

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

Writ Petition No.6476 of 2015

* Janardhan s/o Shekuji Pawar,
Age 61 years,
Occupation : Agriculture,
R/o Savangi, Lasur Station,
Taluka Gangapur,
District Aurangabad. .. **Petitioner.**

Versus

- 1) Sambhaji s/o Vithalrao Patil,
Age 41 year,
Occupation: Agriculture,
R/o Dongaon, Taluka Gangapur,
District Aurangabad.
- 2) The Additional Commissioner,
Aurangabad Division,
Aurangabad. .. **Respondents.**

Shri. P.B. Shirsath, Advocate, for petitioner.

Shri. S.S. Thombre, Advocate, for respondent No.1.

Shri. S.R. Yadav, Assistant Government Pleader, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 29 AUGUST 2016

JUDGMENT:

- 1) Rule, rule made returnable forthwith. By
consent heard for final disposal.

2) The petition is filed to challenge the order made by learned Additional Commissioner, Aurangabad in Case No. ZPPS/Mdisqualification/167/2013/A in the disqualification proceeding started by present petitioner Janardhan Pawar against respondent No.1 Sambhaji. The application was moved by Sambhaji for framing preliminary issue regarding maintainability of the proceeding. After hearing both the sides, the learned Additional Commissioner has held that the ground can be raised in election petition and the proceeding before the authority for disqualification is not tenable.

3) Before the learned Additional Commissioner reliance was placed by the learned counsel for Sambhaji on the case reported as **2010(3) Bom.C.R. 635 (Shrikrishna Dhage v. Shivcharan Kalne)** of this Court (Nagpur Bench). In that case this Court, other Hon'ble Judge, had held that if the disqualification was incurred prior to the date of election then after the election, election petition needs to be filed and the proceeding for disqualification is not tenable. On this point, learned counsel for the present petitioner, placed reliance on a

case reported as **2016(4) Mh.L.J. 178 (Vishwas vs. Devendra)**. The Division Bench of this Court has made it clear that the proceeding under section 16(2) of the Maharashtra Village Panchayats Act is maintainable and there is no general rule that if remedy of election petition is available, then the remedy under section 16(2) is barred and there is no rule that when the petition cannot be filed due to some procedural defects, remedy under section 16(2) is also barred.

4) In the case of Vishwas (cited supra) the Division Bench considered and placed reliance on the ratio of the case of **Dhirendra vs. State of Orissa (AIR 2009 SC 163)** which was also in respect of the election. The other case of the Supreme Court reported as **(2006) 12 SCC 484 (State of H.P. vs. Surinder Singh Banolta)**, on which reliance was placed by the learned Single Judge in the aforesaid case of Shrikrishna, is also considered by the Division Bench of this Court.

5) The wording of section 16 of the Act shows that for the purpose of provision of section 16, for declaring

disqualification, it is immaterial as to whether the disqualification was incurred prior to the date of the election, when candidate was being chosen and so disqualification continues and he remains disqualified due to the provision.

6) In view of the aforesaid provisions of law, this Court has no hesitation to hold that the learned Additional Commissioner has committed error in holding that the proceeding before him is not tenable.

7) In the result, the writ petition is allowed. The order made by the Additional Commissioner, Aurangabad in Case No.ZPPS/Mdisqualiication/167/2013/A is hereby quashed and set aside. The application filed for framing preliminary issue is hereby rejected. The matter is restored to its original number. The Additional Commissioner is to decide the matter on merits. The proceeding is to be disposed of within 45 days from the date of receipt of the order of this Court.

Sd/-
(T.V. NALAWADE, J.)

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