IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3798 OF 2022

Bhushan s/o Gunwantrao Pawar
Age : 36 years, Occu: Agriculture
R/o Nandgaon
Taluka and District - Jalgaon ... **PETITIONER**

VERSUS

1. The Ld. Additional Commissioner
Nasik Division- Nasik

2. The Ld. District Collectors
Jalgaon

3. The Group Gram Panchayat,
Nandgaon through Its Gramseveak,
Nandgaon Taluka & District – Jalgaon

4. Shantaram s/o Chandra Sonawane
Age : 72 years, Occu: Agriculture
R/o Nandgaon
Taluka & District – Jalgaon ... **RESPONDENTS**

...
Advocate for Petitioner : Mr. Jitendra V. Patil
AGP for Respondent Nos.1 and 2 : Mr. S.N. Morampalle
Advocate for Respondent No.4 : Mr. V.D. Hon i/b. Mr. A.V. Hon
...

CORAM : MANGESH S. PATIL, J.

DATE : 01.07.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned AGP and the learned advocate for the respondent No.4 waive service. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner who is an elected Sarpanch is challenging the order passed by the learned Additional Commissioner (respondent No.1) in his appeal preferred under Section 16 of the Maharashtra Village Panchayats Act, 1959 (herein after 'the Act'), dismissing the appeal and confirming the order passed by the Collector (respondent No.2) in a complaint filed by the respondent No.4 about he (petitioner) having incurred disqualification under Section 14(1)(h) of that Act for failure to pay the taxes within three months of receiving a demand in the form of bill for the year 2018-19.

3. The learned advocate Mr. Patil for the petitioner would submit that there was no concrete proof regarding the date of service of the tax bill to him. Since it is a matter of disqualification of an elected Sarpanch there should have been a strict proof. Though the bill that was produced on the record had a printed date as 01.07.2019, it also was having petitioner's signature on its reverse with a date as 10.11.2019 and there was no cogent and convincing evidence to discard the date of receipt of the bill mentioned below his signature. It was a sheer mistake committed by the concerned printer in mentioning the date as 01.07.2019 while printing the bill book. Realizing the fact that there was such uncertainty, in an earlier round of litigation for the same purpose, the respondent No.1 Commissioner had remanded the matter for *de novo* inquiry. The respondent No.4 had challenged that order before this Court in Writ Petition No.6863/2021 but it was dismissed. He would submit that pursuant to such order of remand a detail inquiry was conducted, statement of various employees including the

owner of Gayatri Enterprises which printed the bill book was examined. The Commissioner and the Collector have drawn inferences on the basis of surmises and conjunctures. The petitioner could not have been disqualified on the basis of mere suspicion.

4. Learned advocate Mr. Patil would submit that the observation and the conclusion drawn by the respondent No.1 Commissioner are also based on the conclusion drawn in a similar proceeding initiated against some of the members of the Gram Panchayat seeking their disqualification relying upon the same set of facts and the bills having printed date as 01.07.2019. It was a *suo moto* proceeding initiated by the Collector and the petitioner could not have been attributed with having taken a contrary stand in that proceeding. No such inference was, therefore, deducible and the order under challenge be quashed and set aside.

5. The learned Senior advocate Mr. V.D. Hon on behalf of respondent No.4 would strenuously submit that the petitioner is a Sarpanch and there was ample material before the Collector and the Commissioner to demonstrate that the respondent No.3 Gram Sevak had indulged in manipulations of the Gram Panchayat record which he could not have possibly done without the active connivance of the petitioner. The statements of the employee of the Gram Panchayat were recorded who specifically mentioned about petitioner having demanded the bill book and at the time of handing over it none of the counterfoils of the bill book were having any signature on the reverse but when he returned the bill book after

three days, there was his signature with a date on the reverse of his bill. This was concrete evidence regarding manipulation. Even the statement of the owner of Gayatri Enterprises belies the petitioner's case in as much as the former had stated the bill book having been printed on 14.11.2019 and the date was incorrectly printed as 01.07.2019, still, it was unbelievable that a bill book which was handed over on 14.11.2019 could have been used and the petitioner could have received a bill there from on 10.11.2019.

6. Mr. Hon would further submit that in a similar proceeding of few members of the Gram Panchayat who have been disqualified under Section 14 (1)(h) of Act, they have been disqualified by taking the date of the service of bills as 01.07.2019 but the petitioner is now taking a contrary stand. All these factors were taken into consideration while disqualifying him by the orders under challenge. There is no illegality and the Writ Petition be dismissed.

7. Learned AGP supports both the orders.

8. At the out set, it is necessary to bear in mind that as laid down in the matter of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and Ors.; (2012) 4 Supreme Court Cases 407** the evidence to disqualify an elected candidate has to be strict. Taking into account the ingredients for attracting a disqualification under Section 14(1)(h) of the Act, it is imperative to demonstrate that failure to pay the dues within three months from the date of demand by service of a bill.

9. Taking into account the fact situation of the matter in hand, if

the petitioner was served with a bill on 01.07.2019, obviously his payment of tax was beyond three months but if the bill was taken as served to him on 10.11.2019, the payment would be within this time limit of three months. It is, therefore, a decisive factor as to on which date the demand was raised in the form of service of the bill.

10. As is mentioned by the learned advocates herein above, the bill bears a printed date on the front side as 01.07.2019. The owner of Gayatri Enterprises through whom this bill book was got printed has stated that it was a sheer mistake. The learned Commissioner respondent No.1 to this extent has accepted his version. This person has thereafter stated about having handed over the bill book on 14.11.2019 but the learned Commissioner has disbelieved his such version by observing that the statement was incorrect, and rightly so, because if the bill book was handed over by him on 14.11.2019, the circumstance would belie the petitioner since his signature with the date appearing on the reverse of the office copy of the bill served to him bears a date of 10.11.2019. But then the Divisional Commissioner has observed that this bill book could have been handed over by him prior to 10.11.2019.

11. The fact remains that the Commissioner has believed his version that the bill book was not printed on 01.03.2019, the date which was printed on each of these bills on the front side. If this is the state of affairs, one will have to proceed on the premise that this could not have been treated as a date for reaching to the conclusion that the demand for taxes

was raised on that day i.e. 01.07.2019 which is the basis for the authorities below to reach to the conclusion that this was the correct date on which the demand was raised.

12. Assuming for the sake of argument that the petitioner as also the Gram Sevak have indulged in some manipulation and even if this date below the petitioner's signature was put later on, still, the fact remains that in order to prove the ingredients for attracting the disqualification under Section 14(1)(h), the date of service of demand notice or bill which is so vital is not forthcoming. Merely disbelieving the petitioner's version is not suffice. The authorities below ought to have undertaken a scrutiny to ascertain as to on which date the bill was served upon the petitioner if that was not to be on 01.07.2019 or 10.11.2019.

13. True it is that an employee of the Gram Panchayat has stated about the petitioner having demanded the bill book for taking photocopies and while it was handed over to him there was no signature on the reverse any of the bills but when it was returned after three days petitioner's signature was appearing on the reverse of one of the bills. Accepting for the sake of argument that this is a correct state of affairs, still what is required is the proof regarding the exact date on which the demand was raised. Merely discarding the petitioner's version would not be sufficient.

14. Again, even if it is a matter of record that few members of the Gram Panchayat have been disqualified on the same ground by treating the date of demand as 01.07.2019, as has been mentioned by the learned

advocate for the petitioner, though his name appears in the order passed by the Collector in that matter, it was a *suo moto* inquiry initiated by the Collector and the fact has not been controverted by the respondents. Besides, as is mentioned herein above, the Commissioner has now on the basis of the statement of the owner of Gayatri Enterprises, accepted his version that it was a mistake in printing the date on the front side of each of the bill books as 01.07.2019. If this is the state of affairs, the petitioner cannot be punished for the inference drawn in the parallel proceeding right in the teeth of the material available in the matter in hand.

15. Taking stock of the material discussed herein above, though there is a concurrent finding of fact by the two authorities, when the inference drawn by them is palpably and patently erroneous and illegal, this Court has to step in and correct the error in exercise of the Writ jurisdiction. The inference drawn by them is clearly perverse and arbitrary beside being based on surmises and conjunctures.

16. The Writ Petition is allowed in terms of prayer clause 'A'.

17. The Rule is made absolute.

(MANGESH S. PATIL, J.)

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