

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6187 OF 2022

Nitin Rajendra Aawale.

...Petitioner.

Versus

Dattatrey S. More and Others.

..Respondents.

Ms. Vritee Ssoni for the Petitioner.

Mr. Kuldeep U. Nikam and Mr. Prasad Avhad for Respondent No. 1.

Mr. Sandip L. Babar, AGP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.

Date : June 22, 2022.

P. C. :

1. Heard learned counsel appearing on behalf of the Petitioner, learned counsel appearing on behalf of Respondent No.1 on instructions and learned AGP for Respondent no.3 (Collector Sangli). As the copy of petition was not supplied to the office, notice was not issued to Respondent No.2. Learned counsel appearing on behalf of the Petitioner submitted that Respondent No.2 is served by way of a private notice and she be permitted to file affidavit of service in the office.

2. Considering the controversy involved in petition and the order impugned in petition, we deem it appropriate to dispose of the petition without waiting for response from Respondent No.2 as our order would not cause any prejudice to Respondent No. 2.

3. Respondent No.1 in the present petition submitted the proceedings before the District Collector, Sangli against the Petitioner as well as one Rupali Gajanan Jadhav and Asha Rajendra Majgaonkar. In the said proceedings, the provisions of Maharashtra Village Panchayat Act (for short “the said Act” } and particularly section 10(1-A) of the said Act were invoked. It was the submission of Respondent no.1 herein, before the Collector that the Respondents before the Collector, namely, Rupali Gajanan Jadhav, Asha Majgaonkar and Nitin Awale contested the election of village Julewadi post Bhilwadi, taluka Tasgaon, district Sangli held on 15th January 2021; they were declared elected members of the panchayat from reserved seats. It was further submitted that as per the provisions of the said Act, the Respondent members were required to submit their caste validity certificates within the stipulated period of six months, but the respondents members failed to submit their caste validity certificates and, as such they have earned disqualification to occupy the post of member of panchayat. The collector after hearing the parties at length and by assigning reasons in detail, passed order dated 13th April 2022. The proceedings initiated at the instance of Respondent No.1 was partly allowed. The order of Collector is challenged in the present petition.

3. Learned counsel appearing on behalf of Respondent No.1 submitted before this Court that the Petitioner without availing the appropriate efficacious remedy provided in the said Act itself, has filed the present petition in this Court. It is the submission of learned counsel that on the ground of availability of efficacious statutory remedy, the petition may

not be entertained.

4. On perusal of the provisions of the said Act, we find considerable merit in the submissions of learned counsel appearing on behalf of Respondent No.1. Section 16(2) of the said Act provides a remedy of an appeal before the Commissioner against the order of Collector. This being the position, without observing anything more on merits, we deem it appropriate to dispose of the petition with liberty to the Petitioner to submit an appeal before the Commissioner within two weeks from today. In case, such an appeal is submitted before the appellate authority (Divisional Commissioner) within two weeks from today, the Divisional Commissioner to decide such an appeal as expeditiously as possible. Needless to state that appeal be decided by giving an equal opportunity to all the concerned parties. Considering that the issue involved in appeal is of disqualification of elected member, the Commissioner shall endeavour to decide the appeal expeditiously.

5. Learned counsel appearing on behalf of the Petitioner made an attempt to submit before this Court by filing an interim application, that the Petitioner–Applicant had placed on the record of Collector, the Government Notification dated 10th May 2022 and in view of this Government Notification, the delay in filing validity certificate could have been condoned. We are unable to accept the submission of learned counsel appearing on behalf of the Petitioner for the reason that the said Government Notification was issued by the State Government on 10th May 2022 and the order of Collector was passed on 13th April 2022. The Petitioner – Applicant may raise

all these grounds including the ground drawing support from the said Government Notification dated 10th May 2022 before the appellate authority.

6. With these observations, petition is disposed of.

7. In view of the disposal of writ petition, interim application does not survive. No orders are required to be passed on the said application.

[Shrikant D. Kulkarni, J.]

[Prasanna B. Varale, J.]