

A

VIRENDRASING

v.

THE ADDITIONAL COMMISSIONER AND ORS.

(Civil Appeal No. 1715 of 2023)

B

APRIL 17, 2023

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

Maharashtra Zilla Parishads and Panchayat Samitis Act,

- C 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 :Salutary 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
- E existing contractual work – It was only soon after the election of 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

- H and Panchayat Samitis Act, 1961 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, 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]

A

B

C

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]

D

E

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]

F

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

H

- 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 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]
- 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 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]
- 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 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]
- F
- 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*
- H

Collector, Raigad & Ors. (2012) 4 SCC 407 : [2012] 3 SCR 775; Zelia M. Xavier Fernandes E. Gonsalves v. Joana Rodrigues & Ors. (2012) 3 SCC 188 : [2012] 3 SCR 258 – referred to.

A

<u>Case Law Reference</u>		
[2015] 6 SCR 437	referred to	Para 7
[1966] SCR 339	referred to	Para 10
[2012] 3 SCR 775	referred to	Para 11
[2012] 3 SCR 258	referred to	Para 14

C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1715
of 2023.

From the Judgment and Order dated 17.11.2021 of the High Court
of Judicature at Bombay at Aurangabad in WP No. 12526 of 2021.

Sudhanshu S. Choudhari, Ms. Amarjitsingh Girase, Mahesh P. D
Shinde, Ms. Rucha A. Pande, M. Veeraragavan, Advs. for the Appellant.

Vinay Navare, Sr. Adv., Siddharth Dharmadhikari, Aaditya
Aniruddha Pande, Bharat Bagla, Sourav Singh, Prashant Shrikant Kenjale,
Amol B. Karande, Narennder Rao Thaneer, Ms. Vaishnavi Gupta, Veshal
Tyagi, Sravan Kumar Karanam, Advs. for the Respondents. E

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

The Factual Scenario:

1. The appellant was elected as a member of the Zilla Parishad, Chimthane Block, Taluq Shindkheda, District Dhule, on 08.01.2020, as the candidate of a recognized party. However, he was disqualified from this position by an order dated 08.11.2021 passed by the Divisional Commissioner, Nashik, which came in a petition filed by respondent no.3, who had lost the Zilla Parishad election. F

G

2. Respondent no.3 had filed the aforesaid petition under Sections 40 and 16(1)(i) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as ‘*the said Act*’). Respondent no. 3 claimed the appellant’s disqualification on the basis that the appellant had misused his elected post with the object of gaining undue personal H

- A financial benefit. This financial benefit is stated to have accrued on account of the role played by the appellant in passing of a resolution dated 26.01.2020, whereby the Aarave Gram Panchayat sanctioned the repairing and tarring of a road from Aarave Phata to Mauje Aarave. Thereafter, the Zilla Parishad, Dhule, of which the appellant was a member, granted administrative sanction to the project on 05.06.2020.
- B This sanction order records that the Zilla Parishad, Dhule had approved the project at a cost of Rs. 15 lakhs, through the exercise of the Zilla Parishad's powers under Section 125 of the said Act.

3. Pursuant to the sanction, an e-tender was floated by the Aarave

- C Gram Panchayat on 29.06.2020. The appellant's son applied and was successful in the tender process against two other applicants. Thereafter, the Aarave Gram Panchayat issued a work order to him on 21.07.2020 for repairing the road at Mauje Aarave for a sum of Rs.14,62,871/-.

4. In the aforesaid scenario, respondent no. 3 alleged that the

- D appellant had misused his elected post and was liable to be disqualified.
- The application was filed under Section 16(1)(i) read with Section 40 of the said Act. For reference, the provisions are reproduced hereunder:

“16. Disqualifications - (1) Subject to the provisions of sub-section (2), a person shall be disqualified for being chosen as, and for being, a Councillor -

- E
- F
- (i) if he has directly or indirectly by himself or by his partner any share or interest in any work done by order of the Zilla Parishad or in any contract with, by or on behalf of, the Zilla Parishad;”

“40. (1) Subject to the provisions of sub-section (2) of section 62, if any Councillor during the term of his office—

XXXX XXXX XXXX XXXX

- G [(2) If any question whether a vacancy has occurred under this section is raised either by the Commissioner suo motu or on an application made to him by any person in that behalf, the Commissioner shall decide the question [as far as possible] within ninety days from the date of receipt of such application; and his decision thereon shall be final. Until the Commissioner decides

H

that the vacancy has occurred, the Councillor shall not be disabled A from continuing to be a Councillor:

Provided that, no decision shall be given against any Councillor without giving him reasonable opportunity of being heard.]”

