

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.2223 OF 2017

Vaishali Baburao Bhad]
Age: 38 years, Occ: Household/Agriculturist]
Residing at Gaudgaon, Taluka Barshi,]
District Solapur]..Petitioner

Versus

1. Rahul Shivaji Bhad,]
Age: 35 years, Occu: Agriculturist,]
Residing at Gaudgaon,]
Taluka Barshi, District Solapur.]
2. Dattatray Machindra Aargade,]
(Since deceased)]
3. Amit Nilkantha Bhad,]
Age: 27 years, Occu: Agriculturist,]
Residing at Gaudgaon,]
Taluka Barshi, District Solapur.]
4. Suresh Jyoti Aargade,]
Age: 52 years, Occu: Agriculturist,]
Residing at Gaudgaon,]
Taluka Barshi, District Solapur.]
5. The Tahsildar/Election Officer,]
Grampanchayat Ghodegaon,]
6. The State of Maharashtra]..Respondents

ALONGWITH
WRIT PETITION STAMP NO.2224 OF 2017

Atul Sampatrao Yadav,]
Age: 32 years, Occ: Agriculturist]
Residing at Gaudgaon, Taluka Barshi,]
District Solapur]..Petitioner

Versus

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|-------------------------------------|----------------|
| 1. Rahul Shivaji Bhad, |] |
| Age: 35 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 2. Dattatray Machindra Aargade, |] |
| (Since deceased) |] |
| 3. Amit Nilkantha Bhad, |] |
| Age: 27 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 4. Suresh Jyoti Aargade, |] |
| Age: 52 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 5. The Tahsildar/Election Officer, |] |
| Grampanchayat Ghodegaon, |] |
| 6. The State of Maharashtra |]..Respondents |

**ALONGWITH
WRIT PETITION STAMP NO.2225 OF 2017**

Sudhir Govardhan Dasvant,	]
Age: 34 years, Occ: Agriculturist	]
Residing at Gaudgaon, Taluka Barshi,	]
District Solapur	]..Petitioner

Versus

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|-------------------------------------|---|
| 1. Rahul Shivaji Bhad, |] |
| Age: 35 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 2. Dattatray Machindra Aargade, |] |

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| (Since deceased) |] |
| 3. Amit Nilkantha Bhad, |] |
| Age: 27 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 4. Suresh Jyoti Aargade, |] |
| Age: 52 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 5. The Tahsildar/Election Officer, |] |
| Grampanchayat Ghodegaon, |] |
| 6. The State of Maharashtra |]..Respondents |

ALONGWITH
WRIT PETITION STAMP NO.2226 OF 2017

Usha Raghunath Garad,	]
Age: 32 years, Occ: Household/Agriculturist	]
Residing at Gaudgaon, Taluka Barshi,	]
District Solapur	]..Petitioner

Versus

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|-------------------------------------|---|
| 1. Rahul Shivaji Bhad, |] |
| Age: 35 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 2. Dattatray Machindra Aargade, |] |
| (Since deceased) |] |
| 3. Amit Nilkantha Bhad, |] |
| Age: 27 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 4. Suresh Jyoti Aargade, |] |
| Age: 52 years, Occu: Agriculturist, |] |

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| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 5. The Tahsildar/Election Officer, |] |
| Grampanchayat Ghodegaon, |] |
| 6. The State of Maharashtra |]..Respondents |

**ALONGWITH
WRIT PETITION STAMP NO.2229 OF 2017**

Sampat Vasudev Chavan,	]
Age: 34 years, Occ: Agriculturist	]
Residing at Gaudgaon, Taluka Barshi,	]
District Solapur	]..Petitioner

Versus

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|-------------------------------------|----------------|
| 1. Rahul Shivaji Bhad, |] |
| Age: 35 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 2. Dattatray Machindra Aargade, |] |
| (Since deceased) |] |
| 3. Amit Nilkantha Bhad, |] |
| Age: 27 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 4. Suresh Jyoti Aargade, |] |
| Age: 52 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 5. The Tahsildar/Election Officer, |] |
| Grampanchayat Ghodegaon, |] |
| 6. The State of Maharashtra |]..Respondents |

**ALONGWITH
WRIT PETITION STAMP NO.2230 OF 2017**

Suraj Sampatrao Kakade,	]	
Age: 42 years, Occ: Service	]	
Residing at Gaudgaon, Taluka Barshi,	]	
District Solapur	]	..Petitioner

