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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4784 OF 2015

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| 1. | Venkatrao Mukundrao Nemaniwar
Age - 67 years, Occ - Agriculture
R/o Yelmapura, Kinwat,
Taluka - Kinwat, District - Nanded | PETITIONERS |
| 2. | Sow. Kalawatibai w/o Venkatrao Nemaniwar,
Age-57 years, Occ - Household
R/o as above | |

VERSUS

- | | | |
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| 1. | The State of Maharashtra
The Department of Home (Urban)
Urban Development, General Administration,
Law, Government of Maharashtra,
Mantralaya, Mumbai - 32
Through the Secretary, | RESPONDENTS |
| 2. | The Minister of State,
The Department of Urban Development,
Government of Maharashtra,
Mantralaya, Mumbai-32 | |
| 3. | The District Collector, Nanded
District - Nanded | |
| 4. | Baburao s/o Lacchana Oddiwar,
Age-63 years, Occ - Agriculture
R/o Sainagar, Taluka - Kinwat
District - Nanded | |
| 5. | The Chief Officer,
Kinwat Municipal Council, Kinwat,
Taluka - Kinwat, District - Nanded | |

Mr. A. G. Godhamgaonkar, Advocate for the petitioners
 Mr. S. P. Daund, AGP for respondent State
 Mr. V. P. Latange, Advocate for respondent No.4

Mr. B. A. Darak, Advocate for respondent No.5.

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th JUNE, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioners are aggrieved by order of dismissal of appeal preferred by them pursuant to section 44 (4) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Town Ships Act, 1965 (Herein after will be referred to as "said Act").

3. After hearing learned advocates for the parties, the situation emerges that petitioner No.1 was sought to be disqualified as a councilor of Kinwat Municipal Council on account of certain construction. In the proceedings before the Collector, an order came to be passed disqualifying him. According to contention of learned advocate for the petitioners said construction had taken place way back before petitioner No.1 got elected as a councillor of Municipal council and as such, allegations claiming disqualification pursuant to section 44 (1)

(e) of said Act were not tenable. The petitioners had been before the appellate authority against said order pursuant to section 44 (4) of said Act, however, since no interim order was granted, the petitioners had moved this Court in writ petition No. 2005 of 2015 and by order dated 25th February, 2015, division bench of this court had directed respondent No.1 therein to consider application for interim relief, preferably within a period of three weeks. However, instead of considering the application for interim relief, without reference to the facts and without application of mind to the submissions and circumstances, the appellate authority has dismissed the appeal, on 15th April, 2015. He further submits that based on collector's order disqualifying petitioner No.1, some criminal prosecution is also taken up. He, therefore, urges that the writ petition be allowed and interim protection be granted.

4. Contentions on the other side are that the order passed by the collector is with reference to the facts and there is substantial force in the same.

5. Although learned advocates for the respondents have contended so, they have not been able to support the order passed by the appellate authority by any convincing rationale for,

perusal of the order passed by the appellate authority does not at all depict consideration of the appeal on merits nor there is any reference to the facts on which the disqualification had been ordered nor whether the order passed by the collector is sustainable and the reasons therefor.

6. Having regard to that the order passed by the appellate authority does not depict, consideration of factual aspects and independent application of mind to the facts, circumstances and law, as would be required by an appellate authority, I deem it appropriate to set aside the impugned order dated 15th April, 2015 in the proceedings pursuant to section 44 (4) of said Act lodged by the petitioners and restore the appeal to its position as had been subsisting before the impugned order came to be passed. Accordingly, the impugned order dated 15th April, 2015 passed by respondent No.2 is quashed and set aside. The matter is remanded for reconsideration. The appeal is restored to its position as was subsisting before the impugned order. The appellate authority to hear the parties and to consider the appeal filed by the present petitioners on merits and in accordance with law. Needless to refer to that the appellate authority shall not be influenced by any observations made hereinbefore in this order.

7. The appellate authority as well to consider the application of the petitioners for interim relief, if any filed by them in accordance with its own merits and in accordance with law. The application for interim relief be considered as expeditiously as possible preferably within a period of four weeks from the date of receipt of writ of this court. In order to curtail and save time for appearance of parties, the parties are directed to appear before the appellate authority on 17th June, 2015. The parties to abide by the schedule, as may be fixed by the appellate authority.

8. Writ petition, as such, stands disposed of. Rule is made absolute in aforesaid terms. Pending civil application stands disposed of.

[SUNIL P. DESHMUKH, J.]