

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

WRIT PETITION NO.11267 OF 2016

Ranibai Thakaru Jadhav & Ors.

.. Petitioners

vs.

Tulshiram Dhaku Rathod & Ors.

.. Respondents

Mr.Prasad B. Kulkarni for the petitioner

Mr.R.S.Alange for respondent no.1

Ms.Vaishali Nimbalkar, A.G.P. for the respondent nos.3 and 5

**CORAM : K. K. TATED, J.**

**DATE : OCTOBER 25, 2016**

**PC.:**

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 7.9.2016 passed by Divisional Commissioner, Pune Division, Pune in Appeal No.100 of 2016 declining to grant stay to the order dated 10.8.2016 passed by the learned Collector, Solapur in Gram Panchayat Dispute Application No.9 of 2016 under section 14B of the Bombay Village Panchayats Act, 1958 by which the petitioner was declared as disqualified to hold the post of Member of Gram Panchayat, Ghodatanda, Taluka South Solapur, Solapur.

3 In the present proceeding, the petitioner was elected as member of the Gram Panchayat. Thereafter, the petitioner filed statement of account with the concerned authority i.e. Tahsildar within time but the same was not supported with the affidavit. In respect of filing of statement of account, learned Tahsildar, South Solapur informed to the Collector, Solapur by his letter dated 29.6.2016 (Exhibit-'E') page 75 of the petition.

4 The learned counsel for the petitioner submits that the learned Collector failed to consider the fact that petitioner complied the mandatory provision of section 14B of the said Act. He submits that whether the said statement of account be accompanied by affidavit or not and whether the same is mandatory or not, was not decided by the Authority. He submits that without considering the objection raised by the petitioner in their Appeal Memo, Divisional Commissioner, Pune Division, Pune rejected their application for stay by order dated 7.9.2016. In support of this contention, the learned counsel for the petitioner relies on the order of this court dated 14.9.2016 in Writ Petition No.6537 of 2016 particularly paragraph 7 which reads thus:

“7. It is to be noted that in the present proceedings, the petitioners filed their statements of expenses with the concerned authority immediately within fifteen days from the date of election. Whether it is mandatory on the part of candidates to submit the expenses in prescribed form and whether they have to maintain a separate bank account, is required to be considered at the time of final hearing of the Appeals.”

5 The learned counsel for the petitioner submits that during the pendency of the Appeal, this court be pleased to stay the operation and implementation of the order passed by the learned Collector, Solapur. She submits that if stay is not granted irreparable loss will be caused to the petitioner in case the respondent declares the election during that period.

6 On the other hand, the learned A.G.P. for the respondent no.1 and counsel for the respondents vehemently opposed the present Writ Petition. He submits that both the petitioners submitted statement of account but without affidavit which is mandatory. They submit that in the present case, though petitioner filed statement of account in time and same is certified by the Tahsildar by his letter dated 29.6.2016, same were not accompanied by affidavit duly affirmed by the petitioner. Hence, there is no question of staying the order passed by learned Collector, Solapur in Gram Panchayat Dispute Application No.9 of 2016 is not according to law. In support of this contention, the learned counsel for the respondent no.1 relies on the order dated 22.8.2016 passed by this court in Writ Petition No.7798 of 2016. On the basis of these submissions both the counsel submit that there is no substance in the present Writ Petition and same be rejected.

7 I have heard both the sides at length. It is to be noted that in the present proceedings, as required by section 14B of the said Act, petitioner submitted statement of account of the expenses incurred by him at the time of election. Same was certified by the Tahsildar by his letter dated 29.6.2016. The only question remains whether it is necessary or mandatory to file affidavit in support of statement of account, is required to be decided. As appeal is pending before

respondent no.5, Divisional Commissioner, Pune Division, Pune, I am of the opinion that petitioner has made out a case for stay of the order passed by learned Collector, Solapur. Hence, following order is passed:

- a) Writ Petition is partly allowed.
- b) Impugned order dated 7.9.2016 passed by learned Divisional Commissioner, Pune Division, Pune in Appeal No.100 of 2016 rejecting petitioner's application for stay is set aside.
- c) Operation and implementation of the order dated 10.8.2016 passed by learned Collector, Solapur in Gram Panchayat Dispute Application No.9 of 2016 is stayed till the hearing and final disposal of Appeal by learned Divisional Commissioner, Pune Division, Pune.
- d) Hearing of Appeal before Divisional Commissioner is expedited.
- e) Respondent no.5, Divisional Commissioner, Pune Division, Pune to decide Appeal No.100 of 2016 as early as possible but in any case within 4 months from the receipt of copy of this order.
- f) All contentions of both the parties are kept open.

Parties to act on authenticated copy of this order.

JUDGE