Versus

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|-------------------------------------|---|---------------|
| 1. Rahul Shivaji Bhad, |] | |
| Age: 35 years, Occu: Agriculturist, |] | |
| Residing at Gaudgaon, |] | |
| Taluka Barshi, District Solapur. |] | |
| | | |
| 2. Dattatray Machindra Aargade, |] | |
| (Since deceased) |] | |
| | | |
| 3. Amit Nilkantha Bhad, |] | |
| Age: 27 years, Occu: Agriculturist, |] | |
| Residing at Gaudgaon, |] | |
| Taluka Barshi, District Solapur. |] | |
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| 4. Suresh Jyoti Aargade, |] | |
| Age: 52 years, Occu: Agriculturist, |] | |
| Residing at Gaudgaon, |] | |
| Taluka Barshi, District Solapur. |] | |
| | | |
| 5. The Tahsildar/Election Officer, |] | |
| Grampanchayat Ghodegaon, |] | |
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| 6. The State of Maharashtra |] | ..Respondents |

**ALONGWITH
WRIT PETITION STAMP NO.2231 OF 2017**

Anjana Sambhaji Paikekar,	]	
Age: 25 years, Occ: Household/Agriculturist	]	
Residing at Gaudgaon, Taluka Barshi,	]	
District Solapur	]	..Petitioner

Versus

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|-------------------------------------|----------------|
| 1. Rahul Shivaji Bhad, |] |
| Age: 35 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 2. Dattatray Machindra Aargade, |] |
| (Since deceased) |] |
| 3. Amit Nilkantha Bhad, |] |
| Age: 27 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 4. Suresh Jyoti Aargade, |] |
| Age: 52 years, Occu: Agriculturist, |] |
| Residing at Gaudgaon, |] |
| Taluka Barshi, District Solapur. |] |
| 5. The Tahsildar/Election Officer, |] |
| Grampanchayat Ghodegaon, |] |
| 6. The State of Maharashtra |]..Respondents |

Mr. D. S. Mhaispurkar for the Petitioner in all the Writ Petitions.
Mr. Vishal Kanade i/by Mr. V. V. Ugle for the Respondent Nos.1, 3 & 4.
Mr. S. D. Rayrikar, AGP for the Respondent Nos.5 and 6.

CORAM : R. M. SAVANT, J.
DATE : 23rd MARCH, 2017

ORAL JUDGMENT

1 Rule in all the above Petitions. With the consent of the
Learned Counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court under Article 227 of the

Constitution of India is invoked against the order dated 28.12.2016 passed by the I/c Additional Commissioner, Pune Division, Pune, by which order, the Appeals filed by the Petitioners herein came to be dismissed and resultantly the order dated 30.04.2016 passed by the Collector, Solapur came to be confirmed.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioners in each of the above Petitions were members of the Gram Panchayat Gaudgaon, Taluka Barshi, District Solapur being elected from the respective wards from which they had contested the elections. The Respondent Nos.1 to 4 herein who are the residents of the said village Gaudgaon filed applications against each of the Petitioners above named under Sections 14B and 16 of the Maharashtra Village Panchayats Act, 1958 (For short "the said Act") for disqualification of the Petitioners on the ground that the Petitioners have failed to open bank accounts. The Respondents in the said applications however accepted the fact that the Petitioners had submitted their statement of accounts of the election expenses but the same was without opening bank accounts. The Petitioners herein replied to the said applications. The Petitioners contended that the fact that they have filed their statement of accounts of the election expenses has been accepted by the complainants. It was further contended in the said reply

that the directions as contained in the order dated 30.07.2011 of the State Election Commission in respect of the opening of the bank account cannot be construed to mean that in the event the bank account is not opened the candidate would stand disqualified. It was further contended in the reply that in almost 90% of the Gram Panchayats established within the State of Maharashtra, there are no banks. It was lastly contended that the Petitioners have the mandate of the people of the said village Gaudgaon and therefore their election should not be interfered with.

