

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
(1) WRIT PETITION NO.9409 OF 2019

Eknath s/o Ramadhan Chavan

Petitioner

Versus

The State of Maharashtra
& others

Respondents

WITH
(2) WRIT PETITION NO. 9410 OF 2019

Aruna w/o Ankush Rathod

Petitioner

Versus

The State of Maharashtra
& others

Respondents

WITH
(3) WRIT PETITION NO. 9411 OF 2019

Chandrakala Vinod Jadhav

Petitioner

Versus

The State of Maharashtra
& others

Respondents

WITH
(4) WRIT PETITION NO. 9412 OF 2019

Bhimrao s/o Shriram Rathod

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Sanjay s/o Namdeo Rathod

The State of Maharashtra & others	Respondents
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Mainabai w/o Ramesh Chavan	Petitioner
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The State of Maharashtra
& others

Respondents

Anita w/o Hari Rathod Petitioner

The State of Maharashtra & others	Respondents
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Mr. S.S. Tope advocate for the petitioner.
Mr. S.R. Yadav-Lonikar, AGP for Respondents no. 1 to 4.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th August, 2019

PER COURT:

1 On 30.07.2019, I had passed the following order:

"1 In all these petitions, the petitioners are aggrieved by their disqualification, vide order dated 31.3.2018, passed by the District Collector, Jalna. These petitioners are held to have incurred the disqualification under Section 14B(1)(a) & (b) of the Maharashtra Village Panchayat Act. They are also aggrieved by the identical orders dated 22.3.2019 passed by the Additional Divisional Commissioner, Aurangabad, dismissing their Appeals.

2 Reliance is placed upon the judgment of this Court in the matter of Savitribai Kisan Shinde Vs. The Additional Divisional Commissioner and others - Writ Petition No.197 of 2018, dated 14.2.2018, and the order dated 25.9.2018, delivered in the matter of Jagannath Bhujangrao Pawar and others Vs. The Divisional Commissioner, Aurangabad and others - Writ Petition No.4015 of 2018. It is, however, pointed out that the order of this Court, dated 14.2.2018, is referred to in a subsequent order dated 4.9.2018, in the matter of Kaveri Rahul Waghmare and others Vs. State of Maharashtra and others - Writ Petition No.101 of 2018 and it has been ordered that the judgment in the case of Savitribai (supra) shall not be cited as a precedent.

3 Reliance is also placed upon the judgment of this Court in the matter of Shakti Balkrushna Mhatre Vs. Returning Officer [2015 (3) Mah.L.J. 275].

4 The learned Advocate for the petitioners strenuously submits that not a single petitioner was issued with a show cause notice before concluding that they have no good reason or justification in not submitting the accounts of election expenses. It is stated that this averment has been made on oath and the State can point out from any document as to whether any notice of hearing was issued to these petitioners. They did not get the opportunity of making out a case under Section 14B (1)(b) of the said Act.

5 The learned AGP has strenuously defended the impugned order and submits that though the elections were concluded and the results were declared on 4.11.2015, not a single petitioner tendered accounts of election expenses upto 31.3.2018, when the Collector disqualified these petitioners. He submits that both the impugned orders are well reasoned. He then refers to a statement made by each of these petitioners on Rs.100/- non-judicial stamp paper declaring on 15.5.2018 that they had not

incurred any expenditure for contesting the elections as they were declared elected unopposed, mostly, on account of reservation.

6 *The learned AGP, however, as on date, due to lack of sufficient instructions, is unable to point out a reference to any show cause notice issued by any revenue authority to these petitioners prior to the District Collector invoking his powers under Section 14B. He, however, submits that the impugned order would indicate some sort of a notice being issued and if this Court grants time, the revenue authorities can produce the entire record for the assistance of this Court.*

7 *In view of the above, issue notice to the respondents, returnable on 20.8.2019. To be listed in Urgent Orders Category.*

8 *Learned AGP waives service for respondent Nos.1 to 4.*

9 *Learned Advocate waives service for respondent No.5.*

10 *The learned AGP would ensure that the relevant record and proceedings are placed before this Court for perusal on the next date.*

11 *Until the returnable date in this matter, if no vacancies have been declared and no elections have been announced to fill in the posts, which are said to have fallen vacant on account of the disqualification of these petitioners, as on date, the respondents/authorities would refrain from declaring elections. Though these petitioners would, therefore, be protected to the extent of their position not being declared vacant, they shall be precluded from seeking payment of allowances in their capacity as Members and shall not be entitled to vote on any subject, which may invite a voting amongst the members of the Gram Panchayat, Govindpur. They may, however, attend the meetings of such Panchayat. The Sarpanch, amongst these petitioners, would be at liberty to hold the Gram Sabha and the monthly meetings and also participate in the Flag Hoisting Ceremony on Independence Day.*

2 The learned AGP, appearing on behalf of the statutory authorities, has submitted that he has the record available. When called upon as to where is the Register which contains the acknowledgment of notices served upon these petitioners, he

submits, on instructions, that he has produced the record that was made available from the office of the District Collector, Jalna. I find that there is no document shown to the Court from the said record which would indicate that these petitioners were served with a notice of hearing under Section 14B(1) of the Maharashtra Village Panchayats Act. In the absence of any evidence, the contention of the petitioners that they were never served with any notice, will have to be accepted.

3 Notwithstanding the above, the fact remains that if the notice of hearing was not served upon the petitioners, apparently, they were not heard by the District Collector, who is the competent authority. No order could be passed without hearing these parties considering the law laid down by this Court in paragraph no.15 of the judgment delivered in the case of **Savitribai Kisan Shinde Vs. Additional Divisional Commissioner, Aurangabad and others** (Writ Petition No.197 of 2018, dated 14.2.2018).

4 Considering the above, it is obvious that each of these petitioners is charged with having failed in submitting their accounts of election expenses. This is the only charge levelled against them. They have to tender an explanation under Section

14B(1)(b), which has to be considered by the District Collector.

5 As such, the petitioners and the Respondents agree to treat this observation as a notice having been issued by Respondent No.3 – the District Collector and they shall remain present before the District Collector, Jalna, on 18th September, 2019 at 2.00 p.m.

6 Each one of the petitioners would submit a written say supported with an affidavit. They are permitted to take the assistance of an advocate in the matter. After the hearing is concluded, Respondent No.3 shall deliver a reasoned order in each of these matters, on or before 15.11.2019. However, Respondent No.3 shall take care to inform the petitioners as regards the date of the pronouncement of the order and the time so that they can remain present on the said date and note the decision in their matter.

7 Until the decision to be declared by Respondent No.3, the order passed by this Court on 30.07.2019 shall remain in force.

RAVINDRA V. GHUGE
JUDGE

adb/