REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 55 OF 2022
(arising out of S.L.P. (CIVIL) NO. 295 OF 2021)

SHOBHABAI NARAYAN SHINDE .....APPELLANT

VERSUS

THE DIVISIONAL COMMISSIONER,
NASHIK DIVISION, NASHIK & ORS. .....RESPONDENT(S)

with

CIVIL APPEAL NO. 56 OF 2022
(arising out of S.L.P. (CIVIL) NO. 451 OF 2021)

J U D G M E N T

A.M. Khanwilkar, J.

1. Leave granted.

2. The core issue in these appeals is: whether an appeal could be filed before the Divisional Commissioner against an order passed by the Collector under Section 14B(1) of the Maharashtra Village Panchayats Act, 1959[1], declining to disqualify a Sarpanch/Member of the Panchayat for allegedly having failed to lodge an account of election expenses within the time and in the manner prescribed by the State Election Commission, without offering any good reason or justification for such failure?

3. Briefly stated, the appellants contested elections held in September, 2018 for electing a new Panchayat. The appellant in appeal arising out of SLP (C) No. 295/2021 had been directly elected as a Sarpanch of Village Panchayat, Kusumba, Taluka and District Dhule in the State of Maharashtra, from public, whereas, the appellant in appeal arising out of SLP (C) No. 451/2021 was elected as a member of the same Village Panchayat.

4. Respondent No. 2 filed two Dispute Applications being Nos. 10/2019 and 11/2019 in the office of respondent No. 5 – Collector, seeking declaration under Section 14B(1) - that the appellants

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1 for short, "the 1959 Act"

herein stood disqualified for not submitting the election expenses within the stipulated time. The Collector, after considering the relevant material and the submissions of the rival parties, rejected both the Dispute Applications by separate judgment and order dated 5.2.2019 being devoid of merits.

5. The respondent No. 2 thereafter carried the matter in appeal before the Divisional Commissioner, Nasik Region, Nasik[2], questioning the correctness of the rejection of his Dispute Applications by the Collector. The Divisional Commissioner allowed both the appeals by separate judgment and order dated 15.7.2019 and thereby declaring the appellants as disqualified and ineligible to remain as Gram Panchayat Sarpanch/Member.

6. Feeling aggrieved, the appellants filed writ petitions before the High Court of Judicature at Bombay Bench at Aurangabad[3] being Writ Petition Nos. 9244/2019 and 9245/2019.

7. As common question had arisen for consideration, the High Court vide impugned common judgment and order dated

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2 for short, "the Divisional Commissioner"

3 for short, "the High Court"

17.12.2020, dismissed both the writ petitions and affirmed the order of disqualification passed by the Divisional Commissioner against the appellants herein.

8. The principal challenge before the High Court was about the jurisdiction of the Divisional Commissioner to entertain the appeals as filed by the respondent No. 2. For, the 1959 Act does not provide for an appeal against the order passed by the Collector under Section 14B(1) in rejecting the application for declaring the incumbent member as disqualified. Further, the remedy provided for consequent to the decision of the Collector under Section 14B(1) before the Divisional Commissioner, is limited to removing the disqualification or reducing the period of any such disqualification. However, in a case where the Collector rejects the application for disqualification of Sarpanch/Member, no further remedy of appeal is provided for in the 1959 Act. The High Court negatived this contention and opined that it was open to the aggrieved applicant(s) to assail such decision of the Collector, by way of an appeal under Section 14B(2) before the Divisional Commissioner. To buttress this conclusion, the High Court drew analogy from

remedy of appeal against order of Collector under Section 16(2) before the Divisional Commissioner under Section 16(2) and then adverted to the decision in ***Suchita Murlidhar Kewati (Sarpanch) & Ors. vs. State of Maharashtra & Ors.***[4] Further, having rejected the objection regarding jurisdiction of the Divisional Commissioner to entertain the appeal(s), the High Court proceeded to affirm the view taken by the Divisional Commissioner of reversing the decision of the Collector, on merits. Accordingly, the writ petitions filed by the appellants came to be dismissed.

