

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12825 OF 2016
WITH
CIVIL APPLICATION NO. 6627 OF 2017

KACHARU DHONDIBA GORE AND OTHERS
VERSUS
MAKARDHVAJ BABARAO FAJAGE AND OTHERS

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Advocate for Petitioners : Shri R. S. Patil
Advocate for Respondent 1 : Shri P. S. Anerao
Advocate for Respondent 2 : Shri S. N. Janakwade
AGP for Respondents 3 & 4 : Shri S.K.Tambe

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 03, 2017

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PER COURT :-

1. The petitioners are aggrieved by the concurrent findings of the Additional Collector, dated 26.9.2016 and the Upper Divisional Commissioner dated 14.12.2016, by which, the petitioners have been held disqualified under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act, on the ground that these petitioners did not have a toilet block and were obviously not using it.

2. The petitioners have strenuously contended that the inspection report signed by a committee, which indicates that the petitioners did not construct a toilet and were not using it, does not bear their signature and hence the same is unsustainable.

3. The petitioners have drawn my attention to each of the ten grounds raised by them in the memo of the petition. Grievance is that though they had the toilets in their house and were using them regularly, a false report has been furnished by the committee under the influence of a former lady Sarpanch of village Dagad-Savangi.

4. Learned AGP and the learned Advocate for respondent No.1 have supported the impugned orders.

5. Section 14(1)(j-5) of the said Act, reads as under:-

14. Disqualifications. (1) No person shall be a member of a Panchayat continue as such, who -

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(j-5) fails to submit a certificate of the concerned panchayat, along with resolution of the Gram Sabha or of the Chief Executive Officer or an officer designated by him; or a self certificate, certifying that, -

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet:"

6. It is settled law that the person desirous of contesting the elections of the Gram Panchayat has to submit a report of the Gram Sevak and the Resolution of the Gram Sabha indicating that the candidate has a toilet block constructed within his house and he and his family members are using the said block or he is using such a toilet block as provided under Clause (j-5).

7. Learned counsel for the petitioners submits that the petitioners do not have a copy of the nomination papers and also do not have copies of any such certificates issued by the Gram Sevak at the time of the filing of the nomination papers in the Gram Panchayat elections held in 2012. Certificates dated 13.5.2016 are placed on record at page Nos.42 to 51 to support the contention that they were having the toilet blocks.

8. The District Collector, while considering the complaint of respondent No.1 filed on 11.4.2016, came to the conclusion that though the elections were conducted in November, 2012, the toilet blocks were not constructed by these petitioners. This fact was exposed by the complaint of respondent No.1 on the basis of which the enquiry officer appointed by the competent authority along with the Block Development Officer has conducted the inspection by visiting the actual residences of these petitioners.

Even on the date of such inspection, there were no toilet blocks.

9. Respondent No.2 - Gram Sevak is said to have submitted a report on-line on 2.12.2015 to the Ministry of Water and Sanitation in pursuance to the *Swaccha Bharat Abhiyan*, introduced by the Government. Even in that report, it was mentioned that the petitioners do not have a toilet block.

10. In the light of the above and considering the concurrent findings of the competent authorities and in the absence of the certificates of the Gram Sevak and the resolution of the Gram Sabha under Section 14(1)(j-5) with regard to the Elections of November 2012, I do not find that the impugned conclusions of the competent authorities could be termed as being perverse or erroneous.

11. Considering the above, this petition, being devoid of merits is dismissed.

12. The pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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