



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.484 OF 2024

(Sau. Savita Vishnu Tirmare Vs. Additional Commissioner, Amravati Division, Amravati and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. N.A. Gawande, Advocate for petitioner.
Ms. Dangre h/f. Mr. Harish Dangre, Advocate for respondent No..5.
Mr. I.J. Damle, AGP for respondent Nos.1 to 3.

CORAM : ANIL S. KILOR, J.

DATE : 23rd JANUARY, 2024.

1. In the present writ petition the grievance is raised as regards the disqualification of the petitioner as Sarpanch of village Grampanchayat Wadhona, Ramnath Taluka Nandgaon Kh., District Amravati.

2. The petitioner was disqualified by the order dated 28.12.2023 by the Collector against which the petitioner referred an appeal before the Additional Commissioner. The appeal was filed on 3.1.2024 and on that day notices were issued and kept the matter returnable on 8.1.2024. On 8.1.2024 the Presiding Officer was not available, therefore, it was adjourned on 11.1.2024. Again, as the Presiding Officer was on leave the matter was posted for 22.1.2024 and in the meantime on 15.1.2024 the election programme was declared for the election of the post the petitioner was holding.

3. On receiving such information on 17.1.2024 the petitioner moved an application on 18.1.2024 for taking case

on board and grant of hearing on stay. The Additional Commissioner instead of considering the prayer of the petitioner for grant of stay to the election has observed vide order dated 18.1.2024 that the matter is fixed for 22.1.2024 and, therefore, as there is no urgency posted the hearing on said application on 22.1.2024 which amounts to rejection of stay. Hence, this petition.

4. It is evident from the record that despite having knowledge about the appeal filed before the Additional Commissioner the election programme was issued. On moving an application for stay, immediately on issuance of election programme, the Additional Commissioner had two options either to pass appropriate order on stay application by rejecting it or allowing it. The other option was to hear the appeal finally and decide it finally before the date of election. But the Additional Commissioner failed to adopt any of the above referred two options and adopted third option i.e. not to hear the application before election, which gave rise to the present writ petition.

5. Ms. Dangre, learned counsel opposes this petition on the ground that the petitioner has no locus to raise any grievance against the election, for the reason that she has been disqualified and election can be challenged only at the behest of any candidate or voter. This argument is misplaced and cannot be accepted for the reason that there is no challenge raised in the writ petition to the validity of election. The prayer is to stall the election till the decision on the appeal preferred by the petitioner before the Additional Commissioner. In the circumstances, to avoid multiplicity of

proceeding and further complications which may take place if the election is permitted to hold.

6. In the circumstance, following order is passed :

ORDER

- i) The writ petition is allowed.
- ii) The order dated 18.1.2024 passed by the Additional Commissioner is hereby quashed and set aside and thereby the application for grant of stay filed before the Additional Commissioner is hereby allowed and consequently stay is granted to the impugned order dated 28.12.2023 passed by the Collector till the decision of the appeal.
- iii) The Additional Commissioner is directed to decide the appeal within a period of 15 days from today after hearing both the sides.

(ANIL S. KILOR, J.)