

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

961. WRIT PETITION NO. 322 OF 2017

1. Smt. Sarla Dashrath Patil, age 40 years
2. Smt. Kokila Pandharinath Marathe, age 45 years
3. Jagdish Deoram Bagul, age 47 years,
4. Suresh Sahebrao Patil, age 46 years

All agriculturists by occupation and
R/o Mordad Taluka and District Dhule.

...Petitioners

VERSUS

1. The State of Maharashtra
through : the Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Nashik Division, Nashik Taluka and District Nashik.
3. The Collector,
Dhule District Dhule
4. Govinda Shivaji Patil,
age adult occupation agriculture
R/o Mordad Taluka and District Dhule
5. *Gram Panchayat*,
Mordad Taluka and District Dhule
through its Gram Sevak.

...Respondents

Mr. Amol S. Sawant, Advocate for petitioners
Mr.S.B. Pulkundwar, Asstt.Govt.Pleader for respondents No. 1 to3
Mr. Ujwal S. Patil, Advocate for respondent No.4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 5th February, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally with consent.

2. After hearing learned counsel for the parties, it transpires that petitioners were declared elected as members of *Gram Panchayat*, Mordad, on 6th August, 2015.

3. According to petitioners, they had submitted details of election expenses with the Returning Officer on 27th August, 2015. Thereafter, on 3rd December, 2015 the Returning Officer telephonically informed *ex-sarpanch* of the *Gram Panchayat* that the petitioners' accounts of election expenses are missing and that he had requested to re-furnish it with the Returning Officer. Accordingly, petitioners have submitted the accounts of election expenses again on 29th December, 2015.

4. Subsequently, respondent No.4 had filed *Gram Panchayat* dispute bearing No. 135 of 2015 before the collector seeking disqualification of petitioners pursuant to section 14B of the Maharashtra Village *Panchayats* Act, 1959 (hereinafter referred to as "the Act") for non submission of accounts of

election expenses as per the prescription thereunder.

5. Petitioners resisted the dispute. It appears that the Returning Officer had been examined, however, according to petitioners, he had not been allowed to be cross-examined on behalf of petitioners and the dispute had been decided against petitioners and appeal therefrom as well has been rejected.

6. The authorities *i.e.* the collector and the commissioner in their decisions have observed to the effect that besides their statement about submission of account of election expenses on 27th August, 2015 and about telephonic call around 3rd December, 2015 no credible material evidence had been placed on record by petitioners and despite opportunity, petitioners had failed to adduce proper evidence.

7. Learned counsel for petitioners has submitted that subsequent to decision by the appellate authority *i.e.* the commissioner, petitioners have received requisite documents depicting telephone call by the Returning Officer where he purportedly had accepted submission of account of election expenses.

8. There also appears to be a communication dated 4th December, 2015 addressed by Public Information Officer to

respondent No.4 referring to that alongwith nominations, accounts of election expenses had been submitted, however, the papers were blank.

9. In the circumstances, in order to have fair play while unseating and disqualifying elected persons is a serious matter, let the parties to have opportunity to deal with the dispute anew since the orders are deficient in respect of consideration of communication dated 4th December, 2015 and about opportunity to cross-examine the Returning Officer and which subsequently evidence is being claimed to be available.

10. In the circumstances, orders passed by the commissioner and the collector are set aside without affecting prevailing position in order to enable petitioners and respondents have adequate opportunity to deal with the case afresh. The writ petition, therefore, succeeds to aforesaid extent.

11. Petitioners in the meanwhile until decision by the collector, would not be able to claim benefit of the writ petition and orders therein.

12. Needless to refer to that the matter is wide open on merits for contest for parties concerned before the collector. Observations in this order shall not influence decision making in

the dispute.

13. The collector to proceed with the matter expeditiously and dispose of the same within a period of two months from the date of receipt of writ of this order.

14. Parties to appear before the collector on 15th March, 2019.

15. Rule is made absolute in aforesaid terms.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar