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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12200 OF 2021

Bhimraj Namdeo Chattar
Age – 65 years, Occ – Agriculture
R/o Nannajdumala, Taluka – Sangamner
District - Ahmednagar

PETITIONER

VERSUS

1. The Additional Divisional Commissioner RESPONDENTS
Mashik Division, Nashik
2. The District Collector,
Office of the District Collector,
Ahmednagar, District – Ahmednagar
3. Village Panchayat Returning Officer
@ Tahasildar, Sangamner
Taluka – Sangamner, District – Ahmednagar
4. Gramsevak,
Village Panchayat Office
Having office at Nannajdumal
Taluka – Sangamner, District – Ahmednagar
5. Babasaheb Nabaji Kadnar
Age – 50 years, Occ – Agriculture
R/o Nannjadumal, Taluka – Sangamner
District – Ahmednagar
6. Bhausahab Patilba Kadnar
Age - 45 years, Occ – Agriculture
R/o Nannajdumal, Taluka – Sangamner
District – Ahmednagar

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Mr. Amol K. Gandhi, Advocate for the petitioner
Mr. Y. G. Gujrathi, AGP for respondent - State
Mr. A. B. Kadethankar, Advocate for respondent No.3
Mr. Rupesh Jaiswal, Advocate for respondent No.4
Mr. Sayyed Umair Pasha, Advocate for respondent No.5

Mr. K. N. Shermale, Advocate for respondent No.6

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 24th JUNE, 2022

PRONOUNCED ON : 7th SEPTEMBER, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition, filed under Article 226 and 227 of the Constitution of India, is directed against order dated 8th July, 2021 passed by the Collector, Ahmednagar in Gram Panchayat Dispute No. 1 of 2021, which is confirmed by the Additional Divisional Commissioner, Nashik vide order dated 29th September, 2021 passed in Gram Panchayat Election Expenses Appeal No. 5 of 2021.

3. By filing Gram Panchayat Dispute No. 1 of 2021, respondents No. 5 and 6 sought disqualification of the petitioner from the post of Sarpanch, on the ground that the petitioner failed to submit election expenses within the time stipulated under section 14-B of the Maharashtra Village Panchayats Act, 1959 (hereinafter for short "the said Act").

4. The petitioner appeared in the said dispute and submitted

his say that he has submitted details of election expenses on 25th January, 2021, within the stipulated period of 30 days. The Collector, after hearing the parties and considering report, allowed the dispute and disqualified the petitioner from the post of Sarpanch and also disqualified him from contesting the election for next 5 years from the date of the impugned order. The petitioner unsuccessfully challenged the disqualification order by filing Gram Panchayat Election Expenses Appeal No. 5 of 2021 before the Additional Divisional Commissioner, Nashik Division, Nashik.

5. Heard learned advocate for the petitioner and learned advocates for the respondents and the learned Assistant Government Pleader.

6. Learned advocate for the petitioner submits that after declaration of election result on 10th January, 2020, the petitioner submitted details of the election expenses on 25th January, 2020. Thus, the election expenses were submitted within the stipulated time. If at all there was any technical defect, the petitioner ought to have been called upon to cure the same. No show cause notice was ever issued to the petitioner to rectify the technical defect. He further submits that along with the appeal before the Divisional Commissioner, stay application

was filed and the stay was refused, therefore, the petitioner had filed writ petition in which notices were issued. However, after issuance of notices, new Sarpancha was elected, thereby rendering the writ petition infructuous. He further submitted that no opportunity to rectify and / or comply with the technical defect is given to the petitioner. By relying on "***Laxmibai V/s Collector Nanded and Others***" (2020) 12 SCC 186, he submits that impugned disqualification is highly disproportionate to the alleged non compliance on the part of the petitioner. According to him, since substantial compliance was made by the petitioner, the impugned disqualification order is unsustainable.

7. Learned Assistant Government Pleader, by relying on section 14-B of the said Act, submits that the compliance has to be made in the manner as required by the Election Commission. Since the petitioner has failed to comply the requirements in the manner as required by the Election Commission, the impugned orders cannot be faulted with. In support of his submissions, learned Assistant Government Pleader relied on the ratio in "***Ravi Yashwant Bhoir V/s Collector***" (2012) 4 SCC 407. He, therefore, supported the impugned order.

8. Learned advocate for respondent No. 5 submits that non compliance of the mandatory provisions under section 14-B of

the said Act on the part of the petitioner is clear from the record. Though the petitioner had tried to rely on the notarized affidavit on stamp paper, the same is purchased on 23rd January, 2020. Whereas the affidavit should have been filed in 30 days from the date of declaration of the election result, i.e. 10th January, 2020. Thus, the petitioner has played fraud in submitting said affidavit. Learned advocate also adopted arguments of learned Assistant Government Pleader and supported the impugned orders.

9. Mr. Kadethankar, learned advocate for respondent No. 3 submits that submission of election expenses by the petitioner was incomplete and was not within the time and manner as prescribed by the election commission. Therefore, the impugned disqualification orders cannot be faulted with.

