

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14556 OF 2018

Latabai Kashinath Gaikwad	..Petitioner
VS.	
Namdeo Rambhau Gaikwad & Ors.	..Respondents

.....

- Mr. Prashant D. Patil, Advocate for the petitioner.
- Ms. P. J. Gavhane, AGP for respondent Nos.2, 3 and 6.
- Mr. Pratik B. Ranade, Advocate for respondent No.5.

**CORAM : C. V. BHADANG, J.
DATE : 11th DECEMBER, 2019**

P.C. :

. The challenge in this petition is to the order dated 29/9/2018 passed by the third respondent in Grampanchayat Dispute Application No.72/2017 (old application No.75/2016) by which the third respondent has held the petitioner to be disqualified for holding the post of member of Grampanchayat Ambe, Taluka Peth, District Nashik on the ground of violation of section 14(1)(j-5) of the Maharashtra Village Panchayat Act, 1958 ('Act' for short), as the petitioner had failed to show that the house in which she was residing was having a toilet, which was being regularly used. The order passed by the third respondent has been

confirmed by the second respondent on 4/9/2017 in Grampanchayat Appeal No.490/2016.

2. The brief facts are that on the basis of complaint lodged by first respondent, the Grampanchayat Dispute No.75/2016 was initiated on the file of the third respondent. It was contended that the petitioner who is the elected member of the Grampanchayat for the period from 2016 to 2021 had no toilet in the house in which she was residing and that she had produced a certificate dated 2/4/2016 from the Gramsevak which was false.

3. It appears that the third respondent after hearing the parties, by an order dated 13/12/2016 dismissed the application filed by the first respondent holding that the petitioner who was residing in house No.191 belonging to her father-in-law Mr. Devram Sayaji Gaikwad had built a toilet and it was being used. Feeling aggrieved, the first respondent challenged the same before the second respondent in Grampanchayat Appeal No.490/2016. The second respondent partly allowed the appeal by order dated 4/9/2017 and the matter was remanded back to the third respondent for a fresh inquiry.

4. The third respondent called for report from the Block Development Officer, Panchayat Samiti Peth and came to the conclusion that the Resolution dated 19/1/2011 which was produced by the petitioner was misleading and cannot be relied upon. On the basis of the report of the Block Development Officer, third respondent also found that concerned Gramsevak has issued certificate in breach of the certain rules and regulations and he was placed under suspension. The Gramsabha Resolution dated 19/1/2011 is not a valid resolution and the said Gramsabha is illegally conducted by the then Sarpanch of the village. In short, the third respondent has found that there was clear breach of the provisions of Section 14(1)(j-5) of the Act by the petitioner and therefore, by the impugned order dated 29/9/2018, the petitioner was held to be disqualified which order has been confirmed by the second respondent in Grampanchayat's Appeal No.91/2018 by a judgment and order dated 4/12/2018.

5. I have heard learned counsel for the petitioner and learned counsel appearing for the respondent No.5. I have also heard learned AGP appearing for the respondent Nos.2, 3 and 6. None appears for contesting respondent No.1.

6. It is submitted by learned counsel for the petitioner that the Gramsevak had earlier issued a certificate dated 2/4/2016 which was produced at the time of nomination by the petitioner. It is submitted that on the basis of the same the nomination of petitioner was accepted and after having contesting the election, she was declared elected. Reliance is also placed on the panchanama dated 10/10/2016 and the Resolution dated 15/8/2016 passed by the Gramsabha, in particular Resolution No.12. He submits that the panchanama dated 10/10/2016 would indicate that the petitioner is having a toilet in her house.

7. Learned AGP and learned counsel for the respondent No.5 have supported the impugned order. It is submitted that before the Collector the petitioner had placed reliance on the resolution dated 21/7/2011 which has rightly been found to be not acceptable.

8. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. Section 14(1)(j-5) of the Act which is relevant for the purpose reads thus..

Section 14. Disqualifications.- (1) No person shall be a member of a Panchayat or continue as such, who-

(j-5) - fails to submit a certificate of the concerned panchayat, alongwith the resolution of the Gram Sabha (or of the Chief Executive Officer or an officer designated by him; or a self-certificate) certifying that,

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet ; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet

9. The said sub-section is introduced by Act No.33/2010, with effect from 10/1/2011. The present case would be covered by clause (ii) of section 14(1) (j-5) of the Act. According to the petitioner, she is residing in house No.191 owned by her father-in-law. Before the Collector, the petitioner had placed reliance on certificate dated 2/4/2016. There was no resolution of the Grampanchayat which was produced by the petitioner at the time of her nomination.

10. Be that as it may, before Collector the petitioner sought to place reliance on a resolution passed in the

meeting of the Gramsabha dated 19/1/2011. The third respondent got the said resolution verified from the BDO and the BDO has sent his report dated 13/4/2018. It is inter alia found that one Dhavalu Rama Waghmare who has signed as a Sarpanch on the said resolution was not the Sarpanch on 19/1/2011 as he became Sarpanch subsequently on 21/7/2011. It is also found that one Meena Madhav Sankar, who was a Anganwadi Sevika had signed the resolution as a Secretary. The BDO has also found discrepancy in the signatures of the persons who had signed purportedly as members of the Gramsabha. It does not appear that the report of the BDO was objected at any point of time. The third respondent has also noted that as per the report of the BDO, the meeting of the Grampanchayat held on 19/1/2011 was not as per the rules and therefore, the resolution dated 19/1/2011 cannot be accepted. The third respondent has also noted that the concerned Gramsevak who had issued the certificate dated 2/4/2016 has been proceeded against and placed under suspension for having issued the certificate in breach of the rules. The said finding recorded by the BDO has been confirmed by the second respondent in appeal.

11. The reliance placed on behalf of the petitioner on the panchanama dated 10/10/2016 and the resolution

dated 15/8/2016 to my mind is misplaced, in as much as, it is on the date on which the petitioner was elected she ought to have a toilet in the house in which she was residing. Significantly, the second respondent has also noted that the amount of Rs.12,000/- was sanctioned as a grant in aid to Devram Gaikwad, the father-in-law of the petitioner for construction of the toilet only on 8/9/2017 which is much after the date of the election. It is submitted on behalf of the petitioner that it is the second toilet. However, no such case is ever made out before any of the authorities below and not even in the petition. Therefore, the same cannot be accepted.

12. I have carefully gone through the order passed by the third respondent which has been confirmed by the second respondent and I do not find that they suffer from any infirmity. Thus, I do not find that any case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

(C. V. BHADANG, J.)