

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

WRIT PETITION NO. 12276 OF 2021

Shri Gulabrao S/o Ananda Patil
Age : 72 years, Occu-Agriculture,
R/o Mukti, Tq. And District Dhule.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
- 2] The Divisional Commissioner,
Nashik Division, Nashik.
- 3] The Collector,
Dhule, District Dhule.
- 4] The Tahsildar,
Dhule, Tq. and District Dhule
- 5] Shri Pradip S/o Nimba Patil,
Age : Major, Occu : Agriculture
R/o Mukti, Tq. and District Dhule
- 6] Shri Ritesh S/o Suresh Patil,
Age : Major, Occu : Agriculture,
R/o Mukti, Tq. and District Dhule.

..RESPONDENTS

.....

Mr. A.B.Girase and Y.B.Bolkar,Advocates for the petitioner
Mr. K.B.Jadhavar, A.G.P for respondent Nos.1 to 4.
Mr.Chaitanya Deshpande,Advocate for respondent No.5
Mr. Mukul Kulkarni, Advocate for respondent No.6.

.....

AND

WRIT PETITION NO. 12893 OF 2021

Shri Ritesh Suresh Patil
Age : 43 years, Occu-Agriculture,
Residents of : At village Mukti,
Taluka and District Dhule.

..PETITIONER
[Org.Appellant]

VERSUS

1. The State of Maharashtra
Through the Divisional Commissioner,
Nashik Division, Nashik.

2] The Collector,
Dhule, District Dhule.

3] Shri Gulabrao S/o Ananda Patil
Age : 72 years, Occu-Agriculture,
Resident of : At village Mukti,
Taluka and District Dhule.

[Opponent No.1]

4] Shri Pradip S/o Nimba Patil,
Age : years, Occu : Agriculture
Resident of : At village Mukti,
Taluka and District Dhule.

..RESPONDENTS

.....

Mr. Mukul Kulkarni, A.B.Girase and Y.B.Bolkar,Advocates for the petitioner

Mr. K.B.Jadhavar, A.G.P. for respondent Nos.1 and 2.

Mr.A.B.Girase Advocate for respondent No.3

Mr.Chaitanya Deshpande,Advocate for respondent No.4

.....

CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 23.11.2021

JUDGMENT PRONOUNCED ON : 03.12.2021

JUDGMENT :-

Since these are counter Writ Petitions and a common question of law based on same facts arises in both these Petitions, these are being disposed of by this common judgment.

2] Heard both the sides. Rule. The Rule is made returnable forthwith. The learned advocates and the learned A.G.P. for the respective respondents in both these petitions waive service. At their request, the matters are heard finally at the stage of admission.

3] For the sake of convenience and in order to avoid confusion, individual parties would hereinafter be referred to by their first names.

4] The common question that arises for determination is as to whether the Divisional Commissioner as a delegate of the State Election Commission has the powers to increase the period of disqualification fixed by the Collector as a delegate of State Election Commission under sub-Section 1 of Section 15B of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter the Z.P. Act]. The question arises from a chequered history, the relevant facts being as follows:

(i) The petitioner Gulabrao contested the election of Panchayat Samiti, Dhule which was held under the Z.P. Act on 2/12/2013 but did not succeed. As per the provisions of Section 15B, he failed to furnish election expenses for the two days i.e. the date of voting and the date of counting of the votes. He furnished some explanation to the respondent Collector *inter alia* claiming it to be a sufficient ground for his inability to furnish the expenses. The Collector by his order dated 3/11/2014 disqualified him for a period of 5 years under Sub Section 1 of Section 15B of the Z.P. Act. The matter went upto the Supreme Court in Civil Appeal No.1622/2020 arising of S.L.P.(Civ) No.16827/19, in a group of matters in respect of similar challenge. Though the Supreme Court upheld the orders of the Collector to the extent of Gulabrao having incurred disqualification under Section 15B(1), by applying doctrine of proportionality, it struck down the quantum of disqualification of 5 years and directed the respondent Collector to pass an appropriate order regarding period of disqualification. Gulabrao and the other petitioner Ritesh then appeared before the Collector who by his order dated 11/6/2021 reduced the period of disqualification to two years.

(ii) In the mean time the petitioner Gulabrao filed a nomination form for being elected as a Sarpanch of village Mukti under the provisions of the

Maharashtra Village Panchayats Act 1959 (hereinafter the V.PAct) on 21/9/2017. Respondent Pradip raised an objection to his nomination but it was turned down. Gulabrao got elected as a Sarpanch on 11/10/2017. The election was challenged by respondent Pradip and Ritesh and was declared his election as void *ab initio* in view of the disqualification incurred by him under Section 15B(1) of the Z.P. Act. That order was challenged before the Supreme Court which, as mentioned hereinabove, remanded the matter to Collector for taking a decision as to the period of disqualification.

5] Relevant observations of the Supreme Court in respect of petitioner Gulabrao can be found in paragraphs 30,31,35, 43 and 44 as under :

“30] It is also submitted that the disqualification for a period of five years is wholly disproportionate to the default committed by the appellant of not filing the election expenses incurred on the date of election.

