

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5449 OF 2015

Vishwanath Ashruji Sanap
Adult, Member of Z.P. Washim
R/o Chinchamba (Bhar) Tq. Risod
Dist. Washim.

... Petitioner.

-vs-

1. Chandu Uttam Jadhav
Adult, Occ. Z.P. Member,
R/o Malegaon Tq. & Dist. Washim.

2. Z. P. Washim Through
its Chief Executive Officer,
Washim, Tq. & dist. Washim

3. The Collector Washim,
Tq. & Dist. Washim.

... Respondents.

Shri J. B. Gandhi, Advocate for petitioner.

Shri S. D. Chande, Advocate for respondent No.1.

Respondent No.2 served.

Shri A. Kadukar, Assistant Government Pleader for respondent No.3.

CORAM : A.S.CHANDURKAR, J.

DATE : August 09, 2016

Oral Judgment :

In view of notice for final disposal, the learned counsel for the parties have been heard at length by issuing Rule and making the same returnable forthwith.

The petitioner is aggrieved by the order dated 27/08/2015 passed

by the Collector thereby disqualifying the petitioner as member of Zilla Parishad, Washim. This order of disqualification is under provisions of Section 3(1)(a) of the Maharashtra Local Authority Members Disqualification Act, 1986.

2. The respondent No.1 had initiated proceedings for disqualification of the petitioner on the ground that the petitioner had voluntarily given up membership of the political party that had sponsored his candidature on the basis of which he had been elected. The said elections were held in the month of December 2014. The disqualification petition was filed under Rule 6 of the Maharashtra Local Authority Members Disqualification Rules, 1987 (for short, the Rules of 1987). By the impugned order, the petitioner stands disqualified from continuing as a Councillor of the Zilla Parishad.

3. Shri J. B. Gandhi, the learned counsel for the petitioner submitted that the impugned order has been passed without complying with the procedure prescribed by Rule 7 of the Rules of 1987. He submitted that the petitioner had appeared before the Collector on 02/06/2015. He had sought time to file the reply. After grant of some time, the proceedings were fixed for final hearing on 31/07/2015. The petitioner filed an application dated 31/07/2015 for deciding the preliminary objection raised to the maintainability of the proceedings. On the next date which was 07/08/2015

another application for deciding preliminary objection came to be moved. Despite these applications being placed on record, the Collector proceeded to decide the proceedings on merits and passed the impugned order. He submitted that the petitioner intended to lead evidence in support of his defence. Relying upon the decision in **2015(2) ABR 759 Avinath Gulabrao Mardikar v. The Divisional Commissioner, Amravati and ors.**, it was submitted that as the procedure prescribed by the Rules of 1987 were not followed, the impugned order stood vitiated.

4. Shri S. D. Chande, the learned counsel for the respondent No.1 supported the impugned order. According to him, as it was an admitted position that the petitioner had contested the subsequent election from a different political party, the petitioner stood disqualified for voluntarily giving up the membership of the earlier political party. He referred to the averments made in the application dated 31/07/2015 filed by the petitioner to support the aforesaid stand. He placed reliance on the judgment of learned Single Judge in **2015(3) ALL MR 516 Mahesh Vishnupant Kothé vs. Sanjay Channvirappa Hemgaddi and ors.** and submitted that in such situation, the petitioner was rightly disqualified.

Shri A. Kadukar, the learned Assistant Government Pleader appeared for the respondent No.3.

5. The learned counsel for the parties have been heard at length. The roznama of the proceedings indicates that after the petitioner entered his appearance, time was granted to file reply and thereafter the proceedings were fixed for final hearing. The preliminary objection raised by the petitioner on 31/07/2015 remained undecided. The procedure for deciding a disqualification petition is laid down in Rule 7 of the Rules of 1987. The same includes drawing of articles of charge, calling upon the parties to lead evidence and thereafter deciding the proceedings. In **Avinash Gulabrao Mardikar** (supra) it was held that procedure prescribed by Rule 7(3) to 7(15) of the Rules of 1987 is required to be followed before passing the final order. In the present case, no articles of charge were framed nor was any opportunity given to the parties to lead evidence. In other words, the procedure prescribed by Rule 7(6) of the Rules of 1987 and onwards has not been followed.

The submission on behalf of the respondent No.1 by relying upon the decision in **Mahesh Vishnupant Kothe** (supra) that as the petitioner had contested elections from another political party, he could be straightway declared disqualified cannot be accepted. The petitioner had sought to raise a specific defence justifying his actions and therefore the proceedings ought to have been decided by following the procedure prescribed by the Rules of 1987. A go-by to the said procedure resulting in disqualifying a councillor

could not have been permitted.

6. In view of aforesaid, the impugned order dated 28/07/2015 is quashed and set aside. The proceedings are restored before the Collector for trying the same after following the procedure prescribed by Rules of 1987 from the stage contemplated by Rule 7(6). For adjudication of aforesaid proceedings, the parties shall appear before the Collector on 29/08/2016. The proceedings shall be decided expeditiously and in accordance with law within time stipulated by Rule 8(1A) of the Rules of 1987.

Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

Asmita

-: C E R T I F I C A T E :-

“ I certify that this Judgment/order uploaded is a true and correct copy of the original signed Judgment/order.”

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