

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2609 OF 2017

Malhari Sadhu Sirsath

... Petitioner

Versus

The State Election Commissioner
Through State Election Commissioner,
Mumbai and Others

... Respondents

.....

Mr. B. M. Dhanure for the Petitioner.

Mr. S. T. Shelke for Respondent No.1.

Mr. S. N. Kendre, AGP for Respondent Nos. 2, 3 and 4.

Mr. S. S. Manale for Respondent No.5.

Mr. A. N. Irpatgire for Respondent Nos. 6 to 12.

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CORAM : V. K. JADHAV, J.

DATED : 3rd APRIL, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. By way of this Petition, the petitioner has challenged the order dated 26.09.2016 passed by the Additional Commissioner, Aurangabad in appeal CR No. 22 of 2016, thereby allowing the said appeal and quashing and setting aside the order dated 25.01.2016 passed by the Additional Collector, Latur in disqualification proceedings bearing No. CR/59 of 2015 filed by the present petitioner.

3. Brief facts giving rise to the present Petition are as follows:

a. Respondent nos. 6 to 12 are elected as members of the village panchayat, Niwali, Taluka and District Latur in the general elections held in April 2015. On 17.11.2015, the present petitioner filed disqualification proceedings bearing No. CR/59 of 2015 under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act, 1958 (for short, "Act of 1958") before the Additional Collector, Latur, contending therein that respondent nos. 6 to 12 did not have their own toilets and were not using the said facility on the date of filing of nomination papers as well as on the date of results of the said elections. Moreover, they did not submit any certificate of the concerned panchayat alongwith resolution of the Gram Sabha certifying that they reside in a house owned by them and have a toilet in such house and they regularly use such toilet, or they reside in a house not owned by them and have a toilet in such house and they regularly use it, or they have no such toilet but regularly use the public toilet. The Additional Collector, Latur, by order dated 25.01.2016, allowed the application filed by the petitioner and declared respondent nos. 6 to 12 as disqualified.

b. Being aggrieved by the order passed by the Additional Collector, Latur, respondent nos. 6 to 12 preferred appeal CR No. 22 of 2016 before Additional Commissioner, Aurangabad. The petitioner resisted the said appeal by filing written arguments. The Additional Commissioner, Aurangabad, by order dated 26.09.2016, allowed the appeal preferred by respondent nos. 6 to 12 and set aside the order passed by the Additional Collector, Latur. Hence this Writ Petition.

4. The learned counsel for the petitioner submits that the impugned judgment and order passed by the Additional Commissioner, Aurangabad is perverse and contrary to the record and the provisions of the Act of 1958 and therefore, unsustainable. The Additional Commissioner, Aurangabad failed to consider the scope and ambit of Section 14(1)(j-5) of the Act of 1958 and the language used therein and came to the wrong conclusion while allowing the appeal preferred by respondent nos. 6 to 12. The Additional Commissioner failed to apply his mind in interpreting the provisions of Section 14(1)(j-5) and incorrectly held that respondent nos. 6 to 12 are having their own toilets. The learned counsel submits that the Additional

Commissioner, Aurangabad ought to have considered the panchanama conducted by the office of the Government and there is no reason to disbelieve the same. The reason behind conducting such panchanama at eleventh hour is that respondent nos. 6 to 12 should not construct toilet after filing of nomination. It is well settled law that toilet must have been constructed prior to filing of nomination papers and a certificate and resolution of Gram Sabha and grampanchayat must be filed alongwith nomination papers. This well settled position is ignored by the Additional Commissioner, Aurangabad. Moreover, filing of such certificate subsequently and construction of toilet subsequent to the election is also not permissible. This requirement of law is not taken into consideration by the Additional Commissioner while allowing the appeal preferred by respondent nos. 6 to 12 and setting aside the order passed by the Additional Collector, Latur, which is in consonance with the provisions of the Act of 1958. Thus, the order passed by the Additional Commissioner, Aurangabad suffers from perversity on the face of record and the same is also contrary to the well settled principles of law and therefore, needs to be quashed and set aside.