31] Similar argument has been examined in an appeal preferred by ***Laxmi Bai***. For the reasons recorded therein, we find that the order of disqualification for a period of five years is illegal and untenable and cannot be sustained.

35] The High Court followed its earlier judgment reported as ***Gokul Chandanmal Sangvi v. State of Maharashtra and Others*** holding that the disqualification incurred by a candidate will entail

disqualification to contest an election under 1959 Act in terms of Section 13 of the said Act. Since the appellant has been disqualified under the provisions of 1961 Act, therefore, such disqualification is a disqualification for the purposes of the elections under 1959 Act as well. Therefore, the appellant could not contest elections for Gram Panchayat having been disqualified for a period of five years under the 1961 Act. We see no reason to disagree with the findings of the High Court in this respect.

43] Section 10A of the 1959 Act and Section 9A of the 1961 Act read with Articles 243-K and 243-O, are *pari materia* with Article 324 of the Constitution of India. In view of the judgments referred, we find that the remedy of an aggrieved person accepting or rejecting nomination of a candidate is by way of an election petition in view of the bar created under Section 15A of the 1959 Act. The said Act is a complete code providing machinery for redressal to the grievances pertaining to election as contained in Section 15 of the 1959 Act. The High Court though exercises extraordinary jurisdiction under Article 226 of the Constitution of India but such jurisdiction is discretionary in nature and may not be exercised in view of the fact that an efficacious alternative remedy is available and more so exercise restraint in terms of Article 243-O of the Constitution of India. Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the results of the elections but relegate the parties to the remedy contemplated by the statute. In view of the above, the writ petition should not have been entertained by the High Court. However, the order of the High Court that the appellant has not furnished the election expenses incurred on the date of election does not warrant any

interference.

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.”

6] It is the submission of learned advocate Mr.Girase who appears for petitioner Gulabrao that by virtue of the wordings of Section 15B of the Z.P Act the powers to decide on the question of disqualification under Sub Section 1 have been delegated by State Election Commission to the Collector whereas the power to remove such disqualification or reduce its period have been delegated by the State Election Commission to the Divisional Commissioner. From the wordings of Sub Section 2, the Divisional Commissioner either can remove the disqualification or reduce its period. A specific word "reduced"

clearly indicates that the legislature did not intend and vest him with a power to increase the period of disqualification or even to disqualify a person when under Sub Section 1 the Collector has not recorded the disqualification. According to him the Divisional Commissioner acting under Sub Section 2 of Section 15B can either remove the disqualification which has been recorded under Sub Section 1 or reduce its period. In utter disregard to such provision, the Divisional Commissioner in the matter in hand by order under challenge by Gulabrao has increased the period of disqualification recorded by the respondent Collector from 2 years to 3 years. Such exercise of power which did not vest in him, is clearly illegal and is liable to be quashed and set aside.

7] *Per contra*, the learned A.G.P and the learned Adv.Mr.Kulkarni for petitioner Ritesh as also Mr.Deshpande for respondent Pradip would submit that the powers to enhance the period of disqualification are inherent with the Divisional Commissioner and are not limited to the extent of removing disqualification or reduction of its period. They would further submit that without sufficient and cogent reasons, the Collector had reduced the period of disqualification to two years even while the petitioner Gulabrao specifically admitted the default. Such arbitrary exercise of the powers has been interfered with by the Divisional Commissioner in the order under challenge.

There is no illegality.

8] The learned advocates would then submit that since the fact of petitioner Gulabrao having incurred disqualification has been confirmed by the Supreme Court, he was not qualified and entitled to contest the election of Sarpanch and still their objections to his candidature was turned down and he got elected as a Sarpanch which election has subsequently been held to be void *ab initio*. As a corollary they would submit that since the petitioner Gulabrao has incurred disqualification confirmed upto the Supreme Court, there is no question of he being reinstated to the post of Sarpanch.

9] I have carefully considered the rival submissions and the papers.
Section 15B of the Z.P. Act reads as under :

“15B(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 Councillor or for contesting an election for being a Councillor 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.”

10] The parties are unanimous that by virtue of a notification issued by the State Election Commission, its power under Sub Section 1 of Section 15B has been delegated to the concerned Collector, whereas its power under Sub Section 2 has been delegated to the Divisional Commissioner.

11] As is mentioned at the inception, the question formulated has to be answered in the light of the aforementioned facts and the wordings of Section 15B. It is quite apparent that it is essentially a power of the State Election commission, under Sub Section 1 to declare disqualification, whereas under Sub Section 2 it is empowered to remove such disqualification or to reduce the period of such disqualification. Basically it is the self same authority which has been conferred with such two powers of firstly declaring disqualification and, secondly, either to remove it or reduce its period. Though, admittedly, these powers under Sub Sections 1 and 2 have been delegated to the Collector and the Divisional Commissioner respectively, the power under Sub Section 2 would not be in the nature of an appeal but will have to be regarded as a power of revision or a review by self same authority which has recorded the

disqualification under Sub Section 1. If a plain meaning is applied, it would clearly indicate that the power to be exercised by a Divisional Commissioner under Sub Section 2 would be limited to either removing the disqualification recorded by a Collector or reducing its quantum as imposed by the latter. It is trite that the provisions of a statute are to be interpreted primarily by giving full effect to the plain language. It is only if the language has a tendency to create some confusion or is open to some interpretation that the other principles of interpretation of statute are to be resorted to.

