

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.3846 OF 2018
with
CIVIL APPLICATION NO.5402/2018**

Shri Gulabrao Ananda Patil
Age: 73 years, Occ.: Agril.,
R/o Mukti, Tq and Dist. Dhule. = **PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nashik.
3. The Collector, Dhule
4. The Tahsildar, Dhule.
5. Pradip Nimba Patil,
Age: 36 Yrs., occu. Agril.
R/o Mukti, Tq. and Dist.
Dhule = **RESPONDENTS**

Mr.VD Sapkal, Advocate for Petitioner;

Mr.SK Tambe, AGP for Respondents;

Mr.VD Hon, Sr.Counsel i/by Mr.VB Anjanwatikar, Adv. For
Respondent No.5-intervenor.

WITH

WRIT PETITION NO.11929 OF 2017

Pradip Nimba Patil
Age: 50 years, Occ.: Agri.
R/o Mukti, Tq & Dist Dhule. = **PETITIONER**

VERSUS

1. The State of Maharashtra.
Through Secretary,
Rural Development Department,
Mantralaya Mumbai.
2. The State Election Commissioner
Maharashtra State,
New Administrative Building,
Opp. Mantralaya, Madam Cama Road,
Mumbai-32.
3. The Collector, Dhule,
Collector Office, Dhule.
4. The Returning Officer,
Grampanchyat Mukti,
Village Mukti,
Tq & Dist. Dhule.
5. Grampanchyat, Mukti,
Through its Gramsevak
Mukti, Tq & Dist. Dhule.
6. Gulabrao Ananda Patil,
Age: 73 years, Occ. Agri.,
R/o Mukti, Tq & Dist. Dhule. = **RESPONDENTS**

Mr.VD Hon, Sr.Counsel i/b Mr.VB Anjanwatikar, Adv.
For petitioner;

Mr.SK Tambe, AGP for Resp.Nos.1 and 3;

Mr.ST Shelke, Adv. For Resp.Nos.2 & 4.

Respondent No.5 served;

Mr. VD Sapkal, Adv. For Resp.No.6.

WITH

WRIT PETITION NO.13711 OF 2017

Ritesh S/o Suresh Patil,
Age 39 Years, Occ.: Agri.,
R/o Mukti, Tq & Dist. Dhule. = **PETITIONER**

VERSUS

1. The State of Maharashtra
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai
2. The State Election Commission,
Maharashtra State,
New Administrative Building,
Opp. Mantralaya, Madam Cama Road,
Mumbai.
3. The Collector, Dhule
Tq & Dist. Dhule.
4. The Returning Officer,
Grampanchayat Mukti,
Village Mukti,
Tq & Dist. Dhule
5. Gulabrao S/o Ananda Patil,
Age: 73 years, Occ.: Agri.
R/o Mukti, Tq & Dist. Dhule.
6. Rohidas Gangram Patil,
Age: 49 years Occ., Agril.,
R/o Mukti, Tq and Dist. Dhule = **RESPONDENTS**

Mr. MS Kulkarni, Adv. h/for Mr. Amol S. Sawant, Adv.
For petitioner;
Mr. SK Tambe, AGP. For Resp. Nos. 1 & 3;
Mr. VD Sapkal, Adv. For Respondent Nos. 5 & 6;
Respondent No. 4 served.

CORAM : P.R. BORA, J.

RESERVED ON : 4th July, 2019
PRONOUNCED ON : 24th July, 2019

JUDGMENT

1. CA No. 5402/2018 moved for intervention in
WP No. 3846/2018 is allowed and disposed of.

2. All these writ petitions are heard together. WP No.3846/2018 is filed by Shri Gulabrao Aananda Patil (herein after referred to as Gulabrao) against order dated 18.12.2017 passed by Divisional Commissioner, Nasik, whereby he has confirmed the order passed by Collector, Dhule on 3.11.2014. Petitioner Gulabrao had contested the Panchayat Samiti elections in the year 2013. Vide order dated 3.11.2014 Collector, Dhule had disqualified petitioner Gulabrao for contesting elections for next five years on account of his failure to submit accounts of election expenses within the stipulated period without any sufficient cause.

