IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6619 OF 2022

Archana w/o. Santosh Neharkar
Age : 35 years, Occu : Sarpanch & Household,
R/o. Kutewadi, Post Parner,
Tq. Patoda, Dist. Beed. .. Petitioner

Versus

1. Anil s/o. Maruti Kshirsagar
Age : Major, Occu : Agril & Ex. Up Sarpanch,
R/o. Parner, Tq. Patoda, Dist. Beed.

2. Parshuram s/o. Baburao Merad,
Age : Major, Occu : Business,
R/o. Parner, Tq. Patoda, Dist. Beed.

3. The District Collector, Beed,
Collector Office, Beed. .. Respondents

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Mr. S.E. Shekade, Advocate for the petitioner
Mr. I.K. Wagh, Advocate for Respondent nos.1 and 2
Mr. K.B. Jadhavar, AGP for the respondent – State

...

CORAM : SANDEEP V. MARNE, J.

DATE : 20-10-2022

ORAL JUDGMENT:

. Heard. Rule. It is made returnable forthwith. Mr. I.K. Wagh, learned advocate and Mr. K.B. Jadhavar, the learned AGP waive notice for the respective respondents. At the request of the learned counsel for the parties, the matter is heard finally at the admission stage.

2. Petitioner takes exception to the order dated 07.04.2022 passed by the Additional Divisional Commissioner, Aurangabad rejecting her appeal and confirming the order passed by the Collector, Beed dated 05.01.2022 by which she has been disqualified for being a Sarpanch. Petitioner was earlier disqualified on 09.12.2021 under the provisions of Section 39 (1) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as the 'Act of 1958') on the basis of the report of the Chief Executive Officer, Zilla Praishad. Her disqualification has been set aside by this Court by order dated 26.09.2022 passed in Writ Petition No.7812 of 2022 on the ground that the Chief Executive Officer had not conducted independent enquiry as envisaged under Section 39 (1) of the Act of 1958. The matter came to be remanded back to the Additional Commissioner with a further direction to the Chief Executive Officer, Zilla Parishad to hold an enquiry by giving an opportunity of hearing to all concerned.

3. Simultaneously, the Collector initiated disqualification proceedings under the provisions of Section 14 (1)(g) of the Act of 1958 on the ground of the petitioner having interest in the contracts awarded by the grampanchayat. After granting an opportunity of

hearing to the petitioner, order came to be passed on 05.01.2022 holding that various amounts meant to be paid to the contractors were found to be deposited in the accounts of petitioner's husband, father-in-law and brother-in-law. She is therefore disqualified under the provisions of Section 14 (1) (g) of the Act of 1958 by order dated 05.01.2022. The order is upheld by the Additional Divisional Commissioner by dismissing the petitioner's appeal by order dated 07.04.2022.

4. Mr. Shekade, the learned counsel for the petitioner would submit that the Collector as well as the Additional Divisional Commissioner have relied upon the very same report of the Chief Executive Officer, which has been discarded by this Court by its order dated 26.09.2022. That on account of consideration on that report of the Chief Executive Officer, the orders are vitiated. So far as the aspect of deposit of amounts in the accounts of petitioner's – husband, father-in-law and brother-in-law is concerned, Mr. Shekade would contend that this might lead to initiation of criminal action against them, but the same cannot be a ground to disqualify the petitioner who is democratically elected representative. In support of his contention, Mr. Shekade relies upon the judgment of this Court in **Jyotitai Vikas Gawande vs. Additional Commissioner and others**,

2009 (5) Mh.L.J. 486.

5. Per contra, Mr. Wagh, the learned counsel for respondent nos.1 and 2 opposes the petition and supports the orders passed by the Collector and Additional Divisional Commissioner. He would submit that apart from the report of Chief Executive Officer, the Collector has also considered the bank statements of petitioner's husband, father-in-law and brother-in-law and has rightly arrived at a conclusion that the amounts meant to be paid to the contractors have only been received by them. He would further submit that the receipt of amounts by them would clearly indicate the interest of the petitioner in those contracts. He therefore prays for dismissal of the petition.

6. Mr. Jadhavar, the learned AGP for the State Government also opposes the petition and supports the orders passed by the Collector and the Additional Divisional Commissioner.

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

8. Petitioner is disqualified under the provisions of Section 14 (1) (g) of the Act of 1958. Clause (g) of sub-section 1 of Section 14 reads thus:

> **'14. Disqualifications.- [(**1) No person shall be a member of a *Panchayat* continue as such, who -
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> (g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the *Panchayat,* or in any contract with, by or on behalf of, or employment with or under, the *Panchayat;* or.'

