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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2518 OF 2023**

VISHAL LAXMAN SAKHARE,
Age-34 years, Occupation-Farmer
Residing at post Hinjewadi, Taluka Mulshi,
District Pune 411 057.

... PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Principal Secretary,
Rural Development Department,
7th floor, Construction Building,
Fort, Mumbai 400 001.
- 2. THE ADDITIONAL DIVISIONAL
COMMISSIONER,**
Vidhan Bhavan, Council Hall, Bund
Garden Road, Koregaon Park,
Pune, Maharashtra 411 001.
- 3. THE COLLECTOR, PUNE,**
The Collector's Office, Pune.
- 4. SAGAR DATTATRAY SAKHARE,**
R/a post Hinjewadi, Taluka Mulshi,
Pune 411 057.

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5. **DINESH SURESH SAKHARE,**
R/a post Hinjewadi, Taluka Mulshi,
Pune 411 057.
6. **MALHARI PANDURANG
SAKHARE,**
R/a post Hinjewadi, Taluka Mulshi,
Pune 411 057.
7. **HINJEWADI GRAM PANCHAYAT**
Through the Gram Sevak,
At Post Hinjewadi, Taluka Mulshi,
District Pune 411 057.
8. **THE STATE ELECTION
COMMISSION,**
1st Floor, Madam Cama Road,
New Administrative Building.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mrs Neeta Karnik, <i>i/b Jay S Patil.</i>
FOR RESPONDENT- STATE	AA Alaspurkar, AGP.
FOR RESPONDENTS NOS. 4 & 5	Mr Mayur Khandeparkar, <i>with Prasad Avhad, Omkar Mhasde i/b Chetan Nagare.</i>
FOR RESPONDENT NO. 8	Mr Akshay S Pansure, <i>i/b SB Shetye.</i>

**CORAM : GS Patel &
Kamal Khata, JJ**

DATED : 21st September 2023

ORAL JUDGMENT (Per GS Patel J):-

1. On 19th April 2023, this Court issued Rule and passed the following order:

“1. Rule. Learned AGP waives services for Respondent Nos. 1 to 3. Issue notice upon the Respondent Nos. 6 and 7. Humdast is permitted in so far as Respondent Nos. 6 and 7 are concerned. In addition to the Court notice, the Petitioner is permitted to serve the Respondent Nos. 6 and 7 by private service, by all permissible modes of services available in law.

2. A complaint was filed by Respondent Nos. 4 and 5, that the Petitioner had committed default of making payment of certain taxes for water charges payable to Respondent No.7, Grampanchayat in respect of property in question. The Collector rejected the said complaint and the Appeal filed by Respondent Nos. 4 and 5 has been allowed by the Additional Divisional Commissioner.

3. It is common ground that the Petitioner had sold property in question way back in the year 2016 by a registered Sale Deed in respect of which there are alleged arrears of tax and water charges. Whether the Petitioner would be still liable to pay such taxes and charges, and if liable in case of arrears of such payment, whether Petitioner could be disqualified under Section 14(1)(h) of the Maharashtra Village Panchayat Act, 1959 is to be decided by this Court at the stage of final hearing. We are informed by the learned Senior Counsel for the Petitioner that tomorrow is election for the post of Sarpanch, in which Petitioner shall cast his vote.

4. Since in our prima facie view, the property in question was already sold by the Petitioner prior to the Petitioner contesting election as a member of

Grampanchayat, Petitioner could not have been disqualified. We have seen the records. Prima facie it indicates that subsequent purchaser has made payment of certain amount of tax with respect to the property in question, with the Grampanchayat. The complainant is unable to show that any demand is raised for payment of taxes in the name of Petitioner and is served upon the Petitioner. We are of the opinion that the Petitioner be granted ad interim relief till the next date. It is made clear that in view of the ad interim relief granted by this Court, the Petitioner is allowed to cast his vote on the election to be held Tomorrow i.e. 20th April 2023. It is further made clear that ad interim order passed today is subject to further order that will be passed by this Court at the stage of final hearing. We accordingly pass following order:-

5. Rule on prayer clause (c) is made returnable on 26th June 2023. Till next date by way of ad interim relief, the implementation, execution and operation of the impugned judgment and order dated 9th February 2023, passed by Respondent No.2, Additional Commissioner, Pune Division shall remain stayed.

