

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

WRIT PETITION NO. 11026 of 2016

Bharat S/o Punjaram Kharwade,
age 41 years occupation agriculture
R/o Gundalwadi Taluka Kalamnuri Dist. Hingoli. **...PETITIONER**

VERSUS

1. Kachrubai W/o Rajaram Khude,
age 44 years occupation household
R/o Gundalwadi Taluka Kalamnuri Dist. Hingoli
2. The Additional Collector,
Hingoli. **...RESPONDENTS**

WITH

WRIT PETITION (STAMP) NO. 7954 OF 2017

Smt. Kachrubai W/o Rajaram Khude,
age 46 years occupation household, Agri. and
working as Sarpanch of Grampanchayat,
Gundalwadi Taluka Kallamnuri Dist. Hingoli **...PETITIONER**

VERSUS

1. Bharat S/o Punjaram Kharwade,
age 36 years occupation agriculture
R/o Gundalwadi Taluka Kallamnuri Dist. Hingoli.
2. The State of Maharashtra
Through : Additional Collector. **...RESPONDENTS**

Mr. Sharad V. Natu, Advocate for petitioner in WP No. 11026 of 2016
and respondent No.1 in WP No. 7954 of 2017

Mr G.N. Chincholkar, Advocate for respondent No.1 in
WP No. 11026 of 2016 and petitioner in WP No. 7954 of 2017)

Mr C.V. Dharurkar, Asstt. Govt. Pleader for respondent No. 2 in
WP No. 11026 of 2016 and 7954 of 2017).

CORAM : NITIN W. SAMBRE, J.

DATE : 20th September, 2017

ORAL ORDER :

Since the issue raised in both these petitions dwells upon same controversy, by consent, the petitions are taken out for final disposal at this stage.

2. One Bharat Punjaram Kharwade preferred complaint against present respondent Kachrubai W/o Rajaram Khude, alleging that the respondent Kacharubai has given birth to fourth child on October 7, 2001 i.e. after September 9, 2001, which is cut off date, prescribed under the provisions of Section 14(J-1) of the Maharashtra Village Panchayat Act, which according to him, incurs disqualification of Kacharubai as a Member of the Village Panchayat and, as such, Sarpanch.

3. The Collector, Hingoli vide his order dated 27th February 2006 held that Kacharubai had incurred disqualification under the provision of Section 14(J-1) of the Act, which was subject matter of challenge before the Divisional Commissioner under provisions of Section 154 of the said Act. The said appeal, I am informed, was disposed of as in-fructuous for the reason of coming over of the tenure of Kacharubai as Gram Panchayat Member, as is apparent from the order dated 9th September 2015 passed in case No. 42 of 2006.

4. Said Kacharubai, whose tenure expired in 2015, again contested election of Village Panchayat and got elected to the post of Member and it is informed that she is holding post of Sarpanch as on date.

5. Bharat, complainant taking basis of the earlier order of disqualification passed by the Collector, Hingoli, on 27th February 2006 filed fresh proceedings before the Collector, Hingoli, seeking disqualification of Kacharubai and accordingly by order dated 10th February 2016, Kacharubai was again declared to be disqualified for continuing to be a Gram Panchayat Member.

6. Kacharubai, feeling aggrieved by the order of disqualification passed by the learned Collector, Hingoli, on 10th February 2016 i.e. second order of the Collector, preferred an appeal, which came to be allowed by the Additional Commissioner on the ground that Kacharubai has demonstrated that the fourth child was born to her prior to the cut-off date i.e. September 13, 2001.

7. In the intervening period, Kacharubai again approached the Divisional Commissioner, seeking rehearing of Appeal No. DB-Desk-2/ZPVP/Appeal/CR/111/2016, which was disposed of infructuous as tenure of Kacharubai has come to an end. The Additional Commissioner

disposed of said proceedings by refusing to condone delay, which has prompted Kacharubai to file Writ Petition (Stamp) No. 7954 of 2017. The order of the Divisional Commissioner reversing the finding recorded by the Collector on 10th Feb. 2016, vide order dated 26th September 2016 is questioned by respondent Bharat in Writ Petition No. 11026 of 2016.

8. The aforesaid factual matrix narrated herein is not disputed by either of the parties to the proceedings.

9. In the aforesaid backdrop, heard Shri Natu, learned Counsel for petitioner Bharat/original complainant in Writ Petition No. 11026 of 2016 and respondent No.1 in Writ Petition (Stamp) No. 7954 of 2017, and Shri Chincholkar, learned Counsel for respondent No.1 Kacharubai, returned candidate in Writ Petition No. 11026 of 2016 and petitioner in W.P. St. No. 7954 of 2017; and learned Asstt. Govt. Pleader for respondent No.2/Collector/State in both the Writ Petitions.