3. WP No.11929/2017 is filed by one Pradip Nimba Patil, wherein he has challenged the order dated 25.9.2017 passed by the Returning officer, whereby he had rejected the objection raised by petitioner – Pradip to the nomination of Gulabrao Aananda Patil to the election of Sarpanch of village Mukti on the ground that on the date of nomination, said Gulabrao had been disqualified for contesting elections for next five years vide order

dated 3.11.2014 passed by Collector, Dhule.

4. WP No.13711/2017 is filed by one Ritesh Suresh Patil with a prayer to set aside the election of Gulabrao, who has been declared elected as Sarpanch of village Mukti, on the ground that on the date of his nomination, he was disqualified from contesting the said election. A further prayer is also made by petitioner Ritesh to declare him elected as Sarpanch of Grampanchayat Mukti on setting aside the election of Gulabrao.

5. Few facts, which are relevant to decide these writ petitions, can briefly be stated thus,-

a. One Gulabrao Aananda Patil resident of village Mukti, Tq. And District Dhule, contested the election of Panchayat Samiti in the year 2013 from Gut No.104, i.e. Mukti, Tq. and Dist. Dhule and was defeated in the said election. He was served with a show cause notice dated 21.7.2014 under the signature of Collector, Dhule, requiring him to explain as to why he should not be disqualified from contesting any election for next

five years because of his failure to submit the accounts of election expenses incurred by him in the election of Panchayat Samiti held in the year 2013 contested by him from the constituency of Mukti (Gut No.104).

b. Said Gulabrao did not submit his reply to the show cause notice within the stipulated period of seven days, but made a communication on 28.8.2014, stating therein that as he was sick, he could not submit his explanation.

c. Collector, Dhule had called for information in respect of all the candidates, who had contested the elections of Zilla Parishad and Panchayat Samiti held in the year 2013 on the point, whether they had furnished the accounts of their election expenses within the stipulated period to the competent authority. In pursuance of the said report, Collector, Dhule passed an order on 3.11.2014 and thereby disqualified Gulabrao for contesting the elections for next five years.

d. Thereafter, Gulabrao filed an appeal being Appeal No.324/2017 against the said order before the Divisional Commissioner, Nasik on 22.9.2017. The learned Divisional Commissioner,

Nasik rejected the said appeal vide judgment and order dated 18.12.2017.

e. In the meanwhile, elections of Grampanchayat were declared. Gulabrao submitted his nomination for the post of Sarpanch of village Mukti on 21.9.2017. His nomination was objected by Pradip Nimba Patil on 25.9.2017, i.e. on the date of scrutiny of the said nomination, by filing a written application in that regard alleging that Gulabrao had been disqualified from contesting election for next five years vide order dated 3.11.2014 passed by Collector, Dhule. The objection so raised by Pradip Nimba Patil was rejected by the Returning Officer with an observation that the order of disqualification dated 3.11.2014 was applicable only for the elections of Zilla Parishad and Panchayat Samiti and not for the election of Grampanchayat.

f. Pradip Nimba Patil has challenged the aforesaid order of the Returning Officer by filing WP No.11929/2017. This Court (Coram: Ravindra V.Ghuge,J.), vide order passed on 28th September, 2017, though refused to stay validation of the nomination of Gulabrao *exparte*, had issued notice

to him as well as other residents, and made a further order that election of said Gulabrao (Respondent No.6 in the said WP), if he is so elected, shall be subject to the result of the said petition.

g. Gulabrao got elected as Sarpanch of village Mukti and declaration in that regard was published on 11.10.2017. Ritesh Suresh Patil, has challenged the election of Gulabrao by filing Writ Petition No.13711/2017.

