

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

WRIT PETITION NO.11001 OF 2018

Jagdish s/o Ramchandra Samanpelliwar,
Age-39 years, Occu-Business,
R/o Idgaha Road, Gokunda,
Kinwat, Tal.Kinwat,
Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya,
Mumbai – 32
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The District Collector,
Nanded, Dist. Nanded,
4. Naseem Abdul Latif,
Age-52 years, Occu-Household,
R/o Kinwat, Tal.Kinwat,
Dist. Nanded

..RESPONDENTS

**WITH
WRIT PETITION NO.11002 OF 2018**

Jagdish s/o Ramchandra Samanpelliwar,
Age-39 years, Occu-Business,
R/o Idgaha Road, Gokunda,
Kinwat, Tal.Kinwat,
Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32

2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The District Collector,
Nanded, Dist. Nanded,
4. Khan Sajid Khan Nisar Khan,
Age-40 years, Occu-Social work,
Station Road, At Post Kinwat
Tal.Kinwat, Dist. Nanded

..RESPONDENTS

**WITH
WRIT PETITION NO.11003 OF 2018**

Jagdish s/o Ramchandra Samanpelliwar,
Age-39 years, Occu-Business,
R/o Idgaha Road, Gokunda,
Kinwat, Tal.Kinwat,
Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya,
Mumbai – 32
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The District Collector,
Nanded, Dist. Nanded,
4. Kailas s/o Ramrao Bhagat,
Age-40 years, Occu-Business,
R/o Samata Nagar,
At Post.Kinwat, Tal.Kinwat,
Dist. Nanded

..RESPONDENTS

**WITH
WRIT PETITION NO.11004 OF 2018**

Jagdish s/o Ramchandra Samanpelliwar,
Age-39 years, Occu-Business,
R/o Idgaha Road, Gokunda,
Kinwat, Tal.Kinwat,
Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya,
Mumbai – 32
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The District Collector,
Nanded, Dist. Nanded,
4. Haji Khan Shaharbano w/o
Nisar Khan,
Age-62 years, Occu-Household,
R/o Station Road, Kinwat,
Tal.Kinwat, Dist. Nanded

..RESPONDENTS

...
Advocate for Petitioner : Shri Jadhav N.L.
h/f Shri Singare R.B.
AGP for Respondents 1 to 3 : Shri Kutti P.N.
Advocate for Respondent 4 : Shri Kurundkar S.V.
h/f Shri Narwadkar M.D.
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: October 04, 2018
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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. Considering that all the issues involved are identical and respondent No.4 in these four petitions, as well as the petitioner, are identically placed, these petitions have been taken up together for hearing.

5. The petitioner is aggrieved by the judgment and order dated 27.8.2018, passed by the Divisional Commissioner, Aurangabad in the Appeals filed by each of these fourth respondents. By the impugned judgment, the order of the District Collector, dated 26.7.2018, allowing the application filed by the petitioner and disqualifying the fourth respondent under Section 16(1)(b) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 have been quashed and set aside.

6. Having heard the learned Advocates and the learned AGP on behalf of the respective sides, their submissions can be summarized as under:-

(a) The elections were held on 13.12.2017 and the results were declared on 14.12.2017.

(b) The fourth respondent in each of these cases was declared elected after the counting of votes on 14.12.2017.

(c) A period of 30 days after the declaration of the result is available for the elected candidates to submit their accounts of election expenses.

(d) The period of 30 days would, therefore, expire on 13.1.2018, within which, the elected representatives will have to deposit their accounts of elections expenses as per the Rules.

(e) Though the petitioner is not a valid voter and is not included in the list of the voters for the Municipal Council, Kinwat district Nanded, he claims to have a right to lodge a protest or a complaint before the District Collector under Section 16 (1) of the Act for making out a case of disqualification as against the fourth respondent.

(f) These fourth respondents have tendered their accounts on 13.1.2018 and the said submissions have been accepted by the concerned authority, though 13.1.2018 was a non-working second Saturday and hence a holiday.

(g) The petitioner contends that the Collector had rightly concluded that the polling in the elections was held on 13.12.2017 and hence, the 30 days would expire on 12.1.2018. The petitioner further submits that the delay of one year is fatal and the District Collector had rightly disqualified the elected representatives.

(h) There is no dispute that the counting of votes took place on 14.12.2017 and the result of the election was declared thereafter on the same date.

(i) The respondents contend that the petitioner does not have the locus standi to cause his intervention before the Divisional Commissioner in the appeal proceedings as he is not concerned with the elections, is unconnected with the said election and is not a valid voter, who could contest the elections or participate in the voting to such elections.

(j) The petitioner has relied upon the judgment of this Court in the matter of Suvarna Prakash Patil Vs. Anil Hindurao Powar and others [2004 (1) Mah.L.J. 106].

(k) The petitioner contends that the Divisional Commissioner did not have the authority to entertain the appeal in view of Articles 243-K(4), 243-ZA and 243-V(2) of the Constitution of India.

(l) The petitioner further submits that when Section 44(4) of the Municipalities Act mandates that any person aggrieved by the decision of the Collector will approach the State Government, the fourth respondents have wrongly approached the Divisional Commissioner.

(m) The fourth respondents have relied upon Section 10A to contend that the State Election Commissioner can issue special or general orders and can delegate any of his powers and functions to any officer of the Commission or any officer of the State Government not below the rank of Deputy Collector or the Chief Officer of a Council.

(n) They further rely upon the order issued by the State

Election Commission dated 10.8.2015, by which, the power to decide the issue of the disqualification of an elected member would stand delegated to the Divisional Commissioner to the extent of the appeals that are to be filed by the aggrieved person, who desires to challenge the order of the Collector.

7. In view of the above and considering the conspectus of this matter, I find that the following issues need to be adjudicated upon in these proceedings:-

(i) Whether the Divisional Commissioner would have the jurisdiction to entertain the appeal of these fourth respondents?

(ii) Whether the fourth respondents have tendered their accounts of election expenses within 30 days? If they have filed the said accounts beyond 30 days, is the Collector obliged to consider the reasons cited for the delay and decide, whether the delay deserves to be condoned?

(iii) Whether the petitioner would have the *locus standi* to *suo moto* cause an intervention in the proceedings at the appellate stage and whether a Writ Petition at his behest would be maintainable before this Court?

ISSUE NO.(i)

8. In so far as the contention of the petitioner as regards the lack of

jurisdiction of the Divisional Commissioner is concerned, it would be apposite to reproduce the provisions of law relied upon by the respective sides hereunder:-

"CONSTITUTION OF INDIA

Article 243K. (1) *Elections to the Panchayats The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.*

(2)

(3)

(4) *Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.*

Article 243-ZA : Elections to the Municipalities:-

(1) *The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.*

(2) *Subject to provisions of this Constitution, the Legislature of a State may, bylaw, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.*

Article 243-V : Disqualifications for membership:-

(1) A person shall be disqualified for being chosen as, and for being a member of a Municipality

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age, of twenty one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

**MAHARASHTRA MUNICIPAL COUNCILS, NAGAR PANCNAYATS
AND INDUSTRIAL TOWNSHIPS ACT, 1965****Section 10A : State Election Commissioner**

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipal Councils shall vest in the State Election Commissioner.

(2) The State Election Commissioner may, by order, delegate

any of his powers and functions to any officer of the Commission, or any officer of the State Government not below the rank of Deputy Collector or the Chief Officer of a Council.

(3) All officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of the Municipal Council under this Act or the rules shall function under the superintendence, direction and control of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act and the rules, the State Election Commissioner may issue such special or general orders or directions which may not be inconsistent with the provisions of this Act for fair and free elections.]

