

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

WRIT PETITION NO. 14130 OF 2019

Saroja w/o Shirish Behare,
Age: 35 years, Occu. Agri.,
R/o: Malwada, Tq. Mahur,
Dist. Nanded

....PETITIONER

VERSUS

1. Laxman Sonbaji Behare,
Age: 40 years, Occu. Agri.,
R/o: Malwada, Tq. Mahur,
Dist. Nanded
2. Block Development Officer,
Panchayat Samiti, Mahur,
Tq. Mahur, Dist. Nanded
3. District Collector,
Nanded
4. Additional Commissioner,
Aurangabad Division, Aurangabad
5. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai

....RESPONDENTS

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Mr A. N. Nagargoje, Advocate for petitioner;
Mr U. B. Deshmukh, Advocate for respondent No.1;
Mr K. B. Jadahvar, A.G.P. for respondents/State

CORAM : SMT. BHARATI DANGRE, J.

Date of Reserving the Judgment : 20th January, 2022

Date of pronouncing the Judgment : 27th January, 2022

JUDGMENT :

1. The petitioner, Sarpanch of Village Panchayat Malwada, is aggrieved by her disqualification vide order dated 03/07/2019, by the Collector Nanded, under Section 14 (1)(g) read with Section 16 of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as 'the 1958 Act') The order of disqualification was upheld by the Divisional Commissioner, Aurangabad in an appeal filed by her when her appeal came to be dismissed on 23/10/2019.

On the writ petition being filed, the notice is issued to the respondent No.1, and also to the other authorities being impleaded as respondent Nos.2 to 5.

2. I have heard the learned Counsel Shri. Ankush Nagargoje for the petitioner and the learned Counsel Shri. Umakant Deshmukh for respondent No.1. The State authorities are represented by the learned AGP Shri. K.B. Jadhavar.

Since the respective learned Counsel express their consensus to argue the writ petition finally at the stage of

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admission, I have issued "Rule". Rule is made returnable forthwith. Heard finally by consent of the parties.

3. The facts involved lie in a narrow compass and would reveal that the petitioner came to be elected as Sarpanch of Village Panchayat, Malwada in the election held in October 2017. Pertinent to note that she came to be elected as Sarpanch directly from the voters in the wake of the manner effected in the 1958 Act in the form of Section 30A-IA by Maharashtra Village Panchayat Amendment Act of 2018. On being elected, she assumed the charge of the office on 24/12/2017. The Village Panchayat Malwada comprise of 7 members and one directly elected Sarpanch.

Respondent No.1 is the political rival of the petitioner and incidentally, he is also husband of Smt. Sunita Laxman Behare, who was holding office of Sarpanch, prior to the election of the petitioner. The petitioner defeated Smt. Sunita Behare and the respondent No.1 had a grudge against her and immediately upon election of the petitioner, he started lodging frivolous complaints and some of the members of the Panchayat, who were holding office along with the petitioner, also joined hands with him.

4. On 01/09/2018, the respondent No.1 filed a complaint with the Collector Nanded in the form of Dispute No.1/2018, seeking a declaration that the petitioner should be disqualified from the post of Sarpanch on the basis of the allegations levelled in the complaint, being that the petitioner is guilty of committing illegalities in making payment of Rs.54,500/- in name of an agency “Shivashish” Agency” and it was alleged in the complaint that the payment due under MNREGA Scheme, was illegally made and this amounted to misappropriation and provision of Section 14 (1)(g) of the 1958 Act was invoked to submit that she had incurred a disqualification and therefore, under Section 16 of the 1958 Act, the Collector is empowered to declare her disqualified.

