

(2015) 12 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition Nos. 11306, 11307 and 11547 of 2015

Vaijayata Deepak Warke and Others

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243-O

Citation : (2016) 1 ABR 692 : (2016) 1 ALLMR 829 : (2016) 2 MhLj 35

Hon'ble Judges : M.S. Sonak, J.

Bench : Single Bench

Advocate : Tanaji Mhatugade, for the Appellant; D.S. Mondkar i/b S.B. Shetye, for the Respondent

Judgement

M.S. Sonak, J.—Rule, in each of these petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2. The final hearing in these petitions concluded on 3 December 2015 and the judgment was reserved. However, as the learned counsel for the Petitioners pointed out that the last date for filing of nomination for election to the panchayat was 4 December 2015, an interim order was made staying the disqualification incurred by the Petitioners. The interim order dated 3 December 2015 reads thus:

1. The final hearing in these petitions has just been concluded. The Judgment is reserved. However, the learned Counsel for petitioners points out that elections to the Panchayat are scheduled shortly and the last date for filing nominations is 04/12/2015. Accordingly, it is necessary to make an interim order.

2. The petitioners in these petitions have been disqualified under Section 14B of The Maharashtra Village Panchayats Act, 1959 ("said Act") for failure to lodge account of elections taken place within time and manner required by the State Election Commission. The case of the petitioners in Writ Petition No. 11306 of 2015 and Writ Petition No. 11307 of 2015 is that they had, in fact, lodged the

account of their election expenses with the Returning Officer within a period of 30 days from the date of election i.e. 27/11/2012. However, notices as to why action should not be taken against them under Section 14B of the said Act were issued after the period of two years i.e. on 26/11/2014, and at that stage, they did not have any ready proof. Along with the petitions, however, they produced a document entitled "Receipt" signed by the Returning Officer, which at least prima-facie, indicate that that the petitioners had, in fact, lodged their account of election expenses within a period of 30 days from the date of the result of the elections. Such document is at Exh.B, page 12 in Writ Petition No. 11306 of 2015. In fact, the petitioners in Writ Petition No. 11306 of 2015 were not ultimately elected at the election and the learned Counsel for petitioners submitted that, that is an additional reason as to why they may not have maintained any copy of the account of election expenses, though the same was lodged within the prescribed period. If the provisions of Section 14B of the said Act are perused, then mere non-filing of account of election expenses does not operate as a disqualification. The State Election Commission, whose powers have now been delegated to the Collector, has to be satisfied that the failure to lodge the account of election expenses within the time prescribed was without good reason or justification. The Collector, when making the impugned order, at least prima-facie does not seem to have adverted to these aspects.

4. Insofar as the petitioners in Writ Petition No. 11547 of 2015 are concerned, they claim that all of them were declared elected from their respective wards "unopposed". It is the case of the petitioners that since there was no elections or contest insofar as they are concerned, they were not required to file their election expenses. Reliance has been placed upon the decision rendered by the Jammu & Kashmir High Court in case of Kacho Mohd. Ali Khan Vs. Shri Kushok Bakula Vol. XXXIV E.L.R. 323 in respect of the contention that an unopposed candidate is not required to lodge any account of election expenses.

5. In view of the aforesaid, case is made out for grant of interim relief. In several matters of this nature, interim relief has been granted by this Court pending hearing of appeal by the Divisional Commissioner.

4. Accordingly, the impugned orders by which the petitioners have been disqualified, are stayed until the final disposal of the petitions.

5. All concerned to act on basis of authenticated copy of this order."

3. The Petitioners in Writ Petition No. 11306 of 2015 had contested the for elections to the Gram Panchayat of Village - Parite, Tal - Karveer, Dist. Kolhapur held in November 2012. The Petitioners, however, failed to get elected. It is the case of the Petitioners that they had lodged the account of election expenses on 19 December 2012 before the prescribed authority. However, on 26 November 2014, i.e., after period of almost two years, the Petitioners were served with notices, requiring them to show cause as to why they should not be disqualified under Section 14B of the Maharashtra Village Panchayats Act, 1959 (said Act) for

contesting elections or for being a member of any Village Panchayat for a period of five years. The Petitioners submitted their response on 2 December 2014 alongwith reply, but they could not furnish acknowledgement receipt dated 19 December 2012, since the same was not readily available with them at the time of submission of reply. The Collector, Kolhapur, by the impugned order dated 11 March 2015 has disqualified the Petitioners, thereby rendering the Petitioners ineligible for contesting elections or being member of any Gram Panchayat for a period of five years from the date of order. Hence, the petition.

