Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5154 OF 2024

Santosh Balkrushna Kshirsagar & Ors … Petitioners
V/s.
State Election Commission & Ors … Respondents

Mr. Drupad S. Patil, a/w Mr. Namit Pansare for Petitioner.

Mr. S. D. Rayrikar, AGP for State/Respondent No.1.

Mr. Shailesh A. Chavan, for Respondent Nos.2 to 7.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2024

P.C.:

1. **Rule.** Rule is made returnable forthwith.

2. The writ petition arises out of a proceeding under Section 14-B of the Maharashtra Village Panchayat Act, 1958 (“the Act”). The impugned order is passed by the Appellate Authority arising out of exercise of power by the Collector in relation to disqualification under Section 14-B of Act.

3. The facts giving rise to the present writ petition are as under.

4. The election for Gram Panchayat for the term of 2021-2025 for Village Dhondewadi, Taluka Khatav, District Satara was held in the year 2021. Respondent Nos.2 to 7 contested the election for the post of members of the said Gram Panchayat. On 18 January 2021, respondent Nos.2 to 7 were declared as elected members for the post of members of Gram Panchayat.

5. Section 14-B of the Act requires elected candidates to furnish their accounts of election expenses within 30 days from the date of declaration of result.

6. The petitioner herein filed an Application before the Collector, Satara contending that respondent Nos.2 to 7 failed to lodge their election expenses. Respondent Nos.2 to 7 appeared before the Collector, Satara and contended that they submitted their election expenses in the box maintained by the Returning Officer within limitation prescribed.

7. The Collector Satara by order dated 10 May 2023 disqualified respondent Nos.2 to 7 on the ground that they failed to prove that they submitted their election expenses within prescribed time and the registers maintained by the office do not indicate furnishing of such expenses.

8. Respondent Nos.2 to 7, therefore filed an Application before the State Election Commission. The State Election Commission, considering the defence raised by respondent Nos.2 to 7, remanded the proceedings back to the Collector.

9. The Collector thereafter again disqualified the Respondent Nos.2 to 7 by order dated 6th December 2023. Aggrieved thereby, respondent Nos. 2 to 7 filed an application before the State Election Commission. The State Election Commissioner by the impugned order dated 1st February 2024 allowed the application of Respondent Nos. 2 to 7 on the ground that the Returning Officer was hospitalized during the relevant time and one of the respondents spoken with the Returning Officer regarding the statement of account**.** Therefore, benefit of doubt needs to be given to Respondent Nos. 2 to 7 who were democratically elected.

10. Learned counsel for the petitioner submitted that the manner of submitting election expenses has been proved by resolutions issued by the State Election Commission on 10th August 2015 and 25th October 2016. *Submitting* election expenses in the drop box is not valid manner of submitting election expenses. Moreover, the Tahsildar in a communication to the petitioners issued under the provisions of the Right to Information Act, 2005 dated 30th August 2022 stated that respondent No.2 to 7 had failed to submit election expenses within prescribed time. Based on the inward and outward register maintained by the designated Officer and the communication dated 30th August 2022, the Collector recorded a finding of fact that the plea of respondent Nos. 2 to 7 that they submitted election expenses within prescribed time was not proved. Resultantly, the Collector disqualified respondent Nos. 2 to 7.

11. Per contra, learned counsel for the Respondent Nos. 2 to 7 submitted that the Respondent Nos. 2 to 7 had submitted such expenses within prescribed time in the drop box maintained by the Tahsildar/*Designated* Officer as *Returning Officer* was not available. It is submitted that one of the Respondent was suffering from Covid infection and was required to be hospitalized from 10th February 2021 to 20th February 2021. He contacted the Returning Officer on 16th February 2021. But he submitted election expenses on 16th February 2021 by keeping it in the drop box maintained by the *Designated* Officer.

12. On perusal of the record, it appears that the *Designated* Officer on 30th August 2022 communicated to the petitioners that election expenses of Respondent Nos. 2 to 7 were not received by his Office. It is not in dispute that as per the provisions of the Section 14B of the Act, the election expenses need to be submitted to the Tahsildar who is designated Officer by the Collector before 17th February 2021. The Respondent Nos. 2 to 7 have raised a positive defence that they submitted election expense by keeping it in the drop box maintained by the Tahsildar/*Designated* Officer. However, the material produced on record belies the defense of Respondent Nos. 2 to 7 that they had submitted the election expenses to the Returning Officer/designated Officer within the time manner prescribed. The State Election Commission's resolution dated 10th August 2015 requires submission of election expenses in relation to Grampanchayat to either the Collector or Officer Designated for that purpose, not lower in the rank than of Tahsildar. The inward and outward of register produced on record indicates the communications received from other elected candidates from 12 February 2021 till 23rd February 2021. The said register provides for details of names and the subject in relation to which the Office received the documents from various persons. It appears that other candidates contesting the said election had submitted their expenses which find mention in the inward register by entry No.1556 *and entry* bearing No.1671 dated 18th February 2021. However, conspicuously entries in relation to respondent No. 2 to 7 are absent. Therefore, finding of fact recorded by the Collector based on communication dated 30th August 2022 and the inward register was based on conclusive material evidence. Such finding of fact could not have been set aside by the Election Commissioner based on the finding of giving benefit of doubt.

13. The jurisprudence of expression giving benefit of doubt is alien to the disqualification proceedings. Said principle is applicable only in case of trial in relation *to* offences affecting liberty of a person, wherein, it is duty of prosecution to prove the offence beyond reasonable doubt. in view of **Abhiram Singh Vs. C. D. Commachen (deac) by LRS. And Ors.** reported in 2017 (2) SCC 629, it is now well settled that election statutes and rules need to be interpreted electorate centric manner than candidate centric based on purpose interpretation. The disqualification proceeding are quasi judicial in nature and the findings arrived at are based on material more than preponderance of probabilities. That the degree of material to prove disqualification is higher than the degree of material required under the department proceedings. However, the degree of proof cannot be elevated to the degree of proof in criminal trial as it is basic principle of criminal law that a person is presumed to be innocent unless the prosecution proves its case beyond reasonable doubt.

14. Therefore, basis of setting aside well reasoned finding by Collector on the ground of giving benefit of doubt is impermissible. Therefore, in my opinion, the impugned order passed by the State Election Commissioner Maharashtra suffers from legal infirmity hence following order:

a) The impugned order passed by the State Election Commissioner of Maharashtra dated 1st February 2024 in Special Application No.13 of 2023 is quashed and set aside.

b) The order of Collector dated 6th December 2023 is confirmed.

15. Rule is made absolute in above terms.

16. The writ petition is disposed of. No costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 30 April 2024. The corrections are shown in italicized.