

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7282 OF 2016

Sunderabai Ramu Bilawar

... Petitioner

vs.

Gadhinglaj Shahar Rashtrawadi Congress
Party & anr.

... Respondents

Mr. S. S. Patwardhan, Advocate for the petitioner.

Mr. Amit B. Borkar, Advocate for respondent no.1.

Mrs. Vaishali Nimbalkar, A. G. P. for respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 10th August, 2016

P.C. :

1. This petition challenges the order dated 10th May, 2016 by which the petitioner was disqualified for defying the whip of her party.

2. The petitioner was elected as a member of Gadhinglaj Municipal Council in the election that took place in the year 2011-2012. Thereafter on 7th July, 2015 election for electing the president of Gadhinglaj Municipal Council were scheduled. On 4th July, 2015 respondent no.1, on behalf of the party issued a whip that all the members of the party must vote for the candidate of the party contesting the election to the president of Gadhinglaj. The petitioner admittedly did not follow the whip and therefore came to be disqualified.

3. The contention of the petitioner to contest the disqualification proceedings and also in the present petition is firstly that there was no service of whip upon her as claimed in the proceedings for disqualification. Secondly, at the time of actual voting the petitioner was relieved of the control of whip and therefore she was free to cast her vote in favour of any person. The petitioner claims that the contention of respondent no.1 that the whip was served on her on 4th July, 2015 while she was in the hospital at Kolhapur is not correct. According to her no document could have been served upon her at the hospital on that day since she had taken discharge on the earlier day i.e. on 3rd July, 2015. This fact becomes irrelevant since apart from the personal service respondent no.1 had caused the whip to be published in the local newspaper. Therefore there is a presumption that the petitioner was aware of the whip. Mr. Borkar, the learned advocate for respondent no.1 refers to the decision of Division Bench of this Court in ***Gajanan s/o Subhashrao Suryawanshi vs. Sharad Namdeo Pawar*** reported in **2013(6) Mh.L.J. page 505** which holds that mere issuance of whip is sufficient to infer that it is known to every constituent. Therefore once the whip is issued the constituent is supposed to know the same and absence of any separate service becomes irrelevant. Thus there is no substance in the contention with regard to service of the whip.

4. The petitioner claims that on the date and time of election respondent no.1 filed an application in writing, which had effect of relieving the petitioner of the whip. Request in writing of respondent no.1 is referred to in the impugned order. Perusal of the same, makes it very clear that the petitioner was

not discharged or relieved of the whip. The only request made in writing was that nobody should either give proxy for the petitioner's vote or raise her hand by lifting it. This would only indicate that no force was to be used on the petitioner by touching her body. But that does not mean that the petitioner was relieved of the whip issued by respondent no.1. Thus in my opinion there is no infirmity whatsoever with the impugned order. Hence the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]