



Divisional Commissioner, Nagpur Division, Nagpur, whereby the Proceedings initiated by the Petitioner came to be rejected.

(2) The facts giving rise for filing of the present Writ Petition are as under:-

(3) The Petitioner had contested bye-elections held on 05/10/2021 from Sawargaon Constituency, Tahsil Narkhed, District Nagpur. Initially, the Petitioner had raised an objection to the nomination form of the Respondent No. 2 as the Respondent No. 2 is a Registered Contractor for Gram Panchayat and Zilla Parishad. However, the learned Election Officer overruled the objection raised by the Petitioner. The Respondent No. 2 contested the election under the banner of Bhartiya Janata Party and came to be elected. Thereafter, the Petitioner approached before the Divisional Commissioner, Nagpur Division, Nagpur seeking deemed disqualification of the Respondent No.2.

(4) As per the contention of the Petitioner, the Divisional Commissioner, without hearing the Petitioner, forwarded the

same to the office of the Respondent No. 1 – Zilla Parishad for obtaining a report. Eventually, the Respondent No.1 has delegated the powers to the Block Development Officer who obtained a report. The Block Development Officer, Narkhed had called upon the Respondent No. 2 in response to the allegations made by the Petitioner. In her say, the Respondent No. 2 informed that although she was a Registered Contractor, but for the disputed periods, she is not desirous to conclude with the contracts. On the basis of such say, the report was submitted by the Block Development Officer intimating to the Divisional Commissioner that although the tenders were issued in her favour, the work orders were issued, yet she is not deemed disqualified under Section 16(1)(i) of the Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as “the said Act”) as the work orders were not executed. Placing reliance on such report and without hearing the Petitioner, learned Divisional Commissioner rejected the Application/Objection by the order dated 16/11/2022.

(5) Being aggrieved by the said order dated 16/11/2022, the Petitioner filed Writ Petition No. 6394/2022 before this Court.

This Court, by the judgment dated 13/03/2024, allowed the said Petition and observed that the Divisional Commissioner was neither having jurisdiction nor competent to ask for such exercise of obtaining report, that too without hearing the Petitioner. The matter was remanded back and it was directed to decide the same within one month from the date of said judgment.

(6) Upon remand, the learned Divisional Commissioner directed the Petitioner to conduct hearing on 03/04/2024. However, the Petitioner was not adequately permitted to address the issue but only directed to address on the issue that on the date of nominations/election, the Respondent No.2 was executing any work order or not. Accordingly, the Divisional Commissioner rejected the Proceedings initiated by the Petitioner vide order dated 15/04/2024. The order dated 15/04/2024 passed by the learned Divisional Commissioner is the subject matter of challenge in the present Writ Petition.

(7) Learned Counsel for the Petitioner contends that the Respondent No. 2, along with her husband and son, were

residing under one roof. They were running the businesses in the name of Trimurti Hardware and Tiles & Trimurti Building Material Suppliers. The Respondent No.2 was having GST Number and she was also a Registered Contractor in the office of Zilla Parishad, Nagpur which is still lying in the name of the Respondent No. 2. However, the Divisional Commissioner observed that though the Respondent No. 2 had participated in the tender and was paying taxes, yet the Respondent No. 2 did not execute the work orders in question. Therefore, she does not fall within the framework of Section 16(1)(i) of the said Act. Such finding is unknown to the law and she was the beneficiary of acting as a contractor for various Gram Panchayats. However, the learned Divisional Commissioner has committed grave error in law in approving such transaction to be not falling within the framework of 16(1)(i) of the said Act which needs interference by this Court and the said order needs to be quashed and set aside.

(8) Learned Counsel for the Petitioner, in support of his contentions, relied on the following citations:-

**(a) *Virendrasing vs. Additional Commissioner and Others, 2023 SCC OnLine SC 430;***

*(b) Sonba S/o Gulabrao Musale vs Sunil S/o Chhatrapal Kedar & others, 2018(6) Mh.L.J. 368; &*

*(c) Santosh Chandansingh Rawat vs. Divisional Commissioner, Nagpur & others, 2009 (6) Mh.L.J. 828.*

(9) Learned Counsel for the Respondent No. 2 submitted that for the years 2020-21, one tender was succeeded in the name of M/s. Trimurti Building Material Suppliers, Sawargaon, however, the said firm did not supply any construction material to the Gram Panchayat. Accordingly, the said tender was cancelled. It is further contended that the Divisional Commissioner, Nagpur Division is not a party to the Proceedings and on this count also, the present Petition filed by the Petitioner is not maintainable and hence required to be dismissed.

(10) Learned Counsel for the Respondent No. 2, in support of his contentions, relied on the judgment of the Hon'ble Apex Court in the case of **Shrikant vs. Vasantrao & others, (2006) 2 SCC 682.**

(11) Heard learned Counsel for the respective parties at length. Perused the records and impugned order as well as considered the citations relied upon by both the parties.

(12) Admittedly, the Petitioner and the Respondent No. 2 contested the bye-election from Sawargaon Constituency for Member, Zilla Parishad. Earlier, the Petitioner raised an objection to the nomination form of the Respondent No. 2 as she is the Registered Contractor for Gram Panchayat and Zilla Parishad. However, the Election Officer overruled the objection raised thereon. Thereafter, the Respondent No. 2 came to be elected. The Petitioner filed an Application for deemed disqualification before the Divisional Commissioner.

