

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

WRIT PETITION NO.595 OF 2019

VISHWAS RAVINDRA NAGARGOJE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Adv.for Petitioners : Mr. Thigale Girish K. (Naik)
Mr. S.D. Ghayal, Adv. For R/3;
Mr. NV Gavare, Adv. h/for Mr.Shirsat Suhas R.,
Advocate for Resp.Nos. 6 To 9.

CORAM : P.R. BORA, J.
DATED : 2nd April, 2019.

PER COURT:-

1. Order dated 15.10.2018/ 21.12.2018 passed by Collector, Beed in proceedings under the Maharashtra Local Authority Members' Disqualification Act, 1986 (herein after referred to as the Act of 1986), is questioned in the present petition.

2. The petitioners had preferred application before Collector, Beed, seeking disqualification of present Respondent Nos. 6 to 9, alleging that though the said respondents are the members elected on the symbol of Nationalist Congress Party (NCP), and though there was a whip issued for casting vote in favour of the candidates of the party for the

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post of President and Vice-president of the Nagar Panchayat, in violation of the whip so issued, Respondent Nos. 6 to 9 voted against the candidates of the party. Their disqualification was, therefore, sought invoking the provisions under Sections 3 and 7 of the Act of 1986 read with Section 42 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (herein after referred to as the Act of 1965). The application so preferred was contested by the respondents. A preliminary objection was raised that the application so made, invoking Section 42 of the Act of 1965, was not within the jurisdiction of the Collector.

3. The learned Collector, vide the impugned order, declined to adjudicate upon the application so preferred by the petitioners, observing that it was not within his jurisdiction to pass any order, as prayed in the application. In the order, the learned Collector has also observed that the applicants shall seek relief from the competent court. Aggrieved by, the petitioners have preferred the present writ petition.

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4. Shri Thigale, learned counsel appearing for the petitioners, submitted that, reference to Section 42 of the Act of 1965 in the application was mere an inadvertence. The learned counsel submitted that during the course of hearing, the said fact was also brought to the notice of the learned Collector; however, formal application remained to be filed for deleting or ignoring the said reference. The learned counsel submitted that though unwittingly, the reference was made to Section 42 of the Act of 1965, if the application filed by the petitioner before the Collector is read as a whole, nowhere any such allegation was made against the respondents or no such misconduct was alleged against the said respondents, which may fall under Section 42 of the Act of 1965. The learned counsel submitted that a clear case was made by the petitioners that the respondents though were the elected members of the Nationalist Congress Party have acted against the interest of the party and had voted against the candidates nominated by the party. The learners counsel further submitted that looking to the contents of the application it was quite evident that the

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petitioners were seeking disqualification of Respondent Nos.6 to 9 under the provisions of Sections 3 and 7 of the Act of 1986. The learned counsel submitted that despite the facts, as aforesaid, the learned Collector has declined to entertain the application and disposed of the same on the ground of not having jurisdiction. The learned counsel, in the circumstances, prayed for remanding the matter to Collector, Beed for deciding it afresh.

5. The learned counsel submitted that in addition to oral request made by the petitioners for ignoring the reference in their application to Section 42 of the Act of 1965, subsequently, the applicants have also preferred a written application on affidavit in that regard.

6. The learned counsel, relying upon the judgment of this Court in the case of Dhananjay Rambhau Raut Vs. State of Maharashtra and Ors. - 2009 (1) Mh.L.J. 989, submitted that, mentioning of a wrong section in the application should not have been a ground for rejecting the application filed

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by the petitioners when the other averments in the application were sufficient to spell out the grievance of the petitioners that the respondents have incurred disqualification and were liable to be removed under the provisions of the Disqualification Act.

7. The learned counsel then referred to Article 243-P(e) and 243-Q of the Constitution of India. The learned counsel also referred to Section 341-A of the Act of 1965. The learned counsel then referred to the provisions under the Elections Symbols (Reservation and Allotment) Order, 2000. Referring to all those provisions, learned counsel submitted that according to the petitioners, the application seeking disqualification of Respondent Nos. 6 to 9 was liable to be filed before Collector, Beed and the Collector was having authority to decide the said application. The learned counsel further submitted that in Jyoti Prakashsingh Chadel and Ors. Vs. Collector, Nanded and Ors. - 2016 (6) Mah.L.J. 165 certain issues were not addressed before the learned Single Judge. The learned counsel further submitted that had the

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provisions which are referred by the petitioners, more particularly the Allotment of Symbols Order and the Rules in respect of making *Aaghadi* and electing *Gatneta* etc; been brought to the notice of the court, perhaps the decision would have been different.

8. In the circumstances, the learned counsel prayed for remanding the matter to Collector Beed for deciding it afresh by permitting the petitioners to carry out the necessary amendment for omitting the contents in their application with reference to Section 42 of the Act of 1965.

