
(2020) 02 BOM CK 0126
In the Bombay High Court
Case No : Writ Petition No. 11477 Of 2018

Abhishek Vinod Patil

APPELLANT

Vs

Divisional Commissioner Nashik Division And Ors

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats And Industrial Townships Act, 1965
— Section 16(1D)
Maharashtra Village Panchayats Act, 1958 — Section 14B, 14B(1), 14B(1)(b)

Citation : (2020) 02 BOM CK 0126

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : Deshmukh Ajinkya, Ashwin V., Shinde A.S., Kothari P.P., Kasliwal Anil H.

Final Decision : Partly Allowed

Judgement

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. The petitioner, elected Member of the Amalner Municipal Council, is aggrieved by the order dated 13.4.2018 passed by the Divisional Commissioner, Nashik by which, Appeal No.6 of 2018, filed by defeated candidate respondent No.3, challenging his disqualification under Section 16(1D) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (â??1965 Actâ?), has been allowed and his disqualification has been set aside.
5. Having considered the strenuous submissions of the learned Advocates for the

respective sides, I find that the undisputed factors are as under:-

(a) The election results to the membership of the Amalner Municipal Council were declared on 28.11.2016.

(b) The limitation for tendering accounts of election expenses by all contesting candidates was a period of 30 days, which expired on 28.12.2016.

(c) On 14.2.2017, the District Collector issued notice to respondent No.3, under Section 16(1D) of the 1965 Act.

(d) The 3rd respondent, a defeated candidate, tendered an explanation to the notice on 23.2.2017 and submitted his accounts of election expenses along with such explanation.

(e) On 27.2.2017, the District Collector passed an order disqualifying 92 candidates, including respondent No.3, under Section 16(1D) of the 1965 Act.

(f) This Court passed an order on 19.9.2017, allowing Writ Petition No.10984 of 2017, filed by the third respondent and by setting aside the order of the District Collector, remanded the matter for a re-hearing.

(g) The District Collector delivered an order on 28.12.2017, concluding that respondent No.3 had incurred the disqualification for a period of three years during which, he would be ineligible for contesting any elections.

(h) Respondent No.3 approached the Additional Divisional Commissioner, who allowed his appeal, by the impugned order dated 13.4.2018, concluding

that he has not incurred any disqualification, since the reason of his real uncle being ill, was a sufficient cause shown.

6. Considering the grounds for challenge raised by the petitioner, who seeks the disqualification of respondent No.3, I have perused the impugned

order dated 13.4.2018. The Additional Divisional Commissioner has expressed his satisfaction as regards the grounds put forth by respondent No.3 in

justification of the delay caused. I find from paragraph No.6 of the impugned order that the Additional Divisional Commissioner has made a passing

reference to the explanation and the documents filed by respondent No.3 and has concluded in a single sentence that the reason cited is sufficient to

condone the delay of about two months and no disqualification is incurred by him.

7. Section 16(1D) of the 1965 Act reads as under:

Section 16 : Disqualifications for becoming a Councillor.

.....

(1-D) 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

(b) has no good reason or justification for such failure, the State Election Commission may, by order published in the Official Gazette, declare him to

be disqualified and such person shall be disqualified for being a Councillor or for contesting an election for being a Councillor for a period of three

years from the date of the order.

8. Section 14B of the Maharashtra Village Panchayats Act, 1958 reads as under:-

14B. Disqualification by State Election Commission.

(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

(b) 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 or 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.

9. The learned Advocate for respondent No.3 strenuously submits that his uncle Ratanlal Pahade is childless and is dependent upon the third

respondent. He was unwell and therefore, respondent No.3 was busy in taking him to various hospitals for treatment. The documents placed before

the Additional Divisional Commissioner are as under:-

(i) Medical prescription dated 6.12.2016, which prescribes certain medicines. Diagnosis papers are not placed on record.

(ii) The pathology test reports dated 12.12.2016. The haemogram, peripheral smear, urine analysis, blood sugar tests, Serum Creatinine test etc. were

found to be normal. These test reports are from a Laboratory in Amalner.

(iii) From 22.12.2016, the uncle of respondent No.3 was said to be admitted in a hospital at Nashik and he was discharged on 26.12.2016. The clinical

summary indicates cough with expectoration, fever and breathlessness.

10. I, therefore, find that respondent No.3 had no excuse to fail in submitting his accounts of election expenses till 21.12.2016. After his uncle was discharged on 26.12.2016 at 13.12 Hrs., he had time upto 28.12.2016. Till he received the notice of the District Collector dated 14.2.2017, he had not tendered his accounts of election expenses, which he eventually did along with his explanation, on 23.2.2017.

11. This Court, in the case of Shaikh Nizar Ibrahim and another Vs. State of Maharashtra and others [2019 (4) Bom. C.R. 55], has settled the law on disqualification for failing in tendering accounts of election expenses by concluding that mere failure is not sufficient to outrightly disqualify a candidate. Under Section 14B(1)(b) of the Maharashtra Village Panchayats Act, this Court has crystallized the law that the Collector must consider the reasons assigned for the delay and if the reasons are found to be justified, he can absolve a candidate from disqualification. Section 14B is identical to Section 16(1D) under the 1965 Act.

12. The Divisional Commissioner has not applied his mind to the documents tendered by respondent No.3 and by making a passing reference by observing that, "....."

