

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6126 OF 2020

Shri Gulabrao s/o Ananda Patil ... **PETITIONER**

VERSUS

The State of Maharashtra & others ... **RESPONDENTS**

.....
Shri A.B. Girase, Advocate for petitioner
Shri S.P. Tiwari, A.G.P. for State
Shri M.S. Kulkarni, Advocate for respondent No.5 and 6

.....
CORAM : R. G. AVACHAT, J.

Date of reserving order : 5th February, 2021

Date of pronouncing order: 9th February, 2021

ORDER :

Heard learned counsel for the parties. This Writ petition has been filed for the following main reliefs :-

- (B) By way of appropriate writ, order or directions in the like nature, the Hon'ble Court may kindly quash and set aside impugned judgment and order dated 15/07/2020 passed by the Collector, Dhule in Appeal No.06/2020 as well as the impugned judgment and order dated 28/08/2020 passed by the Id. Divisional Commissioner, Nashik Division, Nashik in Appeal No.05/2020, as the same are in violation of the directions issued by

the Hon'ble Supreme Court of India in the judgment and order dated 14/02/2020.

- (D) By way of appropriate writ, order or directions in the like nature, the Hon'ble Court may kindly direct the respondent authorities to allow the petitioner to resume his office on the post of Sarpanch of Mukti Village Panchayat, as the disqualification of the petitioner is set aside by the Hon'ble Supreme Court of India vide judgment and order dated 14/02/2020.

FACTS :-

2. The elections of Panchayat Samiti, Dhule were held on 1/12/2013. The petitioner was one of the contestants in the said election. He was not elected. The petitioner was required to give election expenses within a time-frame in the manner prescribed by the State Election Commission in terms of Section 15-B of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short, Act of 1961). As the petitioner did not submit the accounts of election expenses, he was given a notice to show cause why he should not be disqualified for the next five years. The petitioner submitted his reply late. It was his explanation that due to his ill health, he could not furnish account of expenses incurred. The Collector, Dhule, vide order dated 3/11/2014, disqualified the

petitioner for contesting elections for a period of five years. The appeal preferred by the petitioner was dismissed by Divisional Commissioner in December 2017. In the interregnum, the elections of Grampanchayat of Village Mukti were held. The petitioner got elected to the post of Sarpanch. The respondent No.5 herein raised objection to the petitioner's nomination. The Returning Officer rejected the same. In view of the Returning Officer, the disqualification would be applicable only for the elections of Zilla Parishad and Panchayat Samiti and not for elections of Grampanchayat.

3. The petitioner had filed Writ petition No.3846/2018 taking exception to the order of the Divisional Commissioner, confirming the order of the Collector, dated 3/11/2014. The respondent No.5 filed the Writ Petition challenging the order of the Returning Officer rejecting his objection to the nomination of the petitioner to the post of Sarpanch. The respondent No.6 filed Writ Petition taking exception to the election of the petitioner as a Sarpanch of the village Mukti. All the three Writ Petitions were decided by this Court by common judgment and order dated 24/7/2019. This Court held the petitioner's election as Sarpanch of the village to be void ab initio. The petitioner challenged the said order in Special Leave Petition before the Supreme Court.

4. The Supreme Court allowed the Civil Appeal in terms of the following order :-

“44. Consequently, the order passed by the Collector on 3rd November, 2014 and subsequent orders in appeal and in the writ petition are set aside in part to the extent of prescribing disqualification for a period of five years and the matter is remitted to the Collector to take into consideration the nature of default, the purport for which the election expenses are sought to be furnished and that the order of disqualification operates from the date of the order including delay in passing the order of disqualification. The Collector shall pass the order afresh in respect of period of disqualification in accordance with law preferably within a period of one month from the date of receipt of copy of this judgment. The period of disqualification, if any, will be operative from the date of the order passed earlier by the Collector on 3rd November, 2014 and that any elections held as a consequence of the order of disqualification will abide the final order to be passed by the Collector.”

In terms of the aforesaid order, the Collector took up the appeal (No.6/2020) for re-hearing. After hearing the parties, the Collector passed the following order :

“(१) अर्जदार यांचा अर्ज अंशतः मंजूर करण्यात येत आहे.

(२) महाराष्ट्र जिल्हा परिषद व पंचायत समिती अधिनियम १९६१ चे कलम १५(ख) (१) व कलम ६२-क (१) अन्वये अर्जदार यांची निरर्हता कायम ठेवून, कोणतीही निरर्हता दूर करणे अथवा कोणत्याही निरर्हतेचा कालावधी कमी करण्याचे अधिकार या अधिनियमातील कलम १५(ख) (२) व कलम ६२-

क (२) चे अधिकार मा. राज्य निवडणूक आयोगाने मा. विभागीय आयुक्त, यांना प्रदान केले असल्याने, निरर्हता दूर करणे अथवा त्याचा कालावधी कमी करणे बाबत तरतुदींच्या अधीन राहून प्रकरण मा. विभागीय आयुक्त, नाशिक यांचेकडे मा. सर्वोच्च न्यायालय यांचेकडील निर्देश व राज्य निवडणूक आयोगाचे त्यांना प्रदान केलेले अधिकार अन्वये निर्णयित करणेसाठी सादर करणेत येत आहे."

5. The petitioner preferred appeal being Appeal No.5/2020 against the Collector's order. The learned Divisional Commissioner, Nashik Division, Nashik, vide order dated 28/8/2020, partly allowed the appeal in terms of the following order :

“(१) अपिलार्थीचे अपील अंशतः मान्य करण्यात येत आहे.

(२) अपिलार्थीचे अपील अंशतः मान्य करण्याचे परिणामी, जिल्हाधिकारी, धुळे यांचेकडील आदेश क्र. जि.प.पं.स. सार्वत्रिक निवडणूक/कावि/७५५/२०१४ दि. ०३/११/२०१४ अन्वये अपिलार्थी यांना निवडणूक लढविण्यास निरर्ह केलेला ०५ वर्षाचा कालावधी कमी करण्यात येऊन जिल्हाधिकारी, धुळे यांच्या दिनांक ०३/११/२०१४ रोजीच्या आदेशाच्या दिनांक पासून पुढील ०३ वर्षांचे कालावधीकरिता मर्यादित करण्यात येत आहे .”

The aforesaid two orders of the Collector and the Divisional Commissioner are under challenge in this writ Petition.

6. Mr. Girase, learned counsel for the petitioner

would submit that the Collector is in contempt of the order of the Apex Court dated 14/2/2020 in Civil Appeals @ SLP(C) Nos.20814-20816 of 2019 and Civil Appeal @ SLP(C) ... Diary No.40018 of 2019, the Supreme Court had specifically directed the Collector to pass the order afresh in respect of the period of disqualification in accordance with law, preferably within a period of one month. The Collector abdicated his jurisdiction and referred the issue to the Divisional Commissioner on the ground of having been not authorised or conferred with jurisdiction to reduce the period of disqualification.

7. Mr. M.S. Kulkarni, learned counsel representing respondents No.5 and 6 and the learned A.G.P. representing the State would support the impugned order. According to learned counsel Mr. Kulkarni, the petitioner has already incurred a disqualification. They, therefore, submitted for dismissal of the Writ Petition.

8. Section 14-B of the Maharashtra Village Panchayats Act, 1959 is pari materia with Section 15-B of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. the Hon'ble Supreme Court, in paragraphs No.11, 12 and 13 of the judgment, observed :-

“11. We do not find any merit in the argument that Section 14B of the 1959 Act is mandatory. Sub-section (1) of Section 14B of the said Act empowers the State Election Commission to pass an order of disqualification of a candidate, if the candidate fails to lodge account of election expenses for lack of good reason or without any justification. Such satisfaction is required to be recorded by the Election Commission. The disqualification for a period of five years is not necessary consequence of merely not filing account of election expenses. Still further, subsection (2) empowers the State Election Commission for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification. Since authority is vested with power to reduce the period of disqualification, therefore, makes the provision directory.

12. This Court in **A.K. Pandey** held that the prohibitive or negative words are ordinarily indicative of mandatory nature of the provision although said fact alone is not conclusive. This Court held as under :

“15. The principle seems to be fairly well settled that The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word “shall” is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such.”

13. In the present case, there is no prohibitive or negative expressions used in Section 14B of the 1959 Act, as it empowers the Election Commission to pass a just order of disqualification. Such provision cannot be treated to be mandatory period of five years in view of plain language of the Statute.”

9. It is re-iterated that, the Supreme Court specifically set aside the Collector's order dated 3/11/2014 and directed him to pass the order afresh in respect of period of disqualification in accordance with law within a time-frame of one month. In the given circumstances, it was for the Collector like a first Court/ Trial Court to re-hear the matter and decide the same. The Collector ought not to have, vide order dated 15/7/2020, referred the matter to the Divisional Commissioner, and the Commissioner, in turn, should not have entertained the same. Both the orders impugned herein, therefore, need to be set aside with directions to the Collector to comply with the mandate of the order passed by the Supreme Court, on 14/2/2020.

10. The writ petition is, therefore, allowed in terms of prayer clauses (B) and (C).

**(R. G. AVACHAT)
JUDGE**

fmp/-