

(2003) 09 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 2924 of 2003

Sou. Suvarna Prakash Patil

APPELLANT

Vs

Anil Hindurao Powar, Mahesh Balasaheb Katkar, Gautam
Devappa Sorate, Sou. Shobha Jaisingh Lohar and Balwant
Dattatraya Kumkhar

RESPONDENT

Date of Decision : 20-09-2003

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 129, 129(1), 129(2), 129(4), 14
Constitution of India, 1950 — Article 102, 102(1), 103, 103(1), 190(3)

Citation : (2004) 1 ALLMR 767 : (2004) 1 MhLj 1062

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.A. Kumbhakoni and Ashutosh Kulkarni, for the Appellant; S.S. Patwardhan, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This Writ Petition is essentially under Article 227 of the Constitution of India, taking exception to the Judgment and order passed by the Divisional Commissioner, Pune Division dated March 31, 2003 in Appeal No. 8 of 2002. And I propose to entertain this Writ Petition under Article 227, although in the title of the Writ Petition, the Petitioner has described the Petition as one under Article 226 and 227 of the Constitution of India, inasmuch as this Petition is filed only between the private parties and no State Agency has been made party herein.

2. Briefly stated, the Petitioner was elected as member of Nebapur Gram Panchayat, Taluka Panhala, District Kolhapur on 18th August, 2000. The Respondents were also elected as members of the same Gram Panchayat along with the Petitioner. The Petitioner was later on elected as Sarpanch of the said Gram Panchayat.

3. The present Petition emanates from the proceedings which were commenced

at the instance of the Petitioner, purported to be u/s 15 of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as the "Act") upon filing application before the Collector, Kolhapur, alleging that out of seven members of the Gram panchayat, the Respondents herein (5 members) have incurred disqualification within the meaning of Section 14(h) of the Act on the ground that they were defaulters. Along with the application dated 17th December 2001, the Petition enclosed the Certificate issued by the Gram Sevak dated 13th December, 2001 to buttress the fact that demand regarding the dues payable to the gram Panchayat was made between 25th and 28th July, 2001 on the concerned, but they failed to pay the amount till the issuance of the said Certificate on 13th December 2001. According to the Petitioner, the Bills of demand in respect of Gram Panchayat Tax as contemplated u/s 129(1) of the Act, were issued and also served on the respective Respondents on the same day by hand as per the following table:

Date	Bill No.	Book No.	Amount	Property No.	Owner
25-7-01	70	1	250/-	197	Father of Respt.No.2.
26-7-01	94	1	622/-	138	Respt .No. 1-Self
95	1	58/-	139		Mother of Resot.No.1
26-7-01	18	2	260/-	173	Husband of Respt.No.4
26-7-01	33	2	328/-	204/1	Respt.No.5-Self
				204/2	
28-7-01	76	2	230/-	267	Father of Respt.No.3.

Besides the said Certificate, the application also encloses the relevant provisions of the Act, under which, the action was to be taken against the Respondents.

4. In response to the said Application, the Collector issued show-cause notice to the Respondents. The Respondents, in turn, filed their reply before the Collector. In the reply, it is asserted that the claim set-up in the application filed by the Petitioner was false and bogus and they were not defaulters as claimed. The reply also asserts that the application as presented was not maintainable and no relief could be granted to the Petitioner. It is the case of the Respondents that the said application was filed by the Petitioner out of political vendetta, more particularly, because the Petitioner had realised that she was now in minority. It is also asserted that the documents which have been relied upon by the Petitioner to show that the Respondents were defaulters were illegal and not founded on any statutory provision and no procedure provided by the Statute has been observed. It was therefore asserted by the Respondents that disqualification action cannot be taken against them. It is further asserted on behalf of the Respondents that the documents relied upon by the Petitioners have been prepared only in order to disqualify the Respondents. This is the stand taken in the reply filed on behalf of the Respondents before the Collector.

