

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

WRIT PETITION NO.14213 OF 2017

1. Bajrang s/o Manohar Sonavane,
Age : 46 years, Occu : Agriculturist
and Social Work, R/o. Sarni, Post Javal-ban
Tq. Kaij, Dist. Beed
2. Smt. Mangal Prakashrao Solanke
Age : 61 years, Occu : Agri & Social Work,
R/o. Mohikhed, Tq. Dharur, Dist. Beed
3. Ajay Manikrao Munde
Age : 32 years, Occu : Agri &
Social Work, R/o. Nathra,
Post Kauthali, Tq. Parali, Dist. Beed .. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. Hon'ble Cabinet Minister,
Rural Development Department,
Mantralaya, Mumbai-32.
3. Under Secretary,
State of Maharashtra,
Rural Development Department,
Mantralaya, Mumbai-32.
4. Shivaji S/o Eknath Pawar
Age about : 41 years, Occu : Agri
and Social Work, at Zepewadi,
Post Warni, Tq. Shirur (Kasar), Dist. Beed
5. Prakash s/o Vithalrao Kavthekar
Age about : 38 years, Occu : Agri
and Social Work, R/o. Ukhanda,
Tq. Patoda, Dist. Beed
6. Smt. Ashwini w/o. Dnyaneshwar Jarange
Age about : 30 years, Occu : Agri
and Social Work, R/o. Kusllamb,

Tq. Patoda, Dist. Beed.

7. Smt. Sangita W/o Ramhari Maharnor,
Age about : 30 years, Occu : Agri
and Social Work, R/o. Dadegaon (Mahadevwadi)
Tq. Ashti, Dist. Beed
 8. Smt. Mangal W/o Ganpat Doifode
Age about : 32 years, Occu : Agri
and Social Work, R/o. Ileet, Post Pimpalner,
Tq. & Dist. Beed
 9. Smt Ashwini w/o Amar Nimbalkar
Age about : 35 years, Occu : Agri
and Social Work, R/o At Ashta (Hari Narayan)
Tq. Ashti, Dist. Beed
 10. The Collector, Beed,
District Beed.
 11. The Chief Executive Officer,
Zilla Parishad, Beed,
Dist. Beed.
- .. Respondents

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Shri S.V. Kanitkar, Advocate, h/f. Shri N.L.Jadhav,
Advocate for Petitioners

Shri A.B. Girase, Government Pleader
for Respondents No.1 to 3 & 10

Shri V.D. Salunke, Advocate for Respondents No.4, 5, 7 & 9
Shri B.N. Patil, Advocate for Respondent no.6
Shri G.K. Thigale (Naik), Advocate for Respondent No.8
Shri V.M . Chate, Advocate for Respondent no.11

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CORAM : P. R. BORA, J.

Reserved on : 03.05.2018
Pronounced on : 04.05.2018

PER COURT :

1. By filing the present petition, the petitioners have
challenged the order dated 18-10-2017 passed by the

Honourable Minister (Rural Development), State of Maharashtra, whereby the Honourable Minister has granted stay to the decision rendered by the Collector, Beed, on 16-10-2017 in Petition No.1/2017. Petition No.1/2017 was filed by the present petitioners under Section 7 of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as 'the Act of 1986') read with Section 3 of the said Act, along with Rule 6 of the Maharashtra Local Authorities Members' Disqualification Rules, 1987, with a prayer to disqualify respondent nos. 4 to 9.

2. The learned Collector, after having conducted enquiry in the Petition so filed and after having heard the respective parties, allowed the said petition and declared present respondent nos. 4 to 9 to be disqualified to hold the post of Member of Zilla Parishad, Beed, for violation of the provisions of Section 3 (1) (b) of the Act of 1986. Aggrieved by the decision rendered by the learned Collector, respondent nos. 4 to 9 approached the Honourable Minister (Rural Development) and, as stated above, the Honourable Minister, on 18-10-2017 granted stay to the decision rendered by the learned Collector on 16-10-2017.

3. The order of stay passed by the Honourable Minister on 18-10-2017 is assailed by the petitioners on various grounds. Shri S.V.Kanitkar, learned Counsel appearing for the petitioners, submitted that the impugned order is the patent example of arbitrary exercise of powers by the Honourable Minister. The learned Counsel, referring to the provisions of the Act of 1986, the Rules framed thereunder, as well as the provisions under the Representation of the People Act, 1951, the Constitution of India, the Code of Civil Procedure, and the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961, submitted that the impugned order passed by the Honourable Minister, if considered in the light of the provisions of the aforesaid Acts, Rules as well as the Constitution of India, cannot be sustained and deserves to be set aside. The learned Counsel submitted that the amendment came to be brought in Section 7 of the Act of 1986 and sub clause (3) came to be added in Section 7, thereby providing an appeal to the State Government against the decision of the Commissioner, or the Collector, as the case may be, at the instance and insistence of the Honourable Minister, namely, Smt. Pankaja Mundhe, the Rural Development Minister of the State of Maharashtra.

4. Learned Counsel further submitted that because of such an amendment though the appeal is provided to the State Government against the decision rendered by the Collector or the Commissioner, as the case may be, under Section 7 of the Act of 1986, there is no provision in the Act of 1986 or the Rules thereunder for empowering the Honourable Minister to grant stay to the decision rendered under Section 7 of the Act of 1986. As such, according to the learned Counsel, the impugned order passed by the Honourable Minister granting stay is without jurisdiction and, hence deserves to be set aside.

5. Learned Counsel, inviting my attention to the provisions of Section 116A and 116B of the Representation of the People Act, 1951, submitted that in absence of any such provision made in the Act of 1986, the Honourable Minister could not have granted stay to the decision rendered by the learned Collector, Beed, on 16th of October, 2017. Learned Counsel, referring to and relying upon the judgment of the Honourable Apex Court in the case of Jyoti Basu and others Vs. Debi Ghoshal and others (AIR 1982 SC 983), submitted that the Act of 1986 being the Special Act, the Common Law provisions would not apply. Learned Counsel submitted that the appeal filed by the present respondent nos. 4 to 9 before the

Honourable Minister under Section 7(3) of the Act of 1986, being a statutory proceeding, neither the Common Law nor the principles of equity would apply to such proceeding but only those Rules which the Statute makes, would apply. Learned Counsel submitted that it is a special jurisdiction and the special jurisdiction has always to be exercised in accordance with the Statute creating it. Learned Counsel further submitted that in absence of any provision in the Act of 1986, vesting any power in the Honourable Minister to grant stay to the order impugned before him / her, the order so passed by the Honourable Minister has to be held without jurisdiction and has to be, therefore, set aside.

6. Learned Counsel further submitted that respondent nos. 4 to 9 had ceased to be the Councillors of Zilla Parishad, Beed, after they are disqualified by the learned Collector, Beed, for violation of Section 3(1B) of the Act of 1986. Learned Counsel referred to the provisions of 16(1A) of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961. Referring to and relying upon the judgment delivered by the Division Bench of this Court in the case of Narsingrao Gurunath Patil and others Vs. Arun Gujarathi, Speaker and others (2003(1) Bom.C.R. 363) and more particularly to the discussion made in

paragraph No. 51A and paragraph No.53 of the said judgment, submitted that there is limited scope while deciding an appeal under Section 7(3) of the Act of 1986, and the appellate authority is not expected to interfere unless the decision of the Collector is held to be perverse.

