

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.10841 OF 2015

Mahesh Ramesh Sarang and Ors. .. Petitioners
Vs.
State of Maharashtra and Ors. .. Respondents

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Mr.A.S.Khandeparkar a/w. Mr.S.V.Gavand for Petitioners.
Mr.S.C.Mangle for Respondent no.3.
Mr.S.B.Shetye for Respondent no.4.
Mrs.V.Nimbalkar AGP for Respondent no. 1 and 2.

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CORAM : M.S.SONAK, J.
DATE : 8th DECEMBER, 2015.

P.C.:

1. Rule. With the consent of the parties and at the request of the learned Counsel for the parties, rule is made returnable forthwith.
2. The challenge in this petition is to the order dated 17th October, 2015, by which the Ld. Collector, Sindhudurg, has disqualified the petitioners under the provisions of Maharashtra Local Authority Members Disqualification Act, 1986 (the said Act).
3. Considering the order which is proposed to be made, it is not necessary to advert to the facts in great details. Respondent no. 3 herein lodged a petition before the Ld. Collector, Sindhudurg District urging action against the petitioners under provision of the said Act. Allegation was that the petitioner stands disqualified under section 3(1)(a) of the said Act. On about five or six dates, the matter was adjourned to enable the petitioner to file reply. On 28th August, 2015 respondent no.3 applied for withdrawal of the petition. The Roznama records that the matter was

adjourned to 1st September, 2015 for final decision. It is case of the petitioners that the final decision was declared on 17th October, 2015, disqualifying the petitioners.

4. From the aforesaid it does appear that opportunity was not offered to the petitioners in the matter of their disqualification under the provision of the said Act. No doubt the Collector, Sindhudurg District was not bound to act upon the plea of respondent no. 3 for withdrawal of the disqualification petition. If the jurisdictional facts are found to be present, then, the local authority members incur disqualification in terms of the said Act. Therefore, the Collector, in such a situation is justified in determining whether or not local authority member has at all incurred disqualification under the provision of the said Act.

5. The Collector, in such a situation is not bound to permit withdrawal of the petition or dismiss the petition merely because petitioner has chosen not to proceed with the same. Nevertheless, before proceeding to declare that any local member has incurred disqualification under the provision of the said Act, the Collector is bound to comply with principles of natural justice and fair play. If there is any statutory provision with regard to offer of opportunity, the same has to be complied with before any declaration as to disqualification is made.

6. In this case there is merit in the submission of the learned Counsel for the petitioner that the matter was only posted for orders upon the application made by respondent no. 3 to withdraw the petition. Considering the facts and circumstances of the present case, though, the Collector may have been right in not entertaining the application for withdrawal of the disqualification petition, the Collector, before proceeding to disqualify the petitioners was required to offer sufficient opportunity of

hearing to the petitioners. It is on this limited ground that the impugned order dated 17th October, 2015 is being interfered with.

7. In the present case, the record indicates that there has been no compliance to principles of natural justice and fair play before the impugned order dated 17th October, 2015 came to be made. Only on this ground the impugned order dated 17th October, 2015 is set aside and the matter remanded to the Ld. Collector, Sindhudurg for disposal of the Application no.1 of 2015 in accordance with law and on its own merits. The Ld. Collector, Sindhudurg to offer an opportunity to the petitioners to file their reply and to otherwise show cause as to why they should be disqualified under the provision of the said Act.

8. The parties to appear before the Collector on 21st December, 2015 at 11.00 am.

9. All parties to cooperate in the matter of expeditious disposal before the Collector. The Collector is required to dispose of this proceeding as expeditiously as possible and in any case within a period of three months from today.

10. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11. All concerned to act on the authenticated copy of this order.

(M.S.SONAK, J.)