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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4203 OF 2017

- | | | | |
|-----|---------------------------------------|---|----------------|
| 1). | Ranibai Thakaru Jadhav, |) | |
| | Age : Adult, Occupation : Agri. / |) | |
| | Social Worker |) | |
| | |) | |
| 2). | Laxman Bhairu Chavan |) | |
| | Age : Adult, Occupation : Agri. / |) | |
| | Social Worker |) | |
| | |) | |
| 3). | Santosh Harischandra Chavan |) | |
| | Age : Adult, Occupation : Agri. / |) | |
| | Social Worker |) | |
| | |) | |
| 4). | Minakshi Chandrakant Chavan |) | |
| | Age : Adult, Occupation : Agri. / |) | |
| | Social Worker |) | |
| | |) | |
| 5). | Chandrakant Bhairu Chavan |) | |
| | Age : Adult, Occupation : Agri. / |) | |
| | Social Worker |) | |
| | |) | |
| | All resident of A/P. Ghodatanda, |) | |
| | Tal. South Solapur, District Solapur. |) | ...Petitioners |

....Versus....

- | | | | |
|-----|---|---|--|
| 1). | Tulshiram Dhaku Rathod |) | |
| | Age : Adult, Occupation : Agriculturist |) | |
| | R/o. A/p. Ghodatanda, |) | |
| | Tal. South Solapur, District Solapur. |) | |
| | |) | |
| 2). | Grampanchayat, Ghodatanda |) | |
| | Through Gramsevak, Grampanchayat |) | |
| | Ghodatanda, Tal. South Solapur, |) | |
| | District Solapur. |) | |
| | |) | |

- | | | | |
|-----|--|---|----------------|
| 3). | The Collector, Solapur |) | |
| | Zilla Parishad Compound, Solapur |) | |
| | |) | |
| 4). | The Chief Executive Officer, |) | |
| | Zilla Parishad, Solapur, having office |) | |
| | at Zilla Parishad Compound, Solapur |) | |
| | |) | |
| 5). | Divisional Commissioner, Pune |) | |
| | having office at Commissioner Office, |) | |
| | Pune Division, Vidhan Bhavan, Pune. |) | |
| | |) | |
| 6). | The State Election Commission, |) | |
| | New Administrative Building, Mumbai. |) | ...Respondents |

Mr.Prasad B. Kulkarni for the Petitioners.

Mr.R.S. Alange for the Respondent No.1.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.3 and 5.

Mr.Saily Pednekar i/b Mr.S.B. Shetye for the Respondent No.6.

CORAM : R.D. DHANUKA, J.
DATE : 26TH FEBRUARY, 2018.

ORAL JUDGMENT :-

1. Rule. Learned counsel appearing for the respondents waive service. Heard forthwith finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 4th March, 2017 passed by the learned Divisional Commissioner, Pune in Appeal No.100 of 2016 and the order dated 10th August, 2016 passed by the Collector, Solapur in Village Dispute No. 9 of 2016.

3. The petitioners had contested the election for the post of

member of Village Panchayat in the year 2015. The petitioners were elected as the members of the Village Panchayat on 3rd November, 2015. The petitioner no.1 was elected as Sarpanch of the respondent no.2 Village Panchayat. It is the case of the petitioners that though the petitioners had individually filed their accounts of the election expenses with the Tahsildar and had complied with the procedure as contemplated under section 14-B of the Maharashtra Village Panchayat Act, 1958, the respondent no.1 had made a complaint to the Collector alleging that the petitioners had not complied with the mandatory requirement under section 14-B of the Maharashtra Village Panchayat Act, 1958 and thus shall be considered as disqualified. Pursuant to the said complaint, the Collector had directed the Tahsildar to make an enquiry. In the said enquiry, it was found that though the petitioners had submitted their accounts, the same were however not accompanied with the affidavit. Based on the said report, the Collector passed an order of disqualification against all the petitioners. The appeal filed against the said order passed by the Collector came to be dismissed by an order dated 4th March, 2017 by the learned Divisional Commissioner, Pune.

4. Learned counsel appearing for the petitioners invited my attention to the judgment of this Court in case of **Sahebrao Dashrathrao Patole vs. State of Maharashtra & Ors. (2010) 5**

Mh.L.J. 462 and in particular paragraph 8 and would submit that this Court after considering the provisions of the section 16(1D) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act (40 of 1965) which are in pari materia with the provisions of section 14-B of the Maharashtra Village Panchayat Act, 1958 has held that the concerned authority ought to have exercise discretion conferred upon the authority under section 16 (1D). It is held that mere failure to furnish the accounts within the time or in the manner prescribed may not constitute a disqualification.

5. Learned counsel for the petitioners states that his clients are ready and willing to comply with the provisions of section 14-B of the Maharashtra Village Panchayat Act, 1958.

6. A perusal of the record indicates that the petitioners are mainly disqualified only on the ground that the account statements were not submitted by the petitioners along with an affidavit. In my view, both the authorities thus ought to have granted an opportunity to the petitioners to remove the ground of disqualification by filing an affidavit which was to be accompanied with the statement of account.

7. Both the impugned orders thus passed by the authorities are quashed and set aside. The complaint filed by the respondent no.1 is restored to file. Learned Collector shall hear both the parties and shall give an opportunity to the petitioners to remove the ground

of disqualification. If the petitioners remove all such objections of disqualification within the time prescribed, the learned Collector shall pass a fresh order after considering the complaints, if any, by the petitioners.

8. Both the parties are directed to remain present before the learned Collector on 7th March, 2018 at 3:00 p.m. Learned Collector shall pass a fresh order in accordance with law and without being influenced by the observations made in the order dated 10th August, 2016 passed by the learned Collector and in the observations made in the order dated 4th March, 2017 passed by the Divisional Commissioner, Pune.

9. All the contentions of both the parties are kept open.

10. Rule is made absolute in aforesaid terms. No order as to costs.

11. All the parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)