IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 11762 of 2015

* Prashant s/o Dattatray Pawar,
Age 37 years,
Occupation : Business and
Agriculture,
R/o Shiv Colony, Bhadgaon,
Taluka Bhadgaon, Dist. Jalgaon. **.. Petitioner.**

Versus

1) Hon'ble Minister for State for
Urban Development Department,
Maharashtra State,
Mantralaya, Mumbai - 32.

2) Collector, Jalgaon,
District Jalgaon.

3) Returning Officer for election
to the post of President,
Municipal Council, Bhadgaon,
for 2015 @ Sub Divisional Officer,
Sub Division, Pachora,
Taluka Pachora, Dist. Jalgaon.

4) Municipal Council, Bhadgaon,
Taluka Bhadgaon,
District Jalgaon,
Through its Chief Officer.

5) Rajendra Mahadu Patil,
Age 45 years,
Occupation: Agriculture,
R/o Near Swami Samarth Petrol
Pump, Pachora Road, Bhadgaon,
Taluka Bhadgaon, Dist. Jalgaon. **.. Respondents.**

Shri. Mahesh S. Deshmukh, Advocate, for petitioner.

Shri. S.R. Yadav, Assistant Government Pleader, for respondent Nos.1 to 3.

Shri. D.B. Thoke, Advocate, for respondent No.4.

Shri. S.B. Talekar, Advocate, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 24 OCTOBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2) The petition is filed against the order of the Hon'ble Minister, Urban Development Department in a dispute filed by present respondent Rajendra Patil under the provisions of section 51(6) read with section 16(1)(a1) read with section 55-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Act"). In the proceeding declaration was sought that respondent No.1, Pawar, present petitioner, was disqualified on the date of election held for the post of the President of Bhadgaon

Municipal Council and after making such declaration to make further declaration that Rajendra Patil was elected in the said election as he had also filed nomination for the said election. Notice was issued in respect of this proceeding for hearing by the Government in August 2015. Initially present petitioner had prayed for transfer of the matter from the Hon'ble Minister to other Hon'ble Minister but he could not get such relief. The Hon'ble Minister allowed the proceeding and declared that on 30-4-2015 present petitioner, Pawar, was not eligible to contest the election to the post of the President as he was already disqualified is given. Further declaration is made that in view of the declaration made in respect of previous term that he was disqualified, he stood disqualified for subsequent term also which was for the period 2015-2020 also.

3) The submissions made and the record show that both Rajendra Patil and Pawar got elected to Municipal Council Bhadgaon for the term 2015-2020. The election to the post of President was scheduled on 30-4-2015. Both of them had filed nominations for the said

post. Rajendra Patil took objection to the nomination of present petitioner Pawar but this objection was rejected. Pawar was declared as elected when lots were drawn.

4) The Hon'ble Minister has held that due to order of disqualification made in the previous proceeding against Pawar he was not entitled to contest the election of the Municipal Council and then the election to the post of President. The Hon'ble Minister has held that the vote of Pawar could not have been counted in the election to the post of the President and in view of these circumstances, Patil needs to be declared as elected for the post of the President.

5) When the proceeding of aforesaid nature was filed, Hon'ble Minister went on to give one more declaration. It is declared that Pawar is not entitled to continue on the post of Councillor in view of the disqualification which he had incurred in the previous term. The proceeding before the Hon'ble Minister was filed under section 51(6) of the Act and this provision is as under:-

"51. Election of President:

(1)

(2)

(3)

(4)

(5)

(6) Any dispute regarding election of the President shall be referred to the State Government whose decision in that behalf shall be final.

6) In view of the aforesaid provision and as the proceeding was filed to challenge only the election of the President, it was not possible to treat this proceeding as the one under section 55-A of the Act. Further, the provision of section 16(1)(a1) of the Act can be used only when he is disqualified under law made for the purpose of elections to the Legislature of the State. This provision cannot be used in proceeding filed under the provision of section 51(6) of the Act. Further even order under section 55-A of the Act could not have been made by the Hon'ble Minister in this proceeding. There was no allegation against present petitioner Pawar that he had made illegal or unauthorized construction while he was holding the post of President or Vice President. Provisions of Section 55-A and 55-B of the Act can be used only when the

Councillor was holding the post of President or Vice President and misconduct was of that tenure. Further, there is procedure laid down in the Act for passing order under section 55-A or Section 55-B of the Act and separate show cause notice is required to be given when action is intended under these sections. The allegations which can be called as charge on the basis of which order can be made need to be informed to the person like present petitioner. Reasonable opportunity needs to be given in that proceeding to defend the matter and only after that order under section 55-A or 55-B of the Act can be made.

7) Today, this Court decided Writ Petition No.4878/2015 which was in respect of disqualification incurred by present petitioner Pawar due to his misconduct of previous tenure, 2010-2015. There were allegations against him that he had made illegal or unauthorized construction on his property when he was Councillor. Proceeding was conducted against him under section 44(1)(e) of the Act. This Court has held that the ground is proved against him and so he was disqualified to

continue as Councillor for the remaining period of the said term. Unfortunately, due to the pendency of the proceeding before the Hon'ble Minister and stay given, the petitioner enjoyed the entire tenure as a Councillor. But, due to this circumstance it cannot be said that the previous misconduct when he was the Councillor can be considered for the subsequent term. In any case, in a proceeding of the present nature it was not possible to give the declaration of aforesaid nature viz. he cannot continue as Councillor for the remaining period of present term. It appears that the Hon'ble Minister had misconception that this Court had directed him to review the decision given by him in the previous appeal which was under challenge in Writ petition No.4878/2015 mentioned above. No such direction was given by this Court. Thus, only the appeal filed against the election of Pawar to the post of the President was under challenge in the proceeding which was pending before the Hon'ble Minister but the orders of aforesaid nature came to be made.

8) This Court has decided today another Writ Petition bearing No.4925/2015 which was filed by Rajendra Patil against present petitioner to challenge acceptance of nomination filed for the President's post. Said proceeding is also dismissed by this Court by holding that the order of disqualification made in respect of the previous term under section 44 of the Act cannot be used against Shri. Pawar. The position of law is discussed in that proceeding. This Court has held that the disqualification cannot continue after expiry of the term when the order is made under section 44(1)(e) of the Act. Thus, the Hon'ble Minister has committed serious error in making order of aforesaid nature against the present petitioner. In the said proceeding also this Court has made it clear that the point whether the circumstance of the construction made by Pawar which is said to be illegal or unauthorized can be used for his disqualification for subsequent term needs to be dealt with in a separate proceeding which can be started under different provisions of the Act. Unless and until the order of disqualification is made in a proceeding which may be filed, the petitioner will be entitled to continue as

Councillor.

9) In the result, the petition is allowed. Parts 3 and 4 of the operative order of the decision given by the Hon'ble Minister are hereby quashed and set aside. Rule is made absolute in those terms.

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

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