

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8051 OF 2021

Smt. Sangeeta Shivaji Vadkte

... Petitioner

V/s.

Suryabhan Damu Yamgar & Ors.

... Respondents

Mr. Rameshwar N. Gite for the petitioner.

Mr. S.H. Kankal, AGP for the State.

Mr. J.D. Khairnar for respondent nos. 1 to 3.

CORAM : G.S.KULKARNI, J.

DATE : 14 December, 2021

ORDER:

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. The question which arises for consideration in the present proceedings is whether a "self declaration" made by a candidate contesting elections to the post of Sarpanch, that he/she has a "toilet" in a house where he/she resides was a sufficient compliance, to be not disqualified under Section 14(1)(j-5) of the Maharashtra Village Panchayat Act, 1959?

3. The petitioner challenges an order dated 29 September, 2021 passed by the Additional Commissioner, Nashik Division whereby an appeal filed by her under section 16 of the

Maharashtra Village Panchayat Act, 1959 (for short "the Act") has been dismissed thereby confirming the order dated 15 March, 2021 passed by the Additional Collector, Malegaon, District Nashik. By the impugned order, the petitioner has been held to be disqualified as a Sarpanch of Grampanchayat, Khadgaon, Taluka Nandgaon, District Nashik under the provisions of Section 14(1)(j-5) of the Act. At the outset, it would be appropriate to extract the said provisions, which reads thus:

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

.....

(j-5) fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha **[or of the Chief Executive Officer or an officer designated by him; or a self-certificate]** certifying that -

(i) **he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or**

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet.

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits **such** certificate to the Block Development Officer, within a period of one year from the 10th January, 2011, being the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2020 (Nah.XXXIII of 2010)]

Provided further that, nothing contained in this clause shall affect the member holding office on the 10th January, 2011, who has not submitted the certificate within a period of ninety days from the said date, as required under the provisions of this Act, as amended by the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010 (Mah. XXXIII of

2010); and he shall not be deemed to be disqualified and shall continue to hold his office for a period of one year from the said date, unless he is disqualified under any other provisions of this Act or any other law for the time being in force;"

4. Some undisputed facts are required to be noted:

It is the case of the petitioner that she was elected as a Sarpanch of the said Grampanchayat on 21 November, 2019 from the seat reserved for Other Backward Class Women. It is her categorical contention and it appears to be not disputed, that the petitioner at the time of filing nomination for the election of Sarpanch had submitted all the requisite documents to the Returning officer on 21 November, 2019 as required under the provisions of the Act along with her nomination papers. The certificate relevant to the present proceedings as filed with her nomination papers was a self-certificate dated 20 November, 2019 that she is resident of the said village and that there is a toilet in her house which was constructed on 10 May, 2019. She also undertook that if such information in regard to the existence of toilet is found to be false, she would be liable for a penal action, as also for other consequences the law would provide. Her contention is that the submission of such certificate was not disputed at any point of time.

5. It appears that respondent nos. 1 to 3 filed a complaint before the Additional Collector on 20 September, 2020 that the petitioner has not complied with the mandatory requirement of submitting a certificate of not having a toilet as per the requirement of the said provision.

6. Learned Collector examined the complaint, only on the ground that although a self-certificate was filed by the petitioner, however, in addition thereto a certificate of the concerned Grampanchayat along with the resolution of Gramsabha was not submitted by the petitioner. Accepting the complaint of respondent nos. 1 to 3, the Collector held the petitioner to be disqualified under the provisions of Section 14(1)(j-5) of the said Act. The reasons as set out by the Collector are seen in paragraph 7.5 of the said order, which reads thus:

(Official transaction of the vernacular (Marathi) version)

"7.5 Although the point viz. Whether respondent no. 1 had or had not produced the resolution of Gramsabha and certificate of the Panchayat along with the Nomination form, is for consideration in the present matter, respondent no. 1 has neither produced any proof nor made any comment in respect thereof. The points raised by him in his arguments are not applicable in the present matter and hence, the same are not taken into consideration.

As per the aforesaid discussion, it is proved

that while filing nomination form at the time of election, the respondent no. 1 has not produced the resolution of the Gramsabha and certificate of the Panchayat regarding existence of toilet (in the village) along with the nomination form and therefore, I am of the opinion that he is ineligible to hold the post as a Sarpanch of the Grampanchayat."

7. The petitioner being aggrieved by the above order dated 15 March, 2021 passed by the Additional Collector, approached the Additional Commissioner in an appeal, filed under section 16(2) of the Act. By the impugned order, the learned Additional Commissioner has confirmed the finding as recorded by the Additional Collector that a self-certificate was not sufficient and the petitioner was required to submit the certificate of a concerned Panchayat along with the resolution of Gramsabha and accordingly, dismissed the appeal filed by the petitioner.

8. Learned counsel for the petitioner in assailing the concurrent findings against the petitioner would submit that the interpretation of Section 14(1)(j-5) of the Act as made by the authorities is patently perverse. His submission is that, the findings as recorded by both the authorities in the present context are in the teeth of the clear language of Section 14(1)(j-5) of the Act which permits a self-certificate to be issued, by virtue of an amendment which is inserted by Maharashtra Act No. 28 of 2017 w.e.f. 31.01.2017. It

is his submission that the Additional Collector as also the Additional Commissioner has completely overlooked the effect of the amendment, namely, that there was a distinct departure from the said provision as it stood prior to the amendment inasmuch as the pre-amended provision prescribed that a certificate of the concerned panchayat along with resolution of the Gramsabha be submitted. However, according to him, by such amendment, it has been provided that if the certificate of the concerned panchayat along with resolution of the Gramsabha has not been provided then it is permissible to provide a certificate of the Chief Executive Officer or an officer designated by him or a self-certificate certifying the compliance of Clauses (i) and (ii) of the said provision. It is his submission that the petitioner had complied with the said provision as it stood on the date the nomination form was submitted and had accordingly submitted the said certificate which was accepted as a proper compliance by the Election Officer in accepting petitioner's nomination. It is hence submitted that the finding as recorded by both the authorities are completely oblivious to the effect of the amended provision, which provides for a self-certificate. It is also his submission that although the election has taken place on 21 November 2019 and there was no dispute in regard to the said certificate, a belated complaint came

to be submitted by respondent nos. 1 to 3, i.e., almost 10 months after the petitioner was elected as a Sarpanch on a complete non-issue, when the authorities themselves were satisfied on the compliance, by the petitioner of the requirements of Section 14(1)(j-5) of the Act.

9. On the other hand, Mr. Khairnar, learned counsel for respondent nos. 1 to 3 would submit that it was an obligation on the petitioner as asserted by his client in the complaint that a certificate of the concerned panchayat along with the resolution of Gramsabha was mandatory along with a self-certificate. It is his contention that both the authorities have appropriately considered the said provision and the law in that regard in holding the petitioner to be disqualified. The impugned orders according to him would not require interference of this Court.

10. Learned AGP has also supported the impugned orders. He submits that this is a case involving interpretation of the provisions of Section 14(1)(j-5) of the Act and as undertaken by the authorities below.

11. Having heard the learned counsel for the parties and having

perused the impugned order, in my opinion, both the authorities have ex-facie erred in passing the impugned order inasmuch as the provisions of Section 14(1)(j-5) have been incorrectly read and/or misinterpreted by the said authorities in disqualifying the petitioner as a Sarpanch. The discussion below would aid this conclusion.

12. It needs to be noted that the provision as it stood prior to its amendment necessitated the candidate to submit a certificate of the concerned panchayat along with resolution of the Gramsabha. However, a categorical departure of said requirement has been made by virtue of the amendment inserted by Maharashtra Act No. 28 of 2017 with effect from 31 January, 2017, which would be applicable to the facts of the case, for the reason, that the elections in the present case was held on 21 November, 2019. At the cost of repetition, it would be appropriate to revisit the relevant part of the provision so as to appreciate the effect of the amendment. The highlighted words indicate the amended provision, which reads thus:

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

.....