Section 44 : Disqualification of Councillor during his term of office.-

(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he -

(a) is or becomes subject to any of the disqualifications specified in Section 16 except the disqualification specified in clause (h) of sub-section (1) of that section; or

(b)

(c)

(d)

(e)

and he shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant:

Provided that-

- (i)
- (ii)

(2) *When a Councillor whether elected, or nominated incurs any of the disqualifications in sub-section (1), it shall be the duty of the Chief Officer to submit a report to the Collector within one month of his becoming aware of the disqualification through any source whatsoever.*

(3) *In every case the authority to decide whether a vacancy has arisen shall be the Collector. The Collector may give his decision on receipt of the report of the Chief Officer under sub-section (2), or on his own motion or on an application made to him by a voter and such decision shall be communicated to the Councillor concerned, the Chief Officer and the applicant, if any. Until the Collector decides that a vacancy has arisen and such decision is communicated as provided above, the Councillor shall not be deemed to have ceased to hold office.*

(4) *Any person aggrieved by the decision of the Collector may within a period of fifteen days from the date of receipt of the decision of the Collector by him, appeal to the State Government and the orders passed by the State Government shall be final:*

Provided that, no order shall be passed under sub-section (3) by the Collector or under sub-section (4) by the State Government in appeal, against any Councillor without giving him a reasonable opportunity of being heard.

Explanation.- If any elected or nominated Councillor were subject to any disqualification specified in Section 16, at the time of his election, or nomination and continues to be so disqualified, the disqualification shall, for the purposes of this section, be deemed to have been incurred during the term for which he is elected or nominated."

9. It is canvassed by the petitioner that Article 243-K prescribes entire superintendence, direction and control being vested in the State Election Commission for the elections to the Panchayat. Under Article 243-V, the disqualification of a person for being chosen as a member or for being a member of a municipality, is provided. I find that Article 243-V(1)(a) provides for a disqualification of a Member under any law, which is applicable and which has been made by the Legislature. Article 243-ZA makes it further clear that the superintendence, direction and control over the entire process of election shall be vested in the State Election Commission.

10. It is strenuously canvassed by the learned Advocate for the petitioner that in view of these provisions under the Constitution of India, the Divisional Commissioner cannot exercise jurisdiction which is otherwise vested in the State Election Commission. I find from Section 44 of the Nagar Panchayat Act, that the person aggrieved by the decision of the Collector can approach the State Government within 15 days from the date of the receipt of the decision of the Collector. It is in

this backdrop that Section 10A was introduced by Maharashtra XLI of 1994, which provided for delegating the powers of the State Election Commission to any officer of the Commission or any officer of the State Government, but not below the rank of a Deputy Collector or the Chief Officer of a council.

11. Considering the above referred provisions, the contention of the petitioner, though principally would sound correct that the State Election Commission cannot issue an order to override the provisions of law, Section 10A empowers the State Election Commission to delegate authority to any officer of the Commission or the Government, but not below the rank of a Deputy Collector or the Chief Officer. Section 44(3) empowers the Collector to give a decision, whether a vacancy has arisen on account of any such contingency inclusive of the incurring of a disqualification under the law applicable for reasons so provided in the Act. If Section 10A(2) and Section 44(4) are to be read in tandem and a harmonious interpretation is to be made to ensure that neither of the provisions are rendered nugatory, the effect of Section 10A(2) would permit the State Election Commission to delegate its powers under Section 44(4) to the Divisional Commissioner or any such officer not below the rank of the Deputy Collector or the Chief Officer.

12. Considering the position of Law as above, I have perused

Annexure II to the order of the State Election Commission dated 10.08.2015. It indicates that the Divisional Commissioner would be the competent authority to consider the cases of the candidates elected to the Municipal Corporations who have failed to submit their accounts of election expenses. The Appellate authority would be the State Election Commissioner. For similar such candidates elected to the Nagar Panchayats or Nagar Parishads, the District Collector would be the competent Authority and the Divisional Commissioner would be the Appellate Authority. This position would clear all doubts about the jurisdiction of the Divisional Commissioner to consider the appeals of the respondent No.4/candidates.

13. On the above premises, I am of the view that the order of the State Election Commission dated 10.8.2015, thereby delegating the powers to the Divisional Commissioner, would not be in contravention of Section 44. It would empower the Divisional Commissioner to decide the appeals against the orders of the District Collector, in view of Section 10A and Annexure-II of the Notification dated 10.8.2015.

