

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

Writ Petition No.6665 of 2016

Yuvraj s/o Dagadu Lonari.

.. Petitioner.

Versus

Haji Naim Kha Siddiq Kha
And Others.

.. Respondents.

Shri. A.P. Bhandari, Advocate, for petitioner.

Shri. M.S. Deshmukh, Advocate, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 1st SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by learned District Collector Jalgaon in Disqualification Petition No.15/2014. Present respondent No.5 had filed an application for allowing him to intervene in the matter and for allowing him to prosecute the matter of disqualification and this application is allowed. The original petitioner Haji Naim Kha, present respondent No.1, had given in writing that he had no intention to prosecute the matter. Heard both the sides.

2) The facts of the case pending before the Collector show that the general elections of the Municipal Council Bhusawal, District Jalgaon were held in the month of December 2011 and political party, Nationalist Congress Party had contested the seats. 24 candidates of this party were elected as councillors and so the party decided to contest the elections for the posts of the President and the Vice President. The candidates of these posts were selected and then whip was issued by the party to all the councillors of the party in this municipal council to vote for the candidates of the party. In municipal party of Nationalist Congress Party, respondent No.1 Haji Naim, original petitioner, was the leader on record. These elections took place in July 2014 and the term of the post was 2 and half years. Present respondent Nos.2 to 4 disobeyed the whip of the party and so the matter was reported by the respondent No.1 to the political party and the disqualification petition came to be filed.

3) The voting took place on 19-7-2014. Present petitioner who was councillor of Nationalist Congress Party, contested the election for the post of the President

against the party candidate and original respondent Nos.2 to 4, Rajendra, Uday and Smt. Shobha voted in favour of petitioner and so all of them defied the direction given by the party.

4) The petition was filed for disqualification under the provision of section 3(1)(b) of the Maharashtra Local Authority Members' Disqualification Act, 1986 on 16-8-2014 when the election had taken place on 19-7-2014. In support of the contentions, Haji Naim, group leader filed evidence by affidavit and when the hearing was going on, on 22-7-2015 Haji Naim filed affidavit and requested the Collector to dispose of the matter without taking further action.

5) It appears that no urgency was shown by the Collector also even when it is the matter of disqualification and in April 2016 the Collector took up the matter as present respondent No.5 Ulhas Pagare, a councillor, filed application for intervention and informed that he wanted to prosecute the matter. Notice was then issued on 22-4-2016 and both the parties and Ulhas were

asked to remain present on 26th April 2016 for further hearing. On 26-4-2016 two orders were made. By the first order, the application of Haji Naim for disposal of the matter without taking action came to be rejected and by the second order the Collector allowed Ulhas to intervene in the matter. This application was opposed by one more person like Nirmalkumar Kothari.

6) The learned counsel for the petitioner submitted that when the petitioner, Haji Naim, group leader of the political party in the Municipal Council, did not want to prosecute the matter, there was no option before the Collector than to dispose of the matter without taking further action. He submitted that the procedure which is required to be followed for filing the proceeding for disqualification is required to be followed and as the intervenor cannot follow that procedure, intervention application ought to have been rejected and the proceeding ought to have been disposed of by the Collector in view of the affidavit filed by Haji Naim.

7) This Court has carefully gone through the relevant provision of the Maharashtra Local Authority Members' Disqualification Act, 1986 and the rules framed thereunder of 1987. The provision of Section 3 runs as under :-

"3. Disqualification on ground of defection:- (1) Subject to the provisions of section 5, a councillor or a member belonging to any political party or *aghadi* or front shall be disqualified for being a councillor or a member -

(a) if he has voluntarily given up his membership of such political party or *aghadi* or front; or

(b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, *Panchayat Samiti* contrary to any direction issued by the political party or *aghadi* or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or *aghadi* or front, person or authority and such voting or abstention has not been condoned by such political party or *aghadi* or front, person or authority within fifteen days from the date of such voting or abstention:

Provided that, such voting or abstention without prior permission from such party or *aghadi* or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, shall not be condoned under this clause;

Explanation:- For the purposes of this section - (a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or *aghadi* or front, if any, by which he was set up as a candidate for election as such councillor or member; "

8) In the present matter, admittedly Nationalist Congress Party on its own had secured 24 seats and so it was in a position to win the elections to the posts of President and Vice President in view of the total strength of the members which was less than the double of this number. Shri. Haji Main was Group Leader of this party in the Municipal Council though he has described himself as leader of *Aghadi*. Admittedly no such *Aghadi* of two political parties or one political party and independent members was created. Thus, present petitioner Yuvraj was belonging to political party in view of the aforesaid provision. He contested the election against the party candidate and it is the case against him that whip was issued and it was communicated to him. In view of the provision given in Section 3(1)(b) proviso it was not possible to condone the act of the present petitioner.