9. Thus, disqualification is incurred by a member of panchayat in the event it is noticed that he / she has any interest in any work done by panchayat or in any contract with the panchayat. The factum of receipt of amounts in the accounts of her husband, father in law and brother in law is not disputed by her. She has submitted in her reply dated 29.06.2021 that her husband runs a company named 'Shri Industrial Services' at Silvasa. There is no dispute that the following cheques are issued in the names of her husband, father in law and brother in law:

Sr. No.	Cheque No.	Amount	Name of Person
1	166369	102430/-	Santosh Janu Neharkar
2	166365	54555/-	Dhananjay Janu Neharkar
3	166366	53177/-	Dhananjay Janu Neharkar
4	166370	100000/-	Janu Pandurang Neharkar
5	166371	1,00,000/-	Hanumant Janu Neharkar
6	166372	28440/-	Hanumant Janu Neharkar
7	166373	76127/-	Hanumant Janu Neharkar
8	166364	95433/-	Dhananjay Janu Neharkar
9	166374	69,500/-	Janu Pandurang Neharkar
10	289326	149235/-	Hanumant Janu Neharkar

10. Petitioner has not explained in any manner as to why these amounts were received in the accounts of her relatives. She has

only asserted that she does not have any relationship with the businesses of her husband, father in law and brother in law. Once the receipt of amounts in the bank accounts of her relatives is not disputed by Petitioner, it became incumbent upon her to explain those entries after a show cause notice was issued to her by the Collector. However, she has miserably failed to explain as to why these amounts came to be transferred from the account of Grampanchayat to the accounts of her relatives.

11. In reply filed by respondent nos.1 and 2, following averments are made:

> ‘18. Deponent further submits that, perusal of the statement of the Village Panchayat account no.62427520752, it is clearly found that, in the work of Plevor block Kalika Temple, total amount is 2,52,430/-, the name of agency is “Jay Hanuman Cement Udyog”, but the amount deposited the account of the Santosh Janu Neharkar i.e. husband of petitioner (Sarpanch) on 08.03.2018 by way of cheque no. 166358 and 166369, the work of “Double Pump Hanuman Temple and Shikarwadi” total amount of Rs.2,10,630/-, the name of agency is “New Gurukrupa Traders Patoda, but actual payment of Rs.54,555/- given to the Dhananjay Janu Neharkar, brother-in-law of petitioner (Sarpanch) by way of Cheque No.166365 and Rs.53,177/- by way of cheque no. 166366, the work of water supply repairing Parner, the name of agency is “Gurukrupa Traders Patoda” but actual amount given to the Jan Pandurang Neharkar i.e. Father-in-law of petitioner, amount of Rs. 1 lakh by way of cheque no. 166370 and Hanumant Janu Neharkar i.e. brother in law of petitioner, amount given of Rs. 1 Lakh by way of cheque no. 166371, the work of water supply Kutewadi, fund of Rs. 2 Lakh, the name of agency Gurukrupa Traders, Patoda, there are three cheques were issued for this amount to the name of Hanumant Janu Neharkar and Dhananjay Janu

> Neharkar both are the brother-in-law of the petitioner and cheque nos.166372, 166373, 166364. The computer purchased by the Village Panchyat from Matoshri Computer Patoda, but cheque no. 166374 issued to the Janu Pandurang Neharkar amount of Rs.69,500/-. In the work of Pevorblock Khandoba Temple, total amount of Rs.29,84,471/-, tender allotted to the "Jay Hanuman Cement Udyog, Pangri" but actual cheque no. 289335 issued on the name of Hanumant Janu Neharkar i.e. brother-in-law of petitioner.
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> These all are the cheques issued to the family members of petitioner. The copy of account statement of Village Panchayat Parner the copy of local inquiry report are annexed herewith and marked as Exhibit "R-1".

12. There is no rejoinder for the petitioner to deny these averments. Even in complaint filed by respondent nos.1 and 2 specific instances of involvement of petitioner's husband, father in law and brother in law in various purchases made and contracts effected by the grampanchayat were given. In her reply, the petitioner failed to deal with those instances. Those allegations have therefore remained uncontraverted not only before the Collector but also before this Court.

13. In my opinion therefore, it is proved beyond any iota of doubt that the petitioner, through her husband, father in law and brother in law have exhibited interest in work done by panchayat as well as contracts executed with the panchayat.

14. Mr. Shekade has strenuously relied upon the order of this court passed in Writ Petition No.7812 of 2022 in support of his contention that the report of Chief Executive Officer being discarded by this Court, consideration thereof vitiates the impugned orders. I am not impressed by this submission. True it is that this court has remanded back the earlier disqualification proceedings held for an altogether different reason of commission of misconduct under Section 39 of the Act of 1958 by directing Chief Executive Officer to hold a fresh enquiry in the matter. However, in the present case the report of Chief Executive Officer alone is not the basis for disqualifying the petitioner. The Collector has himself considered the banks statements of the relatives of the petitioner as well as various contracts awarded by the grampanchayat. After perusal of that material, the Collector has reached a satisfaction that the petitioner has interest in work done and contract executed by the grampanchayat. Furthermore, there is a clear distinction between the provisions of Section 14 (1)(g) and Section 39 of the Act of 1958. Under Section 39, the Divisional Commissioner is empowered to remove a Sarpanch on the ground of misconduct acting on the report of Chief Executive Officer. Such report is to be prepared by the Chief Executive Officer after granting an opportunity of being heard to the concerned Sarpanch. For the sake of convenience, the provisions of

Section 39 of the Act of 1958 are reproduced below:

> **'39. Removal from office** - [(1) The Commissioner may, -
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> (i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat; or
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> (ii) remove from office the member, Sarpanch or as the case may be *Upa-Sarpanch if not less than twenty per cent, of the total number of voters in the village who have paid all dues of the panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the* panchayat in the development activities are not placed before the *Gram Sabha;* and the information thereof is not displayed on the notice board as required by sub-section (1) or (1-A) of section 8:
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> Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the Panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned, through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:
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> Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.]'

