

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4930 OF 2015**

**1 Smt. Savita Dipak Waghchoure)
An Adult, Occ Houswife)
R/at, Near S. T. Stand,)
At & Post Jawhar, Taluka Jawahar,)
District – Palghar)**

2 Smt. Yogita Suresh Mulgir)
An Adult, Occ Houswife)
R/at, Near Ambedkar Chowk)
At & Post Jawhar, Taluka Jawahar,)
District – Palghar)

3 Smt. Geeta Ashok Chaudhari)
An Adult, Occ Houswife)
R/at, Near Water Fitter plant,)
Jawhar Nashik Road)
At & Post Jawhar, Taluka Jawahar,)
District – Palghar)

4 Smt. Preeti Prafful Pawar)
An Adult, Occ Business)
R/at, Near Yashwant Maharaj Chowk)
At & Post Jawhar, Taluka Jawahar,)
District – Palghar)

5 Smt. Vimal Vilas Gore)
An Adult, Occ Houswife)
R/at, Gorewadi, Jawhar Nashik Road)
At & Post Jawhar, Taluka Jawahar,)
District – Palghar)

**6 Shri Ravindra Yashwant Chaware)
An Adult, Occ Houswife)
R/at, Near Mahadev Mandir,)
At & Post Jawhar, Taluka Jawahar,)
District – Palghar)**

7 Smt. Meena Shankar Jadhav)
 An Adult, Occ Houswife)
 R/at, Near S. T. Stand,)
 At & Post Jawhar, Taluka Jawahar,)
 District – Palghar)

8 Smt. Asha Namdev Ballal)
 An Adult, Occ Houswife)
 R/at, Near Ambedkar Chowk,)
 At & Post Jawhar, Taluka Jawahar,)
 District – Palghar)

9 Shri Ganesh Vikaram Rajput)
 An Adult, Occ Business)
 R/at, Near Tower, Jawhar Silvasa Road)
 At & Post Jawhar, Taluka Jawahar,)
 District – Palghar)

10 Shri Ravindra Kashinath Bhoir)
 An Adult, Occ Houswife)
 R/at, Near S. T. Stand,)
 At & Post Jawhar, Taluka Jawahar,)
 District – Palghar)

..Petitioners

Versus

1 Shri Sandip R. Vaidya)
 An Adult, Occ Business,)
 R/at Chhatrapati Shivaji Path)
 Gandhi Chowk,)
 At & Post Jawhar, Taluka Jawahar,)
 District Palghar)

2 The District Collector Cum)
 District Magistrate, Palghar,)
 Office at Chief Administrative Bldg.,)
 New Sales Tax Office)
 Nawali Palghar,)
 Tal & Dist Palghar,)

3 The Chief Executive Officer,)
 Jawhar Municipal Council,)

At & Post Jawhar, Taluka Jawhar,)
District – Palghar)

4 The State of Maharashtra)
(Respondent Nos.2 & 3 served through)
the office of the Govt. Pleader)
Writ Cell), Appellate Side,)
High Court, Mumbai) ..Respondents

Mr. G. S. Godbole i/b Mr. B. G. Tangsali for the Petitioners
Mr. S. M. Oak i/b Mr. Pranil Sonawane for the Respondent No.1
Ms Aparna Vhatkar AGP for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 31st July, 2015

ORAL JUDGMENT

1 At the outset, the Learned Counsel for the Petitioners seeks deletion of the Respondent No.3 whose presence is not necessary considering the challenge raised in the above Petition. The said Respondent No.3 is accordingly deleted at the risk of the Petitioners.

2 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court is invoked against the order dated 15-5-2015 passed by the District Collector cum District Magistrate, Palghar, by which order, the application for disqualification of the Petitioners

under Section 3(1)(a) and 3(1)(b) of the Maharashtra Local Authority Members Disqualification Act, 1986, (for short the said Act), came to be allowed and the Petitioners came to be disqualified.

2 In the context of the directions that are required to be issued, it is not necessary to burden this order with unnecessary details. Suffice it would be to state that the proceedings as regards the disqualification of the Petitioners had commenced before the Collector on or before 23-2-2015. In the context of the order under challenge, it is required to be noted that on 13-4-2015, the Petitioners (who are the Respondents in the proceedings) came to be served with the articles of charge framed against them and the Petitioners were to file their written say to the articles of charge on or before 24-4-2015. The Petitioners were directed to make a copy of the response to the articles of charge available to the Respondent No.1. The proceedings were thereafter adjourned to 24-4-2015 on which day the defects which were there in the application in the matter of the signatures of the Respondent No.1 herein were allowed to be rectified. It was observed in the roznama of the said date that the Petitioners should not delay the proceedings further by getting into any excuses for not filing the reply and it was binding on the Petitioners to file their say up to the said date i.e. 24-4-2015. It was further observed that further hearing would be fixed and all would be intimated on the basis of the Petitioners submitting their say. Hence the roznama of 24-4-2015 discloses that the date of

