

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11776 OF 2015

WITH

CIVIL APPLICATION NO. 3284 OF 2015

Nagesh H. Akkalkote

.. Petitioner

vs.

The State of Maharashtra & ors.

.. Respondents

Mr. Vineet B. Naik, Senior Advocate a/w. Mr. Abhijit Kulkarni i/b
D.D. & Abhijit Associates for the Petitioner.

Ms Neha Bhide, AGP for Respondent Nos.1, 2 and 4.

Mr. Balkrishna D. Joshi for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 17 DECEMBER 2015.

ORAL JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith. Even otherwise, in the order dated 3 December 2015, the parties were put to notice that an endeavour shall be made to dispose of this petition, finally.

2] The challenge in this petition is to the order dated 29 September 2015 made by the Additional Secretary, State of Maharashtra, purporting to exercise appellate jurisdiction under Section 44(4) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (said Act) and in pursuance thereof to stay the orders dated 14 September 2015 made

by the Additional Commissioner, Pune, by which the disqualification order made against the Petitioner under Section 44 of the said Act, had been set aside. In effect, the impugned order purports to revive the disqualification, in so far as the Petitioner is concerned.

3] Mr. Vineet Naik, learned senior advocate for the Petitioner, has made the following submissions in support of the petition:

a] That in terms of Section 44(4) of the said Act, the order dated 14 September 2015 was made by the Regional Director of Municipal Administration, has been accorded statutory finality. Accordingly, no further appeal lay before the Additional Secretary, State of Maharashtra. Since the appeal itself was *ex-facie* not maintainable, the impugned order made therein is a nullity;

b] This Court, by its order dated 31 July 2015 in Writ Petition No. 6139 of 2015 had stayed disqualification incurred by the Petitioner during pendency of the Petitioner's appeal under Section 44(4) of the said Act before the Regional Director, Municipal Administration. The Petitioner's appeal was allowed by the Regional Director and the order of disqualification was set aside. In such circumstances, there

was absolutely no justification to make the impugned order, which virtually has the effect of reviving disqualification of the Petitioner;

c] The impugned order has been made *ex-parte* and contains no reasons whatsoever. This is also a serious jurisdictional error, considering the circumstance that the Petitioner is an elected representative.

4] Ms Neha Bhide, learned AGP for Respondent Nos.1,2 and 4, fairly submitted that under the provisions of Section 44(4) of the said Act, no further appeal, would lie to the State Government. Mr.B.D. Joshi, learned counsel for Respondent No.3, however, joined the issue and submitted that in terms of Section 44(4) of the said Act, appeal against disqualification basically lies to the State Government. Insofar as, notification delegating such powers to the Regional Directors are concerned, Mr. Joshi pointed out that such notification is prior to introduction of Section 44(1)(e) on the Statute Book by virtue of Maharashtra Act 11 of 2002. Therefore, he submitted that the appeal instituted by the Petitioner before the Regional Director was itself not maintainable. In any case, Mr. Joshi submitted that in terms of Section 318 of the said Act, the State

Government possess revisional jurisdiction and therefore, there is no jurisdictional infirmity in the making of the impugned order. In the context of civil application made by the Petitioner seeking his insertion in the name of list of voters, Mr. Joshi submitted that the election process has already commenced and therefore, there arises no question of directing such inclusion, at this belated stage.

5] The rival contentions now fall for determination.

6] Section 44 of the said Act provides that a Councillor shall be disqualified to hold office as such, if at any time during his term of office, he has, *inter alia*, has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of the said Act, or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts or has directly or indirectly been responsible for or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure.

7] Section 44(4) of the said Act provides that any person aggrieved by the decision of the Collector may within a period of fifteen days from the date of receipt of the decision of the Collector by him, appeal to the State Government and the orders passed by the State Government shall be final. The proviso, mandates that no order shall be passed under sub-section (3) by the Collector or under sub-section (4) by the State Government in appeal, against any Councillor without giving him a reasonable opportunity of being heard.

