

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO. 23252 OF 2018
WITH
CIVIL APPLICATION NO. 1893 OF 2018
IN
WRIT PETITION (STAMP) NO. 23252 OF 2018**

Karishma Gautam Pagare	...Petitioner/Applicant
Versus	
Suman Madhukar Kharat & Ors.	...Respondents

Mr. Ganesh Krishnaji Sovani for the Petitioner/Applicant

Mr. G. S. Godbole, Sr. Counsel a/w Mr. Rajaram Lote for the Respondent
Nos. 1 to 4

Mr. A. B. Kadam, A.G.P for the Respondent Nos. 5 to 9-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 30th AUGUST 2018

ORAL ORDER :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of
the parties and is taken up for final disposal. Respondents waive service
through their respective counsel.

3 By this petition, the petitioner has impugned the order dated 16th July 2018 passed by the respondent No.6-Additional Collector, Konkan Division, Mumbai, by which, the respondent No. 1's appeal was allowed and the petitioner came be disqualified under Section 14(1)(j-5) of the Maharashtra Village Panchayats Act (hereinafter for the sake of brevity referred to as 'MVP Act').

4 A few facts as are necessary to decide the petition are as under :

 The respondent No. 1 had contested the election as a member of the Mharal Gram Panchayat from two wards i.e. Ward No. 1 and Ward No. 4-D. As the respondent No. 1 was elected from both the wards, she resigned from Ward No. 4-D, resulting in a vacancy in Ward No. 4-D of Mharal Gram Panchayat. On 9th May 2017, the petitioner filed her nomination from Ward No. 4-D and along with her nomination, submitted all the requisite documents including the toilet certificate at Serial No. 27 issued by the Gramsevak. On 30th May 2017, the petitioner was declared elected from the said ward. On 19th June 2017, the respondent No. 1 filed

an application before the respondent No. 5 i.e. the Additional Collector, Thane, seeking disqualification of the petitioner on the ground of non-filing of the toilet certificate as required under Section 14(1)(j-5) of the MVP Act. On 12th January 2018, the Additional Collector, Thane was pleased to dismiss the respondent No. 1's application seeking disqualification of the petitioner.

Being aggrieved by the said order, respondent No. 1 filed an appeal before the Additional Commissioner, Konkan Division on 2nd February 2018. The Additional Collector vide order dated 16th July 2018 was pleased to disqualify the petitioner, as a result of which, the petitioner was unseated as a Gram Panchayat member. Hence, this petition.

5 Learned counsel for the petitioner submitted that the petitioner had submitted the Toilet Certificate issued by the Gramsevak, with regard to existence of a toilet, along with her nomination form. He submitted that the petitioner could not submit the Certificate of the Gram Sabha, as admittedly no meeting was held, and as such the petitioner cannot be held responsible for the non-holding of the Gram Sabha meeting. According to

the learned counsel for the petitioner, the appellate authority ought not to have interfered in the order passed by the Additional Collector, Konkan Division, Mumbai. He further submitted that the provision under Section 14(1)(j-5) would apply only in cases of general elections and not for by-elections.

6 Per contra, Mr. Godbole, learned Senior Counsel appearing for the respondent Nos. 1 to 4 opposed the application and submitted that no interference was warranted in the impugned order. He submitted that if the Gram Sabha meeting was not held, the petitioner had the option of producing a Certificate of the Chief Executive Officer or an Officer designated by him or a self-certificate. He submitted that the Certificate filed by the Gramsevak was clearly against the mandate of Section 14(1)(j-5) of the MVP Act. Mr. Godbole, learned Senior Counsel relied on a judgment of this Court in the case of *Anjanabai Premsingh Naik vs. The State of Maharashtra & Ors.*¹, in support of his submission. He further submitted that there can be no distinction with regard to the applicability of Section 14(1)(j-5), to general elections and by-elections.

1 2015(5) All MR 170

7 Before I proceed to consider the submissions advanced by the learned counsel for the parties, it would be necessary to reproduce Section 14(1)(j-5) of the MVP Act, with which the present petition is concerned.

The said Section reads thus :

“14. (1)(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.”

(emphasis supplied)

A perusal of Section 14(1)(j-5) shows that a certificate of the concerned Panchayat along with the resolution of Gram Sabha or of the Chief Executive Officer or the Officer designated by him or a self-certificate, is required to be filed by a person contesting the elections. As far as the option of getting a Toilet Certificate from Chief Executive Officer or the Officer designated by him or even a self-certificate is concerned, the same was inserted by Maharashtra Act 28 of 2017, with effect from 31st January 2017.

