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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4784 OF 2021

Shri. Tanaji Jagannath Palave
Age : 46 years, Indian Habitant,
Occupation : Agriculturist, residing at
Mandave, Taluka : Malshiras,
District : Solapur.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Department of Gram Vikas
Having office at Mantralaya,
Mumbai 400 032.
2. The Collector, Solapur, Having
Office at Solapur.
3. The Tahsildar, Malshiras, Having
Office at Malshiras.
4. The State Election Commission,
Having office at New Administrative
Building, Opp. Mantralaya, Mumbai.
5. Nagarabai Jaywant Palave
Age : 60 years, Occu: Housewife,
Residing at Mandave, Taluka Malshiras,
District : Solapur.
6. Nagarabai Tanaji Palve
Age : Adult, Occu: Housewife,
Residing at Mandave,
Taluka : Malshiras, District : Solapur.

.. Respondents

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- Mr. Sarang S. Aradhya, Advocate for the Petitioner.
 - Mr. A.A. Kumbhkoni, Advocate General a/w. Mr. P.P. Kakade, GP and Mr. A.I. Patel, AGP for the State.
 - Mr. Rupesh K. Bobade, Advocate for Respondent No.5.
 - Mr. Milind Shambharkar, Collector, Solapur present by Video Conferencing.
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CORAM : S. J. KATHAWALLA &
MILIND N. JADHAV, JJ.

DATE OF RESERVED : 06.09.2021
DATE OF PRONOUNCED : 23.03.2022.

JUDGMENT: (Per : S.J. Kathawalla & Milind N. Jadhav, JJ.)

. By the present petition, the Petitioner has, *inter alia*, prayed
for the following reliefs:

"B. That by appropriate orders as well as directions of this Hon'ble Court, the record and proceedings in respect of the Dispute Application (Dispute Application No. 01/2021) on the file of the Respondent No. 2 the Collector, Solapur be called for;

C. That after going through the same, by appropriate Writ, Order as well as directions of this Hon'ble Court the impugned order dated 18/02/2021 passed by the Respondent No. 2 the Collector, Solapur which was received by the Petitioner on 23/02/2021 thereby rejecting Dispute Application filed by the Petitioner be quashed and set aside;

D. That by appropriate orders as well as directions of this Hon'ble Court the Dispute Application filed by the Petitioner before the Respondent No. 2 Collector, Solapur pursuant to the provisions of the Section 14(b) of the Maharashtra Village Panchayats Act be kindly allowed and the Respondent No. 5 be disqualified from the Post of Member of the Village Panchayat, Mandave, Taluka Malshiras, District, Solapur forthwith."

2. The Petitioner is the elected Member of Panchayat Samiti from Ward No.5 of Village Panchayat - Mandave, the election to which was held on 15.01.2021. In the same election Respondent No.5 was also declared elected as Member from Ward No.4.

3. It is the Petitioner's case that Respondent No.5 was disqualified from contesting election for a period of 5 years by order

dated 14.06.2016 passed by the then Collector, Solapur under Section 14B of the Maharashtra Village Panchayats Act, 1958 ("**the said Act**"). Despite the subsistence of the said order, Respondent No.5 contested the election from Ward No.4 of Village Panchayat - Mandave on 15.01.2021 by misrepresentation and fraud and was elected. Petitioner has therefore, *inter alia*, prayed for disqualification of Respondent No.5.

4. Before we advert to the submissions made by the respective Advocates, it will be apposite to refer to the relevant facts briefly.

4.1. General Election for the term 2015-2016 to 2020-2021 of Panchayat Samiti - Mandave was held in the year 2016. Respondent No.5 - Nagarabai Jaywant Palave contested the said election. After the election was over, Respondent No.5 failed to submit the election expenses within the prescribed time limit; Respondent No.3 - Tahsildar, Malshiras therefore filed Dispute Application No.4091 of 2016 before the Collector, Solapur for seeking disqualification of Respondent No.5 under Section 14B of the said Act.

4.2. Two show cause notices dated 07.05.2016 and 24.05.2016 were issued by the Tahsildar calling upon the Respondent No.5 - Nagarabai Jaywant Palave to attending the hearings on 13.05.2016

and 03.06.2016. The notices were received by Rajendra Jaywant Palave, son of Respondent No.5. By reply dated 03.06.2016 Respondent No.5 - Nagarabai Jaywant Palave informed the Election Returning Officer that her son Rajendra Jaywant Palave will submit the election expenses, but failed to submit the same.

