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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4096 OF 2015

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| 1. | Rekha Suresh Patil
Age - 33 years, Occ - Household
R/o Near Suryawanshi Building,
Amalner, Taluka - Amalner
District - Jalgaon | PETITIONER |
| 2. | Lata Bindu Sonwane,
Age - 48 years, Occ - Household
R/o Vaibhav Colony, Tambapura
Amalner, Taluka - Amalner
District - Jalgaon | |
| 3. | Madhukar Rama Chudhari
Age - 55 years, Occ - Agriculture
R/o Vaibhav Colony, Tambapura,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 4. | Mayabai Narendrasingh Pardeshi,
Age - 42 years, Occ - Household
R/o Opp Station Road,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 5. | Kavita Avinash Jadhav
Age - 28 years, Occ - Household
R/o 24-B, Krushi Nagar,
Dheku Road,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 6. | Sahebrao Vasantrao Pawar,
Age - 49 years, Occ - Agriculture
R/o Shrikrishna Nagar,
Mohadikar Plot,
Amalner, Taluka - Amalner
District - Jalgaon | |

7. Swati Pravin Pathak,
Age - 33 years, Occ - Household
R/o Vanita Samaj,
Amalner, Taluka - Amalner
District - Jalgaon
8. Ashabai Vithoba Mahajan,
Age - 42 years, Occ - Household
R/o Maliwada,
Amalner, Taluka - Amalner
District - Jalgaon

VERSUS

- | | |
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| <ol style="list-style-type: none">1. The State of Maharashtra
Through District Collector, Jalgaon
District - Jalgaon2. Jayshri Anil Patil,
Age - 35 years, Occ - Household
R/o Siddhivinayak Colony,
Dhule Road,
Amalner, Taluka - Amalner
District - Jalgaon | <p>RESPONDENTS</p> |
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Mr. V.J.Dixit, Sr.Advocate i/b Mr. S.B.Yawalkar, Adv for petitioners
Mr. S. K. Tambe, AGP for respondent State
Mr. V.D.Hon, Sr. Advocate i/b Mr. A.V.Hon, Advocate for R-2
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 13th AUGUST, 2015

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petition has been moved by the petitioners, who are

original respondents in disqualification petition bearing No.22 of 2014 pending before District Collector, Jalgaon lodged by respondent No.2 herein, who is original petitioner before the collector invoking section 3 (1) (b) of the Maharashtra Local Authority Members Disqualification Act, 1986 (hereinafter referred to as "Disqualification Act").

3. It appears that after receipt of Disqualification Petition a note appeared on record that the petition has been moved by respondent No.2 – original petitioner pursuant to section 3 (1) (b) of the Disqualification Act against present petitioners – original respondents about defiance of directions (whip). Accordingly, date and time is requested to be fixed for hearing.

4. The petitioners – original respondents, upon receipt of notice purportedly objected to the maintainability of the Disqualification Petition alleging want of compliance of Rules and accordingly sought dismissal of the Disqualification Petition, under application dated November 12, 2014. The application, objecting to the Disqualification Petition had been replied by present respondent No.2 – original petitioner. Respondent No.1 – the collector has, under order dated 4th March, 2015, found the application seeking dismissal of the Disqualification Petition for

non compliance as alleged, to be devoid of any substance and as such, dismissed the application of the present petitioners seeking dismissal of the Disqualification Petition.

5. The application filed by present petitioners – original respondents objects to the Disqualification Petition for, according to original respondents, no scrutiny as is required about compliance of Rule 6 of rules namely Maharashtra Local Authority Members Disqualification Rules, 1987 (Hereinafter referred to as “Disqualification Rules”), appears to have taken place pursuant to Rule 7 (1) of the Disqualification Rules and that the note referred to hereinabove, has been put up by a clerk, which is a request cum remark and that the note is not on the application, but on a different paper. Issuance of notice to present petitioners for hearing and submission of documents is in contravention of Rules 7(1), 7(2) and 7(3) of the Disqualification Rules and whether original petitioner can move the petition at all has also not been scrutinized. It is contended that Rules 6 and 7 of the Disqualification Rules are mandatory. It is further contended that there does not appear to be compliance of Rule 6 (2) and mere reference to satisfaction by the original petitioner is not sufficient, since it does not refer to as to how the petitioner is satisfied. No concise statement of material facts,

referable to Rule 6 (3) of the Disqualification Rules appears to have been given and that the petition contains vague statements. Further, the petitioners objected to the petition on the ground that its verification is not in accordance with the prescription under Order VI, Rule 15 of the Civil Procedure Code or under Order XIX, Rule 1 of the Code of Civil Procedure. So is the case in respect of affidavit accompanying the petition as well as verification of documents annexed to the petition. According to the petitioners, since respondent No.1 – the collector, Jalgaon has called upon to answer the main petition, without compliance of aforesaid, it is in contravention of Rule 8 (3) (b) of the Disqualification Rules.

