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Court : Mumbai Aurangabad

Decided On : Dec-04-2013

Judge : S.S. Shinde

Appeal No. : Writ Petition Nos. 8004 of 2013, 8015 of 2013, 8021 of 2013 & 8035 of 2013

Appellant : Ravindraprasad and Others

Respondent : Prakash and Others

Judgement :

1. Rule. Rule made returnable forthwith. By consent heard finally.

2. These Writ Petitions take exception to the judgment and order dated 05.09.2013, passed by Additional Divisional Commissioner, Aurangabad Division, Aurangabad, in the Appeals preferred by the petitioners.

3. The relevant facts, leading to file the present petition as disclosed in this writ petition are as under:

(a) The General elections of the Grampanchayat Ajegaon were held for 11 posts, wherein the petitioners were elected as successful candidates.

(b) Pursuant to the said declaration, the petitioners have started working as members of the Grampanchayat, wherein in order to complete the work under

schemes, namely, NRHM, DPDC, BRGF, certain advances were made by the petitioners only with a view to complete the work and due to non-availability of the funds at the relevant point of time and further directives of the B.D.O.to avoid administrative action.

(c) Accordingly, on 25.01.2012, the Grampanchayat resolved to avail advances from the members such as petitioners to make the funds available and refund the same upon availability of the funds after inspection by the competent authority.

(d) Respondent No. 1 presented the complaint/application under Section 14 (g) of the Bombay village Panchayat Act (Hereinafter referred to as "said Act" for short) seeking disqualification of the petitioners.

(e) On 29.07.2013, the petitioners as well as the villager offered their say to the complaint before the Additional Collector, Hingoli submitting therein that the advances are repaid and no personal benefit has been achieved, while taking the advances back. However, Additional Collector, allowed the complaint and consequently disqualified the petitioners.

(f) Being aggrieved by the same, the petitioners had preferred Appeals before the Additional Divisional Commissioner, Aurangabad under Section 16(2) of the Act. However, the Additional Divisional Commissioner dismissed the Appeals.

4. Being aggrieved by the order passed by the Additional Divisional Commissioner, the petitioners have filed present Petitions.

5. Learned counsel appearing for the petitioners invited my attention to the pleadings in the petitions and submitted that, while working as members of the Grampanchayat, it was endeavour of the petitioners that, various schemes in the welfare of the general public at large should be implemented, therefore, the advances were made and subsequently upon availability of the funds same were reimbursed, wherein no personal gain as such out of the same has been derived by the petitioners. The refund of the amount is equal to that of advances, and no further gains has been made by the petitioners out of the said reimbursement.

6. It is further submitted that the concerned authorities were asking the Grampanchayat to complete the certain works within stipulated period. Under the compelling circumstances, the petitioners were required to advance the amount to the Grampanchayat and upon availability of funds by the Grampanchayat, the said amount was reimbursed. It is submitted that the said act of the petitioners is in pursuant to the resolution passed by the Gram Panchayat. Learned counsel appearing for the petitioners invited my attention to the said Gram Panchayat Resolution. It is further submitted that, the authorities below are not justified, while disqualifying the petitioners by virtue of operation of Section 14(1)(g) of the said Act, when admittedly the amount advanced was with an object to get the work completed and same has been returned back without extending any benefits, whatsoever, in favour of the petitioners, therefore, the disqualification is totally justified and consequently the impugned orders are liable to be quashed and set aside.

7. The learned counsel appearing for the petitioners invited my attention to the grounds taken in the petition and annexures thereto and submitted that, the provisions of section 57A of the said Act empowers the Panchayat to borrow money for the purpose of carrying out its functions under the Act. Therefore, the amount was advanced to the Gram Panchayat, and after Gram Panchayat received the funds, the said advanced amount was reimbursed. It is submitted that it is also permissible to receive the funds by way of gift and contribution.

8. Learned counsel appearing for the petitioners also invited my attention to the judgment of this Court in case of **S ou. Jyotitai Vikas Gawande Vs. Additional Commissioner, Amravati Division, Amaravai,** reported in **2009 Mh.L.J.486**, in particular, para No. 7 thereof. It is submitted that on interpretation of provisions of Section 14(1)(g) of the said Act, this Court in the facts of that case held that, there should be share or interest by Panchayat Member himself or his partner in any work done by order of the Grampanchayat or in any contract with by or on behalf of, or employment with or under the Panchayat.

9. Learned counsel appearing for the petitioners further invited my attention to para No. 19 of the said judgment. It is submitted that in the facts of the present

case, the petitioners totally acted in the interest of the Panchayat and advanced amount was reimbursed after funds were received by the Gram Panchayat and funds were properly utilized, as such, it cannot be said that the petitioners have misutilized the amount and made misappropriation of it.

10. The learned counsel appearing for the petitioners also invited my attention to the provisions of sub-section 57(2)(h)(i) of the said Act. Therefore, relying upon the pleadings in the petitions, annexures thereto and aforesaid provisions of the Bombay Village Panchayats Act, the learned counsel appearing for the petitioners submitted that the petitions deserve to be allowed.

11. Learned AGP appearing for respondent No. 3 relying upon the reasons recorded by the Additional Collector and Additional Divisional Commissioner in the impugned orders submitted that, the petitions are devoid of any merits and the same may be dismissed.

12. Learned counsel appearing for respondent No. 1 has vehemently opposed the prayers in the petitions. He invited my attention to the reasons recorded by the Additional Collector, which are confirmed by the Additional Divisional Commissioner. In addition to it, he submitted that in view of Section 57A of the said Act, the power of Panchayat to borrow money only from such body or association as may be approved by the State Government in that behalf is permissible. He submitted that in the facts of the present case, the amount advanced to the Gram Panchayat was subsequently reimbursed by withdrawing the amount from the Gram Panchayat account, is contrary to the statutory provisions. He submitted that the said act of the petitioners is to benefit themselves and their relatives, therefore, the petitioners had interest in advancing the amount to the Gram Panchayat and withdrawing the amount from the Gram Panchayat account, on account of reimbursement of the said amount. Therefore, he submitted that the petitions deserve to be dismissed.

13. Learned counsel for respondent No. 1 further submitted that, in similar facts situation, the Division Bench of this Court, in the case of **BalajiGanpati Manmode Vs. The State of Maharashtra,** in Letters Patent Appeal No. 6 of 2013 in Writ Petition No. 6533 of 2012 with Civil Application No. 306 of 2013 has taken a view

that, giving advances to the Gram Panchayat and reimbursement of the said advanced amounts to members of Panchayat appellant-therein had interest in the work and has most probably get it done himself and in order to show that the work was done from the funds of Panchayat, appellant-therein made a show of payment in cash and then recovering it by cheques from the Panchayat.

14. The learned counsel appearing for respondent No. 1 further pressed into service the exposition of the Supreme Court in case of **EeliaM. Xavier Feernandes E Gonsalves Vs. Joana Rodrigues and others** reported in **(2012)3 Supreme Court Cases 188** and submitted that in the facts of that case the Supreme Court while interpreting the provisions of Goa Panchayat Raj Act 1994 held that, the word 'interest' should be given wide meaning. The learned Counsel appearing for respondent No. 1 invited my attention to para No. 17 from the said judgment and submitted that interest must concern, advantage, good; share, portion, part or participation. Therefore, learned counsel appearing for respondent No. 1 submitted that this Court may not interfered with the impugned judgment and order passed by Additional Collector and confirmed by the Additional Divisional Commissioner, Aurangabad.

15. I have given careful consideration to the submissions made by the learned counsel appearing for the petitioners, the learned AGP appearing for respondent Nos. 1 to 3 and learned counsel appearing of respondent No. 5. With their able assistance, I have perused the grounds taken in the petition and annexures thereto and the impugned judgment and order passed by the Additional Collector, which is confirmed by the Additional Divisional Commissioner, Aurangabad and the provisions of the Bombay Village Panchayats Act, 1958 and judgments cited supra by the learned counsel appearing for the petitioners and respondent No.1. At this juncture, it would be apt to reproduce herein below Section 14(1)(g) of the said Act.

"**14. Disqualifications**.

(1) ...

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

16. Upon careful perusal of the said provision, it is abundantly clear that, no person shall be a member of the panchayat continued as such, who has directly or indirectly by himself or his partner, any share or interest in any work done by order of the panchayat or any contract with, by or on behalf of, or employment with or under, the panchayat.

17. In the facts of present case, according to the petitioners, in order to overcome the financial constraints, it was resolved in the meeting of the Gram Panchayat dated 25.01.2012, with special subject in respect of completion of the work and in order to complete the work, Gram Panchayat members were asked to pay the amount by advance so as to commence and complete the work under DPD scheme.

