

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

WRIT PETITION NO. 12368 OF 2018

MADHUKAR NAVNATH BIDAWE AND OTHERS
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER AURANGABAD AND
OTHERS

...

Advocate for the Petitioners : Shri Gapat Pramod B.

AGP for Respondents 1 and 2 : Shri N.T.Bhagat.

Advocate for Respondent 4 : Shri A.S.More.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st November, 2018

Per Court:

1 The learned AGP points out the order of this Court dated 12.10.2018 passed in Writ Petition No.7029/2018 in the matter of ***Rekha Dada Burange and others vs. The State of Maharashtra and others***, whereby, this Court has remitted the proceedings for a fresh hearing in view of the judgment of this Court (Coram : R.M.Savant, J.) at the Principal Seat dated 23.03.2017 delivered in Writ Petition (Stamp) Nos.2223/2017 to 2231/2017 in the matter of ***Vaishali Baburao Bhad and others vs. Rahul Shivaji Bhad and others***.

2 The petitioners are the elected members of the Gram Panchayat, Hingangaon (Kh), Taluka Paranda, District Osmanabad. All of

them have been disqualified by the District Collector vide order dated 16.09.2018 and their appeals have been dismissed by the impugned order dated 15.10.2018. 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.

3 The petitioners placed reliance upon the judgment of this Court in ***Vaishali Baburao Bhad*** (supra), 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 Bhad*** (supra), has refused to disqualify the elected persons in the same set of facts.

4 The learned Advocate for the original complainant/contesting respondent No.4 submits that the Collector can be directed to reconsider the issue in view of the judgment delivered in ***Vaishali Bhad*** (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.

5 I find that Respondent No.2 / District Collector, should adopt a consistent approach. If he has followed the view in ***Vaishali Bhad*** (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.

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

“B. *By issuing appropriate writ, order or directions the order dated 16.09.2018 passed by the Collector, Osmanabad in case No.2018/GA/ VPE/KA-1/ CR-873/C.No. 22/2018 and order dated 15.10.2018 passed by the Additional Divisional Commissioner, Aurangabad in case No.DB/ Desk-2/ ZPVP/ Appeal/ CR/91/ 2018 may kindly be quashed and set aside.*”

7 The Application No.22/2018 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 21/11/2018 at 11.00 a.m.. Formal notices are not necessary.

8 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 Bhad*** (supra).

9 Respondent No.2 shall conclude the said proceedings and shall deliver his order with reasons, on or before 31/01/2019.

10 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.

kps

(RAVINDRA V. GHUGE, J.)