

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

WRIT PETITION NO. 8433 OF 2023

Pramod s/o Satish Bondre,
Age; 42 years, Occ; Agril.,
At : Shibalapur, Tq. Sangamner,
District; Ahmednagar.

...PETITIONER
(Orig. Appellant)

V E R S U S

- 1) Shubhangi Dipak Rakte,
Age; Major, Occu; Agril.,
R/o; Shibalapur, Tq. Sangamner,
District; Ahmednagar.
- 2) The Election Officer &
the Circle Officer, for holding
election of Sarpanch of Village
Shibalapur, Tq. Sangamber,
C/o. Tahsil Office, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
- 3) The Tahsildar, Sangamner,
District; Ahmednagar.
- 4) The Collector, Ahmednagar.
- 5) The Additional Commissioner,
Nashik Region, Nashik.
- 6) The Gramsevak,
Grampanchyat Shibalapur,
A/P : Shibalapur, Tq. Sangamner,
District; Ahmednagar.

...RESPONDENTS
(Respdt. Nos. 1 to
3 & 6 are Orig.
Respondents)

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Advocate for the Petitioner : Mr. Shivaji T. Shelke
Advocate for Respondent No. 1 : Mr. V.D. Hon i/b Mr.A.V. Hon.
A.G.P. for the Respondent Nos. 2 to 6/State : Mr. S.B.Pulkundwar
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CORAM : KISHORE C. SANT, J.

Date of Reservation : 20.07.2023
Date of Pronouncement : 03.10.2023

JUDGMENT [PER : KISHORE C. SANT, J.] :

1. Rule. Rule made returnable, heard finally with the consent of the parties.
2. This petition arises out of the proceedings under the Maharashtra Village Panchyat Act, wherein, the petitioner is concurrently held as disqualified from being member of the Grampanchyat, on the ground that he failed to produce his caste certificate, showing that he belongs to a reserved category. The proceeding was initiated by respondent No. 1 before the learned Collector/ respondent No. 4, and the same was allowed. A challenge thereto was raised by the petitioner, before the learned Additional Commissioner, Nashik (Respondent No. 5), which came to be rejected. The petitioner is, therefore, before this Court.

3. The facts in short are that an election to the post of Sarpanch at Grampanchyat, Shibalaplur, Tq. Sangamner, District Ahmednagar was held on 15.01.02021 for a period of 5 years. Thereafter, an election by the Members for the post of Sarpanch was held on 09.02.2021. An elected Sarpanch however, resigned from the post on 06.09.2022. Though the aforesaid Grampanchyat consists of total 11 members. One of the members died after an election and only 10 members remained in the Grampanchyat. The Tahsildar declared an election to be held on 25.11.2022 by way of secret ballot papers. Only two persons i.e. the present petitioner and respondent No. 1 contested an election and both have got equal number of votes i.e. 5 votes each. Since there were equal number of votes to both the members, it was decided to draw a lot and the petitioner came to be elected.

4. Respondent No. 1 filed dispute before the learned Collector on 22.12.2022, on the ground that one of the members Smt. Savita Chandrabhan Kadam @ Savita Vitthal Muntode participated in an election, who was not eligible to participate, as her caste certificate was invalidated and therefore, it was alleged that the election was vitiated. The petitioner resisted the dispute

mainly on the ground of limitation. It is mainly contended that any dispute needs to be filed within 15 days and since in the present case the dispute was filed after 15 days, the same was not maintainable.

5. Certain dates given are that an order dated 17.11.2022 declaring petitioner Savita as disqualified was received by the Tahsildar, Sangamner, on 02.12.2022 and thereafter, the same was received by the Village Panchyat Officer on 09.12.2022. An election had already taken place by that time and the meeting which was held between the period cannot be said to be vitiated. The learned Collector, however, held that on the date of election said Savita was disqualified, therefore the meeting was not vitiated. The caste certificate of Savita was cancelled by the Caste Validity Scrutiny Committee on 20.12.2021, only because the learned Collector passed an administrative order on 17.11.2022. The said was not within the knowledge of an Election Officer, however, the said was invalidated and was very well received by the concerned member and the Tahsildar but the same was not brought to the notice of an Election Officer. It is submitted that because of participation of a disqualified member in the meeting, the meeting was vitiated. On

the point of limitation, it is submitted that though the dispute was raised after 10 days of the limitation, still it is maintainable and allowed.

6. The petitioner, being aggrieved by the order passed by the learned Collector dated 22.05.2023, filed an appeal before the learned Additional Commissioner, Nashik. In that appeal the petitioner prayed for setting aside an order passed by the learned Collector, however, the said appeal came to be rejected. Thereafter, a Writ Petition bearing No. 6003 of 2023 was filed before this Court. This Court had directed stay of the impugned order passed by the learned Collector pending the Writ Petition, by order dated 06.06.2023.

7. In an appeal, the petitioner had raised a ground that there is no provision to condone the delay in filing dispute before the learned Collector and the said was not maintainable. There is clear violation of Section 33 of the Village Panchyat Act. The learned Additional Commissioner held that, though the dispute was filed after a period of 15 days and it cannot be rejected on the sole ground. One of the members had incurred disqualification, so she was not eligible on the date of an election to participate and vote in

the meeting and on that ground an appeal was rejected by judgment and order dated 05.07.2023.

8. The learned Advocate, Mr. Shelke, for the petitioner vehemently argued that the learned Collector had no authority and jurisdiction to entertain the dispute after a period of 15 days and an exercise of entertaining the said itself was illegal. The learned Collector had not discussed anything about the delay. The learned Commissioner also failed to appreciate this fact and without considering the point of delay has rejected an appeal. He further argued that before the learned Collector, there was not even an application for condonation of delay while deciding the dispute. On the point of limitation, he relied upon the following judgments :

(a) 2001 AIR SCW 2351 – Ragho Singh Vs. Mohan Singh and Others.

(b) 2002(1) Mh.L.J. 881 – Prabhakar Sabaji Kandalkar Vs. Tahsildar Sangamner and others.

(c) 2008(2)Mh.L.J. 727 – Umesh Tukaram Kamble and Others Vs. Shamrao Sakharam Patil and others.

(d) AIR 1998 SC 2276 – P.K. Ramchandran Vs. State of Kerala and another.

9. The learned Senior Advocate Mr. V.D.Hon for Respondent No. 1 submits that the said member Savita had

contested an election to the post of Sarpanch, which was reserved for the person belonging to Scheduled Caste. Her caste certificate was already held to be invalid and the same was confiscated by the authority. The said order is not challenged showing as she has accepted the invalidation. On 02.12.2022, itself the learned Tahsildar had received knowledge of such invalidation but still she did not inform the authorities and did not take any step. Even a vacancy to the post of Sarpanch arises after disqualification of Savita. He further submits that only valid voters are eligible to cast votes. Had Savita not taken part in the meeting, There would have been only 9 members eligible to cast votes. It is only because she was allowed to vote, there was equal number of votes secured by both the members. As a result of which the lot was drawn. The fact of invalidation, though was within the knowledge of the Tahsildar and the said member and as respondent No. 1 had no such knowledge and no-objection was not raised within time. Both authorities, thus, have rightly held that the meeting was vitiated. In support of his submission, he relied upon the following judgments :

(a) 2017(6) Mh.L.J. 841 – Sangitabai w/o Vasudeo Rajput Vs. State of Maharashtra and Others.

(b) 1999(4) SCC 526 – K. Venkatachalam Vs. A. Swamickan and another.

(c) 2002(3) Mh.L.J. 201 – Madhukar Baburao Deshmukh Vs. Jalgaon Jilla Maratha Vidya Prasarak Co-Op. Samaj Ltd. Jalgaon and Others.

10. It is submitted that even in absence of condonation of delay application, the learned Collector had condoned the delay and entertained the proceedings. As regards the merits of the matter, he submits that since ineligible candidate participated in an election the entire process is materially affected.

11. The learned Advocate Mr. Shelke, for the Petitioner in rebuttal submitted that in the entire process, there is no fault on the part of the petitioner. There were no pleadings about the cause of the delay. The learned Collector has no power to condone the delay. He submits that there are glaring defects in the conduct of special meeting. If the impugned order is set aside, it will amount to perpetuate the illegality. A right of the petitioner is only statutory right and not fundamental. It is clear that on the date of special meeting, one of the members had incurred disqualification, as her caste certificate was held to be invalidated and was confiscated by the authority. The only question now remains is as to whether an

application/dispute filed after 10 days of the limitation period or whether the learned Collector was right in entertaining the said Dispute ?.

In **Ragho Singh** (supra) the Hon'ble Apex Court had considered the provisions of Section 5 of the Limitation Act. The delay of 10 days was caused in filing an appeal. No application for condonation of delay was filed and still an appeal was entertained. The Hon'ble Apex Court in that case held that merely because an appeal was entertained, the delay cannot be deemed to have been condoned and in that view rejected an appeal. An appeal was filed and still the same was entertained. An order of the Appellate Court was challenged by filing a revision. The revision came to be dismissed, against which a Writ Petition was filed before the High Court. The High Court allowed the Writ Petition holding that an appeal was filed beyond the period of limitation and the same ought to have been dismissed by the appellate Court, on the ground of limitation, as no application was filed for condonation of delay and by observing the same the Hon'ble Apex Court had held that no appeal would have been made in absence of condonation of application.

In **P.K. Ramchandran** (supra) also it was the case of

delay in filing an appeal and the same was continued without recording the satisfaction or the satisfactory explanation of inordinate delay. In that view, it was held that the Court has to apply its mind while proceeding with an appeal. Both these cases are in view of Section 5 of the Limitation Act. This Court finds that both these judgments, for the above reasons, are applicable to the case in hand.

In **Prabhakar** (supra) a Single Judge of this Court has held that the learned Collector under Section 35 (3) (v) of the Bombay Village Panchyat Act is not a Court and thus, Section 5 of the Limitation Act has no application in the matters of dispute before the learned Collector. It is held that both the Courts need to consider Section 5 of the Limitation Act in strict sense. The Quasi Judicial and Executive Authorities are not the Courts within the meaning of Section 5 of the Act. Therefore, it is held that Section 5 of the Act has no application to the proceedings before such authorities.

In the case of **Umesh** (supra), it was the case under Bombay Village Panchyat Act, wherein a challenge was raised to the validity of an election to the Panchyat. It was considered that when a period of limitation of 15 days is prescribed under Section 15 (1)

of the Act, the provisions of Section 5 of the Limitation Act would be excluded for condonation of delay. In the said case it was held that when the State legislature has given a specific period of limitation to challenge the validity of an election, the same needs to be challenged within that specific period. It is considered that an object of the legislature is that the dispute must be brought to an adjudication on expeditious basis. The dispute in regard to the validity of an election must be resolved at an earliest, as it is a matter of public policy. This Court finds that both these judgments i.e. **Prabhakar** (supra) and **Umesh** (supra) are relevant for the present petition.

12. So far as the judgment relied on by the learned Senior Advocate Mr. V.D.Hon for Respondent No. 1, in **K. Venkatachalam** (supra), the Hon'ble Apex Court considered the challenge about the dis-qualification of a member of legislative assembly as the member in that case was not possessing basic qualification prescribed under Section 5 (c) of the Representation of the People Act, 1951. The Division Bench of the High Court had held that the applicant therein was not an elector for an Assembly Constituency and therefore, was not possessing necessary qualification to be chosen

from that Constituency. In that view, the petition came to be dismissed holding that in that case since the caste claim was found to be faulted, there was inherent lack of the qualification.

In **Madhukar** (supra), it was the case under Section 154 of the Maharashtra Co-Operative Societies Act. A revision filed was entertained by the Revisional Authority i.e. the Divisional Joint Registrar, Co-Operative Societies, under revisional jurisdiction of the Co-Operative Societies Act. The said judgment was again challenged by filing a revision before the State Government. It was held that once revisional jurisdiction was already exercised by an authority, no second revision by the State Government is maintainable.

In **K. Venkatachalam** (supra), the Hon'ble Apex Court held that when no recourse would be taken to an alternative remedy within the period prescribed, the High Court can still grant leave under Article 226 of the Constitution holding that the High Court's jurisdiction unless specifically barred is wide, when recourse cannot be had to other remedies provided by the law. Considering all these judgments, this Court finds that the judgments relied on in **Prabhakar** (supra) and **Umesh** (supra) are on the point of filing of dispute before the learned Collector under the

Maharashtra Village Panchyat Act, after a period of 15 days and therefore, those are perfectly applicable to the case in hand. So far as the judgments relied on in **Sangitabai** (supra) and **Ragho Singh** (supra) are the judgments in respect of appeals and those are applicable to the present case.

In **K. Venkatachalam** (supra) and **Madhukar** (supra) are concerned, those are in respect of bar of exercise of powers of the High Court under Article 226 of the Constitution of India. The judgment of **Madhukar** (supra) in respect of entertaining the second revision by the State Government under the Co-Operative Societies Act and therefore, is not applicable to the facts of the present case.

13. This Court finds that undisputedly a dispute was filed after a period of limitation. The learned Collector ought to have considered this aspect and ought to have discussed all these points. The revisional authority has also not given serious thought to this aspect. There is no discussion as to how the authorities got the powers to consider the dispute beyond the period prescribed by the Statute. Nothing is brought on record to show the powers of the learned Collector to condone the delay.

14. This Court finds that both the authorities below have

entertained the dispute beyond the period of 15 days. Therefore, the entire proceedings before both the authorities deserve to be quashed and set aside. The Writ Petition is, therefore, allowed and disposed off in terms of prayer Clause (B). The Rule is made absolute.

(KISHORE C. CHANT)
JUDGE

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