5. The learned counsel for the petitioner, in order to substantiate his contentions, placed reliance on the following cases:

1. ***Nimba Dashrat Koli and another vs State of Maharashtra and others***, reported in **2015 (3) Mh.L.J. 598**,
2. ***Vijaymala vs The State of Maharashtra and Ors.***, reported in **2016 (6) Mh.L.J. 1950**,
3. Judgement dated 20.09.2016 delivered by this Court (Coam: Ravindra V. Ghuge, J.) in Writ Petition No. 9704 of 2016 (Savita Mhasnaji Sonkamble vs The State of Maharashtra and Ors) along with connected Writ petition.
4. ***Vijay Ramchandra Raut & Ors vs Divisional Commissioner & Ors.***, reported in **2014 (3) Mh.L.J. 641** and
5. Order dated 21.11.2014 delivered by this Court (Coram : Ravindra V. Ghuge, J.) in Writ Petition No. 10372 of 2014 (Subhash Triambak Wadhe vs. The State of Maharashtra & Others) with other connected Petitions.

6. Learned counsel for respondent nos. 6 to 12 submits that

respondent no. 8 was issued certificate by the grampanchayat in the year 2012 to the effect that she is using the toilet. The other respondents are also having toilets in their houses and they are using the same. The elections of grampanchayat Niwali were declared in the year 2015 and therefore, respondent nos. 6, 7 and 9 to 12 approached the concerned village development officer and requested to issue certificates in respect of toilets, however, there was opposite group in power and at their instance, certificates were not issued in favour of the said respondents. The respondents apprised this fact to the authorities holding elections and the authorities informed the respondents that it is not necessary to submit certificates alongwith nomination form. The authorities also informed the respondents that it is necessary to file an affidavit stating therein that, in case the candidate is not having toilet, he will construct the same within six months. This procedure was followed not only in respect of Niwali grampanchayat but all the grampanchayats in Latur Taluka, of which elections were held and the number of such grampanchayats is more than 60.

7. The learned counsel submits that there were draught

conditions from 2011 onwards in Latur District and even in 2015 water was supplied by train from Sangli District. Present respondent nos. 6 to 12 submitted nomination form along with others and the same were accepted during scrutiny by the Returning Officer as there was no disqualification attracted to the respondents and the elections of the grampanchayat were unopposed and they were declared elected in April, 2015. One Mangalbai Pratap Patil was elected as Sarpanch of the village and this was not liked by the village politicians. Moreover, the newly elected members filed one Writ Petition No. 6027 of 2015 before this Court to permit them to cast their votes in the elections of A.P.M.C, Latur and this Court granted interim relief and the said Petition is still pending. The learned counsel submits that on 15.08.2015, certificates were issued by the grampanchayat in favour of respondent nos. 6 to 12 and one Rajabhau Maruti Rasal, thereby certifying that they are having toilets and using the same. The existence of toilets and its use is not in dispute. The village Niwali is having population of about 7500 and there is Railway Station and a Co-operative sugar Factory near the village. The said village is developed and it is now declared as clean village (Nirmal Gram) by the authorities.

The learned counsel submits that after elections, the newly elected members assumed charge and the grampanchayat started its functioning. The learned counsel submits that elections could be challenged only by filing election petition under Section 15 of the Act of 1958 and there is no other remedy available as there is a bar under Section 15-A of the said Act. The legality and validity of the elections cannot be questioned before the Collector and the Collector cannot usurp the powers of Civil Court and under the garb of disqualification proceedings, cannot nullify the elections and disqualify the elected members.

8. The learned counsel submits that the present petitioner was neither a candidate in the said elections nor he has stated in his application that he is a voter of grampanchayat Niwali. He has not raised any objection to the nomination forms of the respondents neither challenged the acceptance of the same. Even he did not challenge the elections by filing election petition under Section 15 of the Act of 1958. The petitioner, without any cause and *locus*, obtained certificates from the village development officer on 06.11.2015 to the effect that respondent nos. 6 to 12 are not having toilets and they are not using the

same. The said certificates were issued as per directions of the authorities in the night of 06.11.2015 after visiting the houses of the concerned members. The present petitioner therefore made application to the Collector to disqualify respondent nos. 6 to 12 and one Rajabhau Maruti Rasal. The Collector, Latur, without serving the inquiry report submitted by the Block Development Officer on 06.11.2015 and without considering the earlier certificate and the procedure as followed for the grampanchayat elections in Latur taluka, disqualified respondent nos. 6 to 12 on the ground that they did not submit the certificate at the time of nomination as provided under Section 14(1)(j-5) of the Act of 1958.

