

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13213 OF 2017

Muzakkir Abdul Gafar Tamboli,
Age: 38 years, Occup: Business,
R/o Shukrawar Peth, Kaij Tq. Kaij
Dist. Beed.

...Petitioner

Versus

- 1) The State of Maharashtra,
Through Hon'ble Minister,
Urban Development Department,
Mantralaya, Mumbai – 32.
- 2) The Collector,
Beed Dist. Beed.
- 3) The Returning Officer
@ Sub Divisional Officer,
Ambajogai for the election of
President or Vice-President of
Kaij Municipal Council, Tq. Kaij,
Dist. Beed.
- 4) The Municipal Council, Kaij,
Tq. Kaij Dist. Beed.
Through its Chief Officer.

...Respondents

Mr. V. D. Salunke, Advocate for petitioner
Mr. S. P. Sonpawale, AGP for respondents No.1 to 3/ State
Mr. H. P. Jadhav, Advocate for respondent No.4

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 13-11-2017

PER COURT :

1. The petitioner is objecting to the impugned passed by the Collector on 03-11-2017 thereby ordering to comply with the directions issued by this Court in Writ Petition No.4996 of 2015 dated 30th April 2015, issued on the eve of elections for electing President and Vice President of Nagar Panchayat, Kaij. The petitioner is an elected representative of the Municipal Council, Kaij Dist. Beed and has been declared to have been elected on 19-01-2015. The defeated candidate by name Shaikh Zafar Shaikh Farid Presented an appeal bearing No.4 of 2015 to the District Collector, Beed on 28-01-2015, under Section 44 of the Act of 1965, requesting for issuance declaration that the petitioner stands disqualified on the ground that the third child is born to the petitioner after the cutoff date, i.e. 12-09-2001.

2. The appeal presented by the defeated candidate was taken up for consideration by the Collector, who by the order dated 01-04-2015 allowed the same and declared the petitioner as disqualified, to

continue as member of Nagar Panchayat, Kaij. Being aggrieved by the decision rendered by the Collector, the petitioner presented appeal to the State Government and the State Government by an order dated 23-04-2015 granted interim stay to the operation of the order of disqualification. By virtue of the order of stay granted by the Hon'ble Minister, the order of disqualification raised issued against the petitioner sustained.

3. In the meanwhile, the elections to the post of President and Vice President were declared and the issue cropped up as regards the entitlement of the petitioner who is already held disqualified to continue as councilor and has been granted interim protection by State Government, to participate in process of election to elect President and Vice President of Nagar Panchayat. Petition was presented by the objector to this Court seeking restraint order against the petitioner from exercising right to vote at the election during 2015. While disposing of the petition on 30th April 2015, this Court permitted the petitioner herein/ respondent No.4 in the Writ Petition No.4996 of 2015 presented by defeated candidate, to cast vote at the meeting scheduled for electing the President and Vice President of Municipal Council. It was directed that the vote cast by the petitioner shall be

kept in a separate ballot box and shall not be computed until issuance of orders by State Government in an appeal presented in respect of the disqualification of the petitioner. It was further directed that, in case of stalemate and if it becomes necessary to compute the vote cast by the respondent No.4/ petitioner, the same can be done only upon issuance of direction by the appellate authority i.e. State. A directions was issued that till final order is passed in appeal by State Government, all other rights of respondent No.4 i.e. present petitioner herein, shall remain untouched. The learned single Judge of the High Court further observed that, the fate of the vote cast by the petitioner herein /respondent No.4 in writ petition shall depend upon final decision in respect of his disqualification pending with the State Government. A direction was also issued to the State Government to decide the appeal on its own merits, without being influenced by order of this Court. It does appear that, till this date the appeal presented by the petitioner to the State Government has not yet been decided and the next elections to the President and Vice President of the Municipal Council are scheduled to be held on 17-11-2017. The Collector by virtue of the order dated 03-11-2017 issued directions to respondent No.3 that the vote cast by present petitioner be kept in separate ballot box as per directions issued by the High Court in Writ Petition No.4996

of 2015.

4. The learned counsel appearing for the petitioner states that, in fact it is not permissible to put any fetters on the rights of the petitioner since he has been elected as member of Nagar Panchayat. It would be impermissible to direct that the vote cast by the petitioner shall not be counted at this stage and can be considered only after the decision by the State Government as the appeal presented by petitioner, questioning his disqualification.

5. The learned counsel appearing for petitioner places reliance on the Judgment in the matter of *Jagannath Pundlik Date and others Vs. Sukhdeo Onkar Wankhede and others*, reported in *AIR 1967 Bombay, Page 317*, and contends that an elected representative cannot be restrained by virtue of an order of injunction from exercising his rights as an elected representative.

6. There can be no dispute as regards the principle laid down by the Division Bench as referred to above. The rights and entitlement of the petitioner are not being curtailed. By virtue of the directions issued by the learned Single Judge of this Court while disposing of the earlier petition, it has been clarified that the petitioner herein would

be entitled to exercise all his rights and those remain untouched.

7. So far as the right to cast vote at meeting to elect President and Vice President is concerned, it has not been taken away. However, it has been directed that since the order of disqualification issued against the petitioner is subjected to challenge before the Appellate forum and the appeal is pending, the decision in respect of computation of the vote that the petitioner is being permitted to cast shall depend upon the outcome of the appeal.

8. The order passed by the single judge appears to be reasonable and proper and does not in any manner offend the entitlement of the elected member i.e. petitioner. The petitioner has already suffered an order of disqualification by virtue of the orders passed by the Collector in exercise of powers under Section 44 of the Act and the order of disqualification stands suspended by virtue of interim order passed by the State Government during the pendency of the appeal.

9. During the pendency of the appeal the petitioner would be entitled to continue to function as an elected representative and would be entitled to exercise his rights. It would be most reasonable to

permit the petitioner to cast his vote, however subject to limitations which were directed to be imposed by the learned single Judge. The arrangement that has been directed by learned single Judge while disposing of the earlier petition shall remain operative and would cause least inconvenience to either parties. The ends of the justice would be met if the State Government is directed to decide pending appeal presented by petitioner within period of eight (8) weeks from today, and it is accordingly directed.

10. In view of above, petition stands disposed of.
11. Parties to act upon authenticated copy, of the order.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.