

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2802 OF 2015

Mahesh Vishnupant Kothe,)
Age-42 years, Occupation-Social Worker,)
Residing at Radhashri, 20/26, Murarji Peth,)
Solapur).. **Petitioner**

Versus

- 1. Sanjay Channvirappa Hemgaddi,**)
Age-48 years, Occupation-Business,)
Residing at 102K, Nawnath Appartment,)
Railway Line, Old RTO Office, Solapur.)
- 2. Prakash Balkrushna Yalgulwar,**)
Age-52 years, Occupation-Business,)
At Shri Gurukrupa Shriniwas Housing Society,)
North Sadar Bazar, Solapur.)
- 3. The Divisional Commissioner,**)
Pune Division, Pune.)
- 4. The State of Maharashtra**)
(Notice to Respondent No.3 & 4 to be served)
on High Court (A.S.) Writ Cell, Mumbai))
- 5. The State Election Commissioner,**)
Maharashtra State, Mumbai.).. **Respondents**

Shri. P. S. Dani, Senior Advocate i/by Shri. Anand S. Kulkarni, for the Petitioner.

Shri. P. K. Dhakephalkar, Senior Advocate i/by Shri. T. D. Deshmukh, Shri. Samrat K. Shinde & Ms. Gauri Raghuwanshi, for the Respondent Nos.1 & 2.

Ms. M. S. Bane, 'B' Panel Counsel for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 13th APRIL, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 02.03.2015 passed by the Respondent No.3 i.e. the Divisional Commissioner, Pune Division, Pune, by which order the application for disqualification filed by the Respondent Nos.1 and 2 herein being No.NP/1/SR/01/2014 came to be allowed and resultantly, a declaration came to be issued that the Petitioner stands disqualified as a Councilor of the Solapur Municipal Corporation under Section 3(1)(a) of the Maharashtra Local Authority Members Disqualification Act, 1986.

The facts giving rise to the filing of the above Petition can be stated thus :-

3. The Petitioner was at the relevant time a member of the Indian National Congress and was elected as a Councilor from Ward No.18

in the elections held to the Solapur Municipal Corporation in the year 2012. The Petitioner was thereafter appointed as a house leader of the Indian National Congress, Municipal Party. It seems that a post poll alliance was entered into between the Indian National Congress and the Nationalist Congress Party in the Municipal Corporation.

4. The elections to the Maharashtra Legislative Assembly were announced and were to be held in October-November, 2014. There were reports in various newspapers having circulation in Solapur published on 6/7 October, 2014 of the Petitioner joining the rival party of the Indian National Congress namely the Shiv-Sena. In the newspapers, the Petitioner's photographs with the leaders of the Shiv Sena were published along with news reports of the Petitioner joining the Shiv Sena.

5. The Respondent Nos.1 and 2 being the District President of the Indian National Congress and the house leader in the Solapur Municipal Corporation filed an application dated 02.09.2014 under Section 7 of the Maharashtra Local Authority Members Disqualification Act, 1986 (herein after for the sake of brevity referred as "the Disqualification Act") seeking disqualification of the Petitioner under Section 3(1)(a) thereof. In support of the said application the Respondent Nos.1 and 2 annexed about 12 press reports. Another application came to be filed on behalf of the Respondent No.2 on the same day i.e.

02.09.2014. It appears that the State President of the Indian National Congress vide his letter dated 08.08.2014 communicated to the Petitioner of his expulsion from the Indian National Congress. The Respondent Nos.1 and 2 i.e. Applicants under the cover of the letter dated 04.10.2014 forwarded further documents in support of their applications dated 02.09.2014 relating to the Petitioner contesting the assembly elections from the 249, Solapur City Assembly Constituency as a candidate of the Shiv Sena. The said documents were the following :-

“1) Nomination form the Petitioner as the candidate of the Shiv Sena.

2) Affidavit of the Petitioner submitted along with the nomination paper.

3) A, B form given to the Petitioner by the Shiv Sena Party.

4) The final list of the candidates declared by the Returning Officer for the said 249, Solapur City Assembly Constituency.”

The said documents were procured by the Respondent Nos.1 and 2 from the Returning Officer and certified copies of the said documents were filed by the Respondent Nos.1 and 2 before the Respondent No.3.

6. The Petitioner filed his reply dated 07.11.2014 to the said application. In his reply, the Petitioner stated that the said application filed by the Respondent Nos.1 and 2 is illegal. The Petitioner contended that

the material furnished along with the application is false and not acceptable to the Petitioner. The Petitioner in the said reply further stated that the photographs and reports are not admissible as per law. It was lastly stated by the Petitioner in the said reply that the documents regarding the Maharashtra Legislative Assembly Elections have no nexus to the present application for disqualification of the Petitioner as a Municipal Councilor.

