IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION

WRIT PETITION NO. 12570 OF 2017

Narayan Bandu Patil & Ors. .. Petitioners

v/s.

Additional Commissioner,
Revenue Department, Pune & Ors. .. Respondents

Mr. Chetan Patil for the petitioners
Mr. V.S. Talkute a/w Mr. S.R. Ghanvat for respondent no.4
Mr. S.H. Kankal, AGP for respondent nos. 1 and 2

CORAM : M.S. SANKLECHA, J.
DATED : 21st NOVEMBER, 2017

P.C.

1. This is a common petition filed by six petitioners, all of whom are elected members of Gram Panchayat of Patane, Tal. Shahuwadi, Dist. Kolhapur. This petition challenges six orders all dated 22nd August, 2017 passed by the respondent no.1 – Divisional Commissioner. Each of the six impugned orders dated 22nd August, 2017 has held the all the petitioners had become disqualified as Panchayat Members on account of their failure to lodge their election expenses in terms of Section 14B of the Maharashtra Village Panchayat Act, 1959 (the Act).

2. Mr. Talkute, learned Counsel appearing for respondent nos. 4 and 5 raises preliminary objection to the petition being entertained in its entirety, as filed. It is submitted that this is not a case of a common impugned order being challenged by the six petitioners, but individual and separate orders have been passed in respect of each of these petitioners. In such cases, it is submitted that separate petition needs to be filed, as separate writs would be issued. In support, he reiles upon the decision of Orissa High Court in the case of ***Nityananda Panigrahi & Ors. Vs. Commissioner of Consolidation and Ors. 1994(2) OLR 214***.

3. Mr. Chetan Patil, learned Counsel appearing for the petitioners while disputing the applicability of the aforesaid decision states that so far as this petition is concerned, it is restricted only to the petitioner no.4. He seeks to withdraw this petition to the extent it is filed on behalf of petitioner nos. 1, 2, 3, 5 and 6 with liberty to file an individual petition in respect of each of them. Thus, this petition to the extent it relates to petitioner nos.1, 2, 3, 5 and 6 are dismissed as withdrawn. However, liberty as prayed for by petitioner nos. 1,

2, 3, 5 and 6 is granted. This petition is now restricted only to the original petitioner no.4 i.e. Mrs. Shobhatai Shamrao Patil.

4. At the request of the parties, this petition is being disposed of finally at this stage.

5. Briefly, the facts leading to the filing of the present petition are as under :-

(a) Elections of Gram Panchayat, Patane were conducted on 26th July, 2015 for the period 2015-2020.

(b) On 27th July, 2015, counting of votes took place and the results were declared *inter alia* declaring the petitioner as an elected member of Gram Panchayat.

(c) On 29th July, 2015, the election results of Gram Panchayat elections were published in accordance with Rule 37 of the Maharashtra Village Panchayat Election Rules, 1959 (Rules).

(d) On 26th August, 2015, the petitioner submitted / lodged the details of her election expenses with a supporting affidavit.

(e) Thereafter, respondent nos. 4 and 5 filed a complaint to the Collector alleging disqualification of the petitioner as a member of

Panchayat, in view of Section 14B of the Act. The basis of the complaint is that the petitioner had not complied with her obligation to submit her election expenses to the Returning Officer within the time stipulated under the Act.

(f) The aforesaid complaint led to issuance of show-cause notice to the petitioner. The petitioner responded to the same by pointing out that there has been no breach of Section 14B of the Act on her part. This for the reason that she had submitted the expenses to the Returning Officer within 30 days from the date of publication of the results i.e. 29th July, 2015. In the alternative, it was submitted that even if the date of declaration of election is taken as the date when the period to file the election expenses are said to have been commenced i.e. 27th July, 2015, the first day has to be excluded and, therefore, the election expenses have been filed within a period of 30 days as prescribed by the State Election Commission.

(g) By an order dated 12th April, 2017, the Collector rejected the petitioner's contention and held that the period of 30 days commenced from the date of declaration of the elected candidates on 27th July, 2015 and not from publication of the election results under Rule 37 of the Rules.

(h) Being aggrieved, the petitioner filed an appeal to the respondent no.1 Commissioner. However, the petitioner's appeal was also dismissed by the impugned award dated 22nd August, 2017 of respondent no.1 Commissioner. This on the ground that the election expenses were submitted beyond the period of 30 days from the date of declaration of the successful candidate to the panchayat. Thus, upholds the order dated 12th April, 2017 of the Collector.

6. Before dealing with the submissions, it would be useful to reproduce Section 14B of the Act, which reads as under :-

> ***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 commission 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.

7. Mr. Chetan Patil, learned Counsel appearing for the petitioner supports the petition and challenges the impugned order dated 22nd August, 2017 on the following grounds :-

(a) The election expenses has been submitted on 26th August, 2015 within 30 days of the publication of election results on 29th July, 2015. Thus, no breach of Section 14B of the Act;

(b) In the alternative, even if the date of declaration of election results is taken as 27th July, 2017, yet there is no delay in filing the election expenses with the Returning Officer within the prescribed period of 30 days as the first date would have to be excluded. In support, he places reliance upon a notification issued by the State Election Commission on 7th February, 1995 issued in exercise of its power under Section 10A(4) of the Act, which inter alia provides that the statement of accounts are to be submitted by the contesting candidates within 30 days of the declaration of the results. The words "within 30 days of " the Apex Court in ***Econ Antri Ltd. Vs. Rom Industries Ltd. & Anr. (2014)11 SCC 769*** has held that the words "of", "from" and "after" mean the same thing in the context of the Negotiable Instrument Act. Thus, 'of the declaration of results' would require exclusion of the first day in computing the period of 30 days; and

(c) In terms of Section 14B(b) of the Act, the Authorities under the Act are obliged to consider whether there was any good reason or justification for failure to file election expenses within prescribed time i.e. 30 days. This exercise has not been done in the impugned orders of the Collector and the Commissioner as it failed to consider the petitioner's contention that it was under the *bona fide* understanding that the time to file election expenses would commence to run from the date of publication of the results of the election held on 29th July, 2015.

8. As against this, Mr. Talkute, learned Counsel appearing for the contesting respondents and Mr. Kankal, the learned AGP support the impugned orders as under : -

(a) the time and the manner in which the election expenses are to be lodged is as laid down by the State Election Commission as provided in Section 14B of the Act. In support, he places reliance upon a brochure issued by the State Election Commission called the

“Frequently Asked Questions” and relies upon the answer to question no. 8 thereof to the effect that while computing 30 days period for filing of election expenses, the first day has to be included and the date of declaration of the election results is the date when the period of 30 days to file the expenses commence. Thus, according to him, the election expenses in this case was lodged beyond the period of 30 days.

9. There is a broad consensus between the contesting parties that the impugned order rejects the petitioner's contention that the election expenses had been filed with the Returning Officer within 30 days of the declaration of the election, without referring to either the frequently asked questions, issued by the State Election Commission, relied upon by the respondents or the Notification dated 7th February, 1995 relied upon by the petitioner. Moreover, the impugned orders have been passed oblivious of Section 14B(1)(b) of the Act, reproduced hereinabove, which requires it to consider that in case of delay, whether there was good reason or justification for failure to file the election expenses within time. In the facts of the present case, the petitioner urged that the basis of her filing the

election expenses on 26th August, 2015 was the understanding that 30 days would run from the publication of the election results on 29th July, 2015 has not been considered. The Authorities must examine the reasons made out by the noticee / elected representative pointing out the reasons for the delay in filing the election expenses and only on consideration of the same, an order adverse to the elected candidate be passed. Thus, the impugned orders are non-speaking orders.

10. Consequently, both the orders namely order dated 12th April, 2017 and 22nd August, 2017 passed by the Collector and the Divisional Commissioner respectively are quashed and set aside. The proceedings in respect of petitioner no.4 Mrs. Shobhatai Patil is restored to the file of the Collector to pass a fresh order after following the principles of natural justice, preferably within a period of two months from the date of first appearance of the parties. It is made clear that all the contentions are left open to be urged before the Authority under the Act. The Authorities under the Act are to apply their mind to the submissions raised by the respective parties and pass appropriate orders thereon without being influenced with

the observations made in this order.

11. Petition is disposed of in above terms. No order as to costs.

(M.S. SANKLECHA, J.)