The petitioner contested the said claim of disqualification by submitting that the allegations. in no way incur a disqualification as contemplated under Section 14 (1)(g), which operate in a distinct situation, where a member of Panchayat is 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

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Panchayat. Alleging that the complaint was based on an obscure report submitted by the Block Development Officer, Panchayat Samiti, Mahur, which enquiry was conducted against her back and without her participation, it was submitted that the petitioner on assuming her office of Sarpanch, she had merely issued a cheque in favour of the concern agency, in whose favour, the erstwhile Sarpanch Mrs. Sunita Behare and the then Managing Committee had approved a proposal for allotment of work and the permission was granted for allotment of work by passing a Resolution by the Grampanchayat and even the work completion certificate is issued by the then Sarpanch and Gramsevak. It was pleaded that then Sarpanch Sunita Behare had allotted the work to Shivashish Agency, but since the payment could not be made during her tenure, based on the record and proceedings of the Grampanchayat, she had signed the cheque of Rs.54,500/- on 07/04/2018 and the amount was disbursed in favour of Shivashish Agency. In the wake of the allegation leveled against her, she admit that though the amount was disbursed in favour of Shivashih Agency, she has no direct or any indirect interest in the work allotted nor she had any share in the work done by the order of Panchayat or employment with, or under the Panchayat.

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Alleging that the complaint has been filed on account of political rivalry and it was a clear attempt of disrepute her, the request was made not to entertain the complaint.

Along with her reply, she also submitted before Collector, several documents which included the supply order, commencement of work order, completion certificate and the proposal for refilling of the wells.

5. During the course of the hearing before the Collector, the Block Development Officer, Panchayat Samiti, Mahur, produced on record a report of the enquiry conducted by him, along with the copy of the first information report registered in an offence against the petitioner and the Gramsevak, on 31/08/2018. The report forwarded by the Block Development Officer is based upon an enquiry conducted by the Extension Officer, Panchayat Samiti, Mahur, and I will refer to the details of the said report a little later.

To continue narration of events, it would suffice to note at this stage, that the Collector on 03/07/2019, allowed the application filed by respondent No.1 and disqualified the petitioner, as Sarpanch of the Grampanchayat Malwada, for the remaining tenure.

The finding rendered in the order of disqualification is based on the report of the Block Development Officer which has recorded a finding that the Sarpanch Saroja Behare had indulged in misappropriation of the amount under the MNREGA illegally and an offence came to be registered against her on 31/08/2018. By placing reliance upon the report of the Extension Officer, the Collector has recorded that the report would lead to an irresistible conclusion that without supply of material by Shivashish Agency, Mahur, a cheque of R.54,500/- was issued in it's favour on 07/04/2018 and this amounted to illegality. Further a cheque of Rs.29,000/- dated 18/05/2018, was issued in favour of Shri Tukaram Machhindra Kshirsagar, but before that, on 07/04/2018, the amount was paid to Shivashish Agency under the joint signature of Sarpanch and Gramsevak and this lead him to a conclusion that they have committed gross illegality. The Collector has, therefore, recorded a finding that the petitioner, has indirectly caused interference in the financial affairs of the Grampanchayat by showing her interest/relationship and has thus, availed financial benefit, which entail a disqualification under Section 14(1)(g) of the Maharashtra Village Panchayats Act.

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On an appeal being filed before the Divisional Commissioner, the appellate authority upheld the finding that the petitioner had caused Criminal misappropriation by showing her interest and the charge being of serious nature, by upholding the order passed by the Collector, the appeal was dismissed.

6. With the assistance of the respective Counsel, I perused the documents placed on record appended to the petition, affidavit filed by the contesting respondents and the rejoinder of the petitioner, dated 11/03/2021.

The documents appended along with a rejoinder of the petitioner would reveal that on 27/07/2017, administrative approval came to be granted to the project of refilling of the wells in Grampanchayat Malwada in Gut No.67 and the technical approval was granted by the Agricultural Officer, Panchayat Samiti, Mahur. The estimated price of the said work was projected and approval was granted to the estimated cost of the work at Rs.22417.00 which was trifurcated as under :

A	Un-skilled work	Rs.15148.51
B	Skilled work	Rs.5960.49
C	Minor	Rs.1308.00
Total		Rs.22417.00

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7. The sanction order issued by the Block Development Officer / Joint Programme Officer (MGNREGA), Panchayat Samiti, Mahur, directed that the work was to be carried out under the Mahatma Gandhi National Rural Employment Gurarantee (MGNREGA) and it was directed that the unskilled work shall be completed through the daily wages by adopting the prescribed procedure, whereas for carrying out the skilled work and supply of material for skilled work, tenders should be invited on local basis by ensuring that the material is obtained at the lowest rate. Further sanction was granted on submission of the estimate of wok under the scheme to be 60% unskilled and 40% skilled and the work to be undertaken through the labour from the village and on completion of the work, the completion certificate to be issued. The sanction order also declared that the work commencement order should be issued under the signature of the Block Development Officer. Thus, sanction order granted in respect of the project of refilling of wells to be implemented in Gut Nos. 82 ,66 ,27, 62, 10, 93 and 70, subject to the same terms and conditions.