7. The Respondent No.3 i.e. Divisional Commissioner before whom the application was filed by the Respondent Nos.1 and 2 in terms of Rule 7(6) of the Maharashtra Local Authority Disqualification Rules, 1987 (For short "The 1987 Rules") framed the following charge against the Petitioner :- (English Translation)

"That Shri. Mahesh Vishnupant Kothe, the Municipal Councilor of the Solapur Municipal Corporation and house leader was elected as a Councilor in the general election from Ward No.18B. The said Shri. Mahesh Vishnupant Kothe is the official of the Indian National Congress who on 06.08.2014 has joined the Shivsena, for which disciplinary action by way of expulsion was taken against him since he has voluntarily joined the Shivseva who is to be disqualified."

In annexure 'B' the statements of imputations were furnished to the Petitioner.

8. The Respondent Nos.1 and 2 thereafter made an application for verification of the second application dated 02.09.2014 which

according to them through inadvertence remained to be verified. The said permission was accordingly granted to the Applicants. The Petitioner thereafter filed his affidavit dealing with the documents which were filed by the Respondent Nos.1 and 2 i.e. Applicants. The stand taken by the Petitioner was the same as was taken by him in his reply. The Respondent No.3 framed the following issues :-

“7.1. Issue 1: Whether contesting Legislative Assembly elections on the ticket of another party would amount to voluntarily giving up membership of the party on which the councillor was elected for Municipal Corporation?

7.2. Issue 2: Whether dismissal from the original party is an outcome of taking membership of another party or whether the contesting of elections as candidate of another party happened after his dismissal from the original party ?

7.3. Issue 3: Whether the one of the applications is defective for want of appropriate verification and competency to file the petition as provided under the Rules ?

7.4. Issue 4: In view of the above facts, whether the non-applicant stands disqualified ?”

As indicated above, the said application filed by the Respondent Nos.1 and 2 for disqualification of the Petitioner came to be allowed. The gist of the reasoning if one can say of the Respondent No.3, was that in contesting on the ticket of a rival party necessarily points out to the voluntarily giving up membership of the original party. The contention urged on behalf of the Petitioner that the activity relating to the assembly elections has no bearing on the disqualification proceedings relating to the Municipal

Corporation was rejected by the Respondent No.3, as according to the Respondent No.3 the claim of the Petitioner that he belongs to two parties was not possible to accept in the political situation that prevails in our country. The Respondent No.3 held that though the expulsion of the Petitioner from the Indian National Congress was earlier, then he contesting for the Assembly elections on the ticket of the Shiv Sena, but the fact that he joined before getting a ticket and the joining of another political party after being expelled from the Indian National Congress could not be lost sight of. The Respondent No.3 rejected the contention that the photographs and the newspaper reports could not be relied upon on the ground that the Petitioner had not stated any plausible chain of events meaning thereby no plausible explanation was given by the Petitioner in respect of the said photographs. As indicated above, it is the said order dated 02.03.2015 which is taken exception to by way of the above Petition.

9. Heard the Learned Counsel for the parties.

10. **Submissions made by the Learned Senior Counsel Shri. P. S. Dani appearing for the Petitioner :-**

- I) That there is variance between the charge framed and the issues that were framed in the disqualification proceedings and therefore the impugned order is vitiated on the said

ground.

- II) That the material on record can by no stretch of imagination can be said to prove the voluntarily giving up of the membership of the Indian National Congress by the Petitioner.
- III) The photographs along with the newspaper reports cannot be relied upon to prove that a case of voluntarily giving up membership is made out under Section 3(1)(a) of the Disqualification Act.
- IV) That if the events post the expulsion of the Petitioner on 08.08.2014 are to be taken into consideration, then it cannot be said that the Petitioner has voluntarily given up membership as the Petitioner has been expelled from the Indian National Congress.
- V) In so far as the application for disqualification is concerned, the facts as prevailing on 06.08.2014 are only to be taken into consideration and if that be so no case for disqualification of the Petitioner under Section 3(1)(a) of the Disqualification Act is made out as the press reports cannot be relied upon in view of non-compliance Rule 3(b) of the Disqualification Rules.

11. **Submissions of the Learned Senior Counsel Shri. P. K. Dhakephalkar appearing on behalf of the Respondent Nos.1 and 2 :-**

- A) The Applicants had placed the relevant material by way of photographs and news reports as also the documents procured from the Returning Officer of the Assembly elections which were relating to the Petitioner having filed his nomination as a candidate belong to the Shiv Sena for the elections to be held for the 249 Solapur City Assembly Constituency. The said material substantiates the case of the Applicants that the Petitioner has voluntarily given up the membership of the Indian National Congress and therefore stands disqualified.
- B) That the Petitioner in his reply dated 07.11.2014 has given an evasive denial. The Petitioner has not denied that he was not present or that the photographs and newspaper reports are fabricated. The Respondent No.3 was therefore right in relying upon the said photographs and newspaper reports. In respect of a matter wherein the issue is of voluntarily giving up membership, the conduct of the party assumes utmost importance. In support of the said contention the Learned

Senior Counsel sought to place reliance upon the judgment of the Apex Court reported in 1994 Supp (2) SCC 641 in the matter of Ravi S. Naik Vs. Union of India and the judgment of a Learned Single Judge of this Court reported in 2011(6) Mh.L.J. 60 in the matter of Balaji Ganeshrao Bacchewar Vs. Laxman Ganeshrao Thakkarwar and others.

- C) That the giving up of membership of a political party can be express or implied. In the instant case, by joining the Shiv Sena party the petitioner has voluntarily given up the membership of the Indian National Congress. In support of the said contention reliance was placed on the judgment of the Apex Court reported in (1996) 2 SCC 353 in the matter of G. Viswanathan Vs. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras and another.
- D) That the disqualification Rules in question are not mandatory that even a slight infraction of the Rules would not render the entire proceedings vitiated. In support of said contention reliance was placed on the judgment of the Apex Court reported in (2004) 8 SCC 747 in the matter of Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar

Legislative Council and others. The said judgment having been rendered in respect of the para-materia provisions contained in the Bihar Legislative Counsel Members (Disqualification on Ground of Defection) Rules, 1994 would apply on all fours to the facts of the present case.

CONSIDERATION

12. Having heard the Learned Counsel for the Petitioner, I have considered the rival contentions. As indicated above, the applications filed by the Respondent Nos.1 and 2 were for disqualification of the Petitioner under Section 3(1)(a) of the Disqualification Act, 1987 for voluntarily giving up the membership of the Indian National Congress. In the said context, it is required to be noted that it is an undisputed position that the Petitioner was elected as a Municipal Councilor of the Solapur Municipal Corporation on a ticket of the Indian National Congress and was in fact the house leader of the Indian National Congress Municipal Party. The application filed by the Respondent Nos.1 and 2 initially was founded on the news reports which as indicated above are 12 in number. The news reports are along with photographs of the Petitioner with the leaders of the rival party of the Congress i.e. the Shiv Sena. Though the application was initially filed and was sought to be substantiated by the news reports along with the photographs which were appearing in the said newspapers,

the said case of the Respondent Nos.1 and 2 i.e. Applicants was further substantiated by them by filing further documents under the cover of the letter dated 04.10.2014. The said documents relate to the Petitioner filing his nomination for the Shiv Sena from 249, Solapur Assembly Constituency. The A, B form given to the Petitioner by the Shiv Sena party and the final list of candidates published by the Returning Officer, wherein the name of the Petitioner is appearing as a candidate of the Shiv Sena. In so far as the initial material i.e. press reports as also the material which was furnished later on i.e. vide letter dated 04.10.2014, though the Petitioner filed a reply in the said proceedings, the reply as best could be said to be evasive. The Petitioner did not deny the factum that he was present in the meeting with the leaders of the Shiv Sena party or that the news reports are false and fabricated. The Petitioner's stand was that the said reports are not admissible and therefore, could not be legally taken into consideration. The fact that the Petitioner has been expelled by the State President of the Indian National Congress on 08.08.2014 may be probably the reason as to why the Petitioner could not deny his meetings with the leaders of the rival party i.e. Shiv Sena and his photographs appearing with the said leaders. In the said context, it would be necessary to refer to the judgment of the Apex Court in *Ravi S. Naik's case (supra)*, in the said case two members of the Maharashtrawadi Gomantak Party out of

about 15 members had accompanied Dr. Wilfred D'Souza leader of the Congress (I) party in the Goa Legislative Assembly who staked his claim to form the Government. News reports appeared in various newspapers showing the photographs of the two MLAs with the Congress MLA's when they had gone to meet Governor to demonstrate that the said Dr. Wilfred D'Souza had the support of 20 MLAs. The reply filed by the 2 MLAs of the Maharashtrawadi Gomantak Party did not deny the fact that they went to the Governor against the Maharashtrawadi Gomantak Party. The Apex Court held that the words voluntarily giving up his membership are not synonymous with resignation and have a wider connotation. The Apex Court held that even in the absence of a formal resignation from the membership an inference can be drawn from the conduct of a member that he has voluntarily given his membership of the political party to which he belongs. The Hon'ble Speaker had taken into consideration the photographs to draw an inference about a fact which had not been denied by the Appellants themselves namely that they had accompanied Dr. Wilfred D'Souza and Dr. Barbosa on 10 December, 1990 in the company of Congress (I) MLAs and accordingly disqualified the said two MLAs. The said order of disqualification was confirmed by the Apex Court.

13. In *G. Viswanathan's case (supra)*, the Apex Court held that the act of voluntarily giving up may be either express or implied. The Apex

Court further held that when a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member. In the instant case, there can be no denial of the fact that the Petitioner filed his nomination for contesting the Assembly elections as a candidate of the Shiv Sena party which is rival party of the Indian National Congress. Hence, in filing his nomination as the candidate of the said party the obvious conclusion that is required to be drawn is that the Petitioner has voluntarily given the membership of the Indian National Congress. The conduct of the Petitioner in the instant case leaves no room for doubt that the Petitioner had voluntarily given up his membership of the Indian National Congress.

14. In so far as the documents relied upon by the Applicants are concerned, as indicated above the Petitioner's denial is evasive. The Petitioner never did deny the fact that he was not present in the meeting with the leaders of the rival party or that the newspaper reports are fabricated. It is also required to be borne in mind that this is not a case of there being one or two stray reports, but it is a case where there are 12 reports in the local newspapers of Solapur. The Petitioner's contention that his conduct of contesting the Assembly elections on the ticket of the Shiv

Sena has no bearing on belonging to the Indian National Congress, this submission which can be said to be advanced by the Petitioner only with a view to somehow keep his chair. In my view, the said submission can only be stated to be rejected.

15. The contention of the Petitioner that the newspaper reports cannot be relied upon on account of non-compliance of rule 3(b) is concerned. In my view, even assuming that the proof of the said newspaper reports has not been produced by the Respondent Nos.1 and 2. The photographs wherein the Petitioner is shown appearing with the leaders of the Shiv Sena party having not been denied would have to be accepted in view of the judgment of the Apex Court in *Ravi S. Naik's case (supra)*, as in the said case the Speaker by referring to the photographs had drawn an inference about a fact which had not been denied by the Appellants themselves.

16. The fact that the Petitioner has contested as a candidate of the Shiv Sena in the Assembly elections from Solapur City assumes utmost importance in the context of the application for disqualification filed by the Respondent Nos.1 and 2. The said conduct of the Petitioner though post his expulsion from the Indian National Congress on 08.08.2014 is indicative of the fact that the Petitioner has voluntarily given up the membership of the Indian National Congress. Hence, the contention of the

Learned Senior Counsel for the Petitioner that the facts for consideration of the applications would have to be frozen as on 06.08.2014 cannot be accepted as the same would militate against the very object of the Disqualification Act, 1987. Lastly, the contention of the Petitioner that the charge framed and the issues that were framed by the Respondent No.3 are at variance and therefore, the proceedings are vitiated also cannot be accepted. Assuming that there is variance between the charge that was framed by the Respondent No.3 and the issues framed in the said proceedings, the Petitioner very well knew as to on what ground his disqualification was sought. The parties were therefore very well aware of the scope of the inquiry. The Petitioner having participated in the said proceedings and having not taken objection to the issues that were framed at the relevant time is now estopped from questioning the same on the ground that there is variance between the charge and the issues framed. In my view, if on such ground the proceedings are held to be vitiated, the same would amount to laying a premium on persons who are prone to change their allegiance for one reason or the other and would also result in nullifying the objects with which the Disqualification Act, 1987 was brought into force. The view taken by the Respondent No.3 in the facts and circumstances of the case cannot be said to be a view which could not be taken in the facts and circumstances of the case. I do not find any

illegality or infirmity or any error of jurisdiction committed by the Respondent No.3 for this Court to exercise its Writ Jurisdiction. The Writ Petition is accordingly dismissed. Rule discharged. No orders as to costs.

17. At this stage, the Learned Counsel for the Petitioner seeks stay of the instant order for a period of four weeks. In the facts and circumstances of the case, the said prayer is rejected.

[R.M. SAVANT, J]