

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

WRIT PETITION NO.1599 OF 2019

Amila Vinod Vasave,
Age : 23 years, Occupation : Agriculture,
R/o Borshisa, Tq.Dhadgaon,
District Nandurbar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through Additional Divisional
Commissioner, Nasik,
District Nasik.
- 2 The Additional Collector,
Nandurbar, District Nandurbar.
- 3 Anita D/o Nimji Vasave
@ Sau.Anita Rita Padvi,
Age : 20 years,
Occupation : Agriculture,
R/o Hatti, At present Goradi,
Taluka Dhadgaon,
District Nandurbar.

...RESPONDENTS

...
Advocate for the Petitioner : Shri Savale Amit S.
AGP for Respondents 1 and 2 : Shri S.R.Yadav
Advocate for Respondent 3 : Shri A.B.Kale
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd September, 2019

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The petitioner is aggrieved by the order passed by the Additional Commissioner, Nashik Division, Nashik Shri Jyotiba Patil (now retired) dated 02.11.2018 by which, he has rejected the Gram Panchayat Appeal No.45/2018 filed by the petitioner despite the specific judgment and direction of this Court (Coram : V.K.Jadhav, J.) dated 21.02.2018 in Writ Petition No.3988/2017 between the same parties.

3 I have considered the submissions of the learned advocates for the respective sides. The learned AGP and the learned advocate appearing for the respective respondents have vehemently defended the impugned order.

4 I find from the record that these parties were before this Court since the same Additional Divisional Commissioner had declined to pass an order in the pending appeal concluding that an election petition is possible. This Court considered the entire issue by its order dated 21.02.2018 and concluded that the petitioner has raised the ground that respondent no.3 was less than 20 years of age when she contested the election. She was, therefore, ineligible under Section 13 of the Maharashtra Village Panchayats Act. Since her nomination form was accepted and she was returned as an elected candidate, being less than 21 years, she incurred disqualification under Section 14(1)(a-1) of the said Act and therefore, the vacancy had to be declared under Section 16.

5 My learned brother passed the detailed order concluding that the law laid down in *Popat Bajirao Gaikwad vs. Dinkar Bhagwanrao Gaikwad and others, 2014 (2) AIR Bom R 117*, does not lay down the law that in such a situation the election petition would alone be a remedy. It was, therefore, directed that the Additional Collector, Nandurbar shall decide the proceedings as being one seeking disqualification and not as an election petition.

6 The concerned authority delivered an order on 19.05.2018 concluding that respondent no.3 had not incurred a disqualification. Being aggrieved by the order of the District Collector dated 19.05.2018, the petitioner approached the Divisional Commissioner, Nashik, leading to the impugned order dated 02.11.2018.

7 I find from Section 16(2) that any person aggrieved by the decision of the Collector can approach the State Government by preferring an appeal. The amendment was introduced to Section 16(2) by Maharashtra Act No.54/2018 dated 13.08.2018 w.e.f. 19.07.2017, by which, the words "State Government" were replaced by the word "Commissioner" and therefore, the petitioner rightly approached the Additional Divisional Commissioner at Nashik.

8 I find from the impugned order passed by the Additional Divisional Commissioner that he has failed to apply his mind and has very casually passed the impugned order without going into the merits of the

matter. He had no reason to probe into the aspect as to whether, the proceedings initiated by the petitioner should be treated as an election petition or an application seeking disqualification. I, therefore, express my displeasure on account of the lack of understanding by the Additional Commissioner, which has made the petitioner once again come to this court and spend on litigation. It is informed that the Additional Commissioner, Nashik Shri Jyotiba Patil has now retired. Had he been in service, this was a fit case to impose costs of Rs.10,000/- to be recovered from the salary of Shri Jyotiba Patil.

9 In view of the above, this Writ Petition is partly allowed. The impugned order dated 02.11.2018 is quashed and set aside. Gram Panchayat Appeal No.45/2018 shall stand restored to the file of the Additional Divisional Commissioner, Nashik Division, Nashik.

10 All the parties shall appear before the said authority on 27.09.2019 at 12:00 noon. Formal notices need not be issued. The concerned authority shall proceed to decide the said appeal on its own merits keeping in view Sections 13, 14(1)(a-1) and 16 of the Maharashtra Village Panchayats Act and shall pass a reasoned order on the merits of the matter.

11 Rule is made partly absolute in the above terms.