

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2304 OF 2019
(Mahendra s/o Baban Ransing and another Vs. The Divisional
Commissioner, Nashik Division, Nashik and others)

Mr.R.A.Tambe, Advocate for the petitioners.
Mr.S.W.Munde, AGP for respondent No.1.
Mr.V.P.Patil, Advocate for respondent Nos. 2 and 3.
Mr.D.B.Rode, Advocate for respondent No.4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/12/2019

PER COURT :

1. The petitioner is aggrieved by the order dated 16/10/2018 passed by the Additional Divisional Commissioner, Nasik in Gram Panchayat Disqualification Appeal No.37/2018 u/s 39(2) of the Maharashtra Village Panchayats Act.

2. Section 39(3) provides for a statutory appeal within 15 days from the date of the receipt of the order with which a party may be aggrieved. The impugned order was not within the knowledge of the petitioners as they were not arrayed as respondents despite the fact that they were the complainants who had filed the complaint setting into motion the procedure u/s 39. After they got the knowledge of

the impugned order through hearsay, they moved an application on 21/12/2018 and obtained a certified copy on the same date. Considering the vacations that followed, they approached this Court on 15/01/2019.

3. The recent view taken by the Hon'ble Apex Court in the matter of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Educational Society [2019 SCC Online SC 1292] in Civil Appeal No.7764/2019, dated 03/10/2019 and Genpact India Private Limited Vs. Deputy Commissioner of Income Tax in Civil Appeal No.8945/2019 dated 22/11/2019 is that the availability of a statutory remedy would be a "Near Total Bar" for the High Court to exercise supervisory jurisdiction by entertaining a writ petition under Article 227. Even an admitted petition will have to be dismissed in the face of a statutory remedy, is the view of the Hon'ble Apex court.

4. It is apparent that the petitioners who were the original complainants and who set the process of law in motion, were not noticed by the Divisional Commissioner, Nasik and without hearing them, the report of the C.E.O. Zilla Parishad under 39(1) holding that the Sarpanch is guilty and would incur disqualification, has been set

aside by the Divisional Commissioner.

5. The learned Advocates for the respondents submit that the petitioners can avail of the statutory remedy u/s 39(3) by preferring the proceedings within 15 days and the matter can be decided by the State on its merits.

6. In view of the above, this petition is disposed off and the time spent by the petitioners in this Court shall be excused.

7. If the petitioners avail of the remedy u/s 39(3) on or before 16/12/2019, the said appeal shall be entertained by the authority and would be decided on its own merits. The issue of limitation shall not be raised.

(Ravindra V.Ghuge, J.)