

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7029 OF 2018
(Rekha Dada Burange and others Vs. The State of Maharashtra and others)

Mr.G.J.Kore, Advocate for the petitioners.
Mr.P.N.Kutti, AGP for respondent Nos. 1 and 2.
Mr.V.S.Undre, Advocate for respondent Nos. 3 and 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/10/2018

PER COURT :

1. The petitioners are 6 out of the 9 elected members of the Gram Panchayat, Asu, Tql.Paranda, Dist.Osmanabad. All of them have been disqualified by the District Collector vide order dated 12/04/2018 and their appeals have been dismissed by the impugned order dated 11/05/2018. Grievance is that these petitioners have been disqualified on the ground that though they have submitted their accounts of election expenses within limitation, none of them has opened a bank account and such expenses were not furnished through the on line process as has been prescribed in the Circular by the State Government.

2. The petitioners placed reliance upon the judgment of this Court (Coram : R.M.Savant, J.) dated 23/03/2017 delivered in WP Stamp

Nos.2223/2017 to 2231/2017 Vaishali Baburao Bhad and others Vs. Rahul Shivaji Bhad and others, at the Principal Seat of this Court wherein it has been held that the circular issued on 30/07/2011 by the State Election Commission mandating the opening of a bank account, would be directory in nature. Further grievance is that the same District Collector, by relying on the judgment in Vaishali (supra), has refused to disqualify the elected persons in the same set of facts.

3. Learned Advocate for the original complainants/contesting respondent Nos. 3 and 4 submits that the Collector can be directed to reconsider the issue in view of the judgment delivered in Vaishali (supra). An administrator has now been appointed, who has taken charge and consequentially, the Administrator can continue until the District Collector adjudicates upon this issue.

4. I find that Respondent No.2 / District Collector, should adopt a consistent approach. If he has followed the view in Vaishali (supra), which he is obliged to follow, he should apply the same law to all the cases provided the said cases rest on similar set of facts and circumstances.

5. Considering the above, this petition is partly allowed in terms of prayer clause “B”, which reads as under :-

“B. By issuing the writ of certiorari or any other writ, order or direction in like nature, the impugned order dated 11/05/2018 passed by Ld. Additional Divisional Commissioner in proceeding No.DB/DESK-2/ ZPVP/APPEAL/CR/36/2018 thereby, the confirming the order passed by the Ld. Collector, Osmanabad dated 12/04/2018, proceeding No. 2017/GB/DESK-1/ Gram Pan. Election/KA1/KAVI 1662/Petition No.48/2017, may kindly quash and set aside.”

6. The Gram Panchayat Application No.48/17 in these proceedings shall stand remitted to the Office of the District Collector, Osmanabad for a re-hearing. All the litigating sides would appear before the District Collector on 22/10/2018 at 11.00 a.m. Formal notices are not necessary.

7. The litigating sides are at liberty to tender their written notes of submissions besides making oral submissions. It is expected that respondent No.2 would decide the said dispute afresh by considering all the contentions of the litigating sides and after going through the judgment delivered by this Court in Vaishali (supra).

8. Respondent No.2 shall conclude the said proceedings and shall deliver his order with reasons, on or before 31/12/2018.

9. Until the decision of the District Collector, the Administrator would continue to administer the Gram Panchayat and elections to the positions which have fallen vacant on account of the impugned disqualification, shall not be conducted till the decision of the District Collector.

(Ravindra V.Ghuge, J.)