6. Having regard to the facts, noted as above, it is evident that WP No.3846/2018 has to be decided first. As noted earlier, Gulabrao has filed the aforesaid petition, taking exception to the order passed by Collector, Dhule on 3.11.2014, whereby he has been disqualified to contest any election for next five years from the date of the said order. Order dated 3.11.2014 been confirmed by the learned Divisional Commissioner, Nasik in Grampanchayat Appeal No.324/2017 preferred by Gulabrao.

7. Gulabrao filed appeal No.324/2017 on

22.9.2017, i.e. almost after for the period of 34 months. As has been observed by the learned Commissioner, Gulabrao had not filed any separate application for condonation of delay, but has merely averred in his memo of appeal that the delay occasioned in filing the appeal be condoned. The learned Commissioner has observed in the impugned order that in fact, the appeal filed by Gulabrao was liable to be rejected only on the ground of delay, however, he preferred to decide it on merits also. It was the main contention of Gulabrao in the said appeal that Collector, Dhule, without giving him an opportunity of hearing, had passed the order dated 3.11.2014. The contention so raised has been rejected by the learned Commissioner.

8. Shri VD Sapkal, learned counsel appearing for petitioner Gulabrao, submitted that the order dated 3.11.2014 is liable to be set aside on the sole ground that no opportunity of hearing was afforded to the petitioner before passing the said order. Relying on the judgments delivered by this court, it was further argued by Shri Sapkal that the authority, to whom the power has been

delegated, has to consider the reasons cited by the concerned candidate for not submitting the accounts of election expenses within time and has to conclude whether there are good reasons or justification for such failure. The learned counsel further submitted that the provision in the statute as aforesaid presupposes that the competent authority would give adequate opportunity of hearing to the candidate concerned and only thereafter will pass the final order. The learned counsel submitted that in the instant matter, Collector, Dhule has passed a common order thereby disqualifying about 148 candidates, who contested the elections of Zilla Parishad and Panchayat Samiti from their respective constituencies.

9. The learned counsel further submitted that in the order dated 3.11.2014, the Collector though has mentioned against the name of petitioner Gulabrao that he could not furnish the account of election expenses because of his ill health, has failed in considering the said reason and has mechanically passed an order thereby disqualifying

him from contesting the elections for next five years from the date of the said order. The learned counsel pointed out the application dated 28.8.2014 submitted by petitioner Gulabrao to Collector, Dhule, wherein he has stated that he could not furnish the election expenses for the day on which voting had taken place because of his ill-health. According to the learned counsel, the order passed by Collector on 3.11.2014 is, therefore, liable to be set aside.

10. The submissions made on behalf of petitioner Gulabrao were strongly opposed by learned AGP Shri Tambe appearing for State as well as learned Sr.Counsel Shri VD Hon, appearing for intervenor viz. Pradip Nimba Patil. It was pointed out by Shri Hon that the petitioner though filed the application on 28.8.2014, did not furnish the account of election expenses and as such, was rightly disqualified by the Collector. The learned counsel further pointed out that the certificate which has been filed by the petitioner evinces that he was ill only for two days, i.e. on 1st and 2nd December, 2013 and was advised to take rest for a

week thereafter. The learned counsel submitted that petitioner Gulabrao thus could have submitted the election expenses within the reasonable period thereafter, but he did never submit such expenses. The learned counsel, in the circumstances, prayed for dismissal of the writ petition.

11. After having considered the submissions made by the learned counsel appearing for the respective parties and after having perused the impugned orders and the other material placed on record, apparently, I see no reason to cause any interference in the impugned orders. The order dated 3.11.2014 was not challenged by petitioner Gulabrao admittedly for the period of more than two years and nine months. As has been observed by the learned Divisional Commissioner, the petitioner did not even submit an application seeking condonation of delay nor provided any explanation even in the memo of appeal. In fact, the appeal filed by petitioner Gulabrao must have been rejected by the learned Divisional Commissioner on the said ground alone. However, as I noted herein above, the learned Divisional commissioner thought it

appropriate to decide the appeal on merits and has accordingly decided the same on merits.

