

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 04193 of 2015

District : Parbhani

1. Mangal w/o. Prakash Mulgir,
Age : 27 years,
Occupation : Household,
R/o. Mahatpuri,
Taluka Gangakhed,
District Parbhani.
 2. Dashrath s/o. Dnyanoba Dhumal,
Age : 24 years,
Occupation : Agriculture,
R/o. As above.
 3. Khajabee w/o. Habib Pathan,
Age : 40 years,
Occupation : Household,
R/o. As above.
 4. Sau. Sushila w/o. Vaijnath Gejage,
Age : 50 years,
Occupation : Household,
R/o. As above.
 5. Sau. Sunita w/o. Banshi Mulgir,
Age : 37 years,
Occupation : Household,
R/o. As above.
 6. Kiran s/o. Bapurao Chaphale,
Age : 31 years,
Occupation : Agriculture,
R/o. As above.
 7. Sau. Chhaya w/o. Prakash Jakapure,
Age : 28 years,
Occupation : Household,
R/o. As above.
 8. Sau. Kashibai w/o. Kishan Rathod,
Age : 45 years,
Occupation : Household,
R/o. As above.
- .. Petitioners
(Original
appellants)

versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
 2. The State Election Commission,
Maharashtra State.
 3. The Additional Divisional
Commissioner,
Aurangabad Division,
Aurangabad.
 4. The District Collector,
Parbhani, Dist. Parbhani.
 5. The Tahsildar, Gangakhed,
Taluka Gangakhed,
District Parbhani.
- .. Respondents.

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With**Writ Petition No. 04809 of 2015**

District : Parbhani

1. Eknath s/o. Marotrao Gejge,
Age : 37 years,
Occupation : Labour,
R/o. Bhambarwadi,
Taluka Gangakhed,
District Parbhani.
2. Sau. Rekha w/o. Eknath Gejge,
Age : 30 years,
Occupation : Household,
R/o. As above.
3. Savita w/o. Daulatrao Bhambre,
Age : 50 years,
Occupation : Household,
R/o. As above.

4. Meerabai w/o. Prabhakar Horgule,
Age : 28 years,
Occupation : Household,
R/o. As above.

versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The State Election Commission,
Maharashtra State.
3. The Additional Divisional
Commissioner,
Aurangabad Division,
Aurangabad.
4. The District Collector,
Parbhani, Dist. Parbhani.
5. The Tahsildar, Gangakhed,
Taluka Gangakhed,
District Parbhani.

.. Respondents.

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Mr. Mahesh P. Kale, Advocate, for the petitioners.

*Mr. M.B. Bharaswadkar, Asst. Government Pleader, for
respondent nos.01, 03, 04 and 05.*

Mr. S.T. Shelke, Advocate, for respondent no.02.

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CORAM : M.S. SANKLECHA, J.

DATE : 25TH APRIL 2017

ORAL ORDER :

At the request of the Counsel, as the two
petitions raise identical issues, they were heard

together and are being disposed of by this common order.

02. These two petitions under Article 227 of the Constitution of India have challenged two independent orders dated 08th April 2015, passed by the Addl. Divisional Commissioner, Aurangabad, upholding two independent orders dated 06th January 2015, passed by the District Collector, Parbhani, disqualifying the petitioners as Members of Grampanchayat of Mahatpuri and Bhambarwadi, respectively, both in Taluka Gangakhed, District Parbhani, under Section 14B of the Maharashtra Village Panchayats Act, 1959 [**the Act**]. This for having failed to lodge an account of election expenses within the prescribed time in the prescribed manner without good reasons.

03. By two orders dated 06th January 2015, the District Collector disqualified the petitioners from holding the membership of the two Grampanchayats (one in each petition) for having failed to submit the account of election expenses within a period of 30 days from the date of declaration of election result in the required format along with supporting affidavit. As a consequence of the same, the petitioners in both the petitions also stood disqualified for contesting election of the Grampanchayat for a period of 05 years from the date of the disqualification order i.e. 06th January 2015.

04. Consequent to the petitioners'

disqualification, the petitioners had filed appeals from the two orders dated 06th January 2015 of the District Collector to the Addl. Divisional Commissioner in terms of Section 16 of the Act.

