

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8585 OF 2021

Amit Tanaji Gote

Age : Adult, Age – 32,
Occ. Agriculture & Business,
R/at : Gotemala, Village Shiraswadi,
District – Pune.

.. Petitioner

Versus

- 1. State of Maharashtra.**
 - 2. Divisional Commissioner,**
Pune Division, Pune.
 - 3. District Collector,**
Pune Division, Pune.
 - 4. The Tahasildar,**
Haveli, Pune.
 - 5. Sima Namdev Gawade,**
Adult, Occ. Agriculturist,
R/at : At Post Shirswadi,
Tal : Haveli, District : Pune.
 - 6. Maharashtra State Election Commission**
Office at – First Floor,
New Administrator Building,
Hutatma Rajguru Chowk,
Madam Cama Road,
Mumbai – 400032.
- .. Respondents

**WITH
WRIT PETITION NO. 8587 OF 2021**

Amit Tanaji Gote

Age : Adult, Age – 32,
Occ. Agriculture & Business,
R/at : Gotemala, Village Shiraswadi,
District – Pune.

.. Petitioner

Versus

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 2. **Divisional Commissioner,**
Pune Division, Pune.
 3. **District Collector,**
Pune Division, Pune.
 4. **The Tahasildar,**
Haveli, Pune.
 5. **Sangita Kondiba Chitalkar,**
Adult, Occ. Agriculturist,
R/at : At Post Shirswadi,
Tal : Haveli, District : Pune.
 6. **Maharashtra State Election Commission**
Office at – First Floor,
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Pune Division, Pune.
3. **District Collector,**
Pune Division, Pune.

4. **The Tahasildar,**
Haveli, Pune.

5. **Kiran Lalasaheb Shinde**
Adult, Occ. Agriculturist,
R/at : At Post Shirswadi,
Tal : Haveli, District : Pune.

6. **Maharashtra State Election Commission**
Office at – First Floor,
New Administrator Building,
Hutatma Rajguru Chowk,
Madam Cama Road,
Mumbai – 400032.

.. Respondents

-
- Mr. Anil Anturkar, Senior Advocate a/w. Mr. Ranjit Shinde and Mr. Ajinkya Udane, Advocates for Petitioner in all Writ Petitions.
 - Mr. S.H. Kankal, AGP for Respondent Nos.1 to 4 – State.
 - Mr. Atul Damle, Senior Advocate a/w. Mr. Suhas Inamdar, Advocate for Respondent No.5.
 - Mr. Sachindra Shetye a/w. Ms. Sarika Shetye, Advocates for Respondent No.6 (S.E.C.)
-

CORAM : MILIND N. JADHAV, J.
RESERVED ON : FEBRUARY 07, 2023.
PRONOUNCED ON : JUNE 05, 2023.

JUDGMENT:

1. The present judgment shall dispose of all three Writ Petitions.

2. The facts are identical in all three Writ Petitions. Petitioner is common in all three Writ Petitions. His name is Amit Tanaji Gote. He is one of the elected member of the Gram Panchayat. Respondent No.5 in all three Writ Petitions are also elected members of the same

Gram Panchayat. Respondent No.5 in Writ Petition No.8587 of 2021 was elected as Sarpanch subsequently. Brief facts necessary for adjudication are outlined hereinunder:-

2.1. On 15.01.2021, election of member of Gram Panchayat Shiraswadi, Tal. Haveli, District Pune was held.

2.2. On 18.01.2021, votes were counted and on 29.01.2021 result of election was declared.

2.3. Pursuant to election, on 08.03.2021, Petitioner filed three separate Applications seeking disqualification of Respondent No.5 in the three Writ Petitions as member of the Gram Panchayat. These disqualification Applications were filed on the principal ground that all three i.e. Respondent No.5 failed to lodge the detailed Affidavit of election expenses within 30 days from the date of announcement of the result of the election i.e. on or before 01.03.2021.

2.4. On 17.08.2021, Respondent No.5 in all three Writ Petitions filed their separate individual reply and resisted the Applications.

2.5. On 06.09.2021, Tahsildar, Tal. Haveli, District Pune addressed a letter to the District Collector, Pune stating that Respondent No.5 had not filed the detailed Affidavit of election expenses as there was no entry in the inward – outward register maintained by his office.

2.6. On 12.10.2021, District Collector, Pune passed a detailed order allowing the Applications filed by the Petitioner thereby disqualifying the Respondent No.5's election. Each of the Respondent No.5 in the three Writ Petitions filed an Appeal before the Divisional Commissioner, Pune to challenge the Collector's order of disqualification.

