

BDPSPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5948 OF 2017

Deepak Sudhakar Hajare Petitioner.

V/s

State of Maharashtra & Others Respondents.

Mr. R.K. Mendadkar, Advocate for the Petitioner.

Mr. B.V. Samant, AGP for Respondent Nos. 1, 2, 4 and 5.

Mr. K.P. Shah, Advocate for Respondent No.3.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 19th September, 2017

P.C.:-

1] Present Petition deserves to be dismissed on the short ground of misrepresentation.

2] When the matter was listed on board on the last date i.e. on 12th September, 2017, it was urged before the Court that show cause notice for disqualification of the Petitioner, who is elected as a member of Panchayat Samiti, is issued and, therefore, there is a grave urgency for grant of ad-interim order. Believing the statement that the matter was urgent and since we thought that when the matter was concerning

with the electoral office, it was not only the right of the elected member but also the right of the persons who elected such a member was affected, we granted ad-interim relief in terms of prayer clauses (c) and (d).

3] Today, when the matter is listed on board, we have gone through the earlier order-sheets. We noticed that the Division Bench presided over by Mr. Justice A.S. Oka, had unequivocally rejected the ad-interim relief by order dated 6th June, 2017.

4] When we made a specific query to Mr. Mendadkar, learned Counsel appearing on behalf of the Petitioner, as to whether on the last date i.e. on 12th September, 2017, he had brought to our notice the order dated 6th June, 2017 passed by the Division Bench presided over by Mr. Justice A.S. Oka, rejecting the ad-interim prayer, he submitted that the earlier order is a matter of record and, therefore, the Court is presumed to have knowledge about it. The contention of Mr. Mendadkar is absolutely correct. When the orders passed by the earlier Bench are matter of record, normally, we are expected to know the same. However, with admission board of 75 to 100 matters every day, we ask a question to ourselves, as to whether it is humanly possible to read the entire order-sheet in all the matters which, at times, may run into more than 100 pages.

5] At least this Bench holds lawyers arguing before it in high

esteem and takes the statement made by the lawyers on its face value. We are of the considered view that lawyer's first duty, as an Officer of the Court, is to assist the Court and, therefore, it is presumed that the lawyer appearing in the matter would assist the Court and bring all the orders, either against his client or in favour of his client, to the notice of the Court.

6] We need not reiterate what are the duties of a lawyer. Lord Denning in *Rondel v. Worsley*¹, which case has been succinctly discussed by Their Lordships of the Supreme Court in *E.S. Reddi vs. The Chief Secretary, Govt. of A.P. and another*², has observed that it is the duty of a lawyer to assist the Court as an Officer of the Court. It has been held that though a lawyer is at liberty to canvass the case of his client with utmost vigour, at the same time, it is his duty to be fair to the Court and point out the facts, which, at times, may be against the interest of his client.

7] We find that the present petition deserves to be dismissed on the short ground of obtaining ad-interim order from this Bench by suppressing rejection of ad-interim order passed by the earlier Bench.

8] Taking into consideration the conduct of the learned Counsel for the Petitioner, we would have been justified in not referring to the merits of the matter. However, it is a settled position in law that on

1 [1966] 3 ALL ER 657

2 AIR 1987 SC 1550

account of mistake committed by a lawyer, litigant should not be made to suffer. As such, we also proceed to consider the claim of the Petitioner on merits.

9] Perusal of the material on record would reveal that in the vigilance cell inquiry conducted by the said cell, it has been found that Petitioner's caste is named as "Hindu" in his school record, whereas his father's caste is recorded as "Rajput". The entries in birth and death record of the Petitioner's ancestors also refer to the caste to be "Rajput". It could thus be seen that not a single document, even after 1967, shows the Petitioner or his father's caste to be "Rajput-Bhamta". It need not be stated that castes "Rajput" and "Rajput-Bhamta" are totally different, whereas Rajput people belong to Rajput Community and have their ancestors as warriors, the members belonging to caste "Rajput-Bhamta", had their ancestors involved in criminal activities like theft etc. We therefore find that, even on merits, claim of the Petitioner is without any substance.

10] Petition is therefore dismissed.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)