

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 10999 OF 2018

Mangal Meharprakash Narayankar

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Mr. S.S. Tope, advocate for petitioner.

Mr. P.S. Patil, AGP for respondents 1 and 2.

**CORAM : R.M.BORDE AND
MANGESH S. PATIL, JJ.
DATE : 3rd OCTOBER, 2018.**

P.C. :

1. Petitioner is seeking directions to the respondents to decide the application tendered by him seeking disqualification of respondent no. 4 under section 44 r/w sections 15 and 16(1A) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965.

2. Respondent no. 4 is a directly elected President of the Municipal Council, Ambad. According to petitioner, on the date of application, respondent no. 4 had more than two surviving children and a such, petitioners claims that in view of provisions of section 16(1)(k), respondent no. 4 is disqualified to continue in the office. Petitioner contends that the directly elected President is also a Councillor within meaning of section 2(7) of the act of 1965.

3. An application has been tendered by the petitioner to the

Collector on 08.06.2017 under sections 16, 16(1)(k) r/w section 44(1)(3) of the Act of 1965, praying for disqualification of respondent no. 4 as the President of the Municipal Council. Further direction is sought seeking declaration of the petitioner as the elected President. Petitioner also claims that respondent no.4 shall be declared disqualified to continue as the member of the of the Municipal Council for a period of six years and she shall be held disqualified to contest the election.

4. Section 16 of the Act of 1965 refers to disqualification for becoming a Councillor. Sub-Section (1)(k) of section 16 provides that no person shall be qualified to become the Councillor whether by election or nomination, who has more than two children. The remedy is provided under section 44 of the Act to hold the Councillor disqualified at any time during his/her term of office.

5. Application tendered by petitioner seeking disqualification of respondent no. 4 on 08.06.2017 to the Collector is not liable to be considered by the Collector for two reasons. Firstly, respondent no. 4 has been elected as the President of the Municipal Council directly by the voters residing within the municipal area and, in accordance with section 55-1(1) of the Act of 1965, a requisition for removal of the President directly elected under section 51A-1A of the Act shall be signed by not less than one half of the total number of Councillors and shall contain the charges of misconduct against such President and shall be sent to the Collector. The Collector, after holding preliminary enquiry, is required to submit the application together with his finding to the State Government for taking appropriate action under Section 55A of the Act of 1965.

6. Section 55A of the Act of 1965 provides that without prejudice to the provisions of sections 55-1A and 55, a President or a Vice-President may be removed from office by the State Government for mis-conduct in the discharge of his duties or for neglect of, or incapacity to perform, his duties or for being guilty of any disgraceful conduct. In the instant matter, petitioner refers to disqualification provided under Section 16(1)(k) of the Act of 1965 and the application is moved to the Collector. The Collector, as has been recorded above, is not having jurisdiction to entertain the application seeking disqualification of a directly elected President. Secondly, the grounds recorded under section 16 of the Act relating to disqualification of a Councillor are not part of Section 55A whereas the grounds of removal of President or Vice-President by the Government are different and those are mis-conduct in discharge of duty, neglect of or incapacity to perform duty or for being guilty of any disgraceful conduct. There is no such allegation in the application tendered to the Collector. As the grounds provided under section 16 of the Act relating to disqualification of Councillor are distinct than the grounds referred to under section 55A relating to removal of the President by the State Government, the application tendered by petitioner with the Collector even if transmitted to the State Government, is not liable to be considered. Petitioner contends that since the directly elected President is a Councillor within meaning of section 2(7) of the Act, section 16 and the grounds recorded therein are relevant and the application tendered to the Collector is entertainable.

7. Respondent no. 4 is elected as President directly by the

voters within the municipal area under section 55A-1A of the Act of 1965. It is true that the directly elected President is a Councillor within meaning of section 2(7) of the Act. It is also true that according to section 51A-1A, every person qualified to be elected as Councillor under Section 15 of the Act shall be qualified to be elected as the President. Qualifications attributable to the President for being elected as the President are the same qualifications prescribed for getting elected as Councillor of the Municipal Council. Though, to the extent of ineligibility to get elected as the President, section 16 of the Act would be relevant, however, for removal of the elected President during continuance of his tenure, recourse to Section 44 of the Act cannot be taken and an application tendered to the Collector seeking removal of the elected President cannot be maintained. Secondly, an application under section 55A of the Act tendered to the State Government can also be maintained on the grounds referred to under section 55A of the Act. It would be open for the voters or the contesting candidate to impeach the election of the President on the grounds referred to under section 51A(1-A) of the Act. In the instant matter, no such course appears to have been adopted by the petitioner.

8. For the reasons recorded above, writ petition seeking relief as claimed in the petition is not entertainable. It would be open for the petitioner to avail of the remedies as permissible in law. Writ petition is dismissed with liberty as aforesaid.

MANGESH S. PATIL
JUDGE

R.M.BORDE
JUDGE