

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7411 OF 2021

Anusaya w/o Babu Pawar,
Age-47 years, Occu-Agriculture,
R/o Chaundi, Tq. Udgir,
District : Latur

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary of Village
Development Department,
Mantralaya, Mumbai - 32,
2. The Additional Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The Collector,
Dist. Latur,
4. Gram Panchayat Chaundi,
Tq.Udgir, Dist.Latur,
5. The Gram Sevak,
Gram Panchayat Chaundi,
Tq. Udgir, Dist. Latur,
6. Bhanudas s/o Lalu Pawar,
Age-50 years, Occu-Agriculture,
R/o Chaundi, Tq. Udgir,
Dist. Latur

-- RESPONDENTS

Mr.R.R.Imale, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for respondent Nos. 1 to 3.
Mr.M.S.Deshmukh h/f Mr.U.L.Momale, Advocate for respondent No.6.
Mr.S.G.Jadhavar, Advocate for respondent No.5.

(CORAM : BHARATI H. DANGRE, J.)

DATE : 27.01.2022

ORAL JUDGMENT :

1. "Caesar's wife should be above suspicion"

The above phrase come from a story of a Roman Ruler Julius Caesar. A man named Publius Clodius sneaked into a party with the intention of seducing Caesar's wife Pompeia. This lead to Publius's arrest and trial. After trial, Caesar divorced Pompeia. When questioned what this might have had to do with the trial of Publius, Caesar said "my wife ought not even to be under suspicion".

People associated with public figures must not be suspected of being part of any wrong doing and the present case is the one which fall into the aforesaid category.

2. The petitioner, Sarpanch of Grampanchayat Chaundi, Tal.Udgir, Dist.Latur, came to be disqualified from her post by respondent No.3 Collector on 18.02.2021 and upon an appeal preferred by her to the Additional Divisional Commissioner, Aurangabad, the appeal came to be dismissed on 29.06.2021. Being aggrieved by the action of

disqualification at the hands of the Collector and the same being confirmed by the Appellate Authority, the petitioner has approached this Court by filing the present writ petition, in which she seek relief of quashing and setting aside of the impugned orders and her reinstatement on the post of Sarpanch.

3. While issuing notice in the said writ petition, the original record and proceedings was called for and it was indicated by this Court that the writ petition shall be heard finally at the stage of admission.

I have heard the learned Counsel Shri. R.R.Imale, for the petitioner, Shri S.G.Jadhavar for respondent No.5, Shri U.L.Momale for respondent No.6 and Shri K.B.Jadhavar, AGP for respondent Nos. 1 to

By the consent of the parties, the petition is taken up for final hearing. Hence Rule. Rule is made returnable forthwith.

4. The election of Gram Panchayat Chaundi was held on 07.10.2017 and the petitioner came to be directly elected as a Sarpanch on a post which was reserved for OBC Women.

In the month of October 2020, respondent No.6 preferred a complaint to the Collector, Latur alleging that the petitioner in her

capacity as Sarpanch, has individually benefited her husband Babu Pawar and his brother Ramchandra Pawar R/o Chaundi by allotting work to them and further by disbursing a cheque from the account of Gram Panchayat in their favour in connivance with the Gram Sevak of Chaundi. In order to substantiate the said allegation, the bank statement of Latur District Central Co-operative Branch Udgir was also annexed to the complaint alongwith the cash book extract of Gram Panchayat Chaundi. By referring to the said documents, it was alleged that the Sarpanch in connivance with the Gramsevak Chaundi, got the work of Gram Panchayat executed through her husband and brother of husband and accordingly paid them the remuneration. This has resulted into her disqualification u/s. 14(1)(g) of the Maharashtra Village Panchayats Act, and she is liable to be disqualified from the post of Member, resulting into her dis-entitlement to hold the post of Sarpanch.

