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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5555 OF 2016

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| 1. | Rekha Suresh Patil
Age -33 years, Occ - Household,
R/o Near Suryawanshi Building,
Amalner, Taluka - Amalner
District - Jalgaon | PETITIONERS |
| 2. | Lata Bindu Sonwane,
Age - 48 years, Occ - Household,
R/o Vaibhav Colony, Tambepura,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 3. | Madhukar Rama Chudhari,
Age - 55 years, Occ - Agriculture
R/o Vaibhav Colony, Tambepura,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 4. | Mayabai Narendrasingh Pardeshi,
Age - 42 years, Occ - Household
R/o Opp Station Road,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 5. | Kavita Avinash Jadhav,
Age - 28 years, Occ - Household
R/o 24-B, Krushi Nagar, Dheku Road,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 6. | Sahebrao Vasantrao Pawar,
Age - 49 years, Occ - Agriculture
R/o Shrikrishna Nagar
Mohadikar Plot,
Amalner, Taluka - Amalner
District - Jalgaon | |
| 7. | Swati Pravin Pathak,
Age - 33 years, Occ - Household | |

R/o Vanita Samaj
Amalner, Taluka - Amalner
District - Jalgaon

8. Ashabai Vithoba Mahajan,
Age - 42 years, Occ - Household
R/o Maliwada,
Amalner, Taluka - Amalner
District - Jalgaon

VERSUS

- | | |
|--|-------------|
| 1. The State of Maharashtra
Through District Collector,
Jalgaon, District - Jalgaon | RESPONDENTS |
| 2. Jayshri Anil Patil,
Age - 35 years, Occ - Household
R/o Siddhivinayak Colony,
Dhule Road, Amalner,
Taluka - Amalner, District - Jalgaon | |

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Mr. V.J.Dixit, Sr. Advocate i/b Mr. S.H.Tripathi, Adv. for petitioners
Mr. B. A. Shinde, AGP for respondent - State
Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, for respondent No.2
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JUNE, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioners are before this court aggrieved by order dated 3rd May, 2016 passed upon an application/objection filed by them dated 12th April, 2016 seeking dismissal of

disqualification petition bearing No. 22 of 2014 pending before Collector, Jalgaon, primarily for non compliance of direction to rectify verifications, on this occasion particularly verifications of the annexures to the disqualification petition, despite affording opportunity twice, alleging failure on the part of respondent No.2 to bring the same in tune with the requirements of Order VI, Rule 15 of the Civil Procedure Code, contravening Order XIX, Rule 1 of the Civil Procedure Code and Rule 6 (4) of the Maharashtra Local Authority Members Disqualification Rules, 1987.

3. Learned senior advocate Mr. Vinayak J. Dixit vehemently contends that in spite of letting opportunity to respondent No.2, twice, she has failed to bring verification of the disqualification petition in tune with requirement of Order VI, Rule 15 of the Civil Procedure Code and particularly ignoring categorical observations of this court as occurring in paragraph No.5 of order dated 22nd March, 2016 in writ petition No. 1848 of 2016. Learned senior advocate contends that initially an opportunity had been let to respondent No.2, when earlier on an order in writ petition No. 4096 of 2015 had been passed directing the collector to examine compliance of requirement of Rules 6 and 7 of the Disqualification Rules. After decision in writ petition

No.4096 of 2015, the petitioners had moved writ petition No.1848 of 2016 challenging order dated 5th January, 2016 rejecting an application dated 31st December, 2015 in disqualification petition. It had been alleged that the collector had not considered that the disqualification petition suffers material defects and the mandatory compliance, as required under Rule 6 of the Disqualification Rules, had not been made and further that the disqualification petition had not been signed and verified before the person empowered to administer oath and the collector has erred in ignoring these vital aspects. This Court (Coram : S. V. Gangapurwala, J.) while deciding writ petition No.1848 of 2016 has observed in paragraph No.5 of the order dated 22nd March, 2016 as under;

