

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9244 OF 2019

Mrs. Shobhabai Narayan Shinde,
Age: 65 years, Occupation: Agriculture,
R/o: Kusumba, Taluka Dhule,
District Dhule.

... Petitioner

Versus

1. The Divisional Commissioner,
Nashik Division, Nashik.
2. Mr. Sangram Govindrav Patil,
Age: 41 years, Occupation: Agriculture,
R/o: Kusumba, Taluka Dhule,
District Dhule.
3. Grampanchayat Kusumba,
Taluka Dhule, District Dhule,
Through its Village Development Officer.
4. The Returning Officer,
Kusumba, Taluka and District Dhule.
5. The Collector,
Dhule, District Dhule.

... Respondents

WITH

WRIT PETITION NO. 9245 OF 2019

1. Mrs. Sunita Nana Bhil,
Age: 30 years, Occupation: Agriculture,
R/o: Kusumba, Taluka Dhule,
District Dhule.

... Petitioner

Versus

1. The Divisional Commissioner,
Nashik Division, Nashik.
2. Mr. Sangram Govindrav Patil,
Age: 41 years, Occupation: Agriculture,
R/o: Kusumba, Taluka Dhule,
District Dhule.
3. Grampanchayat Kusumba,
Taluka Dhule, District Dhule,
Through its Village Development Officer.
4. The Returning Officer,
Kusumba, Taluka and District Dhule.
5. The Collector,
Dhule, District Dhule.

... Respondents

...

Advocate for the Petitioners: Mr. Bachate Pralhad D.
AGP for Respondent/State: Mr. S.N. Morampalle
Advocate for Respondent No.2: Mr. S.P. Shah
Advocate for Respondent No.3: Mr. A.B. Kadethankar

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CORAM : MANGESH S. PATIL, J.

DATE : 17.12.2020

JUDGMENT :

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

2. The question that arises in these petitions is as to if a Commissioner has the jurisdiction to entertain an appeal under Section 16(2) of the Maharashtra Village Panchayats Act, 1959 (herein after the Act) against an order of a Collector refusing to disqualify a Member/Sarpanch under Section 14B of the Act ?

3. The facts leading to such a dispute arise can be summarized as under:

(a) The petitioners were elected unopposed as member of the Village Panchayat, Kusumba in the elections held in September 2013. The first meeting of the Panchayat was held on 08.02.2014. Since the tenure of the term was to come to an end, before such expiry of the term, an election was held in September 2018 for electing a new Panchayat. In such election, the petitioner in Writ Petition No.9244 of 2019 was directly elected as a Sarpanch from public whereas the petitioner in Writ Petition No.9245 of 2019 was elected as a Member.

(b) The respondent No.2 in both these petitions, who is one and the same person, filed Dispute Application No.10/2019 and 11/2019 before the respondent No.5-Collector against these two petitioners respectively on the ground that they be declared disqualified under Section 14-B for not submitting the election expenditure within the stipulated time.

(c) The petitioners appeared in the proceedings before the Collector and raised a contest. The Collector dismissed both the applications.

(d) The respondent no.2 challenged these orders by preferring Appeal Nos.1/2019 and 2/2019 before the respondent No.1-Divisional Commissioner. The petitioners objected to the maintainability of these appeals. The Commissioner, by the judgments and orders impugned in these Writ Petitions, allowed the appeals and quashed and set aside the order passed by the respondent No.5–Collector. He declared that the petitioners were disqualified under Section 14-B of the Act.

4. The learned advocate Mr. Bachate for the petitioners would submit that he is primarily challenging the impugned orders on the ground of jurisdiction. He would submit that under Section 10-A of the Act, superintendence, direction and control of the preparation of the electoral rolls for and the conduct of, all elections to the *Panchayats* have been vested in the State Election Commission. Under sub-section 2 of that Section, the State Election Commission is empowered to delegate any of its powers and functions to any officer of the Commission or any officer of the State Government not below the rank of a Tahsildar. Pursuant to such enabling powers, the State

Election Commission, by Notification dated 19.11.2010 duly published in the Government Gazette, has delegated its powers under Section 14B (1) to the concerned Collector and the powers under Section 14B (2) to the concerned Divisional Commissioner. He would therefore submit that in view of such delegation of powers, the power to disqualify a member has been vested in the Collector. By virtue of Section 14B (2), the power to remove any such disqualification or to reduce the period of such disqualification ordered by the Collector is vested with the Divisional Commissioner. He, therefore, submits that going by the wording of Section 14B (2), it is only when the Collector declares a member to be disqualified that such a member alone is entitled to challenge that order before the Commissioner. Conversely, if the Collector does not declare a member to be disqualified under Sub-section 1 of Section 14B, no such appeal would lie before the Commissioner at the instance of anybody. He would therefore submit that when in the instant matters, the Collector has refused to disqualify the petitioners under Section 14B, the respondent no.2 cannot challenge these orders and the Commissioner would not have jurisdiction and power to entertain such challenge under Sub-section 2 of Section 14B. He would therefore submit that in spite of such an objection having been raised before the respondent no.1–Commissioner, he has gone ahead and

has exercised the jurisdiction purportedly under Sub-section 2 of Section 14B and on this ground alone, the impugned orders are liable to be quashed and set aside.

5. The learned advocate Mr. Shah for the respondent No.2 submits that though under the provisions of Section 14B the State Election Commission can declare a person to be disqualified for not lodging an account of the election expenses in time. By the Notification under Section 10A (2) it has delegated its powers to the concerned Collector under Section 14B (1) to declare a person to be disqualified. A member who has been disqualified has the remedy to question such disqualification or its period before the Commissioner under Section 14B(2). However, he would point out that simultaneously while inserting Sections 14-A and 14-B by Maharashtra Act No.16 of 2010 dated 06.05.2010, the legislature has inserted clause (j-4) in Sub-section 1 of Section 14 of the Act. Section 14 gives a list of various instances and grounds when a member can be declared as disqualified. He would then point out that the consequences of such disqualification and the question whether a vacancy has occurred consequent thereto have been vested in the Collector and the question is to be decided by the Collector under Section 16(2). Any person aggrieved by the decision of the Collector

can prefer an appeal within fifteen days of the decision to the Commissioner. Learned advocate Mr. Shah therefore submits that Section 14B only empowers the Collector to declare if a person has incurred disability under that provision but as far as its further consequence of declaring a vacancy to have occurred it has to be decided by him which he can do by resorting to Section 16(2). Once it is concluded that the question as to occurrence of such vacancy or otherwise is to be decided by a Collector, an appeal would lie to the Commissioner under that provision. He therefore submits that there was no error committed by Commissioner in exercising such appellate power under Section 16(2). In support of his submission, he would rely upon the decision of this Court in the case of **Vaijayata Deepak Warke and Ors. Vs. State Election Commission ; 2016 (2) Mh.L.J. 35.**

6. By way of an alternate argument, learned advocate Mr. Shah would submit that irrespective of the above legal position, the petitioners surrendered themselves before the respondent no.1- Commissioner and contested the respective appeals without making any attempt to question his powers and jurisdiction.

7. Learned advocate Mr. Bachate would counter such submission of Mr. Shah, firstly, by pointing out that in the Written Reply filed by the petitioners in the appeals before the Commissioner,

objection to the jurisdiction was specifically raised.

8. As far as the legal aspects are concerned, learned advocate Mr. Bachate would submit that the Collector has not exercised the powers under Section 16(2) but has exercised the powers delegated to him by the State Election Commission under Section 14B(1). Therefore, there is no question of preferring any appeal before the Commissioner by the respondent no.2.

9. Learned advocate Mr. Bachate would further submit that the petitioners in the case of *Vaijayata Deepak Warke* (Supra) where the members who were declared disqualified under Section 14B (1) and the persons who were not elected but were still challenging a similar order of their disqualification. He would point out that in the matter in hand, it is the respondent No.2 who was challenging the order passed by the Collector refusing to disqualify the petitioners. Therefore, the observations and the conclusions in the case of *Vaijayata Deepak Warke* (Supra) cannot be pressed into service.

