



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

WRIT PETITION NO.9161 OF 2023

Sandeep Uttamrao Kadam

VERSUS

The Additional Divisional Commissioner And Others

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Advocate for the Petitioner : Mr. U B Deshmukh

AGP for Respondent no.1,2 : Mr. A.V. Lavte

Advocate for Resp.3 : Mr. T.S. Lodhe h/f Ms. Y.S. Thorat

Respondent Nos.4 and 5 – served.

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 08th July, 2024

PER COURT :-

1. The petitioner impugns the order dated 9.5.2023 passed by the Additional Commissioner, Aurangabad Division in appeal No.9 of 2023.

2. Petitioner is resident of village Nivgha (BA), Tq. Hadgaon, District Nanded and valid voter for Grampanchayat. Respondent No.5 is elected Member of village panchayat and subsequently assumed the position of Sarpanch. Petitioner moved proceedings U/s 16 read with section 14(1)(g) of the Maharashtra Village Panchayats Act, 1958 (for short hereinafter referred to as the Act) alleging disqualification against petitioner contending that since the date of election of respondent no.5 as Sarpanch, an amount of Rs.5,34,191/- has been disbursed from account of village Panchayat in the name of his real brother namely Abhishek Sanjay Kadam. Consequently, respondent no.5 incurred disqualification in

terms of Section 14 (1)(g) of the Act. In pursuance of the application moved by the petitioner, District Collector Nanded called report from the B.D.O. particularly as regards to share/interest of respondent no.5 in the contract works alleged to have been executed by Abhishek Sanjay Kadam and involvement of respondent no.5 in such transactions. The B.D.O. submitted his inquiry report dated 16.9.2022 affirming the allegations regarding disbursement of the amount in favour of Abhishek Kadam during term of respondent no.5 as a Sarpanch. The District Collector issued a show cause notice to Respondent no.5 and after considering his defence passed order dated 27.1.2023 disqualifying respondent no.5 to act as Member of village panchayat. Disqualification order passed by the District Collector was assailed in appeal filed by respondent no.5. Said appeal came to be allowed vide order dated 9.5.2023 thereby setting aside the disqualification order passed by the District Collector.

3. Mr. U.B.Deshmukh, learned advocate appearing for the petitioner vehemently submits that disqualification prescribed under section 14(1)(g) has to be given wider meaning to include acts done by family members of the elected representative. Once, evidence on record demonstrates release of huge amount of Rs.5,34,191/- in favour of real brother, presumption ought to have been drawn that respondent no.5 has share or interest in the work done by the Panchayat under contracts executed by his real brother. By inviting attention of this Court to the reasoning adopted by the

Divisional Commissioner, he submits that erroneous finding is recorded that release of amount was in respect of the works executed during the period from 2020 to 2021, when the scheme under which work is executed is introduced in the year 2021 itself and bills have been released during the period from 22.8.2021 to 6.2.2022.

4. In support of his contentions, he relies upon judgment of this Court in case of **Sheela Nandkishor Ingle Vs. Additional Commissioner, Amravati Division, Amravati and others reported in 2019 (4) Mh.L.J. 381.**

5. Per contra, Mr. A.V. Lavte, learned AGP appearing for respondent nos.1 and 2 submits that merely because persons benefited out of contract with panchayat is close relative of Sarpanch, no inference can be drawn that he had pecuniary interest in the contract awarded by the Panchayat. In present case, there is no material to indicate that the petitioner had either interest in the contract awarded to his brother or has gained any benefit directly or indirectly out of the work done under the order of the Grampanchayat. To buttress his contentions, he relies upon the judgment of this Court in case of **Laxmibai Kankhar and others Vs. State of Maharashtra in Writ Petition no.6505 of 2022** decided on 23.8.2022, Writ Petition no.3000 of 2018 between **Sou. Sugandha Manik Waghmode Vs. Shri Tukaram Khandekar** dated 3.12.2018 and in the matter of **Sou Jyotitai Gavande Vs. Additional Commissioner, Amravati and others reported in 2009 (6) AIR Bombay 274.**

6. Having considered the submissions advanced and on perusal of record tendered into service, it can be observed that village panchayat executed certain works under 15th Finance Commission, during the period from 14.7.2020 to 26.3.2022. After respondent No.5 assumed the post of Sarpanch, his real brother Abhishek Sanjay Kadam received sum of Rs.5,34,191/- through 8 different cheques issued by Panchayat during the period from 28.2.2021 to 6.2.2022. In this background, it is necessary to refer section 14 (1)(g) of the Maharashtra Village Panchayats Act, which reads thus :-

Section 14 :-No person shall be a member of a Panchayat, or continue as such, who convicted -

- (i).....
- (ii).....
- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat or in any contract with, by or on behalf of, or employment with or under, the panchayat;

7. Plain reading of the aforesaid provision would show that Member of the village panchayat incur disqualification in terms of section 14(i)(g) of the Act, where there is conflict of interest and duty. Therefore, it is to be find out, if respondent no.5 had indirect or direct interest in the work done under contract of Grampanchayat through his real brother. While

interpreting the aforesaid provision, this Court in case of Sheela Ingale (supra) in paragraph nos.18 and 19 observed thus :-

18. There can be no quarrel with the proposition advanced on behalf of the petitioner that the rule of interpretation is that words of a statute must prima facie be given their ordinary meaning, for which reliance has been placed on judgment of the Hon'ble Supreme Court in the case of Harbhajan Singh v. Press Council of India and others (supra) but, in the very same judgment, reference has been made to the principle that Courts can adopt a purposive interpretation if they find that the statute read as a whole shows that a provision needs to be interpreted in furtherance of the purpose and object of the statute. In the present case, even a literal interpretation of section 14(1)(g) of the Act of 1959 and applying the same to the facts of the present case would show that the petitioner had indeed incurred disqualification. The interpretation being placed by this Court on the said provision is also in consonance with the purpose and object of the statute. The learned counsel for the petitioner is also not justified in relying upon judgment of the Hon'ble Supreme Court in the case of Navjyot Singh Sidhu v. State of Punjab and another (supra) to contend that moral and ethical considerations ought not to be applied while interpreting a statute, because in the present case on a purely legal interpretation of the aforesaid provision and applying the same to the facts of the present case, it is found that the petitioner was correctly disqualified by the impugned orders passed by respondent Nos.1 and 2.

19. The contention raised on behalf of the petitioner to the effect that there was no wrong committed by the award of works to her husband because award of works by inviting bids and auction was necessary only for works involving expenditure of more than Rs.3,00,000/- is also without any substance. This is because, even if work is to be awarded involving expenditure of less than Rs.3,00,000/-, it cannot be awarded in such a manner that it would involve a conflict of interest and duty, as in the present case. If the contention raised on behalf

of the petitioner is accepted, it would be very easy for an elected member or Sarpanch of the gram panchayat to award different parts of development works wherein expenditure involved was less than Rs.3,00,000/-, to family members and then to claim that such a method of awarding works of the gram panchayat could not be called into question. The crucial issue in a case like the present one is that if the elected member indeed has a direct or indirect interest in the work done by order of the panchayat or in any contract awarded by the panchayat, the same would be directly in conflict with the duty of such an elected member if the work is awarded to a family member with whom he/she is living. In the present case, since the husband of the petitioner is directly benefited from the award of contracts and works, which were being undertaken by the order of the gram panchayat, it is a clear case of inviting disqualification under section 14(1)(g) of the Act of 1959. Therefore, it cannot be said that respondent Nos.1 and 2 committed any error in concurrently holding against the petitioner.

8. Applying aforesaid analogy in the facts of the case, it is apparent that real brother of respondent no.5 has been directly benefited by disbursement of the amount towards bills of the works undertaken by the village Panchayat.

9. Respondent No.5 in his written statement contends that his brother resides separately after partition of the joint family in the year 2021 and filed an affidavit to that effect. On the basis of such material, it is contended that, although, there is relationship, the conflict of interest cannot be presumed.

10. The learned AGP relying upon observations of this Court in case of **Jyotitai Gavande** submits that there has to be material on record to suggest that amount paid

towards contract or work done by the Grampanchayat benefits Member or at least some material to show his direct interest in such work.

11. Further, relying upon the observations of this Court in case of **Laxmibai Kankhar**, he submits that mere relationship of Sarpanch with person executing contract would not incur disqualification unless the inquiry conducted by the authority reveals that Sarpanch has pecuniary or material interest in the work of the Grampanchayat.

12. The District Collector while dealing with the application seeking disqualification has observed that since Mr. Abhishek Kadam, who is real brother of respondent no.5 has received an amount of Rs.5,34,191/- through PFMS system, the direct interest of respondent no.5 has been established. On the other hand, Divisional Commissioner recorded converse finding stating that works executed were prior to election of respondent no.5 as Sarpanch. The observations of the Divisional Commissioner are apparently erroneous and not supported by material. Record indicates that payment is made during the period from 22.8.2021 to 6.2.2022 in 15th Finance Commission, which is apparently during the tenure of respondent no.5 as a Sarpanch. However, both the authorities have not recorded specific finding as to whether respondent no.5 had any personal interest in his brother's business and whether the respondent no.5 and his brother are members of undivided family having

common financial interest. In that view of the matter, it would be appropriate to remit the matter to District Collector to record findings on the aforesaid aspect and render his decision, afresh. Resultantly, writ petition partly succeeds. Hence, the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 9.5.2023 passed by Additional Commissioner, Aurangabad Division, in File No.GP/Appeal/Cell/CR-09/2023 as well as the order dated 27.1.2023 passed by Collector in file No.2022/G.B./Desk-1/GPN/CR-55 are hereby quashed and set aside.
- iii. Matter is remitted back to the District Collector, who shall decide the proceedings within a period of two (2) months from the date of this order after recording the findings on issues as indicated in the aforesaid paragraphs.
- iv. The parties shall appear before Collector on **12th July 2024** and on appearance, they shall be at liberty to furnish additional material, if any, within two (2) weeks from the date of appearance to support their contentions.

iv. Writ Petition stands disposed off
accordingly. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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