

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8612 OF 2022

1. Dr. Ramnath s/o Govind Kadam,
Age:- 35 years, Occ. Medical Practitioner,
2. Ankush s/o Shivaji Kadam,
Age:- 34 years, occ. Agri.,
3. Vishwas s/o Dnyandev Kadam
Age:- 31 years, Occ. Agri.,
4. Devidas s/o Vitthal Kadam,
Age:- 34 years, Occ. Service & Agri.

All R/o Manjarsumba, Post. Jeur,
Tq. & Dist. Ahmednagar

...Petitioners

VERSUS

1. Mangal w/o Bhausahab Kadam,
Age:- 55 years,. Occ. Household,
2. Kiran s/o Shivaji Kadam,
Age:- 35 years, Occ. Agri.,
3. Jalindar s/o Machhindra Kadam,
Age:- 40 years, Occ. Contractor
4. Kavita w/o Anil Waghmare,
Age:- 38 years, Occ. Household,
5. Prashant s/o Tukaram Kadam,
Age:- 33 years, Occ. Agri.,
6. Sow. Rupali Arjun Kadam,
Age:- 45 years, Occ. Household,

All R/o Manjarsumba, Post. Jeur,
Tq. & Dist. Ahmednagar

7. The Returning Officer,
@ Tahsildar, Nagar Taluka,
Ahmednagar

(2)

8. The Gram Panchayat,
Manjarsumba, Post. Jeur,
Tq. & Dist. Ahmednagar
Village Development Officer
9. The District Collector,
Ahmednagar
10. The Divisional Commissioner,
Nashik Division, Nashik ...Respondents

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Mr. Rahul R. Karpe, Advocate for Petitioners.

Mr. A.S. Shinde, AGP for Respondents/State.

Mr. D.A. Mane h/f Mr. P.A. Bharat, Advocate for Respondent Nos.1 to 6.

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CORAM : S.G. MEHARE, J.

DATED : 13.02.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. This case exemplifies a lack of sportsmanship and electoral spirit. Instead of spending time on the social work, a doctor by profession is spending time on the litigation. Even after the two competent authorities gave their verdict, he dragged the public-elected members of the Village Panchayat to the High Court. That shows the changing shape of Indian democracy. No one leaves a single stone unturned. The politicians take pride in showing each other down. The politicians appear to have diverted from their primary responsibility to ensure public administration is conducted impartially and neutrally. They also appear to have forgotten that the quality of a good politician is a vision and the power to implement

that vision. They are supposed to take the state forward, make the commoner's life easy and comfortable, and educate people. Not only this, but the parties to the petition tried to involve the government machinery to prove that they were and were not in a position to submit statements of election expenses within the time prescribed by the election commissioner.

3. The election of the Village Panchayat was declared on 18.01.2021. Admittedly, the elected members/contesting respondents had submitted their accounts on 17.02.2021. However, the affidavit, as required to be submitted with the statement of election expenses, was sworn in on 18.02.2021 and submitted to the office on 22.02.2021. Fortunately, both parties agree that on 19.02.2021, there was Shiv Jayanti. On 20.02.2021, it was Saturday, and on 21.02.2021, it was a Sunday. Therefore, the office was closed.

4. The complaints of the petitioners before the Collector as well as the appeal before the Additional Commissioner, have been dismissed.

5. The contesting respondents, nos.1, 2, 3 and 5, explained that they were under treatment for Gastroenteritis from 16.02.2021 to 18.02.2021. Respondents nos.2 to 6 explained that they were suffering from Covid-19. They were found to have an antigen test positive on 03.02.2021. At that time, the Covid-19 pandemic was at its peak. Therefore, they were quarantined at home for 14 days.

