



IN THE HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH

DATED THIS THE 20<sup>TH</sup> DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

**WRIT PETITION NO. 200760 OF 2022 (LB-RES)**

**BETWEEN:**

SMT. LALITABAI

...PETITIONER

(BY SRI. S S HALALLI, ADVOCATE)

**AND:**

1. THE COMMISSIONER  
KARNATAKA STATE ELECTION COMMISSION,  
KARNATAKA STATE CO-OPERATIVE MARKETING  
FEDERATION BUILDING (BEHIND),  
I FLOOR, NO.8, CUNNINGHAM ROAD,  
BENGALURU-560052.
2. THE GRAM PANCHAYATI, MOGHA(K)  
TQ. ALAND,  
DIST. KALABURAGI-585302  
REPRESENTED BY THE PANCHAYAT DEVELOPMENT  
OFFICER.

...RESPONDENTS

(BY SRI. AMRESH S. ROJA., ADVOCATE FOR R1;  
SRI. KRUPASAGAR PATIL., ADVOCATE FOR R2)



THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER ORDER IN THE LIKE NATURE QUASHING THE IMPUGNED ORDER DATED 14.02.2022 VIDE NO. PRAKARNA NO. RA CHU AA/09/GRA PUM. (AA. GOO)/2021 VIDE ANNEXURE E PASSED BY 1<sup>ST</sup> RESPONDENT, IN THE INTEREST OF JUSTICE AN EQUITY AND ETC.

THIS WRIT PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner who was elected to the Mogha (K) Gram Panchayat in the election held on 22.12.2020 and declared on 30.12.2020 is before this Court seeking for the following reliefs:

*a. Issue a writ of certiorari or any other order in the like nature quashing the impugned order dated 14.02.2022 vide No. Prakarna NO. RA CHU AA/09/GRA PUM. (AA. GOO)/2021 vide Annexure-E passed by 1<sup>st</sup> respondent, in the interest of justice and equity.*

*b. Or pass any other order as this Hon'ble Court deems fit under the facts and circumstances of the case in the interest of justice and equity.*

2. The petitioner is aggrieved by the impugned order dated 14.02.2022 at Annexure-E under which he was disqualified and removed from office on account of non-compliance with the requirements of Section



43B of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (for short, 'the Act').

3. Sri.S.S.Halalli, learned counsel for the petitioner submits that

3.1.since there is no show cause notice or enquiry held before such disqualification the impugned order is required to be set aside.

3.2.the principles of natural justice has not been followed.

3.3.in terms of Section 43B(4), a hearing has to be provided before such declaration is made. In the present case, no such hearing has been provided to the petitioner. There is a violation of Section 43B(4) of the Act.

3.4.Lastly, he submits that the allegation of misconduct under Section 43B(4) of the Act comes under Section 43A of the Act and by relying on the decision of the Co-ordinate Bench



of this Court in the case of ***Satish K vs. State of Karnataka***<sup>1</sup>, he submits that there has to be a strong true case of misappropriation or corruption made out against the elected representative to exercise powers under Section 43A of the Act. Only because there are some irregularities, the powers under Section 43A of the Act cannot be exercised.

3.5. Even though there may be delay on part of the petitioner in complying with the requirement of Section 43B of the Act, and the same being curable and the petitioner is always willing to cure the said default and as such, the powers under Section 43B(4) of the Act ought not to have been exercised.

3.6. The filing period being during the time when there was a covid pandemic, the petitioner could not file the declaration. On these grounds, he submits

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<sup>1</sup> W.P.No.51121/2016 dated 23.11.2017



that the above petition is required to be allowed and the reliefs sought for may be granted.

4. Sri.Amresh S.Roja, learned counsel for respondent No.1 submits that the petitioner not having submitted the returns in terms of Section 43B(1) of the Act, a notice came to be issued on 31.12.2021 which came to be served on the petitioner on 07.01.2022, despite which, there was no reply which was submitted by the petitioner nor were the information furnished. Having waited till 14.02.2022, the impugned order was passed. Therefore, he submits that enough and more opportunity by issuing prior notice was provided to the petitioner who chose not to comply with the statutory requirements under Section 43B of the Act.
5. Sri.Krupa Sagar Patil, learned counsel for respondent No.2 - Gram Panchayat adopts the submission made



by Sri.Amresh S.Roja, learned counsel for respondent No.1.