8] Section 74 of the said Act deals with appointment of Regional Directors of Municipal Administration as also, the powers of Collector. Sub-section (1) deals with appointment of Director of Municipal Administration or Regional Directors of Municipal Administration and the extent of their respective jurisdiction. Sub-section (2) provides that the Director and the Collector of each district, shall exercise such powers and perform such duties as are conferred and imposed upon them by this Act or any rule made thereunder. The State Government may, by notification in the Official Gazette, direct that any power (except the power to make rules) or duty which by this Act or by any rule made thereunder is

conferred or imposed upon it shall, in such circumstances and under such conditions, if any, as may be specified, be exercised or performed also by the Director or the Collector. Sub-section (3) provides that each Regional Director and each Assistant and Deputy Collector, shall within his respective jurisdiction be competent to exercise any of the powers and to perform any of the duties conferred and imposed upon, or delegated to, the Director and the Collector, respectively. The proviso provides that the Director or, as the case may be, the Collector, may, subject to the general or special orders of the State Government reserve to himself such powers and duties as he may, by order, specify in this behalf. Finally, sub-section (4) provides that in exercising their powers and performing their duties, the Regional Director and the Assistant and Deputy Collectors shall be subject to the control and supervision of the Director and the Collector, respectively.

9] From the aforesaid, it is quite clear that there are provisions for delegation by the State Government and the powers vested in itself to the Director of Municipal Administration, Regional Directors of Municipal Administration as also such other Officer referred to under Section 74 of the said Act.

10] In pursuance of such powers of delegation, the Petitioner has placed on record notification dated 1 January 2001, in terms of Annexure-2 to the said notification. It is clear that appeal powers under Section 44(4) of the said Act have been delegated by the State Government to the Regional Directors of Municipal Administration. Such powers are to be exercised by the Regional Directors within their respective jurisdiction.

11] In this petition, even Respondent No.3 has not challenged the notification with regard to such delegation of powers. However, Mr.Joshi has submitted that such delegation will not apply to disqualification under Section 44(1)(e) of the said Act, since, this ground of disqualification was introduced in the Statute Book only by Maharashtra Act 11 of 2002. It is not possible to accept this submission.

12] The insertion of clause (e) in sub-section (1) of Section 44 of the said Act, may have come about in the year 2002. However, the provisions of Section 44, which provide for appeals against decisions of the Collector in the matter of disqualifications under Section 44(1) of the said Act, have been in the Statute Book from inception.

In exercise of powers conferred by Section 74 of the said Act, the State Government, which is otherwise appellate authority under Section 44 (4) of the said Act has chosen to delegate its powers to Regional Directors of Municipal Administration. There is no retrospectivity involved in the matter of delegation of such powers. The circumstance that clause (e) was introduced in the year 2002 and the delegation in terms of Section 44(4) of the said Act was made in year 2001, is really an irrelevant circumstance. Even Respondent No.2, at no stage, had objected to appeal of the Petitioner being taken up for Regional Director. This Court, in its order dated 31 July 2015, had also directed the Regional Director to dispose of the Petitioner's appeal, even though, at that stage, the issue now raised by Mr. Joshi had not been raised by any of the parties. Accordingly, the appeal instituted by the Petitioner before the Regional Director was rightly instituted. The Regional Director, undoubtedly, had jurisdiction to decide the said appeal, in terms of Section 44(4) of the said Act read with the delegation notification issued in terms of Section 74 of the said Act.

13] Section 44(4) of the said Act very categorically provides that the orders passed by the State Government in exercise of appellate

powers shall be final. In this case, the State Government has delegated its own powers to the Regional Director, the orders passed by the Regional Director exercising appeal jurisdiction under Section 44(4) of the said Act have been accorded statutory finality. Therefore, there was no question of Respondent No.3 instituting further appeal to the State Government, questioning the order made by the Regional Director under Section 44(4) of the said Act. Such an appeal was clearly not maintainable and on this ground itself the impugned order made therein, is required to be set aside.

14] At this stage, it is not necessary to go into the question as to whether the State Government could have exercised the revisional powers. This is because, the impugned order itself very categorically states that the Additional Secretary, State of Maharashtra, has purported to exercise appeal powers under Section 44 (4) of the said Act, when, as noted earlier, such powers are no longer available for exercise. Besides, it is not even the case of Respondent No.3 that what was instituted before the Secretary, State of Maharashtra, was in fact a revision petition.

15] Even otherwise, assuming that some sort of jurisdiction could be attributed to the State Government in matters of this nature, it must be noted that there was no justification whatsoever for grant of *ex-parte* stay, upon the order made by the Regional Director, which have set aside disqualification order made against the Petitioner. During pendency of the appeal before the Regional Director, stay upon disqualification had been declined by the appellate authority. In Writ Petition No. 6193 of 015, this Court had granted limited stay to such disqualification, which was to operate during pendency of the appeal. The Regional Director has in fact, allowed the Petitioner's appeal and set aside the disqualification. Even the proviso to Section 44 of the said Act mandates that no order shall be made under sub section (4) of the State Government, in appeal, against any Councillor, without giving him a reasonable opportunity of being heard. In these circumstances, there was really no case made out to grant any *ex-parte* stay, which would have effect of virtually reviving disqualification against the Petitioner.

16] Further, the impugned order is totally bereft of any reasons whatsoever. At the stage of grant or refusal of interim reliefs, there may not be any necessity of recording elaborate reasons. However, it

does not mean that there is no requirement of recording any reasons whatsoever. The reasons, in brief, are mandated, particularly considering the fact situation of the present case. This is another reason for which, the impugned order is liable to be set aside.

17] This Court, on 3 December 2015, by a speaking order had granted ad-interim relief in terms of prayer clause (c). This means that the impugned order dated 29 September 2015 was stayed and the Petitioner was very much qualified to continue as a Councilor. Despite this, Respondent No.4 has refused to include the name of the Petitioner in the voters' list for election process to the legislative Council of Maharashtra. Respondent No.4 declined such inclusion, on the ground that the order of this Court was not made available to him by 4 December 2015. This was not proper particularly, considering the order dated 11 December 2015, whereby names of certain voters have been included in the very same voters' list by the very same authorities. The interim order dated 3 December 2015 was made after hearing learned counsel for Respondent Nos.1,2 and 4. Therefore, Respondent No.4 ought to have included the name of the Petitioner in the voters' list, no sooner he was apprised of the interim order dated 3 December 2015, which, as noted earlier was

made after hearing the counsel representing him.

18] Mr. Naik, learned senior advocate for the Petitioner, has made it clear that the Petitioner has no intentions of contesting election, but the Petitioner merely desires to vote at such election. Therefore, requiring Respondent No.4 to do, what Respondent No.4 should, in any case have done by himself, is permissible, particularly since the election process is not being derailed in any manner. The Respondent No.3, on the basis of the *ultra vires* impugned order, which he had obtained cannot be permitted to oppose such plea. Otherwise, Respondent No.3 would virtually succeed, on the basis of the impugned order, which was *ex-facie* without jurisdiction and in any case deserved to be quashed and set aside.

19] Therefore, Rule is made absolute. The impugned order dated 29 September 2015 is quashed and set aside. Respondent No.4 is directed to forthwith include the name of the Petitioner in the voters' list for the elections to the Legislative Council, State of Maharashtra and to permit the Petitioner to vote therein.

20] It is, however, made clear that this Court has not examined

the merits of the matter, in the sense the merits with regard to disqualification or otherwise of the Petitioner. Therefore, all contentions of all parties in this regard are kept open.

21] The petition and civil application are disposed in the aforesaid terms.

22] In the facts and circumstances of the present case, there shall be no order as to costs.

23] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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