IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.442 OF 2018

SAYYAD FAROOQ ALI SAYYAD NUSRAT ALI.
-VERSUS-
THE STATE OF MAHARASHTRA AND OTHERS.

...
Shri V.D.Sapkal h/f Shri Sayyed Touseef Yaseen, Advocate for the Petitioner.
Shri S.K.Tambe, AGP, for Respondent Nos.1 and 2.
Shri G.K.Naik Thigale h/f Shri D.D.Deshmukh, Advocate for Respondent No.3.
...

WITH
WRIT PETITION NO.1251 OF 2018

IMTIYAJ BASHIR TAMBOLI.
-VERSUS-
ARSHIYA BEGUM SAEED CHAUSE AND OTHERS.

...
Shri G.K.Naik Thigale h/f Shri D.D.Deshmukh, Advocate for the Petitioner.
Shri V.D.Sapkal h/f Shri Sayyed Touseef Yaseen, Advocate for Respondent No.1.
Shri S.K.Tambe, AGP for Respondent Nos.2 and 3.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st January, 2018

Per Court:

(a) Writ Petition No.442 of 2018 :-

1 I have considered the submissions of the learned Advocate for

the Petitioner, the learned AGP on behalf of Respondent Nos.1 and 2 and the learned Advocate for Respondent No.3/ original Complainant.

2 The learned AGP has placed on record the compilation of three documents pertaining to the subject matter from the Department before which the hearing of the Petitioner's appeal has been undertaken. The same is taken on record and marked collectively as "X" for identification.

3 The learned AGP submits that the order passed by the Honourable Minister vacating the ex-parte ad-interim stay dated 30.10.2017 on 22.11.2017 is a part of the document "X".

4 Shri Sapkal, learned Advocate for the Petitioner, has put forth a serious grievance that the Petitioner received the notice on 20.11.2017 in his Disqualification Appeal before the Honourable Minister, when the hearing was posted within 48 hours on 22.11.2017. Though the Petitioner, by remaining present, had moved an application on 22.11.2017 seeking an adjournment, the Petitioner has been communicated by the Deputy Secretary of the State vide communication dated 05.01.2018 that ex-parte ad-interim stay to the disqualification of the Petitioner has been vacated. This would indicate that the Honourable Minister has acted highhandedly and the principles of natural justice have been ignored. Merely because the Petitioner sought an adjournment as he had no breathing time, cannot be a ground for vacating the ad-interim stay granted on 30.10.2017

without causing a hearing in the matter.

5 It needs mention that the grievance of the Petitioner, as is voiced above, could have been considered by this Court in this petition, but for the fact that the Petitioner has suffered an order of disqualification at the hands of the District Collector and the said order is subject matter of the pending appeal before the Honourable Minister. If a full fledged hearing on the contentions of the Petitioner is to be held, an affidavit in reply by the Respondents would naturally be expected and the hearing in this matter would take some time. It is on this count that the contentions of the Petitioner with regard to the manner in which the ex-parte ad-interim stay has been vacated, are not being considered at this stage.

6 The learned Advocates for the respective sides consent for an expeditious hearing of the appeal preferred by the Petitioner before the Honourable Minister and are agreeable to even address the Honourable Minister over a period of three consecutive days so as to conclude the hearing in the matter and afford some time to the Honourable Minister to deliver an order.

7 In the light of the above, this Writ Petition is disposed of with the following directions :-

(a) The litigating sides shall appear before the Honourable Minister on 07.02.2018 at 03:00 pm. Respondent No.1 need not issue formal notices to the parties.

(b) The litigating sides would keep their submissions including written notes of arguments as well as judgments to be cited, ready so as to tender them before the Honourable Minister on 07.02.2018.

(c) The litigating sides shall abide by the dates of hearing as may be posted by the Honourable Minister.

(d) The hearing in the appeal preferred by the Petitioner shall be concluded on or before 20.02.2018 and the matter shall be closed for judgment/ order to be delivered on 05.03.2018 at 11:00 am and the litigating sides are at liberty to remain present in the Chambers of the Honourable Minister where the hearing is conducted, for hearing the pronouncement of the order.

(e) Copies of the order shall be kept ready by the Honourable Minister to be delivered to the litigating sides forthwith.

(f) To achieve the above, the Honourable Minister may also conduct a hearing on day to day basis over a period of three consecutive days as per his convenience before 20.02.2018.

(g) All contentions of the litigating sides are kept open.

(h) Till the decision in the appeal filed by the Petitioner before the Honourable Minister, the seat with reference to which the Petitioner has been disqualified, shall be kept vacant and

there shall be no election till then.

(b) Writ Petition No.1251 of 2018:-

8 This petition is not on the board. Mentioned.

9 This petition is preferred by the original Complainant/ Respondent No.3 in Writ Petition No.442/2018, who has challenged the ex-parte ad-interim stay dated 30.10.2017.

10 At the request of the learned Advocates for the parties, this petition is also taken on the Board today along with Writ Petition No.442/2018. Since the ex-parte ad-interim stay dated 30.10.2017 has already been vacated by the Honourable Minister, the learned Advocate for the Petitioner, fairly submits that the petition has become infructuous.

11 In the light of the above, this Writ Petition is disposed of as being infructuous.

kps (**RAVINDRA V. GHUGE, J.**)