

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

901. WRIT PETITION NO. 1200 of 2019

1. Sheetal W/o Rajendra Yadav,
age 36 years occupation household
R/o Tambepura, Sane Nagar, Amalner
Taluka Amalner District Jalgaon.
2. Nutan W/o Mahesh Patil,
age 31 years occupation household
R/o Galli No.1, Sane Nagar, Amalner Dist. Jalgaon
3. Santosh S/o Bhagwan Patil,
age 39 years occupation business
R/o Tambepura, Sane Nagar, Amalnar Dist. Jalgaon
4. Suresh S/o Atmarao Patil,
age 36 years occupation agriculture
R/o Bhavani Chowk, Pailad Amalner Dist. Jalgaon
5. Narendra S/o Rambhau Sandanshiv,
age 46 years occupation business
R/o Rajwada, Farshi road, Amalner Dist. Jalgaon.
6. Nishantbano Aniskhan Kureshi,
age 36 years occupation household
R/o backside of Jain Mandir, Jingar Galli,
Amalner Dist. Jalgaon.
7. Manoj S/o Bhavrao Patil,
age 46 years occupation business
R/o Dajiba colony, Galwade road, Amalner Dist. Jalgaon
8. Gayatri W/o Deepak Patil,
age 31 years occupation household
R/o Vidyur Prabha colony,
near Maratha Mangal Karyalaya, Amalner Dist. Jalgaon
9. Adv. Chetna W/o Yadneshwar Patil,
age 31 years occupation legal practitioner
R/o Vivekanand Nagar, Pimple road, Amalner.

10. Vivek S/o Bhimrao Patil,
age 44 years occupation service
R/o Samartha Nagar, Pimple road,
Amalner Dist. Jalgaon
11. Nishant S/o Rajendra Agrawal,
age 30 years occupation business
R/o new Plot , Amalner Dist. Jalgaon
12. Sanjay S/o Ananda Marathe,
age 51 years occupation business
R/o Marathe Galli, Amalner Dist. Jalgaon
13. Chandrakala W/o Ashok Salunkhe,
age 61 years occupation household
R/o Maratha Colony, Patwari Colony,
Amalner District Jalgaon
14. Ramkrushna S/o Bapurao Patil,
age 36 years occupation service
R/o Subhashpura, Saibaba Mandir Parisar,
Amalner District Jalgaon
15. Rajesh S/o Shivaji Patil,
age 46 years occupation business
R/o R.K. Nagar, Dhule road, Amalner Dist. Jalgaon
16. Kamlabai W/o Pitambar Patil,
age 61 yars occupation household
R/o Jaigurudeo Niwas, Vidyavihar Colony,
Amalner District Jalgaon
17. Ratnamala W/o Sakharlal Mahajan,
age 41 years occupation household
R/o Maliwada, Chaudhariwada, Amalner Dist. Jalgaon
18. Ratna W/o Prakash Mahajan,
age 51 years occupation household
R/o Amaleshwar Nagar, Amalner Dist. Jalgaon
19. Vinod S/o Ramchandra Lambole,
age 46 years occupation business
R/o Maliwada, Bahadurpur road, Amalner Dist. Jalgaon

20. Pravin S/o Sahebrao Patil,
age 56 years occupation business
R/o Ravi Nagar, Dhule road, Amalner Dist. Jalgaon.
21. Saleem Shaikh Fattu,
age 56 years occupation contractor
R/o Kasali Mohalla, Amalner Dist. Jalgaon
22. Abhishek S/o Vinod Patil,
age 33 years occupation business
R/o Siddhivinayak colony, Amalner Dist. Jalgaon

...Petitioners

VERSUS

1. The State of Maharashtra
through the Secretary for Urban Development
Department, *Mantralaya*, Mumbai.
2. The Collector,
Jalgaon District Jalgaon.
3. Pravinkumar S/o Shashikant Pathak,
age 44 years occupation business
R/o in front of Vanita Samaj Mandir,
Wadi road, Amalner Dist. Jalgaon.
4. Savita W/o Yograj Sandanshiv,
age 41 years occupation household
R/o Prabuddha Colony, Station road,
Amalner Dist. Jalgaon
5. Saleem Shaikh Chiragoddin Shaikh,
age 51 years occupation business
R/o Dargahali Mohalla, Ganchaliura,
Amalner Dist. Jalgaon.