7. Learned Counsel submitted that the impugned order passed by the Honourable Minister is most cryptic and does not contain any reasoning for staying the order of the learned Collector. Learned Counsel, inviting my attention to the provisions incorporated in the Xth Schedule of the Constitution, submitted that the Anti Defection Law must be so interpreted as to eliminate the mischief rather than to permit it. The learned Counsel further submitted that from the information as has been provided to the petitioners, it is discernible that when the Honourable Minister passed the impugned order, neither the appeals as envisaged under Section 7(3) of the Act of 1986 were preferred nor any applications were there seeking stay to the order passed by the learned Collector; the fact apart, whether the Honourable Minister was possessing such powers or not. Learned Counsel further submitted that merely on the letter submitted by respondent nos. 4 to 9, a blanket order has been passed by the Honourable Minister.

8. Learned Counsel further submitted that the impugned order, if read as it is, it cannot be interpreted to mean that the Honourable Minister has granted stay; what it indicates is that the Honourable Minister has directed the Under Secretary to grant stay to the decision of the Collector. Learned Counsel further submitted that the petitioners had filed the caveat application before the Honourable Minister but inspite of that without issuing any notice to the caveator, the impugned order has been passed in undue haste. On this count also, according to the learned Counsel, the order has to be set aside.

9. Learned Counsel further submitted that even if it is assumed that the learned Minister was possessing the power to grant stay to the decision of the Collector, in no case, the blanket stay could have been granted by the Honourable Minister in view of the provisions as to disqualification on the ground of defection. Learned Counsel again invited my attention to the Xth Schedule of the Constitution of India and submitted that the object of introducing 52nd Amendment Bill for inclusion of the Xth Schedule in the Constitution is primarily to curb political defection which has been a matter of national concern. Learned Counsel referred to the decision of the

honourable Apex Court in the case of Smt. Indira Nehru Gandhi V. Shri Raj Narain and Anr. wherein the Honourable Apex Court has declined to continue the absolute stay granted by the High Court and had ultimately granted the conditional stay. Learned Counsel submitted that ordinarily in all such matters, conditional stay has been granted. Learned Counsel submitted that even in such eventuality, the impugned order granting blanket stay has to be set aside and to be substituted with conditional order.

10. Shri V.D.Salunke, learned Counsel appearing for respondent nos.4, 5, 7 and 9, opposed the submissions made by the learned Counsel for the petitioners. Learned Counsel supported the impugned order. Learned Counsel submitted that the present petition being filed challenging the interlocutory order, cannot be entertained and the remedy for the petitioner was to approach the same authority which had passed the said order praying for setting aside the said order or for its modification. Learned Counsel submitted that without availing the said remedy, the petitioners have straightway approached this Court by filing the present writ petition. Learned Counsel submitted that the petition is premature and, therefore, cannot be entertained. Learned Counsel further submitted that there is

no specific bar in the Act of 1986 or the Rules thereunder, for application of the provisions under the Code of Civil Procedure. In absence of any such specific bar, according to the learned Counsel, the provisions of Code of Civil Procedure Code; more particularly as is there in Order 41 Rule 5, can very well be invoked and no error, therefore, can be found in the impugned order.

11. Learned Counsel further submitted that without adding the Honourable Minister as party to the present petition, the petitioners cannot make allegations against her, and behind her back. Learned Counsel further submitted that similarly, the constitutional validity of the amendment brought in Section 7 of the Act of 1986, thereby adding sub clause (3) providing an appeal to the State against the decision of the Collector or the Commissioner, as the case may be, cannot be questioned in this petition. Learned Counsel submitted that nothing has been submitted by the petitioners whether they have challenged the constitutional validity of the said provision by filing appropriate petition therefore. Learned Counsel further submitted that the petitioners are avoiding to appear before the Honourable Minister and to proceed with the appeal and are unnecessarily protracting hearing of the said appeal. The learned Counsel

submits that such conduct of the petitioners needs to be considered while deciding the present petition also. Learned Counsel further submitted that the stand taken by the present petitioners that they would not appear before the Honourable Minister is unconstitutional. Learned Counsel submitted that respondent nos. 4 to 9 have exercised the statutory remedy of filing an appeal and nothing wrong has been committed by the Honourable Minister in granting stay to the impugned order.