5. On the other hand, the Petitioner filed affidavit stating that the demand notice has been duly served on the concerned, but the amount as demanded has not been paid within the statutory period of three months from such service. Besides filing affidavit, Petitioner also filed written arguments before the Collector. It also appears from the record that the Collector had invited report from the Gram Sevak of the Gram Panchayat, pursuant to which request, the Gram Sevak submitted report dated 23rd January, 2002. This report clearly mentions that bills were duly served on all the concerned persons on the dates mentioned therein and inspite of the service, amount has not been deposited as per the rules. This Certificate also mentions the fact that each of the Respondents have deposited the amount as demanded only on the evening of 18th December, 2001 (i.e. after institution of and during the pendency of the disqualification proceedings). Besides this Certificate, the Collector also perused the original record which was relevant for deciding the issue of disqualification. The record does indicate that on service of the bills, signatures of the concerned persons have been obtained overleaf, but no date has been mentioned by the signatories.

6. On the basis of the above materials, the Collector proceeded to examine the issue of disqualification. The Collector has adverted to the oral arguments advanced before him by the rival parties in the impugned Judgment. Even on close reading of the points which were argued on behalf of the Respondents, it appears that only technical objections were taken on behalf of the Respondents, namely, that expression "dues" is not mentioned in the Certificate issued by the Gram Sevak; notice was not served on three members; there is no property in the name of those three members; the date on which notice has been served is not mentioned; the demand notice is not as per Section 129(2); no date is mentioned on the demand bill u/s 129, etc. The technical objections taken on behalf of the Respondents have found favour with the Collector as can be discerned from the reasons recorded by the Collector, who, therefore, rejected the application preferred by the Petitioner. The Collector by his Judgment and order dated 25th January 2002 has found that the bill is not signed by the Sarpanch; no date is mentioned before the signature of the recipient acknowledging the receipt of the notice; xerox copy of the demand bill has not been provided by the Petitioner, but has been produced by the Gram Sevak; there is no record to show that any action was taken u/s 129(2), 129(4) for recovery; there is no record regarding Resolution passed by the Gram Panchayat to take recourse to recovery proceedings u/s 129(2); the Certificate issued by the gram Sevak makes no mention that Respondents were defaulters, but it is only mentioned that amount is due from them; and lastly, that before action u/s 129 is taken against the Respondents, they have paid the amount as demanded.

7. Against this decision, the Petitioner carried the matter in appeal before the Divisional Commissioner, Pune Division at Pune. In the said Appeal, the Petitioner filed written arguments dealing with each of the point which had weighed with the Collector to non-suit the Petitioner. No reply or written arguments were filed on behalf of the Respondents before the Appellate Authority. The Appellate

Authority after considering the rival submissions and the written arguments, dismissed the appeal by cryptic reasoning, as can be discerned from the impugned Judgment. All that the Appellate Authority has observed is that sufficient opportunity was given to the Petitioner by the First Authority and secondly, that the Petitioner has not raised any new ground before the Appellate Authority. There is absolutely no adjudication of the issues and arguments canvassed on behalf of the Petitioner before the Appellate Authority. This decision of the Appellate Authority dated March, 31, 2003 is the subject matter of challenge in this Writ Petition.

8. Mr. Kumbhakoni for the Petitioner contends that the authorities below have completely misdirected themselves in rejecting the application preferred by the Petitioner. According to him, however, the Collector was obliged to decide the issue of disqualification against the Respondents in view of the overwhelming record before him in the shape of the application filed by the Petitioner, certificate issued by the Gram Sevak, affidavit filed by the Petitioner, the original record which establishes the factum of raising of demand and service of the bill and the report as submitted by the gram Sevak dated 23rd January 2001, which remained unchallenged. He submits that the fundamental material for answering the issue of disqualification was clearly available before the Collector from the original record produced by the Gram Panchayat. According to him, the principal fact which was required to be examined and answered by the Authority was whether the Respondents have failed to pay any tax or fee due to the Panchayat within three months from the date which the amount of such tax or fee was demanded and a bill for that purpose is duly served on them. He submits that the material available on record would clearly establish the above requirements and the inescapable conclusion was to answer the issue of disqualification against the Respondents. He has criticised the impugned Judgment and Order as passed by the Appellate Court being bereft of any reason so as to stand the test of judicial scrutiny. In so far as the decision of the Collector, learned Counsel submits that the Collector has clearly misdirected in not considering the fact that the factum of demand having been raised and the service of notice was plainly established from the record. Nevertheless, the Collector has given benefit to the Respondents on the specious reasoning that no date has been mentioned below the signature of the concerned persons who were the recipient of the said demand bills. Learned Counsel submits that, it is not the case of the Respondents that no bill has been served on them at all, but they have only contended that there is no date of receipt mentioned on the bill by the recipient thereof. According to him, that plea deserves to be rejected in the wake of original record which would raise presumption that the same have been duly served in the normal course of business on the date stated in the Certificate and the report given by Gram Sevak. He, therefore, contends that, if that reason, which had primarily weighed with the Collector was to be discarded, then it would necessarily follow that the Respondents have had incurred disqualification within the meaning of Section 14(h) of the Act. Mr. Kumbhakoni further contends