".....", he has exonerated respondent No.3. This conclusion clearly indicates that the Divisional

Commissioner did not take the efforts to closely scrutinize the documents tendered by respondent No.3, which are placed before me.

13. In the light of the above, I have no hesitation in concluding that there was no impediment for respondent No.3 to tender his accounts of election expenses from 29.11.2016 till 21.12.2016 and on 27.12.2016 or on the last day 28.12.2016. Beyond this period of limitation, he did not tender his accounts until he received the notice from the District Collector on 14.2.2017, which prompted him to submit his accounts on 23.2.2017. As such, he had not acted till 14.2.2017 and for which he has no explanation to offer.

14. The learned Advocates for the litigating parties submit, to the extent of their knowledge, that this Court has not yet delivered a verdict on the proportionality of the period of disqualification in relation to the period of the delay caused in filing the accounts of election expenses. I have dealt with a similar case in Shaikh Nazir (supra). I find that the Honourable Apex Court has recently delivered a judgment in the matter of Laxmibai Vs.

Collector, Nanded, dated 14.2.2020, reported at 2020 SCCOnline SC 187, in similar set of facts, considering Section 14B of the Village Panchayat

Act. It was recorded in paragraph Nos.10 to 13 as under:-

10. However, the question which arises is that whether delay of 15 days necessarily follows the disqualification for a period of five years.

Learned counsel for the appellant submitted that the order of disqualification was passed by the Collector approximately 3 years after the election and

there were only two dates of hearing for more than two years apart. Therefore, inordinate delay in pronouncing the disqualification order on the part

of the Collector severely prejudices the appellant as the period of disqualification starts from the date of the order. However, the learned counsel for

the respondents relies upon judgment of this Court reported as Union of India & Ors. Vs. A.K.Pandey - (2009) 10 SCC 55 2to contend that the

mandate of Section 14B of the 1959 Act is disqualification and the word 'may' have to be read as 'shall'.

11. We do not find any merit in the argument that Section 14B of the 1959 Act is mandatory. Sub-section (1) of Section 14B of the said Act

empowers the State Election Commission to pass an order of disqualification of a candidate, if the candidate fails to lodge account of election

expenses for lack of good reason or without any justification. Such satisfaction is required to be recorded by the Election Commission. The

disqualification for a period of five years is not necessary consequence of merely not filing account of election expenses. Still further, subsection (2)

empowers the State Election Commission for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any

such disqualification. Since authority is vested with power to reduce the period of disqualification, therefore, makes the provision directory.

12. This Court in A.K. Pandey held that the prohibitive or negative words are ordinarily indicative of mandatory nature of the provision although said

fact alone is not conclusive. This Court held as under:-

15. The principle seems to be fairly well settled that The Court has to examine carefully the purpose of such provision and the consequences that may

follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form

ordinarily has to be read in the form of command. When the word 'shall' is

disqualification in accordance with law preferably within a period of one month from the date of receipt of a copy of this judgment. The period of

disqualification, if any, will be operative from the date of the order passed earlier by the Collector on 9th August, 2018 and any elections held as a

consequence of the order of disqualification will abide the final order to be passed by the Collector.â?? (Emphasis supplied).

16. In paragraph No.44 in Laxmibai (supra), the Honourable Apex Court directed the District Collector to pass an order as to the period of

disqualification, which reads as under:-

â??44. Consequently, the order passed by the Collector on 3 rd November, 2014 and subsequent orders in appeal and in the writ petition are set aside

in part to the extent of prescribing disqualification for a period of five years and the matter is remitted to the Collector to take into consideration the

nature of default, the purport for which the election expenses are sought to be furnished and that the order of disqualification operates from the date of

the order including delay in passing the order of disqualification. The Collector shall pass the order afresh in respect of period of disqualification in

accordance with law preferably within a period of one month from the date of receipt of copy of this judgment. The period of disqualification, if any,

will be operative from the date of the order passed earlier by the Collector on 3 rd November, 2014 and that any elections held as a consequence of

the order of disqualification will abide the final order to be passed by the Collector.â??

17. The learned Advocates in these proceedings submit that this is the second round of litigation upto the High Court and the parties have devoted

about three years and four months in this litigation. Instead of remanding the matter to the District Collector, this Court may decide as to what would

be the commensurate period of disqualification.

18. I am of the view that as respondent No.3 had about 24 days at his disposal before admitting his uncle in the hospital and since he did not tender the

accounts of election expenses even upto 23.2.2017, the delay can be said to be of about two months. As respondent No.3 is a defeated candidate and

there is no issue of he being unseated from an elected position, keeping in view that this act prescribes a maximum of three yearsâ?? disqualification,

the third respondent can be disqualified for a period of one year. The period of

disqualification, which he has already suffered in between 27.2.2017 till 19.9.2017 (6 months and 22 days) and from 28.12.2017 till 13.4.2017 (3 months and 16 days), can be set off against his disqualification for one year, considering paragraph 44 of Laxmibai (supra). He shall, therefore, stands disqualified, effectively for a further period of One month and twenty two days, from today till 20.4.2020.

19. In the light of the above, this petition is partly allowed. The impugned order stands quashed and set aside and respondent No.3 shall stand disqualified under Section 16(1D) for a period of one year, till 20.4.2020.

20. Rule is made partly absolute in the above terms.

21. I deem it appropriate to mention that in a case of disqualification of an elected representative under Section 16(1D), by which, his disqualification is likely to unseat him from his elected position, such a case shall be considered in the light of the facts and circumstances involved therein.