

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7829 OF 2022

Mankarna w/o. Nagorao Kale,
Age : 36 Years, Occu. : Household and Agriculture,
R/o. Kakad Dabha, Tal.Aundha Nagnath,
District Hingoli. .. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Additional Commissioner,
Aurangabad Division, Aurangabad,
Tal. and District Aurangabad.
3. The District Collector, Hingoli,
Tal. & Dist. Hingoli.
(Copy for the 1st to 3rd respondents
is to be served in the office of the Govt. Pleader,
High Court of Bombay, Bench at Aurangabad)
4. Gram Sevak,
Grampanchayat Kakad dabha,
Village Kakad dabha,
Tal. Aundha Nagnath, Dist. Hingoli.
5. Vitthal s/o. Baliram Kale,
Age : 41 Years, Occu. : Agriculture,
R/o. Kakad Dabha, Tal. Aundha Nagnath,
District Hingoli.

.. RESPONDENTS

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Mr.S.S.Londhe, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.S.S.Gangakhedkar, Advocate for the respondent no.5
Mr.N.P.Ghanwat, Advocate for the respondent no.4.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 03.05.2023.

Pronounced on : 05.06.2023

JUDGMENT :

1] By the present Writ Petition, the petitioner is challenging the judgment and order dated 29.06.2022 in Case No. 2022/Grampanchayat/Appeal-2/CR-23 passed by the respondent no.2 – Additional Commissioner, Aurangabad, so also, the judgment and order dated 02.03.2022 passed by the respondent no. 3 – District Collector, thereby disqualifying the petitioner as a member of the Grampanchayat under Section 14 (1) (g) of the Maharashtra Village Panchayats Act, 1958 [for short ‘the Act of 1958’].

Brief facts leading to filing the present Writ Petition are as under:

2] The general elections for the Grampanchayat, Kakad Dabha was conducted in the month of January, 2021.

The petitioner contested the said election and was elected as member of the said Grampanchayat. Thereafter, she was elected to the post of Sarpanch from the Scheduled Tribe category on 10.02.2021.

3] On 06.09.2021, the respondent no. 5 – Vitthal Baliram Kale filed a complaint against the petitioner under Section 16 (1) of the Act of 1958 before the Collector, Hingoli, seeking disqualification of the petitioner under Section 14 (1) (g) of the Act of 1958, for having issued payment to her husband of Rs.19,500/- for contracted work, which is prohibited under the said section.

4] After considering the complaint filed by the respondent no. 5, written say was filed by the petitioner, so also the documents secured from the Grampanchayat by the Collector and having examined the material placed on record, the respondent no. 3 – the District Collector, Hingoli disqualified the petitioner under Section 14 (1) (g) of the Act of 1958. Thereafter, the petitioner filed appeal before the respondent no.2 – Additional Commissioner,

Aurangabad Division, Aurangabad, challenging the order passed by the District Collector and the said Appeal was also dismissed by the Additional Commissioner. Being aggrieved by the said order, the present Writ Petition is filed by the petitioner.

5] It is the case of the petitioner that the husband of the petitioner, namely, Nagorao Janardhan Kale is doing labour work of drainage cleaning and light fitting etc. It is further the case of the petitioner that the work done by the husband of the petitioner was immediately prior to the election of the petitioner as a member of the village panchayat and the same is evident from the record of the Panchayat. However, the payment of work was made after she becoming the member of the village panchayat and the Sarpanch of the village panchayat, as such, the petitioner submits that the disqualification under Section 14 (1) (g) of the Act of 1958 is not applicable to the case of the present petitioner. Therefore, the orders passed by the authorities below be quashed and set aside.

6] *Per contra*, the learned counsel for the respondent no. 5 – complainant submits that the payment is done by the petitioner after becoming Sarpanch of the Village Panchayat, so also, there is doubt as regards the actual work undertaken by the husband of the petitioner. The learned counsel for the respondent no. 5 further submits that the amount was paid during subsistence of the status of the petitioner being Sarpanch of the village panchayat, therefore, the order passed by the authority below disqualifying the petitioner to continue as a Sarpanch of the village panchayat is lawful. The amount of Rs.19,500/- was paid on 26.03.2021 after the petitioner was elected as Sarpanch, as such, the petitioner is an ultimate beneficiary of the amount in question. The learned counsel for the respondent no. 5 submits that the term of earlier Gram Panchayat came to an end on 21.08.2020 and the work is done in October-November 2020. It is further the case of the respondent no. 5 that the resolution no. 4 dated 14.08.2020 has specified that the process of evaluating the work is to be undertaken and the payment

has to be done after verification of attendant muster, but the payment is not done in tune with resolution no.4. There is no evaluation of the work before disbursement of the amount, neither the amount were disbursed after taking resolution of Gram Panchayat and verification of work done in tune with measurement book. Therefore, the process of making payment deviates from the settled procedure and thus creates doubt of actual work undertaken by the petitioner's husband. However, the learned counsel for the respondent no. 5 has admitted in his affidavit that the work is given to the husband of the petitioner in terms of resolution no.4 dated 14.08.2020, but while making payment, assessment of the work was not done and an amount of Rs.500/- per day was paid for 39 days and thus there is violation of Section 14 (1) (g) of the Act of 1958.

