**Vidya Amin**

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

**WRIT PETITION NO. 7992 OF 2021**

Rahul Hanumantrao Bhosale ... **Petitioner**
**V/s.**
The State of Maharashtra & Ors. ... **Respondents**

Mr. Suresh M. Sabrad for the petitioner.
Mr. Manoj Patil for the respondent.
Mr. S.D. Rayrikar, AGP for the State.

**CORAM : G.S.KULKARNI, J.**
**DATE : 2 December, 2021**

**ORDER:**

1. The petitioner had contested elections of the Grampanchayat Kurkumbh, Taluka Daund, District Pune for the post of Sarpanch, held on 27 May, 2018. He was elected having received 1004 votes out of about 1500 votes so casted.

2. Respondent no. 5 lodged complaint/application before the District Collector, Pune on 1 December, 2018 against the petitioner firstly alleging that he had failed to submit accounts within the prescribed period of 30 days from the date of the election and hence the petitioner should be declared to be disqualified under the provisions of Section 14B read with section 16 of the Act. Secondly, respondent no. 5 alleged that the accounts which were submitted by the petitioner were false in regard to the real expenditure incurred, amounting to the breach of the rules prescribed by the Election Commission. Thirdly, it was contended

that the affidavit submitted by the petitioner gave false and bogus information and hence he be disqualified for a period of 5 years under the provisions of section 14B read with section 16(2) of the Act.

3. The petitioner defended such application by filing a reply denying the allegations as made by the respondent. He submitted that, in fact, he had made a disclosure of the accounts on 27 June, 2018, which was within the prescribed period of 30 days, as also an affidavit dated 26 June, 2018 supporting such accounts was submitted by him. He stated that he had opened a bank account on 7 May, 2018 and he had deposited an amount of Rs.74,500/- from which he had issued cheques and had incurred election expenses. This is a categorical statement made in his reply. He also stated on oath that not only he expended amounts from the funds as deposited in the said bank account but also he had received cash of Rs.15,000/- from his wife which he utilized to make the election expenditure. He stated that totally he expended an amount of Rs.68,733/- for contesting the election which was within the prescribed limit of Rs.1,00,000/-.

4. The Collector after considering the materials on record and the rival contentions observed that the petitioner had filed the accounts within the prescribed period of 30 days from the date of

election as also that the petitioner had opened a bank account as per the rules of the Election Commission and that he has expended an amount of Rs.68,733/- and accepted the petitioner's case. Although some miscellaneous expenditure was incurred by him and although there is a provision that miscellaneous expenditure is also required to be supported by vouchers, the Collector observed that the petitioner cannot be disqualified for want of such material and accordingly, dismissed respondent no. 5's application, by holding that the petitioner is not disqualified under section 14B of the Act.

5. Respondent no. 5 being aggrieved by the above order, approached the Divisional Commissioner, Pune Division by filing an appeal under section 16(2) of the Act interalia contending that substantive material has not been considered by the Collector in rejecting his application praying for disqualification of the petitioner. It was contended that the petitioner had not filed the accounts within the prescribed period of 30 days and there was delay of 2 days. It was also categorically contended that it was incumbent on the petitioner to submit the details of the expenditure incurred from the amounts deposited in the bank account and that such expenditure ought to be supported by vouchers etc. He contended that there was no material on record to show that the petitioner had submitted the account of expenditure on 27 June, 2018, as alleged by him, which was not

taken into consideration by the Collector. He also submitted that the statements of the petitioner made in the affidavit filed before the Collector were false when the petitioner stated that he had expended amounts from the deposit as made in the bank account, to which there was no supporting material and more particularly, when the case of the petitioner was that he had expended an amount of Rs.68,723/- as per his declaration. It was his case that on this count itself, the Collector ought not to have dismissed his application. Respondent no. 5 also alleged that in this context, there was also a breach of the orders passed by the Election Commission which required a stipulated method to be followed by the elected candidates, in regard to the election expenditure.

6. The Divisional Commissioner after hearing the parties and considering the materials on record allowed respondent no. 5's appeal and has declared the petitioner to be disqualified from holding the office of Sarpanch, under section 14B of the Act. In passing the impugned order, the Divisional Commissioner has intricately gone into the details of the materials and more particularly the declarations which were made by the petitioners in regard to the accounts, so as to come to a conclusion that the petitioner had failed to comply with the requirements of the statute as also the directions of the Election commission.

7. Mr. Sabrad, learned counsel for the petitioner has limited submissions in assailing the orders passed by the Commissioner. His first submission is that the details of the expenditure incurred by the petitioner were filed alongwith the petitioner's affidavit within the prescribed period of 30 days. He has submitted that as there was no delay on the part of the petitioner in doing so, respondent no. 5 ought not have carried any grievance on this issue. His second contention is that the provisions of Section 14B are held to be directory in nature, hence, if there was to be any deficit, then the Commissioner ought to have granted an opportunity to the petitioner to make good such deficiency. It is his submission that a show cause notice should have been issued to the petitioner before reaching to the conclusion that the petitioner would stand disqualified under section 14B of the Act. It is his submission that the will of the people, ought not to have been set at naught by the Commissioner in passing the impugned order and the case ought to be remanded back to the Commissioner so that the petitioner can now produce relevant material in support of his case in regard to the expenditure. In support of his submissions, Mr. Sabrad has placed reliance on the decision of the Supreme Court in **Laxmibai vs. Collector, Nanded & Ors., (2020) 12 SCC 186**; as also the decision of the learned Single Judge of this Court in **Ranibai Thakaru Jadhav**

**vs. Tulshiram Dhaku Rathod, 2018 SCC Online Bom 686** and in **Shakti Balkrishna Mhatre vs. Returning officer, Panchayat Vindhane & Ors., 2015 (3) Mh. L.J. 275**.

8. On the other hand, Mr. Patil, learned counsel for respondent no. 5 has vehemently argued that this is a fit case where no interference is called for by this Court exercising jurisdiction under Article 226 of the Constitution of India and this is for more than one reason. Mr. Patil would submit that the petitioner was not honest in making a truthful declaration on affidavit, when he made a statement that he had expended amounts from his bank account by issuance of cheques, as no details to that effect were furnished by the petitioner. It is his submission that this has been correctly noted by the Divisional Commissioner and considering such false declaration, the Commissioner has rightly passed the impugned order disqualifying the petitioner. It is his submission that considering the time of 30 days prescribed by the Election Commission, admittedly there was a delay on the part of the petitioner in submitting the accounts and there was no delay condonation application filed in that regard. Mr. Patil would submit that perusal of the detailed order passed by the Commissioner itself reveals large number of deficiencies in this regard and hence once a decision has been taken by the Commissioner which is based on the material on record, such finding of fact ought not to

be disturbed by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. Mr. Patil would also submit that the vouchers in support of the diesel expenditure were also ex-facie unacceptable as observed by the Commissioner in paragraph 5.5 of the impugned order. It is hence his submission that this was a gross case where the petitioner on all counts has failed to submit true and honest accounts of the expenditure as per the mandate of the Election Commission and stipulated under the provisions of the Act.

9. Having heard the learned counsel for the parties and having perused the record and the order dated 22 July, 2019 passed by the Collector, as also the impugned order dated 1 November, 2021 passed by the Commissioner, I am not persuaded to accept any of the contentions as urged by Mr. Sabrad. At the outset, it needs to be observed that the order of the Collector shows that he hardly considered any material on record, as there is no discussion whatsoever on the specific issues which were urged by respondent no. 5 in regard to the account of the expenditure which was submitted by the petitioner. What merely weighed with the Collector was the only fact that the petitioner had filed the accounts of his election expenditure within the prescribed period and although there was a requirement that the petitioner should support his expenses with vouchers, the petitioner nonetheless

need not be disqualified. On the other hand, the Commissioner has taken a indepth examination of all the materials, by considering the case of respondent no. 5 in its proper perspective, not only in regard to the delay on the part of the petitioner in filing the details of the expenditure, but also as to whether there was a "real compliance" of the mandate of the Election Commission and the compliance of the requirements as prescribed by the provisions of Section 14B of the Act. To consider the issue at hand, it would be appropriate to note the provisions of Section 14B of the Act, which reads thus:

> **"14B. Disqualification by State Election Commission.**
> (1) If the State Election Commission is satisfied that a person,—
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> (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,
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> 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)

10. It is clear from the above provisions of sub-section (1A) that the account of the election expenses is not only required to be lodged in time, i.e., within the prescribed limitation, but in the manner as provided by the State Election Commission. The State Election Commission in this regard has issued general order dated

15 October, 2016 prescribing the method and manner in which such declaration of expenses is required to be made. The relevant clauses in this regard are required to be noted, which reads thus:

> **"(iii) Items of total election expenditure :-** the total election expenditure must include the three items mentioned in Para 5 above.
> (a) Expenditure incurred by the candidate himself or his representative.
> (b) Expenditure by the Political Party on him
> (c) Other persons – (Such as – Relatives, near and dear ones, friends, well-wishers, supporters etc.) or the expenditure incurred on them by organization.
>
> **(iv) Affidavit :-** An affidavit to the effect that true, accurate & proper account and details of the total expenditure incurred on the election has been given and that no expenditure has been concealed, should be submitted by the said candidate along with the details of total expenditure incurred.
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> X X X X X X
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> 9.4 The entries of accounts in respect of entire election expenditure incurred by the candidate should be maintained in the records in a true, accurate and proper manner and the documents supporting the said expenditure incurred such as :- Receipts, Bills, Vouchers etc. should be filed, date wise, and serial – wise and the same should be preserved. If the Returning Officers/ or Collector / Municipal Commissioner demands the same for checking, the said Original records and the Original documents of proofs in support of the said expenditure should be submitted."

11. In the present case, certainly there was a confusion in the mind of the petitioner as to whether the day on which the election was held should be accounted or not and immediately within one day after the lapse of period of 30 days he filed such a declaration. The declaratory affidavit was affirmed by the petitioner was on 26 June, 2018. The 30 days period was to come to an end on 25 June, 2018 and the actual accounts were submitted by him on 27

June, 2018, hence there was delay of 2 days. To this extent, in my opinion, the case of respondent no. 5 in regard to delay , ought not to weigh against the petitioner and it needs to be held that such delay could have been condoned by the Election Officer.

12. It would, however, be required to be considered as to whether there was a real intention on the part of the petitioner to make such declaration and whether there is at all a valid declaration by the petitioner. In this context, what is material is the falsity of the petitioner in making such declaration as noted by the Commissioner. When Section 14B contemplates an obligation to lodge accounts of the election expenses within a prescribed time and in the "*manner as required by the Election Commission"*, it cannot be countenanced that such accounts can be false accounts or an empty formality. Further once the Election Commission prescribes a requirement that such accounts be declared on affidavit, it is implicit that a true and correct account is submitted on oath. It thus cannot be countenanced that a false affidavit can be filed. In the present case, the petitioner made a solemn statement in the affidavit that he had expended the amounts from the specified account opened as per the directives of the Election Commission, in which an amount of Rs.40,500/- was deposited. He had further stated that such amounts were withdrawn by cheques. This was a categorical statement in the case pleaded by

the petitioner before the Collector. This apart, he made a solemn statement in his compliance affidavit dated 26 June, 2018 that the information which he has submitted was not false but true to his personal knowledge and that he has not concealed any information. However, the material on record shows that not only the declaration in his first affidavit was false but even the statement in the compliance affidavit was false, in as much as although solemnly stated, the petitioner had not expended a single rupee from the amounts deposited by him in the bank account, much less by issuance of any cheques, when he claimed that the amount of Rs. 68,723/- has been expended by him. He also sought to contend that the amount of Rs.15,000/- was borrowed from his wife.

13. Once a person is not honest in this basic declaration before the Election Commission and that too on a solemn declaration as made on affidavit and further who has given false information to the Election Commission, in my opinion, does not deserve anything but disqualification. Filing of such false affidavit leads to the fundamental non-compliance by the petitioner of not only the orders of the Election Commission on declaration of his accounts of election expenses but also in my opinion would clearly attract a disqualification under section 14B, as lodging of false accounts of election expenses and in a manner contrary to the

orders/requirements of the Election Commission is a sufficient ground for disqualification. In any event, once a false affidavit and declaration was made, the petitioner was completely incapacitated and was ineligible to take recourse to sub-section (1)(b) of Section 14B that he would disclose good reason or justification for such failure. When respondent no. 5 made categorical averments in the appeal memo before the Commissioner that the declaration as made by the petitioner was not a true and correct disclosure and that it was a false declaration, there was certainly opportunity available to the petitioner to make good any failure to provide a true and correct account, however, the petitioner had no material to improve upon his basic failure to comply with the requirements as prescribed by the Election Commission. The Commissioner, hence, has correctly in exercise of his powers and jurisdiction interfered with the orders of the Collector, as the Collector had passed an order without application of mind to such basic tenets of the matter.

