

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 1394 OF 2018

Javed Jilani Tamboli & Ors.

... Petitioners

VERSUS

The State Election Commission & Ors.

... Respondents

.....
Mr Ganesh J. Kore, Advocate for the petitioners
Mr P. S. Patil, AGP for respondent/State
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 06TH FEBRUARY, 2018.

ORDER:

1. Mr Kore, the learned counsel for the petitioners submits that, the petitioners were disqualified in February-2017. The petitioners filed an appeal before the Commissioner. The appeal is still pending before the Commissioner. The Commissioner did not take any steps and is not deciding the matter wrongly interpreting the order of this Court dt. 08.06.2017 in Writ Petition No. 4090 of 2017. According to the learned counsel, the judgment of the Full Bench of this Court holding the proviso to be mandatory is stayed by the Apex Court. This aspect was required to be considered.

2. We had asked the learned AGP about the status of the validation proceedings of the petitioners.

3. Mr Patil, the learned AGP, on instructions, states that the proposal of petitioner no. 1 is returned back to the petitioner as necessary documents were not submitted on 26.10.2017 and no proposal of the petitioner no. 1 is pending with the Committee. The proposal of petitioner no. 2 is also wrongly filed before respondent No. 6 – Committee. As the petitioner's native is Solapur, the proceedings will have to be transferred now to the Solapur Committee.

4. Considering that the petitioner no.1's proposal is not pending as on date and it is returned back, the case of the petitioner on that count cannot be considered. As far as petitioner no. 2 is concerned, the proposal is not yet entertained as it has been transferred to the Solapur Committee. The elections are by-elections. The Commissioner ought to have decided the appeal once it is filed by the petitioner. The order of this Court dt.08.06.2017 in WP No. 4090/2017 is to the effect directing the authorities to stay their hands off in view of the stay granted by the Apex Court.

5. The petitioner no. 2 may endeavour to get the appeal decided before the Commissioner by 24.02.2018. The Commissioner shall, if possible, pass orders in the appeal filed by the petitioner by 24.02.2018. The petitioner no. 2 may appear before the Commissioner on 09.02.2018.

6. The petitioner no. 1 is at liberty to file fresh proposal as is permissible in law.

7. The writ petition accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde