

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

76 WRIT PETITION NO.266 OF 2022

KADIR SULEMAN PATHAN
VERSUS
THE COLLECTOR, AURANGABAD AND OTHERS

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Mr.Y.V. Kakade, Advocate for the petitioner
Mr.S.B. Yawalkar, AGP for the respondent/State.
Mr.R.V. Gore, advocate for respondent nos.2 and
3.

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CORAM : S.V. GANGAPURWALA
AND
S.G. DIGE, JJ.

DATE : 31st JANUARY, 2022

PER COURT :-

1. We have heard learned advocate for the petitioner and learned advocate for the respondents.

2. Amongst other contentions one of the contention of the petitioner is that respondent no.2 herein has filed Election Petition thereby challenging the election of the petitioner bearing Election Petition No.4/2021. The same is pending. One of the ground in the Election Petition is that the petitioner has three children but has shown only two children in the nomination form. For the same purpose, respondent nos.2 and 3 have also initiated the disqualification proceedings purportedly under

section 15 of the Maharashtra Village Panchayat Act, 1958. The learned advocate for the petitioner submits that two proceedings for the same purpose and on the same grounds are not tenable. The learned advocate for the petitioner relies upon the following judgments :-

*(i) 2007 AIR S.C.W. 602
(State of Himachal Pradesh and another
V/s Surinder Singh Banolta)*

*(ii) 2010(3) Mh.L.J. 281
(Shrikrishna Wasudeo Dhage V/s
Shivcharan Trimbakrao Kalne and others)*

*(iii) 2003 (Supp.2) Bom.C.R. 19
(Suvarna Prakash Patil V/s Anil Hindurao
Powar and others)*

*(iv) The judgment and order dated
19.03.2019 passed by Division Bench of
this Court in Writ Petition
No.8674/2018.*

3. Mr. Gore, learned advocate for the respondent nos.2 and 3 submits that the Election Petition is filed by the respondent no.2 basically on the ground that the petitioner has shown incorrect properties. The reference is made of the petitioner having three children only with a view to bring to the notice of the Court dealing with the Election petition that he is proceeding against the respondent no.2 before the Collector on the said ground.

4. Referring to the judgments cited by

Shri Kakade, the learned counsel for the petitioner, there is no iota of doubt that on the same ground two proceedings would not be tenable.

5. The ground of challenge to the Election petition is basically that the petitioner has suppressed the properties i.e. all his assets and liability and in sub para of para 4, it is specifically averred that the election petitioner would be filing the disqualification proceedings before the Collector on the ground that the present petitioner has three children born after the cut of date. The said aspects certainly would not be agitated by the respondent no.2 herein before the Court dealing with the Election petition. It was for the information purpose, the present respondent no.2 had clarified in the Election petition that as far as ground of challenge to the extent that the present petitioner has three children would be taken up in the disqualification proceedings before the Collector.

6. In the light of that, it cannot be said that on the same ground dual proceedings are taken up.

7. The learned counsel Shri Kakade submits that the Collector is not affording the opportunity of hearing to the petitioner to put

forth his case. The Collector is dealing with the disqualification proceedings affecting the rights of the parties, in such event the appropriate opportunity deserves to be granted to the petitioner.

8. The petitioner may place on record the additional documents and say if the petitioner so chooses within a period of 10 days from today. After the petitioner places additional documents or say before the Collector, the Collector shall after hearing the parties decide the said disqualification proceedings on its own merits in accordance with law and procedure.

9. Writ Petition is disposed of. No costs.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)

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