5. The Divisional Commissioner allowed respondent no. 3’s application in terms of the order dated 08.11.2021 in Disqualification Appeal No. 01 of 2021. The Divisional Commissioner noted that as the Aarave Gram Panchayat was in the Chimthane Block, which fell under the purview of Zilla Parishad, Dhule, it was apparent that the appellant would be able to exert influence over the same. It was also observed that there was no evidence of the appellant’s son having been awarded work orders from any other blocks falling under Dhule Zilla Parishad, and thus there was a *prima facie* inference of misuse, sufficient for disqualifying the appellant under Section 16(1)(i) of the said Act. At this stage, it may also be noticed that the Divisional Commissioner’s order was passed after considering the appellant’s written statement as his argument, as the matter had already been adjourned on multiple occasions at the appellant’s request.

6. The appellant challenged his disqualification by way of a writ petition before the High Court, *vide* Writ Petition No. 12526 of 2021. His submissions before the High Court can be crystalized as under:

- (a) The Act would not be applicable to the case as the road repair work was being carried out at the behest of the Gram Panchayat, which is regulated under a different Act, i.e. the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as the ‘*VP Act*’);
- (b) Even assuming the applicability of the said Act, the language of Section 16(1)(i) indicates that disqualification can occur only if the work was undertaken by the Zilla Parishad itself. However, in the present factual scenario the Zilla Parishad played only a supervisory role;
- (c) The appellant had no ‘interest’ in his son’s financial affairs as the latter had an independent business and the two of them did not even reside together;
- (d) The order of disqualification violated the principles of natural justice as the appellant was not given an opportunity of being heard by the Divisional Commissioner.

- A 7. The aforesaid pleas were however rejected by the High Court as per the impugned judgment dated 17.11.2021. The conclusion was based on the following findings:
- A. Section (16)(1)(i) of the said Act was broadly worded. It not only mandated that the councillor should not have any interest in any work *of* the Zilla Parishad, but such councillor should also not have an interest in the work done *by the order* of the Zilla Parishad. In the present factual scenario, the work was ‘ordered’ by the Zilla Parishad, which would be sufficient to attract the provision. The Zilla Parishad had directed the Gram Panchayat to undertake the road repair work *vide* order dated 09.06.2020 under the supervision of the Deputy Engineer, Zilla Parishad. The Executing Engineer, Zilla Parishad’s communication dated 28.10.2021 also stated that the road was being developed pursuant to the order of the Zilla Parishad, which was also the agency that had disbursed the funds.
- B. The Divisional Commissioner had reached a plausible conclusion as to whether the appellant and his son resided together. The appellant’s only evidence was a ration card which showed that his son lived with his grandmother. This however was not conclusive proof about the son’s financial independence. In any case, it was opined that these facts could not be really within the purview of the court’s writ jurisdiction.
- C. An opportunity of hearing was not required to be given to the appellant as all the relevant facts were before the Divisional Commissioner already. This legal conclusion was reached on the basis of the judgment of this Court in *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & Ors.*¹, where it was opined that a hearing was not required where the same would be a mere formality and not have any bearing on the final conclusion of the authority. More than that, the Divisional Commissioner had adjourned the matter on multiple occasions at the request of the appellant. On 08.10.2021, when the appellant again requested for further time on
- H ¹(2015) 8 SCC 519.

account of advocate's illness, although the appellant himself was physically present, the Divisional Commissioner had fairly come to the conclusion that the appellant had been granted multiple opportunities and thus his written statement should be treated as his submissions. The Divisional Commissioner had also rejected the appellant's separate application for an oral hearing *vide* detailed order dated 01.11.2021, and this had not been challenged by the appellant.

