

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

Writ Petition No.10602 of 2016

* Hanumant Sahebrao Patil,
Age 37 years,
Occupation : Agriculture,
R/o. Sakat, Taluka Jamkhed,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) The Additional Commissioner,
Nashik Division, Nashik.
- 2) The Additional Collector,
Ahmednagar.
- 3) Gram Sevak,
Gram Panchayat, Sakat,
Taluka Jamkhed,
District Ahmednagar.
- 4) Alka Pandharinath Kolhe,
Age 35 years,
R/o Kolhewadi, Post. Sakat,
Taluka Jamkhed,
District Ahmednagar. **.. Respondents.**

Shri. Abhijit S. More, Advocate, for petitioner.

Shri. S.N. Kendre, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. V.S. Undre, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 27 OCTOBER 2016

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The petition is filed to challenge the order made on stay application in Village Panchayat Appeal No.80/2016 made by the learned Additional Commissioner Nasik.

3) The learned Additional Collector, Ahmednagar has allowed the Village Panchayat Dispute proceeding No.6/2016 and respondent No.4 Alka Kolhe, is disqualified under the provisions of the sections 14(1)(j-1) and 16 of the Maharashtra Village Panchayats Act 1958. There is allegation against Alka that after relevant date i.e. 12-9-2001 three children were born to Alka and so she is disqualified.

4) The submissions made and the record show that the nomination form was filed on 17-7-2015. Along with the nomination there was declaration that Alka was having 2 children. There are birth certificates in respect of these two children and they are not disputed. In the proceeding filed before the Collector after the elections present petitioner contended that the third child was born to Alka on 7-10-2015 i.e. after the election. Birth certificate in respect of the third child was produced. Alka took defence that it is false certificate. After considering the record, the Collector gave decision and Alka is disqualified.

5) Alka filed appeal before the Additional Commissioner and prior to that caveat was filed by present petitioner. The other side appeared before the Additional Commissioner. As per Roznama Alka did not argue for stay to the order made by the Additional Collector. Then the matter was adjourn to 23-9-2016. The Roznama shows that on that date learned counsel for Alka requested for adjournment and so the matter was adjourned to 25-11-2016. The Roznama shows that on 7-

10-2016 application was moved by Alka for stay and without giving notice of this application to the present petitioner ex-parte stay was granted by the Additional Commissioner.

6) It is the grievance of the petitioner that when there is record of aforesaid nature and when next date was given to both the sides by learned Additional Commissioner, it was not open to the learned Additional Commissioner to grant ex parte stay. Learned counsel for the petitioner placed reliance on a case reported as **2014(2) ALL MR 400 (S.C.) (Taranjeet Singh Vs. District Deputy Registrar Co-operative Societies).**

7) In view of the aforesaid record and circumstance, this Court holds that it was not proper on the part of the learned Additional Commissioner to grant ex parte stay when other side had appeared and adjournment was sought on the previous date and the date was fixed as 25-11-2016. Learned Additional Commissioner ought to have given opportunity to other side by giving notice of this application. It appears that

the present Sarpanch has resigned and due that the petitioner has grievance that Alka will vote in the election and that will be against the political interest of the petitioner. Learned counsel for Alka submitted that appeal is a right and so there is no possibility of interference in the order of stay made by the learned Additional Commissioner.

8) Though it is true that appeal is a right but filing of the appeal does not mean automatic stay to the disqualification declared by the learned Additional Collector as provided in the Act of 1958. Only till declaration is made by Collector in a proceeding the member can continue to be member but once declaration is made disqualification starts. In view of this position of law, it was necessary for the Additional Commissioner to give notice to the other side in view of the aforesaid circumstances. This Court holds that the order cannot sustain in law.

9) The petition is allowed. The order dated 7-10-2016 made by the learned Additional Commissioner Nasik

is quashed and set aside. Both the parties are to appear before the Additional Commissioner on 2nd November 2016 for arguments on the stay application. It is open to the learned Additional Commissioner to go for final hearing of the appeal itself. Rule is made absolute in the above terms. Authenticated copy is allowed to both the sides.

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

rsl