

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

WRIT PETITION NO.2175 OF 2017

1. Rekha W/o. Prabhakar More,
Age: Major, Occu. Household,
2. Ganga W/o. Swami Mane,
Age: Major, Occu. Household,
3. Anil S/o. Sakharbai Take,
Age: Major, Occu. Agril.,
4. Rohini W/o. Anil Take,
Age: Major, Occu. Household,
5. Kaushalya W/o. Damodhar Mane,
Age: Major, Occu. Household,

All R/o. Manewadi,
Tq. & District – Beed.

...Petitioners

Versus

1. Rajendra S/o Maruti Mane,
Age: Major, Occu. Household,
R/o. Manewadi,
Tq. & District: Beed.
2. District Collector, Beed,
Tq. & Dist. Beed.
3. Additional Commissioner,
Aurangabad Division Aurangabad.
4. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.

...Respondents

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Mr. Ankush N. Nagargoje, Advocate for Petitioners.
Mr. K.B. Jadhavar, AGP for Respondent/State.
Mr. Dhananjay Mane, Advocate for Respondent No.1.

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CORAM : P.R. BORA, J.
DATED : 10th APRIL, 2019.

ORAL JUDGMENT:-

. Rule. Rule made returnable forthwith.

2. The matter is heard finally within consent of the learned counsel for the parties. The petitioners have filed the present petition against the order dated 11.11.2016 passed by the Collector, Beed whereby, he has disqualified the present petitioners from holding the post of Member Grampanchayat, Manewadi for not submitting the account of election expenses within the stipulated period. The foremost objection raised by the petitioners in exception to the impugned order is that the said has been rendered relying on the report dated 05.11.2016 submitted by the Returning Officer. The learned counsel pointed out that hearings were conducted in the appeal filed by respondent no.1 before Collector, Beed from 24.08.2016 onwards till 04.11.2016 and on 04.11.2016, the matter was closed for orders. It is the specific objection raised by the petitioners that after proceedings were closed for decision, some documents came to be filed on the second day i.e. 05.11.2016.

3. It is further contended that the document so placed on record or the report submitted by the Returning Officer on 05.11.2016 was not made available to the petitioners and no opportunity was given to the petitioners to submit their say or make any submission as about the report submitted by the Returning Officer on 05.11.2016. The learned counsel submitted that from the averments in the impugned order itself, it is quite evident that the report relying on which the impugned order has been passed by the learned Collector, was not provided to the present petitioners and no opportunity was given to them to make their submissions on the said report. The learned counsel, in the circumstances had prayed for setting aside the order passed by the Collector, Beed and consequently to restore the petitioners to their original post i.e. Member Grampanchayat, Manewadi.

4. The learned AGP Shri Jadhavar has supported the impugned order. The learned AGP submitted that not only relying on the report dated 05.11.2016 but considering over all material on record, the Collector has passed the impugned order and no interference is required in the order so passed. The learned AGP submitted that nothing concrete was produced on record by the present petitioners

evidencing that in fact they had submitted the account of their election expenses within the stipulated period and as such no fault can be found with the impugned order.

5. Shri Mane, the learned counsel appearing for respondent no.1 i.e. original complainant has also supported the impugned order. The learned counsel and the learned AGP however, were not in a position to point out as to whether the report dated 05.11.2016 submitted by the Returning Officer with Collector, Beed was ever provided to the present petitioners and the further opportunity whether was given to the petitioners to make their submissions on the said report. Neither from the impugned order anything is revealed so as to draw an inference that the said report was provided to the petitioners and the petitioners were heard on the said report. From the impugned order it is quite evident that the said report submitted by the Returning Officer is held to be conclusive and the impugned order has been passed.

6. After having considered the fact as above, it appears to me that the impugned order could not have been passed by the Collector, Beed without giving an opportunity of hearing to the petitioners to make their submissions on

the report submitted by the Returning Officer on 05.11.2016. From the record it is quite clear that the proceedings were closed on 04.11.2016 and the report was submitted thereafter. As I noted above, from the record it cannot be said that the report submitted by the Returning Officer was ever supplied to the petitioners. In the circumstances, it appears to me that though the request made by the petitioners to set aside the order and consequent request to restore them to their original post cannot be wholly accepted, the decision rendered by the Collector also cannot be sustained. In the circumstances, it appears to me that the writ petition can be disposed of by remitting the matter to Collector, Beed with a direction to supply the copies of the report submitted by the Returning Officer on 05.11.2016 to the petitioners and after giving due opportunity of hearing to the petitioners on the said report, the Collector, Beed shall decide the matter afresh by recording reasons therefor. In the result, the following order is passed:

ORDER

- i) The impugned order is set aside.
- ii) The matter is remitted to the Collector, Beed with a direction that the report submitted by the Returning Officer

on 05.11.2016 be provided to the present petitioners and after giving due opportunity of hearing to the petitioners as well as the complainant to make submissions based on the said report, the further orders be passed by the Collector in accordance with law.

iii) Parties to appear before the learned Collector, Beed on 29.04.2019.

iv) The learned Collector shall hear and decide the matter as expeditiously as possible preferably within the period of six weeks after appearance of the parties before him.

v) The writ petition stands disposed of.

vi) The contentions raised by the parties in the present petition are not gone into merits by this Court, they are kept open to be agitated before the Collector.

(P.R. BORA, J.)

Mujaheed//