4. The facts and circumstances in Writ Petition No. 11307 of 2015 are also quite similar to the facts and circumstances in Writ Petition No. 11306 of 2015, except that the Petitioners in Writ Petition No. 11307 of 2015 were duly elected as Members of the Village Panchayat, Parite, Dist. Kolhapur. By the impugned order dated 11 March 2015, the Collector, Kolhapur has disqualified the said Petitioners from continuing as Members of the Panchayat and further rendering them ineligible for contesting elections to any Gram Panchayat for a period of five years from the date of the order. Hence, the petition.

5. In Writ Petition No. 11547 of 2015 as well, the facts and circumstances are similar to facts and circumstances in Writ Petition Nos. 11306 and 11307 of 2015, except that the said petition relates to Village Panchayat, Kaneriwadi, Dist. Kolhapur and further the Petitioners therein were elected "unopposed" as Members of said Panchayat. By the impugned order dated 2 March 2015, the Collector, Kolhapur has disqualified the said Petitioners from continuing as Members of the Panchayat and further rendering them ineligible for contesting elections to any Gram Panchayat for a period of five years from the date of the order. Hence, the petition.

6. As the issue of availability of alternate remedy arose for determination, Mr. P.D. Dalvi was appointed as an Amicus Curiae to assist this Court. This Court records gratitude to Mr. P.D. Dalvi, for the assistance rendered in the matter.

7. Mr. Mhatugade, learned counsel for the Petitioners in each of these petitions, has submitted that the Petitioners, who have been disqualified under Section 14B of the said Act have no remedy by way of approaching the State Government or Divisional Commissioner in terms of Section 16(2) of the said Act and therefore, there is no question of relegating the Petitioners to avail any alternate remedy under the provisions of the said Act. Mr. Mhatugade submitted that the remedy under Section 16(2) of the said Act is available only to an elected Member of the Panchayat whose office has become vacant on account of his having incurred disqualification under Section 14 of the said Act. Mr. Mhatugade submitted that in the present case, the Petitioners in Writ Petition No. 11306 of 2015 are not even the Members of the Panchayat and therefore, there is no question of their offices becoming vacant. Similarly, the Petitioners in Writ Petition No. 11307 of 2015 and 11547 of 2015, though members of the Village Panchayat, have not incurred disqualification under Section 14 of the said Act. Therefore, there is no question of the Petitioners availing alternate remedy under Section 16(2) of the said Act.

Even otherwise, Mr. Mhatugade submitted that availability of an alternate remedy under the statute is never a bar to the maintainability of a petition under Articles 226 and 227 of the Constitution of India.

8. Mr. P.D. Dalvi, learned Amicus Curiae as well as Ms. Vaishali Nimbalkar, learned AGP for Respondent Nos. 2 and 3 in these petitions, submitted that alternate remedy under Section 16(2) of the said Act is very much available to the Petitioners, who ought to be relegated to avail the same.

9. In the first place, therefore, it is necessary to determine whether the said Act provides for any alternate remedy in the matter of disqualification under Section 14B of the said Act. Secondly, assuming that there is such alternate remedy, whether the Petitioners in the present petitions are required to be relegated to such remedy, in the facts and circumstances of the present case.

10. Section 14B of the said Act provides for disqualification by the State Election Commission. Sub-section (1) of Section 14B provides that if the State Election Commission is satisfied that a person,--

(a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and

(b) has no good reason or justification for such failure,

Sub-section (2) of Section 14B of the said Act provides that the State Election Commission may, for reason to be recorded, remove any disqualification under sub-section (1) or to reduce the period of any such disqualification.

11. Section 10A of the said Act provides that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats shall vest in the State Election Commissioner. Sub-section (2) of Section 10A of the said Act provides that the State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the Commission or any officer of the State Government not below the rank of Tahsildar.

12. The State Election Commission by Notification dated 19 November 2010 duly published in the official Gazette and in the exercise of powers conferred by Section 10A(2) of the said Act has delegated its powers under Section 14B(1) of the said Act to the concerned Collector and the powers under Section 14B(2) of the said Act to the concerned Divisional Commissioner.

13. In view of the delegation of powers therefore, the power for disqualifying a person under Section 14B(1) of the said Act stands vested in the concerned Collector, whereas the power under Section 14B(2) of the said Act to remove any disqualification under sub-section (1) or to reduce the period of such disqualification is vested in the concerned Divisional Commissioner.

