Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9520 OF 2023

Vhannappa Ramchandra Tupare & Anr ...Petitioners

Versus

The State of Maharashtra through Office of Government Pleader High Court, Mumbai & Ors ...Respondents

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Ms Manisha Devkar, *with Shankar Katkar & Siddhi Patil, for the Petitioners.*
Mr S Shetye, *with Sarika Shetye & Akshay Pansare, for Respondent No. 2.*
Mr Siddeshwar N Biradar, *for Respondents Nos. 4 & 6.*
Ms Molina Thakur, AGP, *for the Respondent-State.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 25th August 2023

PC:-

1. The two Petitioners have come to Court assailing separate orders of 21st March 2023 passed by the 3rd Respondent, the Collector Gram Panchayat in regard to the non-filing of election expenses for Village Panchayat Elections to the Panchayat at Dholagarwadi, Taluka Chandgad, District Kolhapur. The Petition turns on a requirement under Section 14-B of the Maharashtra Village Panchayats Act, 1959. That Section provides for the disqualification by the State Election Commission ("**SEC**"). It says *inter alia* that if the SEC is satisfied that a person has failed to lodge an account of election expenses within the time and in the manner required by the SEC and there is no good reason or justification for such failure, the SEC may by an order in the Official Gazette declare her or him to be disqualified and that person will be disqualified for being a member of the Panchayat or for contesting an election for being a member for a period of five years from the date of that order. Under Sub-section (2), the SEC may, for reasons to be recorded, remove the disqualification or reduce the period of the disqualification. This power has been delegated to the Collector. The order of the Collector is the one that is impugned in the present Petition.

2. The SEC declared an election programme for 433 Gram Panchayats, the tenure of which passed in 2021. 41 Gram Panchayats of Chandgad Taluka were included in that election programme. This election programme was from 15th December 2020 to 21st January 2021. Voting took place on 15th January 2021. The Petition asserts that for this village there is a body of seven members and that the Petitioners along with five others got elected unanimously without there being a contested election. Paragraph (B) says that the Petitioners and all others submitted their expenditure affidavits but this was a formality since the elections were uncontested.

3. In May 2023, the Petitioners received the impugned notices.

4. In paragraph (F) at page 10, the assertion is that the Petitioners have submitted their accounts with the authorised officers of Respondents Nos. 2 and 3 in the office of the Panchayat Samitee, Chandgad and particularly to a clerk in the Panchayat Samitee. She is named in this paragraph.

5. Interestingly, paragraph (G) at page 11 says that the Petitioners never received a notice or an intimation for a hearing on account of non-submission of the Affidavit. It goes on to say that the Petitioners received no show-cause notice at all.

6. Mrs Thakur, learned AGP for the State, has filed an Affidavit of one Rajesh Motiram Chavan, the Tahasildar. The Affidavit is dated 22nd August 2023. Paragraph 7 of this Affidavit says that after receipt of a report from the 3rd Respondent, a show-cause enquiry was issued to the Petitioners by a letter dated 20th September 2021. This notice was served on the 1st Petitioner on 5th October 2021 and on the 2nd Petitioner on 6th October 2021. Copies of these served notices are at Exhibit "1" collectively to the Affidavit in Reply. We have seen the annexed copies. They clearly show the signatures of the 1st and 2nd Petitioner. There is no mention of these two notices in the Petition at all and it is hardly credible that the Petitioners would be unaware of these notices. It is no ground to say that the Petitioners were illiterate and could not understand. The question is not of comprehension of the contents of the notice but of receipt of the notice.

7. Strangely, and curiously at odds with this assertion, in paragraph (F) there is a reference to an application made on 11th May 2023 by the Petitioners asking for the relevant documents. It is clear, therefore, that the Petitioners were not without at least sufficient resources to understand their position.

8. Further, the entire Petition proceeds on the footing that the Petitioners fully understood their responsibilities as elected members of the Gram Panchayat including the requirement under Section 14-B for submission of accounts. That is why there is this submission that accounts were indeed submitted. The Petition does not annex a copy of the submitted accounts. It does not give the date on which those accounts were furnished or whether this was on Affidavit. This is particularly curious because if the accounts were submitted this would necessarily have to be in writing.

9. We find that the Petition is strangely unsigned by either of these Petitioners. The memo of the Petition only contains the signature of the Advocate. That is wholly improper and could not have passed the Registry without an objection. The verification of 15th July 2023 is by the 1st Petitioner. His signature matches the receipt signature on the notice of 20th September 2022 at page 43 of the Affidavit in Reply. The papers also have the Vakalatnama signed by the Petitioners and here we find the signature of the 2nd Petitioner. It exactly matches the signature at page 44, the notice that was served on the 2nd Petitioner.

10. An attempt is made to argue that this was an uncontested election and since there were only seven members, all seven submitted their Affidavits. Support is sought to be drawn from a sentence in paragraph 6 of the Affidavit in Reply that seven members had submitted their election expenses accounts to the office of the 5th Respondent and therefore it must be concluded that the Petitioners, allegedly being two of the seven, had indeed submitted their expenses.

