(2006) 02 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 8 of 2005

Angha Ajit Bhatkar APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Bombay Village Panchayats Act, 1933 — Section 8, 91(1)
Bombay Village Panchayats Act, 1958 — Section 129(2)
Maharashtra Land Revenue Code, 1966 — Section 13(3)
Maharashtra Village Panchayats Taxes and Fees Rules, 1960 — Rule 8
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 13(3), 16(1), 16(2), 40(2), 58(1E)

Citation : (2007) 3 BomCR 865 : (2006) 6 MhLj 13

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : C.G. Gavnekar, G.S. Hiranandani and Deepa Savant, for the Appellant; D.A. Patil, Assistant Government Pleader for Respondent Nos. 1 to 5 and Rajan Salvi, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—Heard learned Counsel appearing for the parties.

2. By this petition, the petitioner challenges the judgment and order dated 17th December, 2004 passed by the Additional Commissioner, Konkan Division, holding that the petitioner was disqualified to be a councillor by virtue of Section 16(1)(k) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short the Z.P. Act).

Facts giving rise to the petition are stated below:

3. The petitioner was elected as a member of the Raigad Zilla Parishad. The husband of the petitioner at the relevant time was the owner of two immovable properties bearing House Nos. 320 and 536 situated at village Bagmandle Taluka Shrivardhan District Raigad, falling under the jurisdiction of Raigad Zilla Parishad.

Two bills bearing bill Nos. 514 and 742 dated 10th May, 2002 and 25th May, 2002 respectively were issued to the husband of the petitioner for the property tax for the financial year 2002-2003. The bills were served on the husband of the petitioner on 11th June, 2002 and 20th June, 2002 but were not paid by him. Hence, writ notices demanding payment were also served on the petitioner''s husband on 24th July, 2002 and 30th July, 2002 respectively. The bills were not paid within a period of six months from the date of service of the bills but were paid by the husband of the petitioner on 31st March, 2003. The respondent No. 6 made an application to the Commissioner for declaring that the petitioner had incurred disqualification under Clause (k) of Sub-section (1) of Section 16 of the Z.P. Act. In view of the notification dated 19th May, 1977 issued under Sub-section (3) of Section 13 of the Maharashtra Land Revenue Code, 1966 conferring powers of the Commissioner on the Additional Commissioner, the Commissioner, Raigad Division transferred to the Additional Commissioner the application of the respondent No. 6 for hearing. The Additional Commissioner, who is the respondent No. 2 herein, after hearing the petitioner and the respondent No. 6 by an order dated 27th February, 2004 held that the petitioner had incurred disqualification under Clause (k) of Sub-section (1) of Section 16 of the Z.P. Act.

4. It was not disputed before the respondent No. 2 that village Bagmandle is situated within the limits of Raigad Zilla Parishad. It was also not disputed before the respondent No. 2 that the petitioner and her husband were living together and formed a group or unit the members of which by custom were joint in residence. It was also not disputed that though the bills were served in June, 2002 they were paid only on 31st March, 2003. In view of this admitted position, the respondent No. 2 held that the bills were not paid within a period of six months from the date of service of the bills and the petitioner had incurred disqualification under Clause (k) of Sub-section (1) of Section 16 read with Section 58(1E) of the Z.P. Act. That order is impugned in this petition.

5. Learned Counsel for the petitioner urged two contentions before me. He firstly submitted that the inquiry as to whether a member of a panchayat samiti had incurred a disqualification was required to be made by the Commissioner under Sub-section (3) of Section 62 of the Z.P. Act. The respondent No. 2 who was the Additional Commissioner had no jurisdiction to make an inquiry and to declare that the petitioner had incurred a disqualification. He submitted that under Sub-section (3) of Section 13 of the Maharashtra Land Revenue Code only the powers conferred on the Commissioner under the Land Revenue Code can be delegated to the Additional Commissioner by the government by notification in the official gazettee. The power to hold inquiry u/s 62 being a judicial power cannot be delegated to the Additional Commissioner by a government notification. He further submitted that the Commissioner is a persona designata and he is required to decide the question of disqualification in a judicial manner. Enquiry before the Commissioner is judicial or at least quasi-judicial and the judicial powers conferred on the Commissioner cannot be delegated to the Additional

Commissioner by issuance of a notification under Sub-section (3) of Section 13 of the Z.P. Act (sic).

