

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4969 OF 2022

Smt. Jijabai Mukaji Gathari
Age : 53 years, Occu : Agri,
R/o. Diwan Mala Post Laling,
Tq. & Dist. Dhule

.. Petitioner

Versus

1. The State of Maharashtra
Through the Collector
Dhule, Tal. & Dist. Dhule
2. The Tahsildar also Election Returning Officer,
For Village Panchayat Laling /Diwan Mala,
Tq. and Dist. Dhule
3. The Village Panchayat Laling / Diwan Mala,
Through its Village Development Officer,
Laling / Diwan Mala, Tq. and Dist. Dhule
4. Pooja Dipaksing Pardeshi
Age : 28 years, Occu : Household,
R/o. Laling, Tq. and Dist. Dhule. .. Respondents

...

Mr. Ajay D. Pawar, Advocate for the Petitioner
Mr. G.O. Wattamwar, AGP for the Respondents – State
Mr. Mukul S. Kulkarni, Advocate for Respondent No.4

...

CORAM : SANDEEP V. MARNE, J.

DATE : 14-10-2022

ORAL JUDGEMENT:

. Rule. It is made returnable forthwith. Mr. G.O. Wattamwar, learned AGP and Mr. Mukul S. Kulkarni, learned

advocate waive service on behalf of respective respondents.

2. The present petition is filed challenging the order dated 14.03.2022 passed by the Collector, Dhule rejecting petitioner's complaint seeking disqualification of respondent no.4 under the provisions of Section 14B of the Maharashtra Village Panchayat Act, 1959 (hereinafter referred to as the 'Act of 1959').

3. The elections to the village panchayat were held on 15.01.2021 and the result was declared on 18.01.2021. As per the 'Order no.4 on Election Expenses' dated 07.09.2021 issued by the State Election Commission, the following mandatory directions were issued:

'2. Contesting candidates shall have to submit the following documents:

(a) From the date of nomination, daily account of election expenses to the Returning Officer on every next day before 2 p.m. till the publication of the results in the official gazette; and

(b) Total account of election expenses within 30 days from declaration of result and Affidavit regarding submission of true election expenses within 30 days from declaration of result, to Collector / Municipal Commissioner or to an Officer authorized by them not less than the rank of Tasildar / Assistant Municipal Commissioner, and to take acknowledgment for the same.

3. The documents as given in above 2 (a) and (b) shall be submitted in the standard formats as are prescribed by the Commission vide its order dated

25.10.2016.

4. The daily expenses can be submitted by two options (i) Online through software application developed by Commission, or (ii) Offline, through a hard copy submitted to the Returning Officer.

5. Total expenses of elections and the affidavit shall be submitted offline, through a hard copy downloaded through the software application.'

4. Thus, as per the order issued by the State Election Commission, the candidate is required to submit daily account of election expenses from the date of nomination till the date of results. Additionally, at the end of the election process, the candidate is also required to submit the total account of election expenses within 30 days from the date of result along with an affidavit. While the daily election expenses can be submitted through online mode, the total election expenses and affidavit are required to be submitted only by way of a hard copy by offline mode.

5. The complaint of the petitioner is that the respondent no.4 has failed to submit the total election expenses along with an affidavit through offline mode on or before 17.02.2021. The same was submitted by her firstly on 25.02.2021 and latter on 10.03.2021. She therefore sought disqualification of respondent no.4 under the provisions of Section 14B of the Act of 1959. By the order impugned in present petition, the Collector Dhule has proceeded to reject the

complaint of the petitioner.

6. Mr. Pawar, the learned counsel for the petitioner submits that the provisions of the Election Order issued by the State Election Commission are mandatory and any violation thereof would result in disqualification of candidates under Section 14B of the Act of 1959. He further submits that the Collector has erred in rejecting the complaint only on the basis of the finding that the respondent no.4 had submitted daily expenses through online mode. He submits that the mandatory condition of submission of total expenses within 30 days along with an affidavit has been ignored by the Collector while rejecting the complaint. In support of his contentions, Mr. Pawar relies upon decisions of this Court in **Bhimraj Namdeo Chattar vs. The Additional Divisional Commissioner, Nashik**, Writ Petition No. 12200 of 2021 decided on 07.09.2022 and **Laxmibai Pralhad Hatkar vs. The Collector, Nanded and Others**, Writ Petition No.13642 of 2018 decided on 10.12.2018.

7. Per contra, Mr. Kulkarni, the learned counsel appearing for respondent no.4 opposes the petition. He submits that the petition is premature. Relying on the provisions of Section 14B, Mr. Kulkarni submits that no occasion had arrived for the Collector to form any

opinion about failure on the part of respondent no.4 to lodge account of election expenses. Therefore, no proceedings under Section 14B of the Act were initiated by the Collector. Mr. Kulkarni relies upon the decision of the Apex Court in **Laxmibia vs. Collector, Nanded and Others**, (2020) 12 SCC 186.

8. Mr. Wattamwar, the learned AGP for the State Government also opposes the petition and supports the order passed by the Collector.

9. Rival contentions of the parties now fall for my consideration.

10. The power to disqualify an elected member of village panchayat is traceable to Section 14B of the Act of 1949, which reads thus:

‘[14B. Disqualification by State Election Commission.

(1) If the State Election Commission is satisfied that a person, -

(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, 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.]'

11. Thus under Section 14B, the satisfaction is required to be reached by the Election Commission. It is common ground that under the provisions of the Election Order issued by the State Election Commission on 07.09.2021, the power has been delegated to the Collector. Thus, for the present case the satisfaction in question is required to be reached by the Collector. It appears that a list of candidates, who had failed to submit their election expenses in Dhule district, was prepared and the name of respondent no.4 figured therein. However, there is a remark against respondent no.4 in that list that election expenses were submitted by her on 09.02.2021, but the same was returned and not resubmitted. This list shows that the factum of the respondent no.4 either submitting or not submitting the total election expenses was within the knowledge of the concerned officials. Furthermore, after Petitioner filed complaint against respondent no.4, report from Tahsildar Dhule was called by the Collector and Tahsildar submitted a report on 23.09.2021. After perusal of the list as well as the report of Tahsildar Dhule, the Collector has not recorded a satisfaction that the respondent no.4 has

failed to submit the election expenses. Thus, the paramount condition of Section 14B of reaching satisfaction by the Collector has not taken place. In these circumstances, the question is whether the petitioner can insist that the Collector must disqualify respondent no.4 in absence of such satisfaction being reached. The answer is obviously in the negative. In this regard reliance of Mr. Kulkarni on the decision of the Apex Court in **Laxmibai vs. Collector, Nanded** (supra) is apposite. In para no.10 of the judgment the Apex Court has held as under:

‘10. We do not find any merit in the argument that Section 14B of the 1959 Act is mandatory. Sub-section (1) of Section 14B 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, subsection (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. Since authority is vested with power to reduce the period of disqualification, therefore, makes the provision directory.’

(emphasis supplied)

12. The Supreme Court has held that satisfaction under Section 14B is required to be recorded by the Election Commission. In the present case, I find that after considering the entire material on record, the Collector has not reached a satisfaction to the effect that respondent no.4 has failed to submit the election expenditure as

required under the order issued by the State Election Commission.

13. There is no dispute that Respondent No. 4 has submitted daily election expenditure from time to time during the period of election. The only grouse of the petitioner is that the final expenses along with an affidavit has not been submitted by the respondent no.4 on or before mandatory period of 30 days from the date of results. There appears to be a factual dispute in this regard as well. In the list of candidates committing defaults in submitting expenses, there is a specific remark against the name of the respondent no.4 that the total expenses were indeed attempted to be submitted on 09.02.2021.

14. The objective behind Section 14B and the election order issued by the State Election Commission is required to be borne in mind. The objective is that the candidate should keep an account of expenses and submit the same for perusal to the State Election Commission. There is no dispute that the daily account has been submitted by the respondent no.4 within the time limit prescribed. The only grievance is about non submission of total expenses along with affidavit within the mandatory period of 30 days. As observed herein above, there is a factual dispute in this regard as well. In such

circumstances, the question that arises is whether an elected candidates can be removed from office at the insistence of Petitioner in absence of satisfaction of the Collector and in the light of disputed questions of fact?. The answer, to me, is in the negative. In this regard a profitable reference can be made to the Judgment of the Apex Court in **Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.** 2012 DGLS (SC) 143, in which it is held as under:

‘70. Thus, the instant case has been a crystal clear-cut case of legal malice and therefore, the impugned orders are liable to be quashed. **The duly elected member/Chairman of the Council could not have been removed in such a casual and cavalier manner without giving strict adherence to the safeguards provided under the statute which had to be scrupulously followed.’**

(emphasis supplied)

15. Reliance of Mr. Shinde on the decision of this Court in **Bhimraj Namdeo Chattar** (supra) would be of no avail to the petitioner. In that case, this Court has held the condition of submission of affidavit within time limit to be technical in nature. In that case, the petitioner therein was already disqualified on the ground of non submission of affidavit within the stipulated time and had questioned the order of disqualification in this court. Her default of non submission of the affidavit within mandatory period has been treated as a technical default by this Court. She was already disqualified. The only issue that remained to be decided was about the period of her disqualification. Relying on the decision of the Apex Court in

Laxmibai (*supra*), this Court set aside disqualification of the petitioner therein for a period of five years. Thus, far from assisting the case of the petitioner, the judgment in **Bhimraj Namdeo Chattar** (*supra*) actually militates against her. Reliance of Mr. Shinde on the judgment in **Laxmibai Pralhad Hatkar** (*supra*) is again of no avail as the decision was carried before the Apex Court and the judgment in **Laxmibai** (*supra*) has been delivered.

16. In the result, I do not find any error being committed by the Collector while rejecting the petitioner's complaint. The Writ Petition, being devoid of merits, is liable to be dismissed and is dismissed without any orders as to costs. Rule discharged.

(SANDEEP V. MARNE, J.)