

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

WRIT PETITION NO.6091 OF 2020

Mandabai W/o. Bhausahab Zinjurde,
Age:57 years, Occu: Agri. & Sarpanch
R/o. Mahalgaon, Tq. Vaijapur
Dist. Aurangabad.

... PETITIONER

VERSUS

1. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The District Collector, Aurangabad,
Collector Office Aurangabad,
Tq. & Dist. Aurangabad.
3. Gramsevak,
Grampanchayat, Mahalgaon,
Tq. Vaijapur, Dist. Aurangabad.
4. Santosh Sankar Kale,
Age – 41, Occu – Agriculture,
R/o. Mahalgaon, Tq. Vaijapur
Dist. Aurangabad.

... RESPONDENTS

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Advocate for Petitioner : Mr. Ravindra V. Gore
GP for respondent Nos. 1 and 2 : Mr. D.R. Kale
Advocate for respondent No.3 : Mr. A.R. Devkate
Advocate for respondent No. 4 : Mr. K.C. Sant

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CORAM : MANGESH S. PATIL, J.

Reserved on 28.10.2020

Pronounced on : 05.11.2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respective respondents waive service. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. In this Petition under Articles 226 and 227 of the Constitution of India, the petitioner is impugning the concurrent judgments and orders of the learned Collector – respondent No.2 and the respondent No.1 – Additional Divisional Commissioner under Section 16 of the Maharashtra Village Panchayats Act, 1959 (hereinafter ‘the Act’) about the petitioner having incurred disqualification to continue as a directly elected Sarpanch of Village Mahalgaon, Tq. Vaijapur, District Aurangabad, under the provisions of Section 14 (1)(h) of the Act having failed to pay tax and fees payable to the Panchayat to the tune of Rs.1209/-.

3. The dispute was raised by the respondent No.4 before the respondent No.2 – Collector seeking a declaration to this effect.

4. The learned advocate for the petitioner submits that in order to attract the disqualification pursuant to a provision contained in Section 14 (1)(h) three requisites have to be complied, firstly, that there should be some dues to the Panchayat, secondly, there is demand for such dues by serving the Member a bill, and thirdly, the Member fails to pay the dues within three months from the date of demand. He would submit that since none of these three conditions have been fulfilled, there was no question of petitioner being disqualified by resorting to this provision. In support of his submission he placed reliance on the decision of **Suvarna Prakash Patil Vs. Anil Hindurao Powar and Ors.**; 2004 (1) Mh.L.J. 1062 and **Shaukat Ali Mohammad Hussain Vs. Shaikh Ayub and Ors.**; 2014 (4) Mh.L.J. 658. The learned advocate would submit that there was absolutely no material before

the respondent Nos. 1 and 2 to demonstrate that there were any dues or that any bill was served upon the petitioner demanding the dues. Overlooking this legal provision, both the authorities have readily inferred about the petitioner having incurred the disqualification.

5. The learned advocate Mr. Gore would further submit that the respondent No. 4 tried to demonstrate that a cheque that was issued by the petitioner's husband for clearing such dues but the cheque was dishonored. The respondent Nos. 1 and 2 have drawn inferences unmindful of the fact that the cheque was in fact issued towards payment of rent of a shop premises and had nothing to do with the property tax regarding which the petitioner is stated to be in arrears of Rs.1209/-. The inferences drawn by the respondent Nos. 1 and 2 are clearly based on surmises and conjunctures. He would submit that since the consequences contemplated under Section 14 are penal, strict compliance is expected which they have failed and this has resulted in passing of the impugned judgments and orders which are not sustainable in law and on facts.

6. The learned advocate Mr. Gore would further submit that in fact, the petitioner had produced a copy of receipt purportedly issued by the respondent No.3 - Gramsevak of the Village showing that she had paid the amount of Rs.1209/-. In spite of that the respondent Nos. 1 and 2 have not at all referred to and discussed about the receipt which *prima facie* demonstrates about the petitioner having paid the tax and fees, for failure of which she is now being sought to be disqualified.

7. The learned advocate would further submit that the cheque that was issued by the petitioner's husband was in fact a cheque towards payment of rent and was for an amount of Rs.14,725/- that liability had nothing to do with the tax that was sought to be attributed to her to the tune of Rs.1209/-. He therefore submitted that there was absolutely no material before the respondent Nos. 1 and 2 to conclusively demonstrate about the petitioner had incurred disqualification under Section 14 (1)(h) of the Act.