9. The submissions made on behalf of the petitioners were strongly opposed by Shri Gavare, learned counsel appearing for Respondent Nos.6 to 9. The learned counsel submitted that reference to Section 42 of the Act of 1965 is not only at one place in the application, but it has appeared at more places, and as such, it cannot be accepted that mentioning of the said section was an inadvertent mistake on the part of the applicants. According to the learned counsel, such mistake

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cannot be permitted to be cured. The learned counsel submitted that even otherwise, the application/appeal filed by the petitioners before the Collector under Section 3 and 7 of the Act of 1986 was also not maintainable and as such, according to him, there was no substance in the prayer made by the petitioners for remanding the matter for its fresh decision. The learned counsel invited my attention to the definition of "local authority" as provided in Section 2(e) of the Act of 1986. The learned counsel also referred to the definition of "councillor" as provided in Section 2(d) of the Act of 1986.

10. The learned counsel, relying on the judgment of this Court in the case of Jyoti Prakashsingh Chadel and Ors. Vs. Collector, Nanded and Ors. - 2016 (6) Mah.L.J. 165, submitted that this Court has in unequivocal terms held that the provisions of MLAMD Act in general and provisions of Section 3 and proceedings for disqualification under Section 7 of the said Act in particular, do not cover Councillor of Nagar Panchayat.

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11. The learned counsel invited my attention to the discussion made in the case of Jyoti Prakashsingh Chadel and Ors. Vs. Collector, Nanded and Ors. - (cited supra) in para Nos.32, 43, 51 to 57, 67, 69 to 76, 83 and 91. The learned counsel submitted that each and every issue, which has been raised by the petitioners in the present petition, has been duly answered in the aforesaid judgment. In the circumstances, according to learned counsel, it would be a futile exercise to remand the matter to the Collector for deciding it afresh. The learned counsel, therefore, prayed for dismissal of the writ petition.

12. Learned AGP Shri Ghayal appearing for Respondent Nos. 1 to 5, adopted the arguments advanced by Adv. Shri Gavare, and prayed for dismissal of the writ petition.

13. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have also perused the impugned order and the other material placed on record. Perusal of the impugned order

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apparently reveals that the learned Collector has declined to pass any order observing that he has no jurisdiction to allow the prayers made in the application. Clause 2 of the order shows that the applicants are suggested to agitate their grievance before the competent court.

14. The copy of the application which was preferred before the learned Collector is filed on record by the petitioners. On perusal of the said application, there remained no doubt that the applicants had sought disqualification of present Respondent Nos.6 to 9 (Respondent Nos.1 to 4 in the said application) under Section 3 and 7 of the Disqualification Act of 1986. In the entire said application, nothing has been alleged against the said respondents, which would make liable the said respondents to be removed from their office under Section 42 of the Act of 1965. It is, however, true that, on the very first page of the application, in a clause titled as 'Prayer"(Magani), there is a reference of Section 42 of the Act of 1965 along with Sections 3 and 7 of the Disqualification Act of 1986. Thereafter in

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the last para (Para 17) of the application, again there is reference of Section 42 of the Act of 1965. The contents of the application if are read as a whole, it becomes clear that the applicants have not sought any action against the respondents under Section 42 of the Act of 1965. The averments made and the facts stated in the application undoubtedly pertain to disobedience of the whip of the party by the respondents, issued by Gatneta for the election of President and Vice-president of Nagar Panchayat, Patoda. In para Nos.13 and 14, it has been categorically alleged that Respondent Nos.1 to 4 have incurred the disqualification under Sections 3 and 7 of the Act of 1986. If the prayer clause is perused, the same also demonstrates that the disqualification was sought only on the ground of anti-party activities by the respondents, which fall in the mischief under Sections 3 and 7 of the Disqualification Act of 1986.

15. Perusal of the impugned order clearly reveals that, without considering the averments in the application and the grievance raised by the

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petitioners in the said application, the learned Collector, merely relying upon the objection raised by the respondents that the application under Section 42 of the Act of 1965 was not liable to be entertained by him, has declined to adjudicate upon the application filed by the petitioners.

16. In the case of Dhananjay Raut (cited supra), the disqualification of councillor was sought on the ground that third child was born to the said councillor after the cut-off date. The said application was stated to be filed under Section 16 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The application so made was rejected by the Collector, observing that the said application ought to have been filed under Section 44 of the said Act. The applicants, therefore, approached this court taking exception to the said order. After having considered the facts involved in the said case, this Court allowed the writ petition, observing that, mentioning of a wrong section of the Act in the application, in the facts of the case, should not have been a ground for rejecting

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the application, when the averments made in the application were clear that the petitioners were asking for disqualification of the respondent-councilor. This court then permitted the petitioners to correct the provisions of the Act mentioned in the application and directed the Collector to decide the matter on merits.

17. In the present matter, the petitioners did commit a mistake of mentioning Section 42 of the Act of 1965 in the application, however, averments made in the application clearly reveal that the petitioners were seeking disqualification of the respondents under Section 3 and 7 of the Disqualification Act and not under Section 42 of the Act of 1965. It is the contention of the petitioners that during the course of hearing, the petitioners had submitted before the Collector that Section 42 of the Act of 1965 has been wrongly mentioned by them and it shall be ignored. It is also brought to my notice that a written application, on affidavit, was also submitted by the petitioners in that regard.

