

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

WRIT PETITION NO. 4127 OF 2016

Ramkishan Shankarrao Madne

..PETITIONER

VERSUS

Samad Razak Patel and Others

..RESPONDENTS

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Mr. R.S. Deshmukh, Advocate h/f Mr. Amol Joshi, Advocate h/f Mrs. Anjali Dube, Advocate for petitioner.

Mr. V.D. Salunke, Advocate h/f Mr. M.V. Salunke, Advocate for Respondent No.1.

Mr. A.V. Hon, Advocate for Respondent Nos. 9 and 10.

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**CORAM : T.V. NALAWADE, J.
DATED : 20th DECEMBER, 2016**

ORDER :

1. The petition is filed to challenge the judgment and order of Election Petition No. 6 of 2012 which was pending in the Court of Civil Judge, Senior Division, Latur. The petition filed by present petitioner is dismissed. The election of Respondent No.1 to the Municipal Corporation, Latur was challenged. Both sides are heard.

2. The election was challenged mainly on the ground that on the relevant date, Respondent No.1 was panel advocate of Latur Corporation and in that capacity was holding the office of profit. It was contended in

the petition that Respondent No.1 was there on the panel of Advocates of the local body for more than 20 years and he was drawing monthly remuneration from the corporation. Objection was also taken to the nomination at the time of scrutiny of the forms but the objection was rejected. It appears that there were other allegations like corrupt practice but they were not pressed in the election petition.

3. It was contended by present petitioner that some record was created by Respondent No.1 by joining hands with the officers and staff of the municipal corporation to show that he had resigned from the post but there were circumstances like scoring entries leading to the probability that resignation was not given prior to the relevant date and it was not accepted prior to the relevant date.

4. Respondent No.1 denied the aforesaid allegations. Both sides gave evidence. The Election Tribunal has held that the Respondent No.1 was not holding the office of profit, he was not working as legal advisor of the local body at the relevant time i.e. 27th march, 2012, the date of filing of nomination paper and so he cannot be disqualified and his election cannot be set aside i.e. he was not disqualified under Section 10(c) of the Bombay Provincial Municipal Corporation Act.

5. The Tribunal has held that even the initial appointment as counsel on the panel of the corporation was not informed and there is no sufficient evidence in that regard. The Tribunal has held that the record of payment of honorarium is for the period ending 01st November, 2011 and there is no such record for the period after 01st November, 2011 and so it is not possible to hold that Respondent No.1 continued to work as panel advocate after 01st November, 2011.

6. The evidence was given to show that the resignation was tendered on 09th March, 2012. The resignation letter is duly proved. Much was argued by learned Counsel for present petitioner on the circumstance that this document bears the stamp of Latur Corporation showing that the letter was registered in the inward register by giving no. 5379 but there is no such entry in the inward register. The present petitioner has produced copy of the inward register and it shows that in the past at this number entry of one some correspondence made by one Madhukar was made. However in this register there was no entry of the aforesaid resignation tendered by Respondent No.1. It appears that outward register was also produced and in the outward register there was entry of the present letter and the Tribunal has held that there is possibility that the staff of corporation committed mistake and made entry

in the outward register and mentioned the number of letter as inward register number.

7. The aforesaid circumstance can only create some suspicion but circumstance cannot create probability that false record was created subsequently of tendering of such resignation. There is record which is proved to show that the Commissioner of Corporation accepted the resignation on 13th March, 2012, much before the date of filing of nomination and this letter was sent to Respondent No.1 on 13th March, 2012 and this letter was also entered in the outward register of Administrative Department and it was given number as 1339 on 13th March, 2012. The Commissioner, one I.A.S officer is examined to prove that resignation was placed before him and he had accepted the resignation. There was no reason whatsoever for the Commissioner to give false evidence in support of Respondent No.1 and further there is record in support of oral evidence.

8. Some argument was advanced by learned Counsel for petitioner on the procedure which needs to be adopted for acceptance of resignation. He submitted that the resignation ought to have been placed before the body of the corporation and only after that it could have been

accepted. This submission is not at all acceptable. It is not disputed that it was honorary post. In addition to the aforesaid record, no dues certificate was issued prior to the date of nomination in favour of Respondent No.1. In view of this circumstance, the resignation of Respondent No.1 could not have been rejected and it was sufficient for him to tender the resignation in such a case. In any case, there is evidence to show that resignation was accepted well before the date of filing of nomination.

9. The burden of proof was on the petitioner to prove that the ground of disqualification existed on the date of filing of nomination paper. The aforesaid material is sufficient to hold that petitioner failed in discharging that burden. Learned Counsel for petitioner placed reliance on observations made by the Division Bench of this Court in the case reported as **2006(2) Bom.C.R. 704 (Sardar Surjeetsingh Jeevansingh Girniwale and Others Vs. State of Maharashtra and Others)**. In paragraph no. 39 of the said judgment, this Court has made discussion about the ground mentioned above, the candidate availing pecuniary benefits by virtue of some office. When he had tendered the resignation and resignation was accepted and further when there was no amount due from Respondent No.1, there was no question of holding that he was

disqualified to contest or hold the post. Thus the observations made by this Court are of no help to the petitioner in getting the decision in his favour. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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