

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1165 OF 2015

Smt. Manda J. Gawli .. Petitioner
VS.
Smt. Dipali L. Koli & ors. .. Respondents

Mr. M.A. Chaudhari for the Petitioner.
Mr. Amit Karkhanis i/b H.K. Sayyed for Respondent No.1.
Mr. Sachin Thorat for Respondent No.3.
Mr. S.D. Rayrikar, AGP for Respondent Nos.4 & 5.

CORAM : M. S. SONAK, J.
DATE : 09 FEBRUARY , 2015

P.C. :-

1] This petition is directed against the order dated 23 January 2015 made by the Additional Commissioner, Pune Division, Pune declining stay upon the Additional Collector's order dated 16 July 2013, by which the petitioner is disqualified from being Member/Sarpanch of the Village Panchayat, Ardhanari, Solapur.

2] There is no dispute that the Additional Collector by order dated 16 July 2013 has disqualified the petitioner from being a Member and consequently a Sarpanch of the Panchayat. The petitioner instituted an appeal against the order dated 16 July 2013 on 30 July 2013 before the Additional Commissioner. However, the petitioner neither moved for nor obtained any stay from the Additional Commissioner.

3] Instead, the petitioner, without any authority of law continued to occupy the post of a Member and Sarpanch of the Panchayat and has discharged some duties in the said capacity. Thereafter upon on complaint by one of the voters from the Panchayat, the authorities perhaps woke-up and initiated action against the petitioner. At this stage, that the petitioner applied to the Additional Commissioner for a stay, which has since been rejected by order dated 23 January 2015.

4] Learned counsel for the petitioner points out that there is no rejection of stay as such, but only a deferment of its consideration until the petitioner produces the case papers in Election Petition No.2 of 2012 pending before the Civil Court. Learned counsel for the petitioner points out that Election Petition No.2 of 2012 has since been dismissed, for non-prosecution. Accordingly, it is submitted that a case has been made out for grant of stay.

5] In my judgment, looking to the conduct of the petitioner, the petitioner is not entitled to any relief from this Court in exercise of its extra-ordinary and equitable jurisdiction. Despite being fully aware that a disqualification order has been made on 16 July 2013, the petitioner has chosen to continue as a Member/ Sarpanch without

any authority of law. On this ground itself, there is no question of the petitioner being rewarded with some stay, at this belated stage. The Additional Commissioner was right in declining the stay.

6] Nevertheless, it cannot be overlooked that the petitioner is an elected representative. The right to appeal against the decision of the Additional Commissioner is also a statutory right. Taking into consideration this aspect, it would be appropriate if the Additional Commissioner is directed to dispose of the petitioner's appeal, within a period of four weeks from the date on which the petitioner unambiguously and unconditionally hands over charge and files an affidavit before the Additional Commissioner that she ceases to be a Member and a Sarpanch of the Panchayat. Learned counsel for the petitioner states that such papers and affidavit will be filed by the petitioner before the Additional Commissioner within a period of two weeks from today. Accordingly, within a period of four weeks thereafter the Additional Commissioner to dispose of the petitioner's appeal. Lest there be any ambiguity, it is clarified that the petitioner shall immediately cease to function as Member or Sarpanch.

7] It is clarified that this Court has not made any observations on the merits of the matter and the observations of this Court are

basically with regard to the conduct of the petitioner in continuing upon an elected post despite having suffered an order of disqualification and there being no stay to the same from the Appellate Authority. Accordingly, the Additional Commissioner to decide the petitioner's appeal on merits and in accordance with law.

8] The petition is disposed of on the aforesaid terms. Although this is a fit case where the petitioner should be called upon to pay exemplary costs, nevertheless considering the circumstances that the petitioner has agreed to hands over charge immediately and file an affidavit to that effect before the Additional Commissioner, this Court refrains from doing so.

9] Learned counsel for the petitioner submits that further hearing in the appeal is already scheduled on 27 February 2015. Accordingly, it is directed that the Additional Commissioner to proceed with the hearing of the appeal scheduled for the said date.

10] With the aforesaid observations, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)