that all other reasons as recorded by the Collector, are not germane to answer the issue of disqualification. He submits that whether proper procedure has been followed u/s 129, cannot be the subject matter in issue in the present proceedings, but the only question that needs to be addressed is, as to whether the demand has been made and notice has been duly served and more than three months have elapsed therefrom coupled with the fact that there was non-payment of the dues within the statutory period of three months from the date of service and, if this position is established, then no other argument can extricate the Respondents from the disqualification incurred by virtue of Section 14(h) of the Act. He further submits that the position as is established from the record is that the bills were duly served on each of the parties on the date as mentioned by the Gram Sevak and that the demand bills remained unpaid for more than three months in case of each of the Respondents, and at any rate, till the initiation of proceedings pursuant to the application taken out by the Petitioner on 17th December, 2001. For it has been stated in the report of the Gram sevak dated January 23, 2002, that each of the Respondents have deposited the requisite amounts only on the evening of 18th December, 2001. That deposit however, cannot save the Respondents from the liability and the disqualification already incurred. Mr. Kumbhakoni further contends that the last reason recorded by the Collector is clearly in the teeth of the decision of this Court as reported in Arun Vaman Kane Vs. The State of Maharashtra and others, . that failure to take action u/s 129(2) of the Act is not a defence in the disqualification proceedings and what is relevant is only service of demand notice and nonpayment by the person within the statutory period, inspite of such a notice.

9. On the other hand, Mr. Patwardhan for the Respondents contends that no fault can be found with the conclusion reached by the Appellate Court as well as by the Collector in rejecting the application. According to him, the application as filed by the Petitioner does not make out any cause of action for initiating action u/s 14(h) read with Section 16 of the Act. He submits that there is no pleading about the factum of service of notice on the Respondents and in any case, about the date on which, the notice was served. He submits that there is also no clear evidence adduced by the Petitioner on the above factual matrix. According to him, in absence of satisfactory pleading and evidence on the factum of service of notice, the action under this provision cannot be proceeded further-because disqualification is incurred only when it is pleaded and proved that inspite of service on a particular date, no payment has been made within three months therefrom. Mr. Patwardhan further submits that the matter needs to be examined also in the context of the background in which the action has been initiated by the Petitioner. He submits that the Petitioner was facing No Confidence Motion, which was taken out by the Respondents and, only as a counterblast, the Petitioner rushed to the Collector on the basis of documents which were prepared solely for the purpose of present proceedings. Mr. Patwardhan further contends that since there is no clinching evidence available on record, about the factum of service of notice and the date on which it has been served, benefit should be

given to the Respondents who are the elected representatives; and the Court should not lightly interfere with their election in such a situation. Mr. Patwardhan fairly concedes that these are the only arguments which will have to be considered at the instance of the Respondents. In other words, no other argument or reason would be of any avail to the Respondents. To buttress the above arguments, Mr. Patwardhan has placed reliance on the decision of the Apex Court reported in *Surinder Singh Vs. Hardial Singh and Others*, , *Ram Singh and Others Vs. Ram Singh*, and *Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan and Others*, . Reliance is also placed on the Division Bench Judgment of this Court as reported in 1964 Mh.L.J. 25 in the case of *Raddulal v. Wasudeo*. It is contended that the later decision deals with the ground of default u/s 14(h) of the Act and the Court has held that the Petitioner is obliged to prove that there was presentation of the bill to the Respondent to pay the tax and if that evidence is lacking or unsatisfactory, the Petition ought to be dismissed. On these arguments, Mr. Patwardhan submits that no interference is warranted in exercise of writ jurisdiction.

