

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7417 OF 2015

Kishor Mansaram Bilwal,
Age: 36 years, Occu. Agril,
R/o Ramraniwadi, Post Waluj,
Tal Gangapur, Dist. Aurangabad.

...PETITIONER

versus

1. The State of Maharashtra,
Through Department of Rural Development,
Mantralaya, Mumbai 400 032.
2. The State Election Commission of
Maharashtra Through State Election
Commissioner, Mumbai.
3. The Collector,
Aurangabad,
District Aurangabad.
4. The Tahsildar,
Gangapur, Tal. Gangapur,
Dist. Aurangabad.
5. The Returning Officer,
For the General Election of Group Gram
Panchayat Jogeshwari, Tal Gangapur,
Dist. Aurangabad.
6. Prakash S/o Trimbakrao Waghchaure,
Age: major Occu. Agriculture,
R/o Ramrai, Tql. Gangapur,
Dist. Aurangabad.

...RESPONDENTS

.....

Mr. D.P. Palodkar, Advocate for Petitioner
Mr. S.P. Daund, A.G.P. For respondents No. 1,3 and 4
Mr. S.T. Shelke, Advocate for respondents No.2 and 5
Mr. R.N. Dhorde, Senior Counsel instructed by
Mr. S.B. Bhosale, Advocate for respondents No.

.....
CORAM : SUNIL P. DESHMUKH, J.

DATED : 31st JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, by consent.

2. Succinctly stated, the facts, as appear, are - respondent No. 6 has been convicted of the offence punishable under section 409 read with section 34 of the Indian Penal Code (hereinafter "IPC") for a period of one year with fine under order dated 02-08-2013 in Regular Criminal Case No. 1185 of 2012 by Chief Judicial Magistrate, Aurangabad. Respondent No. 6 has preferred criminal appeal bearing No. 174 of 2013 against his conviction and sentence and the same is pending. By application under section 389 of the Code of Criminal Procedure (hereinafter "Cr.P.C.") matter had been moved for suspending sentence and release on bail. Sessions Court on 12-08-2013 had suspended execution and operation of substantive sentence of imprisonment in Regular Criminal Case No. 1185 of 2012 dated 02-08-2013.

3. Subsequently, election to Gram Panchayat, Jogeshwari, for the term 2015-2020 had been declared. It appears that respondent No. 6 's name has figured in voters' list of Gram Panchayat, Jogeshwari Ta. Gangapur, District Aurangabad. Accordingly, he had filed nomination seeking to contest said election to membership of said Gram Panchayat.

4. Learned counsel for petitioner submits that the petitioner is voter in said Gram Panchayat election and had taken objection to nomination of respondent No. 6 in writing. He relies on Exhibit-E (Pages 47 to 49) annexed to writ petition. According to learned counsel, despite aforesaid, without passing any order returning officer simply declared respondent No. 6's nomination as "valid". As such, the petitioner is before this court.

5. Learned counsel for petitioner submits that respondent No. 6 has incurred disqualification and stands disqualified under section 14(1-a) (ii) of the Maharashtra Village Panchayats Act, 1959 ("The Act"). Section 14(1-a)

(ii) for ready reference is reproduced herein below: -

“14. Disqualifications:

(1) No person shall be a member of Panchayat continue as such who-

(a) has, whether before or after the commencement of this Act, been convicted.

(i)

(ii) of any other offence and has been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his release; or”

6. Learned counsel for petitioner contends that in view of aforesaid position, conviction having not been stayed, respondent No. 6 stands disqualified and his nomination should be rejected. He submits that without application of mind to the objection, non speaking order validating nomination of respondent No. 6 has been passed. He submits that having regard to aforesaid facts, it is obvious that respondent No. 6 stands disqualified and therefore he urges that petition be allowed.

7. Mr. Dhorde, learned senior advocate for respondent No. 6 submits that *locus standi* of petitioner is questionable. He is not contesting candidate and as such, is not supposed to take objection to nomination of respondent No. 6. He further submits that so far as conviction is concerned that now stands stayed under orders passed by Sessions Judge, Aurangabad on 27-07-2015. He, therefore, submits that petitioner cannot now say that respondent No. 6 is disqualified from contesting the election. He further goes on to contend that stay may operate retrospectively from the date of conviction and this position will have to be considered and decided and until such time when nomination has been accepted, the same may not be disturbed at this stage.

8. Learned counsel for respondent-State Election Officer and learned Assistant Government Pleader for State contend that elections have reached at advanced stage and may not be disturbed at this stage. It is being submitted that acceptance or rejection of nomination can be a matter of examination in election petition and such a remedy is open for the petitioner.

9. Mr. Palodkar, learned counsel, however, submits that qualification or disqualification of the person should be seen as on the date of scrutiny of nomination. He submits that stay to the conviction under order dated 27-07-2015 will be of little consequence as far as disqualification of respondent no.6 is concerned which stands incurred under section 14(1-a) (ii) of the Gram Panchayat Act. He submits that things having bearing have been brought before the court and further that question of *locus standi* shall be relegated to back ground. He submits that petitioner being voter, has *locus standi* to object to and question validity of nomination.

10. Learned counsel for petitioner relies on a judgment in *Lalsai Khunte vs. Nirmal Sinha and ors.* 2007(9) SCC 313 and contends that in view of the same, stay to conviction of respondent no. 6 would be only prospective and would not affect disqualification of respondent no.6 on 21-7-2015. Learned counsel relies particularly on paragraph 9 of the judgment which reads thus;

"9. Recently this Court in the case of Ravikant S. Patil Vs. Sarvabhouma S. Bagali reported in {2006(12) SCALE 295} has clearly held that the Court has enough power to stay the conviction. It was held as under:-

"it deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be

operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may, insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying that consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction."

11. It will have to be considered that as on the date of filing nomination or, for that matter, last date of acceptance of nomination, there was no stay to the conviction of respondent No.6 and validity of nomination has to be examined with reference to the last date of filing nomination or on the date of scrutiny of nomination. The position thus emerges that on the last date of filing nomination and also on the date of scrutiny, disqualification as referred to under section 14 (1-a) (ii) of the Act had been operating against respondent No.6. Thus, the decision about disqualification will have to be taken with reference to the date of filing of nomination or for that matter the date of scrutiny.

12. The facts, indisputably are pointer to that on last date of filing of nomination or for that matter on the date of scrutiny, there was no stay to the conviction of respondent No.6 and as such, having regard to section 14 (1-a) (ii) of the Act, respondent No.6 appears to be statutorily disqualified. In such a case, the matter will be required to be viewed accordingly. Though order granting stay to the conviction is now produced before this Court, the order apparently is of the date subsequent to the date of scrutiny of nominations. Having regard to observations in decision in case of *Lalsai Khunte* (supra) reproduced hereinabove, it is apparent that the stay would be prospectively applicable.

13. Under the circumstances, the petition deserves consideration. Writ petition, as such, stands allowed. Rule is made absolute in terms of prayer clause "C".

14. It is expected that this order would be given immediate effect. Learned counsel for State Election Commission and learned Assistant Government Pleader to communicate this order to the authorities concerned.

15. Learned advocate for respondent No.6 at this stage, makes a request to stay operation of this order, however, looking at indisputable facts and having regard to the ruling of Apex Court cited (supra), the request is being rejected.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK