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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1058 OF 2024

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Kumari Mayuri Prakash Warekar ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO.1060 OF 2024

Nisha Pritam Sawant ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr. Vishal Chandrakant Ghosalkar for the petitioner.

Ms. V. S. Nimbalkar, AGP for the State/respondent No.1
in WP/1058/2024.

Ms. M. S. Srivastava, AGP for the State/respondent
No.1 in WP/1060/2024.

Mr. Rohit Sakhadeo for respondent Nos.2 & 3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 4, 2024

P.C.:

1. Since both the writ petitions involved common question of law and fact, both are being decided by common judgment.
2. The petitioners in both the writ petitions are elected Gram Panchayat members. Respondent No.2 issued notice to the petitioners contending that the Petitioner-Mayuri Warekar remain

absent without permission for period April 2022 till March 2023. According to respondent No.2, petitioner-Nisha Sawant was absent for 18 monthly meetings and petitioner Mayuri Warekar was absent from 12 monthly meetings.

3. Respondent No.2 fixed the hearing of disqualification proceedings on 23rd October 2023. On a request made by the petitioners to submit a reply, respondent No.2 fixed the hearing on 30th October 2023. On 30th October 2023, petitioner-Mayuri Warekar was present. In relation to petitioner-Nisha Sawant her representative was present on 30th October 2023.

4. According to the petitioners, on 30th October 2023, both the petitioners filed application for adjournment seeking time to file reply. The respondent No.2, on 31st October 2023, passed the order holding that the posts of the petitioners become vacant. The respondent No.2, in paragraph No.8, in relation to petitioner Nisha Sawant referred to the request made on behalf of the petitioners to grant one month's time to get relevant documents. However, relying on section 40(2) of the Maharashtra Village Panchayat Act, 1959, the respondent No.2 held that statute requires respondent No.2 to adjudicate on disqualification proceedings within 60 days and, therefore, passed the orders of disqualification of the petitioners.

5. The respondent No.2 has filed affidavit stating that petitioner-Nisha Sawant was represented by her authorised representative and in case of petitioner-Nisha Sawant, her representative was present on 30th October 2023.

6. The fact remains that in both matters, the petitioners filed an application seeking adjournment.

7. The respondent No.2 based on period prescribed in section 40(2) of the Maharashtra Village Panchayat Act, 1959, decided the matters immediately on next day i.e. 31st October 2023. The outer limit prescribed in the statute serves as guidance to the statutory authorities. Such outer limit cannot be termed as mandatory so as to render proceedings conducted have expiry of such proceedings illegal. Such prescription provided under a statute needs to be followed by the authorities, however, not at the cost of breach of opportunity of hearing to the elected candidate. The earlier date prescribed was of 23rd October 2023 and immediately thereafter matter was fixed on 30th October 2023. The proper course for respondent No.2 in such matter was to grant adjournment to the elected representative as a last chance and on failure of such elected candidates or if the authorities are of the opinion that the elected candidates are protracting the proceedings with a view to avoid the unavoidable consequences the authority is free to pass final orders. The statutory authorities are expected to grant last chance to the elected representative with clear understanding that in case of their failure to file reply, the endeavour shall be made to decide the proceedings on merit in accordance with law on the next date.

8. According to learned advocate for respondent No.2, written submissions were filed by the petitioners. However, it is well settled that written submissions cannot substitute oral opportunity of hearing to be granted to elected representative unless such

elected representative categorically states that he does not want to make oral submissions and he relies on written submissions.

9. In the facts of the case, instead of granting opportunity to the petitioners to file their reply, the respondent No.2 immediately on the next day i.e. 31st October 2023 passed orders of disqualification of the petitioners. Therefore, in my opinion, adequate opportunity of hearing was not granted to the petitioners. Such opportunity is necessary as the petitioners are elected representative representing the electorate. Disqualifying such elected representative has a drastic consequence of electorate remaining unrepresented. This does not mean that attempts made by elected representative to protract disqualification proceeding should not be dealt with in stern hand. It is expected that the authorities shall conduct themselves being alive to the rights of elected representative.

10. Therefore, in the facts of the case, I am satisfied that decision by the respondent No.2 on 31st October 2023 (immediately on the next day) was in breach of principles of natural justice. Hence, following order:

- a) The impugned orders passed by the respondent No.2, confirmed by respondent No.4 are quashed and set aside.
- b) Both the petitioners shall appear before respondent No.2 on 11th March 2024 at 10:30 a.m.
- c) The petitioners shall file their reply before 18th March 2024.

d) The respondent No.2 shall decide the applications within four weeks from 11th March 2024.

11. The writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)