hearing was to be fixed on the basis of the Petitioners herein filing their say. It has further been recorded in the roznama that the Respondent No.1 does not want to examine any witness in support of his claim as no list of witness was given by the Respondent No.1. On the said day, an application was filed by the Petitioners asking for the statement of fact, list of documents, list of witnesses, etc., to be furnished to them which the Collector did not deem it appropriate to accede to for the reasons mentioned in the roznama. The Collector thereafter it seems did not fix any date for the said application to be taken up for hearing and has directly passed the order dated 15-5-2015 disqualifying the Petitioners. The Collector has observed in the impugned order that inspite of opportunity being granted to the Petitioners they had not filed their say to the articles of charge, therefore the matter had to be proceeded with. The Collector has thereafter recorded a finding on merits as to how the Petitioners stand disqualified under Section 3(1)(a) of the said Act.

3 The principal contention urged on behalf of the Petitioners by the Learned Counsel Mr. Godbole is that the impugned order has been passed by the Collector without affording an opportunity to the Petitioners in as much as the Collector as the roznama indicates, was to fix the date for hearing after the Petitioners were to file their say and assuming that the Petitioners did not file their say, it was necessary for the Collector to fix the matter for hearing by intimating the said date to the parties. This having not been done by the

Collector, the orders stand vitiated on the ground of violation of the principles of natural justice.

4 Per contra, the Learned Counsel appearing for the Respondent No.1 Mr. Oak would seek to justify the order passed by the Collector by contending that having regard to the fact that inspite of opportunity being granted to the Petitioners they did not file their reply to the articles of charge by the date stipulated by the Collector. The Learned Counsel would contend that since there is no merit in the defence taken by the Petitioners as regards the applicability of Section 3(1)(a) of the said Act, the matter is not required to be remitted back to the Collector even if the court comes to a conclusion that the said order has been passed in breach of the principles of natural justice. The Learned Counsel then endeavoured to justify the findings on merits recorded by the Collector in the impugned order.

5 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that is posed in the above Petition is as to whether the impugned order is required to be quashed and set aside and the matter is required to be relegated back to the Collector for a denovo hearing. As indicated above on 24-4-2015 as the roznama of the said date discloses, the Collector was to fix the application for hearing after the say was filed by the Petitioners to the articles of charge and intimation of the date

was to be given to all the parties, this has admittedly not been done by the Collector. Assuming that the Petitioners did not file their say, it was necessary for the Collector to fix the matter for hearing on a date subsequent to 24-4-2015 and by recording that the Petitioners inspite of opportunity having been granted, having not filed their say could then have proceeded to hear the said application. However, after 24-4-2015, no hearing has taken place and the Collector has directly passed the order on 15-5-2015 which information the Petitioners got later in the absence of any notice to them. In my view, in a matter as serious as an application for disqualification of as many as 10 Municipal Councilors, the course of action that was adopted by the Collector cannot be countenanced. Assuming as contended by the Learned Counsel for the Respondent No.1 that the Petitioners have no defence worth the name that would not mean that the proceedings are to be short circuited and that it was permissible for the Collector to pass the order directly without hearing the affected parties. Since the charges are framed and the proceedings are to be proceeded thereafter it was incumbent on the part of the Collector to give an opportunity to the parties and then decide the matter. This as indicated above the Collector could have done by keeping the said application for hearing on a date subsequent to 24-4-2015 and after hearing the parties could have passed the final order.

6 In my view, therefore, the impugned order is vitiated on the

ground of violation of principles of natural justice. The same is accordingly required to be quashed and set aside and is accordingly quashed and set aside and the matter is relegated back to the Collector for a denovo consideration of the application. Hence the following directions:

(i) On remand, the parties to appear before the Collector on 19-8-2015. The Learned Counsel for the Respondent No.1 has no objection to the Petitioners filing their reply to the articles of charge. The Petitioners therefore to file their reply to the articles of charge and to be served on Mr. Pranil Sonawane who is the Advocate appearing for the Respondent No.1 in the proceedings before the Collector on or before 14-8-2015. The Learned Counsel Mr. Oak states that Mr. Pranil Sonawane would continue to appear for the Respondent No.1.

(ii) The parties to appear before the Collector, Palghar, on 19-8-2015 at 3.00 p.m.

(iii) If the reply is not filed in the office of the Collector and served on the Respondent No.1 or his Advocate by 14-8-2015, the right to file a reply stand forfeited and no further opportunity would be granted to file the reply.

(iv) The Collector would from 19-8-2015 decide the matter expeditiously but not later than 31-10-2015.

(v) It is clarified that though the order has been set aside, the contentions of the parties on merits are kept open for being urged before the Collector.

(v) The Learned AGP to communicate the instant order to the Collector.

7 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]