

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

27 WRIT PETITION NO.10456 OF 2022

**JAYSHRI BALAJI GUTTE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS**

...
Advocate for Petitioner : Mr.Ingole Govind Rangrao
AGP for Respondents-State : Mr.K.B.Jadhavar
Advocate for Respondent No. 3 : Mr. Kadethankar
...

AND

28 WRIT PETITION NO.10457 OF 2022

**BALAJI BABURAO GUTTE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
OTHERS**

...
Advocate for Petitioner : Mr. Sanket Kulkarni h/f Mr. Ingole Govind
Rangrao
AGP for Respondents: Mrs. G.L.Deshpande
Advocate for Respondent No. 3 : Mr. Kadethankar
...

CORAM : SANDEEP V. MARNE, J.

DATE : 10.10.2022.

PER COURT :

1. The petitioners are the elected members of Village Panchyat, Khambegaon, Tq. Loha, Dist. Nanded. The Collector, Nanded passed order dated 09.12.2021 disqualifying the petitioners for a period of 5 years on account of their failure to submit the election expenditure within 30 days on declaration of result of the

election.

2. Aggrieved by the decision of the Collector, the petitioners filed an appeal before the Divisional Commissioner, who initially granted stay to the order of Collector on 18.05.2022, but later dismissed the appeals by order dated 26.07.2022. The order passed by the Divisional Commissioner is the subject matter of challenge in the present petition.

3. Appearing for the petitioners Mr. Kulkarni h/f Mr. Ingole, learned Counsel would rely upon the decision of the Apex Court in **Laxmibai Vs. Collector, Nanded and Others 2020 12 SCC 186** to contend that the Collector ought not to have passed the order disqualifying in a mechanical manner and that he had a discretion either not to disqualify the petitioner or disqualify him for a lesser period. He also relies upon orders passed by this Court in **Bhimraj Namdeo Chattar Vs. The Additional Divisional Commissioner Nashik Division, Nashik in Writ Petition No. 12200 of 2021** decided on 07.09.2022 and **Balu Mohan Dhotre and Ors. Vs. The State of Maharashtra and Ors. in Writ Petition No. 4634 of 2022** decided on 14.09.2022.

4. Per Contra, Mr. Kadethankar, learned Counsel appearing

for respondent No. 3 relies upon, “Order No. 4 on Election Expenses” to contend that a remedy of filing appeal availed by the petitioners before the Divisional Commissioner was contrary to the said order. He would submit that the appropriate remedy was to approach the Election Commissioner. Mr. Kadethankar also relies upon the letter dated 01.07.2022 issued by the State Election Commissioner directing the Divisional Commissioner not to entertain any appeal arising out of the orders of disqualification passed by the Collector.

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

6. In the light of the contentions raised by the Counsels before me, the short issue that needs to be decided is whether the Divisional Commissioner has jurisdiction to entertain the appeal against the order passed by the Collector disqualifying the petitioners. By “Order No. 4 On Election Expenses”, there is delegation of powers in favour of the Collector to exercise powers under Section 14 (B) (1) of the Maharashtra Village Panchyat Act, 1959. Paragraph No. 7 of the order provides for further mechanism to recall or reduce the period of disqualification. Paragraph No. 7 of the “Order No. 4 of the Election Expenses” reads as under :

“7. The power to recall or reduce the period of disqualification :

i) The powers to recall or reduce the said disqualification are provided in Section 16 (1)(F) of the Mumbai Municipal Corporation Act, 1888, section 10(1)(f) of the Maharashtra Municipal Corporations Act, 1949, Section 16(1) (E) of the Maharashtra Municipal Councils, Nagar Panchyats and Industrial Township Act, 1965, Section 15 (B)(2) and 58(1E) of the Maharashtra Zilla Parishads & Panchyat Samities Act, 1961 and Section 14(B)(2) of the Maharashtra Village Panchyats Act, 1959.

ii) This is a special power conferred upon the Commission which can be exercised by the Commission suo moto or at the behest of such disqualified member only.

iii) This power is altogether different from the power provided in various local Acts as ‘Appeal’ by a party aggrieved by any order of an authority competent to impose disqualification (authorities as delegated power in clause 5 above).

iv) The power to recall or reduce the disqualification is vested I the Commission. The order passed by the Commission in exercise of this special power shall be final.

v) An application requesting the Commission to exercise the special power to recall or reduce such disqualification shall be

termed as 'Special Application, and the order passed thereon shall be termed as 'Special Order'."

(emphasis added)

7. Thus, in "Order No. 4 on Election Expenses" issued by the State Election Commission, the Divisional Commissioner does not enjoy the power, jurisdiction or authority to entertain an appeal against the order passed by the Collector. This aspect is reiterated by the State Election Commission by its letter dated July, 2022, by which all the Divisional Commissioners have been expressly directed not to entertain any appeal against the disqualification orders passed by the Collector.

8. Thus, it is clear that the Divisional Commissioner had no jurisdiction to entertain the appeal against the order passed by the Collector in the present petition.

9. Reliance of Mr. Kulkarni and Mr. Ingole on the decisions of this Court in **Bhimraj** (Supra) and **Balu** (Supra) is of no avail as the election "Order No. 4 on Election Expenses" referred to hereinabove was not noticed by this Court while passing orders in the said cases.

10. Mr. Kulkarni and Mr. Ingole, have contended that following decisions in **Bhimraj** (supra) and **Balu** (supra), this Court should remand matter to the Collector for re-consideration of decision of disqualification or for reduction of period of disqualification. I am unable to agree with it. In the light of specific remedy available to the petitioners to question the order passed by the Collector before the State Election Commission, there is no reason why this Court should entertain the present petition. In fact, the petitioners did avail the remedy against the order passed by the Collector, though that remedy is now found to be erroneous. It is therefore, appropriate that the petitioners are relegated to the correct remedy of approaching the Election Commission against the decision of the Divisional Commissioner.

11. Consequently, I hold that the Divisional Commissioner does not have jurisdiction to decide the appeal against the order passed by the Collector disqualifying the members of Village Panchyat. I, therefore, proceed to pass following order :

ORDER

a) The order passed by the Divisional Commissioner, Aurangabad on 18.07.2022 in the case of Balaji Baburao Gutte and on 26.07.2022 in the case of Jayashree Balaji Gutte are set aside.

b) The petitioners would however, be at liberty to approach the State Election Commission challenging decisions of the Collector disqualifying them.

c) If such appeal /petition is filed by the petitioners before the State Election Commission within one week from today, the same be decided as expeditiously as possible and in any case within a period of four weeks from today.

d) If any issue of limitation crops up, the period spent in filing the present petitions be considered for the purpose of condonation of such delay.

e) The Divisional Commissioners would consider directing all the Collectors to incorporate a paragraph in all disqualification orders specifying the remedy before State Election Commission, so that henceforth appeals are not filed before Divisional Commissioners.

f) With these directions the Writ Petitions are disposed of.

(SANDEEP V. MARNE)
JUDGE