
(2019) 06 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 10471 Of 2018

Sajjad Ibrahim Mukadam

APPELLANT

Vs

Divisional Commissioner And Ors

RESPONDENT

Date of Decision : 03-06-2019

Acts Referred:

Maharashtra Village Panchayats Act, 1959 — Section 14B
Constitution of India, 1950 — Article 226, 227

Citation : (2019) 06 BOM CK 0005

Hon'ble Judges : S. S. Shinde J

Bench : Single Bench

Advocate : B.V. Bukhari, F.T. Bukhari, A. B. Kadam

Final Decision : Disposed Off

Judgement

1. Rule. Rule made returnable with the consent of counsel appearing for the parties and petition is being heard finally.
2. This writ petition under Article 226 and 227 of the Constitution of India is filed thereby taking an exception to the impugned order dated 29th March 2018 passed by the Respondent No.1- Divisional Commissioner, Konkan Division, Mumbai and also order dated 9th June 2017 passed by the Respondent No.2- The Collector, Ratnagiri.
3. It is the case of the petitioner that, General Election of Grampanchayat Mhapral, Tal. Mandangad, Dist. Ratnagiri were held on 23rd April 2015 and petitioner was elected as a member. The Tahsildar, Mandangad by way of letter dated 28th June 2016 called upon the petitioner to furnish election expenses. The petitioner submitted election expenses by way of filing an affidavit on 21st July 2016. The petitioner received the show cause notice dated 7th December 2016 from the District Collector mentioning therein that the petitioner has furnished information in respect of election expenses belatedly and there is inordinate delay in submitting such election expenses. The petitioner submitted

his reply on 15th December 2016. By the impugned order dated 9th June 2017 the Collector disqualified the petitioner from continuing as a member of Mahapral Grampanchayat and also disqualified to contest election for member of the Grampanchayat for period of 5 years from the date of said order.

4. Being aggrieved by the said order passed by the Collector, the petitioner filed Appeal No. 102 of 2017 on 26th July 2017. The said appeal was dismissed by the Divisional Commissioner, Konkan Division thereby confirming the order dated 9th June 2017 passed by the Collector. Hence this Writ Petition.

5. The learned counsel appearing for the petitioner submits that the respondents ought to have exercised discretion conferred upon the concerned Authorities under Section 14(B) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as "the said Act"). It is further submitted that, while passing the impugned order by respondent no.2 the principles of natural justice were not followed. The petitioner explained the delay in filing the election expenses. However, the respondent no.2 failed to exercise discretion under Section 14(B) of the said Act. The reply filed by the petitioner was not properly considered by the respondent no.2 and other panchayat members who did not submit information in respect of election expenses were not disqualified, however petitioner has been disqualified to be continued as a member of the Grampanchayat.

6. It is submitted that the impugned order passed by respondent no.2 is common order without affording an opportunity of personal hearing to each Panchayat members, thereby disqualifying 265 panchayat members of various Grampanchayats. Respondent no.2 ought to have given personal hearing to the petitioner and separate order should have been passed in each case. Therefore, the learned counsel appearing for the petitioner in support of his contention that respondent no.2 ought to have exercised discretion available to him under Section 14(B) of the said Act, and should have judiciously acted while passing the impugned order, placed reliance upon ratio laid down in following cases :-

1] Shakti Balkrishna Mhatre Vs. Returning Officer & Ors. reported in 2015 (3) Mh. L.J. 275. (M.S. Sonak, J.)

2] Tamjodevi Madarsha Bhandari Vs. Tahsildar, South Solapur & Ors. reported in 2018 SCC Online Bom 936. (R. D. Dhanuka, J.)

3] Sahebrao Dashrathrao Patole Vs. State of Maharashtra & Ors. reported in 2010 (5) Mh. L.J. 462. (B. P. Dharmadhikari, J.)

4] Savitribai Shinde Vs. Additional Divisional Commissioner & Ors. - Writ Petition No.197 of 2018 (Bombay High Court Aurangabad Bench) (Ravindra V. Ghuge, J.).

