

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

925 WRIT PETITION NO. 9153 OF 2015

JAFARULLA KHAN MOHIDDINKHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. Rajendrraa Deshmukkh, Advocate, for petitioner.
Shri. S.K. Tambe, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. A.M. Gaikwad, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 30 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the Hon'ble Minister in appeal filed against the order made by the learned Collector Nanded in a proceeding filed under Section 16 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 for disqualification. The learned Collector had made order of disqualification and the appeal filed against the said decision is dismissed by the Hon'ble Minister. Heard both the sides.

2) The petitioner was nominated as councillor in the year 2013 in Municipal Council Kandhar. In the year

2013 itself respondent Krishna Papinwar filed proceeding for disqualification under section 16 of the aforesaid Act on the ground that after the relevant date, 12-9-2001, three issues were born to the present petitioner and even on the date of the nomination he was having three issues and so it needs to be declared that he is disqualified. Notice of the present proceeding was given to the petitioner.

3) The petitioner appeared before the Collector and the first thing which he did was to file application for stay of the proceeding. He contended that one election petition was filed in District Court to challenge his election and writ petition was also filed challenging the proceeding of his nomination and so long as those two proceedings were pending, it was not open to the Collector to decide the disqualification matter. Admittedly, no stay of any kind was granted by this Court or by the District Court to the disqualification proceeding. Pendency of these two proceedings does not mean that the disqualification proceeding cannot be decided. Thus, there is no force in this contention and the Collector had

rightly turned down that contention by passing reasoned order on the stay application. The said order was never challenged by the present petitioner.

4) The other contention made by the learned counsel for the petitioner is that the Hon'ble Minister did not give him opportunity and hearing was not given to him and in his absence the matter was decided. The stay was granted by the Hon'ble Minister which was communicated to him on 5-9-2014 and the appeal came to be decided on 23-7-2015. The aforesaid circumstances show that the petitioner was doing everything to see that final decision of the matter is protracted. Learned counsel for the petitioner placed reliance on the case reported as **2010 AIR SCW 3277 (Assistant Commissioner, Commercial Tax Department v. M/s Shukla and Brothers)** and submitted that principles of natural justice were not followed. Whether principles of natural justice were followed or not and what kind of hearing needs to be given to the person like the petitioner, depends on facts of that date. Facts of the present case show that there was opportunity to the petitioner but he failed to avail opportunity and tried only

to protract the things. In such a case it needs to be held that he failed to avail the opportunity though there was opportunity to defend.

5) Coming to the merits of the case it can be said that the learned Collector considered the material which was available and also the written say of the present petitioner and the local body. The record like school leaving certificates in respect of the three issues born to the petitioner on 17-1-2002, 1-6-2005 and 8-7-2006 was on the record and there was no explanation from the petitioner in respect of this record. Thus, after the relevant date viz 12-9-2001 all the three issues were born to him and he could not have been contested election for the post of the councillor. Thus, on merits there was virtually no case to the petitioner and he is playing every tactics to see that the disqualification is not declared. In view of these circumstances, this Court holds that there are no merits in the present petition. The petition stands dismissed.

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