

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 10565 OF 2016

Smt. Jayashree w/o. Pawan Girhe ....**Petitioner.**

**Versus**

The State of Maharashtra and ors. ....**Respondents.**

WITH

WRIT PETITION NO. 10566 OF 2016

Smt. Shakuntala w/o. Babasaheb Gadade ....**Petitioner.**

**Versus**

The State of Maharashtra and ors. ....**Respondents.**

Mr. S.S. Thombre, Advocate for petitioners.

Mr. S.B. Joshi, A.G.P. for respondent Nos. 1 to 5.

Mr. V.D. Salunke, Advocate for respondent - R.B. Devkate.

**CORAM : T.V. NALAWADE AND  
SANGITRAO S. PATIL, JJ.**

**DATED : March 8, 2017.**

**ORDER : [PER T.V. NALAWADE, J.]**

Both the petitioners were Members of Village Panchayat Pangra Gadade, Tahsil Mantha, District Jalna. They were elected from reserved categories like Scheduled Tribe (Lady) and Nomadic Tribes (C), respectively. In the proceeding bearing C.R. No. 61/2015, disqualification of petitioner - Smt.

Jayashree Girhe was sought by one person viz. Ravindra Bhalchandra Devkate of her village. The Collector had dismissed the said proceeding, but in appeal bearing proceeding No. 268/2016, the learned Additional Commissioner, Aurangabad has disqualified her under the provision of section 10(1)(A) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as 'the Act' for short) by the decision dated 30.9.2016 (for not producing Caste Validity Certificate within fixed time). Similarly, the petitioner from the second proceeding viz. Smt. Shakuntala Gadade is disqualified by the learned Additional Commissioner in appeal bearing proceeding No. C.R.-269/2016 by the decision dated 30.9.2016. Both the sides are heard.

2. The learned counsel for petitioners mainly submitted that in view of the stay given by the Apex Court to the decision given by the Full Bench of this Court in the case reported as **2017 (1) Mh.L.J. 431 [Anant H. Ulahalkar and Anr. Vs. Chief Election Commissioner and Ors.]**, present proceedings cannot be

decided and the stay needs to be given to the disqualification. (One proceeding bearing Special Leave to Appeal No. 29874-29857/16 with connected S.L.Ps. is pending in Apex Court in which stay is given). The learned counsel for petitioners submitted that in view of the circumstance that the Apex Court has given stay to the interpretation made by this Court of the provision of section 10(1)(A), the circumstance that one Division Bench of this Court has given interim relief in favour of petitioner of that case who is similarly placed in **Writ Petition No. 87/2017 [Sunita Jaisingh Zaware Vs. The State of Maharashtra and Ors.]** by order dated 16.2.2017 stay to disqualification needs to be given. On the other hand, the learned counsel for respondent, original complainant submitted that in view of the provisions in the Act which are still there and as the relief granted by the Apex Court is of interim nature and the relief granted by the other Division Bench of this Court is also of interim nature, the present proceedings cannot be stayed and no interim relief can be granted. Both the sides were heard for

admission purpose.

3. The facts of the first matter show that Smt. Jayshree Girhe came to be elected on 3.11.2015. Till the hearing of the appeal was started before the Additional Commissioner, Caste Validity Certificate was not produced by her. The learned Additional Commissioner has held that though the Validity Certificate was issued subsequently, it was not issued and produced within six months, within the period fixed as provided in provision of section 10(1)(A) of the Act. The Additional Commissioner has observed that no record is produced by this lady to show that she was not responsible for not giving the decision earlier in time by the Caste Scrutiny Committee and so, she cannot escape from disqualification, from the aforesaid provision. The learned Additional Commissioner has observed that only zerox copy of Validity Certificate dated 24.7.2016 was produced before him and it was not bearing seal and stamp of Scrutiny Committee and so, it was necessary to declare that she stood

disqualified as provided in aforesaid provisions.

4. In the second matter which is from the same election, the Additional Commissioner has observed that no record was produced by Smt. Shakuntala to the effect that she had taken proper steps to get early decision of the matter and to show no fault can be found with her for not taking the decision of the matter by the Caste Scrutiny Committee. The Additional Commissioner has considered the circumstance like a letter issued by Caste Scrutiny Committee dated 18.7.2016 showing that the discrepancies were not removed by the petitioner in the proceeding and due to that the proceeding could not make any progress. In this matter, the Validity Certificate is admittedly not issued in favour of the petitioner. In view of these circumstances, the Additional Commissioner has given decision against the petitioners.

5. The power is vested with the Collector and the Commissioner, the authorities created under the

Act, to take decision on the basis of subjective satisfaction as per the provision of section 10 (1) (A) read with section 16 of the Act and so, it is necessary for the party like petitioners to satisfy the authorities that there was no fault on their part in respect of the ground raised against them.

6. Even if it is presumed that the Hon'ble Apex Court has stayed the interpretation done by the Full Bench of this Court that provision of section 10(1) (A) of the Act is mandatory in nature, the fact remains that the provision is still there and the power given to the authority is still there. The power needs to be exercised on the subjective satisfaction. The Apex Court has not given stay to the similar proceedings pending in the Courts of this State. In view of these circumstances and as the order is interim in nature, this Court holds that it is open to the authority to give decisions of the matters pending before the authority. Similarly, this Court is expected to take decisions in the matters which are pending before this Court.

7. Following cases were cited in the present matters :-

(i) 2009 (3) Supreme 281 [State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha],

(ii) Case of Calcutta High Court decided on 14.5.2007 between Pijush Kanti Chowdhury Vs. State of West Bengal.

(iii) WP(C) No. 26073 of 2009 (D) between Abdu Rahiman Vs. The District Collector decided on 29.9.2009 by the Kerala High Court.

The Apex Court has laid down that interim order cannot become precedent. There cannot be dispute over the proposition and discussion on this point is already made by this Court. Interim order always involves the use of discretion. In view of the aforesaid circumstances, this Court holds that it is not possible to interfere in the decisions given by the appellate authority against the petitioners. In the result, the petitions stand dismissed.

[SANGITRAO S. PATIL, J.] [T.V. NALAWADE, J.]