

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.14002 OF 2016

Savita Ashok Urmude] Petitioner
Vs.
Mariba Gundiba Sukale and others.] Respondents

WITH

WRIT PETITION NO.14041 OF 2016

Pandurang Santram Satav] Petitioner
Vs.
Mariba Gundiba Sukale and others.] Respondents

WITH

WRIT PETITION NO.14297 OF 2016

Yogesh Ghanshyam Jadhav] Petitioner
Vs.
Mariba Gundiba Sukale and others.] Respondents

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Mr. Sandeep S. Salunkhe, for Petitioners.
Mr. P.P. Pujari, A.G.P, for Respondents No.5 and 6.

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CORAM : R.G. KETKAR, J.

DATE: 27TH NOVEMBER, 2018.

P.C.

Heard Mr. Salunkhe, learned Counsel for the petitioners and Mr. Pujari, learned A.G.P, for Respondents No.5 and 6 at length.

2. These Petitions challenge the orders passed by the Collector, Solapur and Additional Commissioner, Pune Division, Pune. By these orders, the petitioners have been disqualified for not furnishing expenses of election in the prescribed format as per section 14 B of the Maharashtra Village

Panchayats Act (for short 'Act'). By order dated 19th January, 2017, notice was issued to the respondents in these Petitions returnable on 16th February, 2017 and interim order to the effect that seats of the petitioners shall not be filled in was granted. Office remark shows that despite service, respondents No.1 to 4 have not entered appearance. The matter was thereafter heard on 12th September, 2017 and after recording the statement of the petitioners' Advocate that service has been effected on all the respondents and necessary affidavit of service is filed to that effect, this Court directed to place the matters for final disposal on 10th October, 2017 in the supplementary board. In view thereof, the Petitions are taken up for final hearing. Rule. Mr. Pujari waives service on behalf of respondents No.5 and 6.

3. Mr. Salunke submitted that the Authorities below held that the petitioners did not submit account of election expenses in the prescribed format along with Affidavits within one month from the date of declaration of the election results. He invited my attention to the order dated 9th July, 2010 passed by this Court (Coram: B.P. Dharmadhikari, J.) in **Writ Petition No.999 of 2010 of Sahebrao Dashrathrao Patole Vs. State of Maharashtra and others along with companion Writ Petitions**. He submitted that section 14B of the Act requires the Authorities to record a finding if there is failure to lodge account of expenses within the time prescribed and in the manner required by State Election Commission. It further requires Authorities to find out whether explanation given by the petitioners for not complying with these requirements is reasonable or sufficient to justify failure. This Court held that the provision uses the word '**may**' and thus discretion is conferred upon the Authorities. *Prima facie*, it appears that mere failure to furnish account within the time or in the manner prescribed may not constitute disqualification. In view thereof, he submitted that impugned orders deserve to be set aside.

4. On the other hand, Mr. Pujari supported the impugned orders. He submitted that after considering the material on record, the Authorities below have concurrently held that the petitioners did not submit account of election expenses in the prescribed format along with affidavit within a period of one month. As the petitioners committed breach of section 14B of the Act, the Authorities below rightly disqualified the petitioners.

5. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. The moot question in the present Petitions is whether provisions of Section 14B are mandatory or directory or whether discretion is conferred upon the Authorities or not. It is also necessary to find out whether failure to furnish account of election expenses within the time or in the manner prescribed will constitute disqualification. A perusal of the impugned order shows that the Authorities below declared the petitioners disqualified on the ground that the petitioners did not submit account of election expenses with affidavits within one month from declaration of the election results.. In the case of **Sahebrao Dashrathrao Patole** (supra), learned Single of this Court in paragraph 8 observed thus;

“The perusal of Section 16 (1D) shows that it requires Respondent No.2 to record a finding if there is failure to lodge account of election expenses within time prescribed and in the manner required by State Election Commission. It further requires Respondent No.2 to find out whether explanation given by the petitioners for not complying with these requirements is reasonable or sufficient to justify his failure. The said provision uses the word “may” and thus discretion is conferred upon Respondent No.2. Prima facie, it appears that mere failure to furnish accounts within time or in the manner prescribed may not constitute disqualification. Here, the relevant facts placed on record by the petitioners are not gone into by Respondent No.2 at all. He has acted mechanically and has declared the petitioners disqualified. The discretion appears to have been deliberately with a view to maintain the election of a person, who has been

democratically elected as a Municipal Councillor as far as possible. Disqualification is a serious stigma and hence the necessary requirements to be fulfilled before holding a person disqualified are already indicated in that sub-section. The impugned order does not meet the standards prescribed for said purpose by State Legislature”.

6. Applying the principles laid down in paragraph 8 extracted hereinabove to the facts of the present case, it has to be concluded that the impugned orders do not meet the standards prescribed by the State Legislature. Disqualification is a serious stigma and necessary requirements are required to be fulfilled before holding a person disqualified as indicated in section 14B. Hence, the Petitions succeed. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

[R.G. KETKAR, J.]