IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 12623 OF 2018**

Smt. Alka Sampat Kale ...Petitioner
*Versus*
Shri. Dattu Bajirao Kale
and others ...Respondents

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Mr.Prashant D. Patil, Advocate for the Petitioner.
Mr. S.D. Rayrikar, A.G.P. for Respondents No.2, 3 and 7-State.

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CORAM : R. G. KETKAR, J.

DATE : 28th NOVEMBER, 2018

P.C.

1. Heard Mr.Prashant Patil, learned counsel for the petitioner and Mr.S.D. Rayrikar, learned A.G.P. for respondents No.2, 3 and 7-State, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 10.7.2018 passed by the Collector, Nashik in Grampanchayat Dispute Application No.90/2017 (old Dispute Application No.14/2017) as also the order dated 20.10.2018 passed by the Additional Commissioner, Nashik Division, Nashik (for short, 'Commissioner') in Appeal No.76/2018. By these orders, the Authorities below have declared the petitioner as disqualified to remain as Member of Pimpalgaon Mor Grampanchayat, Taluka –

Igatpuri, District – Nashik (for short, 'Grampanchayat') in view of Section 14(1)(g) of the Maharashtra Village Panchayats Act (for short, 'Act').

3. It appears that the Scheme of Dalit Vasti Sudhar was sanctioned in the year 2012-13. A sum of Rs.6,93,000/- for implementing the Scheme was also sanctioned. The work required the Grampanchayat to purchase the material and implement the Scheme through labourers. Though the Scheme was sanctioned and the funds were also sanctioned in the year 2013, the tender process was not initiated. It also appears that by circular dated 7.2.2013 instructions were issued to implement e-tendering process w.e.f. 1.2.2013. A perusal of the material on record indicates that the Chief Executive Officer, Zilla Parishad, Nashik sanctioned the work by order dated 20.12.2012. The work of concretization of the road was carried out by purchasing material from Shri Ganesh Kale. Shri Ganesh Kale is admittedly son of the present petitioner. In view thereof, respondent No.1 herein filed Dispute Application No.90/2017 (old Dispute Application No.14/2017) under Section 14(1)(g) of the Act for disqualification of the petitioner as member of the Grampanchayat.

4. By order dated 10.7.2018 the Collector, Nashik disqualified the petitioner under Section 14(1)(g) of the Act. Aggrieved by that

decision, an appeal under Section 16 of the Act was preferred before the Commissioner. By order dated 20.10.2018, the appeal was dismissed. It is against these orders, the petitioner has instituted present Petition.

5. In support of this Petition, Mr. Patil strenuously contended that the Authorities below committed serious error in disqualifying the petitioner. He submitted that the work was sanctioned as far back as on 20.12.2012 as per the order of the Chief Executive Officer, Zilla Parishad, Nashik. The petitioner was elected as Member of the Grampanchayat in March, 2014. In other words, the petitioner is not instrumental in purchase of the material by the Grampanchayat from her son. It is incidental that the work was carried out from 6.5.2015 to 10.10.2015 and her son was paid by way of cheques in 2015. He submitted that as the work was sanctioned and the funds were also sanctioned in the year 2013, the Authorities below were not justified in declaring the petitioner as disqualified under Section 14(1)(g) of the Act. He, therefore, submitted that the petition requires consideration and the impugned orders deserve to be set aside.

6. On the other hand, Mr. Rayrikar supported the impugned orders. He submitted that the Authorities below have found that the work was carried out from 6.5.2015 and was completed on 10.10.2015

without inviting tenders. The petitioner's son Ganesh Kale was paid amount by way of cheque in the year 2015. The case is, therefore, squarely covered by Section 14(1)(g) of the Act. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Section 14(1)(g) of the Act reads :

> "**14. Disqualifications:- (1)** No person shall be a member of a *Panchayat* continue as such, who -
>
> xxxxx
> xxxxx
>
> **(g)** has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the *Panchayat,* or in any contract with, by or on behalf of, or employment with or under, the *Panchayat;*or
>
> xxxxx
> xxxxx"

8. It is not in dispute that by order dated 20.12.2012, the Chief Executive Officer, Zilla Parishad, Nashik has sanctioned the Scheme. It is also evident from record that the funds of Rs.6,93,000/- was also sanctioned in the year 2012-13. In the impugned order dated 10.7.2018, the Collector observed that the Government had issued circular dated

7.2.2013 instructing implementation of e-tendering process w.e.f.. 1.2.2013. It was held that despite this specific instruction, no tender was floated. Though the Scheme was sanctioned in the year 2012, actually the work was carried out in the year 2015. The material was purchased from Ganesh Sampat Kale for the construction of Samaj Mandir in the year 2015. The work was carried out from 6.5.2015 and was completed on 10.10.2015. The petitioner's son was also paid the amount by way of cheque in the year 2015.

9. As far as the impugned order of the Commissioner is concerned, the Commissioner also observed that in the year 2015 material was supplied by the petitioner's son Ganesh Sampat Kale and he was given cheques in the year 2015. Thus the Authorities below, after considering the material on record, have concurrently held that the petitioner's son carried out the work in the year 2015 without inviting tender as also was paid the amount by way of cheques in the year 2015.

10. In view thereof, I do not find that the Authorities below have committed any error in disqualifying the petitioner. Hence, the petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)