

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10779 OF 2016

Sau Laxmi Aappaso Masal	]	
Age : 32 years, Occ : Agriculturist/Housewife	]	 Petitioner.
Residing at Baj, Taluka Jat, District Sangli	]	(Orig. Defendant)

versus

1] Shri Sunil Raosaheb Pawar	]	
Age : 36 years, Occ : Agriculturist,	]	
Residing at Sanmadi, Taluka Jat,	]	
District Sangli	]	
	]	
2] Shri arvind Bhimrao Gadade,	]	
Age : 35 years, Occ : Agriculturist	]	
Residint at Baj, Taluka Jat	]	
District Sangli.	]	
	]	
3] State of Maharashtra	]	
	]	
4] District Collector, Sangli	]	 Respondents
	]	 (Orgi. Plaintiffs)
5] Divisional Commissioner, Pune	]	

**Mr. P S Dani, Senior Advocate a/w Mr. S D Patil and Mr. Chintan Y Shah
i/by Ms. Anusha P Amin for the Petitioner.**

**Mr. Amit Sale a/w Mr. S K Hande and Mr. A A Jadhavar for the Respondent
Nos.1 and 2.**

Mr. S B Kalel, AGP for the Respondent No.3 to 5.

**CORAM : R. M. SAVANT, J.
DATE : 09th December 2016**

ORAL JUDGMENT.

1 At the outset the learned counsel appearing for the Respondent
No.1 on instructions of the advocate on record Shri S.K.Hande states that the
advocate on record undertakes to file the vakalatnama on behalf of the

Respondent No.1 who is one of the original Applicants with the Respondent No.2.

2 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 05/09/2016 passed by the Divisional Commissioner, Pune Division, Pune by which order the Appeal filed by the Petitioner came to be dismissed and resultantly the order dated 04/05/2016 passed by the District Collector, Sangli came to be confirmed.

4 The facts giving rise to the filing of the above Petition can in brief be stated thus :- The Petitioner was elected as a member of the Panchayat Samiti, Jath, Tal. Jath, Dist. Sangli on 17/04/2012 in the general elections which were held to the said Panchayat Samiti. The Petitioner thereafter was elected as a President of the Panchayat Samiti on 14/09/2014. The Respondent Nos.1 and 2 herein are the residents residing within the area of the Panchayat Samiti, Jath. The Respondent Nos.1 and 2 filed the instant application for disqualification of the Petitioner under Section 16(1)(i) read with Section 58 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961.

5 The gravamen of the allegations against the Petitioner was the misuse by her of her position as the President of the Panchayat Samiti in the matter of granting a contract to her husband pursuant to which substantial payments have been released to her husband by the Grampanchayat, Baj. The said application was replied to on behalf of the Petitioner. Suffice it would be to state that the Petitioner denied the allegations made in the said application. The Collector, Sangli by his order dated 04/05/2016 allowed the said application thereby disqualifying the Petitioner under Section 16(1)(i) of the said Act.

6 The gist of the reasoning of the Collector as can be seen from the impugned order is that the Petitioner as a President of the Panchayat Samiti has indirectly influenced the award of the contract to her husband and also facilitated the payments on account of the said contract. The contract in question was of construction of road, development of saplings in a nursery of the Village Panchayat, so as to make the saplings available to the villagers, contract also entailed putting up of fencing, supply of animal manure and sand. The Collector has referred to the payments made for the aforesaid items as also the payments made to the transporter for the said purpose in his order dated 04/05/2016

7 The Petitioner aggrieved by the said order dated 04/05/2016 passed by the District Collector, Sangli challenged the same by way of an Appeal before the Divisional Commissioner, Pune Division, Pune. The Divisional Commissioner has by the impugned order dated 05/09/2016 dismissed the Appeal. Before the Divisional Commissioner on behalf of the Petitioner herein as many as 14 grounds were urged on the basis of which the order passed by the Collector dated 04/05/2016 was assailed. In so far as the Respondent Nos.1 and 2 are concerned, as many as 9 grounds were urged on their behalf in reply. However, as can be seen from the impugned order passed by the Divisional Commissioner the reasoning if any of the Divisional Commissioner is only in paragraph 4.1 and 4.2, in 10 lines the Divisional Commissioner has concluded his finding. The said finding is only to the effect that the order having been passed by the Collector on the basis of the material on record it was not necessary for him to go into the said aspect in detail whilst confirming the order of the Collector. As indicated above, it is the said order dated 05/09/2016 passed by the Divisional Commissioner which is taken exception to by way of the above Writ Petition.

8 The learned Senior Counsel appearing on behalf of the Petitioner Shri P S Dani would contend that the impugned order has been passed by the Divisional Commissioner without even advertng to the material on record. It was the submission of the learned Senior Counsel that the Petitioner has

become the President of the Panchayat Samit on 14/09/2014 whereas the contract in question was awarded on 07/08/2013 and therefore the Petitioner was not responsible in any manner for the award of the contract to her husband, which was done much earlier.. It was the submission of the learned Senior Counsel that the Petitioner would not come within the mischief of Section 16(1)(i) of the said Act as the said provision only contemplates the councillor or his partner. The learned Senior Counsel would contend that the Appellate Authority ought to have recorded its own findings whilst considering the findings recorded by the Collector.

9 Per contra, the learned counsel appearing for the Respondent Nos.1 and 2 Shri Amit Sale would contend that the facts are as such that the role of the Petitioner is ex-facie clear in awarding the contract and therefore the minor technicalities should not come in the way of consideration of the impugned order on merits. It was the submission of the learned counsel that though the Petitioner became the President on 14/09/2014 she was the Vice President between the period 04/06/2013 to 13/09/2014. It was the submission of the learned counsel that the interference of this Court in its writ jurisdiction is therefore not warranted.

10 Having heard the learned counsel for the parties, I have considered the rival contentions.

11 The issue which arises for consideration is whether the Appeal filed by the Petitioner before the Appellate Authority i.e. the Divisional Commissioner, Pune Division, Pune has been considered in its right perspective. It is required to be noted that the proceedings relate to the disqualification of the Petitioner as the President of the Panchayat Samiti. The gravamen of the allegations of the Respondent Nos.1 and 2 are as regards the role of the Petitioner as the President of the Panchayat Samiti. The Collector has proceeded on the basis that the Petitioner as the President of the Panchayat Samiti has indirectly influenced the award of the contract to her husband and has also facilitated the payments made to her husband. As indicated above in the Appeal the Petitioner has raised as many as 14 grounds whilst the Respondent Nos.1 and 2 in reply have also raised as many as 9 grounds. Amongst the grounds raised by the Petitioner is the ground as to whether the Petitioner could at all be proceeded against in view of the fact that she was not the President at the relevant time. Unfortunately none of the grounds urged on behalf of the parties have been dealt with by the Appellate Authority whilst dealing with the Appeal filed by the Petitioner. Though the Appellate Authority is entitled to confirm the findings of the Lower Authority, it is also necessary on the part of the Appellate Authority that it records its own findings as to how it is in agreement with the findings recorded by the Lower Authority. However, this has not been done in the instant case. As indicated above the Appellate

Authority has concluded its findings in just two paragraphs and in 10 lines. In the matter as serious as the disqualification of a person from being a member of an institution which is a local self government, the least that was expected is that the Appeal is dealt with in a proper manner and remedy by way of an Appeal should not result into an empty formality. In my view, therefore, the interest of justice would be served if the impugned order dated 05/09/2016 is quashed and set aside and the matter is remanded back to the Appellate Authority i.e. the Divisional Commissioner, Pune Division, Pune for a denovo consideration of the Appeal in terms of the observations made herein above. The above Writ Petition is accordingly allowed and the following directions are issued :-

- 1] The impugned order dated 05/09/2016 is quashed and set aside and the matter is remanded back to the Appellate Authority i.e. the Divisional Commissioner, Pune Division, Pune for a denovo consideration of the Appeal. The Divisional Commissioner, Pune Division, Pune is directed to consider the Appeal in terms of the observations made herein-above, and the grounds urged on behalf of the parties.
- 2] The said exercise to be carried out latest by 31/01/2017. Needless to state that the contentions of the parties are kept open for being urged before the Appellate Authority.

- 3] The Appellate Authority would be well advised to pass a reasoned order after taking into consideration the contentions of the parties. The parties to appear before the Divisional Commissioner, Pune Division, Pune, on 20/12/2016.
- 4] During the pendency of the Appeal on remand, the stay which was in operation during pendency of the Appeal i.e. the stay of the order of the Collector would continue to operate. Since the stay which was in operation pending the Appeal is continued as herein-above, the Petitioner would be entitled to act as the President of the Panchayat Samiti till the decision in the Appeal, and thereafter, contingent upon the decision that would be rendered in the Appeal.
- 5] Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]