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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10779 OF 2017

Kalpana Dattatray Shid ..Petitioner.

V/s.

The Additional District Collector & Ors. ..Respondents.

Mr.Vivek Salunke I/b. Dinesh Shinde for the petitioner.

Mr.P.P.Pujari, AGP for respondent Nos.1, 2 & 4.

Mr.Anil D.Joshi for respondent No.5.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 28, 2019

P.C.:-

Heard respective counsel.

2. The issue which calls for consideration is, whether pursuant to the provisions of 13A of the Maharashtra Village Panchayat Act, 1958 ('the Act' for short), respondent No.5 has incurred disqualification therein.

3. Few facts necessary for deciding the petition are as under:-

The elections of Village Panchayat, Kinhavli, Taluka

Shahapur, District Thane were held on April 17, 2016 and the result of the election was declared on April 18, 2016 which was notified on April 21, 2016.

4. Since respondent No.5 Smt. Satyavati Ranjeet Kunde had failed to tender her resignation under section 13A of the Act, the petitioner filed a complaint seeking declaration that respondent No.5 has incurred disqualification.

5. The said complaint was dealt with by Additional Collector thereby ordering disqualification of respondent No.5 as respondent No.5 within a period of seven days of notification of election has failed to tender her resignation from one of the seat as she was elected from two seats in the said Gram Panchayat. The said order passed by the Collector of disqualification was subject matter of challenge in appeal before the Divisional Commissioner, Konkan Division, who has reversed the said finding and upheld the election of respondent No.5 as a member of the Village Panchayat. As such, this petition.

6. The submission of the petitioner are, that since the result of the election of the Village Panchayat was declared on April 18, 2016 which was notified on April 21, 2016, respondent

No.5 should have resigned from one of the elected post / ward within seven days as mandated under section 13A of the Act. According to him, respondent-Commissioner has committed error of law in granting latitude to respondent No.5 thereby condoning few days after the date of declaration of result on April 18, 2016 and issuance of notification on April 21, 2016, respondent No.5 has tendered her resignation within seven days as contemplated thereunder.

7. According to him, object sought to be achieved or the language of the section provides for disqualifying the elected member if he fails to submit resignation. According to him, the authority has exceeded its jurisdiction while reading down the provision of section 13A of the Act by allowing the condonation of the period of two days being public holidays. According to him, the order impugned is liable to be quashed and set aside.

8. Learned counsel for respondent No.5 and learned AGP supported the order. According to them, even if the result was declared on April 18, 2016, the fact remains that the same was notified on April 21, 2016. For calculating the period of seven days as prescribed under section 13A of the Act, the first date i.e.

April 21, 2016 is required to be ignored and as such, it can be inferred that respondent No.5 has tendered her resignation within the period of seven days. It is further claimed that few days condonation ordered by the Divisional Commissioner is very much justified even if it is not so expressly prescribed in the provision. According to him, provision can be read down to said effect. Further submission is, respondent No.5 was not keeping well after the results were declared and as such, delay caused in submitting the resignation is not intentional but is bona fide and as such, dismissal of the petition is sought.

9. Considered rival submission.

10. Section 13A of the Act reads as under :-

“13A. If a person is elected to more than one seat in a village panchayat, then unless, within the prescribed time he resigns all but one of the seats by notice in writing signed by him and addressed to the [State Election Commission or any officer authorised by it] in this behalf, all the seats shall become vacant.] “

11. Plain reading of the said section provides that if a person is elected from more than one seat in Village Panchayat and fails to resign from one seat within a period of seven days as

prescribed under Rule 41A of the Bombay Village Panchayat Rules, 1959, then the seats on which the candidate is elected shall become vacant.

12. The undisputed fact which can be borne out from record is, results of the election was declared on April 18, 2016 and the same was notified on April 21, 2016, excluding the said date i.e. April 21, 2016 the date before which respondent No.5 should have resigned from one seat is April 28, 2016.

13. Admittedly, respondent No.5 has tendered her resignation on April 29, 2016 and as such, an inference drawn by learned Collector ordering disqualification appears to be in tune with the requirement of law i.e. provisions of section 13A of the Act.

14. So far as the contention of respondent No.5 that delay of two days in submission of resignation needs to be appreciated by reading down the provisions i.e. April 23, 2016 and April 24, 2016 were public holidays, cannot be accepted for the reasons, there is no such express provisions in the statute which contemplates excluding the dates which are holidays. Something which is not expressly provided and which makes violence to the

section is not permitted to be read therein.

15. This Court is required to appreciate the object with which the provisions for disqualification is provided. The very object sought to be achieved is, the elected member should not continue with more than one elected post in case if the said candidate is elected from more than one post in the same Village Panchayat. Object sought to be achieved to in a democratically rules body, the elected member should be able to deliver and do justice with the people residing in his constituency. It can also be noticed that the right of representation cannot be concentrated in one and the same person. If the very object of the provision i.e. section 13A of the Act is appreciated, the period of seven days prescribed under Rule 41A, *prima facie* demonstrates that the section itself is mandatory. It can be read down by accepting the contention that holidays as are occurring within the period of seven days from the date of of notifying the elections to the date of submitting the resignation are to be ignored. As such, the said contention of respondents are also rejected.

16. The next submission of learned counsel for respondents are, respondents was not keeping well after her election also

cannot be considered as there is no express provisions to deal with such a cause while considering the claim for disqualification.

17. That being so, in my opinion, a case for interference is made out.

18. The order of the Divisional Commissioner dated July 6, 2017 is contrary to the provisions of section 13A of the Act read with Rule 41A of the Rules and as such, the same is hereby quashed and set aside and the order of the Collector disqualifying respondent No.5 passed on March 17, 2017 shall hold the field.

19. The petition stands allowed in the above terms.

(NITIN W.SAMBRE, J.)