10. Learned Counsel Shri Natu would urge that the first order of the Collector passed on 27th February 2006 disqualifying Kacharubai as Gram Panchayat Member, will hold the field as said order is not upset in any of the proceedings. According to him, by virtue of legal fiction provided under Section 14(J-1) of the Maharashtra Village Panchayat

Act, the order once passed of disqualification on the ground mentioned in this case, will operate in perpetuity. There need not have fresh order of disqualification and, as such, disqualification of respondent Kacharubai continued even today. He would as such submit that the order of the Divisional Commissioner, which is impugned in the petition, passed on September 20, 2016, does not take care of aforesaid issue. He would then urge that in the said order, the evidence in the form of documents and pleadings brought on record by the petitioner was not at all considered. What was considered is only the documents produced by Kacharubai in support of her claim. According to him, the order is not sustainable.

11. Per contra, Shri Chincholkar, learned Counsel for Kacharubai while supporting order of Divisional Commissioner passed on September 20, 2016 and questioning order refusing to condone delay for rehearing of earlier proceedings being Appeal No. 42 of 2006, would urge that the earlier appeal of said Kacharubai was disposed of by the authority as in-fructuous instead of adjudicating the claim on merit as to whether said Kacharubai has incurred disqualification or not. The said disposal of appeal of Kacharubai is in the backdrop of coming to an end of the tenure of session 2005 to 2010, however, according to him, said order will not operate against Kacharubai in perpetuity i.e. in subsequent election. He submits that the appeal, which was disposed of as in-

fructuous being No. 42 of 2006 is required to be heard afresh by condoning delay as order of the authority should not cause prejudice to litigant when the litigant was not at fault.

12. Learned Assistant Government Pleader supports order of the Divisional Commissioner thereby refusing to condone delay on the issue of rehearing of appeal of Kacharubai and also the order of Divisional Commissioner, which is impugned in the petition at the behest of complainant Bharat, whereby it is held that Kacharubai was not disqualified under the provisions of Section 14(J-1) of the Bombay Village Panchayat Act.

13. Considered rival submissions. At the outset, it is required to be noted that in the petition at the behest of complainant Bharat, the order of the Divisional Commissioner, whereby the order of the Collector dated February 10, 2016 disqualifying Kacharubai, is questioned.

14. Upon perusal of the order of the Additional Commissioner, it is noted that while reversing the disqualification of Kacharubai, the Divisional Commissioner has considered her documents which were produced by Kacharubai, and not the other material that was placed on record by petitioner Bharat.

15. Apart from above, whether the order earlier passed disqualifying Kacharubai, vide order dated February 27, 2006, passed by the Collector, Hingoli, will operate in perpetuity, is not an issue, which is examined by the Divisional Commissioner.

16. Apart from above, it is not in dispute that the appeal preferred by Kacharubai against order of disqualification passed against her on February 27, 2006 by the Collector Hingoli, she preferred an appeal before the Divisional Commissioner being Appeal No. 42 of 2006, was disposed of as in-fructuous. The least, that was expected from the Appellate Authority, was to examine said appeal on its merit and record finding as to whether Kacharubai has rightly been disqualified by the order of the Collector having incurred disqualification under section 14(J-1) of the Bombay Village Panchayat Act.

17. The attempt on the part of returned candidate, namely, Kacharubai, to grant rehearing of said Appeal No. 42 of 2006 was turned down by the Commissioner on the ground that said application was moved at belated stage and delay cannot be condoned.

18. If the party was not at fault as authority has failed to adjudicate the claim of respective parties on merit, in such an

eventuality, in my opinion, the Authority should not have refused to condone delay in rehearing Appeal No. 42 of 2006.

19. In the aforesaid backdrop, in my opinion, following order will take care of interest of both the parties.

(I) The order dated September 9, 2015 dismissing the Appeal No. 42 of 2006 passed by the Divisional Commissioner, Aurangabad Division, against the order of disqualification of Kacharubai, passed by the Collector on 27th Feb. 2006, is hereby set aside. It is directed that by ignoring all the subsequent orders, the said Appeal Petition No. 42 of 2006 be heard and decided afresh.

(II) The order passed in Appeal Petition No. 40 of 2016, which was preferred by Kacharubai against her disqualification, decided on September 20, 2016 is also quashed and set aside on the ground that the earlier disqualification and documentary evidence which was brought on record by complainant Bharat was not at all dealt with. Said Appeal No. 40 of 2016 is also stood restored to the file of the Divisional Commissioner, who is an Appellate Authority.

- (III) Let both these appeals be heard together and decided by the Competent Authority expeditiously, in any case, within period of 6 (six) months from the date of first appearance of both the parties before the said Authority.
- (IV) The parties hereto agreed that they shall appear before the Appellate Authority on 19th November 2017. As such, fresh notice will not be ordered to Kacharubai and Bharat.
- (V) The status of Kacharubai, who claims to be continued in the office of the Sarpanch by virtue of interim order passed by the Divisional Commissioner, shall be continued till the decision of the appeal, pursuant to the order of this Court.
- (VI) With above observations, both these petitions stand dismissed.

(NITIN W. SAMBRE, J.)

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