...Respondents

*Mr. Vinayak D. Hon, Senior Advocate, i./by Mr Ashwin V. Hon,
Advocate for petitioners*

Mr. S.B. Pulkundwar, Asstt.Govt.Pleader for respondents No.1 & 2

*Mr. V.J. Dixit, Senior Advocate, i./by Mr A.N. Nagargoje,
Advocate for respondent No. 3*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 30th January, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally with consent.

2. Petition takes exception to two orders passed on 18th January, 2019 by respondent No.2, where-under two applications, one dated 26th December, 2018 and other 14th January, 2019 in disqualification application bearing No. 26 of 2017 pending before him, stand rejected.

3. First application in chronology had been moved for framing preliminary issues as to, whether the authority has jurisdiction in view of sections 55A and 55B of the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965 (hereinafter referred to as "the Act" for short) and the other, whether the authority can exercise power under section 44(1)(e) of the Act, in absence of relevant material about the act of the councillors, to consider violation of provisions of law. The subsequent application is for, letting cross-examination of applicants in the disqualification proceedings and issuing witness summons to the then Chief Officer, Municipal Council, Amalner,

Engineer of Municipal Council, incumbent Chief Officer of Municipal Council, Amalner, Tahsildar, Amalner, Taluka Congress President and the then President of Taluka Nationalist Congress Party.

4. It appears that the first application has been rejected purportedly taking into account order dated 19th December, 2018 passed in writ petition No. 9669 of 2018 for prosecution of councillors including the vice president, in the proceeding. In the circumstances, it had been so appreciated that no issue with respect to disqualification of president would be allowed and in the proceedings it is to be examined whether the councillors are disqualified, and, as such, the first issue sought to be framed would not be necessary since the election of vice president is not direct. So far as the second issue is concerned, it had been considered that unless the matter is heard, it would be premature to consider the same. Thus, the application has been rejected.

5. So far as subsequent application for cross-examination of applicants and witness summons in disqualification proceedings is concerned, it had been considered that although application for issuing summons had been sought to be supported by two decisions annexed to the application, the subjects have been different and, therefore, those would not be applicable to

the present case. It was observed that, however, it would be open for the parties to give their written submissions/arguments and pursuant to the order passed by respondent No.1, the Chief Officer had been issued summons and accordingly save the same, rest of the application came to be rejected.

6. Learned senior advocate Mr. V.D. Hon questions propriety and validity of both the orders referred to here-in-above, submitting that those are in violation of principles of natural justice. Proceeding bearing No. 26 of 2017 has been moved to disqualify members of the municipal council and submits, removal of councillors who are elected members is a serious matter. He refers to a decision of the Supreme Court in the case of *Ravi Yashwant Bhoir Versus District Collector, Raigad and others* reported in (2012) 4 Supreme Court Cases 407 and points out observations in head note, reading, thus, under caption,

“

(ii) Compliance with procedure prescribed by law and principles of natural justice.

A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is

removed from the office and further declared disqualified to contest the election for a further stipulated period which also takes away the rights of the people of his constituency to be represented by him.

An elected official in local-self government has to be put on a higher pedestal as against a government servant and for his removal, a more stringent procedure and standard of proof is required. He can be removed strictly in accordance with the provisions provided by the legislature for his removal. Further, removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer. The decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

Thus an elected member can be removed in exceptional circumstances upon strict adherence to the statutory provisions and holding a full-fledged enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice. ”

7. He further goes on to submit that in such a case

observance of principles of natural justice is not a formality and councillors concerned should have fullfledged opportunity to defend themselves in the matter for which examination and cross-examination of witnesses is necessary and had been accordingly sought in the present matter.

8. Mr. Hon, learned senior advocate submits, observations in paragraphs No. 4 and 6 in decision in the case of *Shri Vasant Appaso Mali Versus The Collector, Kolhapur and others in Writ Petition No. 5121 of 2009 dated 26th June , 2009* would be pertinent to be considered, reading, thus,

“ 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.