5. Upon the complaint being preferred, the petitioner denied the said allegation levelled against her by specifically pleading that the complaint is preferred as a counter attack to her accusations against the Chief Executive Officer, Zilla Parishad, Latur on 07.01.2019 and in the

reply, she specifically stated that her husband has no connection with the Gram Panchayat, but a bogus cheque issued in his name came to be encashed in his account in District Central Co-operative Bank, Nulgir Branch. But this fact was not known to her husband and has come to her knowledge only for the first time when the complaint is made. She responded by stating that the said cheque carrying number #005175# came to be encashed in her husband's account on 21.09.2020 but till date, he has not withdrawn the amount and this make it apparently clear that the whole exercise is undertaken to disqualify her as a political vendetta. The petitioner also contested the claim by stating no stranger should have access to the extract of the account of her husband, but the Branch Manager illegally has made available the extract of her husband's account in Nulgir Branch and therefore alleging connivance on the part of her opponents, she responded to the complaint by stating that it is frivolous and mischievous and that she has not incurred any disqualification as alleged.

By way of specific pleading, she has stated in her reply that her husband in no way is concerned with the working of Gram Panchayat and she clearly admitted that she has no experience of any administrative functioning and from the date of her election as

Sarpanch, the Up-sarpanch Mr.Chikte was creating repeated obstacles in her working and in connivance with the Gram Sevak, he is handling the affairs of the Gram Panchayat and at times by forging her signatures. As far as the cheque to which a reference has been made, she has stated that the cheque is old one and by playing mischief, it has been misused, since there is no proof rendered to the effect that the said cheque has been received by her husband by producing any counter signature in register of Gram Panchayat etc., and therefore it is not clear that as to who has deposited the cheque in the name of Shri Babu Pawar i.e. her husband. She also raised a defence that there is a discrepancy in the signature on the cheque in question and in the proceeding book and therefore allegation i.e. that her husband has been benefited by encashing amount in his account for completing the work under Zilla Parishad is a concocted story and is a counter attack for her complaints against those in helm of the affairs of the Panchayat.

6. The proceedings came to be registered before the Collector on 09.11.2020 and on 18.02.2021, he disqualified the petitioner u/s 14(1) (g) of the Maharashtra Village Panchayats Act by allowing the application filed for her disqualification by respondent No.6 and by

declaring that the post of Sarpanch and Member of Gram Panchayat Chaundi has fallen vacant.

The Collector arrived at the said finding in the wake of the counter arguments placed before him, with reference to the provisions contained in the Maharashtra Village Panchayats Act, 1958 u/s 14(1) (g) which provide to the effect that no person shall be a member of the Panchayat continue as such, who has directly or indirectly, by himself or by his partner, any share or interest in any work done by the order of the Panchayat, or in any contract with, by or on behalf of, or employment with or under, the Panchayat.

7. In the impugned order, the Collector referred to five amounts, which have been disbursed from Gram Panchayat Chaundi and the said entries were referred to as under :-

Sr.No	Date	Cheque No.	Amount
1.	21.09.2020	005157	4,000/-
2.	05.11.2018	--	25,000/-
3.	21.08.2018	--	9,600/-
4.	13.08.2018	--	7,200/-
5.	31.08.2018	28526	1,37,400/-

It is recorded in the impugned order that all the aforesaid

amounts in the chart are disbursed from the account of Gram Panchayat Chaundi and as far as amount of Rs.4,000/- mentioned in Sr.No.1, is disbursed in favour of the husband of the petitioner Shri Babu Rupchand Pawar and the amount mentioned at Sr.Nos. 2 to 5 are issued in favour of her brother in law Bhau Pawar and this fact is not in dispute. As amount mentioned at Item No.1 is disbursed in favour of Babu Pawar, the defence of the non applicant that the cheque is bogus, do not appear to be correct, is the observation of the Collector, since the cheque has been passed by the Bank and it pertains to work of laying of Murum (soft stone) and this work was sanctioned by the Gram Panchayat in its meeting dated 07.09.2020 vide Resolution No.7. By referring to the decision of the Apex Court in the case of **Zelia M.Zavier Fernandes E.Gonsalves Vs. Joana Rodrigues and others [(2012) 3 SCC 188]**, where the term "interest" has been construed to be participation in advantage, profit and responsibility and by referring to the work "interest", which would mean concern advantage, share, portion, part or participation, the Collector arrived at a conclusion that disbursing a cheque from the account of the Gram Panchayat in the name of her husband, under her signature, shall amount to an indirect interest and therefore the said action on her part would attract the provisions of

Section 14(1)(g) of the Act. However, as far as the amounts at Sr.Nos. 2 to 5 are concerned, since no proof has been adduced to prove that the non applicant No.1 has any connection with the said amount, the said charge/accusation faced by her, would not warrant an action u/s 14(1) (g) of the Act, is the conclusion derived by the Collector.