However, they could manage to swear in an affidavit on 18.02.2021. Soon after the office opened on 22.02.2021, they submitted it. They have also produced the medical certificate against the documents produced by the petitioners, showing that the allegations against them are false. Respondents nos.4 and 6 have submitted the Covid-19 test report from ICMR as against the certificate of non-examination of respondent nos.4 to 6 from the hospital of the Municipal Corporation, Ahmednagar. The petitioners have also placed on record the discharge certificate of respondent No. 1 Mangal of Bhairawnath Hospital. Referring to these documents, it has been vehemently argued that when she was discharged on 19.02.2021, how could she swear in an affidavit on 18.02.2021? Similar are the arguments against respondent nos.2, 3 and 5. The certificate of Dr. Mayur Chauhan, BHMS, dated 29.07.2021, has also been placed on record. He certified that on 03.02.2021, he did not treat her as she was Covid-19 positive. She and her relatives produced a forged prescription from his hospital. The prescription does not bear his signature. The petitioners did not stop there; they went on calling the information under the Right to Information Act about respondents Rupali and Kavita and obtained the information that their report of COVID-19 positive dated 03.02.2021 was not available on the website covid.nhp.gov.in.

6. Learned counsel for the petitioners has vehemently argued that the explanation for the delay was not convincing and

acceptable. Neither the District Collector nor the Additional Commissioner commented on these crucial questions. The Collector had decided the petition recording the observations in two lines. The Additional Commissioner also did not apply his mind and mechanically accepted the order of the Collector. The order should have been reasoned. He did not dispute that the Election Officer/Collector has powers to condone the delay caused in submitting the statement of election expenses in time. He has further argued that the last date for submitting the election expenses with an affidavit was 17.02.2021. He emphasized that the election expenses and the affidavit must be filed together and could not be segregated. The statement of election expenses must be filed with an affidavit. It is also not a statutory compliance. Therefore, not admitting it is assumed that the statements of election expenses were submitted on 17.02.2022, it was incomplete compliance. He has argued that the compliance required under Section 14-B (1) is a *sine qua non* to continue as a member of the Village Panchayat. He prayed to allow the petition and declare the contesting respondents disqualified to continue as members of the Village Panchayat.

7. Per contra, learned counsel for the contesting respondents has vehemently argued that petitioner no.1 is a medical practitioner by profession. He has very good terms with the medical officers. Hence, he could manipulate the information under the Right

to Information Act from the Civil Health Centre, Corporation Ahmednagar. He pointed out that he had moved an application on 05.08.2021. However, the outward number of the information is dated 09.07.2021. He also read over his reply and argued that the explanation was convincing. The situation was beyond the control of the respondents. There was no deliberate delay in submitting the statements of election expenses. He pressed the Covid-19 test report issued by ICMR into service. He submits that this is authenticated evidence showing that respondents nos.4 and 6 were antigen-positive against the information collected under the Right to Information Act. This document has sanctity compared to the other documents. He also submitted that soon after the office was opened, the affidavits were submitted. He has referred to the documents of the office of the Election Commissioner and argued that the statements of the election expenses were received by the said office till 18.02.2021. Referring to the judgment of the *Shaikh Nisar Ibrahim Vs. State of Maharashtra and others, (2019) 5 Mah LJ 749*, he has vehemently argued that a short delay of one day or two could be condoned and the candidates elected in a democratic way of the election should not be denied to continue as a member of Village Panchayat.

8. The arguments of both counsels reveal that the election expenses statements were first submitted, and after that, the affidavits were produced. This Court, in the case of Shaikh Nisar (supra), has

discussed the rights of the persons elected democratically by an election and observed in para 31 that, as in this case, these petitioners would not benefit in any way by delaying the filing of their accounts of election expenses. Refusing to condone the minor delay would result in not only ousting these petitioners from their elected positions but also disqualifying them for a period of five years, thereby precluding them from contesting such elections. It, therefore, needs to be assessed as to whether the length of the delay is such that such a petitioner could be made to suffer such a harsh consequence. This Court referred to the ratio the Hon'ble Supreme Court laid down in the case of Collector, Land Acquisition, Anantnag v/s. Mst. Katiji, AIR 1987 Sc 1353, further held that taking an overall view of all these factors and after considering the explanation of both the petitioners, in the face of a minor delay of two and sixteen days, both the petitioners are allowed.