9. We have heard Mr. Sudhanshu S. Choudhari, learned counsel for the appellants and Mr. Nishant R. Katneshwarkar, learned counsel for the respondent No. 2. They have, more or less, reiterated the stand taken before the High Court by the respective parties.

10. The provision, for disqualifying, to be a member of a Panchayat and to continue as such, is imbued in Section 14[5] of the

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4 2013 (6) Mh.L.J. 414

5 **Disqualifications. –** (1) No person shall be a member of a *Panchayat* continue as such, who –

(a) to (j-3) xxx xxx xxx

1959 Act. One of the stipulations inserted by way of amendment in 2010 with effect from 6.5.2010 is clause (j-4) in Section 14(1). It predicates that a person, if disqualified by the State Election Commission under Section 14B of the Act, shall not be a member of a Panchayat or continue as such. Section 14B[6] was also inserted by the same amendment Act in 2010. It enables the State Election Commission to declare a person (member of the Panchayat) as disqualified for being a member of the Panchayat or for contesting an election for being a member for a period of five years from the date of the order so passed, if he has failed to lodge an account of election expenses within the time and in the manner

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(j-4) has been disqualified by the State Election Commission under section 14B; or

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6 **14B. Disqualification by State Election Commission. –** (1) 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,

the State Election Commission may, by an order published in the *Official Gazette*, declare him to be disqualified and such person shall be disqualified for being a member of *panchayat* or for contesting an election for being a member for a period of five years from the date of this order.

(2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of such disqualification.

required by the State Election Commission and has no good reason or justification for such failure. Sub-Section (2) of Section 14B enables the State Election Commission to remove such disqualification or reduce the period thereof.

11. Be it noted that the State Election Commission in exercise of its enabling powers, vide Article 243-K of the Constitution of India including Section 10A(2)[7] of the 1959 Act, issued an order dated 19.11.2010[8] to delegate its powers, such as under Section 14B of

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7 **10A. State Election Commission**.-

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(2) 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.

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STATE ELECTION COMMISSION, MAHARASHTRA

New Administrative Building, Opp. Ministry, Madam Cama Road,

Mumbai – 400 032

Date: 19.11.2010

O R D E R

Regarding conferring of powers to declare disqualification of the candidates contesting the elections of Zilla Parishad, Panchayat Samiti and Village Panchayats if they do not submit the expenditure account in the prescribed manner.

No. SEC/ZPPS/2010/L.No.9/KA-7: Under the powers conferred vide Article No. 243-K of the Indian Constitution, as well Section 9A(2) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and Section 10A(2) of the Bombay Village Panchayat Act, 1958 and in exercise of other powers, the State Election Commissioner, Maharashtra pass the following order: -

the 1959 Act to the officers of the State Government. Clause B of the stated order stipulates that powers conferred upon the State Election Commission under Section 14B(1) shall vest in the concerned Collector of the District and powers conferred on it under Section 14B(2) shall vest with the concerned Divisional Commissioner.

12. By virtue of this order, the State Election Commission has had authorised the Collector to exercise its powers under Section 14B(1); whereas powers under Section 14B(2) by the Divisional Commissioner. It follows that the concerned State Government officials are ordained to exercise the assigned power in silos. *Ergo*, the power of State Election Commission under Section 14B(1) to declare that the Sarpanch/Member of a Panchayat as disqualified,

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(A) The powers conferred under the provisions of Section 15(B)(1) and 62(A) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 are hereby vested in concerned Collector. Similarly the powers conferred under Section 15(B)(2) and 62(B)(1) are hereby vested in concerned Divisional Commissioners.

(B) The powers conferred under the provisions of Section 14(B)(1) of the Bombay Village Panchayats Act, 1958 are hereby vested in concerned Collector. Similarly the powers conferred under Section 14(B)(2) are hereby vested in concerned Divisional Commissioners.

By the order of Election Commissioner

...

(emphasis supplied)

is to be exercised by the Collector and not the Divisional Commissioner. Similarly, the Divisional Commissioner can exercise power only in respect of matters specified in Section 14B(2) - to remove the disqualification incurred under sub-Section (1) or reduce the period of such disqualification. In either case, the power to decide concerned issues is that of the State Election Commission, which thenceforth could be exercised by its concerned delegatee in respect of matters specified in the stated order.

13. Notably, no appeal is provided against the order of Collector (or of State Election Commission) refusing to disqualify the Sarpanch/Member under Section 14B(1). Similarly, no appeal is provided even against the order of the Divisional Commissioner (or of State Election Commission) under Section 14B(2). A limited window against the order under Section 14B(1) passed by the Collector (or State Election Commission itself) declaring the Sarpanch/Member of a Panchayat as disqualified, is kept open before the Divisional Commissioner (or the State Election Commissioner, if the order under Section 14B(1) is or were to be

passed by the State Election Commission itself) - to remove such disqualification or to reduce the period thereof in deserving cases. To put it tersely, for the nature of power exercised by the State Election Commission under Section 14B, no remedy of appeal is envisioned by the statute.

14. The power of the State Election Commission, bestowed under sub-Section (1) or (2) of Section 14B, though concerns subject of disqualification of a person, it operates in two different silos. In that, the power under Section 14B(2) gets triggered only after an order of disqualification is passed under Section 14B(1). The former is not activated at all in a case where the application or the proceedings to declare the Sarpanch/Member as disqualified, is rejected or dropped. Taking any other view would inevitably result in a situation where the power exercised by the State Election Commission under Section 14B(1) could be appealed against before itself (its delegatee). That cannot be countenanced. For, an appeal cannot lie before the same Authority/functionary who had passed the order of rejection of prayer to declare the member concerned as disqualified. *Sans* an express statutory intent to provide appeal

against the order rejecting application to declare a person disqualified, it must follow that upon passing such order the power under Section 14B is fully exhausted by the State Election Commission (or its delegatee, as the case may be).

15. Indubitably, an authority rejecting the proposal regarding disqualification, cannot sit "in appeal" over its own order of rejection. Notably, there is no express power bestowed upon the State Election Commission or its delegatee to review its own decision passed under Section 14B(1) or 14B(2) of the Act, as the case may be. The argument of the respondent No. 2 that the power bestowed on the Divisional Commissioner under Section 14B(2) posits power to impose disqualification by virtue of Section 21 of the General Clauses Act, 1897, does not commend to us and the same needs to be merely stated to be rejected. Similarly, we reject the argument of the respondent No. 2 that it is a case of *Casus Omissus*. Whereas, the legislative intent and the setting in which the relevant provisions are couched leaves no manner of doubt that such power had not been given to the delegatee (Divisional

Commissioner), as it does not inhere in the State Election Commission itself.

16. The High Court, however, answered the question by referring to the logic under Section 16(2)[9] of the Act. We hasten to observe that the High Court posed a wrong question to itself in paragraph 2 of the impugned judgment (whether the Divisional Commissioner had jurisdiction to entertain an appeal under "Section 16(2)" against an order of Collector under Section 14B(1) refusing to

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9 **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 disqualification 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.

(emphasis supplied)

disqualify a Sarpanch/Member), and as a result of which arrived at the wrong conclusion.

17. Concededly, Section 16 is a provision which speaks about the disability from continuing as the member of a Panchayat, consequent to incurring disqualification or has been so declared under Section 14 of the Act. Once a Sarpanch/Member is disqualified under Section 14B by virtue of an order under Section 14B(1), it would give rise to two situations – the first is that the person concerned can invoke option under Section 14B(2) for removal of his disqualification or for reduction of the period of such disqualification. The second is the obligation fastened upon the Collector to decide the issue as to whether vacancy has occurred on account of such disqualification. That question is required to be answered by the Collector in the first instance, in terms of Section 16(2) and to take follow-up steps thereafter in filling up such vacancy. The decision of the Collector on such question, referable to sub-Section (2) of Section 16, however, has explicitly been made appealable before the State Government or the delegate of the State Government. That is, completely, a different regime *albeit* a consequence of process referred to in Section 14B(1) - to

declare a Sarpanch or a member as having incurred disqualification. This question decided by the Collector, is essentially in his capacity as a delegatee of the State Election Commission and, *de jure,* deemed to have been decided by the State Election Commission itself. Be that as it may, the question decided by the Collector under Section 16 is, in one sense, a ministerial act bestowed upon him to ascertain whether vacancy had arisen as a consequence of the disqualification order and to fill up such vacancy.