05. On 08th April 2015, the Addl. Divisional Commissioner by the two impugned order dismissed the appeals of the petitioners from the orders of District Collector in respect of Grampanchayat of Mahatpuri and Bhambarwadi. The impugned orders hold that the petitioners had not submitted the election expenditure as required within the time of 30 days in the required format along with supporting affidavit.

06. On 10th April 2015, the petitioners filed Writ Petition No. 4193 of 2015 relating to Mahatpuri Grampanchayat. By an interim order dated 20th April 2015, pending admission, this Court refused to stay the elections as declared by the Election Commission's programme dated 30th March 2015. However, respondent no.02 - State Election Commission was restrained from publishing results of the elections held to Grampanchayat of Mahatpuri. On 20th April 2015, the petitioners filed Writ Petition No. 4809 of 2015 in respect of Bhambarwadi Grampanchayat.

07. Mr. M.P. Kale, learned Counsel appearing in support of both the petitions, invites my attention to Section 14B of the Act which reads as under :-

"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 this 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. "

On the basis of the aforesaid provision, it is submitted that there is a discretion in the State Election Commission whether to disqualify the petitioners from holding the electoral post and also from contesting the Grampanchayat elections for a period of 05 years from the date of disqualification. Thus, in the present facts, the discretion should have been exercised in favour of the petitioners and they should not have been disqualified or debarred from contesting elections for a period of 05 years from the date of disqualification. In support of his submission, he emphasized the use of the word 'may' in Section 14B of the Act. Secondly, Mr. Kale submits that the order has been passed in breach of principles of natural justice as no sufficient time was made available to the petitioners to file their

election expenses.

08. So far as first submission is concerned, it is undisputed position that the petitioners had failed to lodge account of their election expenses within the stipulated time and in the manner required by the Election Commission i.e. in particular format supported by an affidavit. The petitioners have not offered any reason or justification for having failed to comply with the mandate of Section 14B of lodging election expenses with the State Election Commission within the time and in the manner required by the State Election Commission. Consequently, the disqualification follows. This is particularly in the context of failure to offer any reason or justification for not complying with the mandatory requirement of Section 14B of the Act. Therefore, no question of exercising discretion in favour of the petitioner can arise.

09. The word 'may' used in Section 14B of the Act only suggests that there is a discretion in the Election Commission to the extent of not disqualifying a person, if it is satisfied with the reason or justification given by the petitioner for not filing the election expenses within the time and in the manner required by the State Election Commission. In the present facts, admittedly, the petitioners have not given any reason or justification for failure to lodge an account of election expenses within the time and in the manner

required by the State election Commission. Thus, no fault can be found with the two impugned orders dated 06th January 2015 and 08th April 2015 in each of the two petitions.

10. The second contention raised by Mr. Kale, that no sufficient opportunity was given to the petitioner, stands belied by the fact that the order records that the notices were issued to the petitioners on 17th December 2014. The hearing consequent to the notices dated 17th December 2014 was given to the petitioners on 24th December 2014 and 26th December 2014. Consequently, as held by the Addl. Commissioner, the plea of insufficient opportunity to represent their cases is not supported by the facts on record.

11. Moreover, it is pertinent to note that the elections in respect of which the expenses had to be filed were held in the year 2012. The obligation under the Act is to submit election expenses to the State Election Commission within a period of 30 days and in the manner prescribed by the State Election Commission. The petitioners had failed to comply the requirement from 2012 to 2014. The petitioners cannot raise a plea of insufficient time to file their election expenses. This is as the breach had already taken place much prior to the issuance of notice dated 17th December 2014 calling upon the petitioners to show cause why they should not be disqualified on account of non-compliance of

mandatory provisions of Section 14B of the Act.

12. In the above view, no fault can be found with the impugned orders dated 06th January 2015 and 08th April 2015, passed by the District Collector and in appeal by the Addl. Divisional Commissioner, Aurangabad, in the two petitions.

13. Accordingly, both the petitions are dismissed. The interim order dated 20th April 2015 (in Writ Petition No. 04193 of 2015) which restrained respondent no.02 - State Election Commission from declaring the election results, also stands vacated.

(M.S. Sanklecha)
JUDGE

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