

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.11082 OF 2015

1. Shrikant Shivaram Shinde

**Age:-52 years, Occu:-Agriculturist,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

2. Maya Shankar Sale,

**Age:-54 years, Occu:-Housewife,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

3. Nanda Kabir Kamble,

**Age:-56 years, Occu:-Housewife,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

4. Shubhangi Ashok Bannenawar,

**Age:-39 years, Occu:-Housewife,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

5. Manohar Chandrashekhar Pattanashetti,

**Age:-38 years, Occu:-Agriculturist,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

6. Sangita Bhairu Mali,

**Age:-32 years, Occu:-Housewife,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

7. Iqbal Maula Gavandi,

**Age:-36 years, Occu:-Agriculturist,
R/o:-Jath, Taluka Jath, Dist:-Sangli.**

.. Petitioners

Versus

**1. The Chief Executive Officer,
Jath Nagar Panchayat, Jath,
District Sangli.**

**2. The Collector,
Sangli District, Sangli.**

**3. The State of Maharashtra
Through Ministry of Urban Development
Mantralaya Mumbai.**

.. Respondents

**Shri. N. V. Walawalkar, Senior Advocate i/by Ajit J. Kenjale, for the
Petitioners.**

Ms. M. S. Bane, 'B' Panel Counsel for the Respondent Nos.2 & 3.

**CORAM : R.M. SAVANT, J.
DATE : 21st APRIL, 2015**

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order vacating the stay mention of which is found in the communication dated 6th April, 2015 of the Joint Secretary, Government of Maharashtra addressed to the Collector Sangli and copy marked to the Petitioners. The

stay vacated was in operation in the Appeals filed by the Petitioners under Section 44 (4) of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 (For short “The Maharashtra Municipalities Act”). The Petitioners who are 7 in number were elected as Councillors of the Jath Municipal Council, Taluka Jath, District Sangli. The Collector Sangli has passed an order disqualifying the Petitioners as Councillors on account of the fact that they have not submitted the account of the expenses incurred by them in the elections as mandated by Section 16(1D) of the said Act. The said order of the Collector is dated 8th July, 2014. It is against the said order of the Collector that the Petitioners have filed Appeals under Section 44(4) of the said Act.

3. It seems that the list of the disqualified Councillors pursuant to the order passed by the Collector was published in the official gazette dated 25th November, 2014 under the signature of the Collector, Sangli. In view of the fact that the Petitioners had taken exception to the orders passed by the Collector by way of Appeal under Section 44(4), the Petitioners challenged the said action of the Collector publishing the list in the gazette by filing Writ Petition No.143 of 2015 in this Court. A Division Bench of this Court granted stay of the said gazette publication on the ground that in the Appeal filed by the Petitioner a stay was granted on 4th August, 2014 by the Appellate Authority. The Division Bench further

observed that the grant of stay by it, as well as the pendency of the Petition would not be an impediment for the Appellate Authority to consider the Appeal.

4. As indicated above, the Appellate Authority had granted stay to the order passed by the Collector on 4th August, 2014. The said stay was in operation all throughout till the Petitioners received the communication dated 6th April, 2015, wherein it has been mentioned that the stay granted to the order dated 8th July, 2014 by the Appellate Authority has been vacated. As indicated above, it is the vacation of stay by the Appellate Authority as disclosed in the communication dated 6th April, 2015 which is taken exception to by way of the above Petition.

5. It is the contention of the Learned Senior Counsel appearing on behalf of the Petitioners that the stay has been vacated without the Petitioners being noticed or without the Appeal being placed for hearing as regards the vacation of stay. Hence, the principal contention of the Learned Senior Counsel is that the stay has been vacated without following a modicum of procedure.

6. Per contra, Learned AGP Ms. M. S. Bane endeavoured to justify the impugned order, but without any deal of conviction.

7. Having heard the Learned Counsel for the parties, in my view

the above Petition is required to be allowed and the stay which was in operation in favour of the Petitioners from 4th August, 2014 is required to be restored pending the Appeal filed by the Petitioners before the Appellate Authority i.e. the State Government. There is no dispute about the fact that before vacating the stay which is evidenced by the said letter dated 6th April, 2015, the Petitioners were not noticed in respect of the same. If the Appellate Authority was of the view that the stay was required to be vacated, then a modicum of procedure was required to be followed namely the Stay Application was required to be placed for hearing or the Appeal was required to be placed for final disposal. However, without following such modality, the stay has been vacated abruptly at least that is the impression one can gather from the letter dated 6th April, 2015. Since the Appeals are pending and since the vacation of stay would have serious consequences for the Petitioners who are the elected Councillors, and having regard to the fact that the stay was operating from 4th August, 2014, in my view it would be just and proper to set aside the order vacating the stay which is evidenced by the communication dated 6th April, 2015. The order vacating the stay therefore to stand set aside. The result thereof would be that the order dated 4th August, 2014 would continue to operate pending the Appeal. The Appellate Authority to take up the Appeal for hearing and decide the same Appeal latest by 31st July, 2015.

The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs. The Learned AGP Ms. M. S. Bane would inform the developments in the above Petition including the instant order to the concerned department of the State Government.

[R.M. SAVANT, J]