

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9593 OF 2016

Mrs.Mangal Vilas Mukate

.. Petitioners

vs.

Tahsildar, Barshi and Ors.

.. Respondents

WITH
WRIT PETITION NO.9454 OF 2016
WITH
WRIT PETITION NO.9542 OF 2016
WITH
WRIT PETITION NO.9544 OF 2016
WITH
WRIT PETITION NO.10455 OF 2016
WITH
WRIT PETITION NO.10458 OF 2016
WITH
WRIT PETITION NO.9757 OF 2016

Mr.B.D.Joshi i/b Mr.Virendra V. Pethe for the petitioners in all the Writ Petitions

Ms.Shriya Jadhav i/b Mr.Sachindra B.Shetye for the respondent no.4 in all the Writ Petitions

Ms.Vaishali Nimbalkar, A.G.P. for the respondents in Writ Petition No.9593 of 2016, 9454 of 2016 and 9542 of 2016

Ms.M.S.Bane, 'B' Panel Counsel for the respondents in Writ Petition Nos.9544 of 2016, 10455 of 2016, 10458 of 2016 and 9597 of 2016

CORAM : K. K. TATED, J.
DATE : OCTOBER 25, 2016

P.C.:

1 Writ Petition No.9597 of 2016 is not on board. Taken on board.

2 Heard.

3 The issue involved in all these matters is identical i.e. whether it is necessary / mandatory for the petitioners to file statement of account showing the expenses incurred by them at the time of election, even though they elected unopposed.

4 In the present proceedings, it is the case of the petitioners that the election of Gram Panchayat, Jamgaon, Taluka Barshi held on 1.11.2015. Thereafter, the Tahsildar respondent no.1 filed application under section 14(b) of the Maharashtra Village Panchayat Act, 1959 for declaring them as disqualified for the post of member of Gram Panchayat as they failed and neglected to submit statement of account of the expenses incurred by them within time.

5 The learned Collector by its order dated 30.4.2016 declared the petitioners as disqualified as a member of Gram Panchayat, Jamgaon, Taluka Barshi, as they failed to submit the statement of account of election expenses. Thereafter, the petitioner preferred Appeal before the respondent no.3 and also filed application for stay. That stay application was rejected by respondent no.3 by order dated 1.6.2016.

6 The learned counsel for the petitioners submits that there is no question of filing and or submitting statement of account in the present

case because all the petitioners were elected unopposed. He submits that the respondent declared election of Gram Panchayat having 8 posts and there were only 8 candidates. He submits that the petitioner specifically raised these objections before the authority. In support of this contention, he relies on the ground nos.c, d and e of the writ petition which read thus:

“c. The Ld.authorities below erred in not considering the fact that, there were 8 seats to be filled in by election to Grampanchayat and only 8 persons had filled in their Nomination Forms including the petitioner and therefore on the date of withdrawal i.e. 21.10.2015 by law there are to be declared as elected. The Petitioner submits that, this important aspect that there was no Election held and all the candidates were elected unopposed including the Petitioner is not taken into consideration.

d. The Ld.Authorities below erred in not considering the fact that, the Petitioner was liable to submit accounts from the date of his nomination till the date of his election. In the present case since there was no contest, no elections were held and therefore technically they were liable to give accounts from the date of nomination i.e. 17/10/2015 till the date of declaration of result (the date of withdrawal) i.e. 21.10.2015.

e. The Ld.authorities below erred in not considering the fact that, there was no occasion for the Petitioner to incur any election expenses and therefore there was no question of the Petitioner spending beyond the prescribed limit of expenses of Rs.50,000/- each.”

7 The learned counsel for the petitioners further submits that these facts were not considered by respondent no.3 at the time of rejecting their application for stay. He submits that during the pendency of the Appeal, this Hon'ble Court be pleased to stay the operation and

implementation of the order passed by learned Collector. He submits that if stay is not granted, irreparable loss will be caused to the petitioners and in the meanwhile, respondent may declare fresh program for election.

8 The learned counsel for the petitioner further submits that even the Tahsildar, Jamgaon has no jurisdiction to file application under section 14(b) of the said Act. He further submits that only the Election Commissioner can pass order barring petitioners from contesting the election for 5 years. He submits that all these facts were not considered by respondent no.3 at the time of rejecting their application for stay.

9 On the other hand, the learned A.G.P for the respondent filed their Affidavit-in-Reply dated 20.10.2016. The learned A.G.P for respondent submits that Election Commissioner issued G.R. Dated 7.2.1995 in which it is specifically stated that all contesting candidate have to submit their statement of account of expenses within stipulated time. She further relies on the G.R. dated 10.8.2015 issued by the Election Commissioner where it is specifically stated that the statement of expenses be submitted within 30 days from the date of declaration of result. She submits that whether the petitioner had incurred any expenses or not, that cannot be a question, but they have to submit the statement of account and that is not done by them in the present case. Hence, the order passed by the learned Collector is in accordance with law. There is no question of staying the said order during the pendency of Appeal before respondent no.3.

10 I have heard both the sides at length. It is to be noted that in the

present proceedings, all these petitioners were elected unopposed. Therefore, whether it is necessary for them to submit the account of election expenses as per section 14(b) of the said Act and G.R. dated 7.2.1995 and 10.8.2015 issued by Election Commissioner, Maharashtra is required to be considered. The Appeals filed by petitioners are pending before respondent no.3 on its own merits and as learned A.G.P. has made a statement that respondent no.3 will decide those Appeals within 3 months from today, I am of the opinion that in the interest of Justice, during the pendency of Appeal, it is necessary to stay the operation and implementation of the order passed by Collector, Solapur under section 14(b) of the said Act declaring petitioners as disqualified for holding post of members in Gram Panchayat, Jamgaon. Hence, following order is passed:

- a) Respondent no.3 to decide the Appeals filed by the petitioners within 3 months after giving hearing to both the parties on its own merits.
- b) Till the decision of the appeals, operation and implementation of the order passed by learned Collector, Solapur in each matter is stayed.
- c) If order passed by respondent no.3 goes against the petitioner, stay granted by this court to continue for further 2 weeks from the date of receipt of copy of order in appeal.
- d) All the Writ Petitions stand disposed of accordingly.
- e) All contentions of both the parties are kept open.

JUDGE