

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6548 OF 2018

GEETABAI W/O SURESH KALE ... PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND ORS. ... RESPONDENTS

WITH
WRIT PETITION NO. 6572 OF 2018

GANESH S/O BAPURAO KALE ... PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND ORS. ... RESPONDENTS

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Mr. D.S. Bharuka, Advocate for the Petitioners
Mr. K.B. Jadhavar, AGP for Respondent Nos. 1, 3 & 4
Mr. M.K. Bhosale, Advocate for Respondent No.2

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CORAM : V. K. JADHAV, J.
DATED : 9th DECEMBER, 2019

PER COURT :-

1. Both the writ petitions are taken up for final disposal at admission stage. By consent heard both the sides.

2. In both the writ petitions, by separate order dated 12.02.2018, the learned Collector, Parbhani held that the petitioners herein have incurred the disqualification under Section 14 (1) (g) of the Maharashtra Village Panchayats Act,

1958 and by separate orders dated 13.06.2018, the learned Additional Commissioner, Aurangabad has confirmed the said orders. Hence, this writ petition.

3. Learned counsel for the petitioners submits that Section 14(1)(g) of the Maharashtra Village Panchayats Act cannot be invoked in the facts and circumstances of the present case and as such, the impugned orders are thus liable to be quashed and set aside. Learned counsel submits that in the election of year 2015, petitioner - Geetabai Suresh Kale in Writ Petition No.6548 of 2018 was elected as a Member of Grampanchayat of Village Dhanora Kale, Taluka Poorna, District Parbhani and Petitioner - Ganesh Bapurao Kale in Writ Petition No.6572 of 2018 was also elected as a Member of same Grampanchayat. Respondent no.2 herein has filed an application before the learned Collector, Parbhani contending therein that both the petitioners have incurred the disqualification on the ground that the petitioners were not having toilets in their residential houses owned by them. Learned counsel submits that except this ground, no other

ground has been raised in their applications filed by respondent no.2. Learned counsel submits that the concerned Village Development Officer, Grampanchayat Office, Dhanura Kale, Taluka Poorna has issued the certificate in respect of both the petitioners certifying thereby that both the petitioners are having the toilets in their respective residential houses and they are using it regularly. Learned counsel submits that both the authorities below have thus held that the petitioners have not incurred any disqualification in terms of the provisions of Section 14 (j-5). Learned counsel submits that so far as the disqualification held to be incurred by the petitioners in terms of the provisions of Section 14 (1) (g) is concerned, contrary to the facts and circumstances of the present case, both the authorities below have held that the petitioners incurred the qualification in terms of 14 (1) (g) of the Maharashtra Village Panchayat Act. Learned counsel submits that there are allegations to the effect that the petitioners have availed the benefit of scheme of 'Swacha Bharat Abhiyan' and they have received an amount of Rs.12,000/- as a subsidy (Anudan) for

completion of toilets in their respective residential houses. Learned counsel submits that if the petitioners have availed certain benefits of scheme by filing an application to that effect and if they have been selected as one of the beneficiaries, the provisions of Section 14 (1-g) are not attracted and as such, they cannot be held to be disqualified. Learned counsel for the petitioner submits that even if any enquiry is conducted by the authority concerned in respect of the allegations about availing the benefit under the said Swacha Abhiyan Scheme by the petitioners falsely, the said enquiry has been conducted behind the back of the petitioners without giving any notice. Learned counsel submits that both the petitions deserves to be allowed and impugned orders are thus liable to be quashed and set aside.

4. Learned counsel for the petitioners in order to substantiate his contentions placed reliance in the case of ***Pratibha Sanjay Hulle Vs. Additional Collector & Ors.*** reported in ***2010 (4) Bom. C.R. 700.***

5. Learned counsel appearing for respondent no.2 supports the order passed by the authorities below. Learned counsel submits that the petitioners have availed the benefit of Swacha Abhiyan Scheme and received Rs.12,000/- as a subsidy for the same toilets, which have been already completed prior to filing of nomination for contesting the election of the Member of Grampanchayat. Thus, both the petitioners have incurred the disqualification in terms of Section 14 (1) (g) and there is no substance in both the writ petitions. The writ petitions are liable to be dismissed.

6. Learned counsel for respondent no.2 in order to substantiate his contentions placed reliance on the following cases:

(i) **Ashabai w/o Laxman Gawande Vs. Additional Commissioner, Amravati Dvn., Amravati and Ors.** reported in **(2005) 3 Mah. L.J. 183**

(ii) **Rustamji Nasarvanji Dangor Vs. Jeram Kunverji Ganatra and Ors.** reported in **(1976) 4 SCC 500**

(iii) **Nandakumar Sharad Parab Vs. Shri Nhanu Sahadeo Savant and ors.** reported in **2016 (1) Bom. C.R. 819**

(iv) Sheela Nandkishor Ingle Vs. Additional Commissioner, Amravati Division and Ors. reported in 2019 SCC Bom. 236

(v) Sou. Gita Vijay Somankar Vs. Divisional Commissioner, Nagpur and Ors. reported in 2018 SCC Bom. 2943

7. I have also heard the learned AGP for respondent – State. Learned AGP supports the order passed by the authorities below.

8. In the year 2015, the petitioners herein have filed nomination for contesting the election of Grampanchayat of village Dhanora Kale, Taluka Poorna, District Parbhani. At the time of filing of nomination, both the petitioners have filed affidavits and certificates as contemplated under Section 14 (j-5). However, after they were elected as a Member of the said Grampanchayat for the year 2016 and 2017, when village Dhanora Kale was declared to be a village, entitled to claim the benefit under 'Swacha Bharat Abhiyan', both the petitioners have filed an application for availing the benefit under that scheme and received an amount of Rs.12000/- as a subsidy for construction of the toilets in their respective residential houses. It is thus clear that they have used their

position as a Member of Grampanchayat, inserted their names as a beneficiaries in the said scheme and received an amount of Rs.12000/- as a subsidy for construction of the toilets, which was already in existence in their respective houses as certified by the Grampanchayat. They were using it before filing of the nomination to contest the election of the Grampanchayat. During the course of hearing, the Block Development Officer has submitted the report dated 13.12.2017 with annexures and it has been revealed in the said enquiry that both the petitioners have submitted application on 05.09.2016 stating therein that they have completed the construction of toilets in their respective houses after implementation of the said scheme in village and as such, they are entitled for the amount of subsidy. Even the said subsidy amount has been paid to the petitioners through their bank account. It has also been revealed during the course of enquiry that the petitioner - Ganesh was elected as a Sarpanch and in the resolution passed by Gramsabha his name was inserted as a beneficiary. In view of this, I find no fault in

the orders passed by the authorities below. There is no substance in both the writ petitions. Hence, I proceed to pass the following order:

ORDER

(I) The Writ Petition No. 6572 of 2018 and Writ Petition No.6548 of 2018 are hereby dismissed.

9. Both the writ petitions are accordingly disposed of.

(V. K. JADHAV, J.)

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