10. So far as the aspect of jurisdiction is concerned, learned advocate Mr. Bachate would submit that once it is concluded that a quasi judicial forum inherently lacks jurisdiction, the orders passed by it would be a nullity. He would refer to the decision in the case of

Sarup Singh and Another Vs. Union of India and Another; (2011) 11 SCC 198.

11. In order to understand the controversy it is apposite to reproduce the relevant provisions:

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

- (a)
- (b)
- (c)

(j-4) has been disqualified by the State Election Commission under section 14B; or

14B. Disqualification by State Election Commission. -

(1) If the State Election Commission is satisfied that a person,-

- (a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and
- (b) has no good reason or justification for such failure,

the State Election Commission may, by an order published in the *Official Gazette*, declare him to be disqualified and such person shall be disqualified for being a member of *panchayat* or for contesting an election for being a member for a period of five years from the date of the order.

(2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification.

16. Disability from continuing as member. - (1) If any member of a *panchayat*,-

- (a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in section 14 at the time of his election or appointment, or
- (b) during the term for which he has been elected or

appointed, incurs any of the disqualifications mentioned in section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) If any question whether a vacancy has occurred under this section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the orders passed by the Commissioner in such appeal shall be final:

Provided that, no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

12. At the outset, it is necessary to note that there is no dispute about the fact that by the Notification dated 19.11.2010, the State Election Commission in exercise of the powers under Section 10A (2) has delegated its powers under Section 14B (1) to the concerned Collector and the powers under Section 14B (2) to the concerned Divisional Commissioner. Obviously, a plain reading of the provision of Section 14B would reveal that it is the Collector who can declare a member to be disqualified. The power either to reverse such order or to commute the period of disqualification has been delegated to the Divisional Commissioner. It is therefore quite clear that such a person or member, who has been disqualified under

Section 14B(1), has the remedy of maintaining a challenge before the Divisional Commissioner under Section 14B(2). This is what has been interpreted and held by this Court in the case of *Vaijayata Deepak Warke (Supra)*.

13. It is important to understand the scheme of Section 14 and Section 16 of the Act vis-a-vis the powers delegated to the Collector under Section 14B (1) and to the Commissioner under Section 14B (2). It is pertinent to note that simultaneously, when Section 14B was inserted in the statute by the Amending Act of 2010, the legislature has inserted Clause (j-4) in Sub-section 1 of Section 14. Section 14 lays down various grounds on which a member can be declared to have incurred disqualification. Section 16 then empowers a Collector to decide the dispute as to if a consequential vacancy occurs or not. Any order passed by the Collector can be challenged in an appeal before the Commissioner preferred within fifteen days. As the wording of Section 16 suggests, unlike Section 14B, it provides that the Appeal would be maintainable before the Commissioner by a person aggrieved by the decision of the Collector but it does not describe the nature of the decision. It only says that any person aggrieved by the decision of the Collector may prefer an appeal to the Commissioner. It does not say that it is only the order

of the Collector disqualifying a member that would be susceptible to challenge in appeal. Therefore, there can be no manner of doubt that as far as the provision of Section 16 (2) is concerned, any decision of the Collector going either way can be challenged in appeal to the Commissioner. It is therefore quite apparent that a person who is raising a dispute before the Collector by filing an application seeking a declaration about occurrence of a vacancy on account of any member having incurred a disqualification under Section 14 can maintain an appeal before the Commissioner.

