

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

WRIT PETITION NO. 11839 OF 2016

Ramdas s/o. Venkati Puppallwad **Petitioner.**

Versus

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

Mr. R.B. Narvade-Patil, Advocate for petitioner.

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

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

DATED : March 6, 2017.

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

The petition is filed for relief of quashing and setting aside the order made by respondent No. 2, District Collector, Nanded in disqualification/dispute proceeding which was started against the present petitioner, who was Member of the Village Panchayat Pimpalkawtha (Megre), Tahsil Mukhed, District Nanded. He was elected from reserved category and as he could not produce the validity certificate in respect of his caste claim, the District Collector by order dated 16.11.2016 declared that the petitioner is not entitled to continue as

Member of the Village Panchayat. Both the sides are heard.

2. At the outset, it needs to mention that only the relief in respect of the decision given by the Collector Nanded in aforesaid proceeding is claimed and as per the Rules framed by the Appellate Side of this Court, the matter lies before the Single Judge. It can be said that at the relevant time, one of the Member of this Bench was dealing with such matters as Single Judge and a view was taken by that Court that the disqualification relates back to the date of election if the validity certificate is not produced within six months from the date of election. To avoid that Court, the petitioner made proceeding as proceeding before Division Bench, but in view of the nature of relief claimed, this Court holds that the proceeding ought to have been taken before the Single Judge. An attempt is made to claim the relief like declaring that the vacancy has not occurred due to disqualification of the petitioner, but that is a consequential thing and the vacancy automatically

occurs immediately when the proceeding is decided by the District Collector.

3. There were two views of the two different learned Judges of this Court on the point, "Whether the condition of production of caste validity certificate within six months from the date of the election mentioned in section 10-A of the Village Panchayat Act is mandatory in nature ?" As different views were expressed on this point and as similar point was involved in other disqualification proceedings started under Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (Section 9A), the matter was referred to Full Bench. The Full Bench decided this point on 9.12.2016 and held that it is a mandatory in nature. The learned counsel for petitioner produced a copy of the order made by the Hon'ble Apex Court in Petition (S) for Special Leave to Appeal (C) NO(S).29874-29875/2016 to show that the Apex Court has granted stay to the aforesaid decision of the Full Bench of this Court. In view of this circumstance, the learned

counsel for the petitioner submitted that the petitioner is entitled to work as a Member of Village Panchayat till the matter pending in Apex Court is decided. He submitted that in other Court even stay is granted to the disqualification when the proceeding is filed before the Division Bench. He placed reliance on some observations made by the Division Bench of this Court in the past in **Writ Petition No. 9180/2016 [Kamal Uttamrao Shinde Vs. The State of Maharashtra and Ors.] decided on 18.10.2016.** The said proceeding was filed for altogether different relief and direction was claimed against the Caste Scrutiny Committee to decide the claim of the said petitioner in respect of the caste and for that, the proceeding was allowed. There is no such relief claimed in the present proceeding.

4. In any case, the provisions of section 10-1A of Maharashtra Village Panchayat Act read with section 16 of the same Act show that if the certificate is not produced within six months from the date of election, the Member incurs

disqualification and the proviso to section 10-1A shows that the disqualification relates back to the date of election. These two provisions show that the power is with the Collector to decide such point and immediately after the decision given by the Collector, the vacancy occurs and till that date only the Member can function in the Local Body. Even if it is presumed that the aforesaid provision is directory in nature, there is discretion with the Collector and Collector is expected to take decision which is based on his subjective satisfaction. The order of the Collector shows that the cases against some more Members of the same Village Panchayat were pending and Collector did not make such order in respect of three other Members as they had taken steps for obtaining certificate immediately before the date of election in October 2015, but the present petitioner had filed his claim for verification on 25.2.2016. The aforesaid provisions show that it is necessary for a candidate to produce the record along with the nomination form which is to the effect that he had applied for verification of his caste to Caste

Scrutiny Committee on or before the date of his nomination. All these circumstances show that the petitioner has virtually mislead everybody and he tried to misuse the process of law. In view of these circumstances, this Court holds that no relief can be granted to the petitioner. The petition stands dismissed.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/