

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

1002 WP/2669/2016 WITH CA/13411/2016

CHANDRASHEKHAR BALASAHEB MRUTI BORATE
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

...
Advocate for petitioner : V.D. Hon, Sr. Counsel i/b. A.V. Hon
AGP for Respondents 1 and 2 : A.P. Basarkar
Advocate for intervenor : G.K. Naik Thigle
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CORAM : T.V. NALAWADE, J.
DATED : 20th October, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Divisional Commissioner, Nashik in Disqualification Application No. 8/2015. The proceeding is filed against the present petitioner for disqualification under the provisions of section 3 (1) (b) of the Maharashtra Local Authorities Members Disqualification Act, 1986. Heard both the sides.

2. In the aforesaid proceeding, the present petitioner had filed an application for raising preliminary issue that there was non compliance of provisions of Rules 6 and 7 of the Rules framed under the aforesaid Act. After hearing both the sides, the learned Commissioner has dismissed this application.

3. The learned Senior Counsel for petitioner took this Court first through Rule 6. It appears that initially the proceeding was filed by the Group Leader in the Local Body viz. Shri. Samad Khan and now the intervenor Shri. Sampat Baraskar wants to prosecute the matter as the Group Leader as the previous Group Leader Shri. Samad Khan is in jail and according to Shri. Basarkar he is now the new Group Leader. In any case, after taking the cognizance of the matter, it becomes the duty of the authority like Commissioner to proceed ahead with the proceeding and take action in view of the object behind the Anti-defection Law.

4. The order made by the learned Commissioner shows that along with the application, there was an affidavit of the petitioner and there was the other record like the record of whip, copy of constitution of the party, the record showing that the act of the petitioner was not condoned, the record of sending of the whip by post etc. It is also contended that the whip was published in daily newspaper. The petitioner remained absent when the election to the post of Mayor of the Local Body was scheduled and when there was the whip of the group formed in the Local Body.

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 has 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.

6. Both the sides are heard in Civil Application No. 13411/2016. The learned Senior Counsel for the present petitioner submitted that the previous Group Leader Samad Khan has filed Writ Petition No. 9932/2016 to challenge the election of Sampat Baraskar as Group Leader and so Sampat Baraskar cannot act as Group Leader. Application is filed only for getting right to intervene in the matter and to prosecute the proceeding pending before the learned Commissioner. In view of the wording of Rule 6, it can be said that any Councillor can prosecute the matter. In view of this circumstance, this Court is allowing Sampat Baraskar to prosecute the matter. The application is disposed of as allowed.

[T.V. NALAWADE, J.]

ssc/