6. Respondents who are appearing today in the Court and have not filed their Replies are permitted to file Replies within three weeks from today. Respondents who would be served in pursuance of the order are at liberty to file Replies from the date of service of paper and proceedings. Rejoinder, if any, shall be filed within two weeks thereafter with a copy to be served upon the Respondents advocate simultaneously.

7. Parties to act on the authenticated copy of this order.”

2. Taking up the Petition for final disposal, we have heard Ms Karnik for the Petitioner and Mr Khandeparkar for the principal contesting Respondents Nos. 4 and 5.

3. The matter arises under the Maharashtra Village Panchayats Act, 1958 (“**MVP Act**”). The Petitioner has been disqualified as a member of the Gram Panchayat, Hinjewadi by an order passed by the Additional Divisional Commissioner, Pune Division on 9th February 2023. By that order, the Additional Divisional Commissioner reversed an order of 10th December 2021 made by the Collector, Pune. The Collector’s order rejected a dispute application filed by Respondents Nos. 4 and 5 under Section 14(h) of the MVP Act. The ground for disqualification is that the Petitioner allegedly failed to pay a tax due to the Panchayat within the stipulated period.

4. Before we turn to a narrative of the facts, it would be instructive to consider some of the relevant provisions of the MVP Act. There is no controversy about the expressions or their meanings in the definitions. Chapter II of the Act deals with Gram Sabhas and the establishment and constitution of Panchayats. This Chapter includes Sections 4 to 44. Panchayats are incorporated under Section 9. Their constitution is under Section 10. Under Section 9, every Panchayat is a body corporate with perpetual succession and a common seal. It can acquire and hold property, both movable and immovable, even outside the limits of the village. It may sue and can be sued in its corporate name. Section 10 tells us that a Panchayat is to consist of not less than seven and not more

than 17 members. These members are to be elected following the procedure set out in Section 11. The ratio between the population of the territorial area of a Panchayat and the number of seats in a Panchayat to be filled by election is to be more or less consistent throughout the State, at least so far as is practicable. Every village is divided into wards. It is the State Government that decides the number of wards and the number of members of the Panchayat to be elected from each ward. This prescription by the State Government requires the approval of the State Election Commission. Section 10 also provides for reservations. A Sarpanch may directly elected under Section 30A-1A. Then, Section 11 deals with elections. Section 12 deals with lists of voters. Section 13 defines the persons who are qualified to vote and be elected. Section 14 deals with disqualifications. Certain additional disqualifications are in Section 14-A and 14-B, but we not concerned with those.

5. Section 14 has several clauses and sub-clauses. We reproduce the relevant portion.

“14. Disqualifications.—

(1) No person shall be a member of a *Panchayat* continue as such, who—

... ..

(h) fails to pay any tax or fee due to the *Panchayat* or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him; or

(Emphasis added)

6. Section 16 deals with the disabilities of members from continuing as such.

“16. Disability from continuing as member.—

- (1) If any member of a *Panchayat*
 - (a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or
 - (b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.
- (2) If any question whether a vacancy has occurred under this Section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the orders passed by the Commissioner in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.”

7. Chapter IX deals with taxation and recovery of claims. It contains Sections 124 to 130. For our purposes, Section 124 is the relevant section. It reads:

“124. Levy of taxes and fees by *Panchayats*. —

(1) Subject to the minimum and maximum rates which may be fixed by the State Government and in such manner and subject to such exemptions as may be prescribed, a *Panchayat* shall levy taxes referred to in [clauses (I), (i-a) and (i-aa) of this sub-section and where the *Panchayat* has taken over any water supply schemes under sub-section (1) of Section 45, it shall also levy taxes referred to in clauses of this sub-section.

... ..

(5) Any person aggrieved by the assessment, levy or imposition of any tax or fee may appeal to the *Panchayat Samiti*. A further appeal against the order of the *Panchayat Samiti* shall lie to the Standing Committee, whose decision shall be final. The first appeal shall be made within thirty days after the presentation of the bill complained of, and the further appeal within thirty days from the date on which the *Panchayat Samiti* decides the appeal.”

(Emphasis added)

8. The factual matrix is not complex. Elections to the Hinjewadi Gram Panchayat were held on 15th January 2021. The results were declared on 18th January 2021. The Petitioner was elected to that Gram Panchayat from Ward No. 3. He defeated Respondent No. 4 (Sagar Dattatray Sakhare). On 19th March 2021, Sagar, (Respondent No. 4) and Dinesh Suresh Sakhare (Respondent No. 5) filed a dispute application under Section 14(1)(h) and Section 16 of the MVP Act before the Collector, Pune. They contended that the Petitioner, Vishal, stood disqualified from membership of the Hinjewadi Gram Panchayat for non-payment of a tax relating to

Survey No. 184. Sagar and Dinesh said that Vishal had not paid this tax (for water) within the prescribed time limit. They said that Vishal owned Survey No. 184. They claimed that a bill was raised, notice was issued and indeed the amount was paid, but only on 22nd January 2021, that is to say, after the election. Their case, therefore, was that as on the date of the election, Vishal was a defaulter of payment of Gram Panchayat taxes within the meaning of Section 14(1)(h).

9. The bill in question is dated 1st April 2020. The Section tells us that this would have had to be paid within three months, i.e., by 30th June 2020 or 1st July 2020. The notice in question is of 5th November 2020. The receipt for payment is of 22nd January 2021 (there is a typographical error at page 6 in paragraph 3.2). Copies of these documents are to be found at Exhibit “B” collectively. There is no doubt that the bill pertains to Survey No. 184. The period of the bill is 1st April 2020 to 31st March 2021. There are two components in the bill. The amount due for water is Rs 2400/-. The Ghar Patti demand is Rs 603/-. The demand warrant at page 27 is dated 5th November 2020.

10. Vishal disputed (and still disputes) the case of the complainants, Sagar and Dinesh Respondents Nos. 4 and 5. He says that when he filed his nomination papers, he had a no dues certificate from the Gram Panchayat. A copy is at page Exhibit “C” at page 30. This seems to have a date of around December 2020.

11. Vishal also says that the bill in question and of which non-payment was alleged by Sagar and Dinesh was never paid by him at all. It was indeed paid on 22nd January 2021, but it was paid by one Malhari Pandurang Sakhare, Respondent No. 6, to whom Vishal had sold Survey No. 184. Vishal says this sale took place in 2016, well before he filed his nomination to elections to the Gram Panchayat.

12. Ms Karnik on behalf of the Petitioner Vishal says that this transaction of sale is in fact reflected in a resolution of the Gram Panchayat itself. That resolution was passed at a meeting held on 4th November 2019. A copy of that resolution is at Exhibit “D” along with the sale deed. We find a copy of the sale deed from page 63. What is annexed is a hard-to-read photocopy but we are able to discern a date of registration of 26th October 2016. The document itself is also of 26th October 2016 (page 68). This shows the name of Malhari Pandurang Sakhare, Respondent No. 6, and one Martand Pandurang Sakhare as the purchasers. Vishal is shown as the first of four vendors. Three others are shown as confirming parties.

13. The Gram Panchayat resolution in question is to be found at page 97. Interestingly, Sagar himself was one amongst those who proposed the resolution. At page 99, the resolution mentions the sale and the names of the parties. The Gram Panchayat approved the transaction.

14. Therefore, Ms Karnik submits that the dispute application by Sagar and Dinesh was not only false to their knowledge but was vindictive.

15. The Petition then goes on to say that without giving Vishal any notice, on 5th April 2021, the Collector, Pune issued a letter or a direction to the Block Development Officer (“**BDO**”), Mulshi asking for a report whether the bill had been issued to Vishal Sakhare, whether Vishal Sakhare had made payment and whether there was an acknowledgment. It seems that the BDO submitted a report on 19th April 2021 to the Collector, but he did so without any notice to Vishal. The report said that the bill was issued on 5th August 2020, but the dues were not paid by the Petitioner (Vishal). The report also said that the Gram Panchayat did not have an acknowledgment in regard to the bill of 5th August 2020, but it did have an acknowledgment in regard to a bill dated 5th November 2020.

16. Ms Karnik points out that this is materially misleading. The November bill carries forward the demand from the August bill. This is clear from the bill itself. In any case, Section 129 of the MVP Act provides for the recovery of taxes and dues. Under sub-section 2, if there is a failure to pay, the Panchayat issues a writ of demand.

17. It seems that on 14th September 2021, Sagar and Dinesh filed a bundle of documents in support of their dispute application. Vishal raised a preliminary objection to the report of the BDO. He contended that there was a suppression of material facts. He filed an application seeking an *in limine* dismissal of the dispute application. The Collector closed the matter and asked Vishal to file his reply in seven days.