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.”*

He states that aforesaid matter was taken in Letters Patent Appeal bearing No. 148 of 2009 in Writ Petition No. 5121 of 2009 (*Tanaji Balu Pawar Vs. Vasant Appaso Mali and others*) and the Division Bench of this Court under its order dated 16th July, 2009 has observed, thus,

“ 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. In support of his submission, Mr. Hon has also placed reliance on yet another order of the learned Single Judge dated 1st August 2011 in Writ Petition No. 3953 of 2011 in the case of *Makarand Shursen Rajenimbalkar Vs. State of Maharashtra and others*, in which the learned Single Judge has observed, thus,

“ 6. According to the petitioner the witnesses who are not named in the list of witnesses are required to be examined because of stand taken in the affidavit which is

not in tune with the original complaint. The procedural law is always directory in nature. The same cannot be applied in rigid manner. Taking into account the principles of natural justice, the petitioner can be allowed to examine the witnesses not named in the list of witnesses. The petitioner can be directed to submit the list of witnesses in this regard. However, the record and proceedings is not with the Collector, Osmanabad, where the proceedings are pending and the same is with the State Government.”

10. Learned counsel submits that, however, the applications filed on behalf of petitioners have been hastily decided without proper application of mind. He submits, resultantly, elected councillors are compelled to be before this court. He, therefore, submits that the orders passed are untenable and contravene true spirit underlying principles of natural justice. He, therefore, urges this court to indulge into request made under the writ petition.

11. Learned senior advocate Mr. V.J. Dixit for respondent No.3 vehemently opposes request made under the writ petition contending that petitioners are making all out efforts to procrastinate their disqualification on one count or the other. He submits that this court under its order dated 19th December, 2018 has categorically directed disposal of the proceeding within a period of six weeks from the date of appearance and has, in fact,

directed the parties to appear before the collector obviating necessity of notice and consumption of time on the same. He submits that conduct of petitioners in the case gives indication of that the period referred to in the order is not to be observed seriously. Despite the order, petitioners with a view to prolong their disqualification as referred to above, have been filing applications.

12. So far as the issues are concerned, he submits that the first issue sought to be framed as the preliminary issue would not arise in the proceeding and in any case petitioners have resiled to situation emerging from order dated 19th December, 2018. It is, thus, not open for them to re-agitate question about sections 55A and 55B of the Act and accordingly has been rightly considered by the collector. He further submits that other issue has also been appropriately considered by the collector that it is a premature stage.

13. Learned senior advocate Mr. Dixit contends that so far as the application for issuing witness summons, apart from that being attempt to procrastinate the prosecution, the same has been moved belatedly in the month of January, 2019 with a view to attempt prolonging of the proceeding. He submits that disqualification proceeding pursuant to provisions of the Act do

not contemplate fullfledged inquiry as argued on behalf of petitioners. He submits that the proceeding before respondent No.2 is circumscribed by section 44(1)(e) of the Act. He submits that when there is no dispute over that the petitioners being parties to the resolution obstructing removal of illegal structures and encroachment, no further inquiry would be necessary since this is a factual position and is wholly covered by provisions of section 44(1)(e) of the Act. In such a case no amount of evidence is likely to alter the situation emerging from the factual position. He submits that the collector has issued summons to the Chief Officer, as observed in order by respondent No.1 at the appellate stage. Thus, the order on application for issuing witness summons would seldom be liable to be faulted with.

14. Perusal of order dated 19th December, 2018 in Writ Petition No. 9669 of 2018 would show that the matter has been remitted to the collector for disposal within the stipulated period, keeping the matter open on merits for the parties. During the course of submissions, learned senior advocate for petitioners has purported to refer to the circumstances under which the concerned resolution had been passed which is contended to be adverse to functioning of council and, as such, would be covered under section 44(1)(e) of the Act and stated to form basis for

their disqualification. It is submitted that in this respect evidence of the persons referred to in the application would be relevant and has been sought. It is submitted that while circumstances of resolution would be relevant to be considered, evidence in respect of the same will have to be given and that should be