12. Learned Counsel Shri Patil, appearing for respondent no.6, submitted that the Collector has committed undue haste in passing order in Petition No.1/2017 and substantial grounds are raised by the respondent in an appeal filed by him before the Honourable Minister. Learned Counsel submitted that it was not necessary for recording reasons by the Honourable Minister while granting ad interim order. Learned Counsel submitted that the remedy for the petitioner was to participate in the proceeding of appeal and get the appeal decided.

13. Shri Thigale, learned Counsel appearing for respondent no.8, submitted that the petitioners are estopped from raising an objection that the provisions of Code of Civil

Procedure would not be applicable when they themselves have invoked the Code of Civil Procedure by filing caveat in the matter. Learned Counsel further submitted that there is no universal principle that no unqualified stay can be granted. Learned Counsel submitted that he is adopting the arguments advanced by learned Counsel Shri V.D.Salunke. Learned Counsel concluded his argument stating that no interference is required in the ad interim stay granted by the Honourable Minister.

14. Shri A.B.Girase, learned Government Pleader, invited my attention to Section 108 of Code of Civil Procedure and submitted that in view of the said provision, it is explicit that the provisions of Code of Civil Procedure would apply to the proceedings of appeal before the Honourable Minister under the Act of 1986. The said powers, according to the learned Government Pleader, would include the power of granting interim stay to the order impugned in the appeal. Learned Government Pleader further submitted that the allegation made by the petitioners that without there being appeal or application, the Honourable Minister has passed the impugned order is incorrect. Learned Government Pleader submitted that in the reply filed by the Government, it has been amply

clarified that respondent nos. 4 to 9 have preferred the appeals before the Honourable Minister and have also filed applications for stay whereupon the order has been passed by the Honourable Minister. Learned Government Pleader submitted that no case is made out by the petitioners for causing any interference in the impugned order.

15. Learned Counsel Shri Chate appearing for respondent Zilla Parishad did not make any submission.

16. I have given due consideration to the submissions made by the learned Counsel appearing for respective parties. I have perused the impugned order and the documents placed on record. It has been vehemently argued on behalf of the petitioners that the impugned order is without jurisdiction since there is no provision in the Act of 1986 vesting the Honourable Minister with the power of granting any stay to the decision impugned in the appeal before her and as such deserves to be quashed and set aside. As against it, with equal vehemence, it has been unanimously argued on behalf of the contesting respondents that the present writ petition is not maintainable since it challenges the ad interim order passed by the Honourable Minister.

17. None of the aforesaid submission has impressed me much.

18. After having considered the documents filed on record, it is difficult to agree with the submissions made on behalf of the contesting respondents that the order passed by the Honourable Minister on 18-10-2017 is an ad interim order. The petitioners have filed on record the documents received to them from the Desk Officer in the Rural Development Department of the State Government. The document which is at page No.143 of the paper book reveals that the Honourable Minister has passed an order in an appeal thereby granting stay to the decision rendered by the Collector subject to the final decision of the appeal. Though it was sought to be contended by the learned Counsel appearing for the contesting respondents that the order passed by the Honourable Minister was passed on the application and has to be interpreted to mean that it was subject to the final order to be passed on the said application, the said contention is liable to be rejected. The Under Secretary to the State, vide letter dated 18-10-2017, addressed to the Divisional Commissioner of Aurangabad Division, Aurangabad, as well as to the District Collector and to Shri Prakash Vitthal Kavathekar, etc.(5), has to be interpreted

to mean that stay has been granted by the Honourable Minister till the final decision of the appeal. The other documents filed on record also reveal that thereafter the matter has been fixed for hearing of the appeal and not for hearing of any application for stay.

