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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3378 OF 2022

Bandu Machindra Bhil

PETITIONER

VERSUS

The Additional Commissioner and Others

RESPONDENTS

Mr. Mayur V. Salunke Advocate for the petitioner

Mr. S. N. Kendre, AGP for respondent - State

Mr. M. S. Deshmukh, Advocate for respondents No.3 and 4

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th APRIL, 2022

ORDER :

1. The petitioner is the *Sarpanch* of village Panchayat Karmad (Khurd), Taluka – Parola, District – Jalgaon. On a complaint lodged by respondents No. 3 to 5 that the petitioner has failed to submit the account of election expenses within a period of thirty days from the date of declaration of the election result, the Collector – respondent No.2, disqualified the petitioner under sections 14-B (2) and 16 of the Maharashtra Village Panchayat Act, 1958 (hereinafter for short “the said Act”).
2. The petitioner, therefore, challenged the order of his disqualification, by filing appeal under section 14B (2) of the said

Act, before the Additional Commissioner – respondent No.1. Along with the appeal, the petitioner filed application seeking stay to the order of disqualification. The stay application filed by the petitioner is rejected by the Commissioner – respondent No.1. Hence, the present writ petition.

3. This matter was heard for admission on 11th March, 2022 and interim order is passed in favour of the petitioner. Now, respondents No.3 to 5 have appeared in the matter and opposed the writ petition.

4. Heard learned advocate for the petitioner. Learned advocate for the respondents and the learned Assistant Government Pleader.

5. Learned advocate for the petitioner submits that election results were declared on 18th January, 2021 and the petitioner submitted election expenses on 17th January, 2021, however, the Collector has erroneously held that the election expenses should have been submitted on or before 16th February, 2021. By relying in "*Shaikh Nisar Ibrahim and Another V/s State of Maharashtra and Others*" 2019 (5) *Mh.L.J.* 749, he submits that minor delay of 1 day in this case ought to have been condoned and the Collector was not justified in disqualifying the

democratically elected petitioner on this technical ground.

6. Learned advocate for the respondents vehemently opposed the writ petition contending that the petitioner has not placed on record the complete copy of the order passed by the Commissioner refusing stay to the petitioner. The petitioner has only placed on record the copy of the letter intimating him that his stay application is rejected. He pointed out note below the said letter, which states that if certified copy of the decision is required, the petitioner may obtain the same by depositing necessary charges. By pointing out averments in the writ petition that respondent No.1 has passed un-reasoned order, learned advocate for the respondents submits that the petitioner has secured interim relief in his favour by making incorrect submissions. By relying in "***K. D. Sharma V/s Steel Authority of India Ltd and others***" (2008) 12 SCC 481, he submits that since the petitioner has suppressed complete order of refusing stay in the appeal filed by the petitioner, the writ petition may be dismissed on this ground alone. He further submits that by misinterpreting the order passed by this Court, the petitioner is trying to take charge of the post of *Sarpanch*. According to him the petitioner is not entitled to take charge of the post of *Sarpanch*. He submits that the writ petition may be dismissed

summarily.

7. It is a matter of record that the petitioner is disqualified from holding the post of *Sarpanch* on the sole ground that he failed to submit election expenditure within thirty days from the date of declaration of election result. The election result, in the present case, is declared on 18th January, 2021 and the petitioner has submitted the accounts of election expenses on 17th February, 2021. In "***Shaikh Nasir Ibrahim***" (*supra*), learned single judge of this Court (Coram: Ravindra V. Ghuge, J.) has held that - "*the ground for disqualification on account of failure to submit account of election expenses could not be compared with more serious grounds which would warrant and justify disqualification of candidates in those cases of misappropriation and disgraceful conduct.*" It is further held that - "*minor delay in filing account of election expenses could be condoned under section 14 B (1) (b) of the said Act.*" The petitioner's case is covered by the observations in this ruling.

8. Indisputably, the petitioner has challenged the order passed by respondent No.1 refusing to grant stay to the disqualification of the petitioner during the pendency of the appeal. No doubt, the petitioner has not placed on record the complete copy of the impugned order, the fact remains that the

petitioner is aggrieved by refusal of stay. This court granted interim relief in favour of the petitioner taking into consideration the ratio in "***Shaikh Nasir Ibrahim***" (*supra*). In this view of the matter, the arguments of the respondents that the petitioner has secured interim relief by making incorrect statements in the writ petition and by misleading this court, cannot be accepted.

9. In ***K. D. Sharma***" (*supra*), the Hon'ble Apex Court has held that if false statements are made or there is suppression of material facts or attempts to mislead the Court are made by the applicant, then the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case.

Such are not the facts of the present case. The petitioner has not made any false statement or suppressed any material fact and has not attempted to mislead this court. Therefore, the ratio in this ruling would not further the case of the respondents.

10. Statutory appeal filed by the petitioner since is sub-judice before respondent No.1, he ought to have granted stay in favour of the petitioner, by taking into consideration the ratio in "***Shaikh Nasir Ibrahim***" (*supra*). The impugned order passed by respondent No.1 is, therefore, unsustainable in law and facts of

the case.

11. In the result, the writ petition is allowed in terms of prayer clause "B". The impugned order dated 2nd March, 2022 passed by respondent No.1 thereby refusing stay in favour of the petitioner is hereby quashed and set aside. Respondent No.1 is directed to decide the appeal filed by the petitioner within a period of eight weeks from the date of receipt of the writ of this order.

12. Till the appeal is finally decided, the order impugned in the appeal, passed by the Collector, disqualifying the petitioner, shall remain stayed. In the facts, there shall be no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

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