14. Any person aggrieved by an order of disqualification under Section 14B(1) of the said Act therefore, has a remedy to approach the Divisional Commissioner to

whom the powers of the State Election Commission under Section 14B(2) of the said Act have since been delegated. The Petitioners in Writ Petition No. 11306 of 2015, who are not Members of any Panchayat, therefore, have a remedy to petition the Divisional Commissioner in terms of Section 14B(2) of the said Act in the matter of disqualification order dated 11 March 2015, made by the Collector under the provisions of Section 14B(1) of the said Act. The Divisional Commissioner, in terms of Section 14B(2) of the said Act will have the necessary powers to remove disqualification or reduce the period of any such disqualification. There is no merit in the contention of Mr. Mhatugade that the Divisional Commissioner can exercise powers under Section 14B(2) only suo motu and any person, who has suffered a disqualification order under Section 14B(1) of the said Act has no right to approach the Divisional Commissioner. Such submission is not borne out by the statutory provisions. In any case, the circumstance that an authority has powers to take suo motu action does not mean or imply that such authority is disabled from taking action upon being petitioned to take action. Conferment of suo motu powers is a measure of amplitude not restriction.

15. Section 16 of the said Act, which deals with disability from continuing as a Member of Panchayat, reads thus:

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 disqualifications 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 sub-section (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.

16. There is no dispute that the State Government has delegated its appellate powers under Section 16(2) of the said Act to the concerned Divisional Commissioner. Therefore, under the scheme of Section 16, the concerned Collector is the authority to decide the question whether any vacancy has

occurred on account of any Member incurring disqualification under Section 14 of the said Act. Any person, aggrieved by decision of the Collector may, within fifteen days from the date of such decision, appeal to the State Government, which in the present case, would be the concerned Divisional Commissioner and the statutory finality has been accorded to the decision of the State Government or the Divisional Commissioner as the case may be. The proviso to Section 16 commands 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.

17. Mr. Mhatugade is right in his submission that the provisions contained in Section 16 of the said Act apply to the Members of Panchayat and therefore, the alternate remedy provided under Section 16(2) of the said Act will not be available to the Petitioners in Writ Petition No. 11306 of 2015, since they failed to get themselves elected as Members of the Panchayat. However, as noted earlier, such persons have remedy to petition the Divisional Commissioner under Section 14B(2) of the said Act. The Divisional Commissioner to whom, powers under Section 14B(2) of the said Act have been delegated may, for reasons to be recorded, remove any disqualification under Section 14B(1) of the said Act or reduce the period of any such disqualification. Mr. Mhatugade is, however, not right in his submission that the Petitioners in Writ Petition No. 11307 of 2015 and 11547 of 2015, who are admittedly Members of the Panchayat, will not have any alternate remedy under Section 16(2) of the said Act, merely because Section 16(1) of the said Act makes reference to disqualification provided in Section 14 of the said Act.

18. Section 14 of the said Act provides for several instances of disqualifications which a Member might incur. One of disqualifications for a person to be a Member of the Panchayat to continue as such, is contained in sub-section (1) (j-4) of Section 14 of the said Act, which reads thus:

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

(a)

(a-1)

(b)

....

....

(j-4) has been disqualified by the State Election Commission under Section 14B of the said Act;

19. Therefore, once the State Election Commission or the Collector to whom the powers of State Election Commission have been delegated, disqualifies a Member of a Panchayat under Section 14B(1) of the said Act, such Member can be said to have been disqualified under Section 14 of the said Act. Incidentally, the issue of

such disqualification, in terms of Section 14B(1) read with Notification dated 19 November 2010 issued in exercise of powers conferred by Section 10A(2) of the said Act, shall have to be determined by the Collector. Therefore, in terms of the provisions contained in Section 16(2) of the said Act, any person aggrieved by the decision of the Collector, which would obviously include the disqualified Member, will have remedy to appeal to the State Government or the Divisional Commissioner, since the powers of the State Government have been delegated to the Divisional Commissioner of the purposes of Section 16(2) of the said Act. Thus, the Petitioners Writ Petition Nos. 11307 and 11547 of 2015, have an alternate remedy by way of instituting appeals before the Divisional Commissioner in the matter of any disqualification under Section 14B of the said Act.