2.7. On 17.11.2021, Petitioner filed his reply in each of the three Appeals.

2.8. On 22.11.2021, Tahsildar, Tal. Haveli, District Pune addressed a letter to the Divisional Commissioner, Pune stating that the detailed Affidavit of election expenses was not filed by Respondent No.5 in all 3 cases.

2.9. On 23.11.2021, the Divisional Commissioner, Pune passed a reasoned order and set aside the order passed by the Collector, Pune after hearing the parties. This order is impugned in the three Writ Petitions. Reasons given in the order are identical in all three Writ Petitions.

2.10. During the pendency of the above proceedings, by Notification dated 07.09.2021 the State Election Commission (for short "**the Commission**") empowered the Commission itself to hear Appeal under Section 14B of the Maharashtra Village Panchayats Act, 1958 (for short "**the said Act**"), which power was earlier delegated to

the Divisional Commissioner. The effect of this Notification as being applicable to the facts of the present case is argued by the Petitioner and it is submitted that the impugned order is therefore without jurisdiction.

2.11. Petitioner has impugned the order dated 23.11.2021 passed by the Divisional Commissioner, Pune setting aside the order dated 12.10.2021 passed by the District Collector, Pune on the ground that under the State Election Commission Notification dated 03.08.2016 it is mandatory to give account of the election expenses within 30 days from the date of announcement of result of election which has not been given by Respondent No.5 to the Competent Authority. Petitioner has relied upon Report / Letters of the Tahsildar, Tal. Haveli, District Pune dated 05.03.2021, 23.08.2021 and 22.12.2021 in support of the above ground. In that view Petitioner would submit that the impugned order passed by the Divisional Commissioner is vague and passed without complete non application of mind. Petitioner would further submit that day to day expenses have not been submitted by the Respondent No.5 as required, but have been submitted collectively on 15.02.2021. Petitioner would submit that photocopy of the election expenses submitted is infact denied by the Tahsildar's Report. It is submitted that it is mandatory on behalf of Respondent No.5 / any elected member of the Gram Panchayat to

submit the abstract statement of day to day election expenses as per Annexure - I and the Affidavit as per form prescribed in Annexure – III to the Notification dated 07.02.1995 and this mandatory requirement is violated by Respondent No.5 in all 3 cases.

2.12. Finally it is submitted that Respondent No.5 has submitted the original notarized copy of the election expenses for the first time before the Collector, Pune only on 23.08.2021. The date of the notarized copy of the election expenses is 09.02.2021 and it is alleged to be backdated. As stated earlier, Petitioner has also impugned the order passed by the Divisional Commissioner, Pune as having been passed without jurisdiction in view of the State Election Commission Notification dated 07.09.2021.

3. In view of the above facts, Mr. Anturkar, learned Senior Advocate appearing for the Petitioner has made the following submissions:-

3.1. He would submit that Respondent No.5 has failed to lodge the election expenses as per the undertaking as aforementioned and therefore is liable to be disqualified under the provision of Section 14B of the said Act.

3.2. He would submit that after the date of the election for the next 30 days, Respondent No.5 in each case was actively involved in various events in Village Saraswadi. The reason given by Respondent

No.5 for not submitting the prescribed Affidavit in time is that Respondent No.5 had submitted a photocopy of the notarized Affidavit with the election expenses on 15.02.2021. Another reason given by Respondent No.5 is that unknowingly Respondent No.5 did not submit the notarized Affidavit dated 08.02.2021.

3.3. He would submit that a report was given by Tahsildar, Haveli, Pune to the Petitioner being Report dated 22.11.2021 bearing No. Ja.Kra.Grap / KAVI / 729 / 2021 would indicate that there is a clear finding given by the Tahsildar that the election expense was not submitted till the last date of submission and there was no submission of proper document which is required. This report was given in the proceedings in Appeal before the Respondent No.2. That Petitioner had sought for time to file written submission to this report, but the same came to be rejected.

3.4. He would state that there is yet another report submitted by Respondent No.4 on 18.03.2021 to the Respondent No.2 herein. To that report a list of members who has filed their election expenses is enclosed. He would point out that although in the said list it appears that Respondent No.5 has submitted the election expense on 15.02.2021, however perusal of the report dated 22.11.2021 makes it clear that the election expense as mentioned in the report dated 18.03.2021 is only for the purpose of day to day election expense and

there is ambiguity.

3.5. He would submit that Respondent No.4 – Tahsildar being the officer of Respondent No.2 having stated that the original Affidavit was not filed in the prescribed form from 03.03.2021 till 23.08.2021 needs to be considered as a strong circumstance. That Respondent No.2 in the impugned order has not only failed to deal with the said finding but there is no whisper about the conduct of the elected representative.

