

DSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8082 OF 2021**

Rani M. Powar

...Petitioner

V/s.

Sheela N. Buchade and ors.

...Respondents

Mr. P.D. Dalvi a/w. Mr. Girish Agarwal for the Petitioner.

Mrs. Vaishali S. Nimbalkar, AGP for the Respondent – State.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 30, 2021.

PC :

1] Heard learned counsel for the petitioner and learned AGP for respondent Nos.3 to 5.

2] The petitioner successfully contested elections of the Gram Panchayat Kerle for the period 2018 to 2023. The election was held on 27.9.2018. Accordingly, she has been the member of the said Gram Panchayat. However, it so transpired that prior to election of Gram Panchayat in question, the petitioner had participated in elections which were held for Zilla Parishad, Kolhapur and by an order dated 27.6.2017 passed by the Collector, Kolhapur, she was disqualified for a period of 5 years under the provisions of section 15B read with Section 63 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961.

3] Considering such disqualification of the petitioner, respondent No.1 filed an application before the Collector, Kolhapur against the petitioner praying that the petitioner was disqualified to contest the Gram Panchayat

elections by raising a specific ground that the petitioner was disqualified by an order dated 27.6.2017 passed by Collector, Kolhapur for a period of 5 years, in relation to elections of the Zilla Parishad.

4] The said application of respondent No.1 came to be granted by the impugned order dated 5.3.2021 passed by Collector, Kolhapur, the Collector holding that the petitioner was disqualified to contest the Gram Panchayat elections in view of disqualification she possessed having disqualified under the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961.

5] The said order passed by the Collector was assailed by the petitioner in an appeal before the Divisional Commissioner for Revenue, Pune Division and as informed by Mr.Dalvi the Commissioner having tested Covid positive was unable to hear the petitioner's application for stay, as also the petitioner's appeal could not be heard. The petitioner, hence, has filed this petition praying for the following reliefs:

“(a) that Your Lordships may be pleased to issue an appropriate writ, order or direction, and to quash and set aside the impugned Judgement and Order dated 5.3.2021 passed by the Collector, Kolhapur, passed in Dispute Application No. 51 of 2018 and dismiss the said Dispute Application;

(b) pending the hearing and final disposal of this Writ Petition, the execution, operation and implementation of the impugned Judgement and Order dated 5.3.2021 passed by the Collector, Kolhapur, passed in Dispute Application No.51 of 2018 may kindly be stayed;

In the alternative to prayer clause (b) above.

(c) pending the hearing and final disposal of an Appeal No.14 of 2021 pending on the file of Learned Additional Commissioner, Pune Division, Pune, the execution, operation and implementation of the impugned Judgement and Order dated 5.3.2021 passed by the

Collector, Kolhapur, passed in Dispute Application No.51 of 2018 may kindly be stayed;

(d) ad-interim and interim reliefs in terms of prayer clause (b) or (c) above be granted.

(e) pass such other and further reliefs as this Honourable Court may deem fit and proper in the facts and circumstances of the case.

(f) Costs of this Writ Petition be provided for.”

6] Having perused the impugned order passed by the Collector as also the order dated 27.6.2017 whereby the petitioner was disqualified under Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961, in my opinion, no case for interference is made out by the petitioner in order passed by Collector, Kolhapur for more than one reason. Firstly, having due regard to the provisions of section 13(2) of the Maharashtra Village Panchayat Act, 1958, it is quite apparent that the petitioner was disqualified under the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961. By virtue of the disqualification order dated 27.6.2017, the petitioner was not qualified to file her nomination for the elections of the Gram Panchayat as Section 13(2) of the Maharashtra Village Panchayat Act, 1958 ordains an effect, that if a candidate is disqualified under any other law for the time being in force in the present case the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961, he /she is not qualified to be elected. The relevant extract of Section 13 of the Maharashtra Village Panchayat Act, 1958 reads as under:

“S.13. Persons qualified to vote and be elected.

(1) Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.

(2) Every person (who is not less than 21 years of age on the last date fixed for making nomination for every general election or bye-election and) whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected for any ward of the village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected for any ward of the village.

(3) Subject to any disqualification incurred by a person, the list of voters, shall be conclusive evidence for the purpose of determining under this section whether any person is qualified or is not qualified to vote, or as the case may be, is qualified or is not qualified to be elected, at any election.”

(emphasis supplied)

7] Learned AGP for the respondent – State has drawn my attention to the decision of a Division Bench of this Court in the case of ***Gokul C. Sangvi vs. State of Maharashtra & ors. - 2018 SCC OnLine Bom 428***, wherein in a similar situation the Court considering the provisions of Section 13 of the Maharashtra Village Panchayat Act has held that the disqualification under the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 would be applicable to the Gram Panchayat elections by virtue of Section 13 (2) of the Maharashtra Village Panchayats Act. The relevant observations in that regard in paragraph 16 of the said decision can be noted :

“16. In the present case, the State Election Commission has delegated its powers to Collector, Dhule to pass order regarding the disqualification which the Collector, Dhule exercised and passed the order of disqualification for five years from 3-11-2014, obviously on the date when respondent No.5 submitted nomination for candidature as Sarpanch for Fagane on 22-09-2017. He was already disqualified under the Maharashtra Zilla Prarishads and Panchayat Samitis Act and it was existing. This disqualification will be applicable to the elections of Sarpanch as per the express language used in section 13(2) of the Maharashtra Village Panchayats Act and the Notification dt. 1-9-2017. the arguments of learned advocate Shri Sapkal that the disqualification will apply only to the election under particular Act cannot be accepted as it is contrary to the plain language. In 1955, the language of disqualification in section 3(d) of the Municipalities Act was different.

The word in this behalf was used and the argument was advanced that those related to disqualification under particular act only but even this argument was not accepted in Sadasheo v. Hemaji (supra).”

8] The petitioner was clearly disqualified to contest the Gram Panchayat elections. For the aforesaid reasons, in my opinion, no case is made out for stay of the impugned order passed by the Collector disqualifying the petitioner as a member of the Gram Panchayat. The petition is accordingly rejected. No costs.

(G. S. KULKARNI, J.)