

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10560 OF 2015

Shri Sandeep R. Vaidya.] ... Petitioner

Versus

The District Collector, Palghar, and Ors.] ... Respondents

Mr. S. M. Oak i/b Mr. Pranil Sonawane for Petitioner.

Mr. A. D. Kango, A.G.P., for Respondent No.1.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 21, 2015

P. C. :-

1. **Not on board. Upon production, taken on board.**

2. By this petition, the petitioner seeks a direction to the Collector to act upon the petitioner's application dated 28/09/2015 (Exh.B-Colly. to this petition) seeking withdrawal of petition seeking disqualification of respondent nos.2 to 6 under the provisions of Maharashtra Local Authority Member Disqualification Act, 1986 ('said Act') and the rules made thereunder.

3. Mr. Oak, learned Counsel for petitioner, submits that the Collector, by not permitting withdrawal of the petition, is refusing to exercise jurisdiction vested in him. Mr. Oak submitted that the

petitioner, has an inherent right to withdraw the disqualification petition. In any case, Mr. Oak submitted that applying the principles laid down under Section 110 of the Representation of People Act, 1951, leave can always be granted to the petitioner to permit withdrawal of the petition.

4. In my judgment, there is no reason to entertain the present petition. In the disqualification petition instituted by the petitioner, the complaint was basically that the respondent nos.2 to 6 had incurred disqualification under Section 3(1)(a) of the said Act by voluntarily giving up the membership of their political party, *aaghadi* or front. The Petitioner had alleged that the said respondents had formed a new political party, thereby voluntarily giving up their membership of the political party under whose aegis they were elected. There is a difference between the disqualification incurred under Section 3(1)(a) and 3(1)(b) of the said Act. Insofar as disqualification under Section 3(1)(b) is concerned, the same arises where a councillor or a member votes or abstains from voting in any meeting of a Municipal Corporation contrary to the whip issued and such voting or abstention has not been condoned within 15 days from the date thereof. In case of disqualification under Section 31(a), there is no provision for even such limited condonation.

5. That apart, the status of a petitioner who files a disqualification petition under the said Act is that of a messenger who places before the competent authority information

with regard to disqualification. The Hon'ble Apex Court, in the case of ***Kedar Shashikant Deshpande vs. Bhor Municipal Council and Ors.***¹, in the precise context of the provisions of the said Act, has held that Section 7 lays down that the Collector has to decide the question of disqualification on a reference made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1)(a) and 3(1)(b) operate on their own force and moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law.

6. The Hon'ble Apex Court made reference to its earlier decision in the case of ***Mahachandra Prasad Singh (Dr.) v. Bihar Legislative Council***² interpreting the provisions of Schedule X of the Constitution of India involving the issue of disqualification of a member of a Legislative Council and has held that the Maharashtra Local Authority Members' Disqualification Rules, 1987 are in *pari materia* with the Bihar Legislative Council (Disqualification on the Ground of Defection) Rules, 1994 and, therefore, the principles laid

1 (2011) 2 SCC 654

2 (2004) 8 SCC 747

down in the said decision would be applicable with all force to the interpretation to be placed on the 1987 Rules. The Hon'ble Apex Court has, in the said decision, observed that there is no lis between the person moving the petition and the member of the House who is alleged to have incurred disqualification. The proceedings are not an adversarial kind of litigation and, therefore, even if the petitioner withdraws the petition, it will not make a difference as the duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provisions. It was further observed that the provisions of the tenth Schedule of the Constitution read with Articles 102(2) and 191(2) operate on their own and the only purpose of the petition is to bring the relevant information about disqualification to the notice of the Chairman.

7. In view of the aforesaid categorical observation of the Hon'ble Apex Court, the Collector cannot be faulted with his resolve to proceed and decide the disqualification petition in accordance with law. In fact, the Collector is duty-bound to decide such petition in accordance with law. The issue of disqualification cannot be made to depend upon the vagaries of parties to the disqualification petition. As noted earlier, petition under Section 7 does not contemplate the lis between two private parties in a disqualification petition.

8. Therefore, no case is made out to entertain the present petition. The petition is therefore dismissed. There shall be no order as to costs.

9. At this stage, Mr. Oak, learned Counsel for petitioner, seeks leave to withdraw this petition. After the Judgment is pronounced, there is no question of granting any leave to withdraw this petition. In any case, the Collector is duty-bound to apply and law laid down by the Hon'ble Apex Court in the case of ***Kedar Shashikant Deshpande*** (*supra*).

(M. S. SONAK, J.)