

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4710 OF 2016

Jagat Zaguji Shanware

vs.

Additional Commissioner, Amravati and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. N. A. Gawande, counsel for petitioner.
Smt. Mrunal Naik, AGP for respondents No.1 & 2

CORAM : MANISH PITALE J.

DATED : 15/01/2020

By this writ petition, the petitioner, elected as Up Sarpanch of Gram Panchayat, Motha, Taluka Chikhaladara, Dist. Amravati, has challenged order passed by the respondent No.1, Additional Commissioner, whereby he has been found to be disqualified to hold the said elected position under Section 14(1)(g) of the Maharashtra Village Panchayat Act.

2. In this writ petition, although the contesting respondent No.4 (original complainant) was served and he is shown to be represented through counsel, none has

appeared on behalf of the said respondent on 13/11/2019, and even today when the petition was called out for hearing.

3. As a consequence, this petition was taken up for final disposal and the learned counsel for the petitioner, as well as the learned AGP, appearing for the respondent Nos.1 and 2, were heard.

4. The petitioner herein was elected as Up Sarpanch of the Gram Panchayat in the year 2015. In the year 2016, a complaint was lodged by the respondent No.4, a Member of the said Gram Panchayat, claiming that the petitioner was liable to be disqualified under Section 14(1)(g) of the said Act, as he had indulged in activities showing that he had direct or indirect interest in work done by order of the Gram Panchayat. The said complaint was lodged by respondent No.4, before the respondent No.2, Additional Collector under Section 16(1) of the aforesaid Act.

5. By order dated 14/03/2016, the respondent No.2 Additional Collector found that disqualification on the said ground was not attracted, because the petitioner

had withdrawn the amount that was required to be paid to contractors, who had undertaken work of paving blocks for the Gram Panchayat. The respondent No.2 found that the allegations against the petitioner to the effect that amounts payable to the contractors were withdrawn by him and handed over the same to the contractors for work done, did not attract disqualification under Section 14(1)(g) of the said Act. Accordingly, the complaint filed by respondent No.4 was dismissed. Aggrieved by the same, the respondent No.4 filed an appeal under Section 16(2) of the Act before respondent No.1, Additional Commissioner. By the impugned order, the Additional Commissioner held that the facts that came on record in the present case sufficiently demonstrated that by handling said amount payable to the contractors, the petitioner clearly had indirect interest in the work done on behalf of the Gram Panchayat and that therefore, disqualification under Section 14(1)(g) of the said Act was attracted. On this basis, the appeal was allowed and the petitioner was held to be disqualified from the elected position of Member of Gram Panchayat. Consequently, he ceased to

be the Up Sarpanch of the Gram Panchayat.

6. In this writ petition, challenging the said order of the Additional Commissioner, by order dated 12/08/2016, notice was issued to the respondents and ad-interim relief was granted in favour of the petitioner. As a consequence, the petitioner has continued as a Member of the Gram Panchayat during the pendency of this writ petition.

7. The learned counsel appearing on behalf of the petitioner submitted that even if the allegation made against the petitioner was to be accepted for the sake of argument, disqualification under Section 14(1)(g) of the aforesaid Act, was not at all attracted. The learned counsel invited attention of this Court to the said provision and he submitted that merely because the petitioner as Up Sarpanch of the Gram Panchayat, in the absence of the Sarpanch, had withdrawn the amounts and paid the same to the contractors who had undertaken the work of paving blocks to the Gram Panchayat, it would not attract disqualification under Section 14(1)(g) of the said Act. It was submitted that

the Additional Collector rightly dismissed the complaint at the threshold, holding that such disqualification was not attracted, while the Additional Commissioner erroneously allowed the appeal and held against the petitioner. It was submitted that even if the Additional Commissioner found that there was some substance in the complaint filed by the respondent No.4, the matter ought to have been remitted to the Additional Collector, since the said Authority had dismissed the complaint as being not maintainable. On this basis, it was submitted that the impugned order deserved to be set aside.

8. As noted above, the learned counsel for respondent No.4 has failed to appear before this Court on consecutive dates.

9. The learned AGP appeared for respondents No.1 & 2 and submitted that no interference was warranted in the impugned order passed by the Additional Commissioner, because petitioner as Up Sarpanch had no business to withdraw the aforesaid amount of Rs.1,00,000/- to be paid to the contractors and by doing so, he had clearly demonstrated indirect,

even though no direct interest or share in the work done by the Gram Panchayat, thereby attracting disqualification under Section 14(1)(g) of the aforesaid Act.