19. Similarly, though the learned Counsel for the petitioners has strenuously argued that the order passed by the the Honourable Minister is without jurisdiction since in the Act of 1986 or the Rules thereunder, there is no such specific provision, I am not inclined to accept his argument also. It appears to me that the authority invested with the powers to hear the appeal implicitly possesses the jurisdiction to pass the incidental orders which may also include the right to pass an order staying the effect and operation of the order impugned in the appeal filed before it subject to certain conditions or in appropriate case without condition by recording reasons therefor.

20. The moot question involved in the present petition, according to me, is whether the authority i.e. the Honourable Minister (Rural Development) has exercised the discretion judiciously while passing the impugned order and whether the

impugned order reflects the application of mind by the Honourable Minister while passing the said order. It is not in dispute that one line order has been passed by the Honourable Minister which reads as follows:

"उ.स. (ग्रा.वि.)
अंतिम आदेश
होईपर्यंत जिल्हाधिकारी
बीड यांच्या निर्णयाला
स्थगिती द्यावी.

("Stay to the order passed by the
Collector, Beed, till final decision.")

स्वाक्षरी /—
(पंकजा गोपीनाथ मुंडे)
मंत्री,
ग्रामविकास आणि महिला व बालविकास,
महाराष्ट्र शासन, मंत्रालय, मुंबई-४०० ०३२."

21. As I mentioned earlier, the order has to be interpreted to mean that the decision of the learned Collector is stayed till final decision of the appeal. From the documents on record, more particularly, the documents at page Nos. 144 to 148, it is quite clear that the communication was addressed to the Honourable Minister by the present contesting respondents, requesting the Hon'ble Minister to grant stay to the decision of the Collector, Beed, whereby they were disqualified to hold the post of Member of Zilla Parishad, Beed. The record shows that respondent no.5 has only filed a separate stay application and on the said application also the same one line order has been

passed by the Honourable Minister.

22. The order passed as aforesaid apparently does not show or carry any averment therein that the Honourable Minister has read the impugned order, or petition or has perused the document before passing the said order. It also does not reflect that the Honourable Minister had heard the applicant or any other person on behalf of the applicant before passing the said order. Admittedly, no reasons are recorded by the Honourable Minister while passing such order. The question arises can such an order be sustained. Law is well settled that the absence of reasons renders an order unsustainable. Recording of reasons is a basic principle of natural justice and every judicial order must be supported by reasons, may be in brief, irrespective of the fact whether the order is final or interim. The order must disclose conscious application of mind to the effect that the decision making authority has applied the law to the fact brought before it correctly. Cryptic order indicates non application of mind. A non speaking, unreasoned order cannot be considered to be valid.

23. Though the petitioners have seriously disputed the fact of filing of the appeals by respondent nos. 4 to 9 while the

impugned order was passed by the Honourable Minister, without going into the said controversy, I presume that such appeals were filed. Admittedly, these appeals are filed under the amended provisions of the Act of 1986, challenging the order passed by the Collector, Beed, in a reference under Section 7 of the said Act whereby he has disqualified the appellants therein from holding the post of Member of Zilla Parishad, Beed, on account of violation of the provisions under Section 3 (1B) of the Act of 1986. Thus, the dispute involved in the present petition is the alleged political defection. It would not be out of place to mention that the object of introducing Fifty Second Amendment Bill for inclusion of Tenth Schedule in the Constitution was primarily to curb political defection which was considered to be a matter of national concern.

24. The Statement of Objects and reasons appended to the Bill stated thus:

"1 The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for out-lawing defections and fulfilling the above assurance.

2 The Bill seeks to amend the Constitution provide that an elected member of Parliament or a State Legislature, who

has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature, who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seats shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included in the Bill to enable a person who has been elected as a presiding officer of a House to sever his connection with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects."

25. As observed by the Full Bench of this Court in the case of Shah Faruq Shabir and others Vs. Govindrao Ramu Vasave ((2016) (5) Mh.L.J. 436), the statements of objects and reasons clearly lead one to conclude that defection is anti ethical to democracy. It betrays the fundamental promise of loyalty to party and its philosophies. Elected Councilor is supposed to implement the ideals and the philosophies of the political party by which his candidature was set up.

