
(2013) 08 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 2133 of 2013

Dr. Vivek

APPELLANT

Vs

Akhtarkha Ganikha Pathan and Others

RESPONDENT

Date of Decision : 28-08-2013

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14, 14(1)(j3), 16, 16(1), 16(2)

Citation : (2013) 6 ALLMR 172 : (2013) 6 MhLj 233

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.M. Ghare, for the Appellant; R.S. Sirpurkar, Advocate for Respondent Nos. 1 to 7 and Shri A.M. Deshpande, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties. The challenge in this petition is to the order dated 6-4-2013 passed by the respondent No. 8-Additional Collector, Washim, on the applications filed by the respondent Nos. 1 to 7 on 19-3-2013 for calling of the detailed inspection report of the Gram Sevak of Gram Panchayat Malegaon and permitting to cross-examine the said Gram Sevak.

2. In the proceedings of Application No. 25 of 2012 filed u/s 14(1)(j-3) of the Bombay Village Panchayats Act, 1958 seeking disqualification of the petitioner as Sarpanch, Gram Panchayat on the ground that he has encroached upon the Government land or public property, the application for calling of the report of the Gram Sevak was filed. The said application was allowed and the report was submitted on 19-3-2013 by the Village Development Officer, stating that no encroachment was found on the Government land or public property. Immediately thereafter, separate applications were made on 19-3-2013 for making further enquiry into the matter and for permission to cross-examine the Village Development Officer, who submitted his report. The Additional Collector, by his impugned order, has allowed these applications. Being aggrieved by the

order passed by the Additional Collector, the petitioner is before this Court.

3. Obviously, the impugned order is of interlocutory nature. Shri Ghare, the learned counsel appearing for the petitioner, has relied upon the decision of this Court in the case of *Tulsabai, Maroti Shelke v. Additional Commissioner*, reported in 2003-EQ(BOM)-0-1276, for the proposition that u/s 16 of the Bombay Village Panchayats Act, 1958, the Collector has no power to pass an order of disqualification. According to him, the Collector is empowered only to decide the question as to the occurrence of vacancy upon a person being disqualified from the position on the grounds specified under clauses (a) and (b) of sub-section (1) of Section 16 of the said Act. Further, according to him, there has to be an order of disqualification passed by some competent authority, essentially by the Gram Panchayat, wherein the petitioner is holding the post of Sarpanch. He further submits that there is total absence of pleadings in the application u/s 14(1)(j-3) of the said Act filed before the Collector, viz. as to when, by whom, and how the alleged encroachment has taken place. He further submits that the order impugned is not supported by any reason and hence the same is liable to be set aside.

4. In fact, the scope of this writ petition is restricted to the challenge to the order dated 6-4-2013 passed by the Additional Collector allowing the applications for making further enquiry into the matter in respect of the encroachment alleged in the applications and permitting to cross-examine the Village Development Officer, who submitted his report on 19-3-2013. It is the only relief claimed in the petition in prayer clause (i). There is no other relief claimed in the petition. As stated earlier, the order is purely interlocutory in nature and it is a step in the enquiry, as contemplated by Section 16(2) of the said Act to find out whether any encroachment is made so as to incur a disqualification alleged. It is open for the Collector, upon receipt of the material before him, to find out as to whether such material is relevant for the purposes of deciding the question u/s 16(2) of the said Act. Obviously, the petitioner shall have an opportunity to contest, if the report is against him. The order impugned, though not supported by any reason, does not call for any interference.

5. In spite of the fact that there is no relief of setting aside of the proceedings instituted before the Collector u/s 14(1)(j-3) of the said Act for want of jurisdiction, is claimed in this petition, Shri Ghare, the learned counsel for the petitioner, insisted that the judgment in *Tulsabai's* case, cited supra, be dealt with to consider the question regarding jurisdiction of the Collector to enquire into the question of such disqualification. After going through the said judgment, it is apparent that the question involved was regarding disqualification, as contemplated under clause (a-1) of sub-section (1) of Section 14 of the said Act, which is reproduced below:

14. Disqualifications:-No person shall be a member of a Panchayat continue as such, who-

(a-1) has been disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the Maharashtra State:

Provided that, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.

Perusal of the aforesaid provision clearly indicates that the order of disqualification, as contemplated therein, is required to be passed by the authority competent to pass such order of disqualification under any such law for the time being in force. Hence, there cannot be any dispute with the proposition of law laid down in Tulsabai's case that unless there is an order of disqualification passed by the competent authority under any law for the time being in force, the Collector does not get jurisdiction to declare the vacancy, as contemplated under sub-section (2) of Section 16 of the said Act.

6. In the present case, the disqualification alleged is under clause (j-3) of sub-section (1) of Section 14 of the said, which is reproduced below:

14. Disqualification:-(1) No person shall be a member of a Panchayat continue as such, who-

...

(j-3) has encroached upon the Government land or public property; or

...

Section 16(1) and (2) of the said Act is also relevant and is reproduced below:

16. Disability from continuing as member:-(1) If any member of a Panchayat

(a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) If any question whether a vacancy has occurred under this Section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under subsection (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final.

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

Obviously, there is no authority prescribed to make an enquiry into the disqualification under the aforesaid clause. But it is only the Collector exercising the power u/s 16(2) of the said Act to decide the question of occurrence of vacancy, gets the jurisdiction to decide the question as to whether the petitioner is disqualified under clause (j-3) of sub-section (1) of Section 14 of the said Act. Strictly speaking, it depends upon the nature of disqualification alleged, as to whether the Collector has such jurisdiction. In the present case, it is only the Collector, who can pass an order of disqualification under clause (j-3) of sub-section (1) of Section 14 of the said Act. Hence, the decision in Tulsabai's case is clearly distinguishable. In view of this, it cannot be said that the proceedings before the Collector for disqualification of the petitioner are in any way without jurisdiction.

7. In the result, there is no substance in the petition. The petition is dismissed. Since the petition is frivolous, the costs of Rs. 5,000/- are imposed upon the petitioner and it be paid to the respondent within a period of fifteen days from today. At this stage, Shri Ghare, the learned counsel for the petitioner, seeks continuation of the interim order granted, for a further period of six weeks. I do not find any reason to continue such interim order. The request is rejected.