

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

**REVIEW APPLICATION NO.71 OF 2022
IN
WRIT PETITION NO.9882 OF 2017**

...

SAGARBAI W/O. GAUTAM BHISE
VERSUS
THE DIVISIONAL COMMISSIONER AURANGABAD AND
OTHERS

...

Mr. S B Ghatol Patil h/f Mr. S K Sawangikar advocate
for the applicant.

Mr. S S Dande AGP for respondent nos.1,2-State.

Mr. S B Ghute advocate for respondent no.3.

Mr. A G Thitte advocate for respondent no.4.

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WITH

WRIT PETITION NO.13217 OF 2019

SAGARBAI W/O GAUTAM BHISE
VERSUS
THE DISTRICT COLLECTOR AND OTHERS.

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Mr. S B Ghatol Patil h/f Mr. S K Sawangikar advocate
for the petitioner.

Mr. S S Dande AGP for respondent 1 & 2-State.

Mr. S B Ghute advocate for respondent no.3.

Mr. S.V.Suryawanshi advocate for respondent no.4.

Mr. S K Chavan advocate for respondent no.5.

Respondent nos.6 to 8 deleted.

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CORAM : V.K. JADHAV, J.

Dated : JANUARY 21, 2022

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PER COURT :-

1. Heard finally with the consent of the parties at admission stage.

2. Being aggrieved and dissatisfied by the judgment and order dated 24.9.2019 passed by the learned District Judge-1, Hingoli in Election Petition no.14 of 2017, the original respondent no.1-Sagarbai Bhise has preferred writ petition no.13217 of 2019.

3. By judgment and order dated 21.3.2018 in writ petition no.9882 of 2017 preferred by the Review Applicant, this Court has allowed the writ petition in terms of prayer clause "C" and thereby quashed and set aside the order passed by the respondent-Additional Divisional Commissioner, Aurangabad Division, Aurangabad in preliminary objection application case no.34 of 2017 was allowed and in terms of the prayer clause of the said preliminary objection, the further proceedings before the respondent-Additional Divisional Commissioner, Aurangabad Division, Aurangabad held to be not maintainable. One Devidas Ramkisan
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Gawande has filed Election Petition no.14 of 2017 against the petitioner in writ petition no.9882 of 2017 i.e. Sagarbai Gautam Bhise and others.

4. Brief facts, giving rise to all these proceedings, are as follows :-

a] In the year 2017, the elections of Zilla Parishad, Hingoli was declared by the State Election Commission of Maharashtra and nominations were invited from the candidates from date 27.1.2017 to 1.2.2017. On 2.2.2017 one Bhagwat Khandare and Smt. Kusum Khandare had submitted their objections to the Returning Officer, Zilla Parishad, Hingoli against nomination form submitted by the present petitioner Sagarbai Gautam Bhise on the ground that she is having third child after the cut-off date and also on the ground of encroachment on the government land. Returning officer has rejected the said objection and accepted nomination of the said candidate Sagarbai Bhise (petitioner herein). Thereafter, the petitioner came to be elected from Falgaon Block (Block No.1) as a Member of Zilla Parishad, Hingoli.

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b] On 28.2.2017 one Devidas Ramkisan Gavande has filed Election Petition no.14 of 2017 under section 27 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as the 'Act of 1961') against the present petitioner and others before the District Judge, Hingoli. On 23.3.2017 respondent Ramesh Mariba Kamble had filed an application no.34 of 2017 before the Additional Divisional Commissioner, Aurangabad Division, Aurangabad for disqualification of the petitioner Sagarbai on the same ground. The Petitioner herein i.e. Sagarbai has raised preliminary objection before the Additional Divisional Commissioner, Aurangabad Division, Aurangabad about maintainability of the said proceedings. Said Preliminary objection came to be rejected by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad by order dated 4.7.2017. Being aggrieved by the same, the petitioner Sagarbai Gautam Bhise had filed writ petition no.9882 of 2017. By judgment and order dated 21.3.2018 this Court allowed the said writ petition in terms of the prayer clause 'C' and upheld the