14. It is pointed out by the learned Advocates that this Court, by judgment dated 13.2.2014 in Balasaheb Kashinath Tambe Vs. Nanasaheb Janardhan Khade - Writ Petition No.9508 of 2013, has dealt with a similar case under the Maharashtra Village Panchayat Act and

has concluded that the delegation of power to the Divisional Commissioner by the State Election Commission vide notification dated 19.11.2010 cannot be faulted. The observations of this Court in paragraph Nos.8 to 11 read as under:-

“8. The State Election Commission vide notification published in official Gazette dated 19.11.2010 has delegated its powers U/Sec. 14B(1) of the Panchayat Act to the concerned Collector.

9. In the present case Sec. 182 of the Panchayat Act would not be relevant, as it deals with the powers of the State Government and other authorities under the Act to delegate its powers.

10. Delegation does not imply parting with powers by the person who delegates, but rather confers an authority to do certain things which otherwise the person would have to do himself.

11. In the present matter the authority of the State Election Commission to delegate its powers is relevant. Sub Section 1 of Sec. 10-A of the Panchayat Act gives the authority to the State Election Commissioner to control, direct and superintend the preparation of the electoral roles. Sub Section 4 of Sec. 10-A also empowers the commission to issue such special or general orders or direction, which may not be inconsistent with the provisions of the Act for fair and free elections. Sec. 14B of the Panchayat Act is amended and introduced subsequently in the year 2010. Whereas Sec. 10A of the Panchayat Act is incorporated in the year 1994. The powers of delegation are bestowed upon the State Election Commission under

Sec. 10A(2). Though Sec. 14B of the Panchayat Act is introduced subsequently by way of an amendment, the same would not make any difference. An amendment when introduced becomes an integral part of original statute. Different provisions of the same statute will have to be read in harmony. The words used in original statute should be presumed to be used in the same sense in the amended portion. Sec. 14-B gives powers to the State Election Commission to disqualify the candidate for not submitting the election expenses in time. The State Election Commission possesses the authority and power to disqualify any person from being a member of panchayat who has not submitted the election expenses within the stipulated period. The State Election Commission is bestowed with the authority of delegation under sub Section 2 of Sec. 10-A. The said provision does not lay down any restrictions on the authority of State Election Commissioner to delegate its powers. Reading said provision, it is manifest that, the powers of the State Election Commissioner to delegate any of his powers and function are unfettered and are without any reservation and qualification. Sec. 10-A(2) of the Panchayat Act empowers the State Election Commission to delegate any of its powers and functions to any officer, meaning thereby that even powers U/Sec. 14B can be delegated. When the provision is unambiguous, then the literal interpretation is the rule. In view of powers delegated to the him, the Collector is acting on behalf of State Election Commission while disqualifying the petitioner U/Sec. 14B of the Panchayt Act. In view of that, it cannot be said that the order passed by the Collector disqualifying petitioner for non submission of election expenses is without jurisdiction or authority.”

15. In Vaijayata Deepak Warke and others Vs. State Election

Commission and others [2016 (2) Mah. L.J. 35], this Court had an occasion to consider a similar issue and it was concluded in paragraph No.22 that an alternate remedy in the form of preferring an appeal is available and such remedy should be availed off. Similarly, the issue of delegation of authority by the State Election Commission to the Divisional Commissioner for entertaining an appeal is concerned, it was concluded that such an appeal would be maintainable. The observations of this Court in Vaijayata (supra), read as under:-

“22. Similarly, this Court, in case of Balasaheb K. Tambe and ors. Vs. Nanasaheb J. Khade and ors. 2014(12) LJSOFT 313, in the context of provisions contained in Sections 10A, 14B, 14(1)(j-4) of the said Act has made the following observations at paragraph '11', by reference to Notification dated 19 November 2010:

11. In the present matter the authority of the State Election Commission to delegate its powers is relevant. Sub-Section 1 of Sec. 10A of the Panchayat Act gives the authority to the State Election Commissioner to control, direct and superintend the preparation of the electoral roles. Sub-Section 4 of Sec. 10A also empowers the commission to issue such special or general orders or direction, which may not be inconsistent with the provisions of the Act for fair and free elections. Sec. 14B of the Panchayat Act is amended and introduced subsequently in the year 2010. Whereas Sec. 10A of the Panchayat Act is incorporated in the year 1994. The powers of delegation are bestowed upon the State Election Commission under Sec. 10A(2). Though Sec. 14B of the

Panchayat Act is introduced subsequently by way of an amendment, the same would not make any difference. An amendment when introduced becomes an integral part of original statute. Different provisions of the same statute will have to be read in harmony. The words used in original statute should be presumed to be used in the same sense in the amended portion.