12. When the statute provides and mandates the candidates contesting election to submit account of their election expenses within stipulated period, the candidates are under obligation to comply with the said provision. It has to be further stated that when failure in submitting the election expenses within stipulated period is prescribed as one of the grounds for disqualification of the candidate to contest the election, submission of such expenses within the stipulated period assumes vital importance. In the instant matter, the material on record clearly reveals that petitioner Gulabrao did not bother for submitting the account of election expenses incurred by him. The material on record further reveals that though an opportunity was given to him by Collector Dhule by the notice dated 11.7.2014 to submit election expenses within seven days of receipt of the said notice and though service of the said notice is not denied by petitioner Gulabrao, he did not submit the account of election

expenses within the said period. The material on record further reveals that for the first time, petitioner Gulabrao had certain communications with Collector Dhule on 28.8.2014. It is the matter of record that even thereafter he did not submit his account of election expenses.

13. Though it was sought to be contended by Shri Sapkal that the petitioner had in fact submitted the account of election expenses till the date of voting and the only expenses incurred on the date of voting were remained to be submitted, no document has been placed on record by petitioner Gulabrao in support of his said contention. Even if the said contention is accepted, fact remains that, as admitted by the petitioner in his letter dated 28.7.2014 that he had not submitted the account of election expenses incurred on the date of voting. Nothing has been placed on record by petitioner Gulabrao to show that he furnished the account of election expenses incurred by him on the date of voting at any point of time. It is thus evident that the default was committed by petitioner Gulabrao in submitting the account of

his election expenses. Petitioner Gulabrao has not provided any reason even in the present petition for not submitting the account of his election expenses. In the circumstances, it does not appear to me that any error was committed by the Collector in passing the order dated 3.11.2014 and thereby disqualifying the petitioner Gulabrao from contesting elections for next five years for the said reason.

14. Inviting my attention to the observations made by this court in the case of Sahebrao Dashrathrao Patole Vs. State of Maharashtra & Ors. – 2011 (3) Bom.C.R.359, it was argued by Shri Sapkal that mere failure to furnish the accounts within time or in the manner prescribed, may not constitute disqualification. It has to be stated that the observations made in the said judgment, cannot be interpreted, as have been interpreted by the learned counsel and that cannot be said to be import of the said judgment. In the earlier part of the judgment, the court has observed that the competent authority has to record a finding if there is failure to submit account of election

expenses within time prescribed and in the manner required by the State Election Commission. It is further observed that the competent authority also shall find out whether the explanation given by the candidate for not complying with the requirements, is unreasonable or sufficient to justify his failure. It is further observed that in the concerned provision word 'may' is used and thus discretion is conferred upon the authority deciding the matter. In the aforesaid context, further observations have recorded by the court that mere failure to furnish the accounts within time frame or in the manner prescribed, may not constitute disqualification.

15. In the instant matter, petitioner Gulabrao never submitted the accounts of election expenses. Though an opportunity was given to him by Collector, Dhule, vide show-cause notice dated 21.7.2014 to submit the account of election expenses within 7 days from receipt of the said notice, petitioner did not avail that opportunity. In the circumstances, it does not appear to me that he was liable to be given any opportunity of

personal hearing. Had petitioner Gulabrao submitted the accounts of his election expenses, may be belatedly and had he provided some justification for such delay, it could have been certainly said that the Collector must have given opportunity to petitioner Gulabrao and should have recorded the reasons for accepting or not accepting the explanation so submitted by him. For aforesaid reasons, it does not appear to me that any error has been committed by Collector, Dhule in passing the order dated 3.11.2014 thereby disqualifying petitioner Gulabrao from contesting the elections for next five years. The learned Divisional Commissioner has for right reasons declined to cause any interference in the order passed by Collector, Dhule. No case is made out in the present petition so as to cause interference in the impugned orders. The writ petition being devoid of any substance deserves to be dismissed.