The Record further reveal that the tender came to be floated for the supply of material for carrying the skilled work and tender

of Shivashish Agency was accepted, since it quoted the lowest rate. A comparative chart placed on record along with the rejoinder under the signature of the Gramsevak, reveal that for supply of material in the form of Cement, Sand, Stone, Iron rods, three suppliers had expressed their desire and their rates were called for, which included Shivashish Agency; Dan Tiles, Mahur; and Jay Bhole Tin agency, Mahur. On comparison of the rate of three agencies, the rate of Shivashih Agencies was found to be the lowest by the Gramsevak and he conveyed his intention that the same should be accepted. Accordingly, on 22/06/2017, Shivashsih Agency was informed about the acceptance of it's tender for supply of transportation of PVC Pipes and Stones. The work order in favour of the said agency clarified that, after the raw material is supplied, as and when the grant is received from the Government, the bill shall be paid. The said work order is issued under the signature of the then Sarpanch Smt. Sunita Behare and the erstwhile Gramsevak of the Grampanchayat, Malwada and came to be issued pursuant to the Resolution being passed in respect of refilling of nine wells in different wards in the village Malwada vide Resolution No.8 in meeting of Gram Panchayat dated 15/07/2017, held under the Chairmanship of the

Sarpanch Smt. Sunita Behare. Resolution No.8 resolved that for the purpose of refilling of the 9 wells, the tender of Shivashish Agency is approved and the work order should be issued to the said Agency and the payment shall be effected after completion of the work through cheque. The Resolution is passed unanimously and bear signature of the then Sarpanch, Gramsevak and other five other members, who were present in the meeting.

8. Upon the raw material being supplied in the nine distinct Gut numbers through two trips each, the supply was also acknowledged in favour of Shivashish Agency on 11/07/2017 by the Gramsevak of Gram Panchayat office, Malwada. The material in the form of pipes was also acknowledged and receipt was passed in favour of Shivashish Agency on 27/07/2017. On 02/04/2017, another Resolution No. 5 came to be passed by the Grampanchayat in it's meeting held under the Chairmanship of Smt. Sunita Behare and Resolution No.5 recorded that in terms of the work order issued to Shivashish Agency for supply of material for refilling of the wells under the MNREGA, the material was supplied and the details of which were set out in the Resolution which was worth Rs.54,603/-, however, since the Grampanchayat was shortage of funds, it was resolved that for making the

payment, the request should be forwarded to the Panchayat Samiti and on obtaining necessary grant, a cheque of an amount of Rs.54,603/- should be issued in favour of Shivashish Agency. This Resolution is also passed unanimously and bear signature of five members along with the Sarpanch and the Gramsevak.

9. After passing of the Resolution in the month of August 2017, the elections of the Grampanchayat were held in October, 2017 and the petitioner came to be elected as Sarpanch in the said election and she assumed the charge of the office on 24/12/2017. On taking charge, the Gramsevak submitted the record before her and on perusal of the Resolutions passed by the Grampanchayat earlier, where it was recorded that the Shivashish Agency was allotted the tender for the purpose of furnishing the raw material and transporting the same for refilling of the nine wells and for want of funds the payment was not cleared, a cheque of Rs.54,500/- came to be issued in favour of Shivahish Agnecy under the signature of the petitioner.

10. In the wake of the Resolution which was passed by the earlier body and since the Grampanchayat is body in perpetuity, the petitioner issued the cheque in the name of the Shivashish

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Agency, who was allotted the work by inviting tenders and on completion of the work, even a completion certificate was issued under the signature of the Sarpanch and since the payment could not be effected on account of want of funds, the cheque was issued under the signature of the petitioner, but based on the Resolution and the bills put up by the agency in the tenure of erstwhile Body of Grampanchayat.