Section 14B gives powers to the State Election Commission to disqualify the candidate for not submitting the election expenses in time. The State Election Commission possesses the authority and power to disqualify any person from being a member of panchayat who has not submitted the election expenses within the stipulated period. The State Election Commission is bestowed with the authority of delegation under sub-Section 2 of Sec. 10A. The said provision does not lay down any restrictions on the authority of State Election Commissioner to delegate its powers. Reading said provision, it is manifest that, the powers of the State Election Commissioner to delegate any of his powers and function are unfettered and are without any reservation and qualification. Sec. 10A(2) of the Panchayat Act empowers the State Election Commission to delegate any of its powers and functions to any officer, meaning thereby that even powers U/Sec. 14B can be delegated. When the provision is unambiguous, then the literal interpretation is the rule. In view of powers delegated to the him, the Collector is acting on behalf of State Election Commission while disqualifying the petitioner U/Sec. 14B of the Panchayat Act. In view of that, it cannot be said that the order passed by the Collector disqualifying petitioner for non

submission of election expenses is without jurisdiction or authority.

23. *This Court, in case of Santosh M. Walanj Vs. Manoj S. Jadhav 2013 (2) Mh.L.J. 68, has held that Section 16 of the said Act, in fact, gives effect to Constitutional Scheme enshrined in Part IX of the Constitution of India and that there is no inconsistency whatsoever between the provisions contained in Section 16(1)(a) of the said Act and Article 243-O of the Constitution of India.*

24. *In view of the aforesaid, there is no reason to entertain these petitions and the Petitioners are required to be relegated to avail the alternate remedy before the Divisional Commissioner. The Petitioners in Writ Petition No. 11306 of 2015 have alternate remedy by way of petitioning to the Divisional Commissioner under Section 14B(2) of the said Act. There does not appear to be any period of limitation prescribed for the purposes of availing such remedy. Therefore, such remedy shall have to be availed within a reasonable period. If the Petitioners in Writ Petition No. 11306 of 2015, institute petitions before the Divisional Commissioner within four weeks from today, then the Divisional Commissioner is directed to entertain the same on merits. The Divisional Commissioner is further directed to dispose of such petitions within a period of twelve weeks from the date when such petitions are lodged. If the petitions are lodged within a period of four weeks from today, then the interim order granted on 3 December 2015 shall operate till disposal of the petitions by the Divisional Commissioner. If, however, the Petitioners in Writ Petition No. 11306 of 2015 fail to institute petitions under Section 14B(2) of the said Act to the Divisional Commissioner within a period of four weeks from today, then the interim orders made on 3 December*

2015 shall stand vacated insofar as the said Petitioners are concerned. No doubt, the said Petitioners shall be entitled to apply afresh for interim relief before the Divisional Commissioner, who shall consider such application, in accordance with law and on its own merits.”

16. It be noted that the learned counsel for the petitioner has not cited any judgment or view taken by this Court that the Divisional Commissioner has been held to be bereft of jurisdiction under the 1965 Act. No such judicial pronouncement is cited which would indicate that this Court has taken a view that the Divisional Commissioner cannot exercise the delegated powers under Section 10A of the said Act.

17. In view of the above and considering the phraseology appearing in the provisions of the Nagar Panchayat Act, 1965, I find that the Divisional Commissioner has been legally delegated the authority to entertain the appeals and as such, the said appeals were rightly entertained in these proceedings.

ISSUE NO.(ii)

18. In so far as the second issue is concerned, the petitioner has contended that the District Collector has rightly concluded that 30 days for depositing the accounts would expire on 12.1.2018 and the submission of accounts by these elected representatives on 13.1.2018 cannot be sustained. I find that the District Collector has, in the first

place, erred in considering the exact date of result of the election and has erroneously held that the period of 30 days expired on 12.1.2018. The Collector himself has recorded in the second paragraph of his order dated 26.7.2018 that the polling took place on 13.12.2017 and the results of the elections, after counting of votes were declared on 14.12.2017. The date on which the election results have been declared can never be construed to mean that the said day is to be reckoned. It hardly requires any debate that when the results of the elections are declared on 14.12.2017, that day cannot be included in the 30 days period, lest it would mean that by the time the results are declared, one day already stands deducted from the limitation period of 30 days.

