

(Reportable)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12373 OF 2018

YUWARAJ KONDIBA NALE
VERSUS
VISHAL PRABHAKAR SAKRE AND ANOTHER.

...

Advocate for the Petitioner : Shri Salunke V.D..
Advocate for Respondent No.1 : Shri S.G.Chapalgaonkar.
AGP for Respondent 2 : Shri P.N.Kutti.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st November, 2018

Oral Order :

1 I have heard Shri Salunke, learned Advocate for the Petitioner, Shri Chapalgaonkar, learned Advocate appearing on behalf of the Respondent, who has appeared on caveat and the learned AGP on behalf of the District Collector, Osmanabad.

2 The Petitioner has challenged the impugned order dated 25.10.2018 passed by Respondent No.2 by which, his application praying for issuance of summons so as to examine the witnesses, has been rejected.

3 It is informed that the proceedings were posted today

(01.11.2018), but are now adjourned to 05.11.2018.

4 It is the case of the Petitioner that he is an elected member of the Municipal Council, Osmanabad in the elections held in 2016. Respondent No.1, who is the defeated candidate, preferred the Election Petition before the District Collector, which is pending. During the pendency of the said proceedings, he moved an application under Section 44 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 after about two years and alleged that the Petitioner has certain plots in Survey No.99 wherein, taking advantage of his position as a councillor, the Petitioner has carried out unauthorized construction. Therefore, the Petitioner deserves to be disqualified.

5 It is in these proceedings that the Petitioner moved an application seeking leave to examine two witnesses, out of whom, one has conducted the panchanama as regards the unauthorized construction and another is the Chief Officer of the Municipal Council, who has issued the notice listing out the grounds for disqualification of the Petitioner. By the impugned order, Respondent No.2/ District Collector has refused permission to the Petitioner to examine the said witnesses as there is no provision for adducing direct evidence.

6 The learned AGP and the learned Advocate for the contesting Respondent have supported the impugned order and pray for the dismissal of this petition with costs.

7 The Petitioner relies upon the order dated 26.06.2009 passed by this Court at the Principal Seat in the matter of ***Shri Vasant Appaso Mali vs. The Collector, Kolhapur and others***, in Writ Petition No.5121/2009. This Court has considered the law laid down by the Honourable Supreme Court in the matters of ***Union of India vs. Tulsiram Patel, (1985) 3 SCC 398*** and ***M.P. Industries Ltd. vs. Union of India, AIR 1966 SC 671*** and has concluded in paragraphs 2 to 6 as under :-

- "2. *The learned advocate appearing for the petitioner contends that under Section 44 an enquiry is to be conducted in a manner when the rules of natural justice must be complied with before a person is disqualified to hold the office of a Municipal Council. He submits that the orders of the 1st respondent i.e. the Collector smack of arbitrariness. He submits further that without permitting the petitioner to cross-examine the person who has prepared the report indicating that the petitioner's structure was unauthorized, he has directed the petitioner to proceed in the matter. Permission has also been refused to the petitioner to lead evidence in the matter. The learned advocate has relied on the judgment of a learned Single Judge of this Court in the case of Suvarna Prakash Patil v/s Anil Hindurao Power & ors., reported in 2003 (Suppl.) Bom.C.R. 19, in support of his contention that in the matters of disqualification it is necessary to follow the principles of natural justice and by adopting a procedure which affords a reasonable opportunity of being heard to the incumbent.*
3. *Mr.Patil, learned advocate appearing for the respondent No.3 submits that the proceedings under Section 44 are summary in nature and in any event, the person against whom a disqualification is sought, has merely to show the record indicating that his structure is unauthorized. According to the learned advocate, the petitioner in this case has not produced a single document to establish the validity of the structure and no purpose would be served*

if he is permitted to cross-examine the person who prepared the report. He further submits that, all that the petitioner is required to do in the present case is to produce any document indicating the validity of the structure. He then draws my attention to the judgment in the case *Union of India v/s Tulsiram Patel*, reported in (1985) 3 SCC 398, to submit that unless the law provides for a hearing to be given in a particular manner, one cannot read the principles of natural justice into every statute and thereby expect that in all cases the delinquent must be given an opportunity to cross-examine the witness or to lead his own evidence, whether oral or documentary. He then relies on the judgment in the case of *M.P. Industries Ltd. v/s Union of India*, reported in A.I.R. 1966 SC 671, while reiterating that a quasi judicial tribunal should not take any decision adverse to a party without giving him an effective opportunity of meeting any allegations against him. The Court has further observed that it is not in every case that a personal hearing must be afforded; such an opportunity can be afforded by permitting a written representation.

4. The disqualification of an elected representative of the people attracts civil consequences. It is trite that, any action against a person which would attract civil consequences adverse to his interest in the society, must be dealt with by an enquiry in which the rules of natural justice have been complied with. In the present case, the Collector is expected to give the Councillor a reasonable opportunity of being heard. Such an opportunity, in my opinion, would include the cross-examination of witnesses and the leading of evidence at an enquiry held by the Collector. Adopting this course in such an enquiry would provide an opportunity to the person proposed to be disqualified to establish his case.
5. Clearly, the Collector in the present case has failed to do this. Merely because the report has been submitted by the Municipal Council, it would not necessarily mean that the report must be accepted. It would be open for the petitioner to demonstrate while cross-examining the witness for the Council that the report is incorrect and that the structure owned by him is not unauthorized. If

- the submission of the learned counsel for the respondent No.3 that, all that the petitioner is required to do is to produce documents indicating that the structure is authorized is accepted, it could lead to serious consequences. One cannot lose sight of the fact that a councillor who is holding office could ensure that he secures a letter showing that the structure is authorized. If such a letter is to be accepted as the gospel truth, it would lead to serious consequences. Therefore, a safeguard has been provided by the legislature that a reasonable opportunity must be given to the person to be disqualified of proving that structure is not unauthorized.*
6. *In the circumstances, the impugned orders are set aside. The Collector shall permit the petitioner to cross-examine the witnesses as well as to examine his own witnesses."*

8 The matter was carried before the Appeal Bench in Letters Patent Appeal No.148/2009. The learned Appeal Bench of this Court by order dated 16.07.2009 has concluded in paragraphs 2, 3 and 4 as under :-

- "2. *What has been done by the learned single Judge is that the Respondent No.1 has been given an opportunity to cross-examine the person who has submitted the report saying that the structure of Respondent No.1 is unauthorised. This has been done by the learned single Judge because if finding recorded by the Collector that the structure of the Respondent No.1 is unauthorised that would result in his removal from the elected office. The learned single Judge has held that as the order has drastic consequence, in compliance with the principles of natural justice, the Respondent No.1 should be given an opportunity to cross-examine the person who has submitted the report.*
3. *The Appellant submits that the learned single Judge has committed an error because the inquiry which is to be made is a summary inquiry and it does not contemplate cross-examine of the witness. He also relies on the*

judgment of the Supreme Court in the case of Union of India v/s. Tulsiram Patel 1985, (3) SCC, 398 to submit that as the law does not provide for a right of cross-examination of the witness being given, the learned single Judge should not have done it.

4. *In our opinion, unless we are pointed out the provisions in the law which prohibits cross-examination of the witness, in our opinion, no exception can be taken to the order of the learned single Judge because she has granted opportunity to the Respondent No.1 to cross-examine the witness who says that the structure is unauthorised. That will help in establishing the authenticity of the report. In our opinion, therefore, it is not a fit case where this court should interfere with the order of the learned single Judge. Even the other directions issued for permission to cross-examine the witness, in our opinion, is in the interest of justice. Appeal disposed of."*

9 Considering the above, I find that the impugned order is rendered perverse and erroneous. This Writ Petition is allowed. The impugned order is quashed and set aside. Respondent No.2 is, therefore, directed to to allow the parties to lead evidence. The litigating sides shall ensure that they would not seek adjournment on unreasonable or trivial grounds and would assist the District Collector to decide the said proceedings expeditiously.

10 The District Collector shall, therefore, endeavour to decide the proceedings expeditiously and in any case, on or before 28.02.2019.