10. Heard learned counsel for the rival parties. In the present case, we are concerned with disqualification of elected Member of a Gram Panchayat who is also a Up Sarpanch of the said Panchayat. When an person is elected democratically, to disqualify him by operation of statute, the Authorities and the Court have to be careful to analyze as to whether such disqualification is indeed attracted in the facts and circumstances of the case.

11. In the present case, the respondent No.4 alleged that the petitioner had attracted disqualification under Section 14(1)(g) of the said Act. The aforesaid provision reads as follows :-

“ S.14. Disqualifications:- (1) No person shall be a member of a *panchayat* continue as such, who –
(a) to (f)

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the *panchayat*, or in any contract with, by

or on behalf of, or employment with or under, the
Panchayat ; ”

12. A bare reading of the said provision would indicate that elected Member of the Gram Panchayat would attract disqualification, if he directly or indirectly or through a partner has any share or interest in any work done by the order of the Gram Panchayat or under a contract or on behalf of the Gram Panchayat. In the present case, work of paving blocks was undertaken by the Gram Panchayat. It was alleged against the petitioner that amount was to be paid to two contractors for such work and it was handled by the petitioner. The allegation was that an amount of Rs.1,00,000/- in two cheques of Rs.50,000/- each were issued in the name of Up Sarpanch and upon such amount being withdrawn from the account, it was handed over to the two contractors who had undertaken aforesaid work of paving blocks for the Gram Panchayat. The material on record shows that the petitioner as Up Sarpanch has placed on record the fact that at the relevant time, the Sarpanch was not available, as he was not in the village and even the Secretary of the Gram Panchayat was not

available as he was to undergo some medical treatment. In this situation, since the payment was to be made to the two contractors, the amount payable was withdrawn in two cheques of Rs.50,000/- each by the Up Sarpanch and was handed over to the said contractors. There is no allegation on record that the said two contractors were partners of the petitioner. In such a situation, merely because the petitioner facilitated payment of amounts to the contractors for work that was done on the order of the Gram Panchayat, it cannot be said that disqualification as contemplated under Section 14(1)(g) of the aforesaid Act was attracted. It is not even an allegation against the petitioner that he withdrew the said amount and either did not pay to the contractors or that he retained the same or he was in any partnership with such contractors. There is no material on record indicating any such relationship of the petitioner with the contractors. There is no material to show that the amount was misappropriated by the petitioner as Up Sarpanch.

13. Therefore, it appears that the Additional Collector was justified in holding in his order dated

14/03/2016 that the disqualification as contemplated under Section 14(1)(g) of the said Act was not attracted, as the petitioner had merely withdrawn the amount in question for paying it to the contractors.

14. There is much substance in the contention raised on behalf of the petitioner that since the Additional Collector had found the complaint to be not maintainable at the threshold, the Additional Commissioner while considering the appeal, even if he was prima facie convinced with the grievance raised by the complainant, ought to have remitted the matter to the Additional Collector for consideration. Instead, the Additional Commissioner decided the matter on merits and held against the petitioner.

15. A perusal of the impugned order passed by the Additional Commissioner shows that according to the said authority, work of paving blocks was accomplished by the petitioner herein by engaging services of the contractors in question and it was on his initiative that payments were made to such contractors by withdrawing money from the Gram Panchayat and that therefore,

indirect interest was created in the petitioner in respect of the said work, thereby attracting disqualification under Section 14(1)(g) of the said Act. This Court is of the opinion that such convoluted logic applied by the respondent No.1, Additional Commissioner, was wholly misplaced and that the purport of Section 14(1)(g) of the said Act was completely lost sight of the said Authority. The interpretation of the said provision was unnecessarily misconstrued by the Additional Commissioner in order to hold against the petitioner.

16. In view of the above, it is found that the impugned order is unsustainable, as the ground for disqualification against the petitioner under Section 14(1)(g) of the aforesaid Act was not made out.

17. Accordingly, writ petition is allowed and the impugned order dated 29/06/2016, is quashed and set aside. No order as to costs.

JUDGE