10. Having considered the rival submissions, I have no hesitation to observing that the Appellate Authority has completely misdirected itself in dismissing the appeal preferred by the Petitioner on the reasons as recorded in the impugned Judgment. Even on close examination of this Judgment, only two reasons appear to have weighed with the Appellate Authority. The first is that, sufficient opportunity was granted to the Petitioner by the First Authority. And secondly, that no new ground was raised on behalf of the Petitioner. There is no reference muchless adjudication of various contentions specifically argued at the Bar as well as placed on record by way of written submissions. On this count alone, the impugned Judgment and Order deserves to be set-aside. Ordinarily, this Court would have remanded the case to the Appellate Authority to re-examine the matter afresh in accordance with law. However, to my mind, it will be unnecessary to remand the case to the Appellate Authority because the Collector has already recorded findings of fact and, those findings have not been disputed or controverted by the Respondents. The matter can, therefore, be examined on the basis of the findings already recorded by the Collector. In other words, it will not be necessary for this Court to reappreciate the evidence on record, for the Collector has clearly found as of fact that demand bill was raised and the same has been served on the respective parties. That is a finding of fact recorded by the Collector. The Collector, however, proceeded to give benefit to the Respondents on the premise that no date was mentioned below the signature of the recipient of the demand notice. Meaning thereby, that the date of service of notice is not proved. And until that factum was proved, no authoritative opinion can be recorded on the issue of disqualification. That aspect is purely a question of law and can be addressed in the present Writ Petition.

11. Before I proceed to do so, it will be necessary to first dissipate the argument canvassed before this Court on behalf of the Respondents. According to Mr. Patwardhan, the application as filed by the Petitioner ought to have been thrown

out at the threshold, for it did not make out cause of action for initiating proceedings within the meaning of Section 14(h) of the Act. This argument is founded on the four decisions relied upon by the Respondents as referred to above.

12. In my opinion, however, this argument clearly overlooks that the present proceedings are not for questioning the election of the respondents as member of the Gram Panchayat as such. Whereas, the same is u/s 14(h) read with 16 of the Act, where the issue of disqualification has arisen and is required to be considered by the Collector. The proceedings obviously relates to the subsequent disqualification incurred by the Respondents. In such a case, the analogy of the principles ascribable to the trial of Election Petition cannot be applied at all. Whereas, if at all any parallel is to be drawn, the same is referable to the action under Article 102 read with 103 against the Member of Parliament or under Article 191 read with 192 against the Member of Legislative Assembly. That action or enquiry is surely not an adversarial proceedings but, sui generis, and more in the nature of summary and inquisitorial proceedings. It is appropriate to draw parallel to the above referred actions not only because of the purport of Section 16 of the Act but more importantly because the Gram Panchayats have since been given special status after the insertion of the (Seventy-fourth Amendment) Act, 1992, whereby, Part IX of the Constitution of India has been substantially altered. The Panchayats have now been given the special status and are creature of the Constitution. The members of the Gram Panchayat are obviously holding public office. The Gram Panchayat is now creature of Article 243B of the Constitution. Article 243F postulates disqualifications for membership of Panchayat. The present Section 14(h) of the Act is the law ascribable of Clause (b) of Article 243F(1) of the Constitution. Article 243F(2) of the Constitution provides that if any question arises, as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred to the decision of such authority and in such manner as the Legislature of a State may, by law, provide. Section 16 of the Act is therefore ascribable to Article 243F(2) of the Constitution. Section 16(2) provides that if any question as to 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 60 days from the date of receipt of such application. Proviso to Sub-section (2) of Section 16 provides for the manner in which the decision has to be reached by the Collector in deciding the issue of disqualification. It provides 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. It is common ground that no rules have been framed for governing the procedure with regard to disqualification proceedings. At least, no such provision has been brought to my notice. Therefore, the Collector while adjudicating the issue of disqualification is required only to observe principles of natural justice and fair play, as the Section requires that no order be passed unless reasonable opportunity of being heard is

