

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

WRIT PETITION NO. 8433 OF 2017

RAJU JAGANNATH PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Patil Sandesh R.
AGP for Respondents 1 to 4 : Shri N.T.Bhagat.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st November, 2018

Oral Order:

1 The Petitioner is the original complainant, who had moved a complaint to the District Collector, Dhule under Section 16 of the Maharashtra Village Panchayats Act (hereinafter referred to as "the said Act").

2 By the impugned order dated 03.12.2016, the District Collector has concluded that the issue as to whether, the names of Respondent Nos.5 and 6 were wrongfully included in the valid voters list or not, cannot be gone into by the District Collector under Section 16 of the said Act.

3 The learned Advocate for the Petitioner submits that the Petitioner may have incorrectly invoked Section 16 of the said Act while

filing his Gram Panchayat Dispute Application No.76/2016. He intends to invoke Sections 22, 23 and 26 of the said Act for calling upon the District Collector to initiate penal action against the Returning Officer for wrongfully including the names of Respondent Nos.5 and 6 in the valid voters list.

4 The learned AGP appearing on behalf of the State and Revenue Authorities submits that whether, the name of any person is wrongfully included in the voters list or not, is not an issue which can be gone into by the District Collector under the said Act. He further submits that if the phraseology of Section 26 of the said Act is seen, no court would take cognizance of an offence punishable under Section 22 or Section 23 or Section 25(3)(a) of the said Act unless there is a complaint made by the District Collector or under his authority. He further submits that Section 22 is a provision, which directs that the Returning Officer or the Presiding Officer or Polling Officer at an election or an officer or a clerk appointed by them, shall not act in a manner which would promote the prospects of the election of any candidate. He, therefore, submits that Respondent Nos.5 and 6 had never contested the elections and there is no allegation that the names of these two persons were included in the valid voters list by the Returning Officer to promote the prospects of election of any particular candidate.

5 Having considered the submissions of the learned Advocates,

it would be apposite to reproduce Sections 16, 22, 23 and 26 of the said Act hereunder :-

"16. *Disability from continuing as members :-*

- (1) *If any member of a panchayat, —*
(a) *who is elected or appointed as such, was subject to any of the disqualifications mentioned in section 14 at the time of his election or appointment, or*
(b) *during the term for which he has been elected or appointed, incurs any of the disqualifications mentioned in section 14,*

he shall be disabled from continuing to be a member, and his office shall become vacant.

- (2) *If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :*

Provided that, no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard."

"22. *Officers, etc. at elections not to act for candidates or influence voting :-*

- (1) *No person who is a returning officer, or a presiding or polling officer at an election or an officer or a clerk appointed by the returning officer or the presiding officer to perform any duty in connection with an election shall, in the conduct or the management of the election, do any act (other than the giving of his vote) for the furtherance of the prospects of the election of a candidate.*

- (2) *No such person as aforesaid, and no member of a Police force, shall endeavour—*
(a) *to persuade any person to give his vote at an election, or*
(b) *to dissuade any person from giving his vote at an election, or*
(c) *to influence the voting of any person at an election in any manner.*
- (3) *Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both."*

"23. *Breaches of official duty in connection with elections :-*

- (1) *If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall, on conviction, be punished with fine which may extend to five hundred rupees.*
- (2) *No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.*
- (3) *The persons to whom this section applies are the returning officers, presiding officers, polling officers and any other persons appointed to perform any duty in connection with the maintenance of the list of voters, the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an elections; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act."*

"26. *Prosecution in certain offences :- No Court shall take cognizance of an offence punishable under Section 22 or under Section 23 or under clause (a) of sub-section (3) of Section 25 unless there is complaint made by an order of, or under authority from the Collector."*

6 There is no material before this Court in this petition which would indicate that the Returning Officer has played any role in including

the names of Respondent Nos.5 and 6 in the valid voters list or electoral list.

7 The issue is as to whether, any person as like this petitioner could file a complaint under Section 26 of the said Act alleging that an offence has been committed under Section 22 of the said Act by any officer. Considering the language used in Section 26 of the said Act, it is the Collector, who, by a complaint made by his order or under his authority, can lodge a complaint with a particular court so as to enable the court to take cognizance of an act of an officer, which can be termed to be an offence punishable under Section 22 or Section 23 or Section 25(3)(a). An individual as like this Petitioner is, therefore, not invested with any authority to move such a complaint under Section 26 of the said Act. Consequentially, the Petitioner can neither move a complaint under Section 26, nor can he pray before the District Collector that the latter should invoke Section 22 of the said Act and punish the returning officer. Section 26 indicates that even the Collector is required to make an order or complaint so as to enable the competent court to initiate the proceedings for prosecuting a particular officer under Section 22 or Section 23 or Section 25(3)(a).

8 In view of the above, the impugned order passed by the District Collector concluding that he cannot invoke the powers under Section 16 of the said Act to entertain the complaint of the Petitioner,

cannot be branded as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)