18. Both Additional Collector as well as Additional Divisional Commissioner after considering the material placed before it and upon considering the provisions of the said Act held that the act of the petitioners to draw cheques from the accounts of Gram Panchayat under Scheme of DPDC and NRHM was the serious act, and therefore, the petitioners are not entitled to continue as members of the Panchayat. The Additional Collector and also Additional Divisional Commissioner have referred to the dates, cheque numbers and the amount withdrawn by the petitioners. The provisions of Section 57(A) of the said Act reads thus:

"**57A Power of panchayat to borrow**.

A panchayat may borrow money for the purpose of carrying out its functions under this Act form such body or association (whether incorporated or not) as may be approved by the State Government in this behalf]"

19. Upon careful perusal of provision of Section 57(A) of the said Act, it is abundantly clear that, the Panchayat may borrow money for the purpose of carrying out its functions under the Act from such body or association (whether

incorporated or not) as may be approved by the State in this behalf. Therefore, power of the Panchayat to borrow money is only contemplated under Section 57A of the said Act. The act of the petitioners to advance the amount and then withdraw it from the funds received by the Panchayat is not in accordance with the provisions of said Act. The contention of the learned counsel appearing for the petitioners that Gram Panchayat can receive the amount by way of gift or contribution,cannot be avail to the petitioners, since the amount advanced by them was not gifted or contributed. The Act also provides to hold cash imprest on hand of not more [than one hundred and fifty] at a time, for contingent purpose of the Panchayat under section 57(3)(d) of the Act.

20. The Supreme Court in the case of **EeliaM. Xavier Feernandes E Gonsalves** (Supra), while interpreting the provisions of section 10(f) of Panchayats and Zila Parishads-Goa Panchayat Raj Act, 1994 held that, 'disqualification from membership of panchayat for having direct or indirect monetary or pecuniary interest in panchayat works, such clauses of disqualification should not receive unduly narrow or restricted construction and said clause is required to be interpreted in liberal manner.' The Supreme Court while interpreting the word "interest" held that, 'it has basic meaning of participation in advantage, profit and responsibility. It is a right, title or share in a thing.' Para No. 17 of the said judgment reads thus:

"17. In P. Ramanatha Aiyar's The law Lexicon, 2nd Edn.(Reprint 1999) the term"interest" is explained thus:

"Interest-legal concern, right, pecuniary stake the legal concern of a person in the thing or property or in the right to some of the benefits or use from which the property is inseparable; such a right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings. The said word is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied. it may have even the same meaning as the phrase 'right title and interest' but it has been said also to mean any right in the nature of property, but less than title. The word is sometimes employed synonymous with estate, or property.

'Interest means concern, advantage, good; share, portion, part or participation.'

A person interested is one having an interest; i.e. a right of property, or in the nature of property, less than title.

The word 'interest' is the broadest term applicable in claims in or upon real estate, in its ordinary signification among men of all classes. It is broad enough to include any right, title or estate in or lien upon real estate. One who holds a mortgage upon a piece of land for half its value is commonly and truly said to be interested in it."

21. The Division Bench of this Court in case of **BalajiGanpati Manmode**(Supra) has considered similar facts situation and held that, 'the allegations which follows by adverse inference is that the appellant therein had interest in the work and has most probably got it done by himself and in order to show that the work was done from the funds of panchayat, he has made a show of payment in cash and then recovering it by cheques from the panchayat.'

22. So far resolution passed by the Gram Panchayat enabling its members to advance loan to Gram Panchayat and then get back the said advances by way for reimbursement is contrary to provisions of Section 57A of the said Act. There are allegations that the petitioners for their own interest and for benefit of their relatives they advanced the amount and taken back by way of reimbursement.

23. Though, the learned counsel appearing for the petitioners submitted that, the copies of the record are placed on record. This Court is informed by the learned counsel appearing for respondent No. 1 that, for the first time the copies of the alleged record are produced before this Court and the said copies were not placed before the Additional Collector.

24. In the light of discussion herein above, and in view of concurrent findings recorded by the authorities below and those findings found to be inconsonance with material placed on record and relevant provisions of the said Act; a view taken by authorities below appears to be plausible, reasonable, there is no perversity in the findings recorded by the authorities, therefore, there is no reason

for this Court to interfere in the judgments and orders passed by the authorities below. Hence, Writ Petitions sans merit, therefore, same are rejected.

25. Rule stands discharged, no order as to costs.

The learned counsel for petitioners pray that the order dated 30.09.2013 staying the elections for the post of Sarpanch passed by this Court may be continued for further period of two weeks. The said prayer is vehemently opposed by the counsel for respondents.

In the light of above, the Court cannot stay the election for the post of Sarpanch, since the members have right to elect Sarpanch as per provisions. Hence, the prayer is rejected.

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