“ 5. Perusal of the Bombay Amendment, it is abundantly clear that, the pleadings has to be verified before the authority who is empowered to administer oath or before any other officer of the Court mentioned in Sec.139 of the C. P. C. Sec.139 of the C. P. C. gives the list of persons who are empowered to administer oath. Perusal of the petition, it nowhere appears that, the same is verified before the authority as contemplated U/Sec.139 of the C.P.C. As per Sub Rule 4 of Rule 6 of the Rules of 1987, every annexure is required to be verified in accordance with the provisions of the C. P. C. laid down for verification of pleadings. I have perused the annexures. The verification to the annexure only states that, the same is true and correct. However, the source of said information is not stated i.e. whether the petitioner, believes the same to be true and correct on his personal knowledge or the source of knowledge is different. The same has to be specifically stated. The said defect appears in the verification of the annexures. As far as concise

statement is concerned, the statement appears in respect of registration of Aghadi before the poll and after the poll. At the time of final trial the said aspect can be considered by the authorities, if such an objection is raised by present petitioners.”

4. Learned senior advocate Mr. Dixit, goes on to submit that despite aforesaid categorical observations, respondent No.2 has failed to rectify the defects occurring in the verification, particularly in the verification of the annexures to the disqualification petition.

5. He submits that respondent No.2 has chosen to continue with the same format of verification in respect of annexures. It was incumbent on the Collector to have dismissed the disqualification petition itself, for, despite getting opportunity twice, respondent No.2 had persisted with the defects as occurring in the disqualification petition earlier on and has been stubborn, rather adamant in going ahead with the same verification.

6. He submits that after getting opportunity, if the defects continue to subsist and respondent No.2 since having chosen to persist with the same, the whole disqualification proceedings are liable to be dismissed. He, for said purpose refers to and relies on a decision of the Supreme Court in the case of “*Regu Mahesh*

Alias Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev and Another” reported in *AIR 2004 SC 38*. He refers to head note (B) and paragraph No.18 therein. According to him, the approach as is exhibited by respondent No.2 is casual and not serious.

7. Mr. Dixit, further refers to that aforesaid decision of the Supreme Court takes into account yet another decision of the Supreme Court in the case of “*R. P. Moidutty Vs. P. T. Kunju Mohammad and Another*” reported in (2000) 1 SCC 481 and emphasizes observations in paragraphs No.33 and 35 therein, which are as under;

“ 33. The affidavit filed by the petitioner in support of the election petition as required by Rule 94-A also does not satisfy the requirement of the proviso to sub-section (1) of Section 83 of the Act and Form 25 appended to the rules. The several averments relating to commission of corrupt practice by the first respondent as contained in paras 4 to 12 and 16 of the petition have been verified as true to the best of “my knowledge and information” - both, without specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge.

35. All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in F.A. Sapa V. Singora the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the

verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured (see Murarka Radhey Shyam Ram Kumar V. Roop Singh Rathore and A. S. Subbaraj V. M. Muthiah). In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in the required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings. ”

8. Mr. Dixit, therefore, with reference to observations of the Supreme Court in aforesaid judgment, submits that unless defect in verification is rectified, the petition could not be proceeded with and submits that, verifications in the disqualification petition are not only not in consonance with Order VI, Rule 15 of the Civil Procedure Code, but also or rather are in disregard to the specific observations of this court in order dated 22nd March, 2016 in writ petition No.1848 of 2016 and as such, the disqualification petition is liable to be thrown out.

9. According to learned senior advocate, the collector has committed gross error in cursorily rejecting the application/objection filed by the petitioners, making general

observations that the disqualification petition is duly verified and annexures accompanying therewith are also verified, without taking into account that there is no compliance of the requirements of Order VI, Rule 15 of the Civil Procedure Code in respect of verification of annexures to the disqualification petition. The verifications refer to only "*I believe those to be true and correct*" and do not disclose any source of information or that respondent No.2 on her own believes the same to be true and correct, a defect as had been noticed by this court while order had been passed in writ petition No.1848 of 2016 on 22nd March, 2016. He, therefore, urges to allow the writ petition, set aside impugned order dated 3rd May, 2016 and dismiss disqualification petition No.22 of 2014 pending before Collector, Jalgaon.