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preliminary objection raised by the petitioner. In view of the same, the learned District Judge-1, Hingoli has dealt with the Election Petition no.14 of 2017. In terms of the pleadings raised by the parties in the Election Petition no.14 of 2017, the learned District Judge-1, Hingoli has framed the following issues and recorded the findings thereon, which are as follows :-

Sr. No.	Issues	Findings.
1.	Whether petitioner proves that respondent no.1 begotten third child after 13.09.2001 ?	Proved.
2.	Whether this Court is having jurisdiction to entertain the petition ?	Yes.
2A.	Whether present petition is maintainable under Section 27 of the Maharashtra Zilla Parishad and Panchayat Samiti, Act 1961 ?	Yes.
3.	Is petitioner entitled for relief sought ?	Yes. But only for setting aside election of resp.1
4.	What order ?	As per final order.

5. By order dated 24.9.2019, the District Judge-1, Hingoli has partly allowed the Election Petition No.14 of 2017 and thereby set aside the Election of the returned candidate respondent no.1 Sagarbai as a Councilor of Zilla Parishad, Hingoli and declared it as void under
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section 16(1)(n) of the Act of 1961. However, rejected the prayer of respondent no.2 as elected candidate in place of respondent no.1. It is further held that respondent no.1 Sagarbai (petitioner herein) having incurred disqualification under section 16(1)(n) shall not be entitled to contest the election.

6. Being aggrieved by the same, Sagarbai Gautam Bhise has preferred the writ petition. Further, Sagarbai Bhise has also filed Review Application No.71 of 2022 in Writ Petition no.9882 of 2017 to review the order passed in writ petition no.9882 of 2017 in her favour.

7. The learned counsel appearing for the petitioner submits that the dispute remains only as to whether “Surbhi” is the daughter of the present petitioner or not as claimed by the respondent no.4 in Election Petition no.14 of 2017. Learned counsel submits that, “Surbhi” is not the biological daughter of this petitioner, but she is the daughter of her husband Gautam Dhonduji Bhise and his first wife namely Meenabai @ Sakharbai. The petitioner is the second wife of Gautam Bhise and

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having only two children born before cut-off date. “Surbhi” is step child of the present petitioner and not the biological child. Learned counsel for the petitioner submits that, the learned District Judge-1, Hingoli has failed to consider the documents on record in its proper perspective and passed the erroneous order dated 24.9.2019.

. The learned counsel for the petitioner submits that date of birth of first child of the petitioner namely Rahul is 24.4.2001 and date of birth of second child namely Suraj is 26.8.2003. Said third child namely “Surbhi” is borne on 5.7.1998. She is daughter of Gautam Bhise and his first wife Meenabai @ Sakharbai w/o Gautam Bhise. Marriage between Gautam Bhise and said Meenabai @ Sakharbai came to be dissolved by a decree of divorce by mutual consent. Thereafter, said Gautam Bhise married with the petitioner Sagarbai, who has given birth to two children namely Rahul and Suraj i.e. on 24.4.2001 and 26.8.2003, respectively. “Surbhi” is not biological child of the present petitioner. Thus, due to said third child “Surbhi”, the learned District Judge-1

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Hingoli ought not have disqualified the present petitioner. The Birth report prepared by Nagarparishad, District Washim shows the correctness of the date of birth of the above referred children as well as birth register of the office of the Anganwadi also shows the correctness of the date of birth of above referred children.

8. Learned counsel for the petitioner submits that, certificates issued by the Village Development Officer, Office of Grampanchayat of Kanhergaon Naka dated 11.4.2017 shows that as per the entry of the office of the Grampanchayat "Surbhi" is daughter of Sakharbai Gautam Bhise. The learned counsel submits that birth certificates issued by Washim Municipal Council, wherein, date of births 24.4.2001 and 26.8.2003 are recorded in respect of the children namely Rahul and Suraj and both birth dates are true and correct, whereas, birth certificates issued by Reynonds Memorial Hospital, Washim, wherein the date of birth 5.7.1998 is shown, and the Head Master of Mahatma Phule High

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School Kanhergaon Naka has issued the First Admission Report, wherein the birth dates 24.4.2001 and 26.8.2003 are also shown.

9. The learned counsel submits that E.P. no.14 of 2017 under section 27 of the Act of 1961 is not tenable before the District Judge and proper remedy is only to approach the Divisional Commissioner under section 40 (2) of the Act of 1961. Learned counsel for the applicant/petitioner submits that the petitioner has also therefore filed an application to review the order dated 21.3.2018. in writ petition no.9882 of 2017. The learned counsel for the petitioner submits that his writ petition so also the review application thus deserves to be allowed.

10. Learned counsel for the applicant/petitioner, in order to substantiate his contentions placed reliance on following cases :-

- i. Santosh Chandansingh Rawat Vs. Divisional Commissioner, Nagpur and others reported in 2009 (6) Mh.L.J. 828.
- ii. Gautam Rama Latke Vs. The State of Maharashtra and others reported in 2019 (1) ALL MR 318.

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11. The learned A.G.P. appearing for the respondent State submits that the learned District Judge-1, Hingoli, after considering the documents on record correctly passed the impugned order dated 24.9.2019. The learned District Judge-1, Hingoli has rightly considered the evidence adduced by the witnesses and on perusal of the documentary evidence has rightly come to the conclusion that the present petitioner is having three children and her youngest son Suraj born to her after the cut-off date 12.9.2001. Therefore, the petitioner thus incurred disqualification under section 16(1)(n) of the Act of 1961. The learned AGP submits that the petitioner by playing a fraud has produced false school record before the Returning Officer at the time of deciding the objection application dated 2.2.2017. The petitioner has admitted before the Returning Officer that "Surbhi", Rahul and Suraj are her own children, and, now, she has taken a stand that "Surbhi" is not her biological child, but her step child. The birth entries of three children of the petitioner have been entered in the record of the Municipal Council, Washim. Said record

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shows that the petitioner has given birth to three children, who born to her on 5.7.1998 (Surbhi), 24.4.2001 (Rahul) and 26.8.2003 (Suraj). Said certificates issued by Municipal Council, Washim shows the name of the mother as Sagarbai Gautam Bhise and name of the children as "Surbhi", Rahul and Suraj. It appears that the petitioner has manipulated the dates of birth of their children in Village Panchayat Record and School Record which is run by the Gautam Bhise-the husband of the petitioner. The learned AGP submits that the petitioner has not approached before this court with clean hands. There is no substance in this writ petition and the review application and the same are liable to be dismissed.

12. I have heard the learned counsel appearing for respondent no.3.

13. I have also heard learned counsel for respondent no.4. He has supported the judgment and order passed by the learned District Judge-1, Hingoli. He has

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adopted the submissions made on behalf of the respondents/State by the learned AGP.

14. I have carefully perused the reasons given to issue nos.1 and 2 by the learned District Judge-1, Hingoli while deciding the Election Petition. PW-1 Devidas Ramkisan Gawande (respondent no.4 in writ petition no.13217 of 2019) has testified himself in the Election Petition and deposed that respondent no.1 Sagarbai (petitioner herein) is having three children and her third son Suraj Gautam Bhise born to her after the cut-off date. However, he has no personal knowledge and the learned District Judge has rightly observed that his evidence is not much helpful that “Surbhi” is whether daughter of the respondent no.1 Sagarbai (petitioner herein). However, the respondent no.4 in writ petition i.e. Devidas Ramkisan Gawande (petitioner in election petition) has examined PW-2 Ganesh Shete, Chief Executive Officer to prove the entries at exh.55, 56 and 57 which shows that the entry at sr. no.1651 was taken on 13.7.1998 showing birth of a girl child on 5.7.1998 in

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Renault Memorial Hospital, Washim, entry at sr.no.297 was taken on 31.5.2001 showing birth of a male child on 24.4.2001 at Sarda Hospital, Washim and entry at sr. no.896 is made on 30.8.2003 showing birth of a male child on 26.8.2003 at Sarda Hospital to Sagarbai w/o Gautam Bhise (petitioner herein). The birth certificates exhibit 114, 115 and 116 issued on the basis of those entries in the birth registers also show that respondent no.1-Sagarbai (petitioner herein) has given birth to above 3 children, eldest one amongst them is female child and their date of births are 5.7.1998, 24.4.2001 and 26.8.2003, respectively.

. Though, DW-1 Sagarbai has admitted that her parental village is at Songavan Tq. and District Washim, however, she has denied that she gave birth to her first child "Surbhi" in Reynolds Memorial Hospital, Washim and also birth of her other two children namely Rahul and Suraj in Sarda Hospital, at Washim. However, she has not disclosed then in which hospital she gave birth to her admitted two children Rahul and Suraj. The learned District Judge has, therefore, rightly observed

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that, there is no reason to discard the birth certificates exh.115 and 116 of her admitted children Rahul and Suraj and also exh.114 of disputed girl child of the petitioner Sagarbai. The evidence led by the (petitioner) Sagarbai is not sufficient to rebut the presumptions arising out of said birth certificates. Further, as per the evidence of DW-1 Sagarbai her marriage was performed with Gautam Bhise on 19.5.1997. She has admitted in the cross-examination that in the nomination form she has shown "Surbhi", Rahul and Suraj as dependent upon her. In the nomination form exh.72 she has admitted that she is having 3 children (not 2 children as claimed) and names of these 3 children are "Surbhi", Rahul and Suraj and in the declaration on affidavit, it was disclosed that none of the children born to her after cut off date 12.9.2001.

15. Petitioner Sagarbai has also examined DW-2 Bhujang Shesherao Sonkamble, Secretary of Village Panchayat, Kanergaon to prove birth certificate exh.82 and birth entry exh.84 in the Register of Births from

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record of village Panchayat to show that “Surbhi” is born on 5.7.1997 and names of her parents are Sakharabai and Gautam Bhise. However, said DW-1 Bhujang has admitted that birth certificate exh.82 does not bear serial number of birth register. The learned District Judge-1, Hingoli has rightly considered the scorings on the birth date of daughter of Sakhrabai Gautam Bhise mentioned it as ‘5.7.1997’ from original date ‘5.7.1998’ and date of recording of entry is scored ‘15.8.1998’ from ‘15.8.1997.’ The learned District Judge-1, Hingoli has rightly observed that, if the female child “Surbhi” of Sakhrabai Gautam Bhise was born on 5.7.1997 (date scored from 5.7.1998), then her birth entry would not have been taken on 15.8.1997 (prior to her birth as it is scored from 15.8.1998) between two entries dated 15.8.1998 and 27.8.1998 of other children. I have also carefully gone through the said entries and evidence of DW-2 Bhujang. It appears that the petitioner herein Sagarbai alongwith her husband, who is the Member of village Panchayat have manipulated the dates of birth of their children in the village Panchayat Record and

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school record which is run by Gautam Bhise only to overcome from disqualification. I fully agree with the observations made by the learned District Judge-1 Hingoli in paragraph no.27 of the judgment.

16. Though, the petitioner Sagarbai has examined DW-3 Gautam Bhise i.e. her husband and DW-6 Sakharabai @ Minabai and even though they have deposed about divorce, however, DW-3 Gautam and DW-6 Meenabai @ Sakharbai have admitted that said DW-6 Minabai was working as a Peon in the School of DW-5 Gautam Bhise. They have also admitted that there is no single document either Aadhar Card, Ration Card or entries in the service book of DW-6 Minabai to show that name of DW-6 Minabai is 'Sakharabai' and name of her former husband was Gautam Bhise. There is no evidence to prove the marriage between Minabai @ Sakharabai and Gautam Bhise. DW-3 Gautam Bhise/ husband of the petitioner has also shown name of mother of Surbhi as 'Sagrabai' which is the name of the present petitioner.

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17. Further, it appears that the petitioner has placed reliance on a divorce deed exh.89, which is shown to have been executed on 5.1.1998. It is mentioned in the said deed that “Surbhi” is 6 months of age is daughter of DW-3 Gautam Bhise and DW-6 Minabai @ Sakharabai and her custody was given to Gautam Bhise. However, said divorce deed is notarized document. There is a manipulated entry of date of birth of “Surbhi”. The learned District Judge-1, Hingoli, has, therefore, rightly observed that divorce deed exh.89 is anti dated created document after filing of the Election Petition on back dated stamp paper. The learned District Jude-1, Hingoli has rightly come to the conclusion that the respondent no.1 (petitioner herein) has incurred disqualification under section 16(1)(n) of the Act of 1961 and she is not entitled to contest the election as a Councilor of Zilla Parishad, Hingoli.

18. Learned counsel for the petitioner submits that in terms of the provisions of Section 27 of the Act of 1961, the Election Petition as against disqualification incurred

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is not tenable and proper remedy is only to approach the Divisional Commissioner in terms of Section 40 of the Act of 1961. Learned counsel submits that the impugned judgment and order passed in the Election Petition No.14 of 2017 is thus liable to be quashed and set aside on this ground alone. Learned counsel for the petitioner submits that, so far as the order passed in Writ Petition no.9882 of 2017 preferred by the petitioner Sagarbai is concerned, the petitioner has also filed Review Application No.71 of 2022 in writ petition no.9882 of 2017. The same is tagged with the present Writ Petition no.13217 of 2019.

19. It is to be mentioned here that the petitioner when the learned District Judge-1, Hingoli has decided the Election Petition no.14 of 2017 against her, conveniently with oblique motive filed Review Application no.71 of 2022 to review the order passed in writ petition no.9882 of 2017, which has invited by her.

20. In view of the above challenge, I find it appropriate to mention the relevant provisions of Section 16(1)(n), Section 40 and Section 27 of the Act of 1961.

Section 16. Disqualifications :-

(1) Subject to the provisions of sub-section (2), a person shall be disqualified for being chosen as, and for being, a Councilor, -

(a)

to

(m).....

(n) if he has more than two children ;]

S. 27. Determination of validity of elections; enquiry by Judge; Procedure. -

(1) If the validity of any election of a Councilor or the legality of any order made or proceedings held under section 26 is brought in question by any candidate at such election or by any person qualified to vote at the election to which such question refers such candidate or person may, at any time within fifteen days after the date of declaration of the result of the election or the date of the order or proceeding apply to the District Judge of the district within which the election has been held, for the determination of such question.

(2).....(3)

.....(a)

.....

(b).....(4)

.....(a)

.....(b)

.....

(5) (a) If on holding such enquiry, the Judge finds that a candidate has, for the purpose of election, committed a corrupt practice within the meaning of sub-section (6) or submitted a false claim or a false Caste Certificate, he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under sub-section (2) and shall set aside the election of such candidate if he has been elected.

Section 40: Disqualification of Councilor during term of office

(1) Subject to the provisions of sub-section (2) of section 62, if any Councilor during the term of his office, -

(a) becomes disqualified under sub-section (1) [1] [or (4)] of section 16, or

(b) is, for a period of six consecutive months (excluding in the case of the presiding authority the period of leave duly sanctioned) without the permission of the Zilla Parishad, absent from meetings thereof [2] [or is absent from such meeting for a period of twelve consecutive months],

the office of such councilor, shall, notwithstanding anything contained in clause (c) [3] [* * * * *] of sub-section (1) of section 9 become vacant.

[4] [* * * * *]

[5] [(2) If any question whether a vacancy has occurred under this section is raised either by the Commissioner suo motu or on an application made to him by any person in that behalf, the Commissioner shall decide the question [6] [as far as possible] within ninety days from the date of receipt of such application; and his decision thereon shall be final. Until the Commissioner decides that the vacancy has occurred, the Councilor shall not be disabled from continuing to be a councilor :

Provided that, no decision shall be given against any Councilor without giving him a reasonable opportunity of being heard.]

21. In a case of **Santosh Chandansingh Rawat Vs.**

Divisional Commissioner, Nagpur (Supra) relied upon

by the learned counsel for the applicant/petitioner, the

challenge in the LPA was to the judgment delivered by

the learned Single Judge dismissing the writ petition

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no.2819 of 2009. The appellant has raised the challenge on two grounds and alternative ground is important for the present discussion. The appellant in the said LPA has raised the point that such ground of disqualification may at the most be relevant in election petition, but same cannot in these circumstances be viewed as incurred during the term of his office as Councilor. Thus, locus of respondent no.3 for move to for declaration of disqualification under section 40 also, assailed. In the backdrop of these facts, in paragraph no.8 the Division Bench of this Court has made following observations :-

- “8. Question whether action for removal on account of such continuing disqualification must be sought only under Section 27 through election petition and, it cannot be done via Section 40 also calls for scrutiny. Order dated 16-1-2009 passed by this court in writ petition 2016/2008 gave liberty to Respondent No.3 to file fresh application under Section 40 before Respondent No.1 Commissioner. That Writ Petition was filed by present Respondent No.3 challenging order of Commissioner rejecting his earlier application under Section 40 on the ground that contract was already completed by present Appellant and only because the payment was delayed for want of funds, receipt thereof by Appellant after his election would not be a ground for disqualification under Section 16 (1) (i). In that writ petition, present Appellant contended that because of provisions of Article 243-O(b) of the Constitution of India, his election could not have been set aside except through election petition under Section 27. He contended that Section 40 was therefore not available. These arguments are considered by

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this Court and it found that Commissioner can declare him disqualified if he is incurred such disqualification during the term of the office i.e. after he entered the office. The Commissioner is held not to have power to declare his election illegal or invalid or to quash that election. It is therefore found that application then filed seeking to set aside election of Appellant was not tenable. Then it was pointed out to this Court that as receipt of payment after election revealed his interest, Appellant could have been disqualified even suo motu by Commissioner. The then learned Single Judge applied his mind to various authorities like Chaturbhuj Vithaldas Jesani vs. Moreshwar Parashram & Others (supra), Dattatraya Narhar Oitale vs. Vibhakar Dinkar Gokhale and another, 1975 Mh.L.J. 701, Dinkar Ananda Deore vs. Shantaram Punaji and others, 1981 Mh. L.J. 673 and Indumati Laxman Bhakre vs. State of Maharashtra (supra) in paragraph 9 and concluded-- "All these authorities support the contention of the Petitioner in respect of the interest by way of contract even if work is completed, when payment is yet to be made by Municipal Council or the Zilla Parishad or by the concerned Government or Government body". Present Respondent No. 3 was the Petitioner in Writ Petition No.2016/2008. In paragraph 10, it is also noticed that objection by present Appellant to earlier application under Section 40 was because of its form. In paragraph 11, leave was given to said Petitioner to file fresh application under Section 40 with direction to Commissioner to dispose it off within 90 days. All the objections /contentions of the parties have been left open for consideration by Commissioner. Thus, finding that an interest in work though completed subsisted if payment was not made is recorded in paragraph 9 and then liberty has been given. Hence, as liberty is given after hearing both sides and after recording of finding, present Appellant cannot in subsequent proceedings contend that even such application under Section 40 not touching his election in any way, is not maintainable. It may be pointed out here that in fresh application filed by present Respondent No. 3, Appellant raised preliminary objection about this locus and then approached this Court in Writ Petition No.2952/2008 and sought direction to Commissioner to decide it. That writ petition was withdrawn on 15-6-2009. Appellant has already filed the Writ Petition No. 3783/2008 challenging constitutionality of Section 40 (2) as it enables any person to seek disqualification. This Court has issued notice before

