

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10863 OF 2016

Smt. Malan Dynoba Gawali .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

WITH
WRIT PETITION NO. 10864 OF 2016

Jaysingh Rao S. Nikam .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

WITH
WRIT PETITION NO. 10865 OF 2016

Birappa L. Basbire .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

WITH
WRIT PETITION NO. 10877 OF 2016

Smt. Sayawwa I. Dolale .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

WITH
WRIT PETITION NO. 10879 OF 2016

Yaqub I. Patil .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

WITH
WRIT PETITION NO. 10880 OF 2016

Smt. Saifnabi M. Shaikh .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

Mr. P.S. Dani, Sr. Advocate a/w. Mr. Surel Shah, Mr. Siddharth Karpe
for the Petitioners in all matters.
Mr. A.A. Karande for Respondent No.5 in all matters.

Ms M.S. Bane, AGP for the State-Respondent in WP No. 10863 to 10865 of 2016.

Ms Vaishali Nimbalkar, AGP for the State-Respondent in in WP No. 10877, 10879 and 10880 of 2016.

CORAM : M. S. SONAK, J.

DATE : 18 OCTOBER 2016.

P.C. :-

1] Heard learned counsel for the parties. They agree that these petitions can be disposed of by a common order.

2] Rule in each of these petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith in all petitions.

3] The petitioners, in each of these petitions, have been disqualified as members of the Gram Panchayat, Lavangi (respondent No.5) for failure to lodge their account of election expenses within prescribed period as provided under Section 14B of the Maharashtra Village Panchayats Act, 1958 (said Act). By the impugned orders, such disqualification is directed to apply to the petitioners not only for the current term, but also for further five years.

4] Mr. Dani, learned senior advocate for the petitioners in all these petitions, submits that the provisions contained in Section 14B of the said Act are directory in nature and not mandatory. He submits that the delay in lodging of account of election expenses was of 97 days only and further, sufficient cause was shown for not lodging the account of election expenses within the prescribed period. He submits that such cause has not at all been considered by the authorities, who have proceeded to disqualify the petitioners not just for current term, but also for a term of further five years. He submits that the authorities have proceeded on the basis that the moment there is failure to lodge the account of election expenses within a period of thirty days as notified by the State Election Commission, there is automatic disqualification. Mr. Dani relies upon the decisions of this Court in *Vimalbai S. Gawai & ors. V. Divisional Commissioner, Amravati*¹ and *Sahebrao D. Patole V. State of Maharashtra and ors.*², in support of his contentions.

5] Mr. Amit Karande, learned counsel for respondent No.5, i.e., Gram Panchayat of Lavangi, has defended the impugned orders by submitting that there was no cause, much less, any sufficient cause

1 2015(4) ALL MR 833

2 2010 (5) ALL MR 846

shown by the petitioners in the matter of admitted failure to lodge the account of election expenses within thirty days from the date of election. He submits that the medical reasons were assigned by some of the petitioners, but the same were backed by medical certificates of the year 2007 and in fact, the elections to Panchayat were held in the year 2015. He submits that the authorities, upon due consideration of plea of the petitioners, have found that there was no sufficient cause shown by the petitioners. There is, according to him, no reason to interfere with the impugned orders.

6] Section 14B of the said Act reads thus:

14B. Disqualification by State Election Commission – (1) If the State Election Commission is satisfied that a person,-

(a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and

(b) has no good reason or justification for such failure, 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 the order.

(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.

7] In *Gawai (supra)*, learned Single Judge of this Court has analysed the provisions of Section 14B of the said Act. The

observations in paragraph 6 read thus:

“6. Perusal of aforesaid provisions indicates that it is only after the State Election Commission is satisfied that there had been failure to lodge an account of election expenses within the prescribed time and in the manner prescribed coupled with the fact that there is no good reason or justification for such failure, then an order of disqualification could be passed. A plain reading of aforesaid provisions indicates that mere failure to lodge an account of election expenses within the time stipulated and in the manner required by it cannot ipso facto result in disqualification but the State Election Commission has to be satisfied that there has not only been failure as contemplated but also that there are no good reasons or justification for such failure. The reasons or justification for such failure can be put forth only when reasonable opportunity is afforded to the person sought to be disqualified. Similarly, satisfaction can be recorded only after considering the reason or justification for the failure. Hence grant of opportunity to the person concerned is implicit in the provision itself. Provisions of Section 16(2) of the said Act also support aforesaid conclusion.

There is no material on record placed by the respondents to indicate grant of any opportunity to the petitioners before their disqualification. Hence on account of failure to grant reasonable opportunity before disqualifying the petitioners, the impugned orders cannot be sustained.

