

(2014) 12 BOM CK 0245

In the Bombay High Court

Case No : W.P. Nos. 10340, 10341, 10347 to 10349 and 10376 of 2014

Anjanabai Premsingh Naik

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Bombay Village Panchayats Act, 1933 — Section 14 14(1)

Citation : (2015) 6 ABR 16 : (2015) 5 ALLMR 170 : (2015) 4 MhLj 269

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Vijay Y. Patil, Advocate for the Appellant; G.K. Naik-Thigale, Additional Government Pleader and D.B. Bhange and S.A. Dhumal, A.G.Ps., Advocate for the Respondent;

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.

1. Learned Advocate for the petitioners has sought leave to amend the petitions for raising certain more grounds. A copy of the proposed amendment is placed on record. Heard the learned Advocates, I have considered the proposed amendment as well after letting the learned Advocate for the petitioner advance submissions even on the amendment.

2. Issue involved in all these petitions is the same, in respect of the interpretation of section 14(1)(j-5) of the Maharashtra Village Panchayat Act and the proviso thereunder. It is for this reason that all these matters have been heard together and are being decided by this common order.

3. Contention of the petitioners is that as per the proviso to sub-section (j-5), a person has to produce a certificate of having constructed a toilet in his own house and having regularly used such toilet, within a period of 90 days from the date of election. Further contention is that on the date on which the District Collector; passed the order disqualifying the petitioners as members of the

Group Grampanchayat Khadki, each of them had constructed a toilet and was utilizing the said facility. In short, on 17-1-2014 when the District Collector delivered the judgment, the petitioners had their toilet blocks.

4. The petitioners contend that though the District Collector has observed in the first paragraph on the second page of the impugned order, dated 17-1-2014, that the petitioners made a statement that they did not have a toilet and as such had commenced construction of a new toilet during the pendency of the said proceedings, is an incorrect observation. Such a statement was never made by the petitioners before the Collector and this specific challenge was not even looked into by the Divisional Commissioner in their Appeals.

5. The petitioners further state that it is the responsibility of the Grampanchayat to have a common public toilet and the Gramapanchat has not discharged its obligation under the law. It is further stated that this ground was raised specifically before the Divisional Commissioner and the same has not been considered.

6. The petitioner, therefore, prayed for rehearing of the matter since the issue whether the petitioners had made a statement before the Collector that they did not have a toilet during the pendency of the proceedings before the Collector and that the petitioners constructed new toilet blocks during the hearing of the said proceedings, needs to be gone into.

7. The learned A.G.P. has vehemently opposed rehearing of the matter. He submits that the conclusions drawn by the Collector and the Divisional Commissioner have a presumptive value since they are based on the statements made by the petitioners before the Collector. The petitioners are reselling from the said statement only to save their position as elected members of the Grampanchyat. Such statements are aimed at self-serving purposes and need to be disbelieved. He, therefore, submits that no rehearing of the matter is required, much less necessary.

8. There appears to be an impression in the minds of the petitioners that the proviso to sub-section (j-5) gives a breathing time to the petitioners to tender a certificate. I wish to deal with the said aspect in order to interpret (the import and meaning of) section 14(1) as well as the proviso to sub-section (j-5) of section 14(1), of the MVP Act, in this judgment.

9. Section 14 of the Maharashtra Village Panchayats Act, pertains to disqualification. Sub-section (1) indicates that "No person shall be a member of a Panchayat or continue as such". This part of sub-section (1) is to be read conjointly with sub-section (j-5) which reads as "fails to submit a certificate of the concerned panchayat, along with the resolution of Gram Sabha certifying that,--

"(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet:"

10. This would clearly indicate that a person shall not be a member of the Panchayat and if he is a member, then he shall not continue to be as such, if he fails to produce a certificate from the Grampanchayat as regards having and using a toilet, along with the resolution of Gram Sabha.

11. The proviso below sub-section (j-5) reads as under:--

"Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate, within ninety days from the date of commencement of the Bombay Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (second Amendment) Act; or]"

12. Going by the phraseology used in the said proviso, such disqualification is prohibited if the member of the Grampanchayat submits a certificate, as required under sub-section (j-5)(i) within 90 days from the date of commencement of the Bombay Village Panchayats Act and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010.