(j-5) fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha

[or of the Chief Executive Officer or an officer designated by him; or a self-certificate] certifying that

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(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet”.

13. It is thus clear that there is a departure from the original requirement as postulated by the provision prior to its amendment by the 2017 Amendment Act, by categorically providing for a “self-certificate”, under which the candidate would self certify that he/she complies with the requirement of clauses (i) and (ii) of sub-section (j-5). A valid intention discerns from such legislative amendment. Once a candidate issues a self-certificate setting out the consequence in the self-certificate, namely, the truth thereof, a candidate certainly exposes himself/herself to an enquiry either on a complaint or otherwise that the certificate is a false certificate that the facilities of a toilet are not in existence and therefore on a enquiry being undertaken in the manner known to law, the candidate would expose himself/herself to a disqualification.

14. The case of the complainant as it positively appears is on the basis of a requirement of sub-section (j-5) of Section 14(1) as it

stood prior to the amendment, namely, that a certificate of the concerned Grampanchayat along with resolution of the Gramsabha to be submitted by the petitioner was the requirement of the provision. Such a complaint would have certainly fallen to the ground if the provision as amended by the 2017 Amending Act was to be looked at, which categorically provided for a self-certificate, which was a departure from the prior requirements of the said provision as is clear from the plain language of the provision. If it was contended on behalf of the respondent nos. 1 to 3 in their complaint against the petitioner, that even a self-certificate is required to be accompanied with the certificate of concerned Grampanchayat along with resolution of the Gramsabha, in my opinion, this would amount to a wrong reading of the amended provision of sub-section 14(1)(j-5). This apart a distinct and independent requirement of a self-certificate as incorporated by such amending Act in that case would itself be rendered meaningless. Thus the case of the complainants is that although a self-certificate was given, however, it ought to have been supported by the certificate of the concerned Panchayat or resolution of the Gramsabha was wholly untenable. It cannot be conceived that a self-certificate would be dependent on the concerned Grampanchayat, issuing a certificate along with its

resolution, and that too, these documents to be submitted at the time of filing of the nomination form. This would amount to a completely unworkable exercise and apart from reading into the provisions of Section 14(1)(j-5) something which has not been expressly provided or something which cannot otherwise be gathered to be implicit in the provision.

15. In these circumstances, a self-certificate which was submitted by the petitioner was a sufficient compliance of the provisions of Section 14(1)(j-5) of the Act. requirement. If there was to be any default in regard to the self-certificate, obviously, the petitioner would have exposed herself to enquiry. But such is not the case.

16. The upshot of the above discussion is that the findings rendered by both the authorities below are required to be held not only perverse but also illegal, being contrary to the provisions of Section 14(1)(j-5). The authorities below have erroneously applied the said provision to unseat the petitioner who was elected in a democratic manner as a Sarpanch of the Village Panchayat. This apart, what is glaring is also that the decisions which are considered and applied by both the authorities are decisions which

are rendered by the Court interpreting the provisions as it stood prior to the amendment.

17. As noted above, the amendment has changed the complete complexion of the provision by making the provision more workable in regard to self-certificate. The decision of the learned Single Judge of Nagpur Bench of this Court in **Sau. Chhayatai, w/o. Nageshwar Jengthe & Ors. vs. Additional Collector, Gadchiroli Collector Officer & Ors.** does not assist respondent no.1 to 3 inasmuch as in the said case, there was a total non-compliance of provisions of Section 14(1)(j-5), which is not the case in the present facts. The decision is hence not applicable.

18. For the above reasons, the petition needs to succeed. It is accordingly allowed in terms of prayer clause (b), which reads thus:

"b. This Hon'ble Court may kindly be pleased to quash and set aside the impugned judgment and order dated 29th September, 2021 passed by Id. Additional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No. 14/2021 as well as judgment and order dated 15 March, 2021 passed by the Id. Collector, Nashik, District Nashik in Grampanchayat Dispute Application no. 13/2020.

19. Rule is made absolute in the above terms. No costs.

(G.S.KULKARNI, J.)