

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5312 OF 2015

1. Ujjawala W/o Laxmikant Padamwar,
Age: 43 years, Occu.: Household,
R/o: Shardanagar, Degloor,
Taluka Degloor, Dist. Nanded.

2. Laxmikant S/o Digambar Padamwar,
Age : 45 years, Occ.: Business,
R/o as above.

...PETITIONERS

versus

1. The State of Maharashtra
Through the Secretary,
Urban Development Department
M.S. Mantralaya, Mumbai -32

2. The Collector, Nanded

3. Moglaji S/o Iranna Shirshetwar,
Age: 41 years, Occ.: Agriculture and
Business, R/o Bandgalli, Degloor,
Tallka Degloor, District: Nanded.

4. The Degloor Municipal Council,
Degloor, through its Chief Officer,
District Nanded.

...RESPONDENTS

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Mr. R.S. Deshmukh, Advocate for Petitioners
Mr. S.K. Tambe, A.G.P. for respondents No. 1 and 2
Respondent No. 3 served - Absent.
Mr. G.A. Kulkarni, Advocate holding for
Mr. Amol R. Joshi, Advocate for respondent No. 4

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 25th AUGUST, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the learned counsel
for parties finally, with consent.

2. Despite service, original petitioner in disqualification petition – respondent No. 3 herein has not put in appearance.

3. Petition purports to take exception to an order dated 20th April, 2015 passed by Collector, Nanded, upon application filed by the present petitioners, who are original respondents No. 1 and 3 before the Collector refusing to frame preliminary issue about tenability of petition under section 44 (1) (e) of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965 (hereinafter referred to as “ MMC Act ”).

4. The facts, which emerge after hearing the learned counsel are, petitioner No. 1 was elected as councilor in the elections to Municipal Council, Degloor for the term 2011-2016. After his election as councilor, pursuant to relevant provisions he is elected as President for second half term. Original applicant-respondent No. 3- herein, being voter moved disqualification petition against present petitioner No. 1 bearing No. 7 of 2014, before the District Collector, Nanded, alleging that the petitioners are guilty of carrying out certain construction which is unauthorized referable to section 41 (1) (e) of aforesaid enactment. Petitioners purportedly objected to the tenability of the petition with reference to section 55A of MMC Act.

5. It would be worthwhile to refer to Section 44 (1) (e) and section 55A of the MMC Act read as under :-

“ 44. *Disqualification of Councillor during his term of office*

(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he-

(a)

(b)

(c)

(d)

[(e) has constructed or construct by himself, his spouse or his dependent, any illegal or unauthorized structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councilor in, carrying out such illegal or unauthorized construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorized structure]

and he shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant:

55A. Removal of President and Vice-President by Government-

Without prejudice to the provisions of section [55-1A] and 55, a Resident or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for

neglect of or incapacity to perform, his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President as the case may be, during the remainder of the term of office of the Councillors:

Provided that, no such President or Vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation. ”

6. Aforesaid objections by petitioners to tenability of disqualification proceedings, were countered by reported decision of this court in the case of *Sagar Anandrao Chalake and other Vs. Ilahi Adam Kalavant and others* reported in 2011(3) MhL J. 552 wherein the court appears to have ruled that simultaneous consideration of objection and the merit would be possible by the authority.

7. The Collector while passing order had taken into account the development with regard to amendment in relevant provisions, particularly, section 55A of MMC Act as was then subsisting. Amended provisions of section 51A-(1) of MMC Act reads thus:-

“ 51A. Election of Vice-President

(1) Every Council shall have a Vice-President, who shall be elected by the elected councillors from amongst themselves [in the special meeting convened under sub-section (2) of Section 51] .”

8. Thus, it appears to have been considered by the Collector and quite rightly so since Section 51 (1) context goes as under:-

“ Election of President (1) “Subject to provisions of Section 51-1A every council shall have a President who shall be elected by the elected Councilors from amongst themselves .”

9. It is, thus, apparent that before being elected as President a person has to be Councillor and section 44 refers to disqualification of Councillor. Corollary is, unless person is elected as councilor, he cannot be elected as President from among elected Councillors. The proceedings initiated by present respondent No. 3 appears to be against petitioner No. 1's councillorship.

10. In view of this position, I do not think that petition carries any merit. Writ Petition, as such, stands dismissed. Rule stands discharged.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK