

(2018) 05 BOM CK 0035

In the Bombay High Court

Case No : WRIT PETITION NO. 5503 OF 2018

**?TAMJODEVI MADARSHA BHANDAVss TAHSILDAR, SOUTH SOLAPUR AND
OR S.**

Date of Decision : 04-05-2018

Acts Referred:

Maharashtra Village Panchayats Act, 1958 — Section 14B(2), 14b(1), 14(B)
Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965
—sec 16(1D)
Constitution of India, — Article 227

Citation : (2018) 05 BOM CK 0035

Hon'ble Judges : R.D. DHANUKA

Bench : Single Bench

Advocate : Tamjodevi Madarsha Bhandari, Rajshekhar,S.D.Rayrikar,

Judgement

R.D. DHANUKA, J.

1. Rule. Mr.Rayrikar, learned A.G.P. waives service for the respondent nos. 1, 3 and 4. For the purpose of deciding the issue involved in this petition,

service of the papers and proceedings on the election officer may not be necessary.

2.By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 22nd March,2018 passed by the

learned Divisional Commissioner, Pune Division and also the order dated 5th March,2018 passed by the learned Collector, Solapur disqualifying the

petitioner as a member of the Village Gram Panchayat Aurad, Taluka South Solapur, District Solapur.

3.The petitioner had contested election from the Ward Nos.3 and 4 for the post of member of the Grampanchayat at Post Aurad. The petitioner was

elected as a member of the Ward No.3 and was defeated in Ward No.4. Insofar as Ward No.3 is concerned, the petitioner has submitted the

statement of election expenses within the time prescribed under the provisions of Maharashtra Village Panchayat Act, 1958. Insofar as Ward No.4 is

concerned, the petitioner however did not submit the statement of election expenses within the time prescribed and applied for five days extension of

time by letter dated 4th March,2016. There was no response to the said letter dated 4th March,2016. The collector however passed an order dated

5th March,2016 in Gram Panchayat Dispute No.651 of 2016 and disqualified the petitioner for a period of five years on the ground that the petitioner

has not submitted the statement of election expenses within the time prescribed. The appeal filed by the petitioner came to be dismissed by the

learned Divisional Commissioner, Pune Division by an order dated 22nd March,2016.

4.Mr.Alange, learned counsel for the petitioner invited my attention to the documents annexed to the petition and would submit that the collector did

not make any enquiry into the allegations whether the petitioner was justified or not in submitting the statement of election expenses within the time

prescribed or not and ought to have been granted extension of time of five days in submitting the statement of election expenses by exercising powers

under section 14B(2) of the Maharashtra Village Panchayats Act, 1958. He also placed reliance on the judgment of this court in case of Ranibai

Thakaru Jadhav & Ors. vs.Tulshiram Dhaku Rathod & Ors. in Writ Petition No.4203 of 2017 dated 26th February,2018 and more particularly

paragraphs 3 to 6.

5.A perusal of the record indicates that the petitioner has been disqualified on the ground that statement of election expenses has not been submitted

by the petitioner along with affidavit. Insofar as Ward No.4 is concerned, it is a matter of record that the petitioner was defeated the election from

Ward No.4 and had applied for five days extension of time. There was no response to the said request of the petitioner for extension of time.

6.Under Section 14B(2) of the Maharashtra Village Panchayats Act, 1958, the State Election Commission may, for reasons to be recorded, remove

any disqualification under sub-section(1) or reduce the period of any such disqualification. The State Election Commission in my view thus ought to

have considered the said application for extension of time made by the petitioner and ought to have granted an opportunity to remove such ground of

disqualification to the petitioner. Admittedly no response was issued to the said request for extension of time.

7.This court in case of Ranibai Thakaru Jadhav & Ors. (supra) after adverting to the judgment of this court in case of Sahebrao Dashrathrao Patole

vs. State of Maharashtra & Ors., (2010) 5 Mh.L.J.462 has held that the concerned authority ought to have exercised discretion conferred upon the

authority under the provisions of section 16(1D) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act (40 of

1965) which are in pari materia with the provisions of section 14B of the Maharashtra Village Panchayats Act, 1958. In this case also, the learned

authority has not exercised its discretion and without disposing of the application made by the petitioner, has declared the petitioner disqualified. The

principles of law laid down by this court in case of Ranibai Thakaru Jadhav & Ors. (supra) squarely applies to the facts of this case.

8.A perusal of the order passed by the learned collector indicates that the order is even otherwise totally vague and cannot be implemented as it is.

The petitioner has been already declared elected as a member insofar as Ward No.3 is concerned. Even if the learned collector was convinced that

the petitioner had committed violation of section 14B of the Maharashtra Village Panchayats Act, 1958, he ought to have made it clear in the

impugned order that the petitioner was disqualified from which ward.

9.The impugned order dated 22nd March,2018 passed by the learned Divisional Commissioner, Pune Division and also the order dated 5th March,2018

passed by the learned Collector, Solapur in Gram Panchayat Dispute No.651 of 2016 are accordingly quashed and set aside.

10.The learned collector is directed to consider the application of the petitioner for grant of extension of time in filing the statement of election

expenses and shall pass an appropriate order after hearing the petitioner and in accordance with law. The learned collector shall also exercise its

powers of discretion under section 14B(2) of the Maharashtra Village Panchayats Act, 1958 judicially.

11.The petitioner is directed to appear before the learned collector on 15th June,2018 at 03.00 p.m.

12.The parties as well as the learned collector to act on the authenticated copy of this order.

13. Writ petition is made absolute in the aforesaid terms. There shall be no order as to cost.