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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10688 OF 2015

Dadasaheb s/o Nivrutti Gangarde
 Age - 45 years, Occ - Agriculture
 R/o Eklahera, Taluka - Gangapur
 District - Aurangabad

PETITIONER

VERSUS

- | | |
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| <ol style="list-style-type: none"> 1. The State of Maharashtra
Through Department of
Rural Development,
Mantralaya, Mumbai 2. The State Election Commission of Maharashtra
Through State Election Commissioner,
Mumbai 3. The Collector,
Aurangabad
District - Aurangabad 4. The Tahasildar,
Gangapur, Taluka - Gangapur
District - Aurangabad 5. The Returning Officer,
For the General Election of
Group Gram Panchayat, Eklahera,
Taluka - Gangapur, District - Aurangabad 6. Sarjerao s/o Sakharam Awasarmal,
Age - 55 years, Occ - Agriculture
R/o Eklahera, Taluka - Gangapur
District - Aurangabad | <p>RESPONDENTS</p> |
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Mr. Anand Bhandari h/f Mr. D. P. Palodkar, Advocate for petitioner
 Mr. S. N. Kendre, AGP for respondent State
 Mr. S. T. Shelke, Advocate for respondents No.2 and 5
 Mr. S. B. Talekar, Advocate for respondent No.6.

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 30th OCTOBER, 2015

ORAL JUDGMENT :

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

2. Briefly stated, indisputable facts are – respondent No.6 has been convicted for the offences punishable under sections 135 and 138 of the Electricity Act, 2003 and sentenced to suffer imprisonment for one year by Additional Sessions Judge, Aurangabad in Special Case No. 50 of 2010 under judgment and order dated 5th January, 2013. Respondent No.6 has filed criminal appeal No. 23 of 2013 before this court, which is pending. In criminal application No.406 of 2013 in criminal appeal No.23 of 2013, this court has stayed the sentence under order dated 6th February, 2013 and that there is no stay to order of conviction of respondent No.6.

3. Respondent No.6 has staked candidature to elections of Gram Panchayat Eklaheera, Taluka – Gangapur, District – Aurangabad, polling of which is scheduled on 1st November, 2015. Last date of nominations, according to the election programme, had been 17th October, 2015 and 19th October, 2015

was the date scheduled for scrutiny of nominations.

4. It is further not in dispute at all that by last date of filing nomination i.e. 17th October, 2015, there had been no stay to the order of conviction passed by Additional Sessions Judge, Aurangabad in Special Case No. 50 of 2010, referred to herein above. There is also no dispute about the fact that this High Court, under its order dated 6th February, 2013 had stayed substantive sentence of imprisonment imposed upon respondent No.6. It clearly emerges in the circumstances that, order of conviction had not been stayed in said order. Copy of order passed by this Court dated 6th February, 2013 has been annexed to the petition at Exhibit-D.

5. On the date of scrutiny, it appears, the petitioner had objected to the nomination of respondent No.6 referring to the conviction and sentence by the Sessions Judge, Aurangabad under order dated 5th January, 2013 in special case No.50 of 2010 and thus had claimed that respondent No.6 stands disqualified to contest elections for gram panchayat taking into account substantive provisions of section 14 (1) (a) (ii) of the Maharashtra Village Panchayats Act, 1959. Section 14 (1) (a) (ii) of said Act reads thus -

14. Disqualifications – (1) No person shall be a member of a 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. It appears that in the form prescribed for decision in respect of acceptance of nomination, it has been tersely referred to that nomination of respondent No.6 is valid.

7. The petitioner under the circumstances had moved this court under present writ petition and notice came to be issued and in due deference to the same respondent No.6 has put in appearance and has filed affidavit in reply. In the affidavit in reply at Exhibit-R-2 at page 82, respondent No.6 has fairly placed an elaborate order passed by the returning officer on record, which *inter alia* refers to the objection to nomination of respondent No.6 taken by the petitioner, observing that against conviction and sentence dated 5th January, 2013, the matter is taken up before this Court by respondent No.6, however, further reference to the order of this court has not been made. It thus emerges that the returning officer had not taken into account

orders passed by this court, in the appellate proceedings referred to herein above.

