

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12176 OF 2024

Shabana Naushad @ Navshad Mulani

... Petitioner

Versus

Additional Divisional Commissioner and Ors.

... Respondents

.....

Mr. A.R. Shaikh, Advocate for the Petitioner.

Mr. Kushal Amin, 'B' Panel Advocate for State – Respondent Nos. 1 and 2.

Mr. Yuvraj S. Gharal, Advocate for Respondent No.3.

CORAM : R. M. JOSHI, J.

DATED : 30th AUGUST, 2024.

P.C. :

1. Heard learned counsel for the respective parties.
2. This petition takes exception to the orders dated 08.08.2024 and 25.01.2024 passed by the Collector under Section 16 of Maharashtra Village Panchayat Act, 1959 (for short "**the Act**") disqualifying the petitioner as a member of Gram Panchayat of member of village panchayat, Mhasurli, Tal. Radhanagari, District Kolhapur and confirmation of the said order in appeal by the appellate authority.
3. The facts which led to the filing of this petition can be narrated in brief as under.
4. Petitioner was elected as member of the Gram Panchayat on

15.01.2021. It is the contention of the petitioner that respondent No.3 who is the complainant in the present case was also elected as member Gram Panchayat, however, was disqualified from the membership on 25.03.2022. This respondent filed an application on 06.06.2023 before the collector for disqualification of the petitioner under Section 14(1)(g) of the Act, on the ground that the petitioner had direct interest in the work of the Gram Panchayat as her husband had provided the car to the Gram Panchayat against transportation charges of Rs.4,500/-. Petitioner opposed the said application by filing reply. Collector by order dated 25.01.2024 disqualified petitioner from the membership of the Gram Panchayat. An appeal bearing Appeal No. 04 of 2024 came to be filed before the Additional Divisional Commissioner, Pune who dismissed the appeal by passing impugned order, hence this petition.

5. Learned counsel for the petitioner submits that both the Authorities below have committed error in disqualifying the petitioner from the membership of the Gram Panchayat, by not considering facts as well as judgments relied upon. He takes exception to these orders also on the ground that the orders are unreasoned. Referring to the facts of the case, it is his submission that there was no contract between the Gram Panchayat and husband of the petitioner for providing any services of his vehicle for transportation, as no charges were fixed when the vehicle was

given by him. It is his submission that since the Gram Panchayat was finding it difficult to arrange the vehicle, at the request of Gramsevak, husband of the petitioner has in fact obliged Gram Panchayat by providing his vehicle. It is his submission that there is no contract much less any written contract in order to hold that the petitioner or husband had any interest in the work of Gram Panchayat. He strenuously urged to this Court that the act done by the husband of the petitioner in the helping Gram Panchayat cannot go against him to attract disqualification of his wife i.e. petitioner herein. To support his submissions that the present case does not get covered by the provisions of Section 14(g) of the Act, he placed reliance on following Judgments :

- (1) *Jyotitai Vikas Gawande Vs. Additional Commissioner, Amravai Division And Ors.*¹
- (2) *Dhrupadabai Laxmanrao Mhaske Vs. Additional Commissioner, Amravati & Ors.*²
- (3) *Shyam Madhavrao Mohod and Anr. Vs. Additional Commissioner, Nagpur and Ors.*³
- (4) *Saroja Shirish Behare Vs. Laxman Sonbaji Behare & Ors.*⁴
- (5) *Mankarna w/o. Nagorao Kale Vs. State of Maharashtra & Ors.*⁵
- (6) *Nilesh s/o. Vinayakrao Deshmukh Vs. Additional Commissioner, Amravati & Ors.*⁶

1 2009 (4) ALL MR 851

2 2015 (4) Mh. L.J.

3 2019 (4) Mh. L. J.

4 AIR OnLine 2022 Bom. 489

5 2023 (6) Mh. L. J.

6 2023 DGLS (Bom.) 3041

6. There is no dispute about the fact that the petitioner is the member of Gram Panchayat. Further, admittedly, the Gram Panchayat was in the need of transportation and as such Gramsevak requested the husband of the petitioner to provide his car for the said purpose. There is no dispute made by the petitioner about the fact that by passing resolution in the meeting of Gram Panchayat, a total sum of Rs.4,500/- was paid to the husband of the petitioner towards the services provided by him by cheque. Since these are undisputed facts, this Court is not required to go into the correctness thereof.

7. At this stage, it would be relevant to refer to provisions of Section 14(1)(g) which reads thus :

“14. Disqualifications.