3.6. He would vehemently submit that Notification dated 07.02.1995 is mandatory on the part of Respondent No.5 to submit the abstract statement of election expenses as per Annexure – I and Affidavit as per the form in Annexure – III to the said Notification dated 07.02.1995. This being a mandatory requirement, the record would indicate that Respondent No.5 has not provided the election expenses in the prescribed form.

3.7. That Respondent No.5 has also not submitted the day to day expenses as required on daily basis and have done it collectively on 15.02.2021. Though it is the case of Respondent No.5 that photocopy of the election expense Affidavit was submitted, the said fact is denied in the reports of the Tahsildar. It is only for the first time before Respondent No.3 that the original notarized copy of the election expenses was submitted on 23.08.2021. That the said Affidavit is

backdated and Respondent No.5 should be put to the strict proof of presenting the concerned notary register as the Respondent No.4 Tahsildar has expressly denied submission of the photocopy of the said Affidavit.

3.8. That Respondent No.2 has made a categorical observation in paragraph 8.2 of the impugned order that there is delay on the part of Respondent No.5 for filing the prescribed Affidavit.

3.9. That it is necessary to note the most crucial word in Section 16(2). The most important words are “if any question, whether a vacancy has occurred under this Section, is raised by the Collector *Suo Motu* or an Application made to him by any person on that behalf, the Collector shall decide the question, as far as possible within 60 days from the date of the receipt of the Application. Until the Collector decides the question, the member shall not be disabled under Sub Section 1 from continuing to be a member”. That there are two conditions, for the purpose of the question being a question under the provisions of Section 16(2) viz.: the question must arise, under the Section viz.: under Section 16. If a question arises under some other Section such as Section 14B, it cannot be said to be a question, which arises under Section 16. The word “under this Section is therefore very important. Hence the question viz.: whether the vacancy has arisen or not is completely different from the question, whether the

disqualification is incurred or not.

3.10. He would submit that Section 14B, does not even use the word, vacancy. That it uses the word “Disqualification”. Hence it would be wrong to presume that as soon as a disqualification is incurred the vacancy would occur automatically.

3.11. Further, he would submit that the word used in Section 14B(2) “reduce the period of any such disqualification” is very important. That in an appropriate case, the Election Commission, may reduce the period of disqualification either for one day or for one week or for one month or for one year or in some cases, it may permanently disqualify the person. That is the discretion which is made available. In any given case the Election Commission decides to impose the disqualification only for the period of one day or one week, in that eventuality it cannot be said that the vacancy has arisen. It would only mean that the entitlement, of the member will be under an eclipse, but vacancy has not arisen. That vacancy would arise, only when there is a permanent disqualification. It is therefore, submitted that, Section 14B(1) and 14B(2) operate entirely in a different field than the provisions of Section 16.

3.12. That the provisions of Section 16 is a general provision whereas the provisions of Section 14B and more particularly Section 14B(2) is a subsequent legislation. That it is trite law that subsequent

legislation is clearly intended to bring a change in the existing situation and therefore, the subsequent legislation would always prevail over the earlier general one.

3.13. That at the time when the first Application was made to the District Collector viz., on 08.03.2021 by virtue of the notification dated 10.08.2015, the Collector had the power. However, when the further Appeal was made to the Divisional Commissioner on 20.10.2021, before that date and even before the date when the Divisional Commissioner gave his judgment viz., date 23.11.2022, the election commission by issuing another notification dated 07.09.2021 in supersession of its earlier notifications dated 05.06.2010, 19.11.2010 and 10.08.2015 has declared that the powers under the provisions of Section 14B(2) is withdrawn from the Divisional Commissioner and is retained by the State Election Commission itself. Therefore, on the date, when the Appeal was filed and on the date, when the Judgment was given the Divisional Commissioner had no jurisdiction even under the provisions of Section 14B(2) by virtue of any notification issued by the Election Commission under Section 10 of the said Act.

4. He has referred to and relied upon the following Judgments in support of his aforesaid propositions:-

- (i) *Smt. Indira Nehru Gandhi Vs. Shri. Raj Narain and Another*¹;

¹ (1975) 2 SCC 159

- (ii) *State of Orissa Vs. Madan Gopal Rungta*²; and
- (iii) *Pramod Premchand Oswal Vs. The Pune Municipal Corporation and Ors.*³

5. Mr. Damle, learned Senior Advocate appearing for the contesting Respondent No.5 in all these Writ Petitions has drawn my attention to the Affidavit-in-Reply all dated 31.12.2021 filed by Respondent No.5 in the three Writ Petitions and invited my attention to paragraph Nos.3, 4 and 5 of the same. For convenience and reference, it would be fruitful for me to reproduce paragraph Nos.3, 4 and 5 verbatim from the Affidavit-in-Reply dated 31.12.2021 in Writ Petition No.8585 of 2021. Paragraph Nos.3, 4 and 5 read thus:-

“3. I say that, I was elected in election of Shiraswadi Grampanchayat Taluka Haveli, District : Pune. The voting for the said election took place on 15.01.2021 and the election results were declared on 29.01.2021. I say that I have submitted my accounts of daily expense daily. I say that on 09.02.2021, I made affidavit as per prescribed form and same is notarized with Advocate and Notary (Government of India) Gorakh V. Kirave at serial No.B571 / 2021. I say that on 09.02.2021, I submitted abstract statement of election expenses as per prescribed format, daily expenses and bill etc. with Tahsildar Taluka Haveli. I say that I shown it to concerned clerk who did not raise any objection. Hence I submitted and took acknowledgment. Hereto annexed and marked as Exhibit “A” (colly) is the true copy of the acknowledgment along with abstract statement of election expenses, daily expenses and affidavit. I say that due to oversight and inadvertently, I submitted photocopy of affidavit as per prescribed form to the Tahsildar alongwith other documents. I say that original of the said affidavit was produced before collector in the proceeding / complaint filed by the Petitioner bearing No. Grampanchayat Shakha / vivid Arja / S. R. / 160 / 2021. I say that since I have submitted my election expenses with period of 30 days in prescribed format, and hence in the report dated 18.03.2021 submitted by Tahsildar to the collector, Pune at serial No. 230 it

² 1951 SCC 1024 : 1951 SCC Online SC 63

³ PIL No.109 of 2022, decided on 22.09.2022

is mentioned that candidate has submitted election expenses. The same is annexed at page No.75 of the Petition. I say that thus from above it is clear that I have submitted the election expenses within time and hence present Petition is liable to be dismissed.

4. *With reference to contents in the Petition it is denied that the present Respondent failed to lodge the election expenses as provided for under Section 14 of the Maharashtra Village Panchyats Act read with the notification of 03.08.2016 and hence disqualified under the Section 14B of the Panchayat Act. It is denied that the Respondent No.2 passed detailed order after considering all the documents available on record. It is denied that Respondent No.2 without any application of mind passed impugned order etc. It is further denied that the Affidavit dated 08.02.2021 is backdated. With reference to Annexure N to the Petition it is submitted the facts of said proceeding are totally different than that of present case. Hence the same is not applicable. It is submitted that the present Respondents have filed reply before Collector stating above facts and also mentioned that even otherwise, if the Hon'ble Court comes to conclusion that there is delay, same may be condoned since it was due to inadvertently. I crave leave to refer to and rely upon the reply filed by me before Hon'ble Collector, Pune and same may be treated as part and parcel of present reply. I further say that the Petitioner have filed Application under Section 14B before Collector, Pune. I say that there is no provision under Section 14B before Collector, Pune. I say that there is no provision under Section 14(B) of the Maharashtra Village Panchyat Act (hereinafter referred to as the "Act"), to decide the question of disqualification of member of Grampanchayat upon application made by any person. Hence the order dated 12.10.2021 passed by the Collector under Section 14(B) is illegal and void-ab-initio. I say that the Collector, Pune did not consider that the application filed by the Petitioner before him is not maintainable since it is filed under Section 14B (1). Further Collector, Pune did not consider documents filed by the present Respondents. There is no proper assimilation of facts and documents filed by the present Respondent in the order dated 12.10.2021 passed by the Hon'ble Collector, Pune. I say that the Hon'ble Divisional Commissioner, Pune Division, Pune have properly appreciated that the present Respondent have submitted all documents relating to election expenses. Further Hon'ble Divisional Commissioner, Pune Division, Pune have properly appreciated that present Respondent have properly explained the delay for submitting original affidavit and there is no intentional avoiding or submitting of false expenditure by the Respondent. Further it was properly appreciated by the Hon'ble Divisional Commissioner, Pune Division, Pune that for such technical reason the present Respondent cannot be disqualified. Further, I say that the provision under Section 14B is directory in nature. Hence present Petition is liable to be*

dismissed.

