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VIRENDRASING

v.

THE ADDITIONAL COMMISSIONER AND ORS.

(Civil Appeal No. 1715 of 2023)

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APRIL 17, 2023

**[SANJAY KISHAN KAUL, AHSANUDDIN AMANULLAH
AND ARAVIND KUMAR, JJ.]**

C *Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 : ss. 16(1)(i), 40 – Disqualification – Appellant elected as a member of the Zilla Parishad – Petition by respondent no.3 u/ss. 40 and 16(1)(i) claiming appellant’s disqualification on the ground that the appellant had misused his elected post for gaining undue personal financial benefit whereby in E-tender floated for the project, work order was issued in favour of the appellant’s son –*
D *Application allowed by Divisional Commissioner – Writ petition thereagainst dismissed by the High Court – On appeal, held :Salutory purpose of disqualification provisions was to ensure the purity of administration in Municipal Committee – On facts, it was not even a situation where the appellant’s son was carrying on any existing contractual work – It was only soon after the election of*
E *the appellant that his son was registered as a contractor – Only contract awarded to him was the one where the funds flowed to the Gram Panchayat from the Zilla Parishad of which the appellant was a member – Moreover, issuance of the work order by the Zilla Parishad itself shows the Zilla Parishad’s supervisory and*
F *sanctioning role in the contract, which falls within the wide ambit of s. 16(1)(i) – Probity in such financial transactions should be the rule rather than the exception – Appellant had a greater responsibility as a father to make sure that his son does not enter into a contract that is sanctioned by the Zilla Parishad itself – Order*
G *passed by the High Court is upheld – Consequential disqualification would take effect from the date of the judgment.*

Dismissing the appeal, the Court

HELD: 1.1 The objective of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 is to introduce local self-governance and administration at the grassroots, and to entrust
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Zilla Parishads with the execution of works and developmental schemes of the State Government. It is in this conspectus that the said Act provides for the disqualification of elected representatives. Having been conferred with major financial responsibilities, the statute maintains a system of checks and balances to ensure transparency in local contracts and to obviate the possibility of elected representatives exercising undue influence. It is no doubt true that elected representatives should not be disqualified on flimsy grounds. However, the statutory mandate is equally binding, whereby activities which tend to defeat the objective of transparency should not be permitted to prevail. [Para 15][799-C-D]

1.2 The legislature in its wisdom has defined the grounds for disqualification in expansive terms under Section 16(1)(i) of the Act. Thus, the use of the terminology - ‘directly or indirectly’, ‘by himself or by his partner’, ‘any share or interest in any work done’, ‘by order of Zilla Parishad or in any contract with’, and ‘by or on behalf of the Zilla Parishad’. All eventualities where the councillor can be said to have any financial connection with the work of the Zilla Parishad were sought to be included, with the object of discouraging the practice of financial patronage that is inherently beneficial to the elected representatives. [Para 16][799-E-F]

1.3. This was not even a situation where the appellant’s son was carrying on any existing contractual work. It was only soon after the election of the appellant that his son was registered as a contractor. He had no other contracts in that area or otherwise. The only contract awarded to him was the one where the funds flowed to the Gram Panchayat from the Zilla Parishad of which the appellant was a member. The appellant had attempted to justify this situation by claiming that his son was registered as a contractor soon after the appellant’s election as he had just completed his studies. This fact raises further suspicions about the appellant’s interest in his son’s business. [Para 20][800-E-G]

1.4. The Zilla Parishad, Dhule issued a work order to the Aarave Gram Panchayat for the repair of roads on 09.06.2020. This document, and the Zilla Parishad’s counter affidavit, reveal

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A that the funds flowed from the State Government to the Zilla Parishad, and in turn to the Gram Panchayat. This is notwithstanding the translation of the resolution dated 26.01.2020 adduced by the appellant, whereby an impression is sought to be given as if the Gram Panchayat was willing to spend its own funds on the project. In any case, this translation has been seriously
B disputed by respondent no. 3. The issuance of the work order dated 09.06.2020 by the Zilla Parishad itself shows the Zilla Parishad's supervisory and sanctioning role in the contract, which falls within the wide ambit of Section 16(1)(i) of the said Act. [Para 21][800-G; 801-A-B]

C 1.5. Probity in such financial transactions should be the rule rather than the exception. The appellant had a greater responsibility as a father to make sure that his son does not enter into a contract that is sanctioned by the Zilla Parishad itself. The finding of fact by courts below that nothing had been placed on
D record to show even a separation of residence between the son and the father, other than a ration card purporting to show that the son was living with his grandmother. This was neither here nor there, more so when the son had just completed his education. [Para 22][801-C-D]

E 1.6. That sufficient opportunities were made available to the appellant to present his arguments. There cannot be a birthright to seek adjournments, especially when the Divisional Commissioner was mandated to decide the issue of appellant's disqualification within a period of ninety days from respondent
F no.3's application, as per Section 40(2) of the said Act. The Divisional Commissioner thus rightly treated the appellant's written submissions as his defence. [Para 23][801-E]

1.7. The consequential disqualification would take effect from the date of the judgment. [Para 24][801-F-G]

G *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & Ors. (2015) 8 SCC 519 : [2015] 6 SCR 437; Gulam Yasin Khan v. Shri Sahebrao Yashwantrao Walaskar & Ors. AIR 1966 SC 1339 : [1966] SCR 339; Ravi Yashwant Bhoir v. District*

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Court had distinguished *Gulam Yasin's* case⁵ on the premise that it did not pertain to the disqualification of a member of the local self-government on the ground of direct or indirect pecuniary benefit. It was contended that *Zelia M. Xavier's*⁶ case was of greater relevance as it dealt with Section 10 of the Goa Panchayat Raj Act, 1994, which was analogous to Section 16(1)(i) of the said Act.

Our View:

15. We must begin with the objective of the said Act; which is to introduce local self-governance and administration at the grassroots, and to entrust Zilla Parishads with the execution of works and developmental schemes of the State Government. It is in this conspectus that the said Act provides for the disqualification of elected representatives. Having been conferred with major financial responsibilities, the statute maintains a system of checks and balances to ensure transparency in local contracts and to obviate the possibility of elected representatives exercising undue influence. It is no doubt true that elected representatives should not be disqualified on flimsy grounds. However, we are equally bound by the statutory mandate, whereby activities which tend to defeat the objective of transparency should not be permitted to prevail.

16. The legislature in its wisdom has defined the grounds for disqualification in expansive terms under Section 16(1)(i) of the said Act. Thus, the use of the terminology – ‘directly or indirectly’, ‘by himself or by his partner’, ‘any share or interest in any work done’, ‘by order of Zilla Parishad or in any contract with’, and ‘by or on behalf of the Zilla Parishad’. All eventualities where the councillor can be said to have any financial connection with the work of the Zilla Parishad were sought to be included, with the object of discouraging the practice of financial patronage that is inherently beneficial to the elected representatives.

17. If we now turn to the applicable precedent, this Court in *Zelia M. Xavier's* case had distinguished the applicability of *Gulam Yasin's*⁷ case. It was opined that in *Gulam Yasin*, this Court had held that to invite disqualification, any interest or share had to be in the contract itself, and a mere relationship between the electoral candidate and an employee of the Municipal Committee would not suffice to invite disqualification.

⁵ (supra).

⁶ (supra)

⁷ (supra).

A 18. In our opinion, both of these cases stand on a different footing
as compared to the factual scenario before us. **Gulam Yasin**⁸ was
concerned with the interpretation of the Section 15(1) of the Central
Provinces and Berar Municipalities Act, 1922, which disqualified a
candidate from standing for election if he had ‘an interest’ in the Municipal
Committee. Moreover, another factor that weighed with the Court was
B that the appellant in that case was subject to Mohammedan law, and
thus he and his son could not be said to be members of an undivided
family having common ‘financial interests’. On the other hand, in **Zelia**
M. Xavier⁹, this Court was examining a situation where the appellant
was a Panchayat member who was disqualified as her husband had
C entered into a contract with the said Panchayat for the collection of
market fee. The Court’s decision ultimately took note of the fact that the
money affairs of the husband and appellant-wife were regulated by the
Portuguese Civil Code, 1860, whereby the property of the spouses got
merged upon marriage. Thus, it was held that the appellant-wife had a
financial interest in the Panchayat’s contract with her husband.
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19. Despite these factual differences, we find that the common
principle that can be culled out from the aforementioned cases is that
this Court had cautioned against interpreting disqualification provisions
in an overly restrictive or narrow manner. In both cases, this Court had
noted that the salutary purpose of such provisions was to ensure the
purity of administration in Municipal Committees.
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20. On turning to the factual scenario of the present case, it may
be noticed that this was not even a situation where the appellant’s son
was carrying on any existing contractual work. It was only soon after
the election of the appellant that his son was registered as a contractor.
F He had no other contracts in that area or otherwise. The only contract
awarded to him was the one where the funds flowed to the Gram
Panchayat from the Zilla Parishad of which the appellant was a member.
The appellant had attempted to justify this situation by claiming that his
son was registered as a contractor soon after the appellant’s election as
G he had just completed his studies. In our view, this fact raises further
suspicions about the appellant’s interest in his son’s business.

21. The Zilla Parishad, Dhule issued a work order to the Aarave
Gram Panchayat for the repair of roads on 09.06.2020. This document,

⁸ (supra)

H ⁹ (supra)

and the Zilla Parishad's counter affidavit, reveal that the funds flowed from the State Government to the Zilla Parishad, and in turn to the Gram Panchayat. This is notwithstanding the translation of the resolution dated 26.01.2020 adduced by the appellant, whereby an impression is sought to be given as if the Gram Panchayat was willing to spend its own funds on the project. In any case, this translation has been seriously disputed by respondent no. 3. In our view, the issuance of the work order dated 09.06.2020 by the Zilla Parishad itself shows the Zilla Parishad's supervisory and sanctioning role in the contract, which falls within the wide ambit of Section 16(1)(i) of the said Act.

22. We believe that probity in such financial transactions should be the rule rather than the exception. The appellant had a greater responsibility as a father to make sure that his son does not enter into a contract that is sanctioned by the Zilla Parishad itself. We may note the finding of fact by courts below that nothing had been placed on record to show even a separation of residence between the son and the father, other than a ration card purporting to show that the son was living with his grandmother. It was rightly observed that this was neither here nor there, more so when the son had just completed his education.

23. We may also note that sufficient opportunities were made available to the appellant to present his arguments. There cannot be a birthright to seek adjournments, especially when the Divisional Commissioner was mandated to decide the issue of appellant's disqualification within a period of ninety days from respondent no. 3's application, as per Section 40(2) of the said Act. The Divisional Commissioner thus rightly treated the appellant's written submissions as his defence.

Conclusion:

24. In the aforesaid conspectus, we are thus of the view that the appeal must fail and is accordingly dismissed. The consequential disqualification would take effect from the date of the judgment.

25. The appeal is accordingly dismissed leaving the parties to bear their own costs.