

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

Writ Petition No. 08315 of 2017

District : Jalna

Prabhawati w/o. Subhash Kurewad,
Age : 60 years,
Occupation : Household,
R/o. Police Colony, Ambad,
Taluka Ambad, Dist. Jalna.

.. Petitioner.

versus

01. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
02. The State Minister,
Urban Development Department,
Mantralaya, Mumbai - 32.
03. The Collector,
Jalna, District Jalna.
04. Smt. Ansabai Tatyaba Babar,
Age : 61 years,
Occupation : Corporator,
Ambad Municipal Council,
r/o. Babar Nagar, Ambad,
Taluka Ambad, Dist. Jalna.

.. Respondents.

With

Writ Petition No. 08316 of 2017

District : Jalna

Savitribai w/o. Suresh Gudhe,
Age : 39 years,
Occupation : Household,
R/o. Gudhe Nagar, Ambad,
Taluka Ambad, Dist. Jalna.

.. Petitioner.

versus

01. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
02. The State Minister,
Urban Development Department,
Mantralaya, Mumbai - 32.
03. The Collector,
Jalna, District Jalna.
04. Smt. Mukta w/o. Vishnu Pund,
Age : 36 years,
Occupation : Councillor,
Ambad Municipal Council,
R/o. Pund Vasti,
Behind Matsyodari Devi Temple,
Taluka Ambad, Dist. Jalna. .. Respondents.

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Appearances in both petitions :

Mr. Sambhaji S. Tope, Advocate, for petitioners.

*Mr. S.P. Tiwari, Asst. Government Pleader, for
respondents no.01 to 03.*

*Mr. Shripad S. Kulkarni, Advocate, for respondent
no.04.*

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 10TH JULY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties by consent finally.

02. The writ petitions purport to pose a challenge to communications under letters dated 12-06-2017 whereunder it is contended on behalf of the petitioners, that interim orders staying the orders of the Collector, disqualifying present respondents no.04,

in respective petitions pursuant to Section 44 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, have been stayed.

03. Learned Counsel for petitioners contends that despite caveat having been filed on behalf of the petitioners, the orders came to be passed which is highly objectionable. Learned Counsel, on instructions, submits that the petitioners are the persons who have complained of ineligibility of respective respondent no.04 and there are consequent disqualification orders against respective respondents no.04, them having more than two children after the cut off date. Learned counsel further purports to point out that respondent no.04 in writ petition no. 8315 of 2017 has eight children, whereas respondent no.04 in writ petition no. 8316 of 2017 has four children. The record amply bears the same and despite caveat being filed, without giving notice to the petitioners, interim orders have been passed by the State staying operation of the order passed by the Collector.

04. Learned Counsel for respondents no.04, however, contends that the objection with regard to eligibility and consequent disqualification thereupon has been only an allegation and the matter is pending in appeal where fact finding would be recorded. The finding by the Collector is open for re-appreciation on the basis of facts and evidence. Since appeal has been filed, it cannot be said that the observations by the collector can be said to be final in nature and respondents no.04 have disputed veracity of complaints and claims made against respondents no.04. He, therefore, contends that while appeal is filed, in the natural course, interim relief came to be granted. There is no error in the same.

05. Learned Asst. Government Pleader does not have any particular resistance to aforesaid.

06. Having regard to that, the appeals under the provisions of law are pending before the appellate authority. Proper course in the matter would be to have decision on merits in appeal rather than getting entangled into interlocutory order. It would be expedient in the facts and circumstances and having regard to the nature of dispute, that the appellate authority proceeds with the pending appeals as expeditiously as possible and decide the same within a period of ten weeks from the date of receipt of this order.

07. As such, without touching the legality of the impugned orders or dealing with the same on merits, the petitions are being disposed of with a direction to the appellate authority to go ahead with the appeals themselves and decide the same within a period of ten weeks from the date of receipt of this order. In case, it comes to decision on application for interim relief during the course of aforesaid period, same shall be decided in accordance with law and on its own merits.

08. Rule made absolute in the above terms. There shall be no order as to costs.

(Sunil P. Deshmukh)
JUDGE

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