

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

WRIT PETITION NO. 7844 OF 2017

**SAMBHAJI DEOCHAND SALUNKHE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Shri Paresh B. Patil
AGP for Respondent Nos. 1 and 2 : Shri B. A. Shinde
Advocate for Respondent No. 4 : Shri N. N. Desale

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 30th JULY, 2018.**

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PER COURT :

1. The petitioner is aggrieved by the order dated 31/12/2016 passed by the learned District Collector, Dhule, by which, Grampanchayat Dispute No. 12/2016 filed by the petitioner seeking disqualification of respondent No. 4/elected candidate, under Section 14-B(1) of the Maharashtra Village Panchayats Act, has been rejected. He is further aggrieved by the order of the Divisional Commissioner, Nashik dated 27/03/2017, by which, his Grampanchayat Appeal No. 140/2017, has also been dismissed.

2. None appears for respondent No. 3, though served.
3. I have heard the strenuous submissions of the learned Advocate for the petitioner, the learned AGP on behalf of respondent Nos. 1 and 2 and the learned Advocate on behalf of respondent No.4.
4. The undisputed factors in this case are as under :-
 - a) The election took place on 17/04/2016 to the Grampanchayat of Mauje Basar, Taluka Sakri, District Dhule.
 - b) Election results were declared on 18/04/2016.
 - c) Respondent No. 4 (Sulbha Pawar) was a returned candidate for the village Panchayat.
 - d) The petitioner- complainant desired that Sulbha Pawar be disqualified as she has not submitted her election expenses as required under Sub-Section (1) of Section 14B, within 30 days from the date of the declaration of the results.
 - e) Respondent No. 3- Election Officer Shri D. B.

Kuvar submitted his report to the Collector stating that the elected candidate had tendered the statement of election expenses to him on 20/04/2016.

f) He further makes a statement that election expenses statement was not tendered by Sulbha Pawar till 05/08/2016.

g) He then makes a statement on 12/09/2016, that Sulbha Pawar had submitted her statement of expenses on 11/08/2016.

5. It is, therefore, obvious that the Election Officer Shri Kuvar had made 3 different statements before the District Collector, which cannot be countenanced. He cannot take shifting stands in a serious issue, which is likely to lead to the disqualification of a democratically elected candidate.

6. In the judgment delivered by this Court on 14/02/2018 in the matter of *Savitribai Kisan Shinde and another Vs. The Additional Divisional Commissioner and others, W.P. Nos. 197/2018 and 813/2018*, this Court has concluded in paragraph Nos. 11 to 18 which read as under :

"11. This Court, in the matter of Shakti Balkrishna Mhatre Vs. Returning Officer, Panchayat Vindhane and others [2015(3) Mh.L.J. 275], has dealt with a similar case of delayed lodging of the account of election expenses. The Additional Collector had issued show cause notices to the concerned elected candidates calling upon them to show cause as to why the powers u/s 14-B(1) should not be exercised. The observations of this Court in paragraph No.7 read as under :

"7. Further, in the present case, the petitioner applied for disqualification of respondent nos. 2, 3 and 4 upon the ground that they had failed to lodge the account of election expenses on or before 23rd January, 2014. In pursuance of the said, Additional Collector issued show cause notices to respondent nos. 2,3 and 4, requiring them to show cause as to why the powers under sub section (1) of section 14B of the said Act be not exercised. The said respondents thereafter, furnished explanation which was backed by certain medical certificates, as also the statements of the death of close relatives. The Additional Collector, in the impugned order, has accepted the explanation and treated the same as good reason or justification for the delay of less than fifteen days in lodging the account of election expenses. Accordingly, it is not possible to accept the petitioner's contention that

the cause shown by respondent nos. 2 to 4 could not have been gone into or considered in the petition lodged by the petitioner seeking their disqualification.”

12. This Court in the matter of Hemraj s/o Yuvraj Patil Vs. State of Maharashtra and others [2017(1) LJSOFT 22] has also dealt with a similar situation wherein the elected candidate had not submitted the account of election expenses on the ground that whenever she had approached the concerned Office, she did not find the Officer present and could not file the returns. In that case as well, the notice was issued by the District Collector to the elected candidate Smt.Chandrakala Patil.

13. Section 14-B (1)(a) pertains to failure on the part of an elected candidate in lodging an account of election expenses within time. Sub Clause (b) is with regard to a good reason or justification being posted for seeking condonation of such failure. As such, the Additional Collector, under delegated powers, has to be satisfied that a person has failed to lodge the account of election expenses within time and the said failure is not for any good reason or justification which would empower the authority to declare the elected candidate disqualified.

