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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4005 OF 2017

Arun Laxman Ashan
Age: 45 yrs, Occ: Service
R/at Leela, 1286/10, 11, 12
L.K. Ashan Marg, O.T. Section,
Ulhasnagar 421004.

...Petitioner

V/s.

- 1) Jeevan C. Idnani
Age: Adult,
R/at 601, Simran Apartment
New Link Road, Ulhasnagar.
- 2) Secular Alliance of India Aghadi,
1st Floor, Keswani Complex,
Opp. Civil Court, Ulhasnagar 421003.
- 3) The Divisional Commissioner,
Kokan Division, Mumbai.
- 4) Ulhasnagar Municipal Corporation
Ulhasnagar 421003.

...Respondents

Mr. Saurabh Oka for Petitioner.
Mr. S.M. Kamble for Respondent No.4.
Mr. N.R. Bubna for Respondent Nos.1 & 2.
Mr. S.D. Rayrikar, AGP for State/Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 14TH MARCH, 2018.

JUDGMENT :-

1. By this petition filed under Article 227 of the constitution of

India, the petitioner has impugned the order dated 3rd April, 2017 passed by respondent no.3 on application dated 21st March, 2017 filed by the respondent nos. 1 and 2 thereby reviewing the order dated 31st March, 2017 rejecting the application for registration of the Aghadi.

2. The learned counsel for the petitioner invited my attention to the office order dated 31st March, 2017 passed by the learned Additional Commissioner and also order dated 3rd April, 2017 annexed at Exhibit-C to the petition and would submit that though the application for registration was already rejected by office order dated 31st March, 2017, the learned Additional Commissioner passed a fresh office order on 3rd April, 2017 thereby recalling the earlier order and granting registration of Aghadi. It is submitted by the learned counsel that no hearing was given by the learned Additional Commissioner before passing fresh office order on 3rd April, 2017. It is submitted by the learned counsel that the registration could not have been effected after 30 days from the date of election. In support of this petition, he placed reliance on the judgment of Supreme Court in the case of **Jeevan Chandrabhan Idnani & Anr. Vs. Divisional Commissioner, Konkan Bhavan & Ors, (2012) 2 SCC 794.**

3. Mr. Bubna, learned counsel for respondent nos. 1 and 2 on the

other hand invited my attention to Rule 5 of the Maharashtra Local Authority Member's Disqualification Act, 1986 and would submit that it is not in dispute that the Aghadi was already formed within 30 days by the respondent nos. 1 and 2 of the election held. He submits that under Rule 5, the commissioner was to maintain the register in form-4 based on the information furnished under Rules 4 and 5 in relation to the councilor of the Municipal Party, Zilla Parishad Party or as the case may be the member of the Panchayat Samiti Party. He submits that the documents were accordingly submitted by respondent nos. 1 and 2 for the purpose of maintaining the said form 4 by the learned commissioner. He placed reliance on the judgment of this Court delivered on 9th August, 2011 in case of Jeevan Chandrabhan Idnani & Anr. Vs. Divisional Commissioner, Konkan Bhavan & Ors in Writ Petition No. 5087 of 2011, holding that the provisions of the Maharashtra Local Authority Member's Disqualification Act, 1986 and the Rules 6 and 7 of the Maharashtra Local Authority Member's Disqualification Rules, 1987 are not mandatory but are directory.

4. It is submitted by the learned counsel that no hearing was even otherwise contemplated to be given to either party i.e. either to the applicant or to the objector by the learned Additional Commissioner before entering the details in the register in form 4. It is submitted that no sooner the respondent nos. 1 and 2 came to

know about the rejection of the application filed by the respondent nos. 1 and 2, on the ground that certain documents were not submitted by respondent nos. 1 and 2, immediately within three days, the respondent nos. 1 and 2 submitted those balance documents. It is submitted by the learned counsel that if there was any lacuna in the application filed by respondent nos. 1 and 2, the learned Additional Commissioner ought to have given an opportunity to cure such lacuna and/or defects in the said application. It is submitted that Rule 5 is also directory. The learned Additional Commissioner thereafter corrected his mistake by passing a fresh order on 3rd April, 2017 by giving an opportunity to respondent nos. 1 and 2 to cure the defects in the original application filed.