4 At this stage, it would be necessary to refer to the directions issued by the State Election Commission vide order dated 30.07.2011. The said order has been issued by the State Election Commission increasing the limit of expenditure for a candidate contesting elections to the Municipal Corporations, Municipal Councils, Zilla Parishads, Panchayat Samitis and Gram Panchayats. In so far as the Gram Panchayat is concerned, the limit of expenditure has been increased from Rs.7500/- to Rs.25,000/-. It is mentioned in the said order just below the table mentioning the limit for expenditure of the Gram Panchayat that a candidate contesting the elections should open a bank account for every election and it is through the said bank account that the expenses of the election should be incurred. It is further stated that the statement of the

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said account should be submitted to the Returning Officer and Collector or the Municipal Commissioner as the case may be. It is the aforesaid part of the said order dated 30.07.2011 which is relevant in the context of the applications for disqualification filed by the Respondents. The said applications for disqualification filed by the Respondents was considered by the Collector, Solapur who by his order dated 30.04.2016 has allowed the same. The Collector, Solapur though has allowed the said applications has recorded in the order that the Petitioners have submitted the statement of account of the election expenses within time. However the same has not been done along-with the bank statements. The Collector has further observed that the reasons given by the Petitioners are not acceptable, and considering the legal provisions it is necessary to disqualify the Petitioners. The Collector has accordingly by orders dated 30.04.2016 disqualified the Petitioners above named.

5 The Petitioners aggrieved by the said order dated 30.04.2016 passed by the Collector, Solapur challenged the same by way of Appeals under Section 16 of the said Act. The I/c Additional Commissioner, Pune Division, Pune has by the impugned order dated 28.12.2016 dismissed the Appeals and has resultantly confirmed the order passed by the Collector, Solapur dated 30.04.2016. The Additional Commissioner principally on the ground that the Petitioners had not opened bank

accounts which was required in terms of the directions issued by the Election Commission from time to time did not deem it appropriate to interfere with the order passed by the Collector, Solapur dated 30.4.2016 and accordingly has dismissed the Appeals.

6 The Learned Counsel for the Petitioners Mr. D. S. Mhaispurkar would contend that the directions as contained in the order dated 30.07.2011 issued by the State Election Commission cannot be invoked to disqualify the Petitioners as they are not part of Section 14B of the said Act. The Learned Counsel would contend that in any event the said directions are directory in nature and therefore their non-compliance would not entail disqualification of the Petitioners. The Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court reported in 2008(4) Mh.L.J. 728 in the matter of Kumudini. Balasaheb Salkar Vs. Additional Commissioner, Amravati and others.

7 The Learned Counsel would next contend that both the Collector, Solapur as well as the Additional Commissioner, Pune Division, Pune have passed orders mechanically without considering the fact that discretion was vested in them as to whether the Petitioners were required to be disqualified for non-compliance of the directions of the State Election Commission in the matter of non-opening of a bank account

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when the Petitioners had submitted statement of account of the election expenses within time. The Learned Counsel would seek to place reliance on the judgment of another Learned Single Judge of this Court reported in 2011(3) BCR 359 in the matter of Sahebrao Dashrathrao Patole Vs. State of Maharashtra and others. The Learned Counsel would contend that the Authorities below have also not taken into consideration the contentions which were raised on behalf of the Petitioners and therefore the orders passed by them are vitiated on the said ground. Reliance is sought to be placed on an unreported decision of this Court dated 21.07.2011 in Writ Petition No.1907 of 2011 in the matter of Arun Kanhu Pawar Vs. Sakru Ganu Rathod and others and companion Petitions.

8 Per contra, the Learned Counsel appearing for the Respondents/Complainants Mr. Vishal Kanade would contend that having regard to the manner in which Section 14B of the said Act is structured, the directions of the Election Commission would be covered by the second part of the clause (a) of Section 14B(1). The Learned Counsel would contend that the Petitioners having taken advantage of the increase in the limit of expenditure for the Gram Panchayat election from Rs.7500/- to Rs.25,000/- now cannot be heard to contend that they would not comply with the directions of the State Election Commission in

so far as the compliance of the directions as regards opening of the bank account is concerned.

9 Having heard the Learned Counsel for the parties, I have considered the rival contentions. Before dealing with the contentions urged on behalf of the parties, it would be apposite to refer to Section 14B of the said Act.

“14B. 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.”

Hence the said provision postulates that if the State Election Commission is satisfied that a candidate has failed to lodge an account of election expenses within the time and in the manner required by the State

Election Commission, and has no good reason or justification for such failure, the State Election Commission may, by an order published in the Official Gazette, declare such a candidate to be disqualified for being a member of the Gram Panchayat. However Sub Section (2) envisages that 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. Hence under the said provision discretion is vested in the State Election Commission whether or not to disqualify a particular candidate for non-compliance in the matter of filing the statement of election expenses. The said discretion therefore would have to be exercised having regard to the facts and circumstances which are prevailing in a particular case.

