

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

39 WRIT PETITION NO. 6401 OF 2020

Sandhya W/o. Anil Sarkate,
Age. 28 years, Occ. Household,
R/o. Navha,
Tq. and Dist. Jalna.

...Petitioner.

Versus

1. Aruna W/o. Sadashiv Shinde,
Age. 39 years, Occ. Household,
R/o. Wadgaon, Post. Wakhari,
Tq. and Dist. Jalna.
2. Returning Officer,
Jalna Z.P./PS. Election 2017
Fo Jalna Taluka Electoral Division-23
Pir-Kalyan cum S.D.O. Jalna,
Through Asstt. Returning Officer
Cum Tahsildar, Jalna,
Tq. and Dist. Jalna.
3. Election Commission of Maharashtra,
Through election Commissioner,
Near administrative Building,
Hutatma Chauk, Mumbai- 400032,
Through Collector Jalna.
4. Usha W/o. Vijay Kadam,
Age. 28 years, Occ. Household,
R/o. Deomurti,
Tq. and Dist. Jalna.
5. Ranjana W/o. Ravindra Kharat,
Age. 31 years, Occ. Household,
R/o. Nandapur,
Tq. and Dist. Jalna.
6. Latabai W/o. Parmeshwar Garbade,

Age. 48 years, Occ. Household,
R/o. Najik Pangri,
Tq. and Dist. Jalna.

7. Panchashila W/o. Anil Chittekhar,
Age. 41 years, Occ. Household,
R/o. Nidhona,
Tq. and Dist. Jalna.

8. Dipali W/o. Sudhakar Nikalje,
Age. 30 years, Occ. Household,
R/o. Tandulwadi,
Tq. and Dist. Jalna.

Advocate for Petitioner : Mr. Y.K. Bobade.
AGP for Respondent Nos. 2 & 3 : Mr. S.N. Morampalle.

CORAM : MANGESH S. PATIL, J.
DATE : 26.10.2020

ORDER :

Heard learned Advocate Mr. More holding for Advocate Mr. Bobade for the petitioner and perused the papers.

2. In this petition under Article 227 of the Constitution of India, the petitioner is impugning the judgment and order passed by the learned District Judge-4, Jalna, in Election Petition No. 03/2017 dated 02.09.2020, to the extent it refuses the second part of the relief claimed by her in the election petition, whereby she had prayed that the election of respondent No. 1 be set aside and in her place, she be declared as elected having secured second

highest votes.

3. The petitioner, respondent No. 1 and respondent Nos. 4 to 8 contested the election for Pir-Kalyan Electoral Division, the voting for which was held on 16.02.2017 and respondent No. 1 was declared as elected on 23.02.2017, as a Councillor.

4. The petitioner challenged the election of respondent No. 1 by filing the election petition on the ground that respondent No. 1 had incurred a disqualification under Section 16 (1) (n) of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961. After the petition was contested by respondent No. 1, the learned District Judge allowed the petition but only partly. He set aside the election of respondent No. 1 but refused to declare the petitioner, who had secured second highest votes to have been elected.

5. The learned Advocate Mr. More by pointing out the result submits that respondent No. 1 had secured 4262 votes and the petitioner had secured 4164 votes, therefore, as was held in the case of **Shobha Deshmukh Vs. Election Returning Officer and Others; 2017 (1) ALL MR 370**, the petitioner ought to have been declared as elected in place of respondent No. 1.

6. There is no dispute about the fact that the petitioner did secure second highest votes. However, admittedly apart from the petitioner and respondent No. 1, respondent Nos. 4 to 8 had also contested the election and had secured votes as shown against their names in the result. Logically, it is just possible that if respondent No. 1 had not contested the election, the votes secured by her would have been cast in favour of anybody. One cannot with certainty conclude that these votes would have gone only in favour of the petitioner. It is in view of such peculiar state-of-affairs, this Court has taken a consistent view, for instance in the case of **Sau. Manisha Sanjay Waskar Vs. Anil @ Bajirao Balaso Bhavan (Panari)**; Writ Petition No. 2805/2010 by the judgment and order dated 10.06.2010, that in such a fact situation, when the election of a successful candidate is set aside, the declaration about the candidate who has secured second highest votes having been elected, cannot be granted.

7. In the case of **Shobha Deshmukh** (supra), the facts were peculiar and there were only two candidates. The election of the successful candidate was set aside and consequently, it was only the remaining candidate who was declared as elected. The petitioner is not entitled to claim any advantage from the decision in the case of **Shobha Deshmukh** (supra).

8. The learned District Judge has correctly appreciated the distinction and has rightly refused to grant relief declaring the petitioner to have been elected.

9. There is no error much less any perversity or arbitrariness in the impugned order refusing to declare the petitioner as elected.

10. The petition is dismissed in limine.

(MANGESH S. PATIL, J.)