(13) Learned Counsel for the Petitioner contends that as per Section 16(1)(i) of the said Act, the person shall be disqualified for being chosen as, and for being, a Councillor, 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, **Zilla Parishad**. It is contended that the Respondent No. 2 was and is a Registered

Contractor. It was the defence of the Respondent No. 2 that though she was in receipt of the tender and the work order, but she had expressed her inability to execute the work order and therefore, on the date of nomination form and election, she was not executing any work order.

(14) Learned Counsel for the Petitioner relied on **Sonba Gulabrao Musale** (supra), however, the facts of the said case are different and the said matter was under the Representation of the People Act. In the said matter, the rejection of nomination was on the ground that the Petitioner candidate was partner in construction firm executing the Government contract and the same was subsisting as per Section 9-A of the Representation of the People Act. Therefore, held that the Petitioner was not qualified to contest the election.

(15) Learned Counsel for the Petitioner also relied on **Santosh Chandansingh Rawat** (supra) in support of his contention that the mandate of Section 16(1)(i) operates on “interest” or “share” and not on work done on contract. If there is no subsisting interest or share in work done, the disqualification

does not spring into existence. It qualifies the word “interest” with “has” to emphasize that the interest has to be present at that stage i.e. at the nomination or then during term as Councillor. It is contended that at the time of filing of nomination, the Respondent No. 2 was having a tender in her favour though she has requested for cancellation of the same.

(16) Learned Counsel for the Petitioner also relied on **Virendra Singh** (supra) wherein the Hon’ble Apex Court held in Paragraph No. 17 as under:-

*“17. 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) In my considered opinion, the above citation is not applicable in the present case as Section 16(1)(i) of the said Act not only mandates 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 Zilla Parishad. In the case of **Virendra Singh** (supra), 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. Thus, the road was being developed pursuant to the order of the Zilla Parishad and the Zilla Parishad was the agency to disburse the funds.

(18) In reply, the learned Counsel for the Respondent No. 2 submitted that under Section 16(1)(i) of the said Act, disqualification is applicable only when there is any share or interest in the work of Zilla Parishad. It would be appropriate to reproduce Section 16(1)(i) of the said Act as under:-

*“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 -*

.....

.....

*(19) (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;”*

(20) It is clearly an intent to disqualify a person for being chosen as, and for being, a Councillor of Zilla Parishad if he has directly or indirectly by himself or by his partner any share or interest in any work done by the order of the Zilla Parishad or any in contract with, by or on behalf of, Zilla Parishad. Similar provision is there in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 in which Section 16(1)(i) has the same provision, however, the Councillor is of Municipal Council instead of Zilla Parishad and the words used are “by order of a Council or in any contract with or under or by on behalf of Council”. Similarly, under the provisions of the Maharashtra Village Panchayats Act, 1959, disqualification of a Member of Panchayat is provided under Section 14(1)(g) in which the words “Zilla Parishad” under Section 16(1)(i) are substituted by the word ‘Panchayat’. As such, the legislative intent is clear that the person who is holding the office should

not have any share or interest in any work done by the order of the said office.

(21) Learned Counsel for the Respondent No. 2 relied on **Shrikant** (supra) wherein the Hon'ble Apex Court held that any local or other Authority is not included under Section 9A of the Representation of the People Act. The "State Government" (or "Central Government") is different from "local or other Authorities under the control of the State Government" for the purposes of disqualification under Section 9A. The term "State Government" (or "Central Government") should be understood in its ordinary and normal sense, and not with reference to its extended meaning under Article 12 of the Constitution. Hence, in the said case, the Appellant's subsisting contracts for execution of work with a statutory corporation (GMIDC) and local authority (MJP), though both answered the definition of State in Article 12, did not disqualify him under Section 9A of Representation of the People Act, 1951.

(22) Though it is contended by learned Counsel for the Petitioner that Gram Panchayats are part of Zilla Parishads,

however, for disqualification, the legislative intents are very clear. Disqualification in the respective office would be considered only if the person is elected Member, Councillor of the said Office and having share or interest in any work done by the order of the said office. In the first place, in the Application itself, the Applicant/Petitioner in Paragraph No. 7 submitted that the Non-Applicant/Respondent No. 2 has participated in the tender Proceedings of the Gram Panchayat, Sawargaon. He also submitted that the Respondent No. 2 through her proprietary concerns participated in the tender of Gram Panchayat, Sonoli. It is the contention that it is three tier system and Gram Panchayat, Panchayat Samiti and Zilla Parishad are interlinked, and therefore, the Respondent No. 2 has incurred disqualification under Section 16(1)(i) of the said Act.

(23) My attention is drawn to Paragraph No. 21 of the reply from the record, on perusal of which, it is crystal clear that the said tenders were floated by Gram Panchayat, Sawargaon and though the tender is issued in favour of M/s. Trimutti Hardware

and Tiles in view of the letter dated 07/01/2022, no material had been supplied to the concerned Gram Panchayat.

(24) Be that as it may, it is a fact that the tender is floated by Gram Panchayat and the Respondent No. 2 was elected as a Member, Zilla Parishad. Even the communication dated 17/06/2021 at Page No. 50 addressed to Trimurti Building Material Suppliers by Sarpanch and Village Development Officer clearly goes to show that the tender was issued by Gram Panchayat. Moreover, there is no challenge by the Petitioner to his rejection of Application for rejection of nomination of the Respondent No. 2 by the Election Officer.

(25) Considering the above facts and circumstances and the law position, I do not see any substance in the Writ Petition. The Writ Petition, therefore, stands **dismissed**. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)