Consideration and conclusions :

7] It is to be noted from the order passed by the authorities below that the petitioner is disqualified as a member under Section 14 (1) (g) of the Act of 1958 for the

reason that Rs.19,500/- has been paid by the Sarpanch i.e. the petitioner from the account of the Grampanchayat to her husband and as such the petitioner has violated Section 14 (1) (g) of the Act of 1958. The Authorities below have held that the disqualification under Section 14 (1) (g) of the Act of 1958 is attracted as there is a payment made for contractual work wherein the Sarpanch has indirectly benefited. In the instant case since the petitioner had interest in the contract, the petitioner is disqualified under Section 14 (1) (g) of the Act of 1958.

8] On examination of the attendant sheet, the attendant sheet is of October–November, 2020. The petitioner's husband has remained present for the work on various dates for which the amount of Rs.13,500/- is quantified in the month of October, 2020 for the work of cleaning of drainage and light fitting and similarly for the month of November, 2020, the amount of Rs.6000/- has been paid for the work of cleaning of drainage and light fitting by the Grampanchayat. Both the aforesaid amount

are cleared on 26.03.2021. The work is undertaken by the husband of the petitioner prior to the petitioner becoming a member of the village panchayat. Attendant sheet shows that the work is done. Nobody has challenged the attendant register, moreover, the work is of cleaning of drainage.

9] Section 14 (1) (g) of the Maharashtra Village Panchayats Act is as under:

14. Disqualifications

[(1)] No person shall be a member of a panchayat continue as such, who -

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat or in any contract with, by or on behalf of, or employment with or under, the panchayat; or

10] For disqualification under Section 14 (1) (g) of the Act of 1958, the elected member should have directly or indirectly, by himself or his partner, any share or interest in

any work done by order of the panchayat or in any contract with, by or on behalf of, or employment with or under, the panchayat.

11] In the instant case, the daily work contract is issued at a prior point of time before the election of the petitioner as the member of the village panchayat and the same is not disputed by the parties. The payment for the work is, however, done after the petitioner is elected as the Sarpanch.

12] The work undertaken by the husband of the petitioner is labour work of cleaning of drainage, as such, the work has to be assessed on day to day basis by the panchayat as and when the work of cleaning of drainage is undertaken. The work was undertaken prior to the petitioner being elected as a member. The petitioner has no role in granting work. In a case very similar to the present case, this Court in the case of *Saroja wo. Shirish Behare Vs. Laxman Sonbaji Behare & others* reported in 2022 [2] ALL

MR 295 has held that if the work is undertaken at prior point of time and completed at a prior point of time and merely because, cheque is issued by the elected member after elections, the elected member cannot be disqualified under Section 14 (1) (g) of the Act of 1958. For disqualification under Section 14 (1) (g) of the Act of 1958, a contract has to be made by the panchayat whereby the petitioner has direct or indirect interest. In the instant case, the labour work was allotted to the husband of the petitioner before the election of the petitioner to the village panchayat and that the petitioner has made payment for the aforesaid work. Verification of daily cleaning work cannot be done after prolonged period. Verification of daily work is done on day to day basis. There is no finding by the authorities that labour work of cleaning was not allotted to the husband of the petitioner and that he has not undertaken the cleaning and repair works.

13] Thus, the petitioner has merely made the payment after being elected. The payment done by the

Sarpanch / petitioner to her husband is merely a consequence of the labour work done by the husband of the petitioner at an earlier point of time and as such disqualification under Section 14 (1) (g) of the Act of 1958 is not applicable to the case of the present petitioner.

14] The disqualification under Section 14 (1) (g) is incurred by an elected member only in the cases of a contract being granted or extended during the tenure of the elected member. Disqualification under Section 14 (1) (g) has to be strictly construed.

15] Removal of an elected member is a serious affair. The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407 has held at para nos.35, 36 and 37 as under:

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the

*elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* and *Ram Beti v. District Panchayat Raj Adhikari*].*

36. *In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.*

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

16] In view of the above, the judgment and order dated 29.06.2022 in Case No.2022 /Grampanchayat/ Appeal-2/CR-23 passed by the respondent no.2 – Additional Commissioner, Aurangabad, so also, the judgment and order dated 02.03.2022 passed by the respondent no. 3 – District Collector are quashed and set aside. Accordingly, the Writ Petition is allowed and the petitioner’s membership to the village panchayat as also the post of Sarpanch is restored.

**[ARUN R. PEDNEKER]
JUDGE**

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