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18. Respondents have disputed the facts stated on behalf of the petitioners. According to respondents that the application allegedly filed by the petitioners was filed after the decision was pronounced by the learned Collector and no such submission, as contended, was also made during the course of the arguments.

19. Even if it is assumed that no such submission was made on behalf of the petitioners, from the averments in the application, the learned Collector must have realized that the disqualification of the respondents was sought by the petitioners under the provisions of the Disqualification Act and not under Section 42 of the Act of 1965. As I mentioned earlier, in the prayer clause, disqualification of the respondents was sought specifically on the ground that they acted against the whip of the party and had voted against the candidates fielded by the party.

20. Section 42 of the Act of 1965, reads thus, -

"42. Liability of Councillors to removal from office

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(1) The State Government may on its own motion or on the recommendation of the Council remove any Councillor from office if such Councillor has been guilty of any misconduct in the discharge of his duties, or of any disgraceful conduct, during his current term of office or even during his immediately preceding term of office as a Councillor.

(2) The State Government may likewise remove any Councillor from office if such Councillor has in the opinion of the State Government become incapable of performing his duties as a Councillor.

(3) No resolution recommending the removal of any Councillor for the purposes of sub-sections (1) or (2) shall be passed by a Council and no order of removal shall be made by the State Government, unless the Councillor to whom it relates has been given a reasonable opportunity of showing cause why such recommendation or order, as the case may be, should not be made.

(4) In every case the State Government makes an order under sub-section (1) or (2), the Councillor shall be disqualified from becoming a Councillor, or a Councillor or member

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of any other local authority for a period of five years from the date of such order."

21. The contents of the application filed by the petitioners, if read in light of the aforesaid provision, there remains no doubt that removal of the respondents was not sought under the said provision. As has been observed by this Court in the case of Dhananjay Raut (cited supra), merely because some wrong section was mentioned in the application, in the facts of the case, the said should not have been the ground for the Collector to decline to entertain the application so filed by the petitioners, when from the averments in the application, it was quite discernible that the petitioners were asking for disqualification of the respondents on the ground of their anti-party activities under the provisions of the Disqualification Act.

22. As has been argued by Advocate Shri Gavare, learned counsel appearing for the respondents, in view of the judgment of this Court in the case of Jyoti Prakash Singh (cited supra),

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the application seeking disqualification of the members of Nagar Panchayat, Patoda, was, even otherwise not liable to be entertained by the Collector and in such circumstances, though the learned Collector may not have addressed on the said issue on merits, there is no propriety in remitting the matter to the Collector as prayed by the petitioners for its decision on merits. According to learned counsel, when in the case of Jyoti Prakash Singh (cited supra) this Court has clarified almost every objection, as has been raised in the present case, the learned Collector is not expected to take any contrary view.

23. Advocate Shri Thigale, however, has asserted that if the provision under Article 243-P(e) and 243-Q of the Constitution of India, Section 341-A of the Act of 1965, the definitions of the Municipal Council and councillor, as provided in the Disqualification Act and the provisions under the Elections Symbols (Reservation and Allotment) Order, 2000, are conjointly read, it would lead to an inference that member of Nagar Panchayat stands at par with the councillor, as

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defined in the Act of 1965 as well as in the Disqualification Act, and as such, the application, seeking disqualification of the members of the Nagar Panchayat, Patoda on the ground of their anti-party activities, was liable to be agitated before the Collector. It was further submitted by the learned counsel that some of the issues were not addressed before the learned Single Judge in the case of Jyoti Prakash Singh or else the verdict would have been different.

24. I do not wish to enter into the merits of the rival contentions so raised. The undisputed fact is that the Collector has declined to adjudicate the application not on the ground that the provisions of Section 3 and proceeding for disqualification under Section 7 of the Disqualification Act, do not cover the councillor of Nagar Panchayat, but for the reason that the Collector was not having jurisdiction to adjudicate the request for disqualification of a councillor under Section 42 of the Act of 1965, which in fact was not contemplated. In the circumstances, in no case, the impugned order can be sustained and has

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to be set aside. The Collector has to consider the application filed by the petitioners, seeking disqualification of respondent Nos.1 to 4 therein on its own merits and pass a reasoned order by giving due opportunity of hearing to the parties to the said proceedings.

25. In the result the following order is passed, -

ORDER

i. The order dated 15.10.2018/21.12.2018 passed by District Collector, Beed, impugned in the present petition, is set aside;

ii. The matter is remitted back to Respondent No.4 - District Collector, Beed, to decide it afresh and in accordance with law, by giving due opportunity of hearing to the parties to the said proceeding;

iii. Respondent No.4 shall decide the application as expeditiously as possible and preferably within period of ninety (90) days from today.

iv. It is clarified that the contentions raised by the petitioners as well as the

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respondents on facts as well as on legal aspects, are kept open to be agitated before Respondent No.4 in the aforesaid proceeding.

v. It is further clarified that this court has not entered into merits of the factual as well a legal objections raised by the parties and the observations made by this court, if any, are prima facie in nature and uninfluenced by such observations, Respondent No. 4 shall decide the application on its own merits in accordance with law.

(P.R. BORA)
JUDGE

BDV
fldr 1.4.19