6. While deciding the application submitted by present petitioners, respondent No.1 - the collector, Jalgaon has referred to that on perusal of the petition, his office has found that there is *prima facie* case made out under section 3 (1) (b) of the Disqualification Act against respondents in the petition and thereafter only notices were issued and considering that the notice accordingly has been issued, could not be illegal or in breach of sub rules 7(1), 7 (2) or 7 (3) of the Disqualification Rules. He further referred to that the Disqualification Petition does show that the original petitioner has referred to satisfaction

about existence of reasonable grounds to believe that there arises a question about original respondents having incurred disqualification under the Disqualification Act. Respondent No.1 went on to observe that alleged defect in the verification is a ground upon which dismissal of the petition is uncalled for. He refers to the citations relied upon viz., 2011 (2) SCC 654 and AIR 2011 SC 463 and considered that upon said grounds the petition is not liable to be dismissed. About concise statement of material facts, contended by the original respondents having not been filed, the collector has found that such a concise statement had been tendered on record along with the petition. He also appears to have considered the matters of procedure would not hinder and frustrate the object underlying the Disqualification Act.

7. Mr. V. J. Dixit, learned senior advocate appearing for the petitioners puts a very strong emphasis on the text of Rule 7 (1) of the Disqualification Rules, which reads thus -

“7 Procedure : - (1) On receipt of a petition under Rule 6, the Commissioner or, as the case may be, Collector shall consider whether the petition complies with the requirements laid down in that rule.”

8. Mr. Dixit submits that Rule 7 (1) is mandatory in nature and the record does not show compliance of the same. He

submits that the note as is appearing on record is not by respondent No.1 the collector, Jalgaon, and is not upon application of mind by respondent No.1, but by some other officer, which is in the nature of a request cum remark. It does not at all reflect application of mind to the compliance of requirements under Rule 6 of the Disqualification Rules. He further contends that respondent No.1 has not considered at all that verifications of the petition, its affidavit as also the documents annexed to the petition are not in accordance with verification of pleadings as required under sub rule (4) of Rule 6 of the Disqualification Rules, namely in accordance with requirements of Rule 15 of Order VI of the Civil Procedure Code. He submits that the verifications of the petition and the affidavit are very cursory and that those of the documents appearing as annexures do not at all refer to whether those are being verified upon the knowledge of the original petitioner or upon information received and believed to be true and / or its source. Having regard to the purpose underlying the Rules, such a compliance is strictly required and objection in respect of the same cannot be given just an askance look, saying that it is a procedural matter, as consideration of material without proper verification may have serious repercussions on the petitioners –

original respondents in the proceedings, which have been moved to unseat the persons who are democratically elected. He submits that time and again this High Court as well as the Supreme Court have considered that Rules are mandatory in nature. According to learned senior advocate, the petition cannot be said to contain material facts and those cannot be said to have been pleaded. In the circumstances, the application moved for dismissal of the disqualification petition by the present petitioners ought to have been considered with reference to the objections, contentions and allegations made. The facts, circumstances and events along with aforesaid would entail dismissal of disqualification petition.

9. Mr. Dixit, learned senior advocate further contends that the impugned order stands vitiated for non consideration of various grounds raised in the application. He contends that it ought to have been considered that the petition is incomplete for want of proper verification, required in accordance with specific rules. The notice issued to the present petitioners was by a mechanical process, without giving even a cursory look to the matter. There is no application of mind to aspects as required pursuant to Disqualification Rules. According to learned senior advocate, verifications are stereo type and without taking into account that

it was incumbent upon original petitioner to disclose source of information, authenticity of documents and belief and basis for the same. There is stark lack of these requirements in the verification. According to Mr. Dixit, filing of concise statement of material facts is not an empty formality. Material facts have not been pleaded by original petitioner nor concise statement of material facts has been appended to the petition. These facets although specifically pleaded have not been looked into properly by respondent No.1 – the collector, Jalgaon. Respondent No.1 has not referred to material facts about municipal party, its rules and its leader, consequently rendering the petition devoid of cause of action and as such, it is liable to be dismissed at the threshold. (This last particular point is being taken up in the writ petition for the first time and does not have any reference in the application filed for dismissal of the Disqualification Petition before respondent No.1 - collector).

