

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

CIVIL APPLICATION NO.10800 OF 2019
IN
WRIT PETITION NO.2011 OF 2019

PANDURANG GAHINATH DAVANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Shri Rahul R. Karpe, Advocate for the applicant.
Shri S.R.Yadav, AGP for respondent nos.1 to 3/ State.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd September, 2019

Per Court:

1 Not on the Board. Mentioned at 5:00 pm.

2 The applicants, who are the original petitioners in writ petition no.2011/2019, have expressed a grave urgency in the matter and have prayed for taking up this civil application forthwith for consideration. A copy of the civil application is handed over to the learned AGP.

3 Shri Karpe, learned advocate for the applicants, has strenuously canvassed that this Court (Coram : Sunil P. Deshmukh, J.) had passed an order on 12.02.2019 in the writ petition. The submissions of the petitioners were recorded in paragraph 3 and the ad-interim relief was granted in paragraph 4. As such, these applicants have a right to

participate and vote in the elections to the posts of the Sarpanch and Up-Sarpanch scheduled on 04.09.2019 as being the members of the village panchayat. He further adds that the Election Officer infact issued the notice on 30.08.2019 and has tacitly permitted the petitioners to participate in the meeting and elections to the said two posts.

4 The learned AGP strenuously opposed this application on the ground that the order dated 12.02.2019 is quite clear and the applicants cannot derive any mileage out of the said order.

5 I find from the order dated 12.02.2019 that this court had recorded the submissions of these applicants/ petitioners in paragraph 3, which reads as under :-

"3. *Learned counsel for petitioners urges for interim relief submitting that both the authorities have been oblivion in respect of requirements which would disqualify incumbent-elected member of Gram Panchayat as a defaulter under section 14(1)(h) of the Maharashtra Village Panchayats Act, 1958. It is being submitted that while payments as required pursuant to demand notices have been deposited within prescribed period referred to under the same, the same has not been taken into account by both the authorities. He submits that as a matter of fact, though it is tried to show that petitioners were served with bill/ notice dated 25th May, 2017, it is clear that they have been served with bill/ notice only on 25th March, 2018, 25th November, 2017 and 22nd March, 2018 respectively and thereafter, immediately demanded amount had been paid within a period of three days. This particular aspect has been ignored by the authorities. He submits that neither in fact nor in law disqualification can be said to have been incurred by the petitioners.*"

6 By way of ad-interim relief, this court passed the following order in paragraph 4 :-

"4. *In the circumstances, no action in furtherance of and in consequence of the impugned order be taken till the returnable date.*"

7 It is, therefore, obvious that these applicants had prayed for relief against their disqualification. They had contended that none of their acts would incur disqualification under any law and the disqualification is illegal. In this backdrop, this court recorded that no action in furtherance and in consequence of the impugned order be taken. The impugned order was an order disqualifying these applicants and this court merely protected the applicants from the aftereffects of the order of disqualification, which necessarily would lead to filling in the posts, occupied by these applicants, having fallen vacant on account of their disqualification. This court, therefore, protected the applicants only to the extent of the aftereffects of the order of disqualification. This would not mean that their disqualification was stayed as there is no specific order of this court concluding that the disqualification of the applicants/petitioners would stand stayed till the petition is decided.

8 In view of the above, I find that the Election Officer had inadvertently served the notice of the meeting on these petitioners due to

which they gathered an impression that they were permitted to participate in the meeting as well as the elections. By the corrigendum vide notice dated 03.09.2019, the Election Officer has clarified that these applicants would not be permitted to participate in the said elections.

9 I do not find that the Election Officer has committed any error. This Civil Application being devoid of merit is, therefore, rejected.

10 It, however, needs to be recorded that since the elections are taking place pursuant to the filing of the writ petition, no equities would be created in favour of the newly elected Sarpanch and Up-Sarpanch.

kps

(RAVINDRA V. GHUGE, J.)