

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8227/2016

Digambar Namdev Mastud ... Petitioner

Vs.

The Returning Officer,
Grampanchayat Election & Ors. ... Respondents

Mr. Kuldeep U. Nikam for the petitioner
Mrs. Vaishali Nimbalkar, AGP for the respondents

CORAM : K. K. TATED, J.
DATE : OCTOBER 17, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 08.06.2016 passed by the learned Divisional Commissioner, Pune Division, Pune in interim application in appeal No.50/2016 declining to grant interim relief to stay the operation and implementation of order dated 31.03.2016 passed by the learned Collector, Dist. Solapur in Dispute application No.1454/2015 by which the learned Collector declared the petitioner as disqualified to hold the post of a Member of Grampanchayat, Kedgaon, Tq. Karmala, Dist. Solapur for non submitting election expenses within time.

2. The learned counsel for the petitioner submits that in the present proceedings, the respondent No.1 Returning officer, along with letter

dated 09.12.2015 forwarded a statement of election expenses submitted by the petitioner to the Tahasildar, Karmala. To that effect, he relied on a letter which is at page 46 Exhibit- C. He further submits that even the Returning Officer has submitted a list of candidates who filed statement of expenses in election in which the petitioner's name appears at Sr.No.7 viz. Digambnar Namdeo Mastud from ward No.2.

3. The learned counsel for the petitioner submits that initially, the petitioner filed his nomination from Ward No.2 as well as Ward No.3. The learned counsel for the petitioner submits that the petitioner withdrew his nomination from Ward No.3 immediately. Hence, there is no question of submitting a statement of account for ward No.3. He further submits that these facts were not considered by the learned Collector as well as the learned Divisional Commissioner, Pune Division, Pune at the time of passing the impugned order dated 08.6.2016.

4. The learned counsel for the petitioner submits that this court, by order dated 12.08.2016 granted ad-interim relief in terms of prayer clause (b) staying the operation and implementation of the order dated 31.03.2016 passed by the learned Collector, Dist. Solapur in Dispute application No.1454/2015. He further submits that the appeal preferred by the petitioner before the learned Divisional Commissioner, Pune Division, Pune is pending for final disposal on merits. He submits that in the interest of justice, till hearing and final disposal of the appeal by the learned Divisional Commissioner, Pune Division, Pune, this Hon'ble Court be pleased to stay the operation and implementation

of the order dated 31.03.2016 passed by the learned Collector, Dist. Solapur. He further submits that if stay is not granted, irreparable loss will be caused to the petitioner.

5. On the other hand, the learned AGP vehemently opposed the Writ Petition. She submits that they filed Affidavit-in-Reply dated 08.10.2016 duly affirmed by Mr. Shantaram Namdeo Kirve, Naib Tahasildar, Karmala, Dist. Solapur. She submits that the documents on page 46 and 47 Exhibit- C were not produced before the learned Collector when he decided the Dispute Application No.1454/2015. She submits that the petitioner failed to submit the statement of expenses in election in respect of ward No.3. Hence, the order passed by the Collector as well as the Divisional Commissioner, Pune Division, Pune is according to law. Hence, there is no question of entertaining the Writ Petition.

6. Heard both sides at length. Though the petitioner filed his nomination form from Ward No.2 as well as No.3, he withdrew it from Ward No.3. He contested the election from Ward No.2 only. Letter dated 09.12.2015 of respondent No.1 Returning Officer shows that the petitioner has submitted statement of election expenses within time.

7. Considering these facts and as the appeal preferred by the petitioner being Appeal No.50/2016 before the learned Divisional Commissioner, Pune Division, Pune challenging the order dated 31.03.2016 passed by the learned Collector, Dist. Solapur and as this court has, by order dated 12.08.2016 granted ad-interim relief in terms

of prayer clause (b), I am satisfied that the petitioner has made out a case for allowing this Writ Petition by directing the learned Divisional Commissioner, Pune Division, Pune to decide the petitioner's appeal No.50/2016 on its own merits and till that time, the interim relief granted by this court to continue.

8. Hence, following order is passed:

- a. Order dated 08.06.2016 passed by the learned Divisional Commissioner, Pune Division, Pune in appeal No.50/2016 preferred by the petitioner is set aside.
- b. The learned Divisional Commissioner, Pune Division, Pune is directed to decide the appeal No.50/2016 filed by the petitioner, on merits as early as possible but in any case within 4 months from today.
- c. Till hearing and final disposal of the appeal No.50/2016 before the learned Divisional Commissioner, Pune Division, the operation and implementation of the order dated 31.03.2016 passed by the learned Collector, Dist. Solapur in Dispute Application No.1453/2015 is stayed.
- d. Writ Petition stands disposed of accordingly.

(K. K. TATED, J.)