

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 753 OF 2019

Govind Vikram Thete
Age-36, Occ- Agriculture
R/o Hunda (G.P.), Tq. Umari,
Dist. Nanded

...Petitioner

Versus

1. Additional Divisional Commissioner,
Aurangabad Division, Aurangabad
2. The Collector, Nanded, Dist. Nanded
3. Balaji Gudoppa Tagurwad
Age-32 yeas, Occ-Agriculture and
Sarpanch of Village Panchayat
R/o Hunda (G.P.), Tq. Umari,
Dist. Nanded
4. Sheshabai Shesherao Rakshmare
Age-53 years, Occ-Agriculture and
Sarpanch of Vilalge Panchayat
R/o Hunda(G.P.) Tq. Umari,
Dist. Nanded
5. Rajanbi Farukh Sheikh
Age-38 years, Occ- Agriculture and
Sarpanch of Village Panchayat
R/o Hunda (G.P.), Tq. Umari,
Dist. Nanded
6. The Tahsildar,
Tahsil Office, Umari
Dist. Nanded.

...Respondents

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Mr. Umakant B. Deshmukh, Advocate for petitioner
Mr. S. B. Pulkundwar, Assistant Government Pleader for
respondents no. 1, 2 and 6
Mr. Girish Awale, Advocate for respondent no. 3.

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CORAM: SUNIL P. DESHMUKH, J.

Date: 18th January, 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for appearing parties.

2. Petitioner purports to question the legality and validity of order passed by the additional divisional commissioner, Aurangabad on 15th January, 2019 in interim application staying the order passed by respondent no. 2 - collector on 9th January, 2019, disqualifying present respondents no. 3 to 5 on the ground of lapse on their part to submit necessary caste / tribe validity certificate within stipulated duration pursuant to provisions under section 10 (1)(A) of the Maharashtra Village Panchayat Act, 1958.

3. It is canvassed on behalf of petitioner by Mr U. B. Deshmukh that statutory requirement of submission of caste/tribe validity certificate, if not adhered to, disqualification would incur and the same is mandatory.

4. Learned counsel for petitioner refers to and relies on judgment of full bench of this court in the case of *Anant H. Ulahalkar Vs. Chief Election Commissioner and others*, reported in *2017 (1) Mh.L.J. 431*, and purports to point out that the principle and ratio thereunder has been upheld by Apex court in the case of *Shankar s/o Raghunath Devre (Patil) vs. State of Maharashtra and others* in petitions for Special Leave to Appeals bearing no. 29874-29875/2016.

5. He submits that respondents no. 3 to 5 have failed to furnish caste / tribe validity certificate during prescribed period and they have been disqualified in the proceedings therefor by the collector, Nanded under order dated 9th January, 2019. He submits that the situation and the law being clear, however, in appeal against order of disqualification preferred by respondents no. 3 to 5, interim application moved by them has been granted staying operation of collector's order, on 15th January, 2019 by the additional divisional commissioner, Aurangabad. The disqualification of respondents no. 3 to 5 is absolutely proper. Said respondents no. 3 to 5, if allowed to cast their votes in the meeting scheduled on

21st January, 2019 for no confidence motion against Sarpanch, such motion if would not get through, consequently such motion would not be able to be moved for a period of one year thereafter. He, therefore, submits that operation of impugned order passed by additional divisional commissioner be stayed.

6. On the other hand, learned counsel Mr. Girish Awale, submits that substantive appeal has been filed by respondent no. 3 against disqualification pursuant to provision of Maharashtra village Panchayat Act and the appeal has been pending and interim order on application therein has been granted. He submits that there is no substance in petitioner's contention that in the case of non compliance of requirement to submit caste validity certificate within time, disqualification as canvassed by the petitioner would automatically incur. He purports to refer to government circular in support of aforesaid submission.

7. He submits that statutory substantive remedy cannot be allowed to be pre-empted by abrupt interception in the proceedings stalling interim order which has been granted. He submits that as of now

petition cannot be said to carry any force and passing order in present writ petition intercepting order passed by respondent no. 1 – the additional divisional commissioner, would tantamount to depriving respondents no. 3 to 5 of opportunity of hearing the appeal on merit. He, therefore, submits that no indulgence be given to the petitioner and petition is liable to be thrown out.

8. Learned Assistant Government submits that substantive appeal at the behest of respondents no. 3 to 5 is pending and interim relief has been granted by the additional divisional commissioner. In the circumstances, it would be expedient that appeal filed by respondents no. 3 to 5, would be proceeded with expeditiously and decided on merits.

9. Having regard to aforesaid, it appears that situation can be salvaged / balanced by directing that the scheduled meeting for no confidence motion may be proceeded with, with voting by ballots, however, the votes cast by respondents no. 3 to 5 in the meeting, having regard to scenario, be kept in separate ballot box and if the votes of respondents no. 3 to 5 are likely to

matter in result of meeting, the decision / outcome of the meeting shall not be declared and, in such case, declaration of result of meeting for no confidence motion be deferred till final decision to be rendered by the additional divisional commissioner in appeal filed by respondents no. 3 to 5.

10. It is expected that pending in appeal is expedited and disposed of preferably within a period of one month from the date of receipt of writ of this order. Parties to cause their appearance before the additional divisional commissioner on 25th January, 2019. Learned counsel for the parties agree upon the same.

11. Learned Assistant Government Pleader to communicate this order to concerned authority forthwith.

12. Rule made absolute in aforesaid terms.

13. Writ petition is disposed of.

[SUNIL P. DESHMUKH, J.]