

DSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8649 OF 2021**

Bajirao S. Katkar

...Petitioner

V/s.

State of Maharashtra and ors.

...Respondents

Mr. S.M. Gorwadkar, Sr. Advocate a/w. Mr. N.A. Mogre for the Petitioner.
Mr. C.D. Mali, AGP for the Respondent Nos.1 and 4.
Mr. Milind Deshmukh for the Respondent Nos.2 and 3.

**CORAM : G. S. KULKARNI, J.
DATE : DECEMBER 07, 2021.**

PC :

- 1] Not on board. Taken on board on an application moved on behalf of the petitioner.
- 2] Heard Mr. Gorwadkar, learned senior advocate for the petitioner, Mr. Milind Deshmukh, learned counsel for respondent Nos.2 and 3 and Mr. C.D. Mali, learned AGP for respondent Nos.1 and 4.
- 3] This petition challenges an order dated 17.11.2021 passed by the Divisional Commissioner, Pune, whereby the petitioner has been removed from the post of Sarpanch for the remaining period of his term, on which he was elected in the general elections held in 2017.
- 4] Mr. Gorwadkar, learned senior advocate for the petitioner, in assailing the impugned order would submit that the record is replete with materials to show that the complaint itself was motivated on account of a political rivalry and that there was no material whatsoever before the Divisional Commissioner to pass such a drastic order in overlooking the substantive material which according to him showed that the complaint made by

respondent Nos.2 and 3 was totally false and bogus. He would submit that respondent No.3 is the husband of defeated candidate, who belonged to the rival political party, as also respondent No.2 a defeated candidate. He has drawn my attention to certain letters, which according to him, clearly show that the Divisional Commissioner in passing this order was under some influence and / or pressure to pass such order. Mr. Gorwadkar has vehemently submitted that this is a fit case where the High Court should entertain this petition, as according to him the impugned decision of the Divisional Commissioner in the absence of a stay of such order has drastic consequences which has the effect of setting at naught the people's will in electing the petitioner as a Sarpanch.

5] Be that as it may, Mr. Gorwadkar, however, has fairly submitted that the order passed by the Divisional Commissioner is an appealable order and the petitioner has already preferred an appeal before the Hon'ble Minister. He has submitted that the appeal was lodged on 24.11.2021 along with stay application, however, such stay application has not been considered till date by the appellate authority and in these circumstances, the petitioner was required to approach this Court. Mr. Gorwadkar has also pointed out that the provisions of Section 39(3) of the Maharashtra Village Panchayats Act, 1959 also mandate that the appellate authority should decide the appeal within a period of one month. He submits that although substantial period has lapsed not even the interim application for stay has been taken up by the appellate authority which is causing serious prejudice to the petitioner.

6] Mr. Milind Deshmukh, learned counsel for respondent Nos.2 and 3, on the other hand opposed this petition on the ground that it need not be entertained by this Court as the appeal along with stay application is pending before the appellate authority. The submission of learned AGP for

respondent Nos.1 and 4 would not be different.

7] In the aforesaid circumstances, although the Court can make an exception to entertain the petition in specific circumstances, however, in the present case it is not necessary to exercise such discretion as already an appeal has been filed by the petitioner assailing the impugned order along with stay application. When such proceedings are *sub-judice* before the Hon'ble Minister being the appellate authority, in my opinion, it would be in the interest of justice that the petitioner raises all issues as raised in the petition and to point out the same to the appellate authority in supporting his contention on the illegality of the impugned order. Certainly, the appellate authority would look into all these issues and by a reasoned order adjudicate the stay application or the appeal itself, as the law would mandate. The Hon'ble Minister shall decide the stay application within a period of 10 days from today.

8] At the first instance, the petitioner shall approach the office of Hon'ble Minister along with a copy of this order on 9.12.2021 so as to make a request to take up the interim application for stay on a mutually convenient day.

9] No separate notice for such first appearance before the the office of Hon'ble Minister, is required to be issued to respondent Nos.2 and 3 who are represented by advocate Mr. Deshmukh.

10] All contentions of the parties in the pending proceedings are expressly kept open.

11] Writ Petition is disposed of in the aforesaid terms. No costs.

(G. S. KULKARNI, J.)