14. Insofar as the decisions as relied by Mr. Sabrad in support of his contentions are concerned, in my opinion, these decisions would not assist the petitioner, in the facts of the present case, which as seen from the following discussion:

In **Laxmibai***(supra)*, the issue before the Supreme Court was primarily on sub-section (2) of Section 14B, a power to reduce or remove the disqualification under sub-section (1). In such case, there was a delay of 15 days in making the mandatory declaration in regard to the election expenditure, on the failure of which the petitioner was disqualified. In interpreting Section 14B of the Act, it was held that Section 14B of the Act ordains that the State Election Commission is required to be satisfied as to whether a person has good reason or justification for the failure to furnish account of election expenses and secondly in terms of Section 14-B(2), for the reasons to be recorded, the disqualification under section 14-B(1) can be removed or the period of disqualification can be reduced. It was held that Section 14B is not mandatory and would be required to be held to be directory as it confers a discretion vested with the Election Commission to reduce the period of disqualification. The observation as made in paragraph 10 are required to be noted, which reads thus:

> "10. We do not find any merit in the argument that Section 14-B of the 1950 Act is mandatory. Sub-section (1) of Section 14-B 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, sub-section (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. Such authority is vested with power to reduce the period of disqualification, therefore, makes the provision directory."

There can be no dispute on the position of law, as declared by

Supreme Court in the above decision, however, in the facts of the present case, there was sufficient material to come to a conclusion that there was no compliance much less a meaningful compliance of sub-section (1) of Section 14B or the specific directives of the Election Commission by the petitioner. The petitioner appears to be under a misconception that mere declaration made by him would suffice. This was completely a wrong reading of the said provision and the requirements of the Election Commission. The declaration as made by the petitioner and that too on solemn affirmation, was on the face of it replete with falsity.

15. A mechanical act of filing election expenses in purported compliance of the provisions of sub-section (1) and the directions of the Election Commission, cannot be held to be an appropriate compliance of sub-section (1) read with the directives of the Election Commission. Merely because the provision is directory that would not mean that the provision need not be complied in regard to what it mandates and in the object it intends to achieve as prescribed. For such reason, there is no substance in Mr. Sabrad's contention that the petitioner now (belatedly) be granted an opportunity of filing true accounts of expenditure. Thus, Mr. Sabrad's contention relying on the above decision is required to be rejected.

16. Insofar as the reliance of Mr. Sabrad on the decision in **Ranibai Thakaru Jadhav***(supra)* is concerned, it was a case wherein the petitioner was disqualified only on the ground that the account statements were not submitted by the petitioners along with an affidavit and in such facts, the Court held that the authorities ought to have granted an opportunity to the petitioners to remove the ground of disqualification by filing an affidavit which was to be accompanied with the statement of account. This was not a case in which there was an order of disqualification passed under section 14B of the Act, the endeavour of the petitioner therein was to prevent disqualification, by an opportunity to be granted to remove such ground for disqualification. Thus, this decision would not assist the petitioner in any manner.

17. So far as the decision in **Shakti Balkrishna Mhatre** *(supra)* is concerned, this was again a case of a delay of 15 days to lodge the accounts of election expenses. The issue before the Court was whether the Additional Collector who had condoned the delay had power to condone the delay in lodging the account of election expenses. In this context, interpreting the provisions of Section 14B of the Act, the Court held that if the authority exercising the powers under sub-section (1) of Section 14B is satisfied that there is failure in lodging the account of election expenses within the prescribed period and further, the same is without any good reason

or justification, then the authority has the discretion to declare the said returned candidate to be disqualified for being a member of the Panchayat. It was however observed that, in the said case the failure to lodge an account of election expenses within the prescribed period, was for justifiable reason on record, which was by way of medical certificates submitted by the petitioner explaining the inability in lodging of an account of election expenses. This are not the facts in the present case.

18. As a result of the above discussion, in my opinion, the Commissioner would be correct in his approach in passing the impugned order, which is based on the materials on record in coming to the conclusion that the petitioner in fact had acted in breach of the provisions of Section 14B of the Act and had incurred disqualification by not rendering a true and correct accounts of election expenses "in a manner" as required by the Election Commission under sub-section (1) of Section 14. The petitioner had no justifiable reason in rendering such untrue, incorrect and false accounts. The petition, accordingly, needs to fail. It is accordingly dismissed.

19. At this stage, Mr. Sabrad, learned counsel for the petitioner submits that the petitioner be granted opportunity and complete the formality of approaching the Commissioner for reduction of

the period of disqualification. If the petitioner desires to invoke the provisions of sub-section (2) of Section 14, it is for him to take a decision whether he would be at all justified in doing so in the present facts. Be it so, if an application is made, let the same be decided on its own merits. All contentions of the parties in that regard are expressly kept open. No costs.

**(G.S.KULKARNI, J.)**