26. I have reproduced statements of objects and reasons appended to the Fifty Second Amendment Bill and the observations made by the Full Bench to emphasize that the issue involved in the appeal as well as in the Reference decided by the Collector was of a serious nature. In the Reference / Petition presented before the Collector, Beed, there was an allegation against the present respondent nos. 4 to 9 that they violated the whip of the party and thereby have incurred the disqualification under Section 3(1B) of the Act of 1986. Learned Collector, after having given opportunity to the parties to the said lis of filing the statements, affidavits, opportunity to adduce the evidence and to advance the arguments, decided the said Reference and thereafter, has passed the order on 16-10-2017, thereby disqualifying the present respondent Nos. 4 to 9 from holding the post of Councilor of Zilla Parishad, Beed.

27. The question arises whether the effect and operation of the said order could have been stayed by appellate authority absolutely without assigning any reason therefor. The inevitable answer, in my opinion, is 'No'. At the preliminary stage, the appellate Court cannot so lightly dismiss the illegality of respondent nos. 4 to 9 (the appellants in the appeal before the Honourable Minister) as held by the learned District

Collector. I do not dispute that there may be solid grounds to be agitated against the decision so rendered by the learned Collector. The possibility of setting aside the said judgment also cannot be ruled out. However, until the findings as are recorded by the learned Collector are upset, hold good. As such, it appears to me that the impugned order passed by the Honourable Minister which has nullified the order passed by the Collector, absolutely even before hearing of the appeal, cannot be allowed to exist.

28. I may usefully refer the observations made by the Honourable Shri Justice V.R.Krishna Iyer in paragraph no.10 in an order passed by His Lordship in the case of Smt. Indira Nehru Gandhi V. Shri Raj Narain and Anr. (A.I.R. 1975 SC 1590), which read as under:

'10. At the first flush I was disposed to prolong the 'absolute stay' granted by the High Court, moved not only by what Shri Palkhivala had urged but by another weighty time factor that the appeal itself, in the light of the directions I have already given yesterday, may well be decided in two or three months. But on fuller reflection I have hesitated to take that course. After all, the High Court's finding, until upset, holds good, however weak it may ultimately prove. The nature of the invalidatory grounds upheld by the High Court, I agree, does not involve the petitioner in any of the graver electoral vices set out in Section 123 of the Act. May be they are only venial deviations but the law, as it stands, visits a returned candidate with the same consequence of invalidation. Supposing a candidate

has transported one voter contrary to the legal prohibition and even though he has won by a huge plurality of votes his election is set aside. Draconian laws do not cease to be law in court but must alert a wakeful and quick-acting legislature. So it follows that I cannot, at this preliminary stage, lightly dismiss the illegality of the election as held by the High Court. But more importantly, I am disinclined to set store by Shri Palkivala's 'Private justice' submission (to borrow his own phrase) because the ultimate order I propose to make, if I may even here anticipate, substantially preserves the position of the petitioner as Member of Parliament and does not adversely affect her legal status as Prime Minister.'

29. I reiterate that there is an implicit requirement of observance of the principles of natural justice that the order or decision must be expressed in such a manner that reasons can be spelt out from such decision. The unreasoned order or the order passed without recording reasons amounts to violation of principles of natural justice. It also amounts to arbitrary exercise of power vested in the authority. In so far as the impugned order is concerned, according to me, it is an example of arbitrary exercise of power by the Honourable Minister.

30. It further appears to me that in the matters of disqualification or political defection some more care needs to be taken while passing any order.

