

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4858 OF 2017

Rajnish Nagin Mishra, Deshbandhu Ward, Bhandara and ors.

-vs-

The Collector, Bhandara and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Ghate, Advocate for petitioner.
Ms S. Jachak, AGP for respondent No.1.
Shri C. S. Kaptan, Senior Advocate with Shri P. S.
Chawhan, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : February 28, 2018

The petitioners who are elected Councillors of Municipal Council Bhandara have filed this writ petition challenging the order dated 06/06/2017 passed by the Collector in proceedings for disqualification initiated by the respondent No.2 under Section 3(2) of the Maharashtra Local Authority Members Disqualifications Act, 1986 (for short the said Act). By that order, the proceedings were fixed for preliminary enquiry.

After the petitioners were elected as Councillors, the respondent No.2 filed disqualification petition against them. In these proceedings a notice came to be issued to the

petitioners and after they were duly served, time was granted to file written statement. The written statement was accordingly filed on 08/05/2017. On the next date it was argued on behalf of the petitioners that provisions of Rule 7(4) of the Maharashtra Local Authority Members Disqualifications Rules, 1987 (for short, the said Rules) are mandatory and therefore it was necessary to hold a preliminary enquiry. An order was accordingly passed and the proceedings were kept for holding preliminary enquiry. This order has been challenged in the present writ petition.

Shri S. S. Ghate, learned counsel for the petitioners submitted that the preliminary enquiry ought to have been held prior to calling upon the petitioners to file their written statement. According to him before holding such preliminary enquiry, the petitioners were directed to file their written statement and this has resulted in violation of the procedure prescribed by Rule 7 of the said Rules which procedure is mandatory in nature. He submitted that the proceedings were thus vitiated and therefore the impugned order deserves to be set aside.

Shri C. S. Kaptan, learned senior counsel for respondent No.2 and Ms S. Jachak, learned Assistant Government Pleader for respondent No.1 submitted that the matter has been conducted according to the prescribed procedure. After receiving the reply of the petitioners, the proceedings were fixed for holding preliminary enquiry. The same were conducted as per provisions of Rule 7 of the said Rules.

After hearing the respective counsel and after perusing the material on record, I find that the respondent No.1 did not commit any illegality in directing holding of the preliminary enquiry. As per provisions of Rule 7(3) of the said Rules, a notice is required to be issued to the Councillor whose disqualification is sought. Under Rule 7 (4) after receiving the response of such Councillor, the Collector has to make a preliminary enquiry. Thereafter the articles of charge have to be framed and thereafter it is open for the concerned Councillor to submit a written statement of defence.

In the present case as per Rule 7(3) of the said Rules, the petitioners filed their response. This stage has been treated as the stage of filing the written statement. The written statement as filed has to be treated as the communication of the petitioners under Rule 7 (3) of the said Rules. After the preliminary enquiry as contemplated by Rule 7(4) of the said Rules is held, it is open for the petitioners to file their written statement of defence under Rule 7(8) after the articles of charge are framed.

In view of aforesaid, I do not find any case made out to interfere in writ jurisdiction. The proceedings be decided in accordance with the said Rules. For said purpose, the parties shall appear before the Collector on 12/03/2018.

Writ Petition is dismissed with no order as to costs.

JUDGE