18. Vishal came to this Court in Writ Petition No. 5805 of 2021. On 23rd September 2021, this Court passed an order by which the Gram Sevak was directed to file a report by 27th September 2021 and the Petitioner was to file a reply dealing with the report by 1st October 2021. While this was pending, the Collector, Pune issued a letter to the BDO asking for a fresh enquiry. The BDO submitted a fresh report on 23rd September 2021. This report now said that on 30th October 2019, Ranjana Laxman Sakhare, Vishal's mother, had filed an application to have her name removed in regard to Survey No. 184. It mentions the 4th November 2019 Resolution No. 116(29) mentioned above. But it says that this was not shown in the taxation register and in the digitisation process, this was overlooked due to the negligence of a Gram Panchayat employee. A copy of this report is at Exhibit "I" to the Petition.

19. Vishal then filed his reply opposing the dispute application. He pointed out that he was not the owner of the property after 23rd October 2016 and that the tax liability fell on his purchaser. He was the vendor.

20. On 26th October 2021, in these dispute proceedings, Malhari, Respondent No. 6, Vishal's purchaser of Survey No. 184, filed an intervention application. He was allowed to file his submissions. He accepted that it was he, Malhari, who had made payment of the bill on 22nd October 2021.

21. The Collector heard the matter. On 10th December 2021, he rejected the dispute application.

22. Dinesh filed an appeal to the Additional Divisional Commissioner *inter alia* under Sections 14 and 16 of the MVP Act. On 9th February 2023, the Additional Divisional Commissioner passed an order reversing the order of the Collector rejecting the dispute application.

23. That order is impugned in the Petition. A copy is at Exhibit “O” and we turn to it directly. It is at page 226. In the course of this hearing, one aspect that has struck us is that there is no defence of the impugned order by or on behalf of the 2nd Respondent, the Additional Divisional Commissioner. The opposition of the Petition comes entirely from Mr Khandeparkar, representing Sagar and Dinesh. Mr Khandeparkar has laboured long and hard to justify the Additional Divisional Commissioner’s order. Part of his submissions seem to us an attempt to supply reasons that we do not find in the impugned order.

24. One of the most striking things about the impugned order is that it is based entirely on the first BDO report of 19th April 2021 and does not take into account the subsequent report of 23rd September 2021 at all. This second report is at Exhibit “I” to the Petition at page 135. We have summarised its essence above, but at this stage a more detailed scrutiny is necessary. This report notes that on 4th November 2019, a resolution was passed removing the name of Ranjana Laxman Sakhare from Survey No. 184. It also mentions that an updating of the records remained to be done. Now this is an official report, and we are unable to see how the Additional

Divisional Commissioner could possibly have so entirely overlooked it.

25. What Mr Khandeparkar for Sagar and Dinesh now attempts is exceedingly odd. Apart from trying to embellish the impugned order, he now tries to explain the demand or the bill by saying that on Survey No. 184, there were two structures with a common water connection, that only one was sold and, therefore, it was the liability of the Petitioner, Vishal, to pay the water bill that continued in his name. There is nothing in the bill to suggest this. There is nothing in the demand to suggest this. The reports from the BDO do not suggest this. The Gram Panchayat resolution does not reflect this. The 6th Respondent, the purchase of Survey No 184, does not support this. The order of the Collector does not say so. This is not even the substance of the Additional Divisional Commissioner's order. This is why we believe that the argument seems to us to be one more of desperation than substance.

26. As a matter of law, the impugned order is vulnerable because it fails both well-established tests, namely *Wednesbury* unreasonableness and the doctrine of proportionality. We have had occasion to consider this aspect of the law at some length in previous matters.

27. The law in this regard is well settled. Our Supreme Court, on an exhaustive consideration of the law as it evolved in England, and taking into account the principles enunciated in *Associated Provincial*

*Picture Houses v Wednesbury Corporation*¹ and *Council of Civil Service Unions v Minister for the Civil Service* (“CCSU”)² has drawn a distinction in *Union of India v G Ganayutham*³ between primary and secondary judicial review. The first occurs where fundamental rights are involved, the second where they are not. The Supreme Court itself has had occasion to comment that there may indeed be cases in judicial review that are covered by both. Further, the evolution of law has taken into account emerging doctrines, that is to say Wednesbury unreasonableness on the one hand and proportionately as a more recent emergent doctrine.

28. In *Wednesbury*, Lord Greene said:

“... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word ‘unreasonable’ in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’. Similarly, there may be something so absurd that no sensible

1 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, [1948] 1 KB 223.

2 *Council Of Civil Service Unions & Ors v Minister for the Civil Service*, [1983] UKHL 6 : [1984] 3 All ER 935 : [1984] 3 WLR 1174.

3 (1997) 7 SCC 463.

person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.”

...

“... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another.”

(Emphasis added)

29. In *CCSU*, Diplock LJ for the House of Lords spoke of ‘irrationality’ in these words:

By ‘irrationality’ I mean what can by now be succinctly referred to as *Wednesbury* unreasonableness. **It applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.**

(Emphasis added)

30. Even as *Wednesbury* unreasonableness continued to inform decisions of Courts with the power of judicial review, not only here but in many other jurisdictions, there came into ascendance a parallel doctrine of proportionality. This is not necessarily linked to the award of punishment. It may be a facet of reasonableness. Its tests are slightly different from those of *Wednesbury* unreasonableness. The doctrine tells us that in any executive or

administrative action, the act or thing done or ordered to be done cannot be so disproportionate to the cause for that order. To put it more colloquially, an administrator or an executive cannot use our hammer to kill an ant.⁴

31. In *CCSU*, Diplock LJ foresaw the advent of the proportionality doctrine:

“Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. *I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’...*”

32. The *CCSU* standard was accepted in *Union of India & Anr v G Ganayutham*.⁵ The two doctrines received an elucidation in *Om Kumar & Ors v Union of India*,⁶ particularly on the question of primary judicial review (where fundamental rights are involved) and secondary judicial review (where they are not).⁷ The scope of the

⁴ See: *R v Goldstein*, [1983] 1 WLR 151 : [1983] 1 All ER 434 : per Diplock LJ: “This would indeed be using a sledge-hammer to crack a nut.” Or a paring knife, not a battle axe: *Central Cooperative Bank v Coimbatore District Central Cooperative Bank Employees Association & Anr*, (2007) 4 SCC 669.

⁵ (1997) 7 SCC 463.

⁶ (2001) 2 SCC 386.

⁷ See also: *Kerala State Beverages (M&M) Corporation Ltd v PP Suresh & Ors*, (2019) 9 SCC 710.

proportionality principle came to be examined in *Coimbatore District Central Cooperative Bank v Coimbatore District Central Cooperative Bank Employees Association & Anr.*⁸ The Supreme Court said:

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. **If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”.**

18. **“Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.**

...

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective

8 (2007) 4 SCC 669.

applicability of the government norms or unfairness, arbitrariness or unreasonableness. **It is not permissible to use a “sledgehammer to crack a nut”.** As has been said many a time; “where paring knife suffices, battle axe is precluded”.

(Emphasis added)

33. As the Supreme Court itself noted, the proportionality principle is a test of whether the decision-maker has achieved the correct balance: *Chairman, All India Railway Recruitment Board & Anr v K Shyam Kumar & Ors.*⁹ In *Ganayutham*, the Supreme Court said:

“To arrive at a decision on “reasonableness” the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one.”

(Emphasis added)

34. At least one decision of the Supreme Court reviews more recent thinking in England that the doctrine of proportionately has supplanted *Wednesbury* unreasonableness but our Supreme Court held that there is no such clear-cut division: *Jitendra Kumar & Ors v State of Haryana & Anr.*¹⁰ In given cases both will apply. *Wednesbury*

⁹ (2010) 6 SCC 614.

¹⁰ (2008) 2 SCC 161 : “We, with greatest respect, do not have any such problem. This Court not only has noticed the development of law in this field but applied the same also.”

unreasonableness will speak to the rationality of a decision-making process. It has distinct components. One of these is a test of procedural irregularity. Another test is one of reasonableness, to test whether the decision is of a kind that no reasonable person could ever take. In the words of Diplock LJ in *CCSU*, the *Wednesbury* principle, formulated by Lord Greene, is whether the decision is so outrageous in its defiance of law or logic that it cannot possibly be sustained. Proportionality will speak to, as the Supreme Court said in *All India Recruitment Board*, examining if the decision achieves the required balance. In a complete analysis, the Supreme Court held:

Wednesbury and Proportionality

36. *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223::: (1947) 2 All ER 680 (CA)] **applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to “assess the balance or equation” struck by the decision-maker. Proportionality test in some jurisdictions is also described as the “least injurious means” or “minimal impairment” test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that *Wednesbury* has met with its death knell is too tall a**

statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test but *Wednesbury* has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near future.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

38. Leyland and Anthony in Textbook on Administrative Law (5th Edn. OUP, 2005) at p. 331 has amply put as follows:

“Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in everyday terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often understood to bring the courts much closer to reviewing the merits of a decision.”

39. The courts have to develop an infeasible and principled approach to proportionality, till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. **Proportionality as the word indicates has reference to variables or comparison, it enables the court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision-maker.**

Application of the principles

42. We will now apply the proportionality test to the three alternatives suggested. Principle of proportionality, as we have already indicated, is more concerned with the aims of the decision-maker and whether the decision-maker has achieved the correct balance. **The proportionality test may require the attention of the court to be directed to the relative weight according to interest and considerations.** When we apply that test and look at the three alternatives, we are of the view that the decision-maker has struck a correct balance in accepting the second alternative. The first alternative was not accepted not only because such a process was time-consuming and expensive, but nobody favoured that option, and even the candidates who had approached the court were more in favour of the second alternative. Applying the proportionality test also in our view the Board has struck the correct balance in adopting the second alternative which was well balanced and harmonious.

43. **We, therefore hold, applying the test of *Wednesbury* unreasonableness as well as the proportionality test, the decision taken by the Board in the facts and circumstances of this case was fair,**

reasonable, well balanced and harmonious. By accepting the third alternative, the High Court was perpetuating the illegality since there were serious allegations of leakage of question papers, large scale of impersonation by candidates and mass copying in the first written test.

(Emphasis added)

35. Evidently, the Additional Divisional Commissioner could not have taken into account irrelevant material, i.e., matters of the kind that Mr Khandeparkar suggests. Equally, he could not have ignored directly relevant and germane material, namely the second report of the BDO.

36. This, in our view, would also amount to ‘perversity’. That is an expression that has received judicial interpretation from our Supreme Court in several cases. In *Arulvelu & Anr v State*¹¹ the Supreme Court considered the considerable case law on the subject. It reaffirmed the view that finding unsupported by (or contrary to) evidence on record, or based on no evidence at all, or against the law, or which is procedurally irregular is ‘perverse’.¹² The Supreme Court considered various lexical definitions.¹³ In the context inter alia of Article 226 of the Constitution of India, the Supreme Court reaffirmed the statement of law in *Kuldeep Singh v Commissioner of Police*,¹⁴ that a decision based on no evidence or so thoroughly unreliable evidence that no reasonable person would act upon it

11 (2009) 10 SCC 206.

12 *Gaya Din v Hanuman Prasad*, (2001) 1 SCC 501.

13 Paragraph 27 of *Arulvelu*.

14 (1999) 2 SCC 10.

would be perverse. A finding of fact arrived at by excluding relevant material is undoubtedly perverse.¹⁵

37. The consequence of a disqualification is severe. The approach to an application seeking disqualification cannot be casual. There can be no presumption of disqualification. There must be a strict adherence to the parameters of disqualification. There can be no question of disqualification by inference, conjecture or surmise. Either a person is disqualified on the established facts or the person is not. Indeed, we would go so far as to say that if there is ambiguity, the benefit of doubt must be given to the person who stands elected, because this is, after all, a democratic process in question. That process is not to be subverted, nor to be lightly interfered with. The Additional Divisional Commissioner should at once have seen the inherent contradictions in what Sagar and Dinesh were saying. Notably, the Additional Divisional Commissioner entirely overlooked Sagar's own participation in the matter of the Panchayat resolution approving the sale of Survey No. 184, viz., that Sagar himself proposed the resolution. He could hardly be heard to say thereafter that there was no sale. The sale became the subject matter of a Gram Panchayat Resolution No. 29 at its 116th meeting. The item was on the agenda. A resolution was passed. How this fact could have entirely escaped the Additional Divisional Commissioner is difficult to understand. How Sagar could have claimed now that there was no sale when it was he who proposed the resolution approving the sale was something for Sagar to explain, not Vishal.

¹⁵ *Excise and Taxation Officer-cum-Assessing Authority v Gopi Nath & Sons*, 1992 Supp (2) SCC 312; *SR Tewari v Union of India & Anr*, (2013) 6 SCC 602.

