

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LD-VC-CW NO. 461 OF 2020

PETITIONER :- Manglu Supal Pandhram, Age @..., Occ. Councilor, Municipal Council, Shendurjana (Ghat), R/o. Post Balapeth, Near Balasundari Temple, Shendurjana (Ghat), Tq. Warud, Dist. Amravati.

...**VERSUS**...

RESPONDENTS :-

- 1) The Divisional Commissioner, Amravati Division, Amravati.
- 2) The Collector, Amravati, District Amravati.
- 3) The Municipal Council, Shendurjana (Ghat), Tq. Warud, Dist. Amravati.

Mr.S.M.Vaishnav, counsel for the petitioner.
Mr.Shyam Bissa, A.G.P. for the respondent Nos.1 and 2.
None for the respondent No.3.

CORAM : MANISH PITALE, J.
DATE : 13.08.2020

ORAL JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard.

3. **Rule.** Rule made returnable forthwith. In spite of service of notice to the respondent No.3, he prefers to remain absent. The writ petition is heard finally with the consent of the learned counsel for the parties.

4. In the present case, the petitioner is aggrieved by the order passed by the respondent No.2-Collector cancelling the election of the petitioner as member of Municipal Council Shendurjana (Ghat) on the ground that he failed to submit caste validity certificate within the stipulated period of six months. The petitioner is also aggrieved because the respondent No.1-Divisional Commissioner has rejected his appeal filed against the order of the Collector as not maintainable.

5. The learned counsel appearing for the petitioner contends that a perusal of the impugned order dated 05/01/2019 would show that the Collector has directly cancelled the election of the petitioner with retrospective effect on the ground that the petitioner had failed to submit caste validity certificate within the stipulated period of time. According to the petitioner, the said order is erroneous and unsustainable, as it had been passed against the mandate of Government Resolution dated 28/03/2016. By inviting attention to the contention of the said Government Resolution, it is contended that in such a situation, all that the respondent No.2-Collector could have done was to have referred the matter to the State Government for an appropriate order to be passed. It is contended that the respondent No.2-Collector could not have passed an order in the nature of the impugned order passed herein. It is further submitted that the respondent No.1 also erred in dismissing the appeal filed by the petitioner as not maintainable.

6. On notice being issued, the respondents are represented by Mr.Bissa, learned Assistant Government Pleader. On specific instructions obtained from the said respondent, the

learned Assistant Government Pleader makes a statement that this Court could direct the Collector to refer the matter to the State Government in terms of the Government Resolution dated 28/03/2016.

7. The aforesaid statement made on behalf of the respondents by the learned Assistant Government Pleader clearly indicates that the impugned order dated 05/01/2019 passed by the respondent No.2-Collector is unsustainable as it is in the teeth of the Government Resolution dated 28/03/2016. The respondent No.2-Collector could not have proceeded to directly pass the order of cancellation of election of the petitioner with retrospective effect. Accordingly, the writ petition deserves to be allowed.

8. In this view of the matter, it is not necessary for this Court to consider the contention raised on behalf of the petitioner as regards maintainability of his appeal before the respondent No.1-Divisional Commissioner. The appeal filed by the petitioner before the Divisional Commissioner would obviously be rendered of no consequence in view of the fact that this Court proposes to set aside the original order passed by the respondent No.2-Collector.

9. In view of the above, the writ petition is allowed. The impugned orders passed by the respondent Nos.1 and 2 are quashed and set aside. The order dated 05/01/2019 passed by the respondent No.2-Collector cancelling the election of the petitioner with retrospective effect is found to be unsustainable and it is quashed and set aside. The respondent No.2-Collector is directed to follow the mandate of Government Resolution dated 28/03/2016 and to refer the matter to the State Government for passing appropriate orders in the matter. Such exercise be carried out by the respondent No.2-Collector within a period of four weeks from today.

10. Rule is made absolute in above terms. No order as to costs.

11. The judgment be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

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Ghanshyam
Khunte
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