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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7991 OF 2021

Vinod Narsing Shitole ...**Petitioner.**
V/s.
The State of Maharashtra and ors. ...**Respondents.**

Mr. Surel Shah i/b Mr. S.M. Sabrad for the Petitioner.
Mr.S.H. Kankal, AGP for the Respondent/State.
Mr. Manoj Patil for the Respondent No.5.

C0RAM : G. S. KULKARNI, J.
DATE : DECEMBER 02, 2021.

PC :

1] Rule. The respondents waive service. By consent of the parties, heard finally.

2] The challenge in this petition is to an order dated 1.11.2021 passed by the Divisional Commissioner, Pune Division on an appeal which was filed by respondent No.5 whereby his complaint made before the Collector to disqualify the petitioner under the provisions of Section 14B of the Maharashtra Village Panchayats Act, 1959 (for short "the Act") has been rejected.

3] Section 14B of the Act reads thus:

"14B. Disqualification by State Election Commission.

(1) If the State Election Commission is satisfied that a person,-
(a) <u>has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and</u>

> (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 member of panchayat or for contesting an election for being a member 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.”

(emphasis supplied)

4] The petitioner contested the elections to the post of Upa-Sarpanch which was held on 27 May 2018, and was declared successful. Respondent no.5 lost the said elections by 18 votes from the 450 votes which were cast. Respondent No.5 filed a complaint before the Collector under the provisions of Section 14B of the Act that the petitioner had not furnished an account of the election expenses as required by the State Election Commission and hence he ought to be disqualified under the said provision.

5] From the record, it is not in dispute that the petitioner within the prescribed time of 30 days as prescribed under Section 14B(1), i.e. on 15.6.2018 had submitted his election expenditure along with his affidavit with the Election Officer in regard to the election to the post of Upa-Sarpanch, which was held on 27.5.2018.

6] The Collector examined the complaint filed by respondent No.5 and in his order dated 27.7.2019 recorded a finding that the account of expenditure was submitted by the petitioner within the prescribed time limit of 30 days as also the petitioner had opened a separate bank account. The Collector observed that certain miscellaneous expenditure can be made by a candidate and that the petitioner had made some miscellaneous cash expenditure. The Collector recording such findings held that the allegations which were made by respondent No.5 in his complaint were not proved and hence, rejected respondent No.5's complaint.

7] Respondent No.5 being aggrieved by such order passed by the Collector filed an appeal under section 16(2) of the said Act before the Divisional Commissioner, Pune Division. The Divisional Commissioner, after hearing the parties, by the impugned order has held the petitioner to be disqualified, having not complied with Section 14B of the said Act.

8] Mr. Surel Shah, learned counsel for the petitioner, assailing the impugned order submits that the findings as recorded by the Divisional Commissioner to upset the order passed by the Collector are *ex facie* perverse. To support his submission, Mr.Shah has drawn my attention to paragraph 5.1 of the impugned order wherein the Commissioner has observed that although the petitioner had opened a bank account as also he had submitted his account to the Election Officer within prescribed time, i.e. on 15.6.2018, as also he had filed the prescribed affidavit in relation to the accounts, however, the Commissioner holds that for cash expenditure of Rs.540/- as incurred by the petitioner, no supporting voucher was submitted and hence, the petitioner needs to be disqualified having not complied with the provisions of Section 14B of the said Act.

9] Mr. Shah has more than one grievance on the impugned order passed by the Divisional Commissioner. His first contention is that the petitioner having incurred minor cash expenditure, which was in the nature of miscellaneous expenses, was already dealt by the Collector in his order. His contention is that the Collector rightly did not find it appropriate to consider the meager amount not being supported by vouchers as any major non compliance of section 14B or the Election Commissioner's order, so as to call for any explanation from the petitioner for any supporting vouchers to be submitted by the petitioner. It is contended that such course of action was very much permissible for the Collector; hence, no fault on such count could have been found in the order of the Collector in rejecting the complaint filed by respondent No.5. Mr. Shah submits that in the event if the Commissioner was of the opinion that the petitioner ought to have submitted such vouchers, then an opportunity ought to have given to the petitioner to make good such deficiency, which is a permissible course of action, considering the clear language of Section 14B of the said Act. He submits that even otherwise considering the provisions of sub-section (2) of Section 14B of the said Act, the Commissioner himself taking cognizance of such provision could have called for an explanation rather than imposing on the petitioner such drastic action of a disqualification for vouchers qua an amount of Rs.540 alleged to be deficit. It is hence, submitted that the impugned order which is on the sole basis of the petitioner is not supporting his case such miscellaneous expenditure and that too on food items ought not to have been disqualified by the Commissioner. He submits that the impugned order, therefore, is in the teeth of provisions of Section 14B of the said Act apart from being extremely harsh.