9. The learned counsel submits that the provisions of Section 14(1)(j-5) are arbitrary and absurd and not practicable. No appeal is provided if the certificate is not issued by the grampanchayat and the authorities should be impartial and not partisan to issue certificates. This was causing injustice to the persons who were not in good books of the persons in power in the grampanchayat and tactics were played to deprive such persons from contesting elections. Considering this aspect, the

State of Maharashtra amended the provisions of Section 14(1)(j-5) of the Act of 1958 and now, Chief Officer of the Zilla Parishad or any other officer authorized by him can issue certificate or even a self certificate is sufficient. This amendment is introduced in the year 2017 which shows that the said provisions were absurd and arbitrary. It is pertinent to note that respondent no.6 is having two storied building and there is a toilet. Respondent no. 8 is already having the decision of Gram Sabha in her favour in respect of use of toilet. There is no dispute about existence of toilets in the houses of respondent nos. 6 to 12 and the petitioner is only saying that they did not submit the certificate at the time of nomination. Considering the same and the report of the authorities, the Additional Commissioner has rightly allowed the appeal preferred by respondent nos. 6 to 12. There is no substance in the Writ Petition and the same is liable to be dismissed.

10. I have also heard Mr. Shelke, learned counsel appearing for respondent no.1, Mr. Manale, learned counsel for respondent no.5 and the learned AGP for respondent nos. 2, 3, 4.

11. Section 14(1)(j-5) of the Act of 1958 reads as under:

14. Disqualifications :-

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

(a)

to

(j-4)

(j-5) fails to submit a certificate of the concerned panchayat, alongwith the 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:

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate to the Block Development Officer, within a period of one year from the 10th January

2011, being the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010;

Provided further that, nothing contained in this clause shall affect the member holding office on the 10th January 2011, who has not submitted the certificate within a period of ninety days from the said date, as required under the provisions of this Act, as amended by the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010; and he shall not be deemed to be disqualified and shall continue to hold his office for a period of one year from the said date, unless he is disqualified under any other provisions of this Act or any other law for the time being in force; or

(k)"

12. This Court, in the cases of *Vijay Ramchandra Raut & Ors* (supra) and *Nimba Dashrat Koli and another* (supra), relied upon by the learned counsel for the petitioner, has taken a view that the resolution and the certificate signifies that the

candidate, desirous of contesting elections of grampanchayat has a toilet and is using the said facility as on the date of the filing of the nomination papers. In the instant case, the learned Commissioner has ignored this important legal aspect.

13. So far as the certificate dated 15.08.2015 allegedly issued by the Upa-Sarpanch and the Gramsevak under their signature is concerned, on 19.01.2016, during the course of the dispute proceedings before the Collector, the concerned Gramsevak has submitted in writing that the said certificate has not been issued by him. Further, the said Gramsevak also remained present in the said proceedings before the Collector and gave a statement that the said certificate is fake. There is one another certificate dated 03.11.2015 certifying therein that there are no toilets in the residential houses of the respondents-elected members and they are not using the said facility as on the date of filing of the nomination papers and there is one another report submitted by the Block Development Officer, Panchayat Samiti, Latur on 06.11.2015 as per his local inspection, the learned Collector, relying upon them, disqualified the aforesaid respondents under Section 14(1)(j-5) of the Act of 1958. The learned Commissioner

has discarded the report/certificate issued by the concerned Gramsevak dated 03.11.2015 only for the reason that the inquiry for issuing the said certificate has been done after sunset, particularly at 9.30 p.m. The learned Commissioner has further observed that it is not clear as under whose directions the said inquiry has been initiated before issuing certificate dated 03.11.2015. The learned Commissioner has also questioned the said certificate dated 03.11.2015 on the ground that on completion of inquiry, immediately thereafter the certificate has been issued. Further, the learned Commissioner, for no substantial reasons, discarded in its entirety, the report submitted by a responsible officer like the Block Development Officer dated 06.11.2015. The learned Commissioner has observed in the impugned order that it has not been clearly mentioned in the report dated 06.11.2015 as to the existence of the toilet or use of the same. The learned Commissioner has also observed that during the period of 03.11.2015 to 06.11.2015, it is impossible for the respondents to construct toilet and accordingly discarded both the report/certificates. It is difficult to approve the approach of the learned Commissioner to the issue involved in the matter.

14. On 03.11.2015, the concerned Gramsevak has conducted inquiry about existence of toilets or its use by the respondents, though belatedly, and noticed that there were no toilets in existence in their respective residential houses and immediately after completion of the inquiry, issued certificates. It is to be considered here that the respondents are the elected members of the grampanchayat and it would be a wise move of the concerned Gramsevak to issue certificates immediately. On careful perusal of the report dated 06.11.2015 submitted by the Block Development Officer, Panchayat Samiti, Latur, wherein a reference has been given to the spot inspection done by the Extension Officer of Panchayat Samiti, Latur, it has been specifically mentioned in the report that the said Extension Officer has visited the residential houses of the respondents on account of complaint submitted against them for not having toilets in their residential houses. It further appears that the concerned officer has carried out panchanama in presence of the *panch* witnesses in respect of each of the residential houses of the respondents. It has been specifically submitted in the report

that out of eight elected members, six members had installed ready-made pots of toilets and on inspection it has been noticed that there is no construction of chamber nor pit holes etc. It has also been specifically stated in the last para of the report that even those ready-made pots of toilets came to be installed after 03.11.2015 and before 06.11.2015. It further appears that so far as the certificate issued by the Gramsevak dated 03.11.2015 is concerned, after the meeting of Panchayat Samiti, the concerned Gramsevak was directed by the Assistant Block Development Officer Mr. B. T. Chavan to visit the grampanchayat Niwali to carry out local inspection of the residential houses of those grampanchayat members and submit a report. Accordingly, the said Gramsevak has submitted the report and issued certificate. It has been specifically stated in the said certificate that there were no toilets in their residential houses. It is thus clear that after this certificate is issued by the Gramsevak and before the spot inspection carried out by the Extension Officer and the report submitted by the Block Development Officer, Panchayat Samiti, Latur on 06.11.2015, the attempt was made to install ready-made pots of toilet without any chamber, pit holes etc. There was no reason for the learned Commissioner to discard

this material evidence and as such, the impugned judgment and order passed by the learned Commissioner suffers from perversity.

15. I find no substance in the submission made on behalf of the respondents-elected members that the petitioner has no *locus* to raise dispute and further the election petition is the only remedy to challenge their elections. So far as the determination of validity of election by filing election petition as provided under Section 15 of the Act of 1958 is concerned, in Sub-section (5)(a) of Section 15, the words “or submitted a false claim or a false caste certificate” came to be deleted by the Bombay Village Panchayat (Amendment) Act, 2006 (37 of 2006) dated 21st December 2006 and as such, the learned Collector, by invoking the provisions under Section 16 of the Act of 1958, disqualified the present respondents. So far as respondent no.8 is concerned, there is one certificate already issued by the Gramsevak of the said village way back in the year 2012. However, the learned Collector has not considered the same and in view of the same, the order passed by the Additional Commissioner, Aurangabad in the appeal, though in the different context, needs to be

confirmed to the extent of respondent no.8 herein i.e. Seema w/o Vilas Kshirsagar. Hence the following order:

ORDER

- I. Writ petition is partly allowed.
- II. The judgment and order dated 26.09.2016 passed by the Additional Commissioner, Aurangabad in appeal CR No. 22 of 2016 is hereby quashed and set aside to the extent of respondent Nos. 6, 7, 9 to 12.
- III. The order passed by the Additional Collector, Latur dated 25.1.2016 in Decision No. 2015/GPN/CR/59 stands confirmed to the extent of above respondents.
- IV. The Judgment and order dated 26.09.2016 passed by the Additional Commissioner, Aurangabad in appeal CR No. 22 of 2016 to the extent of respondent No.8 herein viz. Seema w/o Vilas Kshirsagar stands confirmed.
- V Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)