

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9087 OF 2018

Rukhminibai Badrinath Shedage,
Age 45 years, Occ. Household /
member of Village Panchayat,
Dhakalgaon Tq. Ambad, Dist. Jalna.

..Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai 32.

2. The State Election Commission,
State of Maharashtra.

3. The Divisional Commissioner,
Aurangabad Division, Aurangabad.

4. The Collector, Jalna.

5. The Dy. Chief Executive Officer,
Water Supply and Sanitary,
Zilla Parishad, Jalna.

6. The Block Development Officer,
Panchayat Samitee, Ambad,
District Jalna.

7. The Gramsevak,
Village Panchayat, Dhakalgaon
Tq. Ambad, District Jalna.

8. Ijatkha Sujatkha Pathan,
Age 46 years, Occ. Agriculture,
(Ex-Sarpanch and father of
Running Sarpanch), Resident of
Dhakalgaon, Tq. Ambad,
District Jalna.

..Respondents

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Advocate for Petitioner : Shri Rajput Deepak K.
AGP for Respondents 1,3,4: Shri Munde S.W.
Advocate for Respondent 2 : Shri Shelke S.T.
Advocate for Respondents 5 & 6 : Shri Yadav S.R.
Advocate for Respondents 7 & 8 : Shri Dhengle B.A.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: April 25, 2019

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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. The petitioner, who was a member and Up-Sarpanch of Village Gram Panchayat, Dhakalgaon, Tq. Ambad, District Jalna is aggrieved by the order dated 22.2.2017 passed by the Additional Collector, Jalna disqualifying her under Section 14(1)(g) of the Maharashtra Village Panchayat Act and the order dated 4.5.2018 passed by the Additional Divisional Commissioner, Aurangabad sustaining such disqualification.
5. The petitioner submits that she is a resident of village Dhakalgaon and her name is included in the valid voters list. She

contested the elections of the said village from Ward No.1, which was reserved for Women from the General Category. The polling took place on 1.11.2015 and she was declared elected on 3.11.2015. She has tendered the necessary resolution from the panchayat as well as the Block Development Officer, indicating that she has a toilet, constructed by her husband, in her residence and she is using the same.

6. It is submitted that the first meeting of the panchayat took place on 13.11.2015 and she was declared elected as the Up-Sarpanch. The son of respondent No.7, who is the original complainant, was elected as a Sarpanch. The complainant has raised a ground that the monetary benefit of the Swachha Bharat Mission (Rural), under the Government Resolution dated 7.11.2013, was extended to the husband of the petitioner on 21.12.2015, when he accepted Rs.12,000/- for construction of a toilet. The petitioner, being wife of the person who has accepted money from the Village Panchayat for construction of a toilet, has, therefore, incurred the disqualification under Section 14(1)(g) of the said Act.

7. The learned AGP and the learned Advocate for Respondent Nos.7 and 8 have supported the impugned order and submit that there are concurrent findings against the petitioner.

8. Section 14(1)(g) of the said Act reads as under:-

"14. Disqualifications - (1) No person shall be a member of a Panchayat, continue as such, who -

(a) to (f)

(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 under, the Panchayat, or"

9. The record reveals that the husband of the petitioner Badrinath Shedge had applied for grants for construction of the toilets under the Swachha Bharat Mission (Rural) - BLS 2012 Scheme. It was a scheme, which was funded by the Central Government and the State Government. An amount of Rs.9,000/- per person was contributed by the Central Government and the amount of Rs.3,000/- per person was contributed by the State Government. After the toilet is constructed by an applicant, he would receive reimbursement to the extent of Rs.12,000/- only, under the said Scheme.

10. The Government Resolution dated 7.11.2014 also indicates the manner in which the Central and State Governments were to

contribute towards the construction of toilets. The said Government Resolution, indicates the manner in which the Scheme was to be implemented through the Zilla Parishad and the Block Development Officer was the sanctioning authority.

11. The record undisputedly reveals that the husband of the petitioner had applied for such grants and his name was included amongst the beneficiaries of the 2012 scheme. The record also reveals that his name was included in the beneficiaries list after he had constructed the toilet on 2.11.2014. The list of beneficiaries was published on 14.12.2015 and he received the reimbursement on 21.12.2015.

12. Section 14(1)(g) prescribes a disqualification of a person, who 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 the panchayat. The facts emerging from the record in this case do not indicate that any developmental activity was ordered by the panchayat and that the husband of the petitioner had developed any interest or share in any work done, directly or indirectly by the panchayat. The scheme floated by the Central Government is with regard to ensuring hygienic health conditions and encouraging citizens to build and use toilets. The

funding was by the Central Government and the State Government and not by the panchayat. A candidate was at liberty to construct a toilet after getting himself enrolled in the Scheme and thereafter, he was eligible to receive reimbursement to the extent of Rs. 12,000/-.

13. In Sau. Nandabai Ramesh Wakude Vs. Shivprasad Waman Wakude and others - Writ Petition No.7294 of 2014, decided at Nagpur on 11.3.2015, this Court dealt with the case of the Gharkul Scheme. It was concluded that, as the Gharkul Scheme was not sponsored by the panchayat and was a Scheme that was being implemented by the Social Welfare Department of the State Government, it would not amount to a Scheme introduced or implemented by the panchayat.

14. In the instant case, the sequence of events are self explanatory. The husband of the petitioner built his own toilet, got himself enlisted in the Scheme and received the reimbursement on 21.12.2015, though after his wife got elected as a Member on 3.11.2015. His name was already entered in the list of beneficiaries in the Scheme of 2012 and after it was verified that he had constructed his own toilet on 2.11.2014, he received the reimbursement on 21.12.2015, being a small and marginal farmer.

15. In view of the above, I find that both the authorities below have failed to apply their mind to these facts and circumstances and have mechanically concluded that the petitioner had incurred the disqualification on account of her husband having developed an interest in the work of the panchayat.

16. Considering the above, this petition is allowed. The impugned orders passed by the Additional Collector and the Additional Divisional Commissioner are quashed and set aside.

17. The petitioner shall stand reinstated in her position as a Member and the Up-Sarpanch, keeping in view that vacancy, after her disqualification, has not been declared and there has been no election owing to the interim order of this Court.

(RAVINDRA V. GHUGE, J.)

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