5. *I say and submit that Petitioners have amended present Petition and came before this Hon'ble Court with ground that the Hon'ble Divisional Commissioner has passed order without any jurisdiction and as per order / notification dated 07.09.2021 passed by the State Election Commission, the appeal of the order passed by the Collector can be filed before the Commission. It is submitted that the Petitioner did not raise above ground before Hon'ble Divisional Commissioner, Pune Division, Pune in appeal and raising first time in present Petition which is not maintainable and not permissible in the eyes of law. It is submitted that the Petitioner is misinterpreting the notification dated 07.09.2021. It is submitted that paragraph No.7 of order in notification dated 07.09.2021 states that :*

7. The power to recall or reduce the period of disqualification:

i. ...

ii. This is a special power conferred upon the Commission which can be exercised by the Commission suo moto or at the behest of such disqualified member only.

iii. This power is altogether different from the power provided in various local Acts as 'Appeal' by a party aggrieved by any order of any authority competent to impose disqualification (authorities as delegated power in clause 5 above).

Thus from above clause 7(ii) and (iii) in the said notification, it is clear that the powers of "Appeal", challenging the order passed by the Collector are altogether different than that of the provision empowering the commission to recall disqualification or reduce period of disqualification. It is submitted that powers of appeal under the Act have not been taken away by issuing notification by State Election Commission.

Further Section 16(2) of Maharashtra Village Panchayat Act states that :

Section 16 : Disability from continuing as a Member:

1.

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 State Government, and the orders passed by the State Government in such appeal shall be final :

Thus from Section 16(2) it is clear that the any person aggrieved by the decision of the Collector may, within period of 15 days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final. Further it is submitted that the statutory powers cannot be taken away unless the said provision is deleted by the enactment. Further the Divisional Commissioner has exercised its jurisdiction as per powers vested by State Government under provisions of Section 182(1) of the Act. Hence the order impugned in the Petition is legal, just and valid and Respondent No.2 have jurisdiction to pass the order.”

6. From the above perusal Mr. Damle would submit that according to Respondent No.5 the entire election expenses as prescribed by the statutory provisions have been filed by the elected members before the Competent Authority. It is argued that by Mr. Damle that the photocopy of the Affidavit in the prescribed form was also submitted to the Competent Authority alongwith all other documents and the original of the same was produced before the Collector, Pune and as such the necessary election expenses were submitted within 30 days as required. Hence, it is argued that the contention of Petitioner that it was only for the first time before the Collector, Pune the said expenses were submitted is incorrect. In this regard he has drawn my attention to Page No.78 of the Writ Petition.

6.1. Next it is argued that there is no provision under Section 14B of the said Act to decide the question of disqualification of a member of Gram Panchayat upon an Application having been made by

any person and therefore the order dated 12.10.2021 passed by the Collector, Pune under Section 14B of the said Act was rightly set aside by the Divisional Commissioner, Pune. That apart, it is argued that the Collector, Pune did not consider the documents filed by the answering Respondent specifically with respect to the election expenses which have been properly appreciated by the Divisional Commissioner. Finally, it is argued that the Notification dated 07.09.2021 has been completely misinterpreted by the Petitioner in the facts of the present case by submitting that powers of Appeal under the said Act cannot be withdrawn by issuing the Notification by the State Election Commission. It is submitted that the order dated 23.11.2021 passed by the Divisional Commissioner, Pune is a reasoned order giving categorical findings under the provisions of Section 14B of the said Act. Hence, he has prayed that the Writ Petitions be dismissed.

7. Mr. Damle has referred to and relied upon the following Judgments in support of his aforesaid submissions:-

- (i) *Sahebrao Dashrathrao Patole Vs. State of Maharashtra and Ors.*⁴;
- (ii) *Shakti Balkrishna Mhatre Vs. Returning Officer, Panchayat & Ors.*⁵;
- (iii) *Tamjodevi Madarsha Bhandari Vs. Tahsildar South Solapur & Ors.*⁶;

4 2010 (5) Mh.L.J. 462

5 2015 (7) Bom. C.R. 430

6 2018 (5) Mh.L.J. 741

- (iv) *Ranibai Thakaru Jadhav Vs. Tulshiram Dhaku Rathod*⁷;
- (v) *Savita Ashok Urmude Vs. Mariba Gundiba Sukale and Ors.*⁸;
- (vi) *Shaikh Nizar Ibrahim & Anr. Vs. State of Maharashtra & Ors.*⁹;
- (vii) *Laxmibai Vs. Collector, Nanded & Ors.*¹⁰; and
- (viii) *Shobhabai Narayan Shinde & Anr. Vs. Divisional Commissioner & Ors*¹¹.

8. Mr. Shetye, learned Advocate for Respondent No.6 has drawn my attention to the Affidavit-in-Reply dated 21.09.2022 filed by Avinash T. Sanas, Deputy Commissioner in the State Election Commission, Maharashtra which is a common Affidavit in all three Writ Petitions. He has drawn my attention to paragraph Nos.2, 3 and 4 of the said Affidavit which read thus:-

*“2. It is most humbly submitted at the outset that, the said question has already been decided by the Hon’ble Supreme Court in the case of **Shobha Shinde V/s. Divisional Commissioner, Nashik** in Civil Appeal No.55 of 2022 dated 04.01.2022, wherein it is ruled that no Appeal is provided in law under Section 16 of the Maharashtra Village Panchyats Act against Disqualification Order issued by Collector under Section 14B(1). Therefore, the orders of Divisional Commissioners are without jurisdiction and non-est in law.*

3. It is most humbly submitted that Section 14B was introduced by Maharashtra Act XVI of 2010 which reads as below:

14-B. Disqualification by State Election Commission-

7 WP No.4203 of 2017 decided on 26.02.2018

8 WP No.14002 of 2016 decided on 27.11.2018

9 2019 (4) Bom.C.R. 55

10 2020 (12) SCC 186

11 2021 (2) Bom. C.R. 280

(1) If the State Election Commission is satisfied that a person – (a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and 9b) has no good reason or justification for such failure, the State Election Commission may, by an order published in the Official Gazette, declare him to be disqualified and such person shall be disqualified for being a member of panchayat for contesting an election for being a member for a period of five years from the date of the order. (2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification.

*4. State Election Commission has from time to time exercised powers conferred under Section 10A(4) of the Maharashtra Village Panchayats Act and issued Orders, prescribing the time and manner in which election expenses have to be submitted, prescribing the maximum limits for total election expenditure, procedure and about delegation of said powers. The latest Order is dated 07.09.2021, issued after repeal of the earlier orders dated 05.06.2010, 10.08.2015 and 19.11.2019. The copy of the order dated 07.09.2021 is annexed herewith as **Annexure 'A'**. The Petitioner has not annexed the said Order to his Petition, though Petition is filed on 26.11.2021 i.e. after the issue of said order dated 07.09.2021.”*

9. Mr. Shetye would submit from the above it is evident from the above provision that Section 14B (1) provides for the power of disqualification to the State Election Commission and Section 14B(2) provides the power to remove the disqualification or reduce the period of disqualification, to the State Election Commission. It is important to note that while the powers under Section 14B(1) are subject to the satisfaction of the disqualifying authority, the powers under Section 14B(2) are of the kind of mercy appeal seeking removal or reduction of disqualification.

10. He would submit that the Divisional Commissioner cannot entertain the ‘Appeal’ against the disqualification order passed by

Collector as a Disqualifying Authority under Section 14B(1), which are delegated by the State Election Commission to the Collector. Power under Section 14B(2) are not delegated to the Divisional Commissioner, by the State Election Commission. The State Election Commission have informed to all Divisional Commissioners about this on 09.09.2021 and 07.12.2021 and is also uploaded on website for all with facility of download to all.

11. I have heard Mr. Anturkar, learned Senior Advocate for Petitioner; Mr. Damle, learned Senior Advocate for Respondent No.5; Mr. Kankal, learned AGP for Respondent Nos.1 to 4 – State and Mr. Shetye, learned Advocate for Respondent No.6 and with their able assistance perused the pleadings in the present case. Submissions made by the Advocates have received due consideration of this Court.

12. At the outset it is seen from the record that the Tahsildar in his report dated 18.03.2021 given to the Collector (at Page Nos.77 and 78 of the Petition) has certified that Respondent Nos.5 in all three Petitions have submitted their respective election expenses to the Competent Authority. The names of the Respondents Nos.5 appear at Sr. No. 230, 232 and 233 in the table annexed to the Tahsildar's Report certifying receipt/submission of election expenses on 17.02.2021 by Sima Gawade and on 15.02.2021 by Kiran Shinde and Sangita Chitalkar. In view thereof, the substantive challenge that

election expenses have not been submitted within 30 days fails.

13. Next the amended ground raised in the Petition on jurisdiction of the Divisional Commissioner vis-a-vis Notification dated 07.09.2021 needs to be dealt with. Paragraph 7 of the Notification reads thus:-

“7. The power to recall or reduce the period of disqualification:

- i.*
- ii. This is a special power conferred upon the Commission which can be exercised by the Commission suo moto or at the behest of such disqualified member only*
- iii. This power is altogether different from the power provided in various local Acts as ‘Appeal’ by a party aggrieved by any order of an authority competent to impose disqualification (authorities as delegated power in clause 5 above).*

Thus from above clause 7 (ii) and (iii) in the said notification, it is clear that the powers of “Appeal”, challenging the order passed by the Collector are altogether different than that of the provision empowering the commission to recall disqualification or reduce period of disqualification. It is submitted that powers of appeal under the Act have not been taken away by issuing notification by State Election Commission.

