

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

WRIT PETITION NO. 10869 OF 2018

**MOHAMAD JAVED HAJI ABDUL GANI AND OTHERS
VERSUS
THE COLLECTOR NANDED AND OTHERS**

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Advocate for the Petitioners : Shri S. S. Gangakhedkar
AGP for Respondent No. 1 : Shri S. R. Yadav
Advocate for Respondent Nos. 3 and 4 : Shri V. D. Hon
Sr.Adv.h/f. Shri G. G. Kadam

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 08th OCTOBER, 2018.

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PER COURT :

1. I have heard the learned Advocate for the petitioners, the learned AGP on behalf of respondent No.1 and the learned Senior Advocate on behalf of the contesting respondent Nos. 3 and 4.

2. Since at this stage respondent No.2/The Nagar Panchayat is not a contesting respondent and is a formal party, the learned Advocate for the petitioners seeks leave to delete respondent No.2. Leave is granted. At the request of the petitioners, deletion be carried out forthwith.

3. Though I have heard the learned Advocates for the respective sides at length and have considered the judgment delivered by this Court in the matter of ***Jyoti Pratapsingh Chadel and others Vs. Collector, Nanded and others 2016 (6) Mh.L.J. 165***, I find that two crucial documents, on the basis of which the conclusions of this Court in paragraphs 60 to 65, 68, 70 and 91 would become relevant, were not pointed out before the District Collector.

4. Both these documents are notifications dated 30/06/2015 bearing No.MCO 2014/C.R.171/UD-14 and MCO. 2013/C.R. 171/Part-1/UD-14. They pertain to exercising of the powers under Section 341C read with Clause (I) of sub-section (2) of Section 340 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and under Section 341 A (1) (1A) and (2) of the said Act.

5. By these two notifications, the transitional area of Nagar Panchayat, Himayatnagar is said to be covered by the provisions of 1965 Act. The submission of the learned Senior Advocate, therefore, is that by these two notifications, the

observations made by this Court in *Jyoti Pratapsingh (supra)* under paragraphs 62 and 63 would be attracted and as such, this Nagar Panchayat would be covered under the 1965 Act and consequentially, the provisions of the Maharashtra Local Authorities Members Disqualification Act, 1986 would be applicable. It is then submitted that in view of these two notifications, the disqualification proceedings pending before the District Collector would be maintainable and can be taken to a logical end.

6. Though the learned Advocate for the petitioners has tried to canvass that these two notifications would be of no consequence, I find that the District Collector, Nanded was not properly assisted by the learned Advocates for the respective sides. It is rightly pointed out by the learned AGP that these two notifications are found in the R & P of the said proceedings. In my view, if the litigating sides before the District Collector could have properly canvassed these two notifications in the light of the judgment delivered in *Jyoti Pratapsingh (supra)*, the District Collector could have analyzed the said notifications and in the light of the said judgment, he could have better decided the application filed by these

petitioners, which has resulted in the passing of the impugned order dated 14/09/2018.

7. Considering the above, this petition is partly allowed. The impugned order dated 14/09/2018 is quashed and set aside and the said application decided under the impugned order is restored to the file of the District Collector with the following directions :-

(a) The litigating sides shall appear before the District Collector on 22/10/2018 at 11.00 a.m.

(b) The District Collector shall allow these litigating sides to advance their submissions on the said application.

(c) He would consider the effect of the two notifications referred to above and the judgment of this Court delivered in *Jyoti Pratapsingh (supra)*.

(d) The parties are at liberty to enter their written notes of submissions on or before 26/10/2018, besides oral submissions.

(e) The District Collector shall then decide the said application on its own merits by passing a reasoned order considering the notifications and the cited judgment, on or before 30/11/2018.

(RAVINDRA V. GHUGE, J.)

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