(1) No person shall be a member of a panchayat continue as such, who

(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 or;”

8. A bare perusal of this provision clearly indicates that no person shall continue as member of panchayat who has directly or indirectly, by himself or his partner any share or interest in any work done by the order

of the Panchayat or in any contract with on behalf of or employment or the panchayat. It is thus clear that there is complete embargo for the member of the panchayat either directly or indirectly i.e. through his/her partner to have any interest in the work done by the order of panchayat or under any contract with panchayat. The term 'partner' has not been defined under the Act. Dictionary meaning of word partner includes a person with someone has married or lives as if married. Having regard to the intent or purpose of provisions of Section 14(g) life partner would be certainly covered under the said term partner.

9. Considering the undisputed facts herein, this Court finds no reason to accept the contention of the learned counsel for the petitioner that there is no contract between Gram Panchayat and the husband of the petitioner. Record indicates that a vehicle as need was provided for the purpose of transportation to the Gram Panchayat and against the said service, transportation charges are paid by cheque. This is not the case wherein the services are provided by the husband of the petitioner free of charge. In such circumstances, though there is no written contract to that effect, the facts as appeared from the record clearly indicate that it was a concluded contract between the parties, i.e. panchayat and husband of the petitioner for providing services of his vehicle against charges.

10. At this stage, it would be relevant to take note of the judgments

sought to be relied upon by the learned counsel for the petitioner. In the case of ***Jyotitai V. Gawande*** (*supra*) the facts as they indicate from said judgment shows that it was a case wherein the husband of the petitioner had withdrawn the amount by cheques drawn under the signature of petitioner. This Court therefore held that handing over of the cheque to the husband of the petitioner for withdrawing the amount, cannot be treated as permissible in the administration of the Panchayat and appropriate action can be taken in this regard however it does not amount to disqualification under Section 14(1)(g) of the Act.

11. In the case of ***Drupadabai L. Mhaske*** (*supra*) this Court was faced with the situation that there was employment provided to the petitioner's son on temporary basis. In such circumstances, it was held that the enquiry has to be whether the petitioner has pecuniary or material or interest in similar nature in Panchayat and not as to whether the petitioner is interested in her son. It is held that any relationship of the petitioner with her son would not attract the disqualification under Section 14(1)(g) of the said Act. Similarly in case of ***Shyam M. Mohod & Anr.*** (*supra*) the member of Gram Panchayat was elected as member of the Gram Panchayat in the year 2014 whereas his mother had leased out the room owned by her to Anganwadi prior to 2009. Thus, it was held that the election of the member nothing to do with the act of leasing out of the property.

Moreover, it is observed therein that there was nothing on record to show that the lease of room was extended beyond 10 years without certification. Finally, reference is made to the judgment of this Court in the case of ***Nilesh V. Deshmukh*** (*supra*) to contend in the similar set of facts, this Court has held against disqualification. Perusal of the said judgment however indicates that it was a case wherein there was allegation against the Sarpanch of village panchayat that an amount of Rs.15,000/- was sanctioned towards conference charges / taxi charges for attending the conference and thereby the said sum was illegally paid to the taxi owner. Considering these facts it is held by this Court that payment of an amount to the taxi owner would not be an interest of the member himself in the said work.

12. As far as present case is concerned, undisputed facts indicate that petitioner's husband has provided the services of transportation to the Gram Panchayat against the charges. Needless to say that the facts involved in the present case are totally different than the one involved in the cases cited (*supra*). Hence, these Judgments would not come to the aid of the petitioner, in any manner whatsoever.

13. The provisions of Section 14 which contemplates disqualification will have to be construed strictly. In a case where it is proved that the acts which are prohibited by the said provision are committed on grounds get

attracted against a member of panchayat, the disqualification must follow. Section 14(g) clearly bars member of panchayat for his partners which in the present case husband of the member of the panchayat who have any interest directly or indirectly in any work done by the order of panchayat or in any contract with the panchayat. There is no qualification/rider to this provision that an isolated instance or contract or work, is excluded from its application. Hence the moment it is established that there was work or a contract with panchayat and the member of panchayat or his partner has interest therein, it becomes ground for disqualification to continue with the membership of panchayat. In the instant case as noted hereinabove the admitted facts ex-facie indicate that there was contract between the parties may be one time and for the period of 3 days only, however the same is squarely covered by the rigors of Section 14(g) of the Act.

14. Thus there is no other escape from the conclusion that the petitioner has attracted the disqualification for the reason her husband entering into a contract with panchayat for providing transportation services against payment of charges. In view of these admitted facts, nothing more was required to be considered by the authorities below but to apply to provisions of law and direct disqualification. In these circumstances, no perversity is found in the impugned orders.

15. As a result of the above discussion, petition stands dismissed at threshold.

(R. M. JOSHI, J.)

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