14. In the light of the above, while dealing with the contention of the learned AGP that a personal hearing

by the District Collector is not contemplated, it is a matter more of circumspection than speculation as to how would the District Collector, while deciding cases of such candidates, conclude that the reasons are not good or is not a justification. Such candidates have to tender their statement of expenses as is prescribed in Law. There is no provision under the Act or the Rules pertaining to disqualification, as per the contention of the litigating sides, by which an explanation could be filed while lodging the accounts of election expenses.

15. On these premises, the Collector then will have to cause a hearing after noticing such cases of delayed submissions, which would presuppose that a notice of hearing will have to be issued to the concerned candidate whose future as an elected representative is at stake. It is only in response to such a notice of hearing that the elected candidate can furnish his explanation in a manner as he may desire and may also address the Competent Authority to espouse his cause that the explanation is good and satisfactory.

16. It is settled Law that the competent authority u/s 14B has to consider the explanation furnished by the concerned candidates. Unless the Collector causes an hearing in the matter, there would not be an opportunity to such elected candidates to address the mind of the

Collector. I am, therefore, of the view that though Section 14B does not provide for a hearing, it would be necessary for the Collector to issue notices to the elected candidates for a hearing under Section 14B(1)(a & b), before passing an order.

17. Considering the above, as the District Collector has admittedly not heard these petitioners, both these petitions are allowed in terms of prayer clause "B" and the impugned orders of the District Collector dated 23/02/2016 and of the Additional Divisional Commissioner dated 20/11/2017, are quashed and set aside.

18. The proceedings before the District Collector bearing O/W.No. २०१५/सामान्य प्रशासन/ग्रामपंचायत सार्वत्रिक व पोट निवडणुक/कावि—दिनांक २३/०२/२०१६ is restored to the file of the District Collector. The petitioners agree to appear before the District Collector at Aurangabad on 09/03/2018 at 3.00 p.m. Formal notices need not be issued by the Collector. On the date of appearance, all these petitioners shall submit their written submissions with regard to the delay caused in lodging the account of election expenses. They shall thereafter abide by the dates of hearing on which the District Collector would post the matter".

7. This Court has, therefore, concluded that under Section

14-B(1)(a), a person is duty bound to lodge his account of election expenses. If he fails to do so in time that is prescribed, he can tender an explanation for the delay caused under Sub Clause (b) of Section 14-B(1). For this purpose, though the law does not prescribe specifically a hearing, it goes without saying that the explanation can be tendered by the elected candidate for his delayed submission only when he is called upon with a notice of hearing, keeping in view that the proceedings under Section 14-B(1) are summary proceedings.

8. In the instant case, the District Collector has cursorily referred to the delay of 2 months and 24 days by relying on the last report of the Election Officer and has concluded in a single sentence that the said delay is minor. He cannot come to this conclusion since his jurisdiction is not to be exercised for technically considering the length of the delay, he can exercise his jurisdiction under section 14-B(1)(b) to assess, whether, a proper and reasonable explanation for the delay is tendered by the returned candidate.

9. So also, the stand taken by the Election Officer, which he

has changed 3 times, has been ignored by the District Collector. If the Election Officer behaves recklessly and changes his stand as per his whims and fancies, the District Collector needs to initiate proper action against such an Election Officer.

10. Considering the above, this petition is partly allowed. Both the impugned orders are quashed and set aside.

11. Grampanchayat Dispute Application No. 12/2016 filed by the petitioner is restored to the office of the District Collector for a fresh hearing with the following directions :-

A) All the contesting/litigating parties shall appear before Respondent No.2 on 13/08/2018 at 03.00 p.m. and shall abide by further dates of hearing on which the Collector would post the matter.

B) The elected candidate- respondent No. 4 would be at liberty to submit a written explanation in support of her entire contentions inclusive of her contention that the statement/accounts of election expenses were first tendered on 20/04/2016.

C) The District Collector shall decide the said

proceedings under Section 14-B(1)(a and b) in the light of the judgment of this Court in the matter of *Savitribai Kishan Shinde (supra)* by considering all the contentions of the litigating sides.

D) If the District Collector comes to a conclusion, after hearing respondent No.3, Election Officer Shri D. B. Kuvar that he has played an unusual and disturbing role in this case by taking 3 different stands, the District Collector would proceed to recommend disciplinary action or appropriate action against him, as may be permissible in law.

E) The District Collector shall decide the said proceedings as expeditiously as possible and preferably on or before 30/11/2018.

(RAVINDRA V. GHUGE, J.)

shp/-