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16. As noted in the earlier paragraphs, the nomination of Gulabrao Aananda Patil for the election to the post of Sarpanch, Grampanchayat Mukti, was objected by petitioner Pradip Nimba

Patil on the ground that Gulabrao was disqualified to contest the election for next five years vide order dated 3.11.2014 passed by Collector, Dhule from the said date. The Returning Officer turned down the said objection, observing that the order dated 3.11.2014 passed by Collector, Dhule, was applicable only to the elections of Zilla Parishad and Panchayat Samiti and not to the elections of Grampanchayat. The present petition is filed challenging the said order.

17. It is the matter of record that Gulabrao Aananda Patil got elected as Sarpanch of village Mukti in the subject election. However, as has been observed by this court in the order passed on 28th September, 2017, the election of said Gulabrao is subject to result of the present petition.

18. Arguing for petitioner Pradip, learned Sr.Counsel Shri Hon submitted that in WP No. 13489/2017 (Gokul Chandanmal Sangvi Vs. State of Maharashtra and Ors.) a similar issue was for consideration of Division Bench of this court. The learned counsel, taking me through the said

judgment, submitted that in the said matter also nomination of one Vilas Vasant Rao Choudhari, who was intending to contest the election of Sarpanch of village panchayat Phagane, Tq. and District Dhule, was objected on the ground that said Vilas Choudhari was disqualified by Collector, Dhule vide order dated 3.11.2014 from contesting the election for next five years. The learned Sr. Counsel pointed out that the said objection was turned down by the Returning officer on the same ground that the order dated 3.11.2014 was applicable only for the election of Zilla Parishad and Panchayat Samiti and not for the election of Grampanchayat. The learned Sr. Counsel submitted that the Division Bench of this court, while setting aside the order passed by the returning officer, has held that the order of disqualification passed by collector Dhule on 3.11.2014 was equally applicable to the elections of Sarpanch of Grampanchayat.

19. The learned Sr. Counsel further submitted that the order passed by the Division bench in the aforesaid writ petition was challenged before the Hon'ble Apex court in SLP No. 9216/2018. The

Hon'ble Apex court, vide order passed on 18.4.2018, has dismissed the said SLP. The learned Sr.Counsel submitted that in view of the order passed by the Division Bench of this court, the order passed by the Returning Officer in the present matter rejecting the objection raised by petitioner Pradip Nimba Patil, deserves to be set aside for the same reasons, as are discussed by the Division Bench while deciding the WP No.13489/2017.

20. The learned Sr.Counsel further submitted that since respondent Gulabrao was not qualified/eligible to contest the election to the post of Sarpanch of village Mukti on the date of his nomination as well as on the date of election, his election as Sarpanch stands vitiated. The leaned counsel in the circumstances prayed for allowing the writ petition and to declare that the election of Gulabrao Aananda Patil stands vitiated.

21. Shri Sapkal, learned counsel appearing for respondent Gulabrao fairly conceded that in view of the law laid down by the Division Bench of this court in WP No.13489/2017 (cited supra), the

order passed by the Returning officer, rejecting the objection raised by the petitioner in the present petition to the nomination of respondent Gulabrao would not sustain. It was, however, the contention of the learned counsel that once respondent Gulabrao has been declared elected as Sarpanch of village Mukti, his election can only be questioned by filing an election petition, as provided under Section 15 of the MVP Act. The learned counsel submitted that as provided under Section 15-A of the MVP Act, no election to any panchayat shall be called in question except in accordance with the provisions of Section 15; and no court other than the Judge referred to in that section, shall entertain any dispute in respect of such election. The learned counsel further submitted that in view of the mandate of the Constitution in Article 243-O(b) read with Section 15 and 15-A of the MVP Act, the only remedy available for the present petitioner was to file an election petition in accordance with the provisions of the Act and not to invoke extra-ordinary writ jurisdiction of this court under Article 226 of the Constitution. The learned counsel, therefore,

prayed for dismissal of the writ petition.

