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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.9298 OF 2018

Yogita Vijay Pawar and Ors. ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents

Mr.A.S.Pandire a/w Mr.H.M.Inamdar, for the Petitioners.

Mr.S.H.Kankal, A.G.P for the Respondent-State.

Mr.R.N.Gite, for the Respondent No.3.

CORAM: REVATI MOHITE DERE, J.

DATE : 28th AUGUST, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 14th August, 2018, passed by the District Collector, Nashik in Proceeding No.1 of 2018 (Inward No.41705 of 2018).
3. Learned Counsel for the Petitioners submitted that the impugned order passed by the District Collector, Nashik, is contrary to law

inasmuch as, it is contrary to the provisions of Section 3(1)(b) of the Maharashtra Local Authority Members' Disqualification Act, 1986, (hereinafter referred to as 'the said Act'). He submitted that the application filed by the Respondent No.3, was prior to the cooling off period i.e. prior to 15 days, as stipulated under the 'said Act'. He further submitted that the learned District Collector has not given any reason/s for rejecting the Application filed by the Petitioners (Exhibit - B).

4. Learned Counsel for the Respondent No.3 opposed the Petition. He submitted that the very act/conduct of the Respondent No.3 in filing the Disqualification Application itself shows, that the Petitioners' act was not condoned by the Party (B.J.P). Learned counsel also relied on the Judgment of this Court in the case of ***Akramkhan s/o. Gulam Kadar Khan Pathan and Another v/s The Collector, Latur and Others***, in particular paragraphs 62, 64 and 65 of the said Judgment, in support of his submission that Section 3(1)(b) of the Maharashtra Local Authority Members' Disqualification Act, 1986, is directory and not mandatory.

5. Learned A.G.P also opposed the Petition. He submitted that the Petitioners will get an opportunity to participate in the said proceedings which technically, are yet to commence. He also submitted that no interference is warranted in the impugned order.

6. Perused the papers including the impugned order dated 14th August, 2018. The Petitioners were elected as Councillors of the Surgana Nagar Panchayat, for the period 2015 to 2020. The said Election had taken place on November, 2015 and in the said Elections, 17 Councillors were elected; out of which 7 Councillors belonged to B.J.P; 5 Councillors belonged to Shiv Sena and 5 Councillors belonged to M.C.P. (C.P.M.). It appears, that one Smt.Ranjana Suresh Lahre, was elected as the President and Sachin Ramesh Aher was elected as the Vice President of the Surgana Nagar Panchayat. The said *inter se* election/arrangement was for a period of 2 ½ years, after which a new President and Vice President were to be elected. According to the learned counsel for the Respondent No.3, the Respondent No.3, was elected as a Gat Neta i.e. Leader of the Group/Party (B.J.P) for a term of 5 years; and that on 16th November, 2015 a letter to that effect was also submitted to the then President of the Surgana Nagar

Panchayat, and accordingly the Respondent No.3 was declared as a Leader of the B.J.P.

7. After a period of 2 ½ years i.e. on 30th May, 2018, a Special Meeting was arranged for the election of the President and Vice President of the Surgana Nagar Panchayat for another 2 ½ years; and that in the said meeting, the Respondent No.4 was appointed as a Returning Officer. According to the Respondent No.3, a whip was issued by her for electing the President and Vice President for the second term; that she tried to serve the whip on the Petitioners, however they refused to accept the same and hence the said whip was pasted on the doors of the Petitioners' houses. According to the Respondent No.3, the said whip was also published in the local newspapers on 29th May, 2018. According to the Respondent No.3, the Petitioners dishonored the said whip and voted against the candidate decided by the B.J.P. According to the Respondent No.3, the Petitioner Nos.1 and 3 abstained themselves from voting and that the Petitioner No.2 voted in favour of the candidates belonging to MCP (CPM). A video shooting of the voting was also carried out by the Respondent No.4 i.e. the Returning Officer. In view of the Petitioners' conduct, the Respondent

No.3 filed Disqualification proceedings before the District Collector on 12th June, 2018, being Proceeding No.1 of 2018. Pursuant thereto, the Petitioners herein filed an Application being Exhibit – 'B' on page 19 of the above Petition, under Order 7, Rule 11 of Civil Procedure Code and under Section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986, on 14th August, 2018, praying for dismissal of the Disqualification proceedings and for awarding of costs in favour of the Petitioners. The learned District Collector, Nashik after hearing the parties, vide order dated 14th August, 2018, was pleased to reject the aforesaid Application filed by the Petitioners herein.

8. The submission of the learned counsel for the Petitioners is that before the cooling off period i.e. 15 days, as stipulated under Section 3(1)(b) of the said Act, Disqualification proceedings were initiated by the Respondent No.3. He submitted that the elections were held on 30th May, 2018, and the Disqualification proceedings were filed on 12th June, 2018 i.e. before 15 days. He submitted that hence, having regard to the mandate of Section 3(1)(b), the Disqualification proceedings filed by the Respondent No.3 were premature and as such could not be entertained.

9. Having regard to the issue raised in this Petition, it is necessary to reproduce Section 3(1)(b) of the said Act. Section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986, deals with Disqualification of a Councillor/a Member belonging to any political party or *aghadi* or front, on the ground of defection, and reads as under:-

“3. (1) Subject to the provisions of sections 4 and 5, a councillor or a member belonging to any political party or *aghadi* or front shall be disqualified for being a councillor or a member -

(a) if he has voluntarily given up his membership of such political party or *aghadi* or front; or

(b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or *aghadi* or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or *aghadi* or front, person or authority and such voting or abstention has not been condoned by such political party or *aghadi* or front, person or authority within fifteen days from the date of such voting or abstention :

Provided that, such voting or abstention without prior permission from such party or *aghadi* or front, at election of

any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause :

Explanation. -” (emphasis supplied)

10. The learned Single Judge of this Court in the case of ***Akramkhan s/o. Gulam Kadar Khan Pathan and Another v/s The Collector, Latur and Others***¹ has in paragraphs 62 to 65 held as under:-

“62. *Section 3(1)(b) leads to the disqualification of a councillor if he votes (as in this case) contrary to any direction issued by the political party and such voting has not been condoned by such a political party within fifteen days from the date of such voting. Rule 3(5) and Form II are in aid of Section 3(1)(b). Nevertheless, the phraseology used in Section 3(1)(b) and the conclusion of the Hon'ble Supreme Court in the case of Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and others (2004) 8 SCC 747, render the Rules of 1987, directory and not mandatory.*

1 2016(1) ALL MR 664

63. *So also, the political party or aghadi or front or person or authority has to condone the act of a councillor falling under Section 3(1)(b). Such condonation of the act is as serious and important as is the disqualification itself. As has been held in the cases of Dr. Mahachandra (supra) and Jitendra (supra), the object underlying the provisions in the Xth Schedule of the Constitution is to curb the evil of political defection (voting against the party direction as like the case in hand), motivated by the lure of office or other similar considerations which endanger the functioning of our democracy. The Act is introduced to curb political immorality.*
64. *Therefore, though a political party may not have issued a communication condoning the act of a councillor, it would not mean that the act stands condoned by implication or a deeming fiction. There may be such subsequent events which may be said to be indicators of the party having condoned such acts falling under Section 3(1)(b). Nevertheless, the proviso below Section 3(1)(b) indicates that when there is no prior permission obtained from any party or aghadi or front for voting or abstention against a party directive, such voting or abstention shall not be condoned under this clause.*

65. *Therefore, though the petitioners contend that, unless respondent No. 2 indicates that the alleged act of disobedience of the petitioners is condoned or is not condoned in Form II under Rule 3(5), no petition can be preferred by respondent No. 2 before the Collector, the said contention is wholly misconceived.”*

11. Section 3(1)(b) stipulates that a Councillor can be disqualified, if he votes contrary to any direction issued by a political party or abstains from voting, and such voting has not been condoned by the political party within fifteen days from the date of such voting or abstention. In the present case, the Respondent No.3 filed Disqualification proceedings on 12th June, 2018 i.e. on the 14th day. There is no requirement of waiting for fifteen days, before filing disqualification proceedings. The filing of Disqualification proceedings, clearly indicates that the Respondent No.3, had not condoned the Petitioners' act. Having regard to the aforesaid, the proceedings filed by the Respondent No.3 cannot be said to be premature.

12. As far as the second submission of the learned counsel for the Petitioners that no reasons were mentioned in the impugned order while rejecting the Petitioners application is concerned, there is no merit in the same. A perusal of the impugned order shows that the District Collector had rejected the Application, as the same was not in conformity with the provisions of the Maharashtra Local Authority Members' Disqualification Act, 1986. The District Collector, Nashik has however vide the same order dated 14th August, 2018 directed the Petitioners to submit their written say and has posted the matter for hearing on 21st August, 2018.

13. Considering the aforesaid, no interference is warranted in the impugned order.

14. Petition is accordingly disposed of.

15. It is informed that the period for filing the written say expires today. Hence, the period to file the written say is extended till 11th September, 2018.

16. Needless to state, that the learned District Collector, Nashik, shall decide the proceedings, on its own merits. All other contentions of all parties are kept open.

17. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)