
(2021) 09 BOM CK 0022

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No.8037 Of 2019

Shrimant

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Sept. 8, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227
- Maharashtra Village Panchayats Act, 1959 - Section 14(1)(h), 14(1)(h1), 16(2), 140, 178
- Code Of Criminal Procedure, 1973 - Section 48(7)
- Maharashtra Land Revenue Code, 1966 - Section 48(7)

Hon'ble Judges: Mangesh S. Patil, J

Bench: Single Bench

Advocate: S.S. Thombre, K.B. Jadhavar, K.D. Jadhav

Final Decision: Allowed

Judgement

Mangesh S. Patil, J

1. Heard. Rule. The Rule is made returnable forthwith. The learned AGP and the learned advocate for the respondent No.4 waive service. At the

request of the parties, the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under Article 226 and 227 of the Constitution of India, the petitioner is impugning the order passed by the

Collector and confirmed by the Additional Commissioner in Appeal preferred by him under Section 16(2) of the Maharashtra Village Panchayats Act,

1959 (herein after the Act) holding him to have incurred a disqualification under Section 14(1)(h) and 14(1) (h-1).

3. The respondent No.4 made a complaint to the Collector alleging that the petitioner's wife has been imposed with a penalty and royalty of more than Rs.86,00,000/- and without disclosing the fact the petitioner was elected as a Sarpanch. The learned Collector called a report from the Tahsildar

and after confirming the fact of she being due and payable such an amount and a demand notice was also issued to her, concluded about the petitioner

having incurred the disqualification by applying the analogy and referring to the decision of the Supreme Court in the case of Sagar Pandurang

Dhundare Vs. Keshav Aaba Patil; (2017) 6 ALL M.R. 970.

4. The learned advocate for the petitioner would submit that if one bears in mind the specific wording of Sections 14(1)(h) and 14(1) (h-1), it is only if

the incumbent is due and payable something to the Panchayat that the disqualification would be attracted.

5. He would submit that assuming for the sake of argument that petitioner's wife was due and payable something under the Maharashtra Land

Revenue Code and the Mines and Minerals Act and that the Tahsildar in purported exercise of the power under Section 48(7) of that Code has also

slapped some penalty, still those dues and arrears, firstly, are not payable to the Panchayat and do not form any component of tax as is contemplated

under this provision. In support of his submission he would place reliance on the decision of this Court in the case of Dr. Satish Sadashiv Kulkarni Vs.

Gram Panchayat, Janefal & Ors. ; 2012 (3) ALL MR 81. He, therefore, submits that ignoring the specific wording and the purport of the provision the

authorities below have readily accepted the dues payable by the petitioner's wife to the State as forming part of the liability contemplated under

Section 14(1)(h).

6. The learned advocate would then submit that even the provision of Section 14-1 (h-1) are not attracted. There are no dues as is required under

Section 140 or 178 of the Act and still the authorities, without recording any finding in that respect, have even invoked that provision as well. He would

submit that since the consequences of disqualification are drastic, the authorities ought to have been more careful in insisting for strict application of law. Failure of which has resulted in serious miscarriage of justice. The observations and the conclusion though concurrent are perverse and arbitrary and blatantly illegal.

7. The learned AGP and learned advocate for the respondent No.4 would try to support both the orders. They would submit that the fact that wife of

the petitioner was due to the State Government and a certain degree of component there from is being paid to the Gram Panchayat by virtue of a

Government Resolution would also constitute the liability contemplated under these two provisions Section 14 (1)(h) and 14 (1) (h-1).

8. They would further submit that as has been laid down in the case of Sagar Pandurang Dhundare (supra) even if it is the petitioner's wife who is

supposed to clear those dues, in view of the specific wording of the provision, the liability would be attracted even qua the petitioner.

9. The learned AGP and the learned advocate for the respondent No.4 would also submit that the petitioner has not been acting bona fide.

While submitting his nomination form he has specifically denied that he or his wife were payable some dues to the Government. Considering all these

aspects both the authorities have rightly held and confirmed about the petitioner having incurred the disqualification and the petition may be disposed.

10. As can be appreciated, the dispute revolves around the wording and interpretation of the provisions of Section 14(1)(h) and 14(1)(h-1) which read

thus:

“Section 14(1) (h) fails to pay any tax or fee due to the panchayat [or the Zilla 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) fails to pay the amount of surcharge or charge under section 140 or the amount ordered to be paid under section 178 together with interest,

if any, within the period provided in that behalf, and where an appeal has been made, then within one month from the date of receipt of the decision

rejecting such appeal.]

11. Going by the stand of the respondents, the petitioner's wife has been clamped with some penalty for illegal excavation of mines and minerals

and it is being sought to be interpreted as a due contemplated under the above provisions. Indeed there is a notice and an order passed by the

Tahsildar in the purported exercise of the power under Section 48(7) of the Maharashtra Land Revenue Code imposing the penalty and seeking to

recover it as arrears of land revenue. It is also apparent that even a charge to that extent has been incorporated in the revenue record of the

petitioner's land. However, the point here is as to whether the liability of the petitioner's wife of this nature can be said to be the dues payable

to the Panchayat as is required by Section 14(1) (h) and 14 (1) (h-1).

12. A bare reading of the provision would indicate that the whole emphasis has been on making it sure that a person intending to be elected as a

member of the Gram Panchayat should himself be not in arrears of any tax or dues to the Panchayat. The wording is quite clear and it does not cover

any dues payable to any Government or body. One can gainfully refer and indeed I find no reason but to subscribe to the similar interpretation put on

this provision in the case of Dr. Satish Sadashiv Kulkarni (supra) and particularly following paragraphs:

10. It is not necessary to dwell more into this controversy because substantive provision dealing with disqualification, i.e. Section 14(1)(h) specifically

stipulates that it has to be failure to pay any tax or fee. Thus if after a bill demanding such tax or fee is served upon the petitioner and he fails to pay

the same within three months from the date on which the said amount is demanded, disqualification under Section 14(1)(h) accrues. It is therefore

apparent that disqualification must be shown to be on account of non payment of tax or fee. Insofar as Section 14(1)(h) is concerned, there cannot be

any disqualification for not paying any sum other than the tax or fee due and recoverable by Panchayat. The contention of learned AGP that any

compulsory recovery against a person needs to be viewed as tax, cannot be accepted. Words tax or fee have specific connotation in law and emanate

from a legal sanction. In disqualification proceedings which may cast stigma, their strict meaning needs to be adhered to.

12. The discussion above clearly shows that penal provision is being used against the petitioner to hold him disqualified. The amount of alleged

misappropriation cannot be viewed as amount of tax or fee under section 14(1)(h) and hence on that count no disqualification can be fastened on the

petitioner. The trial Court was, therefore, not justified in dismissing the Election Petition only because no oral evidence was adduced. The question of

law could have been looked into and answered by it. Thus, there is refusal to exercise jurisdiction on its part. (emphasis supplied)

Since liability of petitioner's wife under the Maharashtra Land Revenue Code is being resorted to as a ground to hold the petitioner to have

incurred disqualification under Section 14(1)(h) and since as discussed herein above that those dues cannot be taken into account and are not

contemplated under that provision, the impugned orders are clearly perverse, arbitrary and illegal.

13. As far as the provision of Section 14(1)(h-1) is concerned, there is absolutely no whisper or discussion in either of the orders of the authorities

below, as to how the provision is attracted and what is that which is payable or chargeable under Section 140 or under Section 178 of the Act. Even in

this petition the respondents have filed affidavits in reply but have not been able to demonstrate as to how the disqualification under Section 14-1 (h-1)

is also attracted.

14. In view of the above state of affairs, in my considered view both the authorities below have not borne in mind the drastic repercussions of their

orders. Without insisting for a strict proof and bearing in mind the true purport and scope of the provisions they have superficially approached the issue

and have readily accepted and held about the petitioner having incurred the disqualification. The orders are blatantly illegal.

15. The Writ Petition is allowed. The impugned orders are quashed and set aside. The Rule is made absolute.