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

WRIT PETITION NO.6264 OF 2016

Sandeep Bhanuas Kotkar,
Age : 34 yrs. Occ. Agri. & Business,
R/o Kedgaon (Devi),
Ahmednagar

..PETITIONER
(Ori. Appellant)

VERSUS

1. The Divisional Commissioner,
Nasik Division, Nasik

2. Sanjay Pandurang Londhe
@ Sanjay kumar S/o Pandurang
Londhe,
Age : 34 yrs. Occu. Business,
R/o Londhemala, Kedgaon (Devi),
Ahmednagar

..RESPONDENTS
(Resp. No.2 orig. opponent)

Mr N.V. Gaware, Advocate for petitioner;
Mr S.M. Ganachari, A.G.P. for respondent no.1;
Mr V.D. Hon, Senior Advocate, instructed by Mr A.V. Hon, Advocate for
respondent no.2

CORAM : NITIN W. SAMBRE, J.

DATE : 8th September, 2017

ORAL ORDER:

Vide order dated 26th February, 2016, passed by Divisional Commissioner, Nasik Division, Nasik, the prayer for disqualification of respondent no.2, at the behest of the petitioner, under the provisions of the Maharashtra Local Authority Members' Disqualification Act, 1986 (for short "Disqualification Act") was turned down on the ground that the present

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petitioner was unable to serve respondent no.2 or furnish his whereabouts. An issue of identity was also raised.

2. Pursuant to the notice ordered by this Court in which the order of the Divisional Commissioner was questioned, learned Senior Counsel Mr Hon has appeared for respondent no.2/original non-applicant before the Divisional Commissioner. He would submit that the issue of identity of respondent no.2 is also gone into by the Divisional Commissioner, in addition to failure of the present petitioner to serve respondent no.2 in proceedings before Divisional Commissioner. According to him, the order passed by the Divisional Commissioner is self-explanatory and the Divisional Commissioner has rightly rejected the prayer for disqualification moved by the present petitioner. He would submit that both the parties i.e. petitioner and respondent no.2 belong to the same political party and as such petition be dismissed. The elections in which the alleged whip was not honoured are already over.

3. Considered rival submissions. It is required to be noted that the Disqualification Act, particularly under provisions of Sections 3 (b) and 6 (1), disqualification of respondent no.2/non applicant is sought on the ground that he has violated the whip. The disqualification proceedings were rejected by respondent no.1 Divisional Commissioner only on the ground that the present petitioner was unable to serve respondent no.2 as there was some issue of identity in effecting service of notice, particularly having regard to the description of the name mentioned in the application for disqualification.

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4. The said order is questioned by the petitioner in this petition and respondent no.2 has appeared and has not disputed the identity as he is the same person who is named as non-applicant in the application for disqualification.

5. If in a notice issued by the authority, the party respondent no.2 to the petition i.e. original non-applicant if avoids the receipt of notice, the petitioner/applicant has no control over the same, except to make repeated efforts to serve the said respondent as the petitioner has nothing to gain out of it.

6. In view of the fact that respondent no.2 has already appeared before this Court and is aware of the order passed by the Divisional Commissioner and the proceedings initiated thereon vide Appeal No.9 of 2015, in my opinion, it will be appropriate to set aside the impugned order. I, therefore, pass following order :-

The impugned order dated 26th February, 2016 is quashed and set aside and Appeal No.9 of 2015 on the file of the Divisional Commissioner, Nasik Division, Nasik is restored.

The parties hereto agree that they shall appear before the Divisional Commissioner, Nasik Division, Nasik on 25th September, 2017 as the respondent has already waived notice of the said proceedings for disqualification.

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The Divisional Commissioner shall proceed with the said proceedings by deciding the same on its own merits without being influenced by any observations made herein above.

With above observations and directions, writ petition stands allowed.

(NITIN W. SAMBRE, J.)

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