

IN THE HIGH COURT OF JUDICATUR OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11429 OF 2017

ASHWINI AMAR NIMBALKAR
VERSUS
THE DISTRICT COLLECTOR, BEED AND OTHERS

Advocate for Petitioner : Shri S.A. Deshpande.
Advocate for Respondent Nos. 3 to 5 : Shir M.S. Adate
h/f Shri N.L. Jadhav.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 20th September, 2017

PER COURT :

1. The petitioners have raised a preliminary issue of maintainability before the Collector in Petition No.1 of 2017, which is filed under Section 3 of the Maharashtra Local Authority Members Disqualification Act, 1986, along with Rule 6 of the Maharashtra Local Authority Members Disqualification Rules, 1987. By the impugned order dated 21.7.2017, the application raising preliminary objections has been rejected.

2. Learned Advocate for respondent Nos. 3 to 5 have filed an affidavit-in-reply.

3. The petitioners had raised certain objections with regard to the documents not being properly signed, lacking in proper verification, concise statement not having been made, proof of actual service of whip not being furnished and copies of the petition served on the respondent not being properly signed.

4. I have considered the conclusions of the authority dealing with Petition No.1 of 2017. After perusing the entire record, the authority below has noted as under:-

" After going through the contents of the petition, say filed by respondents and written notes of arguments I am of the considered view that in view of the provisions of Rule 6, the petitioners have made compliance of the same. As per Rule 6(3) the petition contains concise statement of material facts. The petition is accompanied by copies of documentary evidence. The evidence and annexures are signed by petitioner and verified accordingly.

Second and third ground of objection is that there are no reasonable grounds and concise statement of material facts in the petition for disqualification of respondents It is evident from the petition itself that

reasonable grounds have been put up by the petitioners to believe that question has arisen about disqualification of respondents, and material facts are placed on record by the petitioners.

In the 4th ground of objection it has been stated that documents are not annexed with petition and proof of actual service of whip is not furnished along with petition. After perusal of the petition and annexure annexed there with I am satisfied that all relevant documents are filed by petitioners and copy of whip published in news papers is also annexed.

5th and 6th ground of objection is that the petition and annexure are not signed and verified in proper way. However, it is evident from the record that all documents are duly signed by the petitioners and petition is verified properly as per code of civil procedure. In order 6 Rule 15 it is stated in para (1) that every pleading shall be verified at the foot by the party or by one of the parties proved to the satisfaction of the court to be acquainted with the facts of the case. Therefore, the petition is duly verified as

per code of civil procedure.

7th ground of objection is about absence of original sign of petitioner on copies of petition served upon respondents. In my opinion, it is not mandatory to provide copies of petition with original sign of petitioners and it is not a ground for rejection of petition. However, it is directed to the petitioners to make compliance of the requirements in their petition.

It is also observed by Honourable HC. Bench Aurangabad in a case Jitendra Biraris Vs. Kiran Gulabrao Patil that,

"Maharashtra Local Authority Members Disqualification Act, 1986, Sec. 7 - Maharashtra Local Authority Members Disqualification Rules, 1987, Rr. 6 & 7(2) Disregard of whip by leader - Cause for disqualification - petition against collectors decision - Defences inter alia that requirement of Rule 6 not followed - Reference was not verified nor affidavit in support etc. were properly verified - Held, without going into facts of judgment it would be proper to deal with broader question

as to whether compliance with Rule 7(2) prescribed that if petition does not comply with Rule 6 Commissioner shall dismiss petition. Apex Court in 2004 DGLS (soft) 777 (three Judge Bench) has ruled that provisions of Rule 7(2) are directory to nature and non compliance will not entail automatic dismissal of reference. Court agrees with above judgment and decisions of Single Judges in 2010(10 Bom. C.R. 125(N.B.) and 2009 (5) Bom. C.R. 753. Writ Petition dismissed. (Paras 10,15,16,17, 21 & 23)."

5. It cannot be ignored that a concise statement by one party may not be to the satisfactory of the other party. Every party may have a different view about the concise statement being made. The respondents herein are satisfied with the concise statements made and if they do not advance their case, ultimately, they will suffer the consequences.

6. It is apparent from the objections raised by these petitioners before the lower authority that they are frivolous in nature and aimed at delaying the proceedings. All those

objections have been dealt with by the lower authority, which conclusions have been reproduced herein above. The petitioners have gone to the extent of raising a feeble objection that the copies supplied to them have not been signed by the original applicant / petitioner. It is not their case that a bogus or different copy of the petition has been served upon them.

7. I, therefore, find that this petition has been filed only with the object of delaying the proceedings before the District Collector. So also, it would not be in the interest of the litigating sides to permit any party to agitate on such frivolous preliminary objections as it would result in delaying the entire proceedings, which probably seems to be the intention of the petitioners, since they are elected persons.

8. Considering the above and the reasoned order passed by the District Collector, I do not find that it could be termed as being perverse or erroneous, keeping in view the law laid down by the Honourable Apex Court in the matters of Syed Yakoob. Versus K.S. Radhakrishnan and others (**AIR 1964 SC 477**) and

Surya Dev Rai Versus Ram Chander Rai and others [(2003) 6

SCC 682],

9. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.