The petitioner in her rejoinder has clarified that at subsequent point of time, it was revealed that bills of Shivashish Agency which was already paid on 07/04/2018, however, while passing Resolution on 12/04/2018, this fact was not brought to the notice of the Grampanchayat and therefore, inadvertently, Resolution came to be passed for paying the amount to the Shivashish Agency. However, subsequently some of the members brought the said fact on record and therefore, the Resolution passed in meeting dated 12/04/2018 came to be cancelled, as even there was no proposer and seconder to the said Resolution. Accordingly, in the meeting held on 01/06/2018, the Resolution passed in the meeting dated 12/04/2018 in respect of making payment of Shivashish Agency was cancelled as the payment was already effected.

11. In the entire sequence of events, and for passing of the Resolution, it cannot be said that the petitioner is responsible for the misappropriation as the Grampanchayat itself had passed the Resolution on the basis that Shivashish Agency has supplied the material and on completion of work, the amount was due to the Agency. The entire procedure was carried under the signature of the earlier Sarpanch, and the Resolutions to that effect were approved by Gramsevak and placed on record by petitioner.

At this stage, it is necessary to refer to the report of the Block Development Officer which forms the fulcrum of the disqualification order passed by the Collector. The report would reveal that in the year 2017-18, an amount for skilled work under MGNREGA to the extent of Rs.54,664/- came to be transferred in the account of Grampanchayat vide FTO. Out of the said amount, Shivashish Agency was issued a cheque of Rs.25,000/-, whereas a cheque of Rs.29,000/- was issued to one Shri. Tukaram Machhindra Kshirsagar by the then Gramsevak M. K. Kamble. However, Shri. Tukaram Kshirsagar did not receive the said amount and therefore, he raised a grievance with the Panchayat.

On perusal of the record of the Grampanchayat, the amount of Rs.54,585/- was due and payable to the following agencies to the following extent :--

अ. क्र.	पुरवठा धारक	तपशिल	रक्कम
१	जयभोले टिन एजन्सी माहुर	पाईप ९ विहिर पुनर्भरण ३००/- प्रमाणे	२७००/-
२	अनिल पांडुरंग राठोड	दगड वाहतुक ९ विहिर पुनर्भरण ३४२५/- प्रमाणे	३०८२५/-
३	तुकाराम मच्छींद्र क्षिरसागर	दगड खरेदी ९ विहिर पुनर्भरण २३४०/- प्रमाणे	२१०६०/-
		एकुण	५४५८५/-

Accordingly, the amounts were therefore required to be disbursed in the above manner, however, on 07/04/2018, the Gramsevak and the present petitioner, in her capacity as a Sarpanch, issued a cheque of Rs.54,500/- in favour of Shivashish Agency, who had not supplied any material. However Shri. Tukaram Machhindra Kshirsagar was given a cheque of Rs.29,000/- on 18/05/2018, but before that on 07/04/2018, a cheque was issued in favour of Shivashish Agency by the Sarpanch and Gramsevak.

This is what is reported by the Extension Officer to the Block Development Officer. The Extension Officer also informed that the necessary action should be taken.

12. Based on the aforesaid, the criminal offence has been registered against the present petitioner in her capacity as a Sarpanch and also against Shri. Madhav Kamble, Gramsevak and upon said complaint, offence under Section 420, 406, 409 read with Section 34 of the Indian Penal Code, is registered.

Perusal of the first information report reveal that an amount of Rs.54,585/- towards skilled work was deposited in the account of Grampanchayat and though the amount was due for payment to Shri. Anil Pandurang Rathod for transportation of stone to the extent of Rs.30,825/- and in favour of Shri. Tukaram Kshirsagar for Rs.21,060/- and Jay bhole Tin agency, the amount was not paid to them. On the basis of the allegations levelled, the petitioner may be found to be guilty, however, for the purposes of disqualification under Section 14 (1)(g), something more is required. As per Section 14, sub-section (I) (g), no person shall be member of a Panchayat, continue as such, who 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. In order to incur a disqualification for the said provision, it must be

