

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9858 OF 2015

Ankush Niwritti Mhaske & Anr.	..	Petitioners
VS.		
Asha Jeevan Idnani & Anr.	..	Respondents

Mr. Amit Borkar i/b. Mr. Vaibhav Gaikwad for Petitioners.
Ms Pooja Singh i/b. Mr. N. R. Bubna for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 20 OCTOBER 2015

P.C. :-

1] The challenge in this Petition is to the undated order made some time in March 2015 dismissing Petitioners objections to the Municipal Disqualification Petition No. 1 of 2015. The Petitioners had objected to the entertainment of the Disqualification Petition on the following two grounds :

- (a) That the Petition was not verified in accordance with law;
- (b) That a joint petition against two Councillors was not maintainable, particularly as the cause of action pleaded in respect of the two Councillors was different and distinct.

2] The Divisional Commissioner, Konkan Division, who is admittedly the Prescribed Authority for entertaining such disqualification petitions has held that the petition was verified in

accordance with the law and further, there was no legal bar to the institution of a joint petition.

3] Mr. Borkar, the learned counsel for the Petitioners has submitted that this was a case where the Petition was not at all verified. Therefore, in view of the mandate contained in Rule 7(2) of the Maharashtra Local Authority Members' Disqualification Rules, 1987 (said Rules), the Commissioner was duty bound to dismiss the petition summarily. In this regard, Mr. Borkar placed reliance upon the decision of this Court in the case of *Fazalur Rehman Gulam Nabi vs. Raziya Begam Sayyed Natiquiddin Khatib & Ors.*¹ Mr. Borkar also attempted to distinguish several decisions which have taken the view that the requirement as to verification is only directory and in any case the defect, if any, is curable. In this regard, Mr. Borkar submitted that there is a distinction between the total non compliance and substantial compliance. In the present case, Mr. Borkar urged that there was total non compliance and therefore, there was no question of even permitting any cure of the defect. Mr. Borkar further submitted that the grounds for disqualification urged were different and distinct in respect of the two Councillors. In such a situation, it was impermissible to institute a joint petition and such institution would embarrass the proceedings and constitute substantial prejudice to the Councillors in respect of whom

1 2012 (4) Mh.L.J. 725

disqualification was alleged. Mr. Borkar finally submitted that since the disqualification petition seeks to unseat elected representatives, strict compliance has to be the norm.

4] Ms. Pooja Singh, the learned counsel for the Respondent No. 1 on the other hand submitted that the petition has been duly verified, which is evident from the endorsements made by the Notary Public before whom the petition and the affidavit in support thereof were verified. She relied upon the decision of the Hon'ble Apex Court in the case of *Seth Beni Chand (since dead) now by L.Rs. vs. Smt. Kamla Kunwar & Ors.*², to submit the meaning of the expression '*attestation*'. She also submitted that in the matters of such nature, there is really no lis between the parties and it is for the Commissioner to determine whether the Councillor has incurred disqualification under the provisions of Maharashtra Local Authority Members' Disqualification Act, 1986 (said Act). Finally, she submitted that there is absolutely no bar for institution of a joint petition and there is no question of any prejudice to the elected Councillors.

5] Rival contentions now fall for determination.

6] In this case, it cannot be said that there is total non

² AIR 1977 SC 63

compliance with the provisions contained in the Rules as urged by Mr. Borkar. Admittedly, the petition has been verified and supported by an affidavit. There is endorsement that such verification was before the Notary Yeshiva Gaikwad. Based upon the circumstance that the Notary has used the stamp indicating '*ATTESTED BY ME*', it cannot be said that this is a case of total non compliance. In this case, there is no objection raised that the verification is not in the manner laid down in the Code of Civil Procedure, 1908 for verification of pleadings. The objection raised is that no oath was possibly administered by the Notary, before making the endorsement upon the petition. Based solely upon the endorsement, such contention cannot be accepted. In any case, it cannot be said that this is a case of total non compliance with the provisions with regard to verification.

7] In the context of the provisions of the said Act, the Hon'ble Apex Court in the case of *Cedar Shashikant Deshpande & Ors. vs. Bhor Municipal Council & Ors.*³ has held that proceedings under the said Act seeking disqualification cannot be regarded as adversarial kind of litigation. Even if, the petitioner withdraws the petition, it will make no difference as the duty is cast upon the Prescribed Authority to determine whether such Councillor has incurred disqualification. Section 7 of the said Act requires the Collector or the

3 (2011) 2 SCC 654

Commissioner to decide the question of disqualification on a reference made to him. A reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Section 3(1)(a) and 3(1)(b) operate on their own force and the moment the conditions prescribed therein are satisfied, the Corporator stands disqualified. The reference to be made to the Competent Authority is only for the purposes of bringing to the notice of the Competent Authority the relevant information about the disqualification. Section 7 of the said Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for the limited purpose of bringing relevant information to the notice of the Collector or the Commissioner, who is duty bound to decide the petition in accordance with law.

8] The Apex Court, in the same case, declined to entertain the objection to the disqualification petition on the ground that some of the annexures to such petition were not duly verified. In this regard, the Apex Court held that verification of the disqualification petition and/ or annexures accompanying the petition is a matter between the persons who filed the disqualification petition and the Competent Authority before whom the election petition was listed for hearing. Having regard to the scheme envisaged by the Rules, the

Apex Court expressed the opinion that it was not necessary for the Competent Authority to even hear the Councillors in the disqualification petition before granting permission to the Petitioners to verify the disqualification petition and/or annexures accompanying the petition. Resort was had to Section 99 of the CPC or the principles analogous thereto to protect the validity of the proceedings from such irregularities. The said Section inter alia provides that no decree shall be reversed or substantially varied, nor shall any case be remanded on account of any error, defect or irregularity in any proceedings not affecting the merits of the case. The so-called irregularity regarding verification of the petition and annexures thereto would never affect the merits of the case and it would be wrong exercise of discretionary powers to dismiss a petition for disqualification on the sole ground of defect in verification.

9] There is no bar pointed out to the institution of a joint petition in respect of two Councillors. In terms of the decision of the Apex Court in the case of *Kedar Deshpande* (supra), the role of a petitioner is to really bring relevant information to the notice of the Competent Authority, which is duty bound to decide the petition in accordance with law. There is no question of any prejudice because both the Councillors would be afforded ample opportunity to put forth their respective defence.

10] The Divisional Commissioner has not exceeded jurisdiction or failed to exercise jurisdiction in refusing to uphold the technical objection raised by the petitioners. This petition is therefore dismissed. There shall be no order as to costs.

11] Since in terms of Rule 7(7), the Commissioner is required to dispose of the disqualification petition within ninety days, the Commissioner is directed to so dispose of the petition as expeditiously as possible and in any case within a period of two months from today.

(M. S. SONAK, J.)

Chandka