10. According to Mr. Dixit, respondent No.1 – the collector, Jalgaon has not considered Rules, 6 (4), 7 (1), (2) (3) and 8 (3) of the Disqualification Rules and the case laws cited by present petitioners. He, therefore, submits that the Disqualification Petition filed by original petitioner – present respondent No.2 deserves to be dismissed.

11. Mr. Hon, learned senior advocate appearing for respondent No.2, however, contends that the present writ petition has been moved with an oblique intention to delay proceedings of Disqualification Petition bearing No.22 of 2014 filed against present petitioners. It is submitted that there is no substance in any of the contentions and allegations by the petitioners in this writ petition as well as in the application for dismissal of the Disqualification Petition. He submits that the Disqualification Petition has been filed in accordance with relevant rules and complying with the requirements of the Disqualification Rules. In the Disqualification Petition material facts and events have been stated and pleaded and there is specific reference to satisfaction of the original petitioner that there are reasonable grounds to believe that question has arisen about original respondents No.1 to 8 – present petitioners having incurred disqualification under the provisions of section 3 (1) (b) of the Disqualification Act. It refers to various aspects about formation of *Aghadi* then its registration, original petitioner being chosen / authorized as leader of the *Aghadi* as also about direction being issued to vote in favour of the candidate Sanjiv Kautik Patil to the post of Vice President, its service on the present petitioners through various modes including paper publication, yet the petitioners went on to

flout and defy the directions incurring disqualification under the provisions of the Disqualification Act, particularly under section 3 (1) (b) of the same. The facts are so glaring and have been specifically pleaded and referred to in the petition. More than sufficient material has been referred to and has been adduced along with the Disqualification Petition. The allegations about the petition being devoid of any material are vacuous, avoiding reference to material pleaded. The petition has been filed in accordance with Rules, particularly rules 6 and 7 of the Disqualification Rules, compliance of which is casually sought to be questioned. Pursuant to Rule 6 (1) of the Disqualification rules, the original petitioner – respondent No.2 herein who is a councillor, has moved petition seeking disqualification of present petitioners and that the petition is in writing and the same is to respondent No.1 – the collector, Jalgaon, being in relation to municipal council, Amalner. Before lodging the petition, the original petitioner has satisfied himself about that there are reasonable grounds for believing that a question has arisen about petitioners having become subject of disqualification. The petition contains concise statement of material facts on which the petitioner relies and is accompanied by documentary evidence on which the petitioner has relied upon and complies

with other requirement pursuant to rule 6 (3) of the Disqualification Rules. The disqualification petition has been signed by the original petitioner and verified and it cannot be said that the original petition / affidavit or for that matter accompaniments of the same are not verified.

12. Mr. Hon, learned senior advocate further submits that respondent No.1 having considered that it cannot be said that the disqualification petition is not in compliance of Rule 6 of the Disqualification Rules, has no occasion to invoke power under sub rule (2) of Rule 7 of the Disqualification Rules and accordingly had proceeded with the matter. According to him, it is absolutely not necessary that satisfaction is required to be recorded and once the petition discloses *prima facie* compliance of Rule 6 of the Disqualification Rules, respondent No.1 – the collector is obligated to and accordingly has proceeded with the proceedings and as such, no fault can be found with the same. He submits that whole exercise of the present petitioners is only a hairsplitting one in order to bide time and lengthen life of litigation and to continue to enjoy posts of councillors, when they indeed stand disqualified under the provisions of the Disqualification Act. He, therefore, submits that objections before respondent No.1 – the collector in the application for

dismissal of the Disqualification Petition and present petition as well, are absolutely frivolous and shall not be given any regard to at all.

13. Mr. Dixit, learned senior advocate for the petitioners, in order to buttress his submissions, refers to a decision dated 28/30 June, 2005 reported in *2005 (Supp) Bom. C R 758 "Hariharrao Vishwanathrao Bhosikar V. Datta Anandro Pawar"* in writ petition No. 3962 of 2005 and companion writ petitions and submits that it has been held in said judgment that the Rules are mandatory and those are required to be followed rather scrupulously as observed by the Court in paragraph No.33 of the Judgment. In the context of facts of that case, it has been observed by the Hon'ble Single Judge that in his opinion, issuance of notice by the collector to the other side when the petitions do not comply with the mandatory requirements of rule 6 of the Disqualification Rules is an indication of non application of mind by the collector and accordingly, the Hon'ble single judge had allowed the petitions. Observations of the Hon'ble Single Judge, however, appear to be occurring with emphasis on facts and circumstances involved in those petitions.