offered to the incumbent. As mentioned earlier, the proceedings for deciding the issue of subsequent disqualification are markedly different than the trial of an Election Petition, which relates to pre-election disqualification; whereas, proceedings with regard to subsequent disqualification is concerned, even in regard to the Members of Parliament and the Members of Legislative Assembly, the Constitution makes almost similar provision to empower the President and Governor, as the case may be, to decide the said issue. Therefore, it will be legitimate to draw parallel from the requirements of those proceedings. The Constitution Bench of the Apex Court while considering the nature of enquiry and the obligation of the specified Authority to decide the disqualification proceedings has observed in *Brundaban Nayak Vs. Election Commission of India and Another*, in paragraph 12, as follows:-

"12.What the said clause requires is that a question should arise; how it arises, by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise; and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of Article 192(1) is plainly inconsistent with the words used in the said clause."

(emphasis supplied)

In paragraph 14 of the same decision, it has been observed as follows:-

"14. It is true that Article 192(2) requires that whenever a question arises as to the subsequent disqualification of a member of the Legislative Assembly, it has to be forwarded by the Governor to the Election Commission for its opinion. It is conceivable that in some cases, complaints made to the Governor may be frivolous or fantastic; but if they are of such a character, the Election Commission will find no difficulty in expressing its opinion that they should be rejected straightaway. The object of Article 192 is plain. No person who has incurred any of the disqualifications specified by Article 191(1), is entitled to continue to be a member of the Legislative Assembly of a State and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Article 190(3)(a), there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat. The whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status and if any member forfeits that status by reason of a subsequent disqualification, it is in the interests of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192(2). Therefore, we must reject Mr. Setalvad's argument that a question has not arisen in the present proceedings as required by Article 192(1)."

(emphasis supplied)

This decision has been adverted to in another decision of the Constitution Bench of the Supreme Court in the case of *The Election Commission of India Vs. N.G. Ranga and Others*, . It will be useful to first reproduce paragraphs 5 and 10 of this decision which reads thus:-

"5. Upon the presentation of a petition by respondent 2 to the President of India, alleging that respondent 1 had become subject to the disqualifications mentioned in Article 102(1) of the Constitution, a question clearly arose as to whether respondent 1 had truly become subject to any of the disqualifications mentioned in that article. By Clause (2) of Article 103, the President was bound to obtain the opinion of all the appellant before giving his decision on the question. Not only that, but the President was further bound to act according to the opinion given by the appellant. The President therefore acted both in the exercise of constitutional authority and in the discharge of his constitutional obligation in referring the question raised by respondent 2's petition for the opinion of the appellant."

"10. The High Court thereafter proceeded to hold that the question whether respondent 1 had become subject to any disqualification u/s 10A of the Act did not arise on the facts stated in the petition by respondent 2. We do not see our way to accepting this statement. Though respondent 2 was not in a position to make a categorical assertion in his petition that respondent 1 had incurred a specific disqualification, he did make allegations, generally, in regard to disqualifications said to have been incurred by respondent 1. Upon the making of those allegations a question arose as contemplated by Article 103(1)(a) of the Constitution and the President had to obtain the opinion of the Election Commission on that question. Respondent 2's petition could not have been rejected by the President without reference to the Election Commission on the ground that the allegations made by respondent 2 were unfounded or unsubstantial."

(emphasis supplied)

13. From the elucidation made by the Apex Court in Para 10 referred to above, it can be plainly deduced that the complaint or application addressed to the appropriate authority needs to mention is that the named member has incurred disqualification, so as to initiate the action. To more and no less. It will be unnecessary to give specific disqualification or for that matter any other material facts. Once such complaint or application is received, alleging disqualification incurred by the member, a question would arise-as in this case within the meaning of Section 16 of the Act; And once such question arises then, it is the bounden duty of the Authority to cause such enquiry as may be deemed necessary into that issue and decide the same appropriately. At any rate, the complaint or application cannot be thrown out at the threshold on the ground that the case made out therein was vague, unfounded or unsubstantial. In my

opinion, it would also mean that even if some citizen has made complaint or application, the Authority will be obliged to make enquiry on his own to record his satisfaction on the issue of disqualification. And it cannot decide the issue only on the basis of the averments in the complaint application and the material produced by such applicant.

14. As mentioned earlier, the case of Brundaban (Supra) has been referred to in the later this decision by the Supreme Court in Paragraph 11. What is relevant to mention for our purpose is that in this paragraph the Apex Court has observed that the Authority had power to issue notice to the person against whom the complaint was made, calling upon him to file his statement and produce evidence in support of his case. This dictum clearly means that the Respondents were not only required to appear in the proceedings, but also submit explanation taking specific stand and produce evidence in support of their case. To put it differently, in such proceedings, the question of technicalities of pleadings and inadequacy of evidence adduced by the complainant or applicant will not arise at all. But the law casts obligation on the Collector to address himself to all the materials relevant for consideration, so as form his opinion on the question of disqualification. In such proceedings, the Respondents cannot succeed by finding fault with the weakness in the pleadings or evidence of the complainant or Applicant. On the other hand, they are and were obliged to file their reply taking specific stand, and also produce evidence to substantiate their stand, so as to persuade the Authority to drop the proceedings against them, on the finding that they have not incurred disqualification at all. In the present case, the Respondents have not disputed the service of demand or bill as such. That means that the factum of service of bill has gone unchallenged. Interestingly, the Respondents have failed to take a specific stand that, three months period from the date of such service has not elapsed. Whereas, there is only vague denial that they have not incurred any disqualification. Moreover, no attempt has been made by the Respondents to adduce any evidence to substantiate that three months period from the date of service of the demand or bill has not elapsed. Only if that fact was pleaded and proved by the Respondents in the enquiry before the Collector, the Collector would have been obliged to hold that the Respondents have not incurred any disqualification.

15. In my considered view, the purpose of disqualification proceedings is somewhat akin to the proceedings for issuance of writ of quo warrantor-where the charge against the incumbent in the Office is that he has usurped that office without authority of law. That is so because, by operation of law, the member incurs automatic disqualification on expiry of three months from the date of service of the demand or bill and would have no authority to continue in the office; and the decision of the Collector on an application made to him by any person in that behalf or suo motu u/s 16 of the Act is only embossment of that position. Indeed, although a person would incur automatic disqualification, he would still continue to hold the office till the Collector decides the question regarding the disqualification as and when it arises. Section 16 of the Act

bestows power on the Collector to decide the issue of disqualification, a fortiori, that power is coupled with the duty to decide the issue on merits and not on technicalities. It will be useful to draw guidance from the principle underlying the exposition of the Supreme Court in the case of *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*, that the exercise of such power is to be governed by objective of promoting public interest and good administration; and on that basis discretion cannot be exercised in favour of interference where it is necessary to prevent continuance of usurpation of public office or perpetuation of any illegality. In that case, the Apex Court went on to observe that in such matters, since these persons continue to hold the public office, to which they are alleged to be disentitled, the writ petitions ought not to be dismissed merely on the ground of laches at the admission stage, without examining the contention on merits that the office were being held by persons without any lawful authority. It will be also useful to advert to the dictum of the Constitution Bench of the Apex Court in recent decision as reported in : AIR2001SC3435 in *B.R. Kapur v. State of Tamil Nadu and Anr.* While dealing with the matter relating to writ of quo warrantor, the Apex Court has observed that such a writ lies against the person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the Office. The Apex Court has further observed, which is relevant for our purpose, is that, the person, against whom the writ of quo warrantor is directed, is required to show, by what authority that person is entitled to hold the Office.

16. To my mind, a priori, the Respondents cannot succeed by finding fault with the weaknesses in the pleadings or the evidence as adduced by the Petitioner, who incidentally happened to be the Sarpanch. Whereas, such application could have been filed by an citizen, resident of that Gram Panchayat. Merely because the proceedings are initiated on an application so filed, does not mean that the same can be thrown out on the technicalities of pleadings and proof, but the law obligates the Collector to examine the issue and enquire into the matter threadbare on his own, so as to decide the question of disqualification as and when it arises. Whereas, in the present case, the Collector has proceeded to decide the matter as if it was an adversarial litigation. That is the manifest error committed by him. Indeed, the Collector is required to adopt procedure as he may deem appropriate during the course of such enquiry. The only requirement in such proceedings is that no order shall be passed by the Collector against any person, without giving him a reasonable opportunity of being heard. If such a notice is issued, then, it is obligatory on the notice (Respondents herein) to not only satisfactorily explain the position and take a specific stand, but also substantiate their stand by adducing evidence, if required. In the present case, however, as observed earlier, the Respondents have not challenged the service of demand or bill. They have failed to take a specific stand that three months period from the date of service was not over. Nor any evidence has been adduced by them to show that three months period from the date of service has not expired. In such proceedings, it was obligatory for the Respondents to establish or

substantiate that they have not incurred disqualification. That could be done only if they were to dispute the factum of service or establish that though bill has been served, three months period had not expired. In such a fact situation, the Collector cannot and ought not to have given benefit to the Respondents. Interestingly, the only defence of the Respondents was that the recipient of the notice of bill has not mentioned the date of receipt below his signature. That is not enough. Whereas, it was necessary for the Respondents to establish that three months period from the date of service was not over, for which reason, disqualification cannot be attributed to the Respondents. All this is lacking in this case.

17. In so far as the present case is concerned, the disqualification was alleged as one u/s 14(h) of the Act. The relevant extract of that provision reads thus:-

"14. No person shall be a member of a panchayat continue as such, who-

(a) to (g)

(h) fails to pay any tax or fee due to the panchayat (or the Zilas Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him; or)

(h-1) to (k)

Explanation 1.....

Explanation 2.- For the purpose of Clause (h)-

(i) a person shall not be deemed to be disqualified if he has paid the amount of any tax or fee due, prior to the day prescribed for the nomination of candidates;

(ii) failure to pay any tax or fee due to the panchayat 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 members of such undivided Hindu family or as the case may be all the members of such group or unit."

It is well settled that when the issue of disqualification arises within the meaning of this provision, then, three conditions will have to be established. First, there must be a failure to pay a bill presented u/s 129(1) of this Act. Secondly, the default must have continued for a period of three months. And third, the amount remained unpaid. In the present case, the Collector, on perusal of the relevant materials on record, which included the application and the affidavit filed by the Petitioner as well as the Certificate issued by the Gram Sevak and the subsequent report dated 23rd January, 2002 as well as the original record, has found that the bill u/s 129(1) was issued and has been served, but has proceed to give benefit to the Respondents merely because no date is mentioned below the signatures of the concerned persons, who have received the said bill. On the other hand, on conjoint reading of the affidavit of the Petitioner, Certificate and the report of the Gram Sevak, correctness of which is not disputed or challenged,

it is positively stated that notice has been served on a particular date. There can be no denying of this position. Indubitably, there is presumption regarding the correctness of the record maintained by the Gram Panchayat having been done in the normal course of business. Moreover, it is also not in dispute that the Respondent have received the notice, but their only defence was that the date on which the said notice was received, has not been mentioned below the signatures of the concerned persons. It is not their specific case that three months period has not elapsed from the date of service. It that is not elapsed from the date of service. If that is not the specific case made out by the Respondents, then it necessarily follows that the notice has been duly served as per the date mentioned in the records maintained by the Gram Panchayat, for there is no positive evidence or even specific stand taken by the Respondents that three months period has not elapsed since the date of service of notice. In such a case, the requirement of Section 14(h) is fully complied with because the factum of demand having been made and the service of bill as well as failure to pay for more than three months from the date of service and that the amount was not paid till the date of application, is established. If that is so, the rigorous of this Section is clearly attracted and it ought to have been held by the Collector that the Respondents have incurred disqualification within the meaning of that provision.

18. According to the Respondents, the matter needs to be examined in the context of the fact that the Petitioner was facing no confidence motion. In other words, the present disqualification proceedings resorted against the Respondents was out of political vendetta. And further that the same was founded on documents prepared to justify this proceedings. I find no substance in any of these arguments. In the first place, the motive of the Petitioner is of no consequence. The Apex Court in the case of Brundaban Nayak (Supra) has observed that how the action arises, by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of deciding the question of disqualification. Secondly, the argument of the Respondents is that the documents in question were prepared, it is not their case that the same are fabricated or bogus or non-existing documents, as such. Whereas, the bill in question has been raised and served on the Respondents in July 2001, whereas, the present proceedings are taken out in December 2001. Ever for this reason, I find no substance in this argument.