10. Learned senior advocate Mr. Vinayak D. Hon, appearing for respondent No.2, however, at the outset requests that if this court comes to the conclusion that verification requires further rectification, respondent No.2 may be let an opportunity to remove the defects. He submits, after the order had been passed in writ petition No.1848 of 2016, the defects in disqualification petition have been cured by respondent No.2. He submits, as far as disqualification petition is concerned, there are no defects in

the verification. He refers to that a new set of disqualification petition has been filed after duly verifying it before proper authorized officer and the same is amply borne out from the documents which have been annexed to the writ petition. He points out that the disqualification petition and annexures thereto had been verified before authorized officer as required under Order VI, Rule 15 of the Civil Procedure Code, particularly, Bombay Amendment.

11. He submits that there is no substance in the allegations that the disqualification petition suffers defect in respect of verification to annexures. Learned senior advocate submits that respondent No.2 has been under impression that the annexures may form part of evidence and it had not occurred to her that those may or may not be integral part of the disqualification petition. She was further under the impression that verification in the form as has been occurring has been depicting that respondent No.2 had annexed to the disqualification petition documents as they had been subsisting and had been received at her end and as such, she believed the same to be true and correct on her personal knowledge and understanding and as such, it may not have been necessary for her to disclose source of the information, since the source of information is receipt of

documents at her end. However, if need be so, and in order to avoid controversy over the same again and to while away time on such controversy, respondent No.2 is willing to rectify the same. He submits that at no point of time, it was her intention to disregard the order passed by the court in earlier round of litigation. However, she was labouring under a genuine impression, which if it is erroneous, she be allowed an opportunity to bring verification of annexures in tune with the requirements.

12. He submits that it has been observed by the courts often rather continually maintaining that the defects in the verification are curable defects and the legitimate */is* shall not be thrown out on the count of defects in verification. He submits that in the present case, the matter can also be viewed from an angle wherefrom it can be considered that documents may evidence the allegations as occurring in disqualification petition. According to him, if at all it is defect, it is debatable one and the collector as such, has not committed any error in passing the impugned order. He submits that this is third round of litigation at the instance of the petitioners to while away time in order to retain their seats in the municipal council. These are dubious ways of doing so and for said purpose, they are misusing the court

process.

13. He submits that respondent No.2 is neither adamant nor stubborn and her concern is to see the disqualification incurred by all the petitioners by their conduct deserves to be proceeded against in accordance with law. He submits that even ordinarily it would not be in her interest to flout the orders and no such intention had ever been there. He submits, she genuinely believed that with rectification of the verification of disqualification petition the defects have been rectified. However, looking at that so much ado has been made, by way of abundant precaution she resiles to a situation that she be let an opportunity to bring the same in tune with the requirements.

14. He, therefore, submits that the writ petition does not require any consideration, however, his client would remove the alleged defects in verification of annexures as early as possible.

15. In view of the submissions as have been advanced on behalf of respondent No.2, as submitted by learned senior advocate that respondent No.2 genuinely believed rather was under the impression that verifications were proper and that she has further shown her willingness to take a corrective action in this respect, I deem it appropriate to let an opportunity to

respondent No.2, to comply with the observations as are occurring in paragraph No.5 of the order dated 22nd March, 2016 in writ petition No.1848 of 2016. In the circumstances, I do not deem it appropriate to meddle with the impugned order passed by the Collector.

16. Since the disqualification petition is pending from 2014, it would be expedient that after corrective action within a period of ten days from the date of receipt of writ of this order, the same be proceeded with in accordance with the directions earlier on passed in writ petition No.4096 of 2015.

17. Writ petition, with aforesaid observations stands disposed of. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]