22. It is not in dispute that the nomination of Respondent Gulabrao was objected by the present petitioner on the ground that on the date of nomination, he had been disqualified by Collector, Dhule, vide his order dated 3.11.2014 to contest the election for next five years. It is also not in dispute that the Returning Officer turned down his said objection, observing that the disqualification so ordered by the Collector, vide the aforesaid order, was restricted to the elections of the Zilla Parishad and panchayat Samiti and was not applicable for the elections of the Grampanchayat. In view of the law laid down by the Division Bench of this Court in WP No. 13489/2017, now there remains no doubt that the order dated 3.11.2014, was equally applicable for the elections of the Grampanchayat.

23. The nomination of Respondent No.5 – Vilas Vasantrao Choudhari in WP No. 13489/2017 was also objected by the petitioner in the said writ petition on the ground that said respondent No5

was disqualified vide order dated 3.11.2014 passed by Collector, Dhule, whereby the said respondent as well as many others, who had contested the election of Zilla Parishad and panchayat Samiti, were disqualified to contest the elections for next five years on account of their failure to furnish the account of the election expenses incurred by them within the stipulated period without any sufficient cause.

24. I reiterate that, Respondent Gulabrao had also been disqualified vide the same order dated 3.11.2014. In WP No. 13489/2017, it was argued that the disqualification order dated 3.11.2014 would prohibit Respondent No.5 in the said writ petition from contesting the election only of Zilla Parishad or panchayat Samiti and not the election of Sarpanch of Grampanchayat. The Hon'ble Division Bench of this court, after having discussed the law in this regard, turned down the argument, as aforesaid, and has held that the disqualification order dated 3.11.2014, was equally applicable for the election to the Sarpanch of the Grampanchayat. As noted herein above, the judgment

delivered by the Hon'ble Division Bench of this court in WP No.13489/2017 was challenged before the Hon'ble Apex court in SLP(Civil) No.9216/2018. The Hon'ble Apex court has dismissed the said Special Leave Petition. The order passed by the Hon'ble Division Bench has thus attained finality.

25. As observed earlier, learned counsel Shri Sapkal, appearing for respondent Gulabrao, has fairly conceded the legal position settled as above. I have, therefore, no hesitation in holding that the Returning Officer had wrongly accepted the nomination of respondent Gulabrao to contest the election for the post of Sarpanch of village Mukti. The objection raised to the nomination of respondent Gulabrao by petitioner Pradip Nimba Patil was thus turned down by the Returning Officer for wrong reasons. In view of the law laid down by the Hon'ble Division Bench in WP No.13489/2017, the decision of the Returning Officer to accept the nomination of Respondent No.5 for the election to the post of Sarpanch of village Mukti, has to be set aside and it is accordingly set aside. It is held that on the date of nomination, respondent

Gulabrao was not eligible to contest the election to the post of Sarpanch of village Mukti.

26. It is, however, the matter of record that since the nomination of respondent Gulabrao was held valid by the Returning Officer, he contested the election and also got elected as Sarpanch of village Mukti. In this background, it has been argued by learned counsel Shri Sapkal that the election of Respondent No.5 now can only be questioned by filing a proper election petition under section 15 of the MVP Act and not by any other mode.

27. The submission so made by Shri Sapkal was strongly opposed by the learned Sr.Counsel Shri Hon as well as learned counsel Shri Mukul Kulkarni, appearing in WP Nos.11929/2017 and 13711/2017 for the respective petitioners therein. The learned counsel submitted that WP No.13489/2017 was also directly filed in this court by a defeated candidate in the election of Sarpanch of village Phagane and the election of Respondent No.5 therein was sought to be set aside only on the ground that

on the date of his nomination, the order dated 3.11.2014 passed against him by Collector Dhule was in force whereby, he was disqualified from contesting the election for next five years. The learned counsel submitted that the Hon'ble Division Bench in the aforesaid writ petition has declared the election of respondent No.5 therein to the post of Sarpanch of Grampanchayat Phagane as *void ab initio* and has accordingly set aside the said election. The learned counsel submitted that though said order was challenged by respondent No.5 therein before the Hon'ble Apex court, no interference has been caused by the Hon'ble Apex court in the said order. The learned counsel submitted that in view of the decision in WP No. 13489/2017, the objection, as has been raised on behalf of the petitioner, deserves to be rejected.

28. The learned Sr.Counsel, placing reliance on the judgment of the Hon'ble Apex court in the case of K.Prabhakaran Vs. P.Jayarajan – 2005(1) SCC 754, submitted that whether or not the nomination was improperly accepted has to be determined by reference to the date fixed for the

scrutiny of nomination and the said date is focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat for which the elections are declared.

29. After having considered the submissions on the issue and after having gone through the material on record, it is difficult to accept the argument advanced by learned counsel Shri Sapkal that election of respondent-Gulabrao cannot be questioned in the present petition. It is true that if the validity of any election of member of a Panchayat or Sarpanch of the Village Panchayat is to be questioned, the normal course would be to file such application/petition under Section 15 of the MVP Act. In the instant matter, the circumstances are bit different. Clause 6 of the order passed by this Court (Coram:Ravindra V.Ghuge,J.) on 28th September, 2017, is material in this regard, which reads thus, -

"6. It is made clear that election of Respondent No.6, if he is so elected, shall be subject to the

result of this petition."

30. The aforesaid order has not been challenged by Respondent No.6 Gulabrao. In the circumstances, now it is not open for respondent Gulabrao to say that since now he has got elected as Sarpanch of village Mukti, his said election cannot be questioned in the present petition. Moreover, as pointed out by learned Sr.Counsel Shri Hon and learned counsel Shri Mukul Kulkarni, in WP No.13489/2017, the petitioner therein had challenged the election of Respondent No.5 therein, who was elected as Sarpanch of the Grampanchayat Phagane on the ground that his nomination was illegally accepted by the Returning Officer though said Respondent No.5 was not qualified to contest the said election since he was disqualified by Collector, Dhule vide his order dated 3.11.2014 to contest any election for next five years. This court has allowed the said writ petition and has accordingly set aside the election of respondent No.5 therein. It need not be repeated that though the order passed in WP No.13489/2017 was questioned before the Hon'ble Apex court in Special Leave

Petition, the said SLP has been dismissed by the Hon'ble Apex court.

31. Moreover, as held by the Constitution Bench of the Hon'ble Apex court in the case of K.Prabhakaran Vs. P.Jayarajan – 2005(1) SCC 754, (cited supra) the date of election and the scrutiny of nomination are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat for which the elections are declared.

32. Section 13(2A) of the Maharashtra Village Panchayats Act qualifies only to such person to contest the election of Sarpanch, who is not disqualified under the Maharashtra Village Panchayats Act or under any other law for the time being in force. In other words, it prohibits the person to contest the election of Sarpanch if he is disqualified under any law for the time being in force. Now, there has remained no doubt that Gulabrao Patil is disqualified from contesting the election for next five years, vide order passed by Collector, Dhule on 3.11.2014 in the matter arising

out of the election of Panchayat Samiti. As interpreted in the judgment delivered by Hon'ble Division Bench of this Court in WP No.13489/2017, the disqualification incurred by Gulabrao Patil under the provisions of The Maharashtra Zilla Parishads and Panchayat Samitis Act would be equally applicable for the election of Sarpanch under the provisions of the Maharashtra Village Panchayats Act. On the date of the scrutiny of the nomination, i.e. on 25.9.2017, the order dated 3.11.2014 was in force. Gulabrao Patil was thus not qualified on the said date to be nominated for and to contest the election to the post of Sarpanch of village Mukti.

33. Now, the petition filed by respondent – Gulabrao, i.e. WP No. 3846/2018, challenging the order dated 3.11.2014 also has been dismissed by this court, meaning thereby that the order dated 3.11.2014 has been confirmed against respondent – Gulabrao. Thus, on the date of filing the nomination to the election for the post of Sarpanch, Grampanchayat Mukti as well as on the date of scrutiny of the said nomination,

respondent-Gulabrao was not qualified to contest the said election. When Gulabrao was actually and as a fact disqualified from filing nomination and contesting the election on the date of scrutiny of nomination, the disqualification incurred by him on said focal date will not be wiped out on the ground that irrespective of such disqualification, voters elected him as the Sarpanch. In such circumstances, his election has to be declared as *void ab initio*. In the circumstances, the election of respondent Gulabrao to the post of Sarpanch, Grampanchayat Mukti, has to be declared void ab initio and, therefore, deserves to be quashed and set aside.

