

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6885 OF 2019**

Savita Sitaram Dhere

.... Petitioner.

V/s

Addl. Commissioner Pune & Others

.... Respondents.

**ALONGWITH
WRIT PETITION NO.6889 OF 2019**

Vanita Dattatray Dange

.... Petitioner

V/s

Addl. Commissioner Pune & Others

..... Respondents.

Mr. Chaitanya Nikte a/w Ms. Sneha Bhange for the Petitioner in both the above Writ Petitions.

Mr. R.P. Kadam, AGP for Respondents.

Mr. Sandeep Phatak for the Intervenor.

CORAM: NITIN W. SAMBRE, J.

DATE: 27th June, 2019

P.C.:-

1] Both these Petitions can be conveniently disposed of by this common order.

2] The order impugned is dated 20/05/2019 passed by Additional Commissioner, thereby ordering disqualification of the Petitioner from the post of Member of the Village Panchayat pursuant to the provisions of Section (40)(1)(b) of the Maharashtra Village Panchayat Act (hereinafter referred to as “the Act” for the sake of brevity). The said provision reads as under:-

“40. **Leave of absence.**-(1) Any member of *Panchayat* who, during his term of office,
(b) absents himself of six consecutive months from the meetings of the *Panchayat* without the leave of the said *Panchayat*, shall cease to be a member and his office shall be vacant.”

3] The case of the Petitioner that the Petitioner remained absent for a period of six consecutive months in the Grampanchayat in question, of which she is an elected Member, is not in dispute.

4] The learned Counsel for the Petitioner submits that the Petitioner has taken out proceedings/application with the Grampanchayat on 20/11/2017, thereby seeking leave of the Grampanchayat to remain absent for a period of three months. He

submits that the said application for grant of leave was acknowledged by the Secretary of the Village Panchayat, as is apparent from the endorsement made thereon, which is produced on record at page 18. He further submits that, once such application is submitted by the Member of the Village Panchayat, like Petitioner, consideration of the same is not within the control or domain of the Petitioner-Member. He would then urge that, in the absence of Rules governing such proceedings for grant of leave, benefit must be passed on to the Petitioner to the extent of granting leave for a period of three months and that being so, order of disqualification is not sustainable.

5] The learned Counsel would further urge that the fact that no decision was taken on the application for grant of leave, communication on such decision was not issued to the Petitioner is a matter of record. According to him, though there are certain objections as regards genuineness of leave application preferred by the Petitioner, still the fact remains that findings need not be recorded on the said issue by the authorities below. He submits that in view of the above, the order impugned of disqualification is not

sustainable.

6] The learned Assistant Government Pleader is supported by the learned Counsel for the Respondent-complainant would urge that the order impugned is based on the material/evidence as was brought to the notice of the authority who has ordered disqualification. According to them, the order passed on documents placed on record is justifiable and that being so, Petition is liable to be dismissed.

7] In the aforesaid background, if the scheme of Section 40(1)(b) is appreciated, same provides for disqualification in case of absence of Grampanchayat member for a period of six consecutive months from the meeting of the Village Panchayat and that too, without leave of the Panchayat.

8] If the case of the Petitioner, in the aforesaid background is appreciated, Petitioner has claimed to have moved an application to the Grampanchayat (which is disputed). However, the fact remains that such leave was never granted and in the absence of grant of

such leave, the order impugned does not warrant any interference.

9] Even if it is presumed that such an application was moved by the Petitioner, the Section itself contemplates grant of leave by the Village Panchayat. As far as the case in hand is concerned, it is brought on record that such leave application was never preferred by the Petitioner and by practicing fraud, a separate inward register was shown to be maintained in which the document i.e. leave application was entered.

10] Apart from above, fact remains that the application for grant of leave moved by the Petitioner is stated to be dated 20/11/2017. However, there is no acknowledgement by Gramsevak, mentioning about Outward Number so also date of receipt of such intimation from the Petitioner. As such, from the plain reading of the very same document i.e. application for grant of leave, it is clear that the said document itself is under serious doubt.

11] Prima facie, the case put-forth by the Grampanchayat against the Petitioner, particularly its Sarpanch, somewhat appears to be

probable. Had the Petitioner moved such application, the same would have been placed in the meeting of Village Panchayat for consideration. However, the authorities below have recorded finding of fact that no such application for leave was received by Grampanchayat and the Petitioner has practiced fraud by creating record to avoid her disqualification

12] In the aforesaid background, having regard to the fact that application for leave moved by the Petitioner itself was under cloud, it would be inappropriate for this Court to go into the disputed question of fact in its supervisory jurisdiction under Article 227 of the Constitution of India. That being so, no case for interference is made out. Petitions stand dismissed.

(NITIN W. SAMBRE, J.)