8. The documents which were placed before the Collector included the Resolution dated 07.09.2020 passed by the Gram Panchayat which pertain to the subject "laying of *Murum*, cleaning of *nali*". This meeting dated 07.09.2020 is attended by the petitioner and when subject No.7 is perused, in relation to "laying of *murum*", it is recorded that Sau.Shobha Govind Mahipati had suggested that the road in the village leading to *Dalit vasti* was in a very bad condition and was posing difficulty for the people to have access and therefore it is necessary to fill *Murum*, which would ease the access. On discussion of the aforesaid subject, the resolution was approved.

Before the Collector, a cheque was produced and the date of the cheque is mentioned as 25.07.2020 and the cheque being signed by the petitioner is in the name of Babu Pawar for an amount of Rs.4,000/-. The said cheque bearing the following number #005175#.

On an appeal being preferred, the Additional Commissioner, considered the argument advanced on behalf of the petitioner that the cheque in question is prior to the date of the meeting of the Gramsabha, which was held on 07.09.2020 whereas the disputed cheque is dated 25.07.2020. Since this question went to the root of the accusations faced by the petitioner, the Additional Commissioner, on 05.03.2021 granted stay to the impugned order passed by the Collector and directed the Block Development Officer, Panchayat Samiti, Udgir to submit his fact finding report after conducting local enquiry. Now the Commissioner had before him the report from the Block Development Officer, where it was reported that from the date of her appointment as Sarpanch, various documents available with the Panchayat Samiti for various bank accounts bear her signature. When her specimen signatures were forwarded to the Bank for verification, her signatures matched with the signatures on the documents of the Bank and therefore it was concluded that during her tenure, no strange person has withdrawn any amount by forging a cheque. The appellant had filed a complaint with the Police Station that her signature is forged, but this has been done by her after lodging of the appeal and even the amount which was encashed in the account of her husband, has been

repaid in the account of the Gram Panchayat during the pendency of the appeal. The submissions advanced on behalf of the appellant that the appellant is illiterate, is also negated by observing that she has studied upto standard 11th. With this limited reasoning, the appeal filed by the appellant is dismissed.

9. On perusal of the impugned orders, they suffer from a basic flaw; the foremost being in the order of the Collector, there is a reference to an entry dated 21.09.2020 of Rs.4,000/-, debited to the account of Gram Panchayat vide cheque No.#005175#. In the wake of the said entry, I have perused the record that is placed before me and on its close scrutiny, the submission advanced on behalf of the learned counsel for the petitioner that the controversial cheque in the name of petitioner's husband was issued on 25.07.2020, give rise to the doubt since the Resolution in respect of the work of laying *Murum* is passed on 07.09.2020. However, when I have perused the record and proceedings of the various meetings of the Gram Panchayat, even on 21.07.2020, one resolution came to be passed in the meeting of the Gram Panchayat and in this meeting, Resolution No.2 make a reference to the work of laying of *murum*, work of *Nali*, purchase of TC Powder

and Chlorine to tackle the problems arising in rainy season and the resolution unanimously sanctioned the said works and permitted expending of the funds of Gram Panchayat for the said work.

In the wake of this resolution passed on 21.07.2020, the cheque dated 25.07.2020 find some correlation. However, the most important thing which is conspicuously absent and which has not been adverted to by the Collector or by the Appellate Authority is whether the said work of Gram Panchayat was allotted in favour of the petitioner's husband and if so, where is the said work order and the certificate of completion of work, which made him entitle to an amount of Rs.4,000/- through a cheque issued under the signature of the petitioner on 25.07.2020. There can be no difficulty in accepting the submission of the learned counsel for the respondents/complainants and the learned AGP that the cheque issued by the Gram Panchayat under the signature of the petitioner came to be debited in the account of the Gram Panchayat on 21.09.2020 in name of Babu Pawar and the fact that during the pendency of the appeal, the husband of the petitioner has remitted the said amount back in the account of the Gram Panchayat, clearly reflect that he had received the amount. In the record, there is also a resolution passed in the meeting held on

07.09.2020 which also relate to laying of *murum* in *Dalit vasti*, but neither the complainant nor the learned AGP were able to throw light as to which of the work was allotted to the husband of the petitioner which made him entitled for the sum of Rs.4,000/-.