19. In view of the above, if 30 days are to be computed with the first day falling on 15.12.2017, inclusive of the 31st day in the month of December, 13.1.2018 would be the last date on which these elected representatives could tender their accounts of election expenses. 13.1.2018 fell on a second Saturday and it is undisputed that the said Saturday was a holiday. These elected representatives, though had submitted their accounts on 13.1.2018, as per the record available. In any case, they would stand protected. Even if the 30th day which is the last day of the limitation period, fell on a holiday, which was followed by a Sunday on 14.1.2018, this benefit of the holiday occurring on the last date of the limitation period has to be interpreted

in favour of the candidate, who is likely to face the possibility of the bar of the limitation period. As such, these fourth respondents could have been justified in tendering their accounts even on 15.1.2018. On these premises, I find that the accounts were tendered by these elected representatives on the last date of the limitation period of 30 days, the conclusions of the Collector are rendered perverse and erroneous.

20. Even if it is presumed that there was a delay on the part of these elected respondents in filing their accounts, Section 16(1D)(b) would entitle the elected candidates to explain the reasons for the delay and the Competent Authority is obliged to consider whether the reasons cited are convincing for condoning the delay. This issue is no longer res-integra in view of the judgments of this Court in the matters of Shakti Balkrishna Mhatre Vs. Returning Officer, Panchayat Vindhane and others [2015(3) Mh.L.J. 275], Hemraj s/o Yuvraj Patil Vs. State of Maharashtra and others [2017(1) LJSOFT 22] and in the matter of Savitribai w/o Kisan Shinde Vs. The Additional Divisional Commissioner and others in WP No.197/2018 and connected matters, decided on 14.2.2018.

21. Before parting with the second issue, I am required to deal with an aspect of a notice being issued to the District Collector by the Divisional Commissioner on the appeal preferred by the aggrieved

parties and the District Collector filing a detailed Written Statement as if he is an answering or contesting respondent.

22. I find from the record that the Divisional Commissioner, had called for the say of the District Collector, Nanded, after receiving the appeals preferred by the elected representatives. While responding to the notice of the Divisional Commissioner, several allegations have been made by the District Collector against the elected representatives. The Collector has accused them of manufacturing new records. These observations in the written say are nowhere found in the order of the Collector impugned before the Divisional Commissioner. It is surprising that the same District Collector, who has passed an order on 16.7.2018 disqualifying the elected persons since their accounts were submitted with a purported delay of one day, has nowhere made any observations about the conduct of the elected persons, much less, a conclusion that they have prepared a false record. When the Collector himself concluded on the basis of the record that the accounts were tendered on 13.1.2018 and nowhere concluded that the records are manipulated, it is unconscionable for the Collector to make new allegations against the elected persons, when he was merely supposed to submit the record and proceedings to the Divisional Commissioner.

23. In the above backdrop, the question that arises is as to whether

the District Collector, though may be arrayed as respondent No.1 in an appeal before the Divisional Commissioner, is required to file a Written Statement or is he only required to prepare a letter and transmit the entire record in the proceedings before him to the Divisional Commissioner for his assistance. In my view, the District Collector is neither an answering nor a contesting respondent. When he receives any notice or intimation of any such appeal proceedings, he is expected to transmit the entire record to the Divisional Commissioner and at the most could mention as to whether new issues were raised before the appellate authority, which were never addressed to the District Collector. I find that the State Government is now required to take cognizance of this aspect and ensure that in such proceedings the revenue / quasi judicial authority passing the order in the first instance, is not required to tender a written statement as if the District Collector is opposing the appeal proceedings as a contesting respondent.

