

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

WRIT PETITION NO.10636 OF 2016

Dharmpal s/o Pandharinath Nadarge
Age: 53 years, Occu : Agri
R/o Nalgir, Tq. Udgir,
Dist. Latur

... Petitioner

Versus

1. Dhiraj s/o. Kiran Dandime
Age : Major, Occu : Education
R/o. Nalgir, Tq. Udgir,
Dist. Latur

2. The Gram Panchayat, Nalgir,
Through its Gramsevak,
Tq. Udgir, Dist. Latur

.. Respondents

....

Advocate for Petitioner : Shri V.D. Gunale
Advocate for Respondent No.1 : Shri A.S. More

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**CORAM : P.R. BORA, J.
Dated: July 11, 2019**

ORAL JUDGMENT :-

1. With consent of the learned counsel appearing for the parties, heard finally.

2. The petitioner has challenged the order dated 20.09.2016 passed by the Additional Divisional Commissioner, Aurangabad in Appeal No.DB/Desk-2/ZPVP/Appeal/CR/131/2015. Few facts, which are relevant for deciding the controversy raised in the present matter, are thus:

. The present petitioner was elected as a Member of Grampanchayat Nalgir in the general elections held in the year 2015 for the term of 5 years from 2015 to 2020. Subsequently, he was also elected as a Sarpanch of the said Grampanchayat. Thereafter, a complaint came to be lodged alleging that, on the date of filing nomination, the petitioner was having conviction at his discredit in R.C.C. No.418 of 2004 awarded by learned Judicial Magistrate, F.C., Udgir for the offence punishable under Section 408 r.w. Section 34 of the Indian Penal Code. The present respondent no.1 had lodged the said complaint to the Additional Collector, Latur. The learned Additional Collector, however, turned down the complaint so filed. The complainant preferred the appeal against the decision rendered by the Additional Collector, Latur before the Divisional Commissioner at Aurangabad and the learned Divisional Commissioner in the aforesaid appeal held the present petitioner disqualified from holding the post of Member of the Grampanchayat in turn Sarpanch of the Grampanchayat.

3. Shri Gunale the learned counsel appearing for the petitioner has impugned aforesaid order stating that, though the petitioner was convicted in the aforesaid criminal case, the sentence

imposed upon the petitioner was suspended by the Appellate Court. The learned counsel further submitted that, subsequently the Appellate Court has recorded clean acquittal in favour of the present petitioner. The learned counsel submitted that, in such circumstances, the decision of the learned Collector was legally sound. The learned counsel submitted that, ignoring the factual aspects, the learned Divisional Commissioner has erroneously held the present petitioner disqualified.

4. The contentions raised by the learned counsel are wholly unacceptable. It is not in dispute that, on the date of filing nomination, the petitioner had stood convicted for the offence punishable under Section 408 r.w. 34 of the I.P.C. by the Judicial Magistrate, F.C., Udgir and was sentenced to suffer Rigorous Imprisonment for one year. Even though in appeal the execution of the sentence imposed upon the petitioner was suspended, the conviction was still in existence and in such circumstances, the petitioner could not have been qualified to contest the election of the Grampanchayat. The Divisional Commissioner has rightly held that, on the date of filing of the nomination and on the date of election, since the conviction was at the discredit of the present petitioner, he stood disqualified from holding the said post. The contention raised

by Shri Gunale that, subsequently the petitioner has been acquitted and the said decision relates back to the date of his conviction, is difficult to be accepted. I do not see any error in the order passed by the learned Divisional Commissioner, Aurangabad on 20.09.2016 in Appeal No.DB/Desk-2/ZPVP/Appeal/CR/131/2015. The Writ Petition being devoid of any substance, deserves to be dismissed and is accordingly dismissed.

(PR. BORA, J.)