

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9494/2016

Kavita W/o Prashant Magar,
Age:22 Years, Occ.Household,
R/o Takali (P.D.), Tq.Chalisingaon,
Dist.Jalgaon.

...Petitioner..

Versus

- 1) The Additional Commissioner, Nasik
Division, Nasik.
- 2) The Additional Collector, Jalgaon,
Dist.Jalgaon.
- 3) The Gram Panchayat, Takali (P.D.),
Tq.Chalisingaon, Through its Gram Sevak.
- 4) Sanjay S/o Parshuram Pawar,
Age: 45 years, Occ.Agric.R/o Takali
(P.D.), Tq.Chalisingaon, Dist.Jalgaon.
...Respondents...

.....

Shri R.N. Dhorde, Senior Advocate i/b Shri V.R. Dhorde,
Advocate for petitioner.

Shri S.K. Tambe, AGP for respondent nos.1 & 2.

Shri V.D. Hon, Senior Advocate i/b Shri A.V. Hon,
Advocate for respondent no.4.

.....

CORAM: T.V. NALWADE, J.

DATE: 14.09.2016

ORAL JUDGMENT :

- 2 -

1] The petition is filed to challenge the orders made by the learned Additional Collector and the appellate authority – learned Additional Commissioner, in a proceeding started for disqualification u/s 14(1)(g) of the Maharashtra Village Panchayat Act, 1958.

2] Both the sides are heard.

3] The petitioner was Sarpanch of village panchayat, Takali (P.D.). The respondent no.4, who started the proceeding, is also a member of the said village panchayat. He informed to the authority that the Sarpanch had incurred disqualification as some work of village panchayat was allotted to the family of Sarpanch headed by her father in law and from the work, the family was benefited.

4] After receipt of the application of the respondent no.4, office of the Collector gave direction to the Chief Officer to make enquiry into the matter and give the report. Enquiry was made and report was given that by way of cheque, amount of Rs.5,000/- was collected by father in law of the present petitioner – Sarpanch and the amount of Rs.44,000/- was paid to driver of the father in law of the petitioner. Notice was then issued

- 3 -

to the present petitioner and opportunity was given to her to have her say.

5] The petitioner filed her say and denied the allegations. She denied that the amount of Rs.5,000/- was collected by her father in law. She contended that as per the resolution of village panchayat, advertisement of the village panchayat was published in Dipawali magazine by name 'Vrukshamitra' and for that, charges were paid. She contended that as the owner / publisher of the said magazine was not in a position to come to the village panchayat. The amount was collected by her father in law and it was paid to the owner of the said magazine. She contended that the funeral place of the village was not in order and stray dogs had created problems at that place and there were cases of dog bites and complaints of 35 to 40 persons were received that they suffered due to dog bites at the funeral place. She contended that one lady Sakwarbai Panditrao Magar had died due to dog bite and so for cleaning the place, urgent action was necessary and so the work was given to one Bharat Madhukar Khairnar and the work was done and sand mixed with clay was also spread there and for that,

- 4 -

the payment of Rs.44,000/- was made to said Khairnar. She contended that Gram Sabha had approved this work, though subsequently.

6] It appears that during enquiry, the statement of aforesaid Khairnar was recorded and some record was produced to show that the amount of Rs.5,000/- was reached to the owner of aforesaid magazine. The petitioner took one more defence that she was living separate from her father-in-law and some record was produced like ration card created on 22.2.2016 subsequent to the aforesaid incidents.

7] After considering all this record, the learned Additional Collector held that the Sarpanch had incurred disqualification due to aforesaid transactions. The findings are confirmed by the learned Additional Commissioner in appeal filed u/s 16(2) of the Maharashtra Village Panchayat Act, 1958.

8] The learned Senior Counsel for the petitioner submitted that if the resolution of Gram Sabha was passed subsequent in time and the amount was paid to Khairnar prior to the approval of Gram Sabha, that can be only irregularity and the said circumstance cannot fall under

- 5 -

the provisions of Section 14(1)(g) of the Act. He submitted that in similar way, issuing of the cheque in the name of father in law of the Sarpanch can be called as an irregularity and so error is committed by both the authorities in holding that the Sarpanch incurred disqualification under the aforesaid provision. It appears that one more defence was taken by village Sarpanch viz. She has not signed on the cheque as the Enquiry Officer had noted that there was some difference in the signature of village panchayat appearing on other record and appearing on the cheque of Rs.5,000/- issued to father in law of the petitioner.

9] The submissions made and the record show that the Sarpanch is not disputing that the cheque of Rs.5,000/- was issued to father in law of the Sarpanch and he did encash the cheque. There is not only the record of cheque, but there is also receipt on the voucher of the father in law of Sarpanch. The resolution of village panchayat shows that the advertisement was to be given in Lokmat magazine, but the advertisement was given to other magazine. There is no explanation with the Sarpanch on the circumstance. Further, the

- 6 -

explanation given by Sarpanch that the owner was not in a position to come to village panchayat is not acceptable. The cheque could have been issued in the name of owner of magazine and it could have been reached to his office. The issuance of cheque in the name of father in law of Sarpanch is itself a circumstance showing that the father in law, the family of Sarpanch had interest in the transaction. Inferences are easy when there are such circumstances that the persons who give advertisement are getting commission. The circumstance that the Sarpanch tried to defend this ground by contending that she had not signed on the cheque, can be used against her. This circumstance creates a probability that her father in law, who is also her God father, was controlling the things and he was doing the things for his own benefit and for making gain by using the post held by his daughter in law.

10] In respect of the second circumstance that the amount of Rs.44,000/- was paid even when there was no resolution and the amount was paid to driver of father in law, there was record of enquiry made by the officers of Zilla Parishad. They had come to the conclusion that the

- 7 -

said person was working with father in law. Admittedly, without getting approval of Gram Sabha, the amount was first paid. Further, no procedure was followed for allotment of work and there is no record to show that some procedure was followed to give work of cleaning of the funeral place to aforesaid person. There is one more circumstance like in the resolution made by Gram Sabha, the surname of the said person is shown as Choudhary when the record of payment is in favour of Khairnar. That circumstance need not be discussed in detail as the name of the person and name of the father are same and the possibility of mistake committed in mentioning surname in the resolution can be taken into consideration.

11] In respect of the work of cleaning of the funeral place, there are many other things showing that the persons who give the work to Khairnar are necessarily benefited. There is a report of Sub Divisional Engineer of Zilla Parishad, Chalisgaon, showing that the value of the work involved, the use of sand mixed with earth and the quantity was 20 to 22 brass. On the basis of Government rate of one brass, such certificate was given. The record shows that the mineral sand mixed with earth

- 8 -

was not purchased and no royalty was paid in respect of the said mineral. By the side of funeral place, there is river bed and the sand mixed with earth was just shifted from river bed and was spread at the funeral place. Thus, only labour charges were to be paid, but the value of the material was also paid when the Government mineral was used. From these circumstances also, inference is possible that the persons like Sarpanch and her father in law are benefited due to this transaction. Not much can be made out due to circumstance that subsequently Gram Sabha approved this work. When admittedly, her father in law is controlling the things and they are in power, the Gram Sabha is bound to take such a decision.

12] In the present proceeding alongwith the affidavit some record is produced to show that there was urgency for getting the aforesaid work executed and there were news items in daily newspapers about the incidents of dog bites. That record cannot make any difference in favour of Sarpanch.

13] The provisions of Section 13(1)(g) r/w Section 16 show that when there are such grounds, the authority is expected to take decision after giving reasonable

- 9 -

opportunity to the person concerned. The orders made are reasoned orders though the learned Additional Collector has not considered the second circumstance like spending of the amount of Rs.44,000/- in detail. There are concurrent findings. Whenever such instances are there, strict view needs to be taken and the matter cannot be left to other authority by holding that it is simply irregularity and action can be taken for misappropriation. If such approach is adopted, it will be defeating the very purpose of the grounds mentioned in Section 14 of the Act. Thus, there are no merits in the present proceedings.

14] Learned Senior Counsel for the petitioner referred *Sou.Jyotitai Vikas Gawande v. Additional Commissioner, Amravati Division & others* reported at **2009 (4) ALL MR 851** and produced copy of order made in Writ Petition No.691/2011 decided on 8.3.2011 by Aurangabad Bench of Bombay High Court. On the other hand, learned Senior Counsel for the respondent no.4 placed reliance on *Ashabai Laxman Gawande v. Additional Commissioner, Amravati Division & others* reported at **2005 (4) Bom.C.R. 335**. The case on which reliance is placed by the

- 10 -

respondent no.4 is referred by the authorities below. The facts and circumstances of each and every case are always different and in such cases, the case law cannot help the Court much.

15] In the result, the petition stands dismissed. The learned Senior Counsel for the petitioner requested for continuation of interim relief for some period. In view of peculiar circumstances, this Court holds that the relief cannot be continued and so it is refused.

(T.V. NALWADE, J.)