10. Learned advocate for respondent No. 6 also supported the impugned orders and has relied on the unreported judgment of this court (Coram : G. S. Kulkarni, J.) in writ petition No. 7992 of 2021 dated 2nd December, 2021 (Rahul Hanumantrao Bhosale Vs. State of Maharashtra) to contend that the impugned order is rightly passed as the petitioner has contravened the provisions of section 14-B of the said Act and has incurred disqualification by not rendering true and correct accounts of the election expenses, as required by the Election Commission.

11. For considering the rival submissions, it would be appropriate to consider the provisions of section 14-B of the said Act, 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 this 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.”

12. Thus, sub section 1 (a) of section 14-B of the said Act mandates that the accounts of election expenses is required to be lodged in time and in the manner required by the State Election Commission. The State Election Commission has issued General Order dated 15th October, 2016, prescribing the manner in which such declaration of election expenses is to be made. Relevant clauses are as under :

“(iii) Items of total election expenditure :- the total election expenditure must include the three items mentioned in para 5 above.

(a) Expenditure incurred by the candidate himself or his representative.

(b) Expenditure by the Political Party on him.

(c) Other persons – (such as Relatives, near and dear ones, friends, well-wishers, supporters etc.) or the expenditure incurred on them by organization.

(iv) Affidavit :- An affidavit to the effect that true, accurate & proper account and details of the total expenditure incurred on the election has been given and that no expenditure has been concealed, should be submitted by the said candidate along with the details of total expenditure incurred.”

13. By issuing Order No. 2 on 25th October, 2016, the State Election Commission, introduced specimen forms for election expenses details to be filled in by the candidates so also the affidavits. The petitioner has failed to submit form No. 2 pertaining to election expenses and form No.3 affidavit in respect of the election expenses to be submitted by a candidate.

14. It is a matter of record that the petitioner though has submitted election expenses with the Tahsildar, he has failed to submit affidavit in Proforma in Form No. 2 giving total amount of expenses and supporting affidavit. The Tahsildar has submitted report on 9th March, 2021 to the effect that the petitioner has submitted account of daily expenses, however, has not filled form and the affidavit.

15. In view of section 14-B (1) (a) of the said Act, the

petitioner was required to submit Form No. 2 and affidavit in Form No. 3 within the stipulated time of 30 days, which the petitioner has failed to submit. In that view of the matter, the Collector was justified in disqualifying the petitioner from holding the post of Sarpanch for non compliance of section 14-B of the said Act. In this view of the matter, it is not possible to accept the contention of the petitioner that it was merely a technical defect and the petitioner ought to have been given an opportunity to rectify the technical defect and to do the compliance, by submitting form No.2 and affidavit in support of the same.

16. This Court in "**Rahul Hanumantrao Bhosale**" (*supra*), has held that disqualification order passed in that case against the petitioner on account of breach of provisions of section 14-B of the said Act was right, as the petitioner failed to render true and correct accounts of election expenses "*in the manner*" as required by the Election Commission under sub section (1) of section 14-B of the said act.

17. The second argument of the petitioner that his disqualification for further five years' period is disproportionate and could not have been ordered by the Collector from the date of passing of the impugned order, deserves to be accepted in the

facts of the present case.

18. The petitioner had submitted details of election expenses within the stipulated time, but not in the manner prescribed by the Election Commission, i.e. the petitioner failed to submit Form No. 2 and affidavit in support of the election expenses. That can be said to be a technical defect for which the petitioner has already suffered disqualification. But the disqualification of the petitioner for a further period of five years from the date of the impugned order i.e. 8th July, 2021 can be said to be grossly disproportionate. In "**Lxamibai**" (*supra*), the Apex Court has held that -

“Disqualification upon not furnishing or delayed furnishing of election expenses is not automatic and prescription under S. 14-B of the 1959 Act is a director one – Ward “may” in S. 14-B (2) cannot be read as “shall” - Disqualification for five years is not a necessary consequence of merely not filing or delayed filing of account of election expenses – Election Commission is to be satisfied as to whether a person has no good reason or justification for the failure to furnish account of election expenses. Such satisfaction has to be recorded by Election Commission. Furthermore, extent of period of disqualification has to be proportional to the default and express power therefor is granted in S. 14-B (2) of the 1959 Act, whereunder period of disqualification can be reduced or even removed for reasons to be recorded. Hence, order of disqualification must be supported by cogent reasons and not merely on fact of not furnishing or delayed furnishing of election expenses.”

19. The above ratio is squarely applicable to the facts of the present case. The default committed by the petitioner is of technical nature, for which the petitioner is already disqualified. The Collector has, however, failed to record any reason for disqualifying the petitioner for further period of five years from the date of the impugned disqualification order. The said period of disqualification is not proportionate to the default of technical nature committed by the petitioner. In the facts of the present case, and particularly in absence of reasons recorded by the Collector, for disqualifying the petitioner for further period of five years, the impugned order to that extent is unwarranted and uncalled for and, therefore, is unsustainable. Hence, the following order.

ORDER

- A. Writ petition is partly allowed.
- B. Impugned order to the extent it disqualifies the petitioner from contesting election for a further period of 5 years from the date of the order i.e. from 8th July, 2021 is hereby quashed and set aside.

- C. Disqualification of the petitioner from the post of Sarpanch is upheld. Impugned order to that extent is confirmed.
- D. Rule is made absolute in aforesaid terms.
- E. No order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE