

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.197 OF 2018

Savitribai w/o Kisan Shinde,
Age-44 years, Occu-Agriculturist/Sarpanch,
R/o Nadarpur, Tq. Kannad,
Dist.Aurangabad

-- PETITIONER

VERSUS

1. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad
2. The Collector/District Election Officer,
Aurangabad, Collector Office,
Aurangabad, Tq. and Dist.
Aurangabad
3. The Tahsildar,
Tahsil Office, Kannad,
Tq. Kannad, Dist.Aurangabad
4. The Gramsevak, **(Deleted)**
Nadarpur, Tq.Kannad,
Dist.Aurangabad

-- RESPONDENTS

WITH
WRIT PETITION NO.813 OF 2018

1. Dnyaneshwar s/o Gulabrao Nikam,
Age-32 years, Occu-Agriculturist/
Member,
2. Krushna s/o Sarjerao Nikam,
Age-30 years, Occu-Agriculturist/
Member,
3. Janabai w/o Hanumanta Nikam,
Age-30 years, Occu-Household/
Member,

4. Sanjay s/o Bhikanrao Nikam,
Age-39 years, Occu-Agriculturist/
Member,
5. Meerabai w/o Sarjerao Singare,
Age-29 years, Occu-Household/
Member,
6. Vimalbai w/o Babasaheb Nikam,
Age-35 years, Occu-Household/
Member,
7. Rameshwar s/o Vitthal Kathar,
Age-27 years, Occu-Agriculturist/
Member,
8. Manisha s/o Bhagwan Nikam,
Age-28 years, Occu-Household/
Member,

All r/o Nadarpur, Tq. Kannad,
Dist. Aurangabad

-- PETITIONERS

VERSUS

1. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad
2. The Collector/District Election Officer,
Aurangabad, Collector Office,
Aurangabad, Tq. and Dist.
Aurangabad
3. The Tahsildar,
Tahsil Office, Kannad,
Tq. Kannad, Dist.Aurangabad
4. The Gramsevak, **(Deleted)**
Nadarpur, Tq.Kannad,
Dist.Aurangabad

-- RESPONDENTS

Mr.R.V.Gore, Advocate for the petitioners.
Mr.V.S.Badakh, AGP for State.
Respondent No.4 in both the petitions is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/02/2018

ORAL JUDGMENT :

1. Leave to delete respondent No.4 Gram Sevak. Deletion be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. In both these petitions, the petitioners are aggrieved by the order of the District Collector dated 23/02/2016 and the order of the Additional Divisional Commissioner dated 20/11/2017, by which the disqualification of these petitioners by the Additional Collector has been confirmed by the Additional Divisional Commissioner.
4. I have considered the submissions of the learned Advocate for the petitioners who are identically placed and the learned AGP on behalf of the respondents.

5. The petitioner in the first petition faced a contest and was elected on 06/08/2015 in the Gram Panchayat Elections for the Gram Panchayat Mouje Nadarpur, Tal.Kannad. The 8 petitioners in the second petition were returned unopposed in the said elections. These are the 9 candidates who have been elected to the available 9 seats in the said Village Panchayat Elections.

6. There is no dispute that all these 9 petitioners submitted their statement of expenses, as is required under Section 14B of the Maharashtra Village Panchayats Act (For short, the Act), on 22/09/2015 when the period of submitting such statement of expenses is 1 month after the declaration of the election results. As such, the submissions of the statements by these petitioners has suffered a delay of 16 days.

7. Contention is that all these petitioners have stated the reasons caused for the delayed submission and a democratically elected candidate cannot be disqualified for such a reason without the due compliance of Section 14-B. It is canvassed that the 8 petitioners in the second petition were not aware that they would have to submit their statement of expenses even if there was no election as they were elected unopposed. The petitioner in the first petition Savitribai has

put forth a reason that due to ill health, she could not submit the said statement.

7. The learned AGP submits that there is no provision under the M.V.P.Act for the District Collector to cause a hearing in the matter and extend an opportunity of hearing to the petitioners. He vehemently supports the impugned orders of the Collector and the Divisional Commissioner, though he cannot point out from the same that the reasons cited by these petitioners has been considered.

8. Section 14 (B) reads as under :-

"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 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."

9. The learned AGP submits on instructions that though the State Election Commission is the Authority which can cause the disqualification, such authority has been delegated to the District Collector of the region within which the Gram Panchayats are situated. As such, there is no dispute that the District Collector can consider the cases u/s 14B.

10. Sub Section 2 u/s 14-B enables the Authority to record reasons for removing any disqualification or for reducing the period of such disqualification. However, this ought to be preceded by a conclusion by the competent authority keeping in view Section 14B (1)(b). It requires no debate that the State Election Commission or the Authority to whom the power has been delegated, has to consider the reasons cited by such candidates and has to conclude whether there are good reasons or justification for such failure.

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 pre-suppose 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 14-B 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 14-B 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 14-B(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.

19. It is expected that the Competent Authority shall pass a reasoned order after hearing the litigating sides, on or before 21/04/2018. Needless to state, until then, the positions, which have been declared to be vacant on account of the disqualification of these petitioners, shall not be filled in and the said disqualification shall be

subject to the result of the proceedings before the District Collector.

20. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)