

**(2021) 01 BOM CK 0003**

**In the Bombay High Court**

**Case No : Writ Petition (ST.) No. 23, 24 Of 2021**

Shivaji Laxman Wadkar And Others

APPELLANT

Vs

Election Returning Officer And Others

RESPONDENT

**Date of Decision : 04-01-2021**

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227, 228  
Bombay High Court Appellate Side Rules, 1960 — Rule 1, 3, 4, 17, 18, 18(3)  
Maharashtra Village Panchayats Act, 1959 — Section 14, 14(1), 14(1)(d), 39(1)

**Citation : (2021) 01 BOM CK 0003**

**Hon'ble Judges : R. D. Dhanuka, J; Madhav J. Jamdar, J**

**Bench : Division Bench**

**Advocate : R.A.Thorat, Balasaheb Deshmukh, Rajiv Patil, Prashant Patil,  
S.S.Panchpor**

**Final Decision : Dismissed**

## **Judgement**

R.D.Dhanuka, J

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 31st December, 2020 passed by

the respondent no.1 thereby rejecting the written objection filed by the petitioner in respect of the Nomination Form filed by the respondent no.2 for

contesting the election from Ward No.4 of Gram Panchayat Velu, Taluka Bhore, District Pune.

2. The matter was taken on board in view of the praecipe filed by the respondent no.2 praying for vacating the ad-interim order passed by a learned

Single Judge of this court (Vacation Court in Chamber).

3. Mr.Thorat, learned senior counsel for the petitioner submits that the writ petition filed by his client was rightly heard by the learned Single Judge.

This petition cannot be heard by the Division Bench. In support of this submission, learned senior counsel placed reliance on Rule 18(3) of the Bombay High Court Appellate Side Rules, 1960 which reads as under :-

18(3) The decrees or the orders passed by any Subordinate Court or by any quasi Judicial Authority in any suit or proceeding (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court and orders passed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; the Administrative Tribunals Act, 1985; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000;]

4. It is submitted by the learned senior counsel that challenge to any impugned order passed by the quasi judicial authority in any of the proceedings, under Rule 18(3) of the Bombay High Court Appellate Side Rules, 1960 is required to be heard by a learned Single Judge of this Court and not by the Division Bench. He relied upon the judgment of this court in case of Manchak Shahaji Pawar vs. The State of Maharashtra, 2011 (3) BCR 812. He also addressed this court on merits of the matter.

5. Mr.Patil, learned senior counsel for the respondent no.2 on the other hand strongly objects to this submission made by the learned senior counsel for the petitioner and submits that the impugned order passed by the respondent no.1 is not arising out of the quasi judicial order passed under one or more of the Acts prescribed in Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960 and thus the matter will have to be heard by the Division Bench of this Court and not by the learned Single Judge.

6. To deal with the rival submissions of the learned senior counsel for the parties, it would be appropriate to deal with the relevant provisions of the Bombay High Court Appellate Side Rules, 1960.

7. Rule (1) of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960 clearly provides that every application for the issue of a direction, order or writ under Article 226 of the Constitution shall, if, the matter in dispute is or has arisen substantially outside Greater Bombay, be heard and

disposed of by a Division Bench to be appointed by the Chief Justice. It is not in dispute that the subject matter of this petition has arisen outside

Greater Mumbai.

8. Rule (17) provides that an application invoking the jurisdiction of the High Court under Article 227 of the Constitution or under Article 228 of the

Constitution, shall be filed on the Appellate Side of the High Court and be heard and disposed of by a Division Bench to be appointed by the Chief

Justice.

9. Rule (18) of the Bombay High Court Appellate Side Rules, 1960 provides that notwithstanding anything contained in Rules 1,4 and 17 of Chapter

XVII, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the

Constitution read with Article 226 of the Constitution) arising out of Acts specifically mentioned therein shall be heard by the learned Single Judge of

this court.

10. Admittedly the Maharashtra Village Panchayats Act, 1959 is not specified as one of those Acts prescribed in Rule 18 of Chapter XVII of the

Bombay High Court Appellate Side Rules, 1960. A perusal of the explanation to the said rule makes it clear that the expression "order"

appearing in clauses 1 to 46 thereof means any order passed by any judicial or quasi judicial authority empowered to adjudicate under those specified

statutes.

11. A conjoint reading of the aforesaid provisions makes it clear that even if the impugned order is passed by a quasi judicial authority, that itself would

not be the criteria to decide that the learned Single Judge of this Court could hear the writ petition under Article 226 or Article 227 of the Constitution

of India unless the impugned order is passed by any judicial or quasi judicial authority empowered to adjudicate under one of those Acts specified in

Rule 18 of Chapter XVII.

12. There is no merit in the submission of the learned senior counsel for the petitioner that in view of sub-Rule 3 of Rule 18 a learned Single Judge of

this Court has jurisdiction to hear the matter arising out of the order passed under the provisions of the Maharashtra Village Panchayats Act. In our

view, rule 3 will have to be read with rule 18, 1st Part which specifies the number of Acts to be read with explanation which makes it clear that a

Single Judge can exercise powers under Article 226 or Article 227 of the Constitution only if the quasi judicial or judicial order is passed under any of the Acts specified under Rule

18 of the Bombay High Court Appellate Side Rules.

13. In view of the fact that the Maharashtra Village Panchayats Act does not fall under any of those specified Acts, these writ petitions impugning

quasi judicial orders passed under Maharashtra Village Panchayats Act pertain to the Division Bench and not Single Judge of this court. The objection

raised by the learned senior counsel for the petitioner is devoid of merits and is accordingly rejected.

14. Insofar as the judgment of this Court in case of Manchak Shahaji Pawar (supra) relied upon by the learned senior counsel for the petitioner is

concerned, a perusal of the said judgment clearly indicates that the said petition was filed impugning the quasi judicial order passed under the

provisions of the Maharashtra Co-operative Societies Act, 1960. It is not in dispute that the said Maharashtra Co-operative Societies Act, 1960 is one

of the Act specified under Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. The said judgment is not even remotely

applicable to the facts of this case. The reliance placed thereon by the learned senior counsel is totally misplaced. We shall now deal with the merits

of the petition.

15. The Nomination Form filed by the respondent no.2 was opposed by the petitioners on the ground that by an order dated 15th May, 2015 passed by

the Divisional Commissioner, Pune, the respondent no.2 was disqualified under section 39(1) of the Maharashtra Village Panchayats Act, 1959. It is

not in dispute that the said order was passed on 15th May, 2015. Our attention is invited to section 14(1) (d) of the Maharashtra Village Panchayats

Act by the learned senior counsel which reads as under :-

Section 14(1) No person shall be a member of a Panchayat, or continue as such, who

(d) has been removed from office under sub-section (1) of section 39 and a period of [six years] has not elapsed from the date of such removal,

unless he has, by an order of the State Government notified in the Official Gazette, been relieved from the disqualification arising on account of such

removal from office; or

16. It is submitted by the learned senior counsel that though the period of (5 years) has been substituted by six years by the Maharashtra Village

Panchayats (Amendment) Act, 2017 by Maharashtra Act No. 54 of 2018 dated 13th August, 2018, the period of six years for the purpose of

computation of period of disqualification under section 14 would apply to the facts of this case. It is submitted that the respondent no.2 cannot be given

benefit of the unamended provisions of five years in view of the respondent no.2 already having been declared disqualified by an order under section

39(1) of the Maharashtra Village Panchayats Act.

17. A perusal of Maharashtra Village Panchayats (Amendment) Act, 2017 by Amendment Act, 54 of 2018 clearly indicates that the said amendment

by which the period of five years has been substituted by six years has been brought into effect with effect from 19th July, 2017. The legislative intent

is thus being clear that the effective date of the said amendment having been brought in force as 19th July, 2017, the period of six years cannot be

read in place of five years with retrospective effect i.e. with effect from the date on which the respondent no.2 was disqualified under section 39(1) of

the Maharashtra Village Panchayats Act, 1959 i.e. 15th May, 2015.

18. In our view, unless the Act itself provides that the amendment would apply with retrospective effect or the legislative intent is clear, the

amendment has to be read with prospective effect. Admittedly in this case five years period was specifically prescribed and was in force prior to the

date of amendment having been brought in force w.e.f. 19th July, 2017. The respondent no.2 has admittedly filed Nomination Form much after expiry

of five years from the date of his incurring disqualification. The period of six years substituting the period of five years would not apply with

retrospective effect. The respondent no.2 is thus not debarred from contesting election to become member of Panchayat on that ground. The

disqualification of the respondent no.2 came to an end within five years w.e.f. 15th May, 2015. In our view, both these writ petitions are devoid of

merits.

19. We, therefore, pass the following order :-

(a) Writ petition is dismissed with cost quantified at Rs.25,000/- in each of writ petition which shall be paid by the petitioner to the respondent no.2

within three days from today.

(b) Ad-interim order passed by this court on 2nd

(c) Learned A.G.P. for the respondent no.1 undertakes to communicate this order to the Election Returning Officer forthwith.

20. The parties to act on the copy of this order duly authenticated by the Sheristedar of this court.