9. So far as the explanations are concerned, there are documents against documents. The petitioners have collected the documents from doctors where the respondents claim that they were under treatment and admitted to the hospital, as well as from the hospital of the corporation under the Right to Information Act. Respondents nos.4 and 6 have submitted the COVID-19 test report issued by ICMR to rebut the said evidence. The whole world knows the fear and effect of the Covid-19 pandemic. Everyone was afraid of

his life. Many countries have declared lockdown. India had also declared a lockdown for a long period. When the respondents had to file the statement of the election expenses and affidavit, the Covid-19 pandemic was at its peak. The routine life of humans was highly affected. People were not allowed to move unnecessarily. Most of the Offices were shut down for routine work. There appears to be substance in the submission of the learned counsel for the respondents that the COVID-19 test report issued by ICMR prevails over the documents produced by the petitioners. The certificate issued by Dr. Mayur Chauhan is interesting that on 03.02.2021, he did not diagnose Rupali as suffering from Covid-19. He did not provide her treatment. The prescription from his hospital does not bear his signature or the stamp of his hospital. The prescription is dated 03.02.2021. Whether he really had treated her is a matter of investigation. However, the fact remains that she was antigen-positive on 03.02.2021 as per the test report of ICMR.

10. What is the effect of submitting the statement of election expenses and affidavit separately to be ascertained? The circulation of the Maharashtra State Election Commission states that the election expenses and the affidavit should be submitted together. In those circumstances, if the statements of expenses were submitted first, those will not be treated as submission in time unless the affidavit has been filed.

11. In this case, the affidavit was sworn in on 18.02.2021. How and where it was sworn in is a matter of evidence. But the fact remains that they had sworn in an affidavit on 18.02.2021 and submitted it on 22.02.2021, soon after the office was opened after three days of long holidays. So, in this case, it can be stated that they have complied with the submission of election expenses and affidavit on 22.02.2021. The last date to comply with was 17.02.2021. Thereafter, the office was opened for only one day, i.e. 18.02.2021 and thereafter, there were three days' holidays. So considering this period, there must not be a delay of more than one day. It is a short delay. *Prima facie*, considering the papers placed on record and reasons assigned by the respondents, it would be difficult to digest that it was a deliberate delay.

12. In the case of *Savitribai Kisan Shinde Vs. The Additional Divisional Commissioner, Aurangabad 2018 MhL.J. Online 26*, this Court held that mere failure to submit the accounts would not *ipso facto* lead to disqualification if such a candidate tenders an explanation under Section 14-B (1)(b). Such an explanation will have to be considered, considering the reasons assigned and the fact that the majority vote elects such candidates, and they cannot be disqualified at the mere askance. The Collector and the Commissioner have discussed the case of the petitioners and the respondents. The Commissioner held that the delay in submitting the affidavit was

caused by sufficient reason. The respondents have produced the evidence to that effect; hence, they would not be disqualified. It appears *prima facie* that they did not commit the deliberate delay. This indicates that the Additional Commissioner bear in mind that the delay could be considered for sufficient reasons. The Collector has also considered that the delay was caused for the just and proper reasons. Both authorities appear to have applied the mind while accepting the respondents' contention.

13. The discussion made above leads this Court to record the finding that it was a delay of one day only. It was not deliberate. The reasons were plausible. Both authorities have correctly considered the same. The ratio of the Shaikh Nisar (*supra*) is squarely applied to the case at hand. The candidates who were democratically elected could not be sent back for such a small delay, which was beyond their control. Both impugned orders are free from infirmities and illegalities and do not warrant interference at the hands of this Court. Hence, the petition stands dismissed.

14. Rule stands discharged.

(S.G. MEHARE, J.)