9) The question now remains is whether due to non prosecution of the petition by a person like Haji Naim, the Collector ought to have disposed of the matter without taking further action. The other question is as to whether the person like Ulhas Pagare could have been allowed to

intervene as he claims to be the councillor of the said Municipal Council. The aforesaid provisions of the Act and the rules framed under the said Act show that other persons can prosecute the matter and it is the duty of the authority like Collector to continue the matter even if the political party or group leader do not show interest in prosecuting the matter. The relevant provision of the rules is Rule 3(5) and it runs as under :-

"3. Information to be furnished by a leader of a Party:-

(1)

(2)

(3)

(4)

(5) Where a councillor in relation to a municipal party or a Zilla Parishad party and a member in relation to a Pachayat Samiti party votes or abstains from voting in any of the meetings of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be Panchayat Samiti contrary to any direction issued by the political party or *aghadi* or front to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior permission of such party, person or authority, the leader of such municipal party or Zilla Parishad party or as the case may be, Panchayat Samiti party, or where such councillor or member is the leader or, as the case may be, the sole member of such municipal party, Zilla Parishad party or Panchayat Samiti party, such councillor or, as the case may be, member, shall as soon as may be thereafter and in any case within thirty days from

the date of such voting or abstention inform the Commissioner or, as the case may be, the Collector in Form II whether such voting or abstention has or has not been condoned by such party, person or authority."

10) If the provision of the section and the object behind the section is kept in mind and the procedure given for taking action of disqualification as laid down in the rule is considered, it can be said that it only needs to be brought to the notice of the authority that a person has incurred disqualification under the aforesaid provision. After that it becomes the duty of the authority like Collector to take action. The learned counsel for the respondent placed reliance on the case reported as **(2011) 2 SCC 654 (Kedar Shashikant Deshpande v. Bhore Municipal Council)**. The Apex Court has discussed the provisions of the Act and the Rules involved in the present matter and by referring to the provision of Rule 6 the Apex Court has laid down that the procedure prescribed like verification of the petition and the documents annexed thereto is directory in nature and it is not mandatory and even if right from beginning there is some defect in the verification the defect can be cured. The

object behind the substantive provision for disqualification and the duty cast on the authority like Collector are discussed by the Apex Court at paragraphs 22 and 23 and they are as under :-

"22. It may be mentioned that the Maharashtra Local Authority Members' Disqualification Rules, 1987 are in pari materia with the Bihar Legislative Council (Disqualification on the Ground of Defection) Rules, 1994 and, therefore, the principles laid down in the abovequoted decision would be applicable with all force to the interpretation to be placed on the 1987 Rules. In the abovequoted decision this Court has gone to the extent of saying that there is no lis between the person moving the petition and the member of the House who is alleged to have incurred disqualification. According to this Court it is not an adversarial kind of litigation and, therefore, even if the petitioner withdraws the petition it will not make a difference as the duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provisions. This Court has held that the provisions of the tenth Schedule of the Constitution read with Articles 102(2) and 191(2) operate on their own and the only purpose of the petition is to bring the relevant information about disqualification to the notice of the Chairman.

23. In the present case also Section 7 lays down that the Collector has to decide the question of disqualification on a reference made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1)(a) and 3(1)(b) operate on their own force and the moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a

disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law."

11) In view of the aforesaid law laid down by the Apex Court and the relevant provisions of the Act and Rules, which are already quoted above, this Court holds that the Collector has not committed any error in allowing the application of the intervenor, who is the councillor, and in rejecting the application made by Shri. Haji Naim, which was filed for disposal of the matter without taking further action. In the result, the petition is dismissed. The Collector is expected to expedite the matter as already much time is unnecessarily consumed and every tactics is played by the concerned to see that original respondents of the petition enjoy the entire term. The entire term is about to end within few months. So the Collector is to make every endeavour to see that the decision is given prior to the expiry of the term. The learned counsel requested for continuation of the interim relief granted by this Court. It is refused.

Sd/-
(T.V. NALAWADE, J.)

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