18. *A priori*, if the State Election Commission or its delegatee were to reject or drop the proceedings against the concerned person or member initiated under Section 14B(1), as being devoid of merits or for any other reason, the complainant does not have remedy of appeal against such decision. Such an order becomes final and is not appealable at all. Indeed, it can be assailed before the constitutional court under Article 226 of the Constitution of India.

19. The High Court has adverted to the decision in ***Suchita Murlidhar Kewati***[10]. Indeed, the exposition in that decision is in the context of an application filed under Section 14B for a

10 supra at Footnote No. 4

declaration that the elected member had incurred disqualification. However, the observations in paragraph 9 of the reported decision have been completely misconstrued and misapplied to the fact situation of the present case.

20. Our attention has also been drawn to yet another decision of the same Bench of the High Court in Writ Petition No. 12276/2021 decided on 3.12.2021[11]. In the said judgment, the legal position has been correctly expounded that the processes under Section 14B(1) and Section 16 are completely different, though concern the matter of disqualification and vacancy arising therefrom. In case, the Collector rejects the complaint and drops the proceedings in favour of concerned Sarpanch/Member, there would be no question of accrual of any vacancy. In contradistinction, if the Collector declares the member as having incurred disqualification, the follow-up issue required to be considered by the Collector under Section 16 then is to ascertain if any vacancy had arisen because of such disqualification. The two are different processes.

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11 Shri Gulabrao vs. State of Maharashtra & Ors. - Writ Petition No. 12276/2021 decided on 3.12.2021

21. Taking any view of the matter, the opinion of the High Court in the impugned judgment cannot be countenanced. We conclude that no remedy of appeal is envisaged against an order of the State Election Commission or its delegatee – the Collector, under Section 14B(1), rejecting the complaint or to drop the proceedings for declaration of a Sarpanch/Member having incurred disqualification. That order becomes final and if passed by the Collector as the delegatee, is deemed to have been passed by the State Election Commission itself. Even the State Election Commission cannot step in thereafter in any manner much less in the guise of reconsideration or review of such order. It must follow that the Divisional Commissioner would have no jurisdiction (*ab initio*) to entertain assail to such an order of the Collector.

22. We are conscious of the fact that the High Court not only negatived the objection regarding jurisdiction of the Divisional Commissioner to entertain the stated appeals, but also affirmed the decision on merits in reversing the order(s) of Collector rejecting the Dispute Applications of the respondent No. 2. The fact that the High Court ventured into the terrain of dealing with

merits of the case, does not require us to examine that question. For, once it is held that the Divisional Commissioner had no jurisdiction to entertain the appeal against the order of the Collector under Section 14B(1) rejecting the complaint filed by the respondent No. 2, no other issue needed examination by the High Court at his instance. Resultantly, we decline to go into the correctness of the decision of the Collector on merits in rejecting the Dispute Applications filed by respondent No. 2, for a declaration that the appellants had incurred disqualification. We also do not wish to dilate on the plea urged by the respondent No. 2 that the appellants had disentitled themselves for indulgence of this Court owing to their conduct, as we have held that the stated order(s) of the Divisional Commissioner are without jurisdiction and *non-est* in law.

23. Accordingly, these appeals succeed. The impugned common judgment and order is set aside. As a result, the separate orders passed by the Divisional Commissioner dated 15.7.2019 in the respective appeals are also set aside and instead the writ petitions filed by the appellants are allowed, thereby restoring the separate

orders passed by the Collector dated 5.2.2019, rejecting the stated Dispute Application(s) filed by the respondent No. 2. There shall be no order as to costs.

.....J.
(A.M. Khanwilkar)

.....J.
(C.T. Ravikumar)

New Delhi;
January 04, 2022.