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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1751/2017

Sow.Mangala Sanjay Chaudhari,
age 40 yrs., occu.nil,
r/o Tulsi Nagar, Infront of
Kalika Mata, Jalgaon.
Tq. & Dist.Jalgaon.
...Petitioner..

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Nagar Vikas Department,
Mantralaya, Mumbai.
- 2] The Divisional Commissioner,
Nashik Division, Nashik.
- 3] The Collector,
Jalgaon. Dist.Jalgaon.
- 4] Lalit Vijay Kolhe,
age 40 yrs., occu.agri., & business,
r/o Kolhe Nagar, Near Ramanand Nagar
Police Station, Jalgaon.
Tq. & Dist.Jalgaon.
...Respondents...

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Shri Anandsingh Bayas, Advocate for petitioner.
Shri S.R. Yadav, AGP for respondent nos.1 to 3.
Shri P.V. Gamot, Advocate for respondent no.4.

CORAM: M.S. SANKLECHA, J.

DATE: 17.04.2017

ORDER :

- 1] This petition challenges the order dated
22.7.2016 passed by the Divisional Commissioner, Nashik

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Division, Nashik, in exercise of powers u/s 3(1)(b) of the Maharashtra Local Authority Members Disqualification Act, 1986 read with Rule 6 of the Maharashtra Local Authority Members Disqualification Rules, 1987 (hereinafter called as the Rules). By the impugned order dated 22.7.2016, the petitioner was disqualified as a Corporator of Jalgaon Municipal Corporation (hereinafter called as the Corporation).

2] The petitioner was an elected member of Corporation having won the election under the banner of Maharashtra Navnirman Sena (MNS).

3] On 15.10.2015, the election of Sabhapati of Mahila Bal Kalyan was scheduled to be held and in that election, MNS party had nominated one Ms.Khushbu Kamlakar Bansode as its candidate. Further, Gat Neta of MNS issued a whip on 13.10.2015 directing all Corporators from the MNS party to attend the meeting on 15.10.2015 and to vote in favour of its candidate Ms.Khushbu Bansode.

4] On 15.10.2015 at 1-00 p.m., the meeting was held under the chairmanship of the Collector in the Corporation to elect the Sabhapati of Mahila Bal Kalyan.

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As recorded in the minutes of the meeting of the Corporation held on 15.10.2015 (Exhibit A to the petition) at 1-15 p.m., there were two candidates contesting for the post of Sabhapati of Mahila Bal Kalyan. One being Ms.Khushbu Bansode of MNS and the other was Ms.Shobhabai Dinkar Bari. The chairman of the meeting at 1-15 p.m. adjourned the meeting for 15 minutes to enable the candidates contesting the election to withdraw if they so desire. At 1-30 p.m., Ms.Shobhabai Dinkar Bari withdrew her candidature and Ms.Khushbu Bansode was elected unopposed as Sabhapati of Mahila Bal Kalyan.

5] The Gat Neta of MNS party thereafter filed a petition under Rule 6 of the Rules to the Commissioner seeking disqualification of the petitioner, for having disregarded whip dated 13.10.2015. Consequent to the above, the Commissioner granted a personal hearing to the petitioner and by the impugned order dated 22.7.2016, disqualified the petitioner from being a member of Corporation in terms of Section 3(1)(b) of the Act.

6] The impugned order held that the petitioner had violated whip of the Gat Neta of MNS. The impugned order

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records that medical certificate produced by the petitioner to justify / explain her absence at the meeting lacked credibility. The medical certificate shows the date of discharge from the hospital as 16.10.2015 while the contents of the certificate show that the petitioner had been advised rest at home up to 16.10.2015. In the above view, the impugned order did not accept the submission of the petitioner that there was no deliberate breach of the whip as she was unable to attend the meeting because of her ill-health. Further, the impugned order holds that in view of Section 3(1)(b) of the Act, non-attending of the meeting for the purpose of casting of vote would by itself entail disqualification.

7] For the purposes of better appreciation of the rival submissions, it would be useful to reproduce Section 3(1)(b) of the Act, which arises for my consideration.

"3. DISQUALIFICATION ON GROUND OF DEFECTION -

(1) Subject to the provisions of Sections 4 and 5, a councilor or a member belonging to any political party or aghadi or front shall be disqualified for being a councilor or a member

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(a)

(b) if he votes abstains from voting in any meeting of a Municipal Corporation, Municipal council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any persons or authority authorised by any of them in this behalf, without obtaining in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:

Provided that such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause."