Further S. 16(2) of Maharashtra Village Panchayat Act states that :

S.16 : Disability from continuing as a Member:

1.....”

- 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 State Government, and the orders passed by the State Government in such appeal shall be final :*

Thus from S. 16 (2) it is clear that the any person aggrieved by the decision of the collector may, within period of 15 days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final. Further it is submitted that the statutory powers cannot be taken away unless the said provision is deleted by the enactment. Further the Divisional commissioner has exercised its jurisdiction as per powers vested by state government under provisions of Section 182 (1) of the Act. Hence the order impugned in the petition is legal, just & valid & Respondent No. 2 have jurisdiction to pass the order.

13.1. By virtue of the above provision, it is seen that the power of Appeal imposing disqualification is not taken away as it is altogether different from the power provided for Appeal against any order of the Competent Authority imposing disqualification. It is thus clear that power of the Appellate Authority i.e. the Divisional Commission is a statutory power and the same is not substituted or withdrawn. In this context Section 16(2) of the said Act is relevant as it provides an appeal to the Competent Appellate Authority (now Commissioner after the 2017 amendment) within 15 days from the date of the any decision of the Collector. This power has not been deleted or withdrawn and subsists on the statute book.

13.2. Both parties have however referred to and relied upon the decision of the Supreme Court in the case *Shobhabai Narayan Shinde (supra)*. Mr. Anturkar has relied upon paragraph Nos.12 to 16 of the said decision.

13.3. Paragraph Nos.12 to 16 are reproduced below for reference:-

“12. Be it noted that the State Election Commission in exercise of its enabling powers, vide Article 243-K of the Constitution of India including Section 10A(2) of the 1959 Act, issued an order dated 19.11.2010 to delegate its powers, such as under Section 14-B of the 1959 Act to the officers of the State Government. Clause B of the stated order stipulates that powers conferred upon the State Election Commission under Section 14B(1) shall vest in the concerned Collector of the District and powers conferred on it under Section 14B(2) shall vest with the Divisional Commissioner concerned.

13. By virtue of this order, the State Election Commission had authorised the Collector to exercise its powers under Section 14-B(1); whereas powers under Section 14-B(2) by the Divisional Commissioner. It follows that the State Government officials concerned are ordained to exercise the assigned power in silos. Ergo, the power of State Election Commission under Section 14-B(1) to declare that the Sarpanch/Member of a Panchayat as disqualified, is to be exercised by the Collector and not the Divisional Commissioner. Similarly the Divisional Commissioner can exercise power only in respect of matters specified in Section 14-B(2) – remove the disqualification incurred under sub-section (1) or reduce the period of such disqualification. In either case, the power to decide concerned issues is that of the State Election Commission, which thenceforth could be exercised by its delegate concerned in respect of matters specified in the stated order.

14. Notably, no appeal is provided against the order of Collector (or of State Election Commission) refusing to disqualify the Sarpanch/Member under Section 14-B(1). Similarly, no appeal is provided even against the order of the Divisional Commissioner (or of State Election Commission) under Section 14-B(2). A limited window against the order under Section 14-B(1) passed by the Collector (or State Election Commission itself) declaring the Sarpanch/Member of a Panchayat as disqualified, is kept open before the Divisional Commissioner (or the State Election Commissioner, if the order under Section 14-B(1) is or were to be passed by the State Election Commission itself) - to remove such disqualification or to reduce the period thereof in deserving cases. To put it tersely, for the nature of power exercised by the State Election Commission under Section 14-B, no remedy of appeal is envisioned by the statute.

15. The power of the State Election Commission, bestowed under sub-Section (1) or (2) of Section 14-B, though concerns subject of disqualification of a person, it operates in two different silos. In that, the power under Section 14-B(2) gets triggered only after an order of disqualification is passed under Section 14-B(1). The former is not activated at all in a case

where the application or the proceedings to declare the Sarpanch/Member as disqualified, is rejected or dropped. Taking any other view would inevitably result in a situation where the power exercised by the State Election Commission under Section 14-B(1) could be appealed against before itself (its delegatee). That cannot be countenanced. For, an appeal cannot lie before the same Authority/functionary who had passed the order of rejection of prayer to declare the member concerned as disqualified. Sans an express statutory intent to provide appeal against the order rejecting application to declare a person disqualified, it must follow that upon passing such order the power under Section 14-B is fully exhausted by the State Election Commission (or its delegatee, as the case may be)