20. From the aforesaid, it is clear that the Petitioners in each of these petitions have alternate remedies provided under the Statute, i.e., the said Act. The Petitioners in Writ Petition No. 11306 of 2015, who are disqualified non-members have alternate remedy of petitioning the Divisional Commissioner in terms of provisions contained in Section 14B(2) of the said Act read with Notification dated 19 November 2010. Similarly, the Petitioners in Writ Petition Nos. 11307 and 11547 of 2015, who are disqualified Members of the Panchayat have alternate remedy of instituting the appeals to the Divisional Commissioner in terms of provisions contained in Section 16(2) of the said Act. In view of the availability of such alternate statutory remedy under the Statute, there is no reason for the writ Court to entertain their petitions and enquire into the legality and validity of disqualification orders made in the first instance. The Petitioners, in each of these petitions, are therefore, required to be relegated to avail the alternate remedies available to them under the said Act.

21. Although, the issue of alternate remedy was not involved in case of Suchita Murlidhar Kewati (Sarpanch) and Others Vs. State of Maharashtra and Others, , the following observations in the said decision are of assistance in the context of the scheme of the provisions contained in Section 14B and Section 16 of the said Act.

9. In view of above, the position is that, it is the Collector of the District who is competent to exercise powers under Sections 14B and 16 of the said Act. It cannot, therefore, be said that the Collector is not competent either to pass an order of disqualification under Section 14B or under clause (j-4) of sub-section (1) of Section 14 of the said Act or to declare the vacancy, in exercise of its power under sub-section (2) of section 16 of the said Act. No doubt that unless there is an order of disqualification passed under Section 14B, no order of declaration of vacancy under sub-section (2) of Section 16 of the said Act can be passed by the Collector. The Collector will have to follow the procedure for disqualification under Section 14B initially and then to exercise its power under sub-section (2) of Section 16 of the said Act for declaration of vacancy in accordance with law.

22. Similarly, this Court, in case of Balasaheb K. Tambe and ors. Vs. Nanasaheb J. Khade and ors. 2014(12) LJSOFT 313, in the context of provisions contained in Sections 10A, 14B, 14(1)(j-4) of the said Act has made the following observations at paragraph "11", by reference to Notification dated 19 November 2010:

11. In the present matter the authority of the State Election Commission to delegate its powers is relevant. Sub-Section 1 of Sec. 10A of the Panchayat Act gives the authority to the State Election Commissioner to control, direct and superintend the preparation of the electoral roles. Sub-Section 4 of Sec. 10A also empowers the commission to issue such special or general orders or direction, which may not be inconsistent with the provisions of the Act for fair and free elections. Sec. 14B of the Panchayat Act is amended and introduced subsequently in the year 2010. Whereas Sec. 10A of the Panchayat Act is incorporated in the year 1994. The powers of delegation are bestowed upon the State Election Commission under Sec. 10A(2). Though Sec. 14B of the Panchayat Act is introduced subsequently by way of an amendment, the same would not make any difference. An amendment when introduced becomes an integral part of original statute. Different provisions of the same statute will have to be read in harmony. The words used in original statute should be presumed to be used in the same sense in the amended portion.

Sec. 14B gives powers to the State Election Commission to disqualify the candidate for not submitting the election expenses in time. The State Election Commission possesses the authority and power to disqualify any person from being a member of panchayat who has not submitted the election expenses within the stipulated period. The State Election Commission is bestowed with the authority of delegation under sub-Section 2 of Sec. 10A. The said provision does not lay down any restrictions on the authority of State Election Commissioner to delegate its powers. Reading said provision, it is manifest that, the powers of the State Election Commissioner to delegate any of his powers and function are unfettered and are without any reservation and qualification. Sec. 10A(2) of the Panchayat Act empowers the State Election Commission to delegate any of its powers and functions to any officer, meaning thereby that even powers U/Sec. 14B can be delegated. When the provision is unambiguous, then the literal interpretation is the rule. In view of powers delegated to the him, the Collector is acting on behalf of State Election Commission while disqualifying the petitioner U/ Sec. 14B of the Panchayat Act. In view of that, it cannot be said that the order passed by the Collector disqualifying petitioner for non submission of election expenses is without jurisdiction or authority.

23. This Court, in case of Santosh Maruti Walanj Vs. Manoj Sadashiv Jadhav, , has held that Section 16 of the said Act, in fact, gives effect to Constitutional Scheme enshrined in Part IX of the Constitution of India and that there is no inconsistency whatsoever between the provisions contained in Section 16(1)(a) of the said Act and Article 243-O of the Constitution of India.

24. In view of the aforesaid, there is no reason to entertain these petitions and the Petitioners are required to be relegated to avail the alternate remedy before the Divisional Commissioner. The Petitioners in Writ Petition No. 11306 of 2015 have alternate remedy by way of petitioning to the Divisional Commissioner under Section 14B(2) of the said Act. There does not appear to be any period of limitation prescribed for the purposes of availing such remedy. Therefore, such remedy shall have to be availed within a reasonable period. If the Petitioners in Writ Petition No. 11306 of 2015, institute petitions before the Divisional Commissioner within four weeks from today, then the Divisional Commissioner is directed to entertain the same on merits. The Divisional Commissioner is further directed to dispose of such petitions within a period of twelve weeks from the date when such petitions are lodged. If the petitions are lodged within a period of four weeks from today, then the interim order granted on 3 December 2015 shall operate till disposal of the petitions by the Divisional Commissioner. If, however, the Petitioners in Writ Petition No. 11306 of 2015 fail to institute petitions under Section 14B(2) of the said Act to the Divisional Commissioner within a period of four weeks from today, then the interim orders made on 3 December 2015 shall stand vacated insofar as the said Petitioners are concerned. No doubt, the said Petitioners shall be entitled to apply afresh for interim relief before the Divisional Commissioner, who shall consider such application, in accordance with law and on its own merits.

25. The Petitioners in Writ Petition Nos. 11307 of 2015 and 11547 of 2015 have remedy of instituting appeals before the Divisional Commissioner under Section 16(2) of the said Act. Such appeals, however, were required to be filed within a period of fifteen days from the date of decision of the Collector. In Writ Petition No. 11307 of 2015, the date of decision of the Collector is 11 March 2015 and in Writ Petition No. 11547 of 2015, the date of the decision of the Collector is 2 March 2015. The period of fifteen days prescribed under Section 16(2) of the said Act has since expired. In the peculiar facts and circumstances of the present case, however, rather than go into the issue as to whether the Divisional Commissioner has the powers to condone the delay in institution of appeal under Section 16(2) of the said Act, the interest of justice would be met if directions are issued to the Divisional Commissioner to decide the appeals on merits, if instituted by the Petitioners in the said two petitions, within a period of four weeks from today. Such direction is issued, considering the circumstance that the Petitioners had instituted these petitions and were bonafide pursuing their remedy against the impugned orders made by the Collector. Besides, Section 14B(2) of the said Act, which even otherwise empowers the Divisional Commissioner, for reasons to be recorded, to remove any disqualification under Section 14B(1) or reduce the period of disqualification, does not prescribe any period of limitation as such.

26. Therefore, if the Petitioners in Writ Petition Nos. 11307 of 2015 and 11547 of 2015 institute appeals within a period of four weeks from today, then the interim order made on 3 December 2015 to operate in their favour, until the Divisional

Commissioner disposes of the appeals instituted by the said Petitioners. The Divisional Commissioner is directed to dispose of such appeals, if instituted within a period of four weeks from today, within a period of twelve weeks from the date of their lodgment. Such disposal shall be on merits and in accordance with law.

27. The reasons for grant of interim relief have been set out in the order dated 3 December 2015 and it is for the same reason that the interim orders are directed to continue during the operation of the appeals before the Divisional Commissioner, should such appeals be instituted within a period of four weeks from today.

28. Rule is, accordingly, discharged in each of the petitions. However, the Petitioners are granted liberty to institute the appeals/petitions before the Divisional Commissioner within a period of four weeks from today. Such appeals/petitions, if instituted during the period of four weeks from today, shall be disposed of by the Divisional Commissioner in accordance with law and on their own merits, within a period of twelve weeks from the date of their lodgment. The interim order granted by this Court on 3 December 2015 shall operate for a period of four weeks from today and in case, the appeals/petitions are instituted during the said period, then until the final disposal of the appeals/petitions by the Divisional Commissioner.

29. After these petitions were closed for orders, Civil Application No. 3232 of 2015 was made and produced on 9 December 2015 seeking intervention in Writ Petition No. 11547 of 2015. The same was not entertained, as the matter had already been closed for orders. However, now that the Petitioners are relegated to avail alternate remedies under the Statute, the Applicant in the said Civil Application is also granted liberty to apply for intervention before the Divisional Commissioner. The Divisional Commissioner to decide such application, in accordance with law and on its own merits.

30. There shall be no order as to costs.

31. All concerned to act on the basis of authenticated copy of this order.