5. Mr. Oka, learned counsel for the petitioner in rejoinder would submit that the period of 30 days in registering the Aghadi is sacrosanct and could not have been extended by the learned Additional Commissioner. He makes an attempt to distinguish the order dated 9th August, 2011 passed by this Court in Writ Petition No. 5087 of 2011 on the ground that this Court had considered Rules 6(1) and 7 of the said Maharashtra Local Authority Member's Disqualification Rules, 1987 and had held that the same are not mandatory but are directory. He submitted that in this case this Court is concerned with Rule 5 of the said rules and not Rule 6 and

7.

6. It is not in dispute that within a period of 30 days, the Aghadi was already formed by respondent nos. 1 and 2. Rule 5 of the Maharashtra Local Authority Member's Disqualification Act, 1986 provides that Commissioner in the case of a councilor of a Municipal Corporation and the Collector in case of Municipal Councilor or member shall maintain in form 4, register based on the information furnished under Rule 4 and 5 in relation to the councilor of a Zilla Parishad Party or as the case may be Panchayat Samiti Party. The information was to be furnished under Rule 4 of the said Rules and within 30 days from such date or within such further period as the Commissioner or else the case may be to Collector with a sufficient details along with statement of particular and declaration in form 3. It is not in dispute that the application under Rule 4 to be read with Rule 5 was submitted within 30 days from the date of election.

7. In my view under Rule 4, the Commissioner or the Collector has been empowered to permit submission of the details within 30 days from such date or within such further period as the Commissioner or as the case may be to the Collector for sufficient reasons.

8. A perusal of the order dated 31st March, 2017 indicates that the said details furnished by respondent nos. 1 and 2 were rejected on

the ground that the same were not in accordance with the requirement under those rules. A perusal of the record indicates that though certain documents were not filed by respondent nos. 1 and 2 and there was a defect according to the learned Additional Commissioner in the order dated 31st March, 2017, no opportunity was given to respondent nos. 1 and 2 to cure such defects. In my view, the provisions of Rule 5 is directory and not mandatory. The learned Additional Commissioner ought to have given an opportunity to respondent nos. 1 and 2 to cure the defects before passing said order dated 31st March, 2017. The respondent nos. 1 and 2 no sooner came to know about the said order, immediately sought an opportunity to cure the said defects. In my view, the learned Additional Commissioner has thus not exceeded his jurisdiction by giving an opportunity to respondent nos. 1 and 2 to cure the defects in the application filed which came to be rejected by order dated 31st March, 2017.

9. A perusal of the order dated 31st March, 2017 as well as 3rd April, 2017 clearly indicates that said orders were office orders. No hearing was contemplated under the rules before considering the application for recording the details in form 4 and Rule 4 to be read with Rule 5. I am thus not inclined to accept the submission of learned counsel for the petitioner that the impugned order dated 3rd

April, 2017 was passed by the learned Additional Commissioner in violation of principles of natural justice.

10. In my view, the view taken by this Court on 9th August, 2011 in Writ Petition No. 5087 of 2011 can be extended to the facts of this case and would assist the case of respondent nos. 1 and 2.

11. This Court while rejecting the ad-interim relief by order dated 5th April, 2017 has considered this aspect in great detail and has adverted to the judgment of the Supreme Court in case of **Kedar Shashikant Deshpande Vs. Bhore Municipal Council, (2011) 2 SCC 654** and also in case of **Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council, (2004) 8 SCC 747** and the judgment of this Court in case of Jeevan Chandrabhan Idnani and Kedar Shashikant Deshpande and has held that the Divisional Commissioner could have given an opportunity to cure the defects. The said order passed by this Court is not impugned by the petitioner before the Hon'ble Supreme Court.

12. In my view, there is thus no merit in the petition and the same is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)