38. Mr Khandeparkar's next argument is equally one that we cannot accept. His submission is that if Vishal is aggrieved by the assessment levy or imposition of a tax, he must file an appeal under Section 124(5). A further appeal is provided to the Standing Committee and that decision is to be final. The first appeal is to be made within 30 days of the presentation of the bill, and the further appeal within 30 days of the Samiti's decision. We are unable to see how this can possibly come to the assistance of Sagar or Dinesh. Vishal has never disputed the existence of the bill. His only case is that it is not he who is liable to pay the bill, but Malhari, to whom he is sold Survey No. 184. Vishal says so, and Malhari agrees. Malhari intervened before the Collector. He confirmed that he was the purchaser of the property. He went a step further. He confirmed that the bill was indeed paid but that it was he, Malhari, Respondent No. 6, who had paid it. There is simply no scope for the application of Section 124(5).¹⁶

39. That really ends the matter entirely because the essence of the dispute application is that the bill was (i) unpaid on the date of the election; and (ii) that it was paid only after election

16 Mr Khandeparkar relied on various authorities relating to disqualification based on non-payment of taxes. (i) *Arun Vaman Kane v State of Maharashtra & Ors*, 1997 SCC OnLine Bom 9 : (1997) 2 Mah LJ 756 : (1997) 4 Bom CR 220; *Taibai w/o Tulsiram Damle v Additional Commissioner, Amravati Divisions & Ors*, 2008 SCC OnLine Bom 807 : (2008) 6 Mah LJ 369 : 2009 Supp Bom CR 1022; *Jijabai Tukaram Gaikwad v State of Maharashtra & Ors*, 2017 SCC OnLine Bom 8462 : (2017) 3 Mah LJ 431 : (2017) 4 Bom CR 8; *Suvarna Prakash Patil v Anil Hindurao Powar*, 2003 SCC OnLine Bom 924 : (2004) 1 Mah LJ 1062. None of these have a bearing on the case given its factual position, i.e., that while the bill and the payment are undisputed, the liability is shown to be that of Respondent No. 6, Malhari, not the Petitioner, Vishal.

on 22nd January 2021. The first posits that the bill was payable by Vishal in the first place. This fact is not established. Indeed, Vishal has been able to establish the reverse. His stand is confirmed by Malhari, his purchaser. The second point proceeds on an assumption, and it is only an assumption, that on 22nd January 2021, i.e., after the election, it was Vishal who paid the bill and, therefore, Vishal is the defaulter. But this is also shown to be factually incorrect, for it was Malhari who paid the bill on 22nd January 2021, not Vishal. These were self-evident factual aspects that the Additional Divisional Commissioner could not possibly have overlooked. The entire impugned order is a classic case of an authority wholly misdirecting itself and proceeding on conjectures, surmises and assumptions while ignoring the factual position.

40. No amount of argumentation from Sagar or Dinesh is now going to help this because (i) the factual aspects cannot be disputed by them, i.e., the sale by Vishal to Malhari of Survey No. 84; (ii) the approval of that sale by the Gram Panchayat in 2019 vide a resolution proposed by Sagar himself; and (iii) the payment of the bill by the purchaser, Malhari. These are all matters of fact and record. They are not capable of being disputed. It is not possible for Sagar and Dinesh to have us hold that the property ‘must be held to have had’ two structures or that these two structures ‘must be held to have had’ a common water connection or that the bill must, therefore, ‘be held’ to have been correctly raised on Vishal despite the same. Nothing on record even remotely indicates this. Even Sagar’s own conduct, consistently unexplained, does not.

41. The Petition succeeds. Rule is made absolute in terms of prayer clauses (a) and (b) which are set out below:

“(a) That the record and proceedings be called for in Appeal No. Pune- 23/ 2021 filed before The Additional Divisional Commissioner, Pune Division, Pune. i.e. Respondent No. 2.

(b) That after perusal of the same the Hon’ble court be pleased to quash and set aside the impugned Judgment and order dated 09.02.2023 passed by the Additional Commissioner, Pune Division by which the Petitioner has been disqualified.”

42. The impugned order of the Additional Divisional Commissioner is set aside. The order of the Collector is restored. The dispute application was correctly rejected.

43. The Petition is disposed of. In the facts and circumstances of the case, there will be no order as to costs.

44. All concerned will act on an authenticated copy of this order. We clarify that Vishal is entitled to vote and fully participate in all Gram Panchayat matters and at all Gram Panchayat meetings including the one that is scheduled on Monday, 25th September 2023.

(Kamal Khata, J)

(G. S. Patel, J)