14. Learned senior advocate Mr. Dixit, for the petitioners, for

the same purpose also relies on yet another decision rendered by Hon'ble Single Judge of this Court reported in 2003 (4) Bom C R 672 "*Mirza Kadir Bain Rasul Baig V. District Collector and Others*". In said case, it is observed that procedure is required to be followed by the collector, since it is mandatory and the collector cannot straightaway proceed to issue summons or notice to the respondents, unless he considers all the aspects about requirements. Accordingly, it was considered that the collector had not applied mind to the compliance of requirements laid down under Rule 6 of the Disqualification Rules.

15. He places reliance on a decision reported in 2001 (1) Mh.L.J. (SC) 312 "*Sadashiv H. Patil V. Vithal D. Teke*". He points out paragraphs No.13 and 14 from said judgment of the Supreme Court submitting that rigorous compliance of the Act and Rules must be shown to have taken place while dealing with the reference to section 7 of the Act. These observations have been referred to in the judgment of Hon'ble single judge, referred to hereinabove earlier.

16. Mr. Dixit refers to AIR 1970 SC 652 "*A. K. K. Nambiar V. Union of India*" pointing out the purpose underlying the proper verification of affidavit. Relying on head note "B", he submits that the

importance of verification cannot be undermined by whisking away the same by saying that it is only a procedural compliance.

Head note “B” reads thus -

“(B) Civil P.C. (5 of 1908), O.19, R-1 – Affidavit – Verification of – Necessity – Affidavits not properly verified cannot be admitted in evidence. The reason for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegation may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In absence of proper verification, affidavits cannot be admitted in evidence”

17. He further refers to 2002 (4) ALL MR 100 “Nagorao Baburao Gaikwad V. State of Maharashtra” to emphasize importance of proper verification. Mr. Dixit, however, is strained as to why Rule 8 (3) of the Disqualification Rules is being referred to which does not ostensibly at this stage appear to have any application.

18. Learned senior advocate Mr. Dixit further, fairly refers to a decision reported in AIR 2011 SC 463 “Kedar S. Deshpande V. Bhor Municipal Council” wherein the Supreme Court has considered that a defect in verification is curable and provisions of Rule 6 (3) and 6 (4) of the Rules are directory and failure to verify annexures to

the petition would not vitiate the proceedings. In said judgment the Supreme Court has observed thus -

*“7. A bare reading of the above quoted provisions makes it abundantly clear that these provisions are directory in nature and defect in verification of the petition is curable. The requirement of Rule 6(3) and 6(4) of the Rules is that the petition shall contain a concise statement of material facts on which the petitioner relies and it shall be accompanied by copies of the documentary evidence if any on which the petitioner relies. If the petitioner relies on any information furnished to him by any person, the statement containing names and addresses of such person and existence of such information as furnished by such person as well as any annexure thereto signed by the petitioner and verified in the manner laid down in the Code of Civil procedure for verification of the pleadings is to be incorporated. **Further, the defect in verification does not affect the jurisdiction of the Collector to entertain and decide a disqualification petition.***

11. *In the case of Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and Others (2004) 8 SCC 747, while interpreting the provisions of Schedule X of the Constitution, in a petition involving the issue of disqualification of a Member of Legislative Council belonging to the Indian National Congress under the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994, this Court has considered the question whether infraction of those Rules would render the entire proceedings initiated by the Chairman invalid or without jurisdiction. After examining the scheme of the Rules, this Court has held that the Rules being in the domain of the procedure are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. It is, further, held by this Court that being subordinate legislation, the rules cannot make any provision which may have the*

effect of curtailing the content and scope of substantive provisions of the Act. It is also held in the said decision that the provisions of Rules 6 and 7 of the Rules of 1994 are only directory in nature and on non-filing of an affidavit as required under sub-rule 4 and order VI, Rule 15 CPC, the disqualification petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis would be adversely affected or rendered bad in any manner. It may be mentioned that the Maharashtra Local Authority Members (Disqualification Rules) 1987 are pari-materia with the Bihar Legislative Council (Disqualification on the Ground of defection) Rules 1994 and, therefore, the principles laid down in the abovequoted decision would be applicable with all force to the interpretation to be placed on the Rules of 1987. In the above quoted decision this Court has gone to the extent of saying that there is no lis between the person moving the petition and the member of the House who is alleged to have incurred disqualification. According to this Court it is not an adversarial kind of litigation and, therefore, even if the petitioner withdraws the petition it will not make a difference as the duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provisions. This Court has held that the provisions of Xth Schedule of the Constitution read with Articles 102(2) and 191(2) operate on their own and the only purpose of the petition is to bring the relevant information about disqualification to the notice of the Chairman. In the present case also Section 7 lays down that the Collector has to decide the question of disqualification on a reference made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3 (1) (a) and 3 (1) (b) operate on their own force and moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the

disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law.”

19. Mr. Hon, learned senior advocate submits that having regard to the decision being fairly referred to by Mr. Dixit the present petition has been reduced to frivolity and deserves to be dismissed. If at all respondent No.1 feels that there is non compliance of the procedural aspects, the original petitioner deserves and is entitled to remove irregularities or defects, if any, including those in verifications.

20. Mr. Dixit, learned senior advocate, however, places a very heavy reliance on the observations made by Hon'ble single judge of this court in 2012 (5) ALL MR 28 “Fazalur Rehman Gulam Nabi V. Raziya Begum Sayyed Natiquiddin” The Hon'ble single judge in said judgment has observed in paragraphs No. 9, 10, 13, 14, 15 and 16 thus -

“9. Sub-rule (1) of Rule 7 of the said Rules requires the Collector to consider whether the petition complies with the requirements laid down in Rule 6 of the said Rules. If the Collector is not satisfied with the compliance of Rule 6, then sub-rule (2) of Rule 7 of the said Rules requires the Collector to dismiss the petition. If the Collector finds that the petition complies with the requirements of Rule 6, then under sub-rule (3) of Rule 7 of the said Rules he has to forward the copies of the

petition and annexures thereto to the Councillor in respect of whom the petition has been made.

10. *Sub-rule (1) of Rule 7 of the said Rules states that on receipt of a petition under Rule 6, the Collector shall consider whether the petition complies with the requirements of Rule 6. It uses the word 'shall' so as to indicate the mandatory nature of duty cast upon the Collector. The object of introducing of sub-rule (1) of Rule 7 is to find out whether the copies of the petition and of annexures thereto are required to be forwarded to the Councillor in respect of whom the petition is made. It requires the Collector to conclude the process of adjudication to some extent and to crystallize the controversy as a part of decision-making process. In the process of adjudication, the Collector has to find out as to what are the actual defects and deficiencies in complying with the requirements of Rule 6 of the said Rules. If the defects or deficiencies found are only of a formal or technical nature then the Collector may issue appropriate directions to the petitioner to cure or rectify such defects or deficiencies so that the other side is also given an opportunity to meet the case and the enquiry is not frustrated or obstructed by introduction of technicalities. While issuing such directions, the Collector may stipulate the time-limit within which such defects or deficiencies are to be cured or rectified and the consequence of failure to cure or rectify the defects or deficiencies within stipulated time. therefore, mandatory. The provision of sub-rule (i) of Rule 7 is, The question No.(i) is answered accordingly.*

13. *I am not required in the present petition to decide the question as to whether the provision of sub-rule (2) of Rule 7 to dismiss the petition for non-compliance of Rule 6 of the said Rules is mandatory or directory, because there is no adjudication by the Collector as to what are the defects or deficiencies in complying with the requirements of Rule 6 of the said Rules. No doubt, it is true that the Apex Court has held in its decision in the case of Kedar Shashikant Deshpande, cited supra, that*

the defect in the verification is curable and the provisions of sub-rules (3) and (4) of Rule 6 of the said Rules are not mandatory but directory in nature. The reason assigned is that such defect does not affect the jurisdiction of the Collector to entertain and decide the disqualification petition. However, the question as to whether the petition can be dismissed under sub-rule (2) of Rule 7 of the said Rules if it is found by the Collector that the defect or deficiency in the petition is of a substantial so as to affect the jurisdiction of the Collector to entertain and decide the disqualification petition, needs to be gone into by the Collector. The Collector can neither avoid adjudication on compliance of Rule 6 nor can he defer the decision on it on the ground that the requirement of dismissal of the petition under sub-rule (2) of Rule 7 of the said Rules is not mandatory. The Collector is bound to carry out the exercise to attain the object of introducing sub-rule (1) of Rule 7, as stated in para 10.

14. *Even if the Collector forwards the copies of the petition and annexures thereto under sub-rule (3) of Rule 7 of the said Rules in breach of the requirement of sub-rule (1) of Rule 7, that will not prevent the other side, upon receipt of the petition to file an application bringing to the notice of the Collector the defects or deficiencies in complying with the requirements of Rule 6 of the said Rules. When such application is made before the Collector, the Collector is bound to perform or discharge his statutory duty or obligation under sub-rule (1) of Rule 7 to decide whether the petition complies with the requirements of Rule 6 of the said Rules.*

15. *Now, coming to question No.(ii), the mode and manner in which compliance of Rule 6 is required to be seen, in order to see whether there is a compliance of sub-rules (1) and (2) of Rule 6 of the said Rules, the Collector has to go through the contents of the petition and the*

documents annexed thereto. The finding is required to be recorded that the petition is presented by the Councillor competent to file it and that the petitioner has reasonable grounds for believing that the question has arisen as to whether such Councillor has become subject to disqualification, as alleged. When the petition claims disqualification on the ground under clause (b) of sub-section (1) of Section 3 of the said Act, the Collector has to record the finding in terms of clause (a) of sub-rule (1) of Rule 6 of the said Rules as to what are the material facts giving rise to a cause of action to file a petition seeking disqualification under clause (a) of sub-section (1) of Section 3 of the said act. Thereafter he has to find out whether such material facts are pleaded in the petition.

16. So far as the question of non-compliance of clause (b) of sub-rule (3) of Rule 6 of the said Rules is concerned, the Collector has to record the finding as to whether the petition is accompanied by the copies of the documentary evidence, if any, on which the petitioner relies. He has also to record the finding as to the facts, which are pleaded on the basis of the information furnished to him by any person to find out whether the petition contains a statement giving the names and addresses of such person and the gist of such information, as furnished by each such person. Lastly, in order to find out the compliance of sub-rule (4) of Rule 6 of the said Rules, the Collector has to state the mode and manner in which the verification of pleadings and annextures is required to be done under the Civil Procedure Code. He has to go through the petition and the annextures furnished to record the finding as to whether the petition is signed by the petitioner and is verified in the manner laid down in the Code of Civil Procedure for the verification of the pleadings.”

21. He submits that having regard to overall bearing of the decision, for non compliance of the same, the writ petition

deserves to be allowed and the impugned order deserves to be set aside entailing dismissal of the Disqualification Petition filed by original petitioner – respondent No.2.

22. According to learned senior advocate appearing for the petitioners, the record, which had been brought before this court does not depict at all application of mind by respondent No.1 - the collector to the compliances as are required under Rule 6 of the Disqualification Rules. Cursorily a note has been put up and accordingly notices have been issued. It is contended that having regard to the decision of Hon'ble Single Judge in *Fazalur Rehman's Case (supra)*, it cannot be said in the present case that there was such an application of mind by respondent No.1 having not depicted on record.

23. Mr. Hon, learned senior advocate on the other hand, submits that while notices were being issued referring to the presentation of election petition, it is implicit that the petition is in compliance of and in adherence to the rules and it should not and it cannot be considered that there is no compliance. He submits that even otherwise objection being taken to the maintainability of the Disqualification Petition and its dismissal under the application filed for said purpose by the present

petitioners are vacuous and devoid of any substance.

24. According to original petitioner - Respondent No.2 herein, she has referred to various facts, events, circumstances and facets in the petition and that she is satisfied that there are reasonable grounds to believe that original respondents No.1 to 8 – present writ petitioners have incurred disqualification under the provisions of section 3 (1) (b) of the Disqualification Act. According to her, she had filed the petition in adherence to and in compliance of requirements under Disqualification Rules

25. However, having regard to decision of Hon'ble Single Judge in *Fazalur Rehman's case (supra)*, since the record does not adequately depict consideration of compliance of requirements under the Disqualification Rules, it would be appropriate that the petition be remitted to respondent No.1 – the collector. Hence following order.

ORDER

- I. Writ petition is partly allowed. Order of collector, Jalgaon dated 4th March, 2015 is set aside. The matter is remitted for re-consideration in order to reflect upon compliances of rules having regard to considerations

which have weighed under the judgment reported in 2012 (5) ALL MR 28 "*Fazalur Rehman Gulam Nabi V. Raziya Begam Sayyed Natiquiddin Khatib & Ors*".

- II. Rectifiable defects be directed to be removed in right earnest.
- III. In case respondent No.1, the collector, Jalgaon decides to proceed with, the proceedings be decided as expeditiously as possible, preferably within a period of four months from the date of receipt of writ of this order.
- IV. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]