established that the person who has been elected as a member of Panchayat, has directly or indirectly, by himself or his partner, has 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. The disqualification would fall only when it is established by positive material being laid to the effect that the petitioner has any direct or indirect interest in allotting the cheque and disbursing the amount in favour of Shivashish Agency, who was allotted work under order of the Panchayat or who has carried out the work on behalf of Panchayat. However, this aspect and requirement for incurring a disqualification is conspicuously absent the finding of both the Authorities i.e. the Collector and the Divisional Commissioner, who have failed to advert this important aspect, being that the petitioner in order to incur a disqualification must have been directly or indirectly, either by herself or through her partner enjoyed any share or interest in any work done by order of the Panchayat or on behalf of, or employment with or under the Panchayat. Had it been established by the complainant that the petitioner had some interest in Shivashish Agency and the work was allotted to it, by her, on basis of some interest, or she enjoyed

any share in the said agency and by taking benefit of her being the Sarpanch, the work was allotted to said agency in which she particularly had any interest, her disqualification by invoking Section 14(1)(g) was possibly justified. In absence of a single averment being made by the complainant, and a finding recorded by the Collector on the said aspect, the impugned order fail to meet the parameters of disqualification by virtue of Section 14(1)(g). The Collector has recorded that by signing the cheque in favour of Shivashish Agency, when the bill was not due and payable to the said agency, she has indulged herself in misappropriation of the finances of the Grampanchayat. The Collector has failed to peruse the record of Grampanchayat which clearly contain documents to show work of Grampanchayat being carried by Shivashish Agency and was being allotted by tender process. This charge, however, is distinct from what the requirement of Section 14(1)(g) is. The section contemplate that taking advantage of her position as a member/Sarpanch, if she had any direct or indirect interest in the work done by the order of the Panchayat or in any contract entered with, by or on behalf of the Panchayat, or if there was any interest in the employment of any person with or under the Panchayat, it would incur a

disqualification. This, however, is not the case here and the allegations levelled and the report of the Block Development Officer fall short of meeting the requirement contemplated in clause (g) of Section 14 (1) so as to disqualify the petitioner.

13. The standard of probity in public life is expected not only by conviction of those in helm of affairs in a criminal Court, but propriety demand that those who are vested with powers remain more accountable and transparent in their functioning and subjected to a social audit with of view to minimize their discretionary decision. The Grampanchayat, which operate as body of governance at grass root level, with the Sarpanch as it's head and members discharging the powers vested in them for the benefit of the village at large, are expected to be sensible to their duties and responsibilities. No doubt, they should not be suspected of being party to any wrong doing, being public figures and every action of their's, must be viewed transparently by taking into account the interest of the people at large and any flaw on their part need not be spared, as they are ultimately liable to the public at large in the village. However, at the same time, they should also not be made the scapegoats for fighting political

battles and it is necessary that for smooth functioning of the Grampanchayat, the Sarpanch and the members are required to exercise discretionary powers and in such contingency, while examining whether the discretion exercised by such functionaries, is or is not in the interest of the Grampanchayat or the public at large or whether it is in the interest of the Sarpanch/member himself or a decision taken with an interest or share in the work of the Panchayat or with some ulterior motive, call for a microscopic evaluation. Those in helm of affairs, who are discharging their duties capably in the interest of the Grampanchayat cannot be enveloped by attributing mala fide intentions, with an intention of seeking revenge or creating obstacle in their pathway in taking the Panchayat ahead.

14. In the present case, the petitioner appear to have been roped in a controversy, which in fact do not exist and the petitioner has merely issued the cheque for work completed by particular agency which was duly approved in meetings of the Grampanchayat and the raw material was in fact delivered and acknowledged by the Gramsevak. For settling the political vendetta, the erstwhile Sarpanch, with the aid of her better half, has attributed of misconduct/misappropriation against the petitioner which is not

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proved on record and in any case, the finding rendered by both the authorities fall short of the requirements contemplated for disqualifying a candidate under Section 14(1)(g) of the Maharashtra Village Panchayats Act. Necessarily, the impugned orders cannot be sustained and the orders passed by the Collector on 03/07/2019, and confirmed by the respondent No.4 - Additional Commissioner, on 23/10/2019 in the appeal proceedings are quashed and set aside. The disqualification of the petitioner is therefore set aside and the petitioner is restored to her post as Sarpanch of village Malwada and is permitted to serve her remaining tenure in the said capacity.

Rule is made absolute in the aforesaid terms. Easy on costs.

(SMT. BHARATI DANGRE, J.)

sjk