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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12245 OF 2016

Sau. Sheetal w/o Veerbhadra Gadage
 Age - 35 years, Occ - Household
 R/o House No. 144, Avishkar Colony,
 N-6, CIDCO, Aurangabad
 Taluka and District - Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
 Through its Principal Secretary,
 Urban Development Department,
 Mantralaya, Mumbai
2. The Divisional Commissioner,
 Aurangabad, District - Aurangabad
3. The Municipal Commissioner,
 Municipal Corporation Aurangabad
4. Smt. Vimalbai B. Rajput
 Age - Major, Occ - Household
 R/o Vimal Sadan, N-6, E-23/10
 Sambhaji Colony, CIDCO,
 Aurangabad, District - Aurangabad
5. Election Commission of Maharashtra
 R/o 1st Floor, New Administrative Building
 Madam Cama Road,
 Mumbai - 32

RESPONDENTS

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 Mr. S. S. Thombre, Advocate for the petitioner
 Mr. S. N. Kendre, AGP for respondent - State
 Mr. Ameya R. Vaidya, Advocate for respondent No. 3
 Mr. B. L. Sagar Killarika, Advocate for respondent No. 4

[CORAM : SUNIL P. DESHMUKH, J.]

RESERVED ON : 6th AUGUST, 2018

PRONOUNCED ON : 12th SEPTEMBER, 2018

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioner, aggrieved by order dated 2nd December, 2016 passed by respondent No. 2, Divisional Commissioner, Aurangabad declaring the petitioner to be disqualified as a councillor, is before this court challenging propriety, legality and validity of said order.
3. The order has been passed by respondent No. 2 invoking powers under section 10 (1E) of the Maharashtra Municipal Corporations Act, 1949, purportedly being satisfied that the petitioner has failed to lodge account of election expenses in the manner required by state election commission and has no good justification for said failure and has, thus, declared the petitioner to be disqualified for contesting any election and for being councillor for a period of three years from the date of the order.
4. General elections of municipal corporation Aurangabad were held in 2015. Petitioner and respondent No. 4 had contested elections from ward No. 62 and petitioner had been declared elected as a councillor, defeating respondent No. 4.
5. Learned advocate Mr. S. S. Thombre for the petitioner

submits, since respondent No. 4 could not digest the defeat, had been looking out for a plea and reason to dislodge the petitioner from serving as a councillor. With such a motive, respondent No. 4 had lodged a complaint, purportedly pursuant to section 10 (1E) of the Maharashtra Municipal Corporations Act, 1949 seeking disqualification of petitioner from the post of councillor alleging that election expenses had not been submitted by her within time and as prescribed by law. With reference to the same, a notice had been issued by respondent No. 2 and petitioner accordingly had appeared.

6. Learned advocate contends, it is an indisputable factual position that petitioner had lodged election expenses as required within prescribed period with the election commission and those were duly acknowledged. Receipts and documents of accounts filed are genuine and there was not defect of any kind in submission of accounts. The expenses and accounts were also submitted in the manner prescribed by the state election commission. He submits that the petitioner used to make signatures in Marathi as well as in English languages. Signatures on the documents submitted to election commission are her signatures. Petitioner had admitted said signatures to be of her.

7. He submits, petitioner had pointed out that the

proceedings before respondent No. 2 are of summary nature and the dispute sought to be raised about non genuineness of her signatures cannot be raised and adjudicated before respondent No. 2. However, respondent No. 2 disregarding aforesaid, solely relying on opinions of handwriting experts had passed impugned order declaring the petitioner to be disqualified as a councillor and further disqualifying her from contesting elections to the councillor's post for a period of three years from the date of the order.

8. Learned advocate for the petitioner submits that handwriting experts' reports only opine that signatures on Exhibit-A-13 are different. Learned advocate goes on to submit that while signatures on the documents are not disputed by the petitioner and she has accepted and acknowledged the same, it is not open for third person to raise objection that it is signed by some other person. Merely saying that signatures on documents are not that of the petitioner is not sufficient in the matter. While the petitioner has accepted signatures as those are of her, it is upon respondent No. 4 to establish that signatures are not that of the petitioner. Learned advocate hastens to add, however, in summary proceedings of nature contemplated under section 10 (1E) of the Maharashtra Municipal Corporations Act, such a disputed question can hardly be gone into which requires

evidence.

9. Mr. Thombre continues to submit, opinion on handwriting given by handwriting expert has far less credibility and probative value than opinion given in respect of thumb impression. He submits that law is fairly well settled in respect of the same.

10. Additionally, he submits that authority taking decision has failed to apply its mind not only to this legal position but also failed to verify as to whether such a plea and allegation is sufficient to oust and disqualify a democratically elected person. He submits, petitioner cannot be dislodged from her position as a councillor cursorily. It is well settled that a democratically elected public person is to be placed on higher pedestal and his disqualification sought on flimsy grounds shall not be indulged into.

11. He submits that the law requires that submission of election expenses shall be within prescribed time and in the manner referred to in relevant notification / resolution issued requiring that election expenses shall be submitted on affidavit of contesting candidate. Petitioner has filed her affidavit as required by law. Furthermore, she has accepted that it is her affidavit. It is not open for any further contest. Election expenses have been filed within prescribed time limit and in the manner

prescribed. Record sufficiently bears that said requirements of legislation have been duly complied with.

12. He submits, while disputed questions of fact had been raised, resolution of the such dispute entails opportunity to lead evidence and respondent No. 2 would not be a forum for the same. In the circumstances, respondent No. 4 indeed had a remedy to lodge an election petition, however, time limit for the same had been over and section 10 (1E) of the Maharashtra Municipal Corporations Act is, thus, sought to be invoked. He submits that for the failure of respondent No. 4 to lodge election petition, such a strategy has been employed and the same ought to have been stamped down.

13. In support of his submissions, learned advocate refers to Supreme Court decision in the case of “*S.P.S. Rathore V/s C.B.I. and Others*” from *Manu/SC/1096/2016*. From said decision, he refers to paragraphs No. 27 and 29, whereunder it has been observed that expert evidence as to hand writing is only opinion evidence and it can never be conclusive. Usually such evidence is to be corroborated either by clear, direct or circumstantial evidence. Sole evidence of handwriting expert is not normally sufficient for recording definite finding about writing is of a certain person or not. Opinion of handwriting expert may be relevant under section

45 of the Indian Evidence Act, but that too is not conclusive. Such an opinion of handwriting expert can hardly take place of substantive evidence and if it is to be acted upon, it would be appropriate to see that it is corroborated either by clear, direct or circumstantial evidence. In paragraph No. 29 of said judgment, another judgment of the Supreme Court in the case of “*Smt. Bhagwan Kaur V/s Shri Maharaj Krishan Sharma and Others*” reported in (1973) 4 SCC 46 has been referred to, extracting paragraph No. 26 therefrom, whereunder, it has been observed that -

“ The evidence of handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The courts should, therefore, be wary to give too much weight to the evidence of handwriting expert. ”

It is further observed in said paragraph that-

“ in Sri Sri Sri Kishore Chandra Singh Deo V. Babu Ganesh Prasad Bhagat, this court (Supreme Court) observed that conclusions based upon mere comparison of handwriting must at best be indecisive and yield to the positive evidence in the case. ”

In paragraph No. 30 of said judgment, it has been further referred to that -

“ It is thus clear that uncorroborated evidence of a hand writing expert is an extremely weak type of evidence and th same should not be relied upon either for the conviction or for acquittal. The courts, should, therefore, be wary to give too much weight to the evidence of handwriting expert. ”

14. He submits that perusal of the impugned order would depict that there is no evidence and only opinions of handwriting experts have been relied on and those have been predominant reasons to pass order disqualifying present petitioner. There is no validity and / or legality in the order. The same is untenable. He, therefore, urges to set aside impugned order and allow the writ petition.

15. Countering aforesaid submissions, learned advocate Mr. B. L. Sagar Killarikar for respondent No. 4, submits that the petition may not be entertained, for, the petitioner has alternate remedy available of making an approach to the State Election Commission. He submits that even the Supreme Court had accordingly dealt with the matter and it has been so considered by the Supreme Court in the case of *“Ashok Shankarrao Chavan V/s Madhavro Kinhalkar and Others”* reported in (2014) 7 SCC 99. According to learned advocate, it is relevant to note that even after order of disqualification, if any, is based under section 10-A of the Representation of People Act, 1951, after following of the requirement of issuance of show cause notice, receipt of reply etc. there is a further remedy available to contesting candidate under section 11 of the Representation of People Act by which the aggrieved candidate can demonstrate before election commission as to how order of disqualification cannot stand and

that it has to be varied. And in case the aggrieved candidate is not able to get his grievance redressed, a constitutional remedy would be available.

