

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 8760 OF 2015

Makrand alias Nandu s/o Shursen
Raje Nimbalkar, Age 43 years,
occup. Business, r/o Sneha Vikas
Society, Anand Nagar, Osmanabad,
Taluka and District Osmanabad.

... Petitioner/
Original
Respondent

versus

01. The State of Maharashtra
through the Secretary,
Department of Urban Development,
M. S. Mantralaya, Mumbai

02. The Hon'ble Minister,
Ministry of Urban Development,
M. S. Mantralaya, Mumbai

03. The District Collector,
District Osmanabad

..... Respondents/
Respondent
Nos.1 to 3 are
Statutory
Authorities
and Resp.No.
4 is the Orig.
Complainant

04. Udaysingh s/o Prakashrao Nimbalkar,
Age major, occup. business,
R/o Anand Nagar, Taluka and
District Osmanabad.

Mr. Rajendrraa S. Deshmukkh, Advocate for petitioner
Mr. S.K.Tambe, Asstt. Govt. Pleader for respondents no. 1 to 3
Mr. S.G. Chapalgaonkar, Advocate for respondent no. 4

CORAM : SUNIL P. DESHMUKH, J.
27TH AUGUST, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the parties
finally, by consent.

2. The petitioner takes exception to order received under letter dated 17-8-2015 annexed as Exhibit-P (pages 140-142) passed by Respondent No.2-Honourable Minister, Urban Development in proceedings under Section 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (" The MC Act "), disqualifying the petitioner - the then Vice President, Municipal Council, Osmanabad.

3. The sum and substance of grievance of the petitioner appears to be that the impugned order, purportedly passed by respondent no. 2 in the proceedings which were initiated at the instance of present respondent no. 4, erroneously holds disqualification having been incurred by present petitioner on account of alleged infraction of section 44, particularly clause (e) of sub-section (1) of the MC Act read with section 55B, for, completion certificate granted in favour of his father was with the influence of his position as vice president of the municipal council construction being of an area more than permissible which is a misuse.

4. The disqualification ostensibly appears to be for an act claimed to have been committed by petitioner during the term

of municipal council for the period 2006-2011. It appears that subsequent elections have also been held and presently petitioner has been elected as president. The act for which disqualification of the petitioner has been sought is alleged to be during his tenure as vice president and while completion certificate had been granted to his father, petitioner was in charge president. Initially, the proceedings were being pursued under section 44 of the MC Act before Respondent No. 3 – Collector, Osmanabad, however, after a while, when the proceedings appear to have reached certain stage, it is being alleged by other side, that when the petitioner sensed the conduct of proceedings before Respondent No. 3 is not likely to be favourable to him, upon his insistence the transfer of proceedings was arranged for before the government.

5. After some intervening period, a show cause notice came to be issued to petitioner on 26-06-2012 by respondents no. 1 and 2 claiming the same to be under section 55-B of the MC Act. It appears that said notice was the subject-matter of challenge before this court in writ petition no.8028 of 2012 which failed and under order dated 01-10-2012 in said writ petition, the petitioner was directed to appear before authorities observing that he may file reply to the notice.

Certain events have also later occurred. Some dates before the authorities intervened.

6. While the petitioner staked claim to the post of president of the municipal council during 2015, a writ petition by third person came to be moved before this court, bearing number 2827 of 2015, challenging petitioner's nomination, pointing out pendency of aforesaid proceedings against him before respondents no. 1 and 2. In said writ petition, Hon'ble single judge by order dated 10-03-2015, had directed disposal of said disqualification proceedings within a specified period. It appears that, a number of applications were moved by petitioner. On 16-04-2015, applications making request for supply of certain material/documents were submitted. On 06-05-2015 also, it appears, two applications were moved which are annexed to present petition [pages 114 and 119]. Later, petitioner also purportedly moved authorities on 25-06-2015 and 26-6-2015 as well, for supply of copies since, according to him, he sensed that some activity detrimental to his interest is likely to take place.

7. According to learned counsel for petitioner, although aforesaid applications have been moved, there has been no response whatsoever. [*Albeit, learned Assistant Government*

Pleader Mr. Tambe for respondents No. 1 to 3 and learned counsel for respondent no. 4 Mr. Chapalgaonkar say that this is a calculated move since applications have been submitted in the inward section rather than to the authorities directly.]

8. *Mr. Deshmukkh* contends that the impugned order even otherwise is unsustainable since it depicts that the matter was heard on 06-05-2015, albeit, he has reservation about correctness of said aspect, as, according to him, the matter was not at all heard on 06-05-2015 and the order is passed only on 17-08-2015 long way down, after three months. He, therefore, submits that the order is unsustainable having regard to the position emerging from various decisions of the supreme court pointing out that a decision rendered after long lapse after hearing the same is vulnerable to attack on the ground of it being belated. *Mr. Deshmukkh* for petitioner, additionally contends that the family, his father and children viz; petitioner and others had been separated and the properties were partitioned long before construction permission had been sought by the father. For said purpose, he purports to rely on certain documents. He submits that the impugned order does not reflect any consideration on aforesaid aspects involved in the matter. *Mr. Deshmukkh* supports his submissions

by placing reliance on judgment in writ petition No. 3942 of 2012 (Ganesh Arun Chavan vs. State of Maharashtra), reported in 2013 (5) Bom.C.R. 297, delivered on 24-09-2012. According to learned counsel, facts of the present matter are squarely covered by said decision. He, therefore urges to set aside the impugned order and makes alternative submission that the matter may be sent back for reconsideration before the authority.

9. It is the contention of learned counsel for the petitioner that in the first place, the petitioner has not been granted opportunity to defend his case and secondly, " 'father's " acts cannot be said to be covered by circumstances referable to section 44(1)(e) of the MC Act. For any act of the father, his son would not be responsible and would not incur disqualification and that is not at all envisaged under said provisions. The impugned order not only is bad for breach of noble principles of natural justice, but it also does not deal with the merits of the case and the defence of the petitioner at all and much less does not consider that the provisions would not apply in the facts of the present case. Father was never dependent on petitioner and that the property has not come to the share of petitioner nor it is owned by petitioner.

10. Mr. Chapalgaonkar, learned counsel for respondent no. 4 sights the matter from a very different angle. He submits that the petitioner hitherto had been well nigh successful in dodging the matter and delaying consequences emerging from its decision and staving off his disqualification referable to section 44(1) (e) read with section 55B of the MC Act. He submits that non receipt of relevant documents is a plea and a stooge only to save the skin, for, there is no substance in the same, such wisdom being dawned on the petitioner for the first time in 2015, after show cause notice had been received by him in June, 2012. He purports to point out that till April, 2015, it was not case of the petitioner at all that he has not been furnished with requisite documents along with show cause notice. He submits that the petitioner had been employing strategic *modus operandi* to avoid early final decision in the matter, making imputations against the authorities and purports not to have confidence in the authorities. In the first place, it was Respondent No.3 and now are Respondents no. 1 and 2.

11. Mr. Chapalgaonkar submits that separation and partition among the family members is an event after complaint is lodged which is easily discernible from the documents sought

to be relied on. He submits that unauthorized/illegal construction was at the behest of the petitioner can easily be gathered, for, in the first instance, the construction permission which was granted was misused and excess construction was illegally and unauthorizedly carried out for which initially completion certificate could not be obtained, however, the same came to be issued promptly while the petitioner had been in charge president and officer concerned had been in charge officer since the regular officer had been away on leave. All these relevant aspects have been taken note of in the report by respondent no.3 to respondents no. 1 and 2 with reference to which decision appears to have been taken. He, therefore, submits that the decision has been rightly taken and no cognizance of the submissions by petitioner of non receipt of the documents be taken, for, there have been various proceedings hitherto in which the petitioner must have received the requisite documents.

12. Learned Assistant Government Pleader Mr. Tambe for respondents no. 1 to 3 justifies the impugned decision pointing out various proceedings which have taken place and submits that petitioner is avoiding consequences of illegalities committed by him which have emerged and are on record.

13. After hearing learned counsel on either side, a specific query had been made about purported supply of documents along with show cause notice to petitioner by respondents no. 1 and 2. None of the parties are unequivocal about the same. It further appears that various applications have been made from April, 2015 to June, 2015 by petitioner which do not find place or even there is no reference to the same in the impugned order.

14. Perusal of the impugned order further depicts that the same has been passed with reference to the report submitted by the Respondent no.3-Collector when the matter was called by respondents no.1 and 2. It further refers to that petitioner has not defended his case upon the allegations in show cause notice to him by filing any reply or material in rebuttal.

15. It is to be noted that all along petitioner has been contending that despite making various attempts, letting his throat run dry demanding documents, no supply has been made particularly when the applications seeking the same are on record depicting acknowledgment of the same by the concerned office. Even otherwise, if the matter is considered to have been heard on 06-05-2015, yet decision has been

communicated more than two months period thereafter on 17-08-2015. Impugned order does not depict that it is in accordance with the provisions of section 55B. I, therefore, deem it expedient that the petitioner should have an opportunity of being heard in the matter, in the sense that, noble principles of natural justice in the true meaning and context are observed, as it is often said that justice should not only be done but, should also appear to have been done.

16. As such, the impugned order passed by respondent no. 2 issued under communication dated 17-08-2015 is set aside and writ petition is allowed with following directions.

- (a)** The petitioner and respondents shall appear before the concerned authorities on 10-09-2015.
- (b)** The petitioner be supplied with the documents along with show cause notice dated 26-06-2012 within a period of one week from 10-09-2015.
- (c)** Petitioner shall file his reply to the show cause notice within a period of a week upon supply of such documents.
- (d)** If the petitioner desires copies of record, he should make such an application within a week from the date of appearance and the same be supplied to him on costs. Such documents on record may be obtained by petitioner on payment

of its charges and he be supplied the same within a week.

- (e)** Parties then shall be heard by the authority concerned within a period of one month.
- (f)** The matter pending before respondents no.1 and 2 be proceeded with as expeditiously as possible and the whole process including decision making may be completed within a period of eight weeks from the date of receipt of this order and/or from 10-09-2015 whichever is earlier.

17. Needless to refer to that aforesaid observations are not on merits at all and shall not influence the authorities while giving decision on merits. All contentions of the parties are kept open.

18. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH, J.

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