8 It is pertinent to note, that the petitioner had filed her nomination paper for Ward No. 4-D on 9th May 2017 and the toilet certificate submitted by the petitioner at Serial No. 27 was a certificate issued by the Gramsevak and not by any other person(s)/Authority or self-certificate as contemplated by Section 14(1)(j-5). The submission advanced by the learned counsel for the petitioner, that the petitioner could not be held responsible for not holding a meeting of the Gram Panchayat

before 1st August 2018 and hence, the certificate issued by the Gramsevak was a bonafide certificate as contemplated under the Act, is devoid of merit. Admittedly, the petitioner had annexed a toilet certificate issued by the Gramsevak. If the petitioner was unable to submit the toilet certificate issued by the concerned panchayat along with the resolution of the Gram Sabha, it was always open for her to file the Certificate of the Chief Executive Office or an officer designated by him or even a self-certificate, under Section 14(1)(j-5), which was not done. The aforesaid options were open to the petitioner, which she failed to exercise. When a Statute, as in the present case, confers authority on certain authorities, then except the authority mentioned therein, no other authority can be read/substituted.

9 This Court in the case of ***Anjanabai Premisingh Naik vs. The State of Maharashtra & Ors. (supra)***, has held that a certificate under Section 14(1)(j-5) and resolution needs to be filed before any person is elected as a member of the Panchayat. It was observed that the phraseology of sub-section (j-5) indicates, that “no person shall be a member of the panchayat, if he fails to submit such a certificate”. When ***Anjanabai's*** case (***supra***) was decided, a candidate was required to file `a

toilet certificate of the concerned panchayat alongwith the resolution of the Gram Sabha'. With the amendment to Section 14(1)(j-5), with effect from 31st January 2017, apart from the concerned panchayat along with the resolution of the Gram Sabha, even the CEO/an officer designated by him/even self-certification is permitted. The object and reason for including the CEO/an officer authorized by him/self-certification has been set-out in the Statement of Objects and Reasons, which is reproduced hereinunder :

“2. Section 7 of the Maharashtra Village Panchayats Act provides that there shall be held at-least four meetings of the Gram Sabha in every financial year. Such Gram Sabhas in most of the Village Panchayats had already been over in the that financial year. As such, the candidates desirous of contesting the elections to the Village Panchayats and the Zilla Parishads of the concerned panchayats. It was, therefore considered expedient to amend clause (j-5) of sub-section (1) of section 14 of the Maharashtra Village Panchayats Act and clause (p) of sub-section (1) of section 16 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 with a view to also provide that such certificate may be given by the Chief Executive Officer of the Zilla Parishad or his designated officer or a self-certificate by such person. Regard being had to the ongoing elections to various panchayats and Zilla Parishads and Panchayat Samitis in the State it was considered expedient to amend the said Acts immediately.”

10 It thus appears that Section 14(1)(j-5) was amended, having regard to the difficulties faced by candidates. By the Maharashtra Act 28 of 2017, in addition to a certificate issued by Gram Sabha along with a Resolution of the Gram Sabha, the CEO/an officer designated by him or even a self-certification was permitted. The amendment came into effect from 31st January 2017, whereas, the petitioner filed her nomination on 9th May 2017. Thus, the petitioner had the option of filing a toilet certificate issued by the CEO/an officer designated by him/a self-certificate, since the Gram Sabha had not convened a meeting. The petitioner had not exercised the options, as spelt out in Section 14(1)(j-5). As is evident from the language of Section 14(1)(j-5) that 'no person shall be a member of the panchayat, if he fails to submit such a certificate', it is clear that except the authority mentioned in Section 14(1)(j-5), no other authority could have issued the certificate. Hence, the certificate issued by the Gramsevak in this case, was not in accordance with the mandate of Section 14(1)(j-5) of the MVP Act. The learned Additional Commissioner has rightly allowed the appeal filed by the respondent No. 1 and as such no interference is warranted in the same.

11 As far as the submission of the learned counsel for the petitioner, that the said provision i.e. Section 14(1)(j-5) would apply only to general elections and not to by-elections, the same is completely fallacious, inasmuch as, there can be no distinction in terms of compliance of the provisions of the MVP Act, whether general elections or by-elections. Hence, the said submission is also rejected.

12 Considering the aforesaid, there is no merit in the petition. Petition is dismissed. Rule discharged.

13 In view of the above order, Civil Application does not survive. The same also stands rejected.

REVATI MOHITE DERE, J.