6. Learned Counsel secondly submitted that the bill Nos. 514 and 742 issued by the village panchayat were not legal and valid and were contrary to Rule 8 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960 (for short the Taxation Rules). He submitted that each of the two bills was for taxes for whole of the financial year 2002-2003 Under Rule 8 of the Taxation Rules, four separate bills for four quarters of a year are required to be issued and one composite bill cannot be issued by a village panchayat. He further submitted that in any event on 1lth June, 2002 and 20th June, 2002 when the bills were served, the property tax was due only for the first quarter of the financial year 2002-2003 and tax for the second, third and fourth quarters of the financial year 2002-2003 was not due. The bills did not make a separate demand of the tax only for the first quarter and each of the bills made a composite demand of tax for the full financial year 2002-2003. The husband of the petitioner was not liable to pay tax for the house properties for the full year in June, 2002. The demand of tax for the full financial year was not valid as the petitioner''s husband was not required to pay tax which was not due. He further submitted that the bills did not make any provision for payment of part of the amount but what was noted below each of the bills was that the entire bill must to be paid within 15 days. Therefore, even if the petitioner''s husband wanted to pay tax for the first quarter which was due he could not have paid the tax for the first quarter as the village panchayat would not have accepted such part payment. He submitted that since the bills were not due, the petitioner''s husband cannot be said to have defaulted in payment of the bills for a period of six months or more. Hence, the petitioner cannot be said to have incurred disqualification under Clause (k) of Sub-section (1) of Section 16 of the Z.P. Act.

7. It would be useful to reproduce here Clause (k) of Sub-section (1) of Section 16 of the Z.P. Act which reads as under:

16 (1). Subject to the provisions of Sub-section (2) a person shall be disqualified for being chosen as, and for being a Councillor and

[clauses (a) to (j): Not reproduced as not relevant.]

(k) If he has failed to pay any tax or fee due to any Panchayat in the District or to the Zilla Parishad within six months from the date on which the amount of such tax or fee is demanded, and a bill for that purpose is duly served on him.

(Explanation. - For the purpose of Clause (k) of this sub-section failure to pay any tax or fee due to any Panchayat in the District or to the Zilla Parishad by a member of an undivided Hindu family, or by a person belonging to a group or unit, the members of which are by custom joint in estate or residence shall be deemed to disqualify all the members of such undivided Hindu family, or as the case may be, all the members of such group or unit).

Clauses (1) and (m) are not reproduced being not relevant.

8. A person is disqualified for being chosen as and for being a Councillor, if he has failed to pay any tax or fee due to any Panchayat in the district or to the Zilla Parishad within six months from the date on which the amount of tax or fee is demanded and a bill for that purpose is duly served on him. The conditions for incurring disqualification under Clause (k) of Sub-section (1) are:

(i) A tax or fee payable to a Panchayat or to a Zilla Parishad must be due;

(ii) such tax or fee must have been demanded from the person;

(iii) the bill for the tax or fee due must have been duly served on him;

(iv) the person must have failed to pay tax or fee due for a period of six months from the date on which the amount of such tax or fee is demanded.

9. It is thus clear that a person would not be disqualified for non-payment of tax or fee to the Zilla Parishad or any panchayat in the district unless the tax or fee was due from him to the Zilla Parishad or the Panchayat and was not paid for 6 months. The issue therefore that arises for consideration is what is the date on which the property tax, which allegedly is not paid, had become due to be paid by the husband of the petitioner. Rule 8 of Maharashtra Village Panchayat Tax and Fees Rules, 1960 lays down when the tax on buildings and lands becomes due. Rule 8 reads as under:

8. Tax effective from what date : The tax shall be leviable for the year beginning on 1st April and ending on 31st March and shall not come into force except on the following dates, viz. 1st April, 1st July, 1st October or 1st January, in any year and if it comes into force on any day other than the 1st April it shall be leviable by the quarter till the 1st April next following.

10. A property tax is levied from year to year. The taxation year or the financial year commences from 1st April and ends on 31st March of next calendar year. Though tax is leviable for the whole year under Rule 8 the tax does not come into force except on the dates mentioned therein i.e. 1st April, 1st July, 1st October and 1st January of the financial year. In other words, tax is payable in four quarterly installments and each of the installment becomes due on the first day of each of the quarters of that financial year i.e. on 1st April, 1st July, 1st October, and 1st January. Ordinarily, Panchayat is required to issue four separate bills and demand the property tax in four quarterly installments. It may be possible to issue a single bill provided that the bill is split up into four parts and the bill clearly specifies the tax payable for each of the quarter and the due date for the payment of the tax for that quarter. Copies of the two bills for the alleged non-payment of which the petitioner has been disqualified were produced for my inspection. Each of the bill is a composite bill showing the property tax due for the whole of the financial year 2002-2003. The bill is not bifurcated into four parts one for each quarter and the bill does not specify that only 1/4th of the amount of the bill was due for each quarter commencing on 1st April, 1st June,

1st September and 1st January. The note below each of the bills states that the entire amount of tax or fees stated in the bill was due to the panchayat and should be paid within 15 days. It further states that if the amount was not paid within a period of 15 days, a writ of demand would be served on the person u/s 129(2) of the Bombay Village Panchayats Act, 1958 (for short the Village Panchayats Act). The bills served on the petitioner''s husband were therefore not in accordance with Rule 8 of the Taxation Rules.

11. Learned Counsel for the petitioner submitted that the petitioner''s husband could not have paid on 1lth June, 2002 and 20th June, 2002 the property tax only for the first quarter as the bills demanded the tax for the whole year and there was no provision for a part payment. Each of the bill was of tax for the whole of the financial year 2002-2003 and not for the first quarter. Only the tax for the first quarter commencing from 1st April, 2002 had fallen due on the date of the service of the bills. The tax for the second quarter would have fallen due on 1st July, 2002. Tax for the third and fourth quarter would have fallen due on 1st October, 2002 and 1st January, 2003 respectively. Therefore, the bills were illegal and a proper bill was not served on the petitioner''s husband.

12. Learned Counsel for the respondents however, submitted that the petitioner''s husband ought to have paid the tax at least of the admitted amount namely tax for the first quarter of the financial year 2002-2003. Tax for the first quarter had fallen due on 1st April, 2002 and two bills for the tax due were served on 11th June, 2002 and 20th June, 2002 respectively. The petitioner''s husband therefore ought to have paid the tax at least for the first quarter within a period of six months from the date of service of the bills i.e. by 1lth December, 2002 and 20th December, 2002. The tax was not paid on that day but was paid on 31st March, 2003. The petitioner''s husband was in arrears of tax as per the two bills for the period of six months. The petitioner was therefore disqualified under Clause (k) of Sub-section (1) of Section 16 of the Z.P. Act. In support learned Counsel relied upon the decision of a Division Bench of this Court rendered in Ramchand Hirachand Kothadia v. The District Deputy Collector, Baramati Division, reported in 1956 Bom. L.R. 940.

13. In Ramchand Hirachand Kothadia (supra) the Division Bench was required to consider Section 8(i) and Section 91(1) of the Bombay Village Panchayat Act, 1933 (Bombay Act VI of 1933) which was then in force. Section 8 (i) of the Bombay Village Panchayat Act, 1933 as in force at that time provided that:

No person may be a member of a panchayat or continue as such who (i) fails to pay any tax or fee due to the panchayat within three months from the date on or before which the amount of such tax or fee is required to be paid in the bill presented to the person under Sub-section (1) of Section 91....

In that case the nomination paper filed by the petitioner who had not paid the tax as per the bill presented to him was accepted by the Returning Officer. However, on appeal the Prant Officer came to the conclusion that the petitioner was not qualified to be a member of the village panchayat as he had not paid the bill. That decision was impugned before the High Court. There was no dispute in that case that the petitioner therein had not paid the amount of the bill. However, a contention was raised on his behalf that an anamolous position would arise every time a candidate for election has not paid the bill but challenges its validity. The Returning Officer would be required to sit down and adjudicate upon the validity of that tax. That being not the function of the Returning Officer it was held that it was open to the tax payer to pay tax under protest and litigate his rights. In that case, there was no provision like what is contained in Rule 8 of the Taxation Rules as applicable in the present case. In that case it was held that the Returning Officer was not required to hold a full fledged inquiry as to the legality or validity of the bills and it was open to the candidate to pay the tax under protest. In the present case, it is not a preliminary inquiry like the one required to be made by the Returning Officer while accepting or rejecting a nomination paper. A full fledged inquiry is contemplated to be conducted by the Commissioner under Sub-section (3) of Section 62 of the Act in respect of a vacation of office on account of disqualification of a member of Panchayat Samiti under Clause 3 of Section 62. Similar enquiry is contemplated in respect of vacation of office of a councillor under Sub-section (2) of Section 40 of the Z.P. Act. In such an inquiry, a final and conclusive finding is required to be recorded on all the four issues which have been referred to above namely:

(i) Whether a tax was due;

(ii) Whether such tax had been demanded;

(iii) Whether bill for that purpose had been duly served on him; and

(iv) Whether he had failed to pay tax within a period of six months from the date on which the amount of such tax or fee is demanded.

Therefore the facts of the case before the Division Bench and the applicable law in Ramchand Hirachand Kothadia are materially different from the facts of the present case. Of course, where the bill has been lawfully served on a member the mere fact that the member disputes the correctness of the bill and challenges it may not be a ground for holding that the tax is not due. However, where ex facie the bill is contrary to the provisions of law like Rule 8 of the Taxation Rules and no inquiry is needed to show the incorrectness of the bill, it cannot be said that the bill of the amount due has been lawfully served on the member. Any other interpretation would defeat Rule 8 of the Taxation Rules by which the Village Panchayat cannot demand tax for the whole of the year in advance before it falls due. It must also be borne in mind that Section 16(1) seeks to take away the right of a lawfully elected member to continue as a member and take part in the local administration of a democratically elected local body. Provision of disqualification must, therefore, be strictly construed. The benefit of doubt, if any must go to the elected representative of the people.

14. In my view, in the present case, the two bills were not lawfully due and

therefore the demand of the tax for the whole year was illegal. The petitioner''s husband therefore cannot be said to have defaulted by non-payment of the property tax under the two bills referred to above. The petitioner therefore had not incurred a disqualification under Clause (k) of Sub-section (1) of Section 16 of the Z.P. Act.

15. In view of this finding, it is not necessary to consider the first submissions of the learned Counsel for the petitioner that the Additional Commissioner was not competent to hear and pass an order of disqualification of the petitioner under Sub-section (3) of Section 62 of the Z.P. Act.

16. For these reasons, the petition must succeed. The petition is accordingly allowed. Rule is made absolute in terms of prayer Clause (a).