16. He purports to refer to the provisions under section 10 (1F) of the Maharashtra Municipal Corporations Act, wherein State Election Commissioner, for the reasons to be recorded, may remove any disqualification under sub section (1E) and reduce period of any such disqualification. Learned advocate submits that while sections 10-A and section 11 of the Representation of People Act and sections 10 (1E) and 10 (1F) respectively of the Maharashtra Municipal Corporations Act are *pari materia*, situation deserves treatment as observed in paragraph No. 94 of judgment in the case of “*Ashok Chavan*” (*supra*).

17. He submits that while this is the position, in such a case, a direct approach to this court shall not be indulged into and the petitioner be directed to avail of alternate remedy in aforesaid form. He, therefore, urges this court not to indulge into request being made in the writ petition and the petitioner be directed to avail of remedy as referred to above.

18. He relies on a decision in the case of “*M. P. State Agro Industries Development Corporation*” reported in (2007) 10 SCC 88, to buttress his submission that in the face of alternate remedy, writ

petition should not be entertained.

19. Referring to the Supreme Court judgment in the case of “*Gulshan Khanam V/s Aftab Ahmad*” reported in (2016) 9 SCC 414 to canvas that the scope of inquiry under the Article would be only to examine whether any jurisdictional error is committed and would not probe into factual issues by appreciation of evidence, purporting to submit that there are restrictions on power of the high court under Article 227 of the Constitution of India

20. Learned advocate for respondent No. 4 submits that most of the receipts on record albeit are shown to have been issued by different shop owners, those give an indication of that blank receipts had been obtained from shop owners and bills were filled in by the petitioner and her supporters for submission to returning officer, which establishes fraud committed by the petitioner in election.

21. He further submits that no details of expenses over campaigns, meetings, posters, advertisements incurred by the petitioner during election have been submitted by the petitioner.

22. He further goes on to submit that on the face of record, it is obvious that there are wide differences in the signatures claimed to be of petitioner on nomination form and the ones on affidavit

submitted with election expenses. Having sensed foul play, respondent No. 4 had obtained hand writing expert's opinion and opinion had come back establishing that signature is not of petitioner. Thereupon, a complaint had been lodged with the State Election Commission and divisional commissioner and commissioner of Municipal Corporation requesting for an inquiry and for action against the petitioner pursuant to section 10 (1E) of the Maharashtra Municipal Corporations Act, 1949. He submits that while on the face of record, a true state of affair emerges, the election commission and its authorities have all the power to verify correctness or otherwise of the submitted documents.

23. He submits that the Commissioner of the municipal corporation, Aurangabad had conducted an inquiry pursuant to letter dated 7th July, 2015 issued by the State Election Commission and had submitted report. He submits that over and above this, during course of hearing, since handwriting expert's report on record claiming to be of private person, had not been accepted by the petitioner, the Commissioner of Municipal Corporation, Aurangabad had, as such, obtained authentic report from Government handwriting expert. His opinion had been the same as that had been given by the expert earlier on that the encircled signature reveals divergence in writing habits indicating different authorship. Accordingly, report had been

forwarded by the Commissioner, Municipal Corporation, Aurangabad to State Election Commission.

24. He submits that filing of affidavit with signature of someone else is a fraud and is electoral malpractice. He, therefore, purports to import and apply observations of the Supreme Court in the case of *“Bhaurao Dagadu Paralkar V/s State of Maharashtra and Others”* reported in AIR 2005 SC 3330. He submits that in aforesaid judgment it has been observed that 'fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. He refers to paragraphs No. 12 and 13 from said judgment. He submits that fraud cannot be allowed to be perpetuated on hyper technical objections. He submits that the petitioner has indulged into fraud. Her husband had earlier been elected councillor of Aurangabad Municipal Corporation. In last election ward No. 62 had been reserved for woman (general) and, therefore, petitioner had been set up by her husband. Her husband had been in a habit of signing documents in the name of petitioner. Nomination paper had been signed by the petitioner in the presence of returning officer, therefore, signatures on the same are true and correct, however, all other documents have been signed by husband of the petitioner or other family members in the name of petitioner and not by the petitioner and, therefore, question relates to authenticity and

legality of documents and affidavit signed in the name of the petitioner.

25. He submits that since present case relates to a cause, post election and, therefore, a different adjudicating mechanism has been provided. An election petition would hardly be a remedy.

26. He submits that decision has been taken after following due procedure and also following principles of natural justice.

27. He submits, handwriting experts' reports and opinions concur on that signatures are not of the same person. Admissions by the petitioner about signature would not be of any relevance, since it carries forward an object to retain post of councillor.

28. He thus purports to contend that calling of opinion of handwriting expert by the commissioner, municipal corporation on 24th November, 2015 was an exercise of power pursuant to proviso to section 58 of the Indian Evidence Act. Powers under proviso to section 58 of Indian Evidence Act had been appropriately exercised. According to proviso person authorized to take evidence can exercise discretion requiring parties to prove facts though facts are admitted. He submits that handwriting expert pointed out that writings indicate different

authorship. He submits that nature of proceedings is summary, but is also *quasi* judicial and in the circumstances, aid of opinion pursuant to section 45 of the Indian Evidence Act would be legitimately available. He submits that respondent No. 4 – complainant in the circumstances can be said to have discharged her burden adequately. Admission, in the circumstances such as in the present matter, would not be conclusive proof and the same is rebutted. He submits that as a matter of fact, the petitioner has failed to adduce evidence disproving handwriting experts' opinions. In the circumstances, admission or statement cannot assume efficacy.

29. As such, it has been requested not to indulge into the request made under the writ petition and dismiss the same.

30. While submissions are so advanced, perusal of impugned decision shows that it refers to the events as those went by and also refers to grounds in complaint of respondent No. 4, particularly, the ground about signatures on appendix III and affidavit dated 28th April, 2015 being bogus and forged and signatures thereon are not of the petitioner and that documents submitted with fraudulent signatures are not admissible and a stringent action be taken against the petitioner. And that, complaint also refers to that opinion in respect of signatures has

been received from the handwriting expert finding the signatures to be different. Further, it has been complained that mention of property of the petitioner's husband and son has been suppressed. It is alleged that submitted expenses do not refer to expenses borne by the party of the petitioner and the expenses shown in the submitted account and the bank accounts do not match.

31. It has been referred to that, on the other hand, petitioner had submitted that the complaint had been lodged since defeat could not be digested and had lost out on opportunity of lodging election petition and, therefore, such an approach is made. The complaint is misleading. It had been denied that documents lodged with the election commission had been with signatures of different persons. It had been submitted that expenses, as required pursuant to provisions had been submitted and receipt had been duly acknowledged and had been accepted by the authorities. The petitioner is used to signing in English as well as Marathi languages. A decision in civil appeal No. 630 of 2006 dated 27th August, 1962 in the case of “*Shri. Ishwariprasad Mishra V/s Mohammad Issa*” has been referred to stating that opinion would not be a conclusive evidence. The allegations with reference to property to be of husband and son are dismissed as baseless referring to that seven twelve extract relied on does not depict

her husband's name. For the dispute of the nature sought to be raised an election petition could have been possibly a remedy and in the proceedings of summary nature, such an inquiry is not contemplated.

32. Impugned decision further refers to that in the information sought by the municipal commissioner it has emerged that concerned landed property is in the name of brother of petitioner's husband. The municipal commissioner had obtained government handwriting expert's opinion, wherein it had been opined that red circle marked Exhibts-A1- to A5, while compared with Exhibit-A-13, revealed divergence in writing habits, indicating different authorship. Legal advisor had opined for prosecution of the matter pursuant to powers under section 10 (1E) of the Maharashtra Municipal Corporations Act, and it had been approved by the Commissioner, Municipal Corporation.

33. The State Election Commissioner has considered that it is incumbent that elected councillor shall submit election expenses in appendix and affidavit bearing his signature and that respondent No. 4 had got examined said signature from a private handwriting expert and the opinion had been submitted in the evidence. Petitioner having objected to the same, municipal commissioner had obtained government handwriting expert's

opinion. As such, upon consideration of opinions obtained by respondent No. 4 and that by the municipal commissioner, it transpires that the documents submitted by the petitioner do not bear signatures of the petitioner. The petitioner, during the course of hearing had submitted that signatures are her, however, in support of the same, no material has been placed on record or no material had been given to rebut the opinions of handwriting experts. Accordingly, it had been concluded that the petitioner has not proved that documents were submitted with her signature and it had thus been considered that the petitioner would be disqualified for she has failed to submit election expenses, without justifiable reasons, as required under section 10 (1E) of the Maharashtra Municipal Corporations Act. As such, the authority went on to pass order disqualifying the petitioner from being a councillor and from contesting for said post for three years from the date of passing of the order.

34. Impugned order depicts that the State Election Commissioner has simply and solely relied on the handwriting experts' opinions.

35. The courts have been considering from a long time that handwriting expert's opinion is a frail and weak piece of evidence and without corroboration to the same, it is not conclusive and

would not be relied on. In the present circumstances, it may have to be adverted to that petitioner herself has admitted documents to have been submitted by her bearing her own signatures. It appears that the State Election Commissioner had been rather cursory in his approach in simply going by the handwriting experts' opinions while the candidate herself admits signatures without taking into account legal position and has erred. Though learned advocate for respondent No. 4 contends that such an admission is amenable for verification by the authority, yet, while the signatures become disputed question, in the inquiry of summary nature, in absence of proof otherwise, upon admission from the other side, it would not be proper for the authority to rest his decision solely on opinions to disqualify an elected person, who is considered to stand on higher pedestal and would not be unseated under a casual approach.

36. Section 58 of the Indian Evidence Act shows that a fact admitted need not be proved. In the present matter, in first place, one has to take into account that the allegations about signatures on appendix III and affidavit not being of the petitioner have been dispelled by the petitioner, by accepting the signatures to be of her and while evidence about opinion of handwriting expert being a weak piece of evidence and would not to be considered and appreciated without corroboration. There is no

corroboration lending credence to allegations by respondent No. 4 beyond making reference to hand writing experts' opinions. Upon such state of evidence, proviso to section 58 of the Indian Evidence Act would not have any significant application in present facts and circumstances of the case. Submissions in this respect on behalf of respondent No. 4, in the circumstances, would not have any efficacy.

37. Thus, situation emerges that it is not the case wherein there is no compliance at all with the requirements. It emerges that the election expenses have been submitted by the petitioner within prescribed time. Dispute is in respect of signatures on the documents submitted, basing the same on handwriting expert's opinions, which having regard to legal position being frail piece of evidence without corroboration, it may not be a sound proposition to rely on the same. There is no independent application of mind by the State Election Commission to the same. In the circumstances, it does not appear that the order impugned can be justified and can be sustained.

38. Without corroboration to the opinion and without letting the parties to adduce evidence, in support of their claims, decision so rendered in respect of democratically elected person would indeed be untenable. Although analogy has been sought to be

drawn from sections 10 (1) and 11 of the Representation of People Act and applied to sections 10 (1E) and 10 (1F) of the Maharashtra Municipal Corporations Act and observations as referred to above in the judgment in the case of *"Ashok Shankarrao Chavan"* (*supra*), it is difficult to accede to the request that the petitioner be relegated to alternate remedy when she is getting unseated upon consideration in the impugned decision incompatible with legal position.

39. As such, writ petition is allowed. Impugned order dated 2nd December, 2016 passed by respondent No. 2 - Divisional Commissioner, Aurangabad bearing outward No. 2016/N.Pa. Pra/Election/DJMS is set aside. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

At this stage, learned advocate for respondent No. 4 requests that effect and operation of this judgment and order be stayed for a period of four weeks in order to enable respondent No. 4 to pose a challenge to the same. Learned advocate for the petitioner resists the request. He submits that the disqualification of petitioner is set aside and she shall not be suffer the same any further. However, it appears to be expedient to indulge into the request of respondent No. 4. As such, effect and operation of this

order shall remain stayed for a period of four weeks from today.

In the circumstances, interim relief hitherto operating shall also continue to operate for a period of four weeks.

Dinesh
Ramrao
Pawar

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[SUNIL P. DESHMUKH, J.]

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