19. It appears from the reasons given by the Collector that he was more concerned about whether the demand as raised, was legitimate and proper procedure has been followed by the Gram Panchayat in that behalf. However, those issues are not germane for deciding the question of disqualification. In the event, the Respondents had any grievance about the correctness of the demand or that it was not legitimate, then proper remedy to challenge that demand was available to the Respondents. Indeed, no tax payer can dis(sic) the liability to pay the amount so as demanded on the reasoning that the same is not legitimate. However, it is only when he sets-up challenge to that demand before

the appropriate forum and, if that was to be accepted, then his liability to pay the amount so demanded would be non-existing. That has not happened in this case. So long as the demand as made is operating, the liability to pay that amount is commensurate with that demand. In other words, the Collector has clearly misdirected himself in examining the matter on issues, which were wholly irrelevant for deciding the question of disqualification incurred by the Respondents. In that sense, the only question that ought to have been examined by the Collector was to ascertain as to whether the demand has been made and the bill has been served upon the concerned persons and whether within three months from the date on which such demand is served, the amount has been paid by the Respondents. No other aspect was relevant for examining the issue of disqualification. Understood thus, the conclusions reached by the Collector cannot be sustained even on this reasoning. On the other hand, as observed earlier, the Collector has failed to exercised jurisdiction vested in him and has examined the matter on issuer which were not germane for deciding the question of disqualification within the meaning of Section 14(h) of the Act.

20. Mr. Patwardhan, during his arguments, had relied on four decisions referred to above. As have already observed, each of those decisions relate to proceedings instituted by way of Election Petition, questioning the election of the returned candidate on the ground that he was not qualified to contest the election. As mentioned earlier, there is marked difference between such proceedings and one contemplated u/s 16 of the Act. Accordingly, those decisions will be of no avail to the Respondents. Hence, it is not necessary to make detail reference thereto.

21. It is relevant to mention that during the arguments, Mr. Patwardhan had also argued that the appeal before the Divisional Commissioner filed by the Petitioner was incompetent. That argument proceeded on the basis that the Appellate Authority provided u/s 16(2) of the Act was State Government. However, this submission need not detain us because, Mr. Kumbhakoni has rightly relied upon the authorisation issued by the State Government, delegating the powers of hearing the Appeals to the Commissioners of Divisions vide No. VPA.1159.P dated 11th November, 1959. Mr. Patwardhan fairly accepts that if this Notification is operating, then the argument as pressed into service, would be unavailable.

22. It is also necessary to record that Mr. Patwardhan has fairly accepted that the grounds stated by the Collector that procedure u/s 129(2) has not been complied with, is also not available to the Respondents in view of the decision of this Court in the case of Arun Vaman Kane (Supra). He further submits that in fact, that was not the argument canvassed before the Court below on behalf of the Respondents, nor the Respondents intend to justify the impugned order on that count.

23. It is also relevant to record that Mr. Patwardhan for the Respondents has fairly accepted that the Collector has committed manifest error in giving benefit to those Respondents whose father, mother and wife were in default in relation to

the property held by them. It is rightly argued by the Petitioner that in view of Explanation 2 to Section 14 which relates to disqualification under 14(h), it postulates that failure to pay any tax or fee due to the Panchayat 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 members of such undivided Hindu family or as the case may be, all the members of such group or unit. Accordingly, even those cases were covered by the above expansive deeming provision being Explanation No. 2; therefore, even those Respondents were disqualified at the relevant time.

24. For the aforesaid reasons, this Petitioner would succeed. The impugned Judgment and Orders passed by the Appellate Authority as well as the Collector are quashed and set-aside, and instead, the application as filed by the Petitioner before the Collector is allowed. As a consequence of which, it is declared that the Respondents have had incurred disqualification within the meaning of Section 14(h) of the Act at the relevant time.

25. Petition allowed on the above terms. No order as to costs.

26. All concerned to act on the ordinary copy of this order, duly authenticated by the Personal Secretary.