10 The State Election Commission as indicated above has issued an order on 30.07.2011 thereby raising the limit of expenditure that a candidate can incur, the limit has been increased for elections from the Municipal Corporations to the elections for the Gram Panchayats. In so far as the Gram Panchayats are concerned, the limit of election expenditure has been increased from Rs.7500/- to Rs.25,000/-. The said order also provides that the candidate would open a bank account for every election and expend funds for the elections from the said account and ultimately submit details of the bank account to the Returning

Officer and Collector or the Municipal Commissioner as the case may be. It is also stated in the said order that the said directions would be binding on the candidates. Though such directions have been issued by the State Election Commission from time to time, the substantive provision i.e. Section 14 of the said Act has not been amended so as to make the directions as part of the said substantive provision.

11 In the instant case, there is no dispute about the fact that the statement of election expenses was submitted by each of the Petitioners within the time stipulated by the State Election Commission as contained in its letter dated 21.10.2015. In fact the said fact has been accepted by the Complainants in the dispute application filed by them. Both the Authorities below i.e. Collector, Solapur and the Additional Commissioner, Pune Division, Pune have passed orders disqualifying the Petitioners on the ground that the Petitioners though have filed their statement of account of election expenses they have not opened the bank accounts. In so far as the Collector, Solapur is concerned, he has very fleetingly referred to the case of the Petitioners and has thereafter observed that the reasons given by the Petitioners for non-opening of the bank accounts are not acceptable. The Collector, Solapur has not dealt with the contentions raised by the Petitioners in their replies filed to the dispute applications. In so far as the Additional Commissioner is

concerned, as indicated above, the Additional Commissioner did not deem it appropriate to interfere with the order passed by the Collector, as according to the Additional Commissioner the non-compliance of the directive of the Election Commission in the matter of opening of bank accounts was fatal to the case of the Petitioners. Both the Authorities below have thereby failed to note that there is a discretion which is vested in them as regards whether the Petitioners are required to be disqualified only because they have not opened the bank accounts when in fact Petitioners have submitted their statement of account of election expenses within the time stipulated by the State Election Commission and therefore have complied with the statutory provision i.e. Section 14B. Both the Authorities can therefore be said to have abdicated from the responsibility which is imposed by the statute on them especially having regard to the fact that they were dealing with cases of disqualification under Section 14B of the said Act of an institution of Local Self Government at the lowest level i.e. the Gram Panchayat. It is required to be noted that out of the 11 members of Gram Panchayat as many as 7 i.e. Petitioners herein have been disqualified on the ground of non-opening of the bank accounts. The judgments cited by the Learned Counsel for the Petitioners would have relevance in the context of the challenge which has been raised by the Petitioners as regards their disqualification.

12 In my view, therefore, both the Authorities having decided the applications and the Appeals in a manner not warranted by law, the impugned orders passed by both the Authorities below i.e. order dated 30.04.2016 passed by the Collector, Solapur, as well as the order dated 28.12.2016 passed by the Additional Commissioner, Pune Division, Pune would have to be quashed and set aside and is accordingly quashed and set aside and the following directions are issued :-

- I) On the impugned orders being quashed and set aside the matter is remitted back to the Collector, Solapur for a de-novo consideration of the dispute applications filed by the Respondents against each of the Petitioners.
- II) The Collector, Solapur to decide the dispute applications on the touchstone of Section 14B and especially having regard to the fact that a discretion is vested in the State Election Commission whether to disqualify a particular candidate or not in the facts and circumstances of the case.
- III) The contentions of the parties are kept open for being urged before the Collector, Solapur.

- IV) The parties may file further pleadings to amplify the dispute applications filed by the Respondent Nos.1, 3 and 4 and the replies filed by the Petitioners to the dispute applications respectively.
- V) The parties to appear before the Collector, Solapur on 06.04.2017. The Collector, Solapur thereafter to decide the dispute applications expeditiously and not later than 30.06.2017. The same to be done on their own merits and in accordance with law.
- VI) In view of the setting aside of the orders passed by the Authorities, the Petitioners would be entitled to function as members of the Gram Panchayat Gaudgaon subject to the result of the dispute applications and further challenge if any.
- VII) In the event an adverse order is passed against the Petitioners in the dispute applications by the Collector, Solapur, the same not to be given effect to for a period of two weeks of the receipt of the said orders by the respective Petitioners so as to enable the Petitioners to

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avail of the remedy available in law.

13 With the aforesaid directions, the Writ Petitions are disposed
of.

[R.M.SAVANT, J]