8] In *Sahebrao Patole (supra)*, learned Single Judge of this Court was concerned with the provisions of the Section 16(1)(D) of Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965. The provisions were similar to the provisions contained in Section 14B of the said Act. At paragraph 8, this Court has observed thus:

“8. The perusal of Section 16(1D) shows that it requires Respondent No. 2 to record a finding if there is failure to lodge

account of election expenses within time prescribed and in the manner required by State Election Commission. It further requires Respondent No. 2 to find out whether explanation given by the petitioners for not complying with these requirements is reasonable or sufficient to justify his failure. The said provision uses the word “may” and thus discretion is conferred upon Respondent No.2. Prima facie, it appears that mere failure to furnish accounts within time or in the manner prescribed may not constitute disqualification. Here, the relevant facts placed on record by the petitioners are not gone into by Respondent No. 2 at all. He has acted mechanically and has declared the petitioners disqualified. The discretion appears to have been conferred deliberately with a view to maintain the election of a person, who has been democratically elected as a Municipal Councillor as far as possible. Disqualification is a serious stigma and hence the necessary requirements to be fulfilled before holding a person disqualified are already indicated in that subsection. The impugned order does not meet the standards prescribed for said purpose by State Legislature.”

9] In order that a member is disqualified under Section 14B of the said Act, the State Election Commission or its delegate, which in the present case is the Collector, has to record satisfaction on the following two aspects:

- (i) That such member has failed to lodge an account of election expenses within the time and in the manner required by State Election Commission ; and
- (ii) Such member has no good reason or justification for such failure.

10] Upon record of satisfaction as aforesaid, the State Election

Commission is empowered, by an order published in the *Official Gazette*, to declare such member to be disqualified and such member 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 order.

Sub-section of Section 14B further empowers the State Election Commission, for reasons to be recorded, to remove any disqualification under sub section (1) or reduce the period of any such disqualification.

11] From the scheme of Section 14B of the said Act, it is clear that mere failure to lodge an account of election expenses within the time and in the manner required by the State Election Commission does not lead to any automatic disqualification of the member concerned. The State Election Commission or its delegate, is duty bound to enquire into and satisfy itself as to reasons or justification for the failure to lodge the account of election expenses within the time and within the manner required by the State Election Commission. This means that there has to be evaluation of the reasons or justification pleaded by the elected members. This further means that there has to be proper consideration of the cause shown for determining

whether the cause shown constitutes good reason or justification.

12] In this case, if the impugned orders dated 8 February 2016 made by the Collector, who has been delegated the powers by the State Election Commission are perused, then it is apparent that there is no proper consideration of the cause shown by the petitioners for their failure to lodge the account of election expenses within the prescribed period. In these cases, there is no dispute that there is delay of about 97 days in lodging the account of election expenses. The petitioners, have furnished certain reasons and justification for such failure. There is an obligation cast upon the Collector to consider such reasons and justification in the proper perspective and thereafter, exercise discretion in the matter of declaration of the elected members as disqualified. The impugned orders merely record a conclusion that the cause shown is not sufficient. There are no reasons to back such conclusion. The reasons, constitute the live-link between the cause shown and the conclusion recorded. This live-link is not present in the impugned orders. Having regard to the drastic consequences, it was necessary for the Collector to have considered the cause shown by the petitioners and recorded cogent reasons as to why the cause shown was either unacceptable or did not

constitute good reason or justification. Since, the impugned orders do not reflect that this exercise has been undertaken by the Collector, there is no option but to set aside the same.

13] Taking into consideration the submissions made by Mr. Karande, learned counsel for respondent No.5, particularly on the aspect of certain factual errors in the context of cause shown as well as other submissions to the effect that the cause shown is by no means sufficient, it will be appropriate if the impugned orders are set aside and the matters are remanded to the Collector, Solapur for determining whether the petitioners, in the facts and circumstances of the present case, deserve to be disqualified under Section 14B of the said Act. In doing so, however, the Collector is bound to consider the law laid down by this Court in *Vimalbai Gawai (supra)* and *Sahebrao Patole (supra)*.

14] Accordingly, the impugned orders dated 8 February 2016 and 25 August 2016 are hereby set aside. The applications made by the Tahsildar, Mangalveda, on basis of which, the disqualification orders came to be made, are restored to the file of the Collector, Solapur, who shall dispose of the same, in accordance with law and on their own merits, as expeditiously as possible and in any case within a period of six months from today.

15] It is made clear that this Court has not made any observations as regards to the cause shown by each of the individual petitioners. The impugned orders are set aside because, the Collector, in making the impugned orders, has really not considered the cause shown or in any case, there is no reflection in the impugned orders that such cause has indeed been considered. Accordingly, all contentions of all parties are kept open for determination by the Collector. The Collector, shall afford personal hearing to the petitioners or such other parties who may be interested in the matter.

16] Rule is made absolute to the aforesaid extent in each of the petitions. In the facts and circumstances of the present case, there shall be no order as to costs.

17] The petitioners in each of the petitions to appear before the Collector, Solapur on 15 November 2016 at 11.00 a.m. and produce authenticated copy of this order.

18] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)