

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11790 OF 2015

Smt. Asha Namdev Ballal and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

WITH

WRIT PETITION NO. 3173 OF 2016

Smt. Geeta Ashok Choudhari and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Shyam Walve i/b A. D. Wagh for the Petitioner in WP No. 11790 of 2015.

Mr. Amey Deshpande for the Petitioner in WP No. 3173 of 2016.

Mr. Suhas Oak and Mr. Pranil Sonawane i/b G. T. Kanchanpurkar for Respondent No. 2.

Mr. S. B. Shetye and Ms. Shriya Jadhav for Respondent No.3.

Mr. P. G. Sawant for AGP for the State.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.

Date : **March 21, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. Both these petitions challenge the order dated 31st October 2015 passed by the Collector, Palghar in the proceedings taken out by Dr. Sandeep Vaidhya under Rule 6 of the Maharashtra Local Authority Members' Disqualification Rules.

2. The Petitioners in both these petitions and Mr. Sandip R. Vaidya, who is arraigned as Respondent in these petitions, are the Councillors of Jawhar Municipal Council, District Palghar. Mr. Vaidya filed separate proceedings under the provisions of the Maharashtra Local Authority Members' Disqualification Act, 1986 and the Rules made thereunder seeking disqualification of the Petitioners on the ground contemplated under clause (b) of section 3 of the said Act.

3. Admittedly, earlier by the order dated 15th May 2015 the Collector, Palghar had disqualified the Petitioners herein, which order was challenged by filing a writ petition before this Court, being Writ Petition No.4930 of 2015. The said writ petition was disposed of by this Court *vide* order dated 31st July 2015 [Coram : R. M. Sawant, J.]. The Collector's order was quashed and set aside on the ground of violation of principles of natural justice and the matter was remanded back to the Collector with a direction to decide the proceedings filed by Mr. Vaidya, afresh after giving an opportunity of hearing to the Petitioners. In pursuance of the directions given by the learned Single Judge of this Court in Writ Petition No.4930 of 2015, it appears that Collector, Palghar gave an opportunity of hearing to the Petitioners

and passed the order dated 31st October 2015. By this order, the Collector, Palghar has confirmed his earlier order dated 15th May 2015. This fresh order of the Collector, Palghar is impugned in these petitions.

4. Learned Counsel appearing for the Petitioner submitted that the impugned order deserves to be quashed and set aside on the sole ground that it is not supported by any reasons. The learned Counsel appearing for Mr. Sandeep Vaidya too, submitted that by the order impugned in this petition, the Collector, Palghar has confirmed his earlier order dated 15th May 2015 which was quashed and set aside by this Court in Writ Petition No.4930 of 2015. He too supported the Petitioners and submitted that the matter deserves to be remanded back. Learned AGP submitted that the impugned order is passed after considering the order passed by the learned Single Judge of this Court in Writ Petition No. 4930 of 2015 and therefore the impugned order does not require any interference at the hands of this Court.

5. We have perused the impugned order. The Collector has recorded the operative portion of the order given by this Court in Writ Petition No.4930 of 2015. He has thereafter recorded the

submissions of the Petitioners. In last paragraph, he has referred to the Apex Court decision in *Kedar Deshpande v. Bhore Nagar Palika* being Civil Appeal No. 10452-10457/2010 dated 10th December 2010 and observed that the facts of the present case and the facts of the said appeal before the Apex Court are similar and has thereafter directly confirmed his earlier order dated 15th May 2015.

6. Under section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986, a councillor or a member belonging to any political party or *aghadhi* or front shall stand disqualified if he has voluntarily given up his membership of such political party or *aghadhi* or front or he votes or abstains from voting in any meeting of the Municipal council contrary to any direction issued by the political party or *aghadhi* 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 *aghadhi* or front, person or authority and such voting or abstention has not been condoned by such political party or *aghadhi* or front, person or authority within fifteen days from the date of voting or abstention.

7. The perusal of the impugned order reveals that there is no finding whatsoever that the Petitioners have either voluntarily given up their membership of the political party to which they belong or they have voted or remained absent at the time of voting in a meeting of Jawhar Municipal Council contrary to the directions given by the political party to which they belong. In fact, what we find is that there are no reasons in the impugned order.

8. Be that as it may, the Collector has confirmed his earlier order dated 15th May 2015. As stated above, this order was already quashed and set aside by this Court in Writ Petition No. 4930 of 2015. Thus, the order dated 15th May 2015 is not in existence and therefore it is not permissible for the Collector to confirm it. The collector has to independently come to the conclusion that the Petitioners stand disqualified as they have committed any of the acts mentioned in section 3 of the said Act.

9. In above conspectus of the matter, we have no alternative but to quash and set aside the impugned order and remand the matter back to the Collector for fresh disposal of Mr. Vaidya's applications seeking disqualification of the Petitioners.

Hence, the impugned order is quashed and set aside and matter is remanded back to the Collector Palghar for afresh decision on merits. The Collector shall dispose of the proceedings by making a speaking order. The matters be disposed of by the Collector as expeditiously as possible and at any rate within the period of three months from the date of receipt of a copy of this order.

10. Writ petitions stand disposed of.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]