16. Indubitably, an authority rejecting the proposal regarding disqualification, cannot sit “in appeal” over its own order of rejection. Notably, there is no express power bestowed upon the State Election Commission or its delegatee to review its own decision passed under Section 14-B(1) or 14-B(2) of the Act, as the case may be. The argument of the respondent 2 that the power bestowed on the Divisional Commissioner under Section 14-B(2) posits power to impose disqualification by virtue of Section 21 of the General Clauses Act, 1897, does not commend to us and the same needs to be merely stated to be rejected. Similarly, we reject the argument of the Respondent 2 that it is a case of Casus Omissus. Whereas, the legislative intent and the setting in which the relevant provisions are couched leaves no manner of doubt that such power had not been given to the delegatee (Divisional Commissioner), as it does not inhere in the State Election Commission itself.”

13.4. From reading Paragraph Nos.15 and 16, it is clearly seen that in that case the facts were different. In that case, the question answered by the Court was whether under Section 16(2) the Divisional Commissioner had the power and jurisdiction to entertain an appeal against an order of the Collector under Section 14-B(1) refusing to disqualify a Sarpanch/Member of the Gram Panchayat. In Paragraph Nos.17 to 21, the Supreme Court has clarified the position and jurisdiction under Section 16(2) of the said Act. In the present case, the Respondent No. 5 has been disqualified as Member of the

Gram Panchayat by an order of the Collector under Section 14 B(1). The Supreme Court has distinguished the provisions and in paragraph No.14 clearly held that no appeal is provided against the order of the Collector refusing to disqualify the Member under Section 14B (1) of the said Act. However, considering the authoritative pronouncement of the Supreme Court in interpreting the appellate power under Section 16 read with the disqualification incurred under Section 14, this Court will have to be guided by the same. Paragraph Nos.18 and 19 of the above decision thus become relevant and are reproduced hereinunder:-

“18. Concededly, Section 16 is a provision which speaks about the disability from continuing as the member of a Panchayat, consequent to incurring disqualification or has been so declared under Section 14 of the Act. Once a Sarpanch/Member is disqualified under Section 14-B by virtue of an order under Section 14-B(1), it would give rise to two situations – the first is that the person concerned can invoke option under Section 14-B(2) for removal of his disqualification or for reduction of the period of such disqualification. The second is the obligation fastened upon the Collector to decide the issue as to whether vacancy has occurred on account of such disqualification. That question is required to be answered by the Collector in the first instance, in terms of Section 16(2) and to take follow-up steps thereafter in filling up such vacancy.

19. The decision of the Collector on such question, referable to sub-Section (2) of Section 16, however, has explicitly been made appealable before the State Government or the delegate of the State Government. That is, completely, a different regime albeit a consequence of process referred to in Section 14-B(1) – to declare a Sarpanch or a member as having incurred disqualification. This question decided by the Collector, is essentially in his capacity as a delegatee of the State Election Commission and, de jure, deemed to have been decided by the State Election Commission itself.”

13.5. It is seen that, as held by the Supreme Court once a Member is disqualified under Section 14-B(1) he would have two options, viz to invoke option under Section 14-B(2) for removal of his disqualification (as in this case) or for reduction of the period of such disqualifications and the second option is under Section 16 of the said Act to be exercised by the Collector in the first instance and then to take follow-up steps under Section 16(2) for filling up such vacancy.

13.6. Considering the above position, the Petitions will have to succeed partly. It is therefore directed that Respondent No.5 shall file their Application / Appeal afresh under Section 14-B(2) of the said Act before the Competent Authority within a period of 4 weeks from today. Copy of the Application / Appeal shall be served on all concerned parties. The Competent Authority under Section 14-B of the said Act shall accord hearing to the Respondent No.5 within 4 weeks thereafter and shall hear all concerned parties. Copies of Application / Appeal filed by Respondent No.5 shall be served upon Petitioner on the date of filing itself to avoid delay.

14. All contentions of parties are expressly kept open.

15. The Competent Authority shall give its final speaking order within 2 weeks thereafter. As a result, the separate orders passed by the Divisional Commissioner in the present proceedings under Section 16(2) of the said Act in the respective Appeals are quashed and set

aside in all three Petitions. The Competent Authority while deciding the Application / Appeal under Section 14-B(2) of the said Act shall strictly pass its order on merits and in accordance with law without being influenced by any of the observations and findings returned in this judgment in all three cases. It is however clarified that in the interregnum, status quo shall be maintained until the decision of the Competent Authority is declared under Section 14-B(2) of the said Act as directed by this judgment.

16. With the above directions, all three Writ Petitions are disposed.

[MILIND N. JADHAV, J.]

Ajay