10. The Commissioner, while deciding the appeal noted the discrepancy in the dates of two resolutions, but he lost his track, when he asked the B.D.O. to submit a final report, who restricted it to the fact that the alleged cheque bearing the signature of the petitioner and the correspondence made by the B.D.O. with the Bank Manager lead him to a conclusion that the cheque No.#005175# issued to Shri Rupchand Pawar on 25.07.2020 is under her signature and this is confirmed by comparing her signature with the specimen signature forwarded, and the Branch Manager of Udgir Branch has declared that on cross verification of the cheque, which is passed by the Bank and the specimen signature available with the Bank and the specimen provided by the Office, it is confirmed that the signature specimen tally with the specimen provided by the Office.

11. In order to attract the disqualification by virtue of Section 14(1)

(g), it is imperative to establish that the petitioner has directly or indirectly, by herself or through her partner, had any share or interest in any work done by the order of the Panchayat, or in any contract with, by or on behalf of, or employment with or under, the Panchayat. This specifically will have to be established in order to sustain her disqualification and though it is established that some amount has gone into the account of the husband of the petitioner, it fall short of establishing her involvement either directly or indirectly, in allotting work to her husband under the order of the Panchayat or any allotment of any contract under the Panchayat. The two resolutions passed on 21.07.2020 and 07.09.2020 reflect the decision taken by the panchayat for laying of the *Murum*, but in absence of any positive material brought on record to establish that the work was allotted to the husband of the petitioner thereby depicting any interest in the allotment of the work to her own family member and ultimately he being her husband, she depicted interest in allotment of the said work, would be the necessary factor to be established. However, both the authorities have failed to deliberate upon the same.

Another important aspect which has been noticed by me while perusing the record and particularly various entries of the amounts

debited to the account of the Gram Panchayat, the entries which are referred to by the Collector at Item Nos. 2 to 5 showing huge amounts being disbursed, in favour of Ramchandra Rupchand Pawar has been completely lost sight of by the Collector by accepting the submission of the petitioner that since family is not residing together under the same roof, the connection cannot be established. The interest as contemplated u/s 14(1)(g), the term "interest" or "share" under clause 14(1)(g) of the Maharashtra Village Panchayat Act, responsible for incurring a disqualification, can be either direct interest or indirect interest and if the work is allotted to a person in whom the Sarpanch/ Member of the Gram Panchayat is interested, without following the due procedure, the person will have to discharge the burden of showing that the work has not been allotted only on the basis of any interest in the said person, but purely upon his own merits. The entries of huge amount in favour of other family relations of the husband of the petitioner also deserve to be looked into, to ascertain whether the petitioner had any interest in allotting the work to her close relations and merely because they are not residing under the said roof, would not absolve her of the burden to come clean.

The standard of probity in public life should be not only

conviction in Criminal Court, but propriety demand that by suitable independent authority, specially constituted for this purpose, determine the conduct of the public functionary. Those who are vested with the powers are to be made more accountable and transparent in their functioning and subjected to social audit with a view to minimize their discretionary decisions.

12. Since the Additional Commissioner has shifted his focus on the report of the Block Development Officer, which merely reiterate that the signature on the disputed cheque, which has been encashed in the account of the petitioner's husband is her's, the matter deserve to be remanded back to the concerned authority for determining as to whether the amount of Rs.4,000/- encashed in the account of her husband is on account of the interest shown by the petitioner in allotting the work of laying *murum* to him by using her office as a Sarpanch. In absence of the said material, being probed into, the impugned order passed by the Collector and Appellate Authority cannot be sustained. Since the Additional Commissioner had granted stay to the order passed by the Collector till the dismissal of the appeal, continuing the said position and permitting the petitioner to discharge

her duties on the post of Sarpanch, the appeal is remanded back to Additional Divisional Commissioner, Aurangabad Division for fresh decision on the points noted above and this decision is expected to be taken by him within a period of 6 (six) weeks from the date of receipt of the intimation of the order being passed by the AGP alongwith an authenticated copy of the same.

The learned AGP to communicate the order to the Divisional Commissioner forthwith.

With the aforesaid directions, the impugned order passed by the Additional Commissioner dated 29.06.2021 is quashed and set aside. The matter is remanded back to the Additional Divisional Commissioner.

(BHARATI H. DANGRE, J.)