31. It is apparent that, the Hon'ble Minister has ignored

the said aspect. The Hon'ble Minister before passing the said order must have heard all concerned and with all seriousness must have considered the rival contentions, must have applied law to the facts brought on record and then should have passed a speaking order. As there is no reasoned order, nor any finding is recorded by the Hon'ble Minister while passing the impugned order, it is very difficult for this court to ascertain as to which were the facts, which warranted the Hon'ble Minister to grant blanket stay to the order passed by the learned Collector. It will also not be possible for me to accept the contentions of the learned Counsel appearing for the parties as there is no merited order in existence.

32. In the above situation, only one course can be adopted i.e. to remand the matter for fresh disposal by the Hon'ble Minister. Hence, the following order.

ORDER

1. The orders passed by the Honourable Minister (Rural Development) of the State of Maharashtra, on 18-10-2017 in the respective appeals impugned in the present petition whereby the Honourable Minister has granted stay to the decision rendered by the Collector, Beed, on 16-10-2017, in

Petition No.01/2017, are quashed and set aside.

2. The matter is remitted back to the Honourable Minister. The Honourable Minister shall take fresh decision on the stay applications in accordance with law after giving due opportunity of hearing to the present petitioners.

3. All points raised in the present petition by the respective parties are kept open. The parties can raise the same before the Honourable Minister who shall consider the same in the backdrop of the statutory provisions as well as the Constitutional mandate and the observations made in the present order and shall pass reasoned order.

4. The parties to appear before the Honourable Minister on 15th of May, 2018.

Writ Petition stands disposed of in aforesaid terms.

(P.R.BORA)
JUDGE

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agp/ggp

LATER ON :

33. After pronouncing the order in the present writ petition, Shri. Thigale, learned Counsel for respondent no.8 prayed for continuing the effect of the order of stay granted by the Hon'ble Minister till 15th of May, 2018 i.e. till the date of the appearance before the Hon'ble Minister. Learned Counsel submitted that today is the last working day and the summer vacation would start from tomorrow. Learned Counsel further submitted that election for local body constituency of Latur, Beed and Osmanabad for the Maharashtra Legislative Council is to be held on 21st of May, 2018 and the names of respondent nos.4 to 9 are included in the voters list. Learned Counsel submits that in such circumstances, if the protection is not continued, the said respondents will be deprived from exercising their valuable right to vote in the said election.

34. Shri. Kanitkar, learned Counsel for the petitioners opposed for granting any such request. The learned Counsel referred to the Division Bench judgment of this Court in the Case of Pandurang Dagadu Parte v. Ramchandra Baburao Hirve and others reported in AIR 1997 BOMBAY 387. Learned Counsel submitted that in the said matter though the request

was made to the Hon'ble Division Bench by the petitioners to stay the effect of the order passed by the Division Bench for approaching the Hon'ble Apex Court, no blanket stay was granted and it was granted subject to the condition that during such period, the petitioners though will be entitled to attend the meetings but will not be entitled to deliberate vote and draw their remuneration. Learned Counsel submits that if such an order is passed, the petitioners may not have any objection.

35. The order passed by the Hon'ble Minister has been set aside by this Court, since it is unreasoned order. This Court has also observed that passing of such order amounts to violation of principles of natural justice and it also amounts to arbitrary exercise of power by the Hon'ble Minister. In such circumstances, I am not inclined to accept the request made by the learned Counsel to continue effect of the stay order as it is.

36. However, I do not see any difficulty in passing the order in tune with the order passed by the Division Bench in the case of Pandurang Dagadu Parate (cited supra) relied upon by the learned counsel for the petitioners. In various other similar matters pertaining to disqualification, this Court has stayed the effect and operation of the order of disqualification subject to

certain conditions and not blanketly. As such, I am inclined to pass the following further order, -

ORDER

i) It would be open for present Respondent Nos.4 to 9 to attend the meetings of Zilla Parishad held, if any, till 15th May, 2018, but Respondent Nos. 4 to 9 will not be entitled to cast their vote and or draw their remuneration during the said period.

(P.R.BORA)
JUDGE

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agp/ggp