

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

920. WRIT PETITION NO. 6962 OF 2018

1. Vimal W/o Gangadhar Mhaske,
age 25 years occup. household & Member
of Grampanchayat, Kedarguda
R/o Kedarguda Taluka Hadgaon Dist. Nanded
2. Gangabai W/o Sahebrao Zingare,
age 24 years occupation and R/o as above.
3. Laxmi W/o Pandurang Fole,
age 62 years occup. & R/o as above. ...Petitioners

VERSUS

1. The State of Maharashtra
Through : The Additional Divisional Commissioner,
Division, Aurangabad.
2. The Returning Officer/Tahsildar,
Hadgaon Taluka Hadgaon Dist. Nanded.
3. The Gramsevak,
Grampanchayat, Kedarguda
Taluka Hadgaon Dist. Nanded.
3. The Gramsevak,
Grampanchayat, Kedarguda
Tal. Hadgaon Dist. Nanded.
4. Bhagwan S/o Narayan Khanjode,
age 32 years occup. agriculture
R/o Kedarguda Tal. Hadgaon Dist. Nanded. ...Respondents

Mr. V.S. Panpatte, Advocate for petitioners

Mr. N.T. Bhagat, Asstt. Govt. Pleader for respondents No.1 & 2

Mr. S.R. Choukidar, Advocate for respondent No.3

Mr. M.B. Sandanshiv, Advocate for respondent No.4

CORAM : ROHIT B. DEO, J.

DATE : 9th January, 2020

J U D G M E N T :

1. Rule. Rule is made returnable forthwith. Heard finally by consent.

2. The petitioners are aggrieved by the decision rendered by the Additional Divisional Commissioner, Aurangabad, whereby the petitioners are held disqualified to hold the office of Member, Grampanchayat, Kedarguda Taluka Hadgaon Dist. Nanded.

3. The disqualification is premised on the ground of non-compliance with the provisions of Section 14(J-5) of the Maharashtra Village Panchayats Act ("The Act" for short).

4. It is well settled that the requirement, as the provision stood then, that the nomination form must be accompanied by the resolution of the *Gram Sabha* and the certificate issued by the *Gram Sevak* to the effect that the candidate resides in a house owned by him and has a toilet in such house, which he regularly uses or if he resides in a house not owned by him and has a toilet in such house and he regularly uses it or if he has no such toilet but regularly uses the public toilet, is mandatory. Suffice it to refer to the decision of this Court in *Nimba Dashrat Koli and another Vs. State of Maharashtra and others* [2015 (3) Mh.L.J. 598].

5. Perusal of the record reveals that it is indubitable that the nomination forms of the petitioners were not accompanied by the resolution of the *Gram Sabha*. In this view of the matter, there cannot be iota of doubt that the petitioners were disqualified to hold the office of Member of *Gram-panchayat*.

6. The learned Counsel for the petitioners would strenuously urge that it is irrefutable and is a finding recorded in the inspection and inquiry conducted by the Village Extension Officer pursuant to the directions issued by the Collector, that the petitioners did have a toilet. The learned Counsel for the petitioners would submit that considering the legislative intent, it must be held that there was sufficient compliance with the statutory provisions and the failure to annex the resolution of *Gram Sabha* to the nomination form would not render the petitioners vulnerable to disqualification. The submission cannot be countenanced for two reasons. In view of the judicial view that the provision is mandatory, it would not be possible for this Court to entertain the submission on the bedrock of the doctrine of substantial compliance. More importantly, what is relevant is the factual position as was obtaining on the date of the submission of the nomination form. The inspection, to which the learned Counsel for the petitioners is referring, was conducted in the year 2017 and, therefore, in any view of the matter, it does not take the case of the petitioners any

further.

7. The learned Counsel for the petitioners would submit that the submission of the certificate issued by the *Gram Sevak* as regards the existence and user of toilet is sufficient compliance with the statutory provision. This submission is only an extension of the submission, noted supra, which I have considered and rejected. The statutory provision as it stood then is unambiguous and the requirement is two fold. It is not only the certificate issued by the *Gram Sevak*, which is to be annexed alongwith the nomination form, the resolution of the *Gram Sabha* is also required to be annexed and the provision to that extent is mandatory.

8. The final submission of the learned Counsel for the petitioners is that the proceedings before the Additional Commissioner were presented beyond the period of 15 days, as envisaged in section 16(2) of the Act. The submission is that although the revision was annexed by an application for condonation of delay of five days, without deciding the said application by passing a separate and independent order thereon, the revision is finally decided. The learned Counsel for the petitioners is right in the submission that there is no separate order on the application for condonation of delay. However, perusal of the revisional order would show that the authority was conscious of the delay and categorically

observed that the delay is condoned. The petitioners sought review of the decision of the Revisional Authority. In the review application, the petitioners have not raised any ground touching the manner in which the Additional Commissioner considered the aspect of condonation of delay. In any event, assuming that the revisional order impugned suffers from some error of procedure or even a substantive error, considering that the delay was of five days, I am not inclined to exercise the Writ Jurisdiction in this matter since the order impugned is otherwise consistent with the law articulated by this Court.

9. The petition is dismissed.

10. Needless to record, the interim order stands vacated.

11. At this stage, the learned Counsel for the petitioners prays that the interim order operating may be continued for four weeks to enable the petitioners to approach the Hon'ble Apex Court.

12. The request is reasonable.

13. The interim order shall continue to operate for a further period of four weeks.

(ROHIT B. DEO)
JUDGE