4.3. By a speaking order dated 14.06.2016 the Collector, Solapur allowed the Dispute Application and passed an order restraining the Respondent No.5 from contesting the Grampanchayat election or become a Member of the Grampanchayat for a period of 5 years from the date of the order. However, in this order the name of the Respondent No.5 as appearing in the cause title was mentioned as Nagarabai **Tanaji** Palave, whereas in entire order the reference to the Respondent No.5 was made as "Opponent".

4.4. General election for Panchyat Samiti - Mandave for the term 2020-2021 to 2025-2026 were announced in the year 2020. Respondent No.5 - Nagarabai Jaywant Palave filed her nomination form and contested the election. Respondent No.5 filed a specific declaration in part II of Form A under Rule 8 of the Maharashtra Village Panchayats Rules, 1959, declaring that she has not been disqualified as a Member of the Grampanchayat for contesting the election under the provisions of section 14B or Section 16 of the said

Act. The Election Returning Officer scrutinized the said form despite there being a specific complaint of the Petitioner that by virtue of the order dated 14.06.2016, the Respondent No.5 stood disqualified and was ineligible to contest the said election. The Election Officer certified that the disqualification order dated 14.06.2016 passed in Dispute Application No.4091 of 2016 pertained to Nagarabai Tanaji Palave and not the Respondent No.5 (Nagarabai Jaywant Palave) and both the said persons were different; thus the Respondent No.5 was considered eligible and her nomination form was accepted.

4.5. Petitioner filed Dispute Application dated 22.01.2021 under Section 14B of the said Act before the Collector, Solapur seeking disqualification of the Respondent No.5 on the ground that by an order dated 14.06.2016 she was restrained from contesting election for a period of 5 years from 14.06.2016 and to declare her election in January 2021 as illegal and void.

4.6. Respondent No.2 - Collector by the impugned order dated 18.02.2021 rejected the Dispute Application and hence the Petitioner approached this Court by the present Writ Petition.

5. Mr. Sarang S. Aradhye, learned Advocate appearing for the Petitioner has taken us through the pleadings and has made the following submissions:

- i. Respondent No.5 has taken advantage of the mistake appearing in the cause title of the order dated 14.06.2016 wherein the name of the Opponent (i.e. Respondent No.5) is typed as "Nagarabai Tanaji Palave"; that she stood disqualified for a period of 5 years from 14.06.2016 and despite the subsistence of the said order, she filed her nomination in December, 2020;
- ii. that "Nagarabai Jaywant Palave" and "Nagarabai Tanaji Palave" are one and the same person; there is no person by the name of Nagarabai Tanaji Palave residing in the jurisdiction of Village Panchayat - Mandave and such a name does not appear in the electoral roll of the said village; the Collector, Solapur ought to have taken into consideration the report and certificate dated 01.02.2021 and 03.02.2021 issued by the Talathi of Village Mandave and the Gramvikas Officer of Grampanchayat - Mandave certifying this aspect;
- iii. that Respondent No.5 has played a fraud; she was having knowledge that she is disqualified from contesting the election or becoming a Member of the Grampanchayat for a period of 5 years from 14.06.2016; despite that Respondent No.5 filed a false declaration before the Election Returning Officer in December 2020 stating that she is not declared as

ineligible from contesting election under Section 14 of the said Act;

- iv. that the impugned order passed by the Collector, Solapur in paragraph No.5 clearly records a finding that there is no person by the name of "Nagarabai Tanaji Palave" residing in Village - Mandave, despite which the impugned order proceeds on the basis that the disqualification order dated 14.06.2016 is against "Nagarabai Tanaji Palave" and not against "Nagarabai Jaywant Palave".

5.1. Mr. Sarang Aradhya, learned Advocate has therefore prayed for quashing and setting aside of the impugned order dated 18.02.2021 and consequential disqualification of the Respondent No.5.

6. *PER CONTRA*, Mr. A.A. Kumbhkoni, learned Advocate General appearing alongwith Mr. P.P. Kakade, learned Government Pleader and Mr. A.I. Patel, learned AGP appearing on behalf of State has drawn our attention to the Affidavit-in-Reply dated 12.04.2021 filed by Mr. Milind Shambharkar, Respondent No.2 - Collector, Solapur and has contended that the impugned order has been passed after following the due process of law and the principles of natural justice. It is submitted that by order dated 14.06.2016 "Nagarabai

Tanaji Palave" was disqualified and not Respondent No.5 i.e. Nagarabai Jaywant Palave; since Nagarabai Tanaji Palave stood disqualified, her name was recorded in the Government Gazette dated 03.02.2017 as being disqualified. They have therefore prayed for dismissal of the Petition.

7. We have perused the pleadings and considered the submissions made by the respective Advocates. Submissions made are on pleaded lines.

8. We may state that the disquieting facts in the present case have dismayed us. Before we dwell to highlight the shocking facts in the present case, it would be appropriate to quote the observations by the Division Bench of this Court in the case of *Sanjeev D. Devre and Ors. Vs. State of Maharashtra and Ors.*¹, which refer to the decisions of the Supreme Court in the case of *United India Insurance Co. Ltd. Vs. Rajendra Singh and Ors.*², and *S.P. Chendgalvaraya Naidu Vs. Jagannath*³, in respect of fraud played upon by a litigant / party. Paragraph Nos.12 to 14 of the said decision are relevant and reproduced hereunder:

"12. Fraud and justice cannot co-exist. They do not dwell together. Fraus et jus nunquam co-habitant is pristine maxim which has never lost its temper all over the centuries.

1 [2004] 1 ALL MR 75 :: [2004] 4 Bom CR 302

2 2000 (3) SCC 581

3 AIR 1994 SC 853

In (United India Insurance Co. Ltd Vs. Rajendra Singh and others) reported in (2000) 3 SCC 581, the Supreme Court applied the said maxim and quoted with approval observation of (Lord Denning in Lazarus Estates Ltd. Vs. Beasley) reported in (1956) 1 All ER 341 to the effect "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything. Castigating the Motor Accidents claims Tribunal and the High Court for not annulling the awards obtained by fraud, the Supreme Court observed (para 4 of the judgment).

"For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by-products of stark fraud played on a tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and peoples faith in the efficacy of the High Courts would corrode."

In (S. P. Chengalvaraya Naidu Vs. Jagannath) reported in A.I.R. 1994 S.C. 853, the Supreme Court has observed :

"Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court whether superior or inferior. It can be challenged in any Court even in collateral proceedings."

13. In Ronald Hyacinth Mendosa Vs. State of Maharashtra a Division Bench of this Court (to which one to us, A. P. Shah, J., was a party) also had an occasion to consider the effect of a fraud, on administrative actions and/or judgments obtained by fraud. Repelling that the contention that the petitioner aggrieved by an order of transfer based on a judgment of Administrative Tribunal, which is obtained by fraud, is required to approach the Administrative Tribunal at the first instance this Court observed:

"There cannot be any dispute about the proposition that the litigant is required to approach the Central Administrative Tribunal as the court of first instance in respect of the areas of law for which it has been constituted. However, when the party has approached this court complaining of fraud or collusion by another party resulting in an order which directly affects him, should the remedy under Article 226 be foreclosed. Surely this Court exercising jurisdiction under Article 226 is not powerless and would not hesitate to quash and set aside such order if it is convinced that the order was procured by fraud, collusion, misrepresentation, or suppression of material which would

affect the very basis of the claim made before the Tribunal."

A Special Leave Petition to appeal against this judgment was rejected by the Hon'ble Supreme Court.

14. The superior courts have a right and obligation to set aside the orders obtained by fraud and not allow perpetuation of the benefits obtained by fraud. This is all the more true where persons who exercise the police powers of the state are involved in and are beneficiaries of fraud committed by them. The respondent Nos.4 to 38 are appointed as State Excise Inspector. They exercise the police powers of the State to Supervise and regulate trade in liquor. Appointment of the persons of such posts, if obtained on the basis of fraud, cannot be sustained. The State wants to take appropriate action against them but doubts whether the orders passed by M.A.T., writ petition against one of which was summarily dismissed prevent it from enquiring into the allegations of fraud. We have no doubt that the State has a power to enquire and find out if any fraud is committed. If at all the State feels any constraints we hereby remove the shackles apparently faced by it making an enquiry whether the respondent Nos.4 to 38 (except respondent Nos.20 and 32) have obtained medical certificates fraudulently and holding appropriate enquiries against them."