13. In my view, there is no ambiguity in the said proviso. It is self-explanatory. Member of the panchayat shall not be disqualified if he produces such a certificate within 90 days from the date of commencement of the Act of 2010. Therefore, in my view, this proviso is in connection with those members of the Grampanchayat who have already been elected prior to the introduction of sub-section 0-5) by the said Act dated 23-12-2010.

14. This is, therefore, a provision which protects only the existing members of the Grampanchayat from being disqualified for a period of 90 days, so as to enable them to submit such a certificate mandated by the introduction of sub-section (j-5). It is given to understand that sub-section (j-5) was further given an extension of one year so as to enable the existing elected members of the Grampanchayat to submit such certificates. As such in my view, the proviso to sub-section (j-5) will not apply to those members of the Grampanchayat who have been elected after the introduction of sub-section (j-5).

15. Admittedly, all these petitioners have been elected as members of the Grampanchayat in the April 2013. There is no doubt that sub-section (j-5) was applicable. Section 14(1), therefore, prohibit a person from being a member of the Panchayat, if he fails to submit the certificate of the concerned Panchayat, along with the resolution of the Gram Sabha, certifying that he resides in a house having his own toilet and he uses the said facility or he uses a public toilet or he resides in a house not owned by him but which has a toilet.

16. A similar issue was dealt with by this Court in the case of Vijay Ramchandra Raut Vs. Divisional Commissioner, , wherein this Court has held in paragraph Nos. 4, 5, 6 and 7 as under:--

"4. Shri Gawande, the learned counsel appearing for the petitioners has urged that the petitioners were elected on 25-4-2010, the provision of section 14(1) (j-5) came into force w.e.f. 10-1-2011, which will operate prospectively and therefore, the provision will not apply to the petitioners who are elected prior to that date. He has further invited my attention to a copy of the resolution said to have been passed by the Gram Panchayat on 11-5-2011 in respect of existence and user of toilets by the petitioners. He submits that there were certificates produced on record also indicating the existence and user of toilets by the petitioners prior to the cut-off date 9-1-2012. He, therefore, submits that the Commissioner has committed an error in holding that the petitioners are disqualified under the said clause.

5. Clause (j-5) of sub-section (1) of section 14 of the BVP Act, reads as under;

"(j-5) fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha certifying that,--

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or (ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet.

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate, within ninety days from the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010."

The present petition pertains to sub-clause (i) above under which the petitioners are disqualified.

6. The provision was brought into force on 10-1-2011 and the period of 90 days prescribed under the proviso was extended by further period of one year i.e., upto 9-1-2012, are not the facts in dispute. Though the petitioners were elected on 25-4-2010, they were working as the Members of the Gram Panchayat or as Sarpanch and Upa-Sarpanch, when the provision was brought into force on 10-1-2011. In view of this, it cannot be said that the provision is not applicable to them. The question of retrospective operation of the aforesaid provision does not arise. The provision operates prospectively and applies to all such members, who continue to hold the post on the date when the Act came into force on 10-1-2011. Hence, the contention is rejected.

7. So far as the compliance of condition under sub-clause (i) of clause (j-5) of sub-section (1) of section 14 of the BVP Act is concerned, the petitioners were required to produce a certificate of the concerned Gram Panchayat along with the Resolution of the Gram Sabha, certifying that they reside in a house owned by them, having toilet in such houses which are being used regularly. The resolution dated 11-5-2011 said to have been passed by Gram Sabha, brought to my notice, was not referred to in the reply filed in response to the show cause notice

of disqualification. There is a dispute raised about the existence and passing of such resolution and also the certificates produced on record. There is a finding recorded by the Commissioner, that the resolution dated 10-5-2013 and the Certificates issued on 11-5-2013 were beyond cut-off date of 9-1-2012. Thus, there was no compliance of sub-clause (i) of clause (j-5) of sub-section (1) of section 14 of the BVP Act."

17. In the light of the above legal position, in my view, such a certificate and resolution needs to be filed before any person is elected as a member of the Panchayat. I have arrived at this conclusion, since the phraseology in section 14(1) indicates that "no person shall be a member of the Panchayat if he fails to submit such a certificate". A person is said to be member of the Panchayat on his election as such and after the appropriate authority declares the result of the election and issues a certificate to that effect. Hence, even on the first day of being a member of the Panchayat, such elected member must be equipped with a certificate and resolution as expected under sub-section (j-5). None of the parties before this Court have placed on record any judicial pronouncement, which could indicate that a different view has been taken as the one which I have taken in this order and by placing reliance upon the Vijay Ramchandra Raut judgment (*supra*).

18. The petitioners have raised other contentions as recorded here-in-above. The salient contention appears to be that several identical orders have been passed by the Collector in every matter against a Grampanchayat member under section 14(1) sub-section (j-5) of the MVP Act. The petitioners have placed before this Court several such identical orders passed by the Collector and have also pointed out that in many other cases, for example Writ Petition No. 10372 of 2014 filed by Subhash Trimbak Wadhe, an identical order appears to have been passed by the Collector. The said petition has been decided by this Court on 21-11-2014.

19. The grievance, therefore, is that "they did not have a toilet and that a toilet is under construction", is a statement which they had never made before the Collector. The learned A.G.P. submits that in several villages, due to lack of awareness and the aspect of hygiene, most of the villagers do not have their own toilets. Members of the villages contest elections of the Grampanchayat without having toilets. It is only after their election that it is brought to their notice that sub-section (j-5) under section 14(1) mandates having a toilet and use thereof. Thereafter, they start their constructions. He, therefore, justifies the conclusions drawn by the Collector on the ground that most of the villagers do not have their own toilets in their own houses.

20. The submissions of the learned A.G.P. and the limited grievance of the petitioners need to be gone into. It would be a miscarriage of justice if in fact any of the petitioners indeed had their own toilets in their own houses and they were utilizing this facility prior to the elections. Generalizing the situation that each one of them did not have a toilet, would not result in dispensing justice.

21. It is in these circumstances, that I am inclined to remand these petitions to the Divisional Commissioner, Nashik Division, Nashik only for a limited purpose.

22. These petitions are therefore, partly allowed and the judgment of the Divisional Commissioner, Nashik Division, Nashik impugned in these petitions is set aside only for a limited purpose as follows:--

a) The respective appeals of the petitioners are relegated to the Divisional Commissioner, only for a limited purpose mentioned in clause (b) below.

b) The learned Divisional Commissioner, Nashik Division, Nashik shall only enquire into the aspect as to whether these petitioners had their own toilets in their houses on the date of election and whether the Gram Sevak did not issue the certificate and the resolution within time.

c) In doing so, the said authority is at liberty to record the statement of these petitioners as well as the statement of the Gram Sevak of the concerned village.

d) He may also call for record and proceedings from the concerned Collector in relation to the Grampanchayat proceedings in relation to these petitioners so as to come to a proper conclusion.

e) The orders passed by the Collector have not been set aside by this Court and the petitioners have not been reinstated as members of the Grampanchayat.

f) By considering the above aspects, the Divisional Commissioner, Nashik shall arrive at an independent finding and shall accordingly decide the Grampanchayat appeals filed by these petitioners, keeping in view the ratio laid down in the Vijay Ramchandra Raut judgment (*supra*) and the view of this Court as summarised in paragraph 18 hereinabove.

23. An apprehension is expressed by the learned A.G.P. that the petitioners would now create documents and also obtain back dated receipts from traders or shopkeepers for proving that they had purchased the material for construction of toilet before the proceedings were initiated or during the pendency of the proceedings before the Collector. As such, the Divisional Commissioner shall decide the appeals on the basis of the record and proceedings from the office of the District Collector's office, as expeditiously as possible and preferably on or before 31-03-2015. The litigating parties shall appear before the Divisional Commissioner, Nasik on 15-12-2014 at 3,00 p.m. and separate notices of hearing need not be issued by the said authority.