A

B

C

D

E

F

G

H

The Appellant's Case Before Us:

8. The appellant's primary plea was that his son was allocated work by Gram Panchayat Aarave and not by Zilla Parishad Dhule. The allocation was done through an e-tendering process published on the web portal of the Maharashtra Government. The payment for the work was also made to the appellant's son by the Gram Panchayat, although it was formally sanctioned by the Zilla Parishad. The work order dated 20.07.2020 was also under the seal of the Gram Panchayat, in view of the authority endowed with them under Article 243(G) read with Entry 13 of the 11th Schedule of the Constitution.

9. The appellant submitted that the Zilla Parishad had merely given administrative and technical sanction for the said allotment under Sections 100, 100(2) and 125 of the said Act. The Zilla Parishad is stated not to have directly paid for the work undertaken by the appellant's son. In this regard, reliance was placed on the counter affidavit of the Zilla Parishad, who is respondent no.3 before us.

10. Second, it was pleaded that the appellant had no personal interest in his son's business and that they did not even reside together. Reliance was placed on *Gulam Yasin Khan v. Shri Sahebrao Yashwantrao Walaskar & Ors.*², where this Court observed that the mere relationship of an electoral candidate with an employee of the Municipal Committee would not disqualify the candidate from standing in the election.

11. Third, it was contended that the Divisional Commissioner had not followed the principles of natural justice while disqualifying the appellant. It was urged that an elected representative cannot be removed from his post in a casual manner and without holding an enquiry into the

² AIR 1966 SC 1339.

- A alleged misconduct, as held by this Court in *Ravi Yashwant Bhoir v. District Collector, Raigad & Ors.*³. In the proceedings before the Divisional Commissioner, the appellant had requested for accommodation on the day as his lawyer was unwell, but the said request was unreasonably rejected.

B **Respondent No.3's Resistance to the Claim of the Appellant:**

12. Learned counsel for respondent no.3 sought to lay emphasis on the objective of Section 16 of the said Act, i.e., to bring probity into the working of the Zilla Parishads. With this background, it was urged that the concerned sub-section (i) of Section 16(1) of the said Act was worded with a wide ambit so as to encapsulate three categories, i.e., work done (a) by order of the Zilla Parishad; (b) in any contract with the Zilla Parishad; or (c) by or on behalf of the Zilla Parishad.

- In the present case, the work was carried out by the order of the Zilla Parishad, and the payment was made through the Zilla Parishad as well. Thus it was urged that the facts fell squarely within the ambit of Section 16(1)(i) of the said Act and disqualification was apparent.

13. In the given factual scenario, it was also urged that the appellant was elected in January 2020, whereas his son was registered as a contractor with the Zilla Parishad, Dhule on 20.02.2020. The contract awarded to the appellant's son was really in the nature of a proxy benefit. Here, we may note that there is also some controversy surrounding the translated version of the Gram Panchayat's resolution dated 26.01.2020. The version adduced by the appellant *inter alia* states that "So also, when the said work will be sanction and when the said work will be completed, the Gram Panchayat is ready and willing to bear the expenses incurred for supervision and repairs of the said work, such resolution was unanimously resolved." [sic]. Respondent no. 3's case was that this portion was not present in the original resolution. In any case, the fact remained that in either eventuality the funds flowed to the Gram Panchayat through Zilla Parishad, which in turn received them from the State Government. This was also the stand taken by the Zilla Parishad in its counter affidavit.

14. Respondent no. 3 relied on the judgment in *Zelia M. Xavier Fernandes E. Gonsalves v. Joana Rodrigues & Ors.*⁴. Here, this

H ³(2012) 4 SCC 407.
⁴(2012) 3 SCC 188.

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.

A

B

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.

C

D

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.

E

F

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.

G

⁵ (supra).

⁶ (supra)

⁷ (supra).

H

- 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 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. Xavier*⁹, this Court was examining a situation where the appellant was a Panchayat member who was disqualified as her husband had 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.
- D 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.
- F 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. 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. 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.