

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

WRIT PETITION NO.6205 OF 2014

Ansari Akil Ahmed Mohammad Sadik,
Age: 45 years, Occ: Councilor,
R/o. Ansar Chowk, Valipura,
Dhule, Tq. & Dist. Dhule.

...Petitioner

versus

1. The Commissioner,
Dhule Municipal Corporation,
Dhule.
2. Munaf Shaikh Abdul Raheman,
Age: 45 years, Occ: Business,
R/o. Shahid Abdul Hamid Nagar,
80 Feet Road, Dhule,
Tq. & Dist. Dhule.

...Respondents

.....

Mr. C.R. Deshpande, Advocate for petitioner
Mr. A.S. Sawant, Advocate for respondent No. 1
Mr. M.S. Sonawane, Advocate for respondent No. 2

.....

WITH

WRIT PETITION NO.6215 OF 2014

Ansari Akil Ahmed Mohammad Sadik,
Age: 45 years, Occ: Councilor,
R/o. Ansar Chowk, Valipura,
Dhule, Tq. & Dist. Dhule.

...Petitioner

versus

1. The Commissioner,
Dhule Municipal Corporation,
Dhule.
2. Ansari Bashir Ahmed Rajjak,
Age: 55 years, Occ: Business,
R/o. Tasha Galli, Dhule,
Tq. & Dist. Dhule.

...Respondents

.....
Mr. C.R. Deshpande, Advocate for petitioner
Mr. A.S. Sawant, Advocate for respondent No. 1
Mr. Afzal H.M. Vakil, Advocate for respondent No. 2
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CORAM : N.W. SAMBRE, J.

DATE : 8th DECEMBER, 2015

ORAL ORDER :

Section 10 of the Bombay Provincial Municipal Corporations Act, 1949 contemplates disqualification of Councillors, who are having more than two issues. As such, proceedings were initiated against the petitioners before the Commissioner, Municipal Corporation, Dhule. The Commissioner recorded findings that sufficient material is available on record as regards filing of incorrect declaration/affidavit by the petitioners at the time of filing of nomination paper and pursuant to the Circular of the State Election Commission dated 11/08/2005 referred the matter for registration of F.I.R. against the petitioners.

2. While relying upon the judgment of this Court in the matter of ***Sajida Nihal Ahmed vs. State of Maharashtra*** reported in ***2005 Mh.L.J. 87*** and the judgment of Apex Court in the matter of ***R.S.D.V. Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd.***, reported in ***A.I.R. 1993 SC 2094***, learned Counsel for the

petitioners would urge that the petitioners were never put to the notice of likelihood of initiation of criminal action against them for filing of incorrect declaration/affidavit along with nomination form. According to him, had it been the case, he would be in a position to defend the said action and order passed by the Commissioner exceeded the jurisdiction. According to him, once it is noticed that there is no case made out against the petitioners on merit as regards disqualification or making of reference, the Commissioner ought not to have observe about criminal angle of the matter.

3. The claim is opposed by respondents on the ground that before registration of the F.I.R. against accused or taking up criminal action, statute does not provide that such proposed accused should be put to the notice. According to him, the petitions are liable to be dismissed.

4. Having considered the rival submissions of the parties, it is required to be noted that the Commissioner having *prima facie* satisfied that there exist case as regards filing of false affidavit, has formed opinion about registration of F.I.R. and has made observations to that effect. At this juncture, Section 154 of the Code of Criminal Procedure is required to be taken note of, which does not contemplate opportunity of hearing or notice to proposed accused.

5. Even if the original proceedings were taken to be without jurisdiction pertaining to disqualification, however, it is always open for the authority to form an opinion about criminal act of the party and order appropriate action of lodging F.I.R.

6. In view of above, in my opinion, no case for interference is made out. Both the writ petitions fail, stand dismissed.

7. At the request of learned Counsel for the petitioner, interim relief granted earlier is continued for period of six weeks from today.

[N.W. SAMBRE, J.]