admission in said matter on 15-1-2009. In any case, as the interest in work done survives during the term of office of Appellant, Section 16 (1)(i) is clearly attracted and hence, remedy under Section 40 of 1961 Act is rightly availed by Respondent No. 3. Section 40 does not prescribe any new disqualification but it lays down the procedure once disqualification under section 16(1)(i) is found to be incurred or continued or available during the term of office. The words "and for being" in opening part of section 16(1) stipulate existence of very same interest which disqualifies its holder for election also as bar for continuing as Councilor after the election. It is continuation of that interest which operates as disqualification and it does not require accrual of such interest again after the election. Continuing possession of such interest after election is sufficient without anything more. Interest which disqualifies at threshold can not cease automatically because of a successful election. Section 16 does not specify the work as disqualification but it is interest in it and if interest continues even after the election is over, the legislature has made provision in Section 40 for removal of its holder to avoid conflict in interest and duty. By providing disqualifications for getting elected and even for continuing in the same section and then by providing separate remedies for removal of such hostile Councilors from the Zilla Parishad, legislature has provided a complete scheme which needs to be preserved and protected. Difference in nature of remedy under Section 27 and Section 40 cannot be used to defeat the otherwise clear legislative mandate so as to enable Appellant to continue as Councilor."

22. In a case **Gautam Rama Latke Vs. State of Maharashtra** (supra) (Coram Ravindra V. Ghuge, J.), relied upon by the learned counsel for the applicant, In this case also the view expressed by the Division Bench of this Court has been referred in the aforesaid case of **Santosh Rawat Vs. Divisional Commissioner, Nagpur** (supra).

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23. In the concluding expressions, the Division Bench in the case of **Santosh Rawat Vs. Divisional Commissioner, Nagpur** (supra) has observed that by providing disqualifications for getting elected and even for continuing in the same section and then by providing separate remedies for removal of such hostile Councilors from the Zilla Parishad, the legislature has provided a complete scheme which needs to be preserved and protected. Difference in nature of remedy under section 27 and [Section 40](#) cannot be used to defeat the otherwise clear legislative mandate so as to enable Appellant to continue as Councilor.

24. In the cited case there are no observations whether Election Petition under section 27 would be or would not be maintainable.

25. Further, it is pertinent that the petitioner Sagarbai Gautam Bhise has preferred Writ Petition no.9882 of 2017 against rejection of the preliminary objection in application No.34 of 2017 raised by her before the Additional Divisional Commissioner, Aurangabad
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Division, Aurangabad filed by Ramesh Ramesh Mariba Kamble. Petitioner Sagarbai Bhise has filed said objection about the maintainability of the petition and has raised contention that section 27 of the Act of 1961 permits an Election Petition to be filed before the learned District Judge, which is already filed and, therefore, filing of the application no.34 of 2017 before the Additional Divisional Commissioner, Aurangabad Division, Aurangabad is not maintainable. The petitioner when, the learned District Judge had decided the Election Petition against her, has preferred Review Application no.71 of 2022 to review the order passed by this Court in the aforesaid writ petition no.9882 of 2017.

26. Furthermore, as discussed above, there is no specific bar as such to consider the issue of disqualification by way of filing the Election Petition. In terms of the provisions of sub-section 5(a) of section 27 of the Act of 1961 if the validity of any election of a Councilor or the legality of any order made or proceedings held under section 26 is brought in

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question, [by any candidate at such election or by] any person qualified to vote at the election to which such question refers [such candidate or person] may, at any time within the period as stipulated therein, on holding such inquiry the Judge finds that candidate has for the purpose of election committed corrupt practice within the meaning of sub-section (6) or submitted a false claim or false caste certificate, the Judge shall declare the candidate disqualified for the purpose of that election and such fresh election shall be held under sub-section (2) and shall set aside the election of such candidate if he has been elected.

27. It is clear from the observations made in Santosh Rawat's case (supra) that for removal of such hostile Councilors from the Zilla Parishad, legislature has provided a complete scheme which needs to be preserved and protected. Difference in nature of remedy under [Section 27](#) and [Section 40](#) cannot be used to defeat the otherwise clear legislative mandate so as to enable the Appellant to continue as Councilor.

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28. In view of the discussion above, I find no merit in the Review Application so also the Writ Petition. Both are liable to be dismissed. Hence, following order.

ORDER

- i. Review application no.71 of 2022 in Writ Petition No.9882 of 2017 is hereby dismissed.
- ii. Writ Petition no.13217 of 2019 is hereby dismissed.

(V.K. JADHAV, J.)

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