

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

WRIT PETITION NO. 6065 OF 2016

Nitin Vasantryao Kasar

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. P.V. Mandlik, Senior Advocate i/b Mr. P.P. Mandlik, Advocate for petitioner.

Mr. A.P. Basarkar, A.G.P. for Respondent No.1.

Mr. K.K. Kulkarni, Advocate for Respondent No.2.

Mr. P.S. Dighe, Advocate h/f Mr. R.L. Kute, Advocate for Respondent No.3.

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CORAM : T.V. NALAWADE, J.

DATED : 21st OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the Hon'ble Minister under Section 55A and 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as 'the Act') by which the petitioner is disqualified for remaining term and further he is disqualified for being elected as Councilor till the period of six years has elapsed from the date of the order of disqualification. Both sides are heard.

2. The petitioner was President of the Municipal Council, Naldurga, District Osmanabad and he was also the Councilor of this local body. The election had taken place in the year 2011 and the petitioner had become the President on 26th December, 2011. As per the decision of his party, he was to hold this post from 26th December, 2011 to 26th October, 2012. On 27th March, 2012, Municipal Council, Naldurga invited tenders for various works which include the work of collection and disposal of garbage from the area of the local body. In all five tenders were received in response to the tender notice and one Kulswamini Swayamrojgar Seva Sanstha had also filled the tender. The tender of Kulswamini institution was of lowest value, of Rs.1,54,231/- per month. The work was not given to this institution but it was given to Sevalal Majur Sahakari Sanstha. In view of this circumstance, Kulswamini institute gave complaint to the Collector, Osmanabad.

3. The Collector made enquiry through Sub-divisional Officer. As the petitioner was the President, the matter was referred to the State - Hon'ble Minister of the State Government. Show cause notice was issued against the petitioner under Section 55B of the Act. It was informed that there was irregularity in allotting the work to Sevalal institution when the tender of Kulswamini institution was lowest and there was no indication

of negotiation in the tender with the other institutions which had given higher rate and further the allotment of the work was not in accordance with the rules.

4. The petitioner filed reply. He contended that after opening the tenders, the matter was placed before the general body and the general body authorised him to go for negotiation to see that the work is given at lower rate. The petitioner contended that Kulswamini institution did not participate in the negotiation and other institutions participated and as Sevalal institution quoted lowest rate of Rs.1,29,500/- per month, the work was given to that institution.

5. The Hon'ble Minister considered the report given by the Chief Officer and also the Collector and passed the order of disqualification of aforesaid nature.

6. The learned Senior Counsel for the petitioner submitted that no loss is caused to the local body due to the act of the petitioner and further it was decision of the general body and so order of disqualification could not have been passed against the petitioner. Learned Senior Counsel placed reliance on some reported cases.

7. In the case reported as *AIR 1996 Bombay 227 (Baburao Mathpati Vs. State of Maharashtra and Others)*, this Court was considering the provision of Section 55A of the Act and there was ground of neglect of duties. The order made by the Hon'ble Minister was set aside in that case as there was lack of judicial appraisal of facts. The facts were different. In the case reported as *AIR 2012 SC 1339 (Ravi Bhoir Vs. District Collector, Raigad and Others)* the Apex Court has observed that the expression misconduct has to be understood as transgression of some established and definite rule of action, forbidden act and unlawful behaviour. It is further laid down that for taking action under Section 55B of the Act, strict adherence to statutory provisions of principles of natural justice is necessary. There cannot be any dispute over this proposition. In that case, there was charge of accepting the tender of higher rate. The tender was passed by the council after due deliberation and it was collective consensus decision of the house and not that of President alone. It was observed that order of removal was suffering from legal malaise and it was liable to be quashed. The facts were different. In the case reported as *AIR 1993 Allahabad 50 (Surinder Prakash Goel Vs. State of Uttar Pradesh and Others)* there was illegality in respect of purchase of material, but resolution was passed by City Board and so it was held that action only against Councilor was not sustainable. In the

case reported as **2015 (3) All M.R. 831** of this Bench (*Yojana Mali Vs. State of Maharashtra and Others*) there was charge of protecting and permitting the interest of close relatives against the President and the resolution was passed in general body without putting it for voting. This Court held that there was no possibility of interference in the order of removal made against the President and further disqualifying him to get elected as Councilor.

8. The facts and circumstances of each and every case are always different. The provisions of Sections 42, 55A and 55B of the Act show that while exercising powers, in all the three cases, the State Government is expected to give reasonable opportunity to the person against whom the proceeding is started. It cannot be disputed that if act of the President was against the bye-law of the local body or there was some misconduct and it was showing that such decision was taken intentionally, then it will be up to the person like the petitioner to show that there were no malafides or he was not responsible for such steps.

9. In the present matter, the public notice inviting the tenders shows that alongwith the tender form, the documents like registration certificate, registration for income tax and sales tax of the institution was

to be produced. It was not mentioned in the public notice that even if tender is lowest, there will be negotiation with all the persons who had filled the tender though the right of acceptance or rejection of the tender was reserved by the local body. Alongwith the petition, comparative table prepared by office of the local body is produced in respect of the tenders and record shows that after opening tenders, proposal was made to accept the tender of Kulswamini institution but step was taken to see that there is further negotiation with this institution. Thus, apparently negotiations were to be done only with Kulswamini institution. The record shows that notices were given to all the five persons who had filled the tenders. Kulswamini institution did not participate in the negotiation and then the work was allotted to Sevalal institution.

10. The report of Sub-divisional Officer shows that he noticed that tenders given by the other institutions could not have been considered as the record like registration for sales tax, income tax, etc. was not supplied by the other institutions and the tender only of Kulswamini institution was in order. The report shows that actual negotiation did not take place and it was virtual auction and that was not permissible as the advertisement was given to the aforesaid effect. As pr the rules, there was right to local body to reject all the tenders and go for other procedure but

that was not done and the other procedure was followed. The report was given that as per the procedure, it was necessary to allot the work to Kulswamini institution but intentionally such allotment was avoided and the work was given to other institution. Submission was made that for the other institution, one Daskar Ajay had remained present and he was son of previous president of the institution and he was belonging to the political party of the present petitioner. It appears that even when there was challenge to the allotment before the Collector, the amount in respect of two months was released in favour of the said institution though after the expiry of the term of the petitioner as President. His party was in power. This subject was within the jurisdiction of standing committee of local body, but attempt was made to see that resolution was obtained from local body to give the authority to the President to make negotiations. Though there was resolution of general body, the negotiations were done by the President himself and so it was the act of the President and it was not the act of general body or standing committee.

11. The submissions made show that the petitioner remained President of the body from 26th February, 2011 to 26th October, 2012. The amount was disbursed on 01st November, 2012. Thus on facts, the

misconduct is proved and the explanation given cannot help the petitioner in any way.

12. The petitioner has enjoyed his post of President and so the action only under Section 55A would not have served the purpose. In view of this circumstance, the action is taken under Section 55B of the Act. The record is sufficient to infer that the conduct was willful and there was intention to allot the work to particular institution by giving go-bye to the procedure. In such circumstances whether infact the local body is benefited or not need not be considered. Due to these circumstances, this Court holds that it is not possible to interfere in the decision given by the Hon'ble Minister. The breach of the procedure and bye-laws is discussed by the Hon'ble Minister and that reason is sufficient for disqualification. These circumstances are sufficient to infer malaice, willful conduct. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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