11. But that is not what paragraph 6 says at all. It does not accept the assertion that the election was uncontested. To the contrary, it says that there were not seven but nine candidates who contested the election and of the nine members in that contest only seven members submitted their accounts. Far from being of assistance to the Petitioners, this is against the Petitioners because it shows that there are two persons who did not submit their accounts.

12. Given the suppression in the Petition and the lack of any detailed information, it stands to reason that of the nine members the two defaulting members were indeed the Petitioners. There is no evidence whatsoever beyond the bare word of the Petitioners that they had submitted their accounts. There is no copy of the accounts. There is no date of the submission. There is no Affidavit. On the contrary, there is a demonstrably incorrect statement and one that is demonstrated to be incorrect that the Petitioners had received no notice nor any show-cause hearing.

13. Curiously there is no explanation at all even attempted as to how the Petitioners made such a statement that they had received no notice or no show-cause notice. There is no explanation as to what the Petitioners did after having received the two notices that we find annexed to the Affidavit in Reply.

14. It is not as if this Petition is being disposed of at the admission stage. This is at least the third or fourth listing. On the very first listing, Mr Shetye for the SEC had pointed out that the Petitioners could avail of an alternate remedy of filing a special application to canvass their grievances there. But on the next date it was pointed out that there was real urgency in the matter and that it would not be possible for the Petitioners to move the competent authority with a newly filed special application and obtain a decision in next few days before the end of August 2023. We chose therefore to proceed on the basis that the availability of an alternate remedy is not always a bar to the exercise of jurisdiction under Article 226 of the Constitution of India. Generally, Writ Courts will adhere to that discipline but an exception can always be made if the circumstances so permit. We, therefore, permitted the Petitioners, giving a fresh date, to argue the matter fully before us rather than putting the Petitioners through the difficulty of having to file a separate fresh special application before some other authority and then struggling to get a priority listing, hearing and disposal before a proximate date.

15. It is only now, after we have considered the matter fully on merits than an application is made across the bar for leave to pursue some alternative remedy or to make a representation. We are not granting any such liberty. The law regarding suppression is well settled and admits of really no exception.[1] A party who comes to Court must make a complete disclosure and must not withhold relevant material. This is not even a case of an accidental omission or an oversight. There is a clear-cut emphatic statement that there was no notice and no show-cause notice.

16. In this context it is now necessary to quote paragraph (G) at pages 11 and 12 of the Petition:

> "G. The Petitioners state that the Petitioners shocked and surprised to see that the Order dated 21.03.2023 has been passed by the Respondent No. 3 without hearing the Petitioners. The Petitioners states that the Petitioners come to know about the said order only in the month of May 2023. The Petitioners never received any notice or intimation regarding hearing for non-submission of affidavit of expenditure in time. The Petitioners also not received any show cause notice. The Petitioner states that there were covid-19 guideline restrictions in 2021 for whole year as second wave was active at the relevant time. The Petitioners state that thus Petitioners have not been granted any opportunity for explanation and hearing as prescribed under Sec 14(B) of the Act. The Petitioners hereby puts

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1 *SP Chengalvaraya Naidu v Jagannath & Ors*, (1994) 1 SCC 1; *Ashok Leyland Ltd v State of Tamil Nadu & Anr*, (2004) 3 SCC 1; *AV Papayya Sastry & Ors v Government of A.P. & Ors*, (2007) 4 SCC 221; *Dalip Singh v State of UP*, (2010) 2 SCC 114; *Oswal Fats & Oils Ltd v Additional Commissioner (Administration) & Ors*, (2010) 4 SCC 728; *Hari Narain v Badri Das*, (1964) 2 SCR 203; *Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody*, (1964) 3 SCR 481; *A Shanmugam v Ariya Kshatriya Rajakula Vamsathu, etc,* (2012) 6 SCC 430; *Maria Margarida Sequeira Fernandes & Ors v Erasmo Jack De Sequeira*, (2012) 5 SCC 370; *Sciemed Overseas Inc v BOC India Ltd*, (2016) 3 SCC 70; *Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors*, (2017) 5 SCC 496.

> Respondent No. 2 to 7 to the strict proof of the acknowledgment of any of service of notice the Petitioners regarding disqualification. The Petitioners states that while taking action against the Petitioners the Respondent relied upon various notifications and GR which are annexed hereto and marked as **Exhibit D.**"

17. The whole of this paragraph is incorrect to the knowledge of the Petitioners. The verification by the 1st Petitioner is that the contents of the Petition are true and correct to his knowledge. We do not see how that can be. The verification does not indicate that the 1st Petitioner is illiterate or required the Petition be read over and explained. The signature of the 1st Petitioner appears to be in the Roman script and is not a thumb impression. The Affidavit in Reply and the Vakalatnama also indicate that both Petitioners are perfectly capable of signing in the Roman script.

18. In these circumstances, we have no hesitation in concluding that the Petition entirely lacks merit. It is rejected. However, in the facts and circumstances of the case, there will be no order as to costs.

19. All previous orders stand vacated forthwith.

(Kamal Khata, J) **(G. S. Patel, J)**