

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12106 OF 2018

(Uday Ambadas Jagdale Vs. Niranjana Devidas Ratod and
another)

WITH WRIT PETITION NO.12107 OF 2018

WITH WRIT PETITION NO.12108 OF 2018

WITH WRIT PETITION NO.12109 OF 2018

Mr.M.S.Kulkarni, Advocate for the petitioner.

Mr.N.T.Bhagat, AGP for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/11/2018

PER COURT :

1. In all these matters, the petitioners are identically placed and are aggrieved by the identical order passed by the District Collector, Osmanabad dated 21/09/2018 by which the applications filed by them raising preliminary objections to the maintainability of the election petitions under Rule 6 of the Maharashtra Local Authority Member Disqualification Rules, 1987, have been rejected.

2. By the consent of the parties, all these matters are heard together. The learned AGP has rendered assistance by keeping the original record available for the perusal of this Court.

3. All these petitioners and respondent No.1 are elected councilors of the Naldurg Municipal Council. Respondent No.1 instituted disqualification proceedings against these petitioners under the Maharashtra Local Authorities Members Disqualification Act and the Rules framed thereunder. It is alleged that a Whip (command) by the District President of the Nationalist Congress Party directing these petitioners to vote in favour of a candidate in the election of the Vice President, was said to have not being followed by these petitioners. A host of factors were canvassed by the learned Advocates for the petitioners on this count, which I am not required to advert to since the main proceedings are pending before the District Collector.

4. The thrust of the petitioner's case is that they moved an application on 20/08/2018 before the District Collector in the pending disqualification proceedings and alleged the following deficiencies in the petitions filed by respondent No.1 :-

[a] The verification in each petition is not in conformity with Order VI Rule 15 of the CPC r/w Rule 6 of the 1987 Rules.

[b] No opportunity of hearing was given by the District Collector on the application filed raising objections.

[c] The roznama contains several discrepancies and though the impugned order is passed on 21/09/2018, the roznama does not reflect any such entry.

5. Following are the further submissions of the learned Advocates for the petitioners, which have not been pleaded in the writ petition and also nowhere stated in the application dated 20/08/2018 inviting the impugned order :-

[a] The statements made by respondent No.1 in paragraph No.8 are contrary to the record placed before the District Collector.

[b] The verification in support of each document produced, is defective.

[c] No specific cause of action can be noticed from the pleadings set out in the election petition.

[d] The pleadings in the election petition are contrary to the contents of several documents relied upon by the election petitioner.

[e] Contradictory statements are made in the election petition and which are not supported by the documents.

6. The learned AGP submits that a vague and ambiguous application was filed by these petitioners before the District Collector. The only two grounds raised in the application are that the contents of the election petition are not supported by a proper verification and that the verification in support of the documents produced are also defective.

7. With the assistance of the parties, I have perused the roznama and the record and proceedings produced by the learned AGP. I find that the roznama has not been meticulously recorded by the concerned clerk or whoever the said Officer could be. The roznama however, does indicate that the application filed by these petitioners and the say of the original election petitioner was considered by the District Collector. He caused an enquiry in the matter and he accordingly considered the material before him and passed the impugned order. The learned Advocate for the petitioner vehemently submits that he was not heard on the said application in which he has raised his objections. In the backdrop of this submission, I called upon the learned Advocate to address the Court on every point that he desires to canvass. He has,

therefore, put forth exhaustive submissions which I have recorded above.

8. Being an election petition, that is pending before the District Collector, I find that though the petitioner has argued at length on several issues, his submissions have to be restricted specifically to the grounds raised by him in his objection application and based on the same, his pleadings in the memo of the petition can be appreciated. In this backdrop, I find that the contention of the petitioner before the District Collector in the objection application is that the election petition is not supported by a proper verification and the documents placed on record are also not supported with a proper verification.

9. I, considered the contentions of the petitioners and have gone through the verification in support of the election petition and in support of the documents that were placed on record alongwith the election petition. On perusing the same, I find that the verification is proper and in tune with the requirement under the Rules. Every verification supporting the documents filed on record are equally specific and I find it to be in tune with the

requirement of Law. As such, a “hair splitting exercise” cannot be undertaken only because the petitioner is not satisfied with the type of the verification offered by the election petitioner in all these matters. I, therefore, find that the applications dated 20/08/2018 raising objections, were filed by these elected representatives only to ensure that the hearing in the matter is delayed. The said application is more of a delaying tactic rather than putting forth a genuine sustainable objection.

10. Learned Advocate for the petitioners has relied upon one judgment of this Court in the matter of Laxmikant Tukaram Chaudhari and others Vs. The State of Maharashtra and others [2003(4) Mh.L.J. 150]. This Court has held that the impugned order must disclose conscious application of mind. A cryptic order indicates non applicability of mind. A non speaking order, un-reasoned order cannot be considered as a valid order.

11. I find that the said view taken by this Court would not assist the petitioners for the reason that they have filed vague and ambiguous applications raising objections and the District Collector has considered all

their objections and has passed a reasoned order. Even I have heard the learned Advocate on the issues raised in the said objection applications and I find that they are without merit.

12. Considering the above, all these petitions, being devoid of merit, are dismissed.

13. Nevertheless, it be noted that after the recording of oral evidence is concluded in the said proceedings, respondent No.2/ competent authority shall decide the said proceedings on their own merits and by considering all the contentions and objections of the litigating sides.

14. The record and proceedings be returned forthwith to the learned AGP.

(Ravindra V. Ghuge, J.)

