

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2704 OF 2016
WITH
CIVIL APPLICATION NO. 14297 OF 2016
IN
WRIT PETITION NO. 2704 OF 2016**

Mudssar Jahangir Shaikh

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. V.D. Hon, Senior Counsel i/b Mr. A.V. Hon, Advocate for petitioner and for Respondent No.1 in CA.

Mr. N.V. Gaware, Advocate for Respondent No.3 in WP.

Mr. G.K. Thigale, Advocate for applicant.

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CORAM : T.V. NALAWADE, J.

DATED : 26th OCTOBER, 2016

ORDER :

1. Heard learned Senior Counsel for petitioner. The petition is filed to challenge the order made by Divisional Commissioner, Nashik in Disqualification Proceeding No. 10 of 2015 and the order dated 15th February, 2016. The application was moved for disposal of the proceeding by contending that there was no compliance of provision of Rules 6 and 7 framed under the Maharashtra Local Authority Member Disqualification Act, 1986.

2. The proceeding is filed for defection under the Anti Defection law in respect of same meeting which was held for election to the post of Mayor. This Court had occasion to decide Writ Petition No. 2669 of 2016 and it had arisen out of Disqualification Application No. 8 of 2015. In that matter this Court has made observation with regard to necessity of compliance of provisions of Rules 6 and 7 at paragraph no.5 and the observations are as under:

“5. The learned counsel for the petitioner placed reliance on some observations made by this Court in the case reported as 2013 (6) Bom.C.R. 818 [Fazalur Rehman Gulam Nabi Vs. Raziya Begam Sayyed Natiquiddin Khatib (Smt.) and Ors.]. This Court has carefully gone through the observations made in aforesaid case cited supra and they are with regard to the procedure which is required to be followed for entertaining the petition and for taking cognizance of the matter under Rules 6 and 7. This Court has referred the case of Apex Court reported as 2011 (1) Bom.C.R. 531 (S.C.) [Kedar Shashikant Deshpande Vs. Bhor Municipal Council] in which the Apex Court has laid down that such defect can be cured by mentioning that the proceeding laid down in these Rules is not that mandatory in nature. In any case, the learned Commissioner has come to the conclusion that the procedure is followed. It can be said that the petitioner is trying to protract the decision of the proceeding and that is why, the present proceeding is filed. There are no merits in the

petition. The petition is dismissed. The Commissioner is expected to expedite the matter and in any case within 45 days from the date of appearance of parties. Both sides are to appear before the learned Commissioner on 15.11.2016.”

3. It cannot be disputed that after taking cognisance of the matter it is the duty of the authority to proceed and find out as to whether there was defection in view of object behind the anti defection law. The cognisance of the matter is already taken and so this Court holds that it is not desirable to interfere in that matter. In view of the facts of the present case also this Court holds that there is no force in the objection taken with regard to non-compliance of provisions of Rules 6 and 7. In the result, present petition is also dismissed.

4. Civil Application No. 14297 of 2016 is filed for permission to intervene in the matter pending before the Divisional Commissioner, Nashik contending that considering the possibility of collusion between the petitioner and other side, present applicant wants to intervene and produce relevant material before the authority if the said material is not produced. In view of possibility and nature of proceeding, this Court holds that such permission also needs to be given. Parties to appear before the Divisional Commissioner, Nashik on 15th November, 2016. The

Divisional Commissioner, Nashik is to dispose of the matter expeditiously and preferably within a period of 45 days.

5. So, petition is dismissed and civil application is allowed. Applicant Sunilkumar Kotkar is allowed to intervene the said matter.

(T.V. NALAWADE, J.)

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