6. Sri.D.P.Ambekar, counsel who has filed I.A.No.1/2023 on behalf of Gram Panchayat member to implead himself though wants to make his submission on merits of the matter, I am of the opinion that the applicant in I.A.No.1/2023 is not a necessary party. Hence, the said application is dismissed.

7. Heard Sri.S.S.Halalli, learned counsel for the petitioner, Sri.Amresh S.Roja, learned counsel for respondent No.1 and Sri.Krupa Sagar Patil, learned counsel for respondent No.2 and perused papers.

8. The points that would arise for determination in the present matter are:

**1)Whether a defaulting member of a Gram Panchayat under Section 43B(1) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 is required to be issued a show**



**cause notice and be heard before removal from the office?**

**2) What order?**

**9. Answer to Point No.1: Whether a defaulting member of a Gram Panchayat under Section 43B(1) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 is required to be issued a show cause notice and be heard before removal from the office?**

9.1. It is not in dispute that the petitioner was declared as elected on 30.12.2020. Thus, in terms of Section 43B, the petitioner was required to, within three months from the date of being elected and assuming office, file a declaration of movable and immovable assets and liabilities of more than two lakhs owned by him/her and by all the members of his/her joint family in the form prescribed by the State Election Commission through the Panchayat Development Officer of concerned Gram Panchayat. Thus, the declaration of the results having occurred on 30.12.2020, the first



meeting having held on 18.01.2021 when all the members were sworn as also the election of Adyaksha and Upadyaksha took place, it was but required that within three months from 18.01.2021 the declaration in terms of Section 43B(1) of the Act was required to be filed i.e., on or before 18.04.2021.

9.2. The same not having been filed, a notice came to be issued on 31.12.2021 by respondent No.1 categorically stating that the documents have not been received and called upon the petitioner to submit the documents by 15.01.2022 by online mode and if the declaration was not supplied by that date, necessary action would be taken. Despite the said notice having served on the petitioner on 07.01.2022, the petitioner chose not to file a declaration.





9.3. Section 43B of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 reads as under:

**43B. Members to declare assets and liabilities.**— (1) Every member shall within three months from the date of commencement of his term of office and until the expiry of his term in every calendar year, and within one month of the end of the financial year, file a declaration of the movable and immovable assets and liabilities of more than two lakhs owned by him and by all the members of his joint family in the form as may be prescribed before the state election commission through the panchayat development officer of concerned Gram Panchayat:

*Provided that, where the term of a member commences before two months of the end of the financial year such member may file his declaration within two months after the commencement of the following financial year.*

(2) the panchayat development officer of the concerned panchayat shall receive the declarations filed by all the members and forward them to the state election commission in the first week of May of that year and, in the case of late submissions, in the first week of July of the year, with a statement of members who have filed and who have not filed the declaration.

(3) a member, who after filing a declaration under sub-section (1), acquires or disposes of any property or incurs any liability shall file a declaration to that effect before the state election commission through the panchayat development officer of the panchayat, within forty-five days from the date of such acquisition or disposal, as the case may be, and the panchayat development officer shall follow the same procedure as in sub-section (1).

(4) if the member does not file the declaration within the time without reasonable cause or the



*declaration is found to be false, shall be deemed to have committed guilty of misconduct and the state election commission shall after giving an opportunity of hearing, remove him from membership and declare his seat vacant.]*

9.4. A perusal of the above provision would indicate that there is an obligation which has been imposed on the member of the Panchayat to submit a declaration within a period of three months from the date of assuming office. The only exception made is by proviso to Section 43B(1) of the Act, if the term commences before two months of end of the financial year, such declaration could be filed within two months after the commencement of the financial year i.e., in such cases, the time period of four months is granted to file the declaration thereby extending the time period by one month. Other than this extension, there is no particular exemption, which is available to any of the members.



9.5. The declaration to be filed in terms of Section 43B(1) of the Act with the Panchayat Development Officer. The said officer in terms of Section 43B(2) of the Act, has to forward them to the State Election Commission in the first week of the May of that year and in case of late submission by first week of the July of that year with the statement of members who have filed and who have not filed the declaration.

