

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8168 OF 2017**

1] Smt. Banabai Ramchandra Kamble,	]
Age: 55 years, Occ: Household	]
2] Shri Nemgonda Chandgonda Patil,	]
Age: 51 years, Occ: Agriculturist	]
3] Shri Ramesh Pandurang Dhanawade,	]
Age: 35 years, Occ: Agriculturist	]
4] Shri Yogendra Baban Dhanawade,	]
Age: 32 years, Occ: Agriculturist	]
5] Sou. Savita Shivram Mohite,	]
Age : 30 years, Occ: Household	]
6] Sou. Surekha Anil Patil,	]
Age: 40 years, Occ: Household	]
7] Smt. Akkatai Babu Sutar,	]
Age: 70 years, Occ: Household	]
8] Sou. Neeta Ashok Thomke,	]
Age: 35 years, Occ: Household	]
All Nos. 1 to 8 are residing at Village	]
Nimshirgaon, Tal: Shirol, Dis: Kolhapur	]Petitioners.

V/s

1] Ld. Additional Commissioner, Pune	]
Division at Pune.	]
2] Ld. Additional Collector of Kolhapur	]
3] Shri Shantikumar Balgonda Patil,	]
Age: 43 years, Occ: Agriculturist	]
4] Shri Shakil Bapu Attar,	]
Age: 45 years, Occ: Agriculturist	]
5] Shri Ajit @ Adgonda Babgonda Patil	]
Age: 50 years, Occ: Agriculturist	]
6] Shri Paygonda Kalgonda Patil,	]
Age: 45 years, Occ: Agriculturist	]
7] Shri Arun Paygonda Patil,	]

Age: 53 years, Occ: Agriculturist]
8] Shri Sudarshan Bhupal Magdum,]
Age: 35 years, Occ: Agriculturist]
Respondents Nos. 3 to 8 are residing at]
Nimshirgaon, Tal: Shirol, Dist: Kolhapur] Respondents.

Mr. Vaibhav Gaikwad for Petitioner No.1 in Writ Petition.

Mr. Manoj P. Patil for Petitioner Nos. 2 to 8 in Writ Petition and for the Applicants in Civil Application.

Mr. A.B. Kadam, AGP for Respondent No.1.

Mr. Sandeep Koregave for Respondent Nos. 3,4, 6 to 8.

CORAM: NITIN W. SAMBRE, J.

DATE: 25th June, 2019

ORAL JUDGMENT:

1] Heard finally by consent of parties.

2] All these Petitioners were elected as members of Nimshirgaon Grampanchayat in District Kolhapur in 2015.

3] Application under Section 14 of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as “the Act” for the sake of brevity) came to be moved by the Respondents, seeking disqualification of the Petitioners on 16/5/2016 on the grounds that

(a) the Petitioners have mismanaged the administration of Village Panchayat and illegally formed sub-committees, (b) they have not taken steps for removal of encroachments, rather supported the encroachers, (c) drawn funds for personal gains/interest.

4] The said application was replied by the Petitioners through a detailed reply. Based on the reply submitted by the Petitioners, the Respondent-Collector by an order impugned dated 05/08/2016, was pleased to disqualify the Petitioners in exercise of powers under Section 14(1)(g) of the said Act.

5] The Petitioners against disqualification carried an appeal before the Additional Commissioner, Pune, which came to be dismissed on 22/11/2016. As such, this Petition.

5] The learned Counsel appearing on behalf of the Petitioners made two-fold submissions. Firstly, the Application made for disqualification is too vague to be answered by the Petitioners. The Petitioner Nos.1 and 2 are Sarpanch and Upa-Sarpanch respectively, cannot be proceeded under Section 14 since there is a separate

procedure contemplated under Section 39 of the said Act, which requires calling for report from Chief Executive Officer, in case if conduct of the Sarpanch and Up-Sarpanch is disgraceful or they are found to be guilty of misconduct. The learned Counsel then would urge that even if allegations against the Petitioners are taken to be true on its face value, without admitting the same, still there are no findings recorded by either of the authorities that the Petitioners in any way are benefited in the alleged act of purchase of sarees or such other act as has been alleged which is found to be the basis for their disqualification.

6] The learned Counsel would also rely upon the report of the Chief Executive Officer dated 10/04/2018, so as to substantiate his contention that other than Sarpanch, rest of the Petitioners cannot be held responsible for the alleged act, which has incurred disqualification. As such, it is prayed that both the impugned orders are liable to be quashed and set aside.