8] Mr.Bayas, learned counsel appearing for the petitioner submits that the impugned order is not sustainable for the reason that the disqualification u/s 3(1)(b) of the Act would only be triggered if member of the party votes or abstains from voting in any meeting of

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the Municipal Corporation. In this case there was no occasion to either vote or abstain from voting as Ms.Khushbu Bansode was elected unopposed. Consequently, disqualifying her from the membership of the Corporation is without jurisdiction. It is further submitted that the MNS party to which the petitioner belongs is itself now supporting the petitioner. Consequently, the impugned order needs to be set aside.

9] As against above, Mr.Yadav, learned AGP appearing for respondent nos.1 to 3, supports the impugned order and submits that the whip which was issued by the Gat Neta was to attend the meeting for election of Sabhapati of Mahila Bal Kalyan and to vote in favour of the party candidate Ms.Khushbu Bansode at the election. Thus, there has been clear violation of the party whip. In terms of Section 3(1)(b) of the Act, the disqualification by the impugned order is unimpeachable.

10] I have considered the rival submissions.

11] The minutes of the meeting held on 15.10.2015 for election of Sabhapati of Mahila Bal Kalyan clearly reveal that at the time when the meeting was called at 1-00 p.m. on 15.10.2015, there were two candidates

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contesting the election i.e. Ms.Bansode and Ms.Bari. At 1-15 p.m., the chairman of the meeting adjourned the meeting to enable the candidates contesting the election to take a decision, if they so desire, to withdraw from the election. At 1-30 p.m., Ms.Bari withdrew from the election. This led to the unopposed election of Ms.Bansode as the Sabhapati of Mahila Bal Kalyan. The whip issued on 13.10.2015 by the Gat Neta of MNS to the petitioner clearly directed its members to attend the meeting called on 15.10.2015 at 1-00 p.m. by remaining present at the venue 15 minutes before commencement of the meeting and thereafter to vote in favour of Ms.Khushbu Bansode. It would, therefore, be noticed that the directions in the whip were two-fold [a] to attend the meeting and [b] to vote in favour of Ms.Bansode.

12] Mr.Bayas' contention that Section 3(1)(b) of the Act can only be invoked to disqualify a Corporator when a member of the party votes or abstains from voting contrary to the direction given by a whip of the leader of the political party to which he belongs. In this case, as there was no voting, therefore, occasion to vote or abstain from voting on the part of the petitioner

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does not arise. Thus, there could be no disqualification on the above ground. This submission overlooks the fact that at the time when the whip was issued, there were two candidates in the fray contesting the election as is evident from the minutes of the meeting held on 15.10.2015. It was only at the meeting that Ms.Bari, one of the two candidates contesting to be elected as Sabhapati of Mahila Bal Kalyan, withdrew from the contest. This resulted in Ms.Bansode being elected unopposed. However, the absence of the petitioner from the meeting was itself a disobedience of the whip dated 13.10.2015. It is only on attending the meeting on 15.10.2015 that the occasion to vote or abstain from voting would arise if there is an election. It is not the petitioner's case that before attending the meeting on 15.10.2015, she knew that Ms.Bari was to withdraw her nomination and Ms.Bansode was to be elected unopposed. Thus, there was no need for her to attend the meeting. Section 3(1)(b) of the Act in fact disqualifies a person from membership if he votes or abstains from voting in any meeting contrary to any direction issued by the party to which he / she belongs without obtaining prior

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permission from such political party. Clearly the direction in the whip dated 13.10.2015 was to attend the meeting and vote for Ms.Bansode. Admittedly, the petitioner did not attend the meeting. Consequently, she disabled herself from voting or abstaining from voting if elections were held at the meeting. The petitioner cannot take advantage of her not attending the meeting on an event which happens at the meeting of which admittedly the petitioner had no fore-knowledge and claim that there has been no violation of the whip. In these circumstances, the impugned order passed by the Commissioner cannot be found fault with.

12] The alternative submission of Mr.Bayas that the MNS i.e. the political party to which the petitioner belongs is now supporting her and not supporting the impugned order is of no avail. The political party having initiated the process of disqualifying the petitioner, cannot now turn around and now seek to withdraw its complaint. It is akin to closing the stable after the horse having bolted.

13] Mr.Pravin Gamot, learned counsel appearing for respondent no.4 – original complainant i.e. Gat Neta,

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states that as of today, he has no instructions with regard to the above submission made on behalf of the petitioner by Mr.Bayas. Be that as it may, the concurrence or otherwise of respondent no.4 – Gat Neta cannot decide the validity of the impugned order dated 22.7.2016 passed by the Divisional Commissioner, Nashik.

14] For the reason set out hereinabove, the interpretation upon Section 3(1)(b) of the Act in the context of the whip dated 13.10.2015 cannot be found fault with, to entitle the exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

15] Accordingly, the petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)