10] On the other hand, Mr. Manoj Patil, learned counsel for respondent No.5, has submitted that the approach of the Commissioner is correct and that although Section 14B of the said Act has been held to be directory, however, according to him in the facts of the case the Commissioner was justified in recognizing the deficiency and non-compliance by the petitioner to submit vouchers and/or supporting documents for expenses of Rs.540/-.

According to him, the Commissioner has appropriately held that such deficiency was sufficient to disqualify the petitioner.

11] Having heard learned counsel for the parties and having perused the order passed by the Collector as also the impugned order passed by the Commissioner, I am of the opinion that there is much substance in the contentions as urged by the learned counsel for the petitioner.

12] It is clear that there was no fundamental and/or any substantial default on the part of the petitioner in complying with the statutory mandate prescribed by Section 14B of the Act. Also the requirements of State Election Commission, namely to open a bank account; submit an account of the election expenditure on an affidavit, within the prescribed period of 30 days from the date of election were complied by the petitioner. Once, such declaration was made, the question was whether it satisfied all the requirements of the State Election Commission in the manner as required by it, as sub-section (1)(a) of Section 14B of the Act would ordain. If there was to be a failure or any deficiency of any nature sub-section (1)(b) of Section 14B of the Act requires the Election Officer to apply his mind to such declaration and come to a conclusion, that the candidate has a good reason or justification for such failure. It is quite clear that the present case was not a case of any failure to lodge an account of election expenses, within time as may be prescribed by the election commissioner, so that the Collector applying the rigors of sub-section (1)(a)(b) would disqualify the petitioner. In my opinion, in the present facts and circumstances, the Collector has appropriately considered that there was compliance of all the prescribed requirements by taking an appropriate view on petty expenditure of Rs.540/- as incurred by the petitioner to hold the petitioner to be not disqualified.

13] Be that as it may, even assuming that for some reason a candidate is not in a position to comply the requirements as prescribed by sub-section (1)(a) of Section 14, not only sub-section (1)(b) but also sub-section (2) confers a power on the State Election Commission for reasons to be recorded in writing of removal of any such disqualification under sub-section (1) or to reduce the period of such disqualification. This is a statutory safeguard which has been provided to protect the interest of elected candidate, when bonafide reasons are available for a failure as default in compliance of sub-section (1)(a).

14] In the present case, the Divisional Commissioner has completely misread, misinterpreted and misapplied the provisions of Section 14B of the said Act, inasmuch as has failed to consider that the Collector taking an appropriate view of the facts, had not thought it appropriate to call for any explanation or call upon the petitioner to submit the supporting documents/vouchers for the petty amount of Rs.540/- as permissible under the orders of Election Commission dated 15.10.2016. Clause 9.4 of the said Circular clearly provides that in a given situation, the Election Officer, Collector and appropriate authority may call for such supporting documents with regard to any expenditure. The Collector considering the meager amount of Rs.540/- that too spent on food articles (Khaan Paan) did not find it to be a very serious non-disclosure. The Collector observing that there are certain miscellaneous cash expenditure of a small amount, rejected the complaint of respondent No.5. The Divisional Commissioner overlooking the clear guidelines as laid down in the Election Commissioner's order dated 15.10.2016, as also the object behind Section

14B of the Act, has accorded undue importance to the expenditure of Rs.540/- not being supported by any vouchers, in taking an extremely technical view of the matter to disqualify the petitioner. In my opinion, such approach is wholly arbitrary and unrealistic in the fact situation as discussed above. I am also of the clear opinion that the matter need not be remitted to the Commissioner to provide an opportunity to the petitioner to support his miscellaneous expenditure of Rs.540/-considering such small amount as involved. In these circumstances, the petition needs to succeed. Hence, the following order.

ORDER

A] The impugned order dated 1.11.2021 passed by the Divisional Commissioner, Pune Division is set aside. It is declared that the order passed by the Collector dated 22.7.2019 rejecting the application of respondent No.5 under Section 14B of the Act is an appropriate order.

B] The petitioner is held not to be disqualified under the provisions of Section 14B of the said Act in relation to the election held on 27.5.2018.

C] Consequences of this order follow, namely, if in the intervening period any steps were taken on the ground that the petitioner stood disqualified, the same are deemed to be rendered otiose and illegal.

D] Writ Petition is accordingly, disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)

PRAJAKTA SAGAR VARTAK Digitally signed by PRAJAKTA SAGAR VARTAK Date: 2022.01.03 14:30:13 +0530