8. Learned advocate for the petitioner refers to a decision of the Supreme Court reported in 2007 (9) SCC 330 "*Lalsai Khunte V. Nirmal Sinha*". He relies on paragraph No.9 of said judgment. For ready reference, said paragraph No.9 is reproduced herein below-

"9. Recently, this Court in Ravikant S. Patil V. Sarvabhouma S. Bagali has clearly held that the Court has enough power to stay the conviction. It was held as under : (SCC p. 679, para 15)

15. 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 the 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"

9. Learned advocate for the petitioner further refers to

judgment of this court dated 31st July, 2015 in writ petition No.7417 of 2015 and submits that the situation is almost identical as has been involved in said matter. The court, having regard to position of law and the decision referred to hereinabove of the Supreme Court, considered that as on the last date of filing of nomination or on the date of scrutiny of nominations, there was no stay to conviction of respondent No.6 and as such, rejected nomination of respondent No.6 therein. He submits that as far as present case is concerned, there is no stay to the conviction of respondent No.6. He, therefore, submits that this is the fittest case wherein the court shall intervene saving elections from being tainted by contest by a statutorily disqualified candidate i.e. respondent No.6.

10. Mr. S. B. Talekar, learned advocate for respondent No.6, on the other hand, raises several contentions and objects to the tenability of the petition at this stage pointing out that as a matter of fact, while scrutiny was in process, no objection on the ground which is purportedly taken in this petition had ever been raised by the petitioner. It was after publication of valid nominations, the objection had been purportedly taken and yet that was considered and overruled. However, Mr. Bhandari, learned advocate for the petitioner disputes the position

regarding publication of valid nominations on 19th October, 2015. He contends that as a matter of fact, without prejudice to his contentions, even if it is assumed that scrutiny was over while the objection has been taken, it is not the fact that valid nominations were declared on 19th October, 2015, it in fact occurred on 21st October, 2015, according to his submissions referring to election programme.

11. Mr. Talekar as well as Mr. Shelke, learned advocates for respondents submit that all the stages of elections are over, even the electronic voting machines have been sealed, symbols have been allotted and displayed and under the circumstances it may be difficult to delete name of respondent No.6 from the electronic voting machines and as such, it is desirable to allow respondent No.6 to contest the elections.

12. Mr. Talekar, further submits that the decision relied upon on behalf of learned advocate for the petitioner in case of Lalsai Khunte (*supra*) is with reference to section 8 (3) of the Representation of People Act, 1951. According to him, phraseology used in section 8 (3) of Representation of People Act under its context is wide apart from that has been used under section 14 (1) (a) (ii) of the Maharashtra Village Panchyats Act.

It is being contended that while the language used in section 14 (1) (a) (ii) of the Maharashtra Village Panchayats Act is of past tense whereas that used under section 8 (3) is of present tense. It would be worth while to refer to section 8 (3) of the Representation of People Act, which reads thus -

“8. (3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.”

13. Perusal of aforesaid provision, however, would clearly indicate the intention underlying is not different from provision of section 14 (1) (a) (ii) of the Maharashtra Village Panchayats Act. Both the provisions converge on that a person who has been convicted and sentenced for a particular period and above referred to therein would stand disqualified. This being the basic intention underlying making provisions, the distinction sought to be made by Mr. Talekar is untenable.

14. In the circumstances, there being no dispute on fact that respondent No.6 having been convicted for offence punishable under sections 135 and 138 of Electricity Act, 2003, there being no stay to the conviction and the sentence being for a period of one year, respondent No.6, pursuant to provisions of section 14

(1) (a) (ii) of the Maharashtra Village Panchayat Act, incurs statutory disqualification.

15. In view of the clearly emerging legal position, the practical difficulties being put forth for exclusion of respondent No.6 from the contest to election of village panchayat Eklahera should not hinder the process for exclusion of a candidate, who stands statutorily disqualified.

16. Writ petition, as such, deserves to be allowed and is accordingly allowed in terms of prayer clause "A". Order dated 19th October, 2015 passed by respondent No.5 accepting nomination of respondent No.6 stands set aside. Nomination of respondent No.6 stands rejected. Rule is made absolute accordingly.

17. At this stage, Mr. Talekar, learned advocate for respondent No.6 requests for stay to this order. However, having regard to facts, as have emerged, I am disinclined to accede to the request.

18. Parties to act upon operative part of this judgment.

[SUNIL P. DESHMUKH, J.]