14. Since the legislature has inserted Clause (j-4) in Sub-section 1 of Section 14, one can easily interpret that the legislature must have intended to further empower the Collector to decide a question in respect of occurrence of a vacancy consequent to a member incurring a disqualification even under Section 14B. Therefore, even when a Collector in exercise of powers under Section 14B (1) takes a decision, simultaneously, he will have to decide a dispute as to if a consequential vacancy has occurred or otherwise, by resorting to the provision contained in Section 16(2). This is what has been precisely observed and concluded by this Court in the case of **Suchita Kevati and Ors. Vs. State of Maharashtra and Ors ; 2013 (6) Mh.L.J 414**. The Paragraph No.9 of the judgment

reads as under:

“9. In view of above, the position is that, it is the Collector of the District who is competent to exercise powers under sections 14-B and 16 of the said Act. It cannot, therefore, be said that the Collector is not competent either to pass an order of disqualification under section 14-B or under clause (j-4) of sub-section (1) of section 14 of the said Act or to declare the vacancy, in exercise of its power under sub-section (2) of section 16 of the said Act. No doubt that unless there is an order of disqualification passed under section 14-B, no order of declaration of vacancy under sub-section (2) of section 16 of the said Act can be passed by the Collector. The Collector will have to follow the procedure for disqualification under section 14-B initially and then to exercise its power under sub-section (2) of section 16 of the said Act for declaration of vacancy in accordance with law.”

15. In view of such an interpretation, there remains no doubt that by submitting an application to the Collector, the respondent no.2 had called upon him to decide if a vacancy had occurred under Section 14-1 (j-4) read with Section 14B(1), which he could have done under Section 16(2). Since the Collector had dismissed the applications, the respondent no.2 preferred the appeals before the Commissioner as provided under Section 16 (2). Therefore it cannot be said that the Commissioner had no jurisdiction to decide the appeals.

16. If the legislature had not intended that the Collector should exercise the powers under Section 16(2) in respect of

declaration as to the disqualification under the provision of Section 14B, there was no need to insert clause (j-4) in Sub-section 1 of Section 14.

17. True it is that in the case of *Vaijayata Deepak Warke* (Supra), the facts were a bit different inasmuch as, it is the members who were declared disqualified under Section 14-B (1) or the persons who were not elected but were so declared were before this Court and were relegated to avail the alternate remedy of appeal under Section 14B (2).

18. Resultantly, the challenge of the petitioners and the submissions of their learned advocate that the Commissioner had no jurisdiction to decide the appeals preferred by the respondent no.2 is not legally tenable.

19. In view of the conclusions drawn herein above, now it becomes academic as to if any specific objection to the jurisdiction of the Commissioner was raised by the petitioners in the appeals. Though in their say, the petitioners did raise such an objection, the impugned orders do not show any submissions having been made by their learned advocates before the Commissioner. Therefore, one need not travel into that area.

20. Similarly, the attempt of learned advocate Mr. Shah for the respondent no.2 referring to several judgments to point out that a party which concedes to the jurisdiction of a Tribunal or a Court cannot raise the issue subsequently also need not be gone into. Similarly, his attempt to point out that in view of the peculiar facts and circumstances, when there is ample material to demonstrate that the petitioners are not coming with clean hands while seeking writ jurisdiction of this Court and this Court for this reason alone should not entertain their objection regarding jurisdiction of the Commissioner in deciding the appeals preferred by the respondent no.2 also becomes equally academic.

21. Needless to state that the attempt of the learned advocate Mr. Bachate for the petitioners to demonstrate that the orders passed without jurisdiction are nullities also need not be gone into and decided in these petitions, since for the reasons recorded herein above, I have concluded that the Commissioner had the jurisdiction to decide the appeals.

22. As far as the factual aspects are concerned, the allegations are to the effect that the petitioners failed to submit the account of the elections expenses incurred by them. Attempt was made on their

behalf to demonstrate as to how though the record was initially not traceable, it was found subsequently and was produced before the Collector to demonstrate that both the petitioners had in fact complied with such requirement and could not have been disqualified under Section 14B. However, it is pertinent to note that, when the respondent no.2 solicited the information under the Right to Information Act in respect of all the candidates who were elected during that election, the record in respect of election expenses of the petitioners were not furnished to him albeit such record in respect of the other candidates was provided. In spite of such state of affairs, barely within few days, on an application tendered by one Sau. Prabhavati Jitendra Shinde demanding a similar record *inter alia* in respect of the election expenses submitted by the present petitioners, a record was stated to have been found which was dumped behind a cupboard in a store room and was furnished to the applicant.

23. Based on such annexures in respect of expenses purportedly incurred by the petitioners that it is now being pretended by them that there was due compliance. The respondent no.2 vehemently tries to demonstrate that this circumstance itself creates suspicion as to the genuineness of the record which was not found when he demanded it but soon thereafter was furnished to another

person within few days. The learned advocate for the respondent no.2 also points that these returns regarding expenses in Annexure-II bear signature of the petitioner from Writ Petition No.9244 of 2019 in English but several other Grampancyat record and the nomination form and the papers annexed thereto bear her signature in Devnagari. According to him, this is yet another suspicious circumstance creating doubt about the genuineness of these documents traced out subsequently.

24. Interestingly, as can be seen from the orders passed by the Collector, initially, even he looked upon these circumstances with equal suspicion, as can be seen from the observations in paragraph Nos. 3, 4 and 5 of the order which are part of the conclusion drawn by him. He also conspicuously noted that the rest of the papers from that record appeared to be old one where the papers had turned yellow whereas the doubtful return of the petitioners were on fresh white papers. He also noticed the discrepancy in the signature of petitioners from Writ Petition No.9244 of 2019. In spite of having noted these circumstances creating a doubt about the genuineness of the record of the expenses of the petitioners, he refused to draw any inference about their genuineness solely on the ground that the objection was raised by the respondent no.2 belatedly, after the

petitioners were got elected for a fresh term.

25. Even if one indulges in scrutinizing the material independently, going by the nature of the dispute, it was expected of the petitioners to have led tangible material to positively demonstrate about having filed the account of the expenses. If at all such accounts were filed, they could have substantiated their version by producing some acknowledgment. But conspicuously they could not produce any acknowledgment or office copy of the accounts bearing some endorsement. Again, learned Collector also noticed this lapse and observed that even the petitioners could not produce any acknowledgment about submissions of such election expenses but still ignored such a material circumstance.

26. It is trite that when a party asserts existence of a fact he is expected to lead some tangible proof to substantiate it. A party denying existence of a fact cannot be expected to lead a negative evidence. When the petitioners want us to believe that they had submitted election expenses, it was their responsibility to prove their such version by leading some positive evidence. Not only that they have failed to lead any such evidence about submission of election expenses except the doubtful record discussed herein above, there is absolutely no whisper made by them in any of their

submissions/written statement/says either before the Collector or the Commissioner or even in the writ petitions filed herein as to why they have not been able to produce any acknowledgment in respect of the election expenses filed by them.

27. In spite of such state of affairs and even though he was well aware about such short-comings, the learned Collector refused to conclude that the petitioners had miserably failed to substantiate their version. The orders passed by him were clearly perverse, arbitrary and capricious and were rightly interfered with and reversed by the Commissioner by the impugned orders. Consequently, even going by the merits, independent of the dispute as to the jurisdiction, the petitioners can certainly be said to have incurred a disqualification under Section 14B as has been rightly concluded by the learned Commissioner in the impugned orders.

28. However as has been rightly pointed out by advocate Bachate, even if the Commissioner was allowing the appeals and holding the petitioners to be disqualified he has neither remitted the matters back to the Collector for deciding the period of disqualification under Section 14B(1) nor has himself laid down any period. It is therefore necessary to modify the impugned orders suitably by directing the Collector to decide the period of

disqualification of the petitioners under Section 14B (1).

29. In view of above, the writ petitions are dismissed. However the matters are remitted to the Collector – respondent No.5 who shall decide the period of disqualification of the petitioners by extending them an opportunity of being heard. The Rule is discharged.

30. At this juncture, learned advocate for the petitioners Mr. Bachate submits that operation of the judgment be stayed for a period of six weeks to enable the petitioners to approach the Supreme Court.

31. Since on an independent scrutiny, as demonstrated herein above, I have come to a conclusion that the petitioners stand disqualified under Section 14B of the Act, the request of the learned advocate Mr. Bachate is rejected.

(MANGESH S. PATIL, J.)