9. While advertng to the facts of the present case, we may now highlight our observations and findings:

- i. there is a categorical finding in the impugned order dated 18.02.2021 that there is no person by the name of Nagarabai Tanaji Palave residing in the jurisdiction of Village - Mandave, Taluka - Malshiras; despite which, without conducting any enquiry, the Respondent No.2 Collector has given a conclusive finding that the order dated 14.06.2016 pertained to Nagarabai Tanaji Palave and not the Respondent No.5;
- ii. the Respondent No.2 - Collector in his Affidavit-in-Reply

dated 12.04.2021 has categorically stated that "*At the time of hearing it is also found that there is no person by the name of Smt. Nagarabai Tanaji Palve in the Village Mandave, Taluka Malshiras, District Solapur, only Nagarabai Jaywant Palave is resident of said Village.*"

- iii. that admittedly there is only one "Nagarabai" i.e. Nagarabai Jaywant Palave in existence;
- iv. that before passing the order of disqualification dated 14.06.2016, Nagarabai Jaywant Palave was served with two specific show cause notices for hearing on 07.05.2016 and 24.05.2016 issued by the Tahsildar; that both the said notices were admittedly received by Rajendra Jaywant Palave, son of Nagarabai; that by reply dated 03.06.2016 Nagarabai Jaywant Palave replied to the contents of the two notices stating that her son Rajendra Jaywant Palave will submit the election expenses on her behalf; that the disqualification order dated 14.06.2016 is passed under Section 14B of the said Act against "Nagarabai Jaywant Palave" wherein there is a clear reference to the enquiry conducted by the Collector, Solapur and the notices issued to Nagarabai Jaywant Palave in respect of non-submission of her election expenses; therefore Nagarabai Jaywant Palave

admittedly stood disqualified and ineligible for contesting election as Member for a period of 5 years from 14.06.2016. Hence, it is beyond doubt that the disqualification order dated 14.06.2016 is passed against Nagarabai Jaywant Palave i.e. the Respondent No.5;

- v. that the Respondent No.5 has taken undue advantage of the incorrect name mentioned / typed in the cause title of the disqualification order dated 14.06.2016 as "Nagarabai Tanaji Palave" and the same name having been reflected in the Government Gazette dated 03.02.2017 as having stood disqualified; due to this mistake of having an incorrect name reflected in the aforementioned two documents, Respondent No.5 in 2020-2021 fraudulently filed her nomination and stated that she had not incurred any disqualification and was eligible for contesting the election.

10. From the material on record, it is clearly evident that Respondent No.5 has taken undue advantage of the mistake occurring in the mention of her name as "Nagarabai Tanaji Palave" in the cause title her disqualification order dated 14.06.2016 and the Government Gazette dated 03.02.2017 and is guilty of misrepresentation.

11. What is equally shocking is the fact that despite ample

material on record, the Respondent No.2 - Collector has turned a blind eye to the same; that it is the duty of the Respondent No.2, being a statutory officer hearing an election Dispute Application under the said Act to investigate and unearth the fraud on the basis of material placed on record. In the present case, the fundamental fact is that no person by the name of "Nagarabai Tanaji Palave" has appeared before the Respondent No.2 while conducting his enquiry and hearing the Dispute Application filed by the Petitioner in 2021; infact no person by the name of "Nagarabai Tanaji Palave" could have appeared as no such person exists.

12. We would also like to refer to the certificate dated 01.02.2021 issued by the Talathi of Village - Mandave clearly records that no person by the name of "Nagarabai Tanaji Palave" exists in Village - Mandave; similarly the certificate dated 03.02.2021 issued by the Gramvikas Officer, Grampanchayat - Mandave states that since the last 15 to 20 years no person by the name of "Nagarabai Tanaji Palave" has been a resident of Village - Mandave and the name of "Nagarabai Tanaji Palave" does not appear on the Grampanchayat Electoral Rolls for the years 2015 as well as 2020.

13. Though the Respondent No.5 has appeared before us through an Advocate she has chosen not to file any response / reply.

In view of the above discussion and findings, we hold that the declaration dated 28.12.2020 given by Respondent No.5 - Nagarabai Jaywant Palave to the Election Returning Officer is a false declaration since on the date of the said declaration Nagarabai Jaywant Palave stood disqualified and was ineligible for contesting the election due to the subsistence of the order dated 14.06.2016. We further hold that the decision of the Election Returning Officer dated 31.12.2020 after scrutiny of the application filed by Respondent No.5 to allow the Respondent No.5 to contest the election as illegal and bad in law and set aside the same; as a consequence of which the impugned order dated 18.02.2021 passed by the Respondent No.2 - Collector accordingly stands quashed and set aside. The election of the Respondent No.5 in 2021 as the Member of the Grampanchyat i.e. Panchayat Samiti - Mandave is therefore set aside. The Respondent No.2 is directed to initiate appropriate steps against Respondent No.5 - Nagarabai Jaywant Palave under the provisions of the said Act and / or in accordance with law as deemed fit for misrepresentation and fraud as observed hereinabove.

14. In view of the above directions and findings, the Writ Petition stands disposed of. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]