

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10288 OF 2013

Raut Sudhakar Dhondiram. ..Petitioner.
Versus
the Divisional Commissioner and Others. ..Respondents.

Mr. U. P. Warunjikar for the Petitioner.
Mrs. M. P. Thakur, AGP for Respondent No.1.
Mr. G. C. Jhaveri i/b Amey Deshpande for Respondent No.2.
Mrs. D. S. Mondkar i/b Mr. S. B. Shetye for Respondent No.5.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **September 26, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the order dated 15th October 2013 passed by Respondent No.1. By the said order, Respondent No.1 has disqualified the Petitioner from being the Councillor of Nashik Zilla Parishad under the provisions of section 16(1)(i) Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 [for short "the said Act"].

2. The Petitioner was elected councillor of Respondent No. 6 Zilla Parishad. There is no dispute that the Petitioner supplied sand and bricks for construction of Anganwadi building at village Kotambi.

There is also no dispute that funds for this work were sanctioned by the Chief Executive Officer, Zilla Parishad, Nashik.

3. Mr. Warunjikar, learned Counsel appearing for the Petitioner relying upon the provisions of section 16(1)(i) of the said Act submitted that merely because the Petitioner supplied sand and bricks for the construction of Anganwadi building by grampanchayat, it cannot be said that the Petitioner has a direct or indirect interest in the work done by the order of Zilla Parishad or on behalf of the Zilla Parishad. He submitted that the said work was done by Grampanchayat Kotambi and the Petitioner being the councillor of Zilla Parishad cannot be disqualified taking recourse to the provisions of section 16(1)(i) of the said Act. He also submitted that source of funds not being from the Zilla Parishad, provisions of section 16(1)(i) of the said Act is not attracted.

4. Learned AGP and the learned Counsel appearing for the Respondent No.2 opposed the petition very vehemently. They supported the order impugned in the writ petition. Lastly, they contended that petition is without any merit and deserves to be dismissed.

5. Having considered the rival submissions and having gone through impugned order, we do not find any merit in the writ petition. Section 16(1)(i) of the said Act, which is relevant for our purpose, reads thus :

“16. Disqualifications.- (1) Subject to the provisions of sub-section (2), a person shall be disqualified for being chosen as, and for being, a Councillor -

(a)....

(b)....

.....

(i) if he has directly or indirectly by himself or by his partner any share or interest in any work done by order of the Zilla Parishad or in any contract with, by or on behalf of the Zilla Parishad;

(j).....”

6. Admittedly, the Petitioner has supplied the sand and bricks for the purpose of construction of Anganwadi building at village Kotambi. The question which deserves consideration is whether the Petitioner as a councillor of Zilla Parishad can be disqualified taking recourse to the provisions of section 16(1)(i) of the said Act on the ground that he has interest in the aforesaid work and whether the said work can be said to be done by the order of or on behalf of the Zilla Parishad.

7. Page 51 to the petition is the letter dated 16th/29th October 2012 written by the Chief Executive Officer of Zilla Parishad and addressed to the Block Development Officer of Panchayat Samiti. The subject of the letter is distribution of grant for the financial year 2011-12 to construct Anganwadi building **through** grampanchayats. This letter contains the names of 5 grampanchayats and the name of grampanchayat Kotambi is at serial no.3. The letter further shows that for construction of Anganwadi building in village Kotambi, Rs. 2,41,000/- were disbursed. In our opinion, the construction of Anganwadi building at village Kotambi was undertaken by Zilla Parishad, Nashik under the scheme of Zilla Parishad and this work was to be executed through concerned grampanchayat.

8. Page No.52 is the work order dated 15th January 2013 issued by the Block Development Officer, Panchayat Samittee, Peth. This work order states that an amount of Rs.2,41,000/- is sanctioned for construction of Anganwadi building at village Kotambi under the Zilla Parishad Scheme. Reference is also made to the scheme under which the building of Anganwadi is to be constructed. This work order undoubtedly shows that construction of Anganwadi building is being done at the instance of Zilla Parishad.

9. In the impugned order, the learned Commissioner has recorded a finding that the Petitioner had interest in the work done by the order of Zilla Parishad and therefore disqualified him under the provisions of section 16(1)(i) of the said Act. We find the said finding is recorded on the basis of material on record. Having considered the rival submissions and having gone through the said material again, we do not find any error in the impugned order.

10. In the light of above, writ petition fails and the same is accordingly dismissed.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]