WRIT PETITION NO. 13711/2017

34. The present petition is filed by the candidate, who got defeated in the election of Sarpanch of village Mukti against respondent Gulabrao. In the present petition also, prayer is made to quash and set aside the order dated 25.9.2017 passed by the Returning Officer in respect of acceptance of the nomination form of

respondent-Gulabrao and a further prayer is also made for setting aside the election of respondent Gulabrao to the post of Sarpanch of village Mukti. One more prayer is made in this petition that the petitioner be declared to have been elected as Sarpanch, Grampanchayat, Mukti in view of the fact that he has secured second highest votes in the said election. Similar prayer was made even in WP No. 13849/2017 by the defeated candidate to declare him to have been elected on setting aside the election of the elected candidate. The said request has however, been rejected. The same course would follow in the present matter also. Relying upon the judgment in the case of Vishwanatha Reddy Vs. Konappa Rudrappa Nadgouda and Anr. - 1969 SC 604, Advocate Shri Mukul Kulkarni, though urged to grant prayer of the petitioner to declare him as elected Sarpanch, it is difficult to accept his request for the reason that the petition in the Hon'ble Apex court was under the provisions of the Representation of the People Act, wherein the specific provision is existing to declare the person securing second highest votes in the event the election of the

elected candidate is set aside for any reason. No such provision is there in the MVP Act. In the circumstances, the said request made by the petitioner in WP No. 13711/2017 has to be rejected.

35. In the foregoing circumstances and for the reasons recorded as above, following order is passed, -

ORDER

i. WP No.3846/2018 is dismissed without any order as to costs.

ii. WP No.11929/2017 is allowed in the following terms, -

a. Order dated 25.9.2017 passed by Respondent No.4 is quashed and set aside. Consequently, the election of respondent No.6 – Gulabrao Aananda Patil to the post of Sarpanch, Grampanchayat, Mukti is declared void ab initio and hence quashed and set aside.

iii. WP No.13711/2017 is partly allowed in the following terms, -

a. Order dated 25.9.2017 passed by Respondent No.4 is quashed and set aside. Consequently, the election of respondent No.5 – Gulabrao Aananda Patil to the post of Sarpanch, Grampanchayat, Mukti is declared *void ab initio* and hence quashed and set aside.

b. The prayer of the petitioner to declare him elected as Sarpanch of Grampanchayat, Mukti stands rejected.

(P.R.BORA)
JUDGE

LATER ON:

. Learned Counsel Shri Sapkal prayed for staying the effect of the present judgment and order for next six weeks. On the date of scrutiny of the nomination, petitioner Gulabrao was not qualified to contest the election of Sarpanch for the reason that Collector, Dhule, vide his order dated 3.11.2014, had disqualified him from contesting any election for next five years from the date of his order. The nomination of Gulabrao was, in fact, objected on that ground, but was wrongly rejected by the Returning Officer,

observing that the said disqualification was restricted to elections of Zilla Parishads and Panchayat Samitis only and not for the elections of Sarpanch of Grampanchayat. In view of the law laid down by the Division Bench of this Court, which has not been interfered with by the Hon'ble Apex court though Special Leave Petition was filed against it, the disqualification incurred by petitioner – Gulabrao was equally applicable for the Grampanchayat elections also. This Court has, therefore, held the election of Gulabrao void ab initio. The order dated 3.11.2014 passed against the petitioner Gulabrao has also not been interfered with by this court. In the circumstances, I see no reason for entertaining the request made on behalf of petitioner – Gulabrao. The request is, therefore, rejected.

(P.R.BORA)
JUDGE

bdv/fldr 15.7.19.