7] The learned Assistant Government Pleader and the learned

Counsel for the Complainants support the orders impugned and submit that disqualification order is based on the interpretation of various Resolutions passed by Village Panchayat, which were supported by the Petitioners. According to the respective Counsel, there is sufficient material on record which rightly prevailed upon the authority for passing the order of disqualification. As such, dismissal of the Petition is sought.

8] Considered the rival submissions. Perusal of material on record and particularly the Resolution passed on 04/03/2016 vide subject No.2, categorically speaks of the amount approved for purchase of Uniforms and three Sarees. The said purchases were made by the Sarpanch of an amount of Rs 6,800/- out of which, two Sarees were provided to staff and one was taken away by Sarpanch. The fact that one of the Sarees purchased out of the funds of the Grampanchayat was taken away by Sarpanch, is well within the knowledge of the Petitioners, as could be inferred from the language which is employed in the said Resolution. All the Petitioners unanimously resolved of approving the said expenses incurred by Sarpanch. Before the said

purchase could be made, no procedure of inviting tenders or offers was followed by the members of the Grampanchayat. All the Petitioners having unanimously resolved to grant sanction to the purchase made by the Sarpanch, prima facie demonstrates that they have equally participated in the process of granting sanction to the said illegal purchase. Apart from above, persual of Resolution speaks of tampering, showing certain insertions are made in the said Resolution which, prima faice, appears to be for the benefit of the Petitioners. Applying the principle of preponderance of probabilities and the fact that insertions made in the Resolution stand contrary to the main Resolution, prima facie demonstrates very intention of the Petitioners to tamer with the record of Grampanchayat to get themselves absolved from the clutches of law viz. disqualification.

9] In view of the above, the fact remains that the order of disqualification passed under Section 14(1)(g) prima facie appears to be justified on facts and evidence.

10] This takes us to the next contention of the Petitioners that the

language of Section 14(1)(g) cannot be stretched to the extent that the Petitioner could incur disqualification for the irregularity committed in purchase of articles for the Grampanchayat.

11] Section 14(1)(g) reads thus :-

“14 [(1)] No person shall be a member of a *panchayat*, or continue as such, who-

(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 or under, the *Panchayat*,”

12] The conduct, as is noticed in the case in hand, *prima facie* demonstrates that one of the Petitioners, particularly Sarpanch, is a direct beneficiary of the illegal act of purchase of Sarees. Such an act is supported by other Petitioners by supporting Resolution, thereby granting sanction to the said purchase and that being so, Petitioners can be held indirectly responsible for the act of sharing interest in the purchases made for the Panchayat.

13] The claim of the Petitioners that the language of sub-section (g) of Section 14(1) in no way can be stretched to the extent of inclusion

of the transaction in question, to be read to the detriment of the Petitioners, in my opinion, also needs to be rejected, as this Court is required to consider very object with which the Section is brought into the statute book and the object sought to be achieved by the said provision.

14] As such, the aforesaid contentions of the Petitioners are also rejected.

15] So far as claim of the Petitioners that Section 39 of the Act provides for separate mechanism for removal of Sarpanch and Upa-Sarpanch or members is concerned, a difference could be noticed on perusal of Section 14 of the Act and Section 39. Section 14 contemplates disqualification, whereas Section 39 contemplates removal of the members or Sarpanch or Upa-Sarpanch. The procedure contemplated by exercising powers under Sections 14 and 39 of the Act and the considerations thereon are altogether different. In the case in hand, the order impugned is passed in exercise of powers under Section 14, which contemplates disqualification. Once the

authority has conducted proceedings pursuant to Section 14 for disqualification, it will be a fallacy, if this Court accepts the submission of the Petitioners that Section 39 for removal of the Petitioners should have been taken recourse to. That being so, the said contention also stands rejected.

16] In the aforesaid background, this Court hardly noticed any infirmity or material irregularity in the orders impugned, which warrants interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The Petition, as such, fails and the same is dismissed. Rule stands discharged.

17] As a consequence of above, Civil Application(s) also stand disposed of.

18] At this stage, learned Counsel for the Petitioners submits that the order of dismissal of Petition be stayed for a period of eight weeks. Considering that there is an interim order operational in favour of the Petitioners for last two years, it will be appropriate, in

my opinion, to stay the effect and operation of the Order of this Court for eight weeks, as prayed. Needless to clarify that embargo on the right of the Petitioners not to vote but to attend the meetings of Grampanchayat shall continue to operate till then.

(NITIN W. SAMBRE, J.)