15. As against this, submission of enquiry report by an

official is not required for initiating proceedings under Section 14 (1) (g) of the Act of 1958. The two provisions are entirely distinct. Therefore merely because this Court has set aside the proceedings under Section 39 of the Act of 1958, the same cannot be a reason to set aside the disqualification of the petitioner under Section 14 (1)(g) of the Act of 1958.

16. Mr. Shekade has relied upon the decision of this Court in **Jyotitai Vikas Gawande** (supra) in support of his contention that even if some amounts are shown to have been transferred in the name of petitioner's relatives, the same could be a ground for initiation of criminal action against them, but the same cannot be a reason to disqualify her. He has relied upon para 18 and 19 of the judgment which read thus:

> '18. According to Secretary, Gram Panchayat, the husband of the petitioner was bringing pressure on him for such withdrawals. He has alleged that amount which was payable to Raju Wardhe was in fact taken by Vikas Gawande i.e. husband of the petitioner. The amount which was payable to the Secretary of the Gram Panchayat was taken by husband of the petitioner, so also the amount which was payable to Gajanan Building Material Supplier was taken by husband of the petitioner. Ex-facie, such allegations if substantiated would invite criminal action against husband of petitioner, if there is misappropriation of the amount. It is for Secretary of Gram Panchayat to take appropriate legal action.
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> 19. Though the practice adopted by the petitioner and secretary of the gram Panchayat in the present case, of

> handing over the cheques to the husband of the petitioner for withdrawing the amount, in no case can be treated as a permissible in the administration of the Gram Panchayat and has to be deprecated. For that disciplinary action against the Secretary of the gram Panchayat would be necessary, if it is warranted and considered fit by the appropriate authorities, but fact in this case remains that this court is required only to consider as to whether the petitioner can invite disqualification under section 14(1)(g) of the Bombay Village Panchayat Act. In my opinion considering object and scope of the said section and intention of the said provision, it is not possible to hold that the allegations made by respondent no.2 in his complaint are sufficient enough to attract the said disqualification. The reasons recorded by the Additional Collector & Additional Commissioner, for the impugned in this petition appear to be too general in nature. They do not state any specific allegations made by the complainant, refer the evidence adduced by him in that behalf and how the allegations are substantiated.'

17. Having gone through the judgment in **Jyotitai Vikas Gawande** (*supra*), it is seen that the case involved withdrawal of certain amounts from the accounts of grampanchayat by the Sarpanch and her husband. However, there was no specific allegation that the Sarpanch or her husband had any share or interest in the work done or contract executed by the grampanchayat. This is clear from the observations of this court in para 9 of the judgment as under:

> '9. It would be seen that there is no allegation made by the respondent No.3 that any share or interest of the petitioner or her husband in the work or contract done by any party for Gram Panchayat.'

18. Even in para 19 of the judgment, this Court has held that

the order passed in that case was general in nature, which did not contain specific allegations. As against this, in the present case, it is proved beyond any doubt that the petitioner's husband, father in law and brother in law have received various amounts in the bank accounts from the village panchayat and those amounts are in respect of the works executed for the grampanchayat. The judgment in **Jyotitai Vikas Gawande** (*supra*) is thus clear of distinguishable.

19. The objective behind provisions of Section 14 (1)(g) of the Act of 1958 is required to be borne in mind, the objective being to disqualify Sarpanch who misuses his / her position by misappropriation of public money by awarding work or contract to his / her relatives. This objective cannot be permitted to be frustrated on a specious plea that petitioner's husband, father in law and brother in law can face criminal action, but she must be permitted to hold on to the position of Sarpanch. Such an interpretation, in my opinion, would completely frustrate the entire objective of Section 14 (1)(g) of the Act of 1958. Having not disputed deposit of amounts in her relatives accounts which were meant to be paid to contractors, it cannot lie in the mouth of the petitioner that she has no link with those transactions and therefore she cannot be disqualified. Petitioner has brazenly permitted amounts meant to be paid for

Grampanchayat works and contracts to be transferred in her relative's accounts. The least consequence that she must suffer is to vacate the post of Sarpanch.

20. Writ Petition therefore fails and is dismissed without any orders as to costs. Rule discharged.

(SANDEEP V. MARNE, J.)

GGP