9.6. In terms of Section 43B(3) of the Act, in the event of any member acquiring or disposing any property or incurring any liability, a further declaration is required to be filed within 45 days from the date of such acquisition, disposal or incurring liability.

9.7. The obligation under Section 43B(1) and Section 43B(3) of the Act is on the member to file the necessary declarations. In terms of Section 43B(4) of the Act, if a member does not



file a declaration within the time without reasonable cause or the declaration is found to be false shall be deemed to be guilty of misconduct and the State Election Commission after giving an opportunity of hearing can remove him from membership and declare his seat vacant.

9.8. Section 43B(4) of the Act comprises of two situations (1) where a declaration is filed beyond time with or without reasonable cause (2) where a declaration is filed and found to be false.

9.9. The above indicates that default in compliance with Section 43B(1) of the Act is not envisaged. It is only when there is a cause shown would a hearing required to be given to ascertain whether a cause for the delay in filing a declaration is reasonable or not. When the



declaration itself is not filed, the question of showing cause or ascertaining whether the cause shown is reasonable or not would not arise.

9.10. Insofar as second portion, when the declaration is found to be false, then in that case, there is an opportunity which is required to be given so as to ascertain if there is any falsity and to give an opportunity to the member to show cause as to how the declaration made is correct and not false.

9.11. Thus, only when there is a cause shown in the late filing of the declaration and/or when the declaration is found to be false, would an opportunity of hearing be required to be given. Such a hearing in my considered opinion would not be required to be made available if the member were to not even file the declaration.



9.12. Be that as it may, in the present case, the petitioner who was required to file the declaration by 18.04.2021 not having filed the same, a notice came to be issued on 31.12.2021, served on the petitioner on 07.01.2022, despite which, the declaration was not submitted. Thus, after nearly a period of 10 months from the date on which the declaration was originally due, the impugned order came to be passed on 14.02.2022. The submission of Sri.S.S.Halalli, learned counsel for the petitioner by relying upon the decision in **Sathish's** case supra that the default under Section 43B of the Act is similar to that under Section 43A of the Act. The filing of the declarations being curable, ought to be so permitted, in my considered opinion, would not be applicable to the present case.



9.13. Section 43A and Section 43B of the Act cannot be said to be in *pari materia* and/or relating to similar kind of defaults. Section 43A of the Act deals with serious allegations made against the member of misconduct in discharge of duties or disgraceful conduct, incapable of performing of duties, persistently remiss in performing duties, medically unfit, insolvency or of unsound mind, etc. These are all issues which are required to be established after giving an opportunity to the delinquent member inasmuch as there being allegations which are made against such delinquent member.

9.14. In the present case, there being a statutory obligation on a member to file a declaration of movable and immovable assets and liabilities of more than two lakhs owned by him/her or members of his/her joint family within two months of assuming office, if the same were



not to be filed, then the question of providing a hearing would not arise. A hearing can only be provided if cause is shown for belated filing.

9.15. The justification now being sought to be made by learned counsel for the petitioner that due to covid pandemic, the declaration could not be filed, in my considered opinion, is not sustainable, inasmuch as the petitioner being a member of a Gram Panchayat, cannot claim covid pandemic as an excuse when all elected members and government officials are functioning. Be that as it may, a notice was issued by respondent No.1 on 31.12.2021 providing an opportunity to the petitioner to file a declaration on an online mode which was also not utilized by the petitioner. What was only required for the petitioner was to submit a declaration to the Panchayat Development Officer of the Panchayat in which the petitioner





was elected, which was also not done by the petitioner. Hence, the ground of covid pandemic cannot justify the action of the petitioner.

9.16. In that view of the matter, I answer Point No.1 by holding that no show cause notice is required to be issued to a defaulting member of a Gram Panchayat under Section 43B(1) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 when there is no declaration filed at all, furthermore hearing before removal from the office would also not be required. Only when there is a cause shown in the late filing of the declaration and/or when the declaration is found to be false, would an opportunity of hearing be required to be given.



10. **Answer to Point No.2**: What order?

10.1. In view of my answer to Point No.1, I do not find any infirmity in the impugned order. The Writ Petition, not making out any grounds, stands dismissed.

10.2. I.A.No.1/2023 stands dismissed.

**Sd/-**  
**JUDGE**

PRS  
List No.: 1 Sl No.: 19