

(2014) 03 BOM CK 0066
In the Bombay High Court
Case No : W.P. No. 1564 of 2014

Vijay Ramchandra Raut

APPELLANT

Vs

Divisional Commissioner

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14, 14(1)(j-5)

Citation : (2015) 1 ALLMR 664 : (2015) 1 BomCR 766 : (2014) 3 MhLj 641

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

Bench : Single Bench

Advocate : A.V. Gawande, Advocate for the Appellant; K.L. Dharmadhikari, A.G.P. for Respondent Nos. 1 and 2 and J.B. Kasat for Respondent No. 4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—Rule made returnable forthwith. Heard the matter finally by consent of the learned counsel appearing for the parties. The challenge in this petition is to the order dated 5-3-2014 passed by the Divisional Commissioner, Amravati Division, Amravati, dismissing Appeal No. 12/BVP16(2)/Dhanodi/2013-14 filed by the petitioners challenging their disqualification u/s 14(1)(j-5) of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as "the BVP Act"), on the ground that the petitioners have failed to submit a certificate of the concerned Panchayat along with the resolution of Gram Sabha, certifying that the petitioners reside in a house owned by them and has a toilet in such house and they are using such toilet.

2. The relevant consideration in the order of the Commissioner is reproduced below:

However, as amended by the Bombay Village Panchayat and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010, the period of 90 days has been extended upto a period of one year from the date of

10-1-2011. It means that the period is extended upto 9-1-2012 and therefore, it was required for member to submit Certificate along with the Resolution of the Gram Sabha till the date of 9-1-2012. However, in the instant case, the Gram Sabha has passed such Resolution on 10-5-2013 and the Certificates are issued on 11-5-2013. Thus, the Appellants have failed to submit Certificates along with the Resolution of the Gram Sabha till the date of 9-1-2012. Under these circumstances, the Additional Collector, Amravati has rightly disqualified the Appellants from the post of member of the Gram Panchayat, Dhanodi, vide his order dated 31-8-2013. I, therefore, do not find any reason to interfere with the said Order.

3. Shri Gawande, the learned counsel appearing for the petitioners has urged that the petitioners were elected on 25-4-2010, the provision of section 14(1) (j-5) came into force w.e.f. 10-1-2011, which will operate prospectively and therefore, the provision will not apply to the petitioners who are elected prior to that date. He has further invited my attention to a copy of the resolution said to have been passed by the Gram Panchayat on 11-5-2011 in respect of existence and user of toilets by the petitioners. He submits that there were certificates produced on record also indicating the existence and user of toilets by the petitioners prior to the cut-off date 9-1-2012. He, therefore, submits that the Commissioner has committed an error in holding that the petitioners are disqualified under the said clause.

4. Clause (j-5) of sub-section (1) of section 14 of the Bombay Village Panchayats Act, reads as under:

(j-5) fails to submit a certificate of the concerned panchayat, along with the resolution of the Gram Sabha certifying that,--

(i) he resides in a house owned by him and has a toilet in such house and he regularly uses such toilet; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet.

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate, within ninety days from the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010.

The present petition pertains to sub-clause (i) above under which the petitioners are disqualified.

5. The provision was brought into force on 10-1-2011 and the period of 90 days prescribed under the proviso was extended by further period of one year i.e. upto 9-1-2012, are not the facts in dispute. Though the petitioners were elected on 25-4-2010, they were working as the Members of the Gram Panchayat or as Sarpanch and Upa-Sarpanch, when the provision was brought into force on 10-1-2011. In view of this, it cannot be said that the provision is not applicable

to them. The question of retrospective operation of the aforesaid provision does not arise. The provision operates prospectively and applies to all such members, who continue to hold the post on the date when the Act came into force on 10-1-2011. Hence, the contention is rejected.

6. So far as the compliance of condition under sub-clause (i) of clause (j-5) of sub-section (1) of section 14 of the Bombay Village Panchayats Act is concerned, the petitioners were required to produce a certificate of the concerned Gram Panchayat along with the Resolution of the Gram Sabha, certifying that they reside in a house owned by them, having toilet in such houses which are being used regularly. The resolution dated 11-5-2011 said to have been passed by Gram Sabha, brought to my notice, was not referred to in the reply filed in response to the show cause notice of disqualification. There is a dispute raised about the existence and passing of such resolution and also the certificates produced on record. There is a finding recorded by the Commissioner, that the resolution dated 10-5-2013 and the Certificates issued on 11-5-2013 were beyond cut-off date of 9-1-2012. Thus, there was no compliance of sub-clause (i) of clause (j-5) of sub-section (1) of section 14 of the Bombay Village Panchayats Act. In view of above, I do not find any reason to interfere in the order impugned. The writ petition is, therefore, dismissed. No order as to costs.