7. On the other hand, learned AGP appearing for respondent-state invites attention of this Court to the averments in the affidavit-in-reply filed on behalf of the Tahsildar, Mandangad and submits that the petitioner submitted account of election expenses after inordinate delay of 424 days. The petitioner was

supposed to submit account of an election expenses within 30 days from the date of declaration of result of election of Panchayat. The contentions of the petitioner that he did not know how to submit the account of election expenses within 30 days, can not be countenanced as the petitioner was twice elected as a Grampanchayat member, and therefore learned AGP prays that petition may be rejected.

8. Heard the learned counsel appearing for the petitioner and the learned AGP appearing for respondent-state. Perused the pleadings and grounds taken in the petition and annexures thereto, and annexures filed by respondents. Upon perusal of the impugned order passed by the respondent no.2, it appears that the respondent no.2 by the impugned order disqualified as many as 265 Grampanchayat members and held that those Grampanchayat members will not be entitled to contest the panchayat election for five years from the date of passing of the said order.

9. Upon perusal of the pleadings in the petition, it appears that, the petitioner in his reply to the show cause notice issued by the Tahsildar, Mandangad stated that, he could not submit account of election expenses within 30 days from the declaration of election, since his father was seriously ill as he was suffering from Parkinson disease since long and petitioner was taking his care. The father of the petitioner was needed proper care of health. The petitioner being elder son in his family, he was required to attend his father on every day. The mother of the petitioner is also having health issues, and therefore the mother was also needed medical treatment. The petitioner has placed on record copies of medical reports of his father and mother showing their ailment during the period 2012 to 2016. It is also stated by the petitioner that the petitioner was under tremendous pressure and as such lost sight of filing such election expenses within time. Therefore, prima facie it appears that the petitioner had faced some serious problems as indicated above, and therefore he could not submit the statement of account of election expenses within stipulated period of 30 days. Therefore, the respondent no.2 ought to have considered the case of the petitioner keeping in view reply filed by him to the show cause notice, and after giving personal hearing to the petitioner, should have passed the appropriate orders by exercising his discretion. The judgments referred to hereinabove, of which implicit reliance has been placed by the petitioner, are squarely applicable to the present case.

10. Firstly, there is a discretion to the District Collector/ Additional Collector under Section 14(B) of the Maharashtra Village Panchayats Act, 1959 to consider the explanation offered by the member of the panchayat and in appropriate cases exercise such discretion so as to extend the time for submitting the account of election expenses.

Secondly, the concerned Authorities was supposed to follow the principles of natural justice including giving opportunity of personal hearing to such panchayat member who have filed account of election expenses belatedly.

11. In the light of discussion hereinabove in forgoing paragraphs, this Court is of the opinion that ends of justice would be met in case the petition is allowed in terms of prayer clause (a) of the petition, and the petitioner is allowed to file further affidavit for explaining the delay caused in filing the account of election expenses before the respondent no.2, and respondent no.2 is directed to offer an opportunity of personal hearing to the petitioner and then pass the appropriate orders. Hence, following order:-

(A) The Writ Petition is allowed in terms of prayer clause (a).

(B) The impugned judgment and order to the extent and confined to the petitioner, stands quashed and set aside.

(C) The proceedings to the extent of petitioner are restored to the file of respondent no.2. The petitioner to appear before the respondent no.2 with the affidavit giving detailed explanation for delay in the filing account of election expenses in the office of the respondent no.2, on 17th June 2019.

(D) In case it is possible for the respondent no.2 to hear the petitioner and pass the orders on same day. The respondent no.2 will be at liberty to pass the appropriate orders on same day or fix the future date for hearing to the petitioner. The entire exercises to be done, as expeditiously as possible, however, within 2 months from the first date of appearance by the petitioner.

(E) While offering hearing to the petitioner and appreciating the reasons given in the affidavit by the petitioner the provisions of Section 14(B) of the Maharashtra Village Panchayats Act, 1959 shall be kept in view by the Collector.

(F) Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.