ISSUE NO.(iii)

24. In so far as the third issue is concerned, with regards to the *locus standi* of this petitioner, it is an admitted position that the name of this petitioner does not appear in the electoral roll prepared for the Panchayat Samiti elections of the Municipal Council, Kinwat. He can neither vote in the elections of the Municipal Council nor can he contest the elections. It is also not claimed by the petitioner that he is a social

worker. He suddenly appeared for the first time before the Divisional Commissioner by filing an application for intervention. Even in the said application, he has not disclosed as to whether he is a voter or a member of the Nagar Panchayat electoral roll / valid voters' list. He has only disclosed his address indicating that he is a resident of taluka Kinwat.

25. The petitioner places reliance upon Suvarna Prakash's case (supra) and especially paragraph No.13, which reads as under:-

“13. From the elucidation made by the Apex Court in Para 10 referred to above, it can be plainly deducted that the complaint or application addressed to the appropriate authority needs to mention is that the named member has incurred disqualification, so as to ignite the action. To more and no less. It will be unnecessary to give specific disqualification or for that matter any other material facts. Once such complaint or application is received, alleging disqualification incurred by the member, a question would arise-as in this case within the meaning of Section 16 of the Act; And once such question arises then, it is the bounden duty of the Authority to cause such enquiry as may be deemed necessary into that issue and decide the same appropriately. At any rate, the complaint or application cannot be thrown out at the threshold on the ground that the case made out therein was vague, unfounded or unsubstantial. In my opinion, it would also mean that even if some citizen has made complaint or application, the Authority will be obliged to make enquiry on his own to record his satisfaction on the issue of disqualification. And it cannot decide the issue only on the

basis of the averments in the complaint application and the material produced by such applicant. ”

26. I find that this Court was dealing with an issue of a complaint having been lodged by an individual alleging that the particular elected member has incurred disqualification. This Court, therefore, concluded that when such a complaint is received, the authority is obliged to conduct an enquiry and decide the complaint based on the allegations / contentions made. A complainant can address the proper authority and cite reasons as the basis for seeking disqualification of the said member. This would ignite the action. Such a complaint cannot be thrown out at the threshold on the ground that the case putforth was vague or that it was unfounded / unsubstantial and did not unfold such ingredients which would lead to the rejection of such complaint without an enquiry. It is in this backdrop that this Court observed in its opinion that even if some citizen had made a complaint or application, the authority will be obliged to make an enquiry on the basis of the record.

27. In Suvarna Prakash (supra), though the details about the locus standi of the petitioner are not mentioned, the fact remains that the said petitioner was the original complainant, who had filed a complaint to the Collector, Kolhapur alleging that seven members of the Gram Panchayat had incurred disqualification as they were defaulters. The elected persons had opposed the application by contending that the said

petitioner had filed the complaints owing to the political vendetta. No where was it brought on record as like the facts in the case in hand that this petitioner is neither a voter in the Panchayat elections of Kolhapur, nor has he occupied any position in the said council. In fact, it is conceded in this case that the petitioner has nothing to do with the elections of the Kinwat Municipal Council and he was never included in the voters' list. It is simply stated that he is a businessman and he has an address of Kinwat.

28. In my view, the Divisional Commissioner should have scrutinized the intervention application filed by the petitioner at the appellate level which practically amounts to adding him as a necessary respondent. From the intervention application made by him, he has completely suppressed the fact that he was not a voter, was never included in the voters' list of the municipal council, inasmuch as, the reason or cause for him to jump into the battle of litigation at the appellate level was not disclosed. In my view, the petitioner, therefore, did not have the *locus standi* to intervene in the matter and consequentially file these petitions.

29. I find that though the impugned judgment of the Divisional Commissioner, may not disclose the extent to which I have considered this matter, the conclusion arrived at by the Divisional Commissioner, cannot be branded as being perverse or erroneous since I find that the

District Collector had failed to apply his mind to the facts of the case and as such, the judgment of the District Collector was unsustainable in law.

30. These petitions are, therefore, dismissed. Rule is discharged.

31. Considering the view that I have taken in so far as the role of the District Collector in disqualification cases at the appellate stage is concerned, it would be appropriate for the State Government to consider the said conclusion and issue necessary instructions to the Divisional Commissioners and the District Collectors in the matters pertaining to such cause of action. The learned AGP shall bring this direction to the notice of respondent No.1.

(RAVINDRA V. GHUGE, J.)

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akl/d

Ajay
Kishanrao
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