8. Per contra, the learned Government Pleader and the learned advocate for the respondent No. 4 supported both the judgments of respondent Nos. 1 and 2. They would submit that the petitioner has manipulated the record of the Grampanchayat and caused the then Gramsevak to issue a false No Dues Certificate. It was issued on the basis of a cheque for an amount of Rs.14,725/- issued by her husband for clearing the dues. However, it was dishonored and consequently the petitioner has incurred the disqualification contemplated under Section 14 (1)(h). The learned advocates would further submit that an attempt was made by the Collector through the concerned Tahsildar to collect the record from the office of the Grampanchayat, however, the record was missing and there is every room to believe that it is the petitioner and the then Gramsevak who is no more have in all probability committed the mischief. They would further submit that even during pendency of the petition record was solicited from the respondent No. 3 who is the present Gramsevak but he has filed an

affidavit that the record of the relevant period is not traceable. So far as the copy of the receipt produced by the petitioner is concerned, the learned Government Pleader fairly conceded that it was available to be seen before the Collector in his file. But it is not the original but only a photocopy and since there was no evidence to prove the receipt to be genuine, no reliance could have been placed by the respondent No. 2 - Collector on it. The learned Government Pleader also faintly tried to demonstrate as to how there is a difference in the signature appearing on the copy of this receipt for Rs.1209/- and the signature of the then Gramsevak as is appearing on No Dues Certificate issued in favour of the petitioner. The learned advocates therefore submitted that the respondent Nos.1 and 2 have taken fairly reasonable view while concluding about the petitioner having incurred a disqualification under Section 14 (1)(h). These being concurrent findings of fact, this Court should not interfere in exercise of the Writ Jurisdiction.

9. Obviously, so far as factual disputes are concerned this Court would be loath in exercising the Writ Jurisdiction. Equally this Court would be loath in interfering in the concurrent findings of the authorities. However, concurrent finding is not an anathema for exercising the Writ Jurisdiction in an appropriate case. The present matter in my view falls under such exceptional category and enables this Court to interfere and reverse the concurrent findings for the reasons to follow.

10. As the wording suggests Section 14 (1)(h) requires failure to pay tax or fee due to the Panchayat within three months from the date on which a

demand is raised by presenting a bill duly served on the Member. The conditions are clearly *sine qua non* for inviting a disqualification under this provision which is now being relied upon by the respondents to justify the impugned judgments and orders. Without indulging in any further scrutiny of the legal provisions, it would be sufficient to refer to and rely upon the concurrent view of this Court taken in the cases of Suvarna Prakash Patil and in Shaukat Ali Mohammad Hussain (*supra*).

11. Since the provision contained in Section 14 of the Act results in penal consequences it is expected that there is strict compliance and proof regarding availability of necessary concomitants, sufficient to attract a disqualification. When Section 14 (1)(h) requires the aforementioned three conditions to be fulfilled it was expected that the respondent No. 4 ought to have demonstrated by leading tangible evidence that there were arrears of tax, there was service of a bill demanding it and that failure of the petitioner to pay the dues within three months of such demand. He has miserably failed to prove compliance with this requirement of law.

12. For that matter even the respondent Nos. 1 and 2 have clearly overlooked this mandate of law and have drawn jumping conclusions while attaching disqualification to the petitioner.

13. Interestingly, the respondent No.1 Commissioner at initial stage while granting ad-interim relief clearly referred to this requirement of law regarding service of bill demanding the arrears of tax and failure to pay within three months from the date of service of such demand and by

resorting to such reasoning had granted ad-interim relief in favour of the petitioner. However, astonishingly, he failed to even refer to and resort to any such discussion and the mandate of law while ultimately dismissing her Appeal by the impugned judgment and order. It is further astonishing that it is the self same Commissioner who had passed both these orders. One fails to understand as to how he could have in spite of being aware about the mandate of law, overlooked it while dismissing the petitioner's Appeal by the impugned judgment and order. Be that as it may, the respondent Nos. 1 and 2 have not at all borne in mind the necessary concomitants for attracting the provision of Section 14 (1)(h) which has resulted in gross illegality in jumping to the conclusion about the petitioner having incurred disqualification under that provision.

14. As far as the disputes regarding facts are concerned, in my considered view the discussion now becomes redundant and academic. Having concluded that both the impugned orders are illegal, the matter should end at that.

15. Still, it is a matter of record that a copy of receipt purportedly issued by the then Gramsevak for an amount of Rs.1209/- was available for the respondent No. 2 - Collector to be seen in his file. It was therefore expected that he should have taken some pains in discussing this piece of evidence and considered its genuineness and effect. He has miserably failed to do so and the error has perpetuated even during appeal before the respondent No.1.

16. A reference is made in the impugned order of the respondent No.2 and even the respondent No. 4 has succeeded in convincing him that a cheque issued by the husband of the petitioner for an amount of Rs.14,725/- was dishonored, on the basis of which she was issued No Dues Certificate. However, as has been rightly pointed out by the learned advocate for the petitioner, cheque was apparently for an amount of Rs.14,725/- and was not in respect of the alleged dues of tax to the tune of Rs.1209/-. It is also apparent from Exhibit-E which is a copy of bank statement of the account shows that the cheque that was dishonored was for an amount of Rs.14,450/- and was in respect of 'Gala Bhade' (rent of the Shop). There is no whisper in the impugned orders to these aspects and discrepancies.

17. In the result, both the impugned orders are clearly perverse, arbitrary and capricious and need to be interfered with and reversed even if those are concurrent findings.

18. The Writ Petition is allowed. The impugned orders passed by the respondent Nos. 1 and 2 are quashed and set aside. Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)