12] When the legislature in its wisdom has in a plain language vested a power under Sub Section 2 either to remove the disqualification or to reduce its quantum, as is imposed under Sub Section 1, it cannot be said that it even intended to confer the power to enhance or increase the period of disqualification. Any other interpretation would run afoul to the legislative intent and cannot be permitted to be done.

13] This is what has happened in the matter in hand. Pursuant to the directions of the Supreme Court the matter was remitted to the Collector to reduce the period of disqualification. He did so and reduced it two years by recording reasons which by no stretch of imagination can be said to be either

perverse or arbitrary. There was merely a delay of two days for which the petitioner had offered some explanation which was accepted by the Collector. As the observations of the Supreme Court reproduced hereinabove, would indicate, it was clearly mentioned that the period of five years was grossly disproportionate to the lapse. By referring to all these observations the Collector had reduced the period of disqualification to two years.

14] Without there being any power vested in the respondent Divisional Commissioner, as if he was sitting in appeal, he has, by the impugned judgment and order quashed and set aside the order of the Collector and has enhanced the period of disqualification from two to three years. He has exercised the jurisdiction which was not vested in him and consequently, the impugned order being clearly illegal, is liable to be quashed and set aside.

15] Coming to the submission of learned advocate Mr.Kulkarni and Mr.Deshpande that once the disqualification of the petitioner Gulabrao has been confirmed upto the Supreme Court, it would remain in perpetuity, suffice for the purpose to refer to the last sentence from paragraph no.44 of the order of the Supreme Court wherein it has been specifically mentioned that the period of disqualification will be operative from the date of the order passed

earlier by the Collector on 3/11/2014 and any elections held as a consequence of the order of disqualification will abide by the final order to be passed by the Collector. Meaning thereby, the period of disqualification of petitioner Gulabrao would begin to run from 3/11/2014. Since it was for a period of two years, that period ended on 2/11/2016 whereas he got elected as a Sarpanch under the V. P. Act on 11/10/2017, nomination for which was filled in by him on 21/9/2017. Therefore, the submission of the learned advocate Mr.Kulkarni and Mr.Deshpande that he was not qualified having once been disqualified to contest the election of Sarpanch and cannot be reinstated would be clearly contrary to the observations of the Supreme Court referred therein above.

16] Coming to the decision cited by learned Advocate Mr.Kulkarni and Mr.Deshpande, in the case of K.Prabhakaran V/s P.Jayarajan; (2005) 1 S.C.C. 754 to buttress his submission that once disqualification is incurred, there was no question of any reinstatement, as can be appreciated, the facts before the Supreme Court in the matter of K.Prabhakaran were to the effect that a person who was elected under the Representation of Peoples Act was convicted for various offences which sentences were directed to run consecutively and was sentenced for a total period of 2 years and 5 months.

He had preferred an appeal against his conviction. The sentence was suspended pending appeal. He then filed a nomination. An objection raised was turned down by the Returning Officer holding that he was not convicted for any offence for a period of two years and did not incur any disqualification under Section 8(3) of the Representation of Peoples Act, 1951. His appeal was then partly allowed by Sessions Court and it directed the sentences of imprisonment for several offences to run concurrently. The person aggrieved preferred an Election Petition before the High Court which was dismissed. It is on this background it was held that the earlier judgment of the Sessions Court of a date subsequent to the date of nomination for election would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for not less than two years is disqualified from filing nomination and contesting the election on the date of nomination or election as the case may be.

17] To repeat, as is mentioned hereinabove, in the matters in hand, the Supreme Court specifically directed in paragraph no.44 that the period of disqualification would be operative from the date of the order of the Collector dated 3/11/2014. Since the period of two years of disqualification had ended even before the petitioner filed nomination for the post of Sarpanch under the

VPAct, as on the date of his nomination and election, he was not running any disqualification. Therefore, petitioner Ritesh and respondent Pradip are not entitled to derive any benefit from the decision in the case of *K.Prabhakaran* (supra).

18] Writ Petition No.12276/2021 is allowed, whereas Writ Petition No.12893/2021 is dismissed. The petitioner Gulabrao shall be entitled to complete the term as a Sarpanch of Mukti village Panchayat.

19] The Rule is made absolute in above terms. No order as to costs.

[MANGESH S. PATIL, J.]

umg/

20] After pronouncement of the judgment, learned Advocate Mr.Mukul Kulkarni for the petitioner in Writ Petition No.12893/2021 requests to stay operation of the order so as to enable his client to approach the Supreme Court. Learned advocate Mr.A.B.Girase strongly opposes the request.

21] Considering the nature of the dispute, operation of the order shall stand

stayed for a period of two weeks.

[MANGESH S. PATIL, J.]

umg/