by the Appellate Authority could be termed as being perverse

or erroneous.

13. Both these petitions, being devoid of merit, are therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)