

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
941 WRIT PETITION NO.5242 OF 2019**

**SHRIMANT GANGADHAR BHOSLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Thombre S.S.
AGP for Respondents No. 1 to 3, 7 & 8 : Mr. K.S. Patil.
Advocate for Respondent No. 4 : Mr. Mayure Pramod C.

CORAM : V. L. ACHLIYA, J.

DATE : 02/05/2019

PER COURT :

1. Issue notice to the respondents.
2. The learned A.G.P waives notice for respondents No. 1 to 3, 7 and 8. Mr. Mayure, learned counsel waives notice for respondent No. 4/complainant. Learned counsel for the petitioner submits that he is not pressing relief as against the respondents No. 5 and 6.
3. By consent the petition is heard finally at the stage of admission.
4. By this petition filed under Article 226 and 227 of Constitution of India, the petitioner has challenged the order dated 01.04.2019 passed by the Additional Commissioner Aurangabad

Division, Aurangabad in Appeal CR No. 99/2019. By virtue of the order passed the learned Additional Commissioner i.e. respondent No. 2 has rejected the application moved by the petitioner to stay the order passed by the District Collector i.e. respondent No. 3.

5. In view of the limited challenge raised in the petition and confines to the order of rejection of the application for stay, the appeal can be conveniently disposed of by issuing appropriate direction to respondent no. 2 to hear and decide the appeal in time bound manner.

6. In brief, it is the contention of the learned counsel for the petitioner that the impugned order to disqualify the petitioner as a Sarpnch of village panchayat Jadgaon Tq. & Dist. Aurangabad came to be passed by respondent No. 3 on the basis of complaint lodged by respondent No. 4. In an appeal preferred before the respondent No. 2 against the order passed by respondent No. 3, the respondent No. 2 though entertained the appeal but rejected the application for stay. It is submitted that the respondent No. 2 ought to have considered that rejection of the application for stay would defeat the very purpose of filing of appeal. It is further pointed out that while rejecting the application for stay the respondent No. 2 has wrongly placed reliance upon the decision of Apex Court in case of **Sagar Pandurang Dhundare Vs. Keshav Aba Patil and others, reported in 2018 (1)**

SCC, 340 which have no bearing upon the decision in appeal. The decision in case of **Sagar Dhundare (supra)** refer to the act of encroachment made by the elected members of the village panchayat during the continuation of office as a members of village panchayat. Whereas; in the case of the petitioner, the petitioner has been disqualified to hold the office on account of non payment of dues of the Government by his wife. In this background, the learned counsel for the petitioner submits that the order passed is per-se illegal and not sustainable under Law.

7. The learned counsel representing the respondent no. 4 submits that the order impugned is already implemented and the charge of the post of Sarpanch is given to Upsarpanch.

8. On due consideration of the submissions advanced, I am of the view that instead of examining the correctness of the impugned order, the appeal can be conveniently decided by directing the respondent No. 2 to prepone the hearing and decide the appeal in time bound manner. Accordingly, the following order is passed.

ORDER

1. The respondent no. 2 is directed to prepone the hearing of Appeal CR No. 99/2019 and list the appeal for final hearing on

15.05.2019.

2. The petitioner, respondent No. 4 and respondents No. 7 and 8 are directed to appear before the respondent No. 2 on 15.05.2019 at about 11 a.m.

3. No fresh notice of hearing to be given to the petitioner as well as respondent No. 4.

4. The petitioner to inform the date of hearing to respondents No. 5 and 6.

5. The respondent No. 2 is directed to hear the parties on 15.05.2019 and decide the appeal as expeditiously as possible and preferably on and before 31.05.2019.

6. Needless to observe that in case the appeal is allowed the petitioner be restored to the post of Sarpanch.

7. It is expressly made clear that this Court has not examined the merit of the case of the petitioner as well as respondents. All contentions raised in the petition are kept open to be raised in appeal.

8. The respondent No. 2 is directed to decide the appeal without influenced by observations made in the order dated 11.04.2019 which is impugned by the petitioner.

9. Till the decision of appeal the vacancy occurred on account of petitioner shall not be filled in.
10. Writ Petition is disposed of in above terms.
11. All concerned to act upon the authenticated copy of the order.

(V. L. ACHLIYA, J.)

mkd