

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3023 OF 2015

Ravindra s/o Baliram Sapkale

Petitioner

Versus

The State of Maharashtra & another

Respondents

Mr.S.B.Bhapkar. advocate for the petitioner
Mrs.M.A.Deshpande, A.G.P. for Respondent No.1.
Mr.G.V.Wani, advocate for Respondent No.2.

WITH
WRIT PETITION NO.3329 OF 2015

Mahendrasingh Hanumansingh Thakur

Petitioner

Versus

The State of Maharashtra & another

Respondents

Mr.S.P.Shah, advocate with Mr.P.B.Gamot, advocate for the petitioner
Mrs.M.A.Deshpande, A.G.P. for Respondents.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 02nd July, 2015

PER COURT:

1 The petitioners are objecting to the order passed by the Collector rejecting proposal tendered in connection with nomination of petitioners as Councillors of the Municipal Council, Bhusawal. The proposal of petitioner in W.P.No.3023 of 2015 has been turned down on the ground that there is no vacancy for the concerned category and in case of petitioner in Writ Petition No.3329 of 2015, the proposal has been turned down on the ground that the concerned petitioner does not fulfill the requirements of being a valid nominee as mentioned in paragraph No.4(g) of Government Notification dated 02.02.2010. It is also recorded in the order that the concerned petitioner is having criminal record and

that there are 18 offences registered against him in Bhusaval Police Station, whereas, one offence is registered at Jalgaon Police Station and out of these 19 offences, six offences are of serious nature.

2 Learned Counsel appearing for petitioners brought to our notice that earlier nominated Councillor namely Jagan Sonwane has been declared as disqualified, whereas, another nominated Councillor Ismail Ahmed Bubkar Memon has tendered his resignation. As such, there are two vacancies from the category mentioned in paragraph no.4(g) of the Government Notification dated 02.02.2010.

3 Section 9 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships) Act, 1965 provides that the Council shall consist of such number of Councillors, not exceeding ten per cent of the total number of elected Councillors or five, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the Collector in such manner as may be prescribed. The manner of nominating the Councillors is provided under the Maharashtra Municipal Councils and Nagar Panchayats (Qualifications and Procedure for Appointment of Nominated Councillors) Rules, 2010. Rule 3 of the Rules provides that subject to the provisions of Rule 4, the Collector shall nominate such number of Councillors, not exceeding ten per cent of the total number of elected Councillors or five, whichever is less, at the first meeting of the Council after the election of the President and Vice President. It is further provided that, while determining the number of nominated Councillors, a fraction of less than one-half shall be ignored and a fraction of one-half or more shall be reckoned as one. This Rule, thus, provides that the nominations of Councillors shall be at the first meeting of the Council after the election of the President and Vice President. There is no prohibition for filling up the vacancy, which may occur during continuance of term of the elected Councillor.

4 The qualifications for nomination are prescribed under Rule 4, which reads thus:

4 Qualification for nomination:- A person shall be eligible for being nominated as a candidate for the office of the nominated Councillors if he has special knowledge or experience in municipal administration and he,-

(a) has been a recognized and registered medical practitioner in the State for a minimum period of five years, or

(b) has been an educationist including retired Professor, Lecturer, Principal, Head-master, etc. of a recognized school or college for a minimum period of five years, or

(c) has been a Chartered Accountant or Cost Accountant for a minimum period of five years, or

(d) possesses a degree in engineering from a recognized University and has professional experience for a minimum period of five years, or

(e) has been an Advocate for a minimum period of five years or is a person possessing degree in Law from a recognized University with an experience in the legal field in the State for a minimum period of five years, or

(f) has experience of working for not less than five years as the Chief Officer of a Municipal Council or as Assistant Commissioner or the Deputy Commissioner or experience of not less than two years as the Commissioner of a Municipal Corporation, and has retired from service, or

(g) has experience of not less than five years as an office bearer of a Non-Government Organization registered under the Bombay Public Trusts Act, 1950 engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.

5 Rule 5 of the Rules provide that in nominating the

Councillors, the Collector shall take into account the relative strength of recognized parties or registered parties or groups, and nominate the members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting leader of each of such parties or groups.

6 In the instant matter, both the petitioners pray that they have experience of not less than five years as office bearers of Non-Government Organization registered under the Bombay Public Trusts Act, engaged in Social Welfare activities working within the area of Bhusaval Municipal Council.

7 It would be open for the Collector to look into the qualifications of the nominees and take appropriate decision as regards their nominations. On perusal of scheme of the Act and Rules, it does appear that the Collector is authorised to nominate the Councillors and the final authority, in that respect, vests with the Collector. Proviso to Rule 5 specifically lays down that nothing contained in this rule shall be construed as preventing the Collector from nominating any member not belonging to any such party or group. It is further provided that every endeavour shall be made to ensure that one Councillor each, possessing any of the qualifications referred to in clauses (a) to (g) of Rule 4, has been nominated. The Collector is expected to take decision independently and on consideration of merit of the individual whose name has been forwarded by the political party. It is normally expected of the Collector to ensure nomination of person best suited to perform the job to assist in administration of Municipal Council. It is also expected of the Collector to ensure that the representation given to an individual fulfills the requirements laid down under Rule 4(a) to (g) and that he bears good moral character. We are sure that the Collector will exercise the powers within the framework of the Rules and take appropriate decision while nominating the Councillors. On receipt of

proposal from concerned political party or parties, the Collector may take further steps for nominating Councillor for remainder term of the Council. The Collector shall take appropriate steps and nominate the Councillors to fill in the vacancies, in observance of procedure prescribed in the Act and Rules, as expeditiously as possible, preferably within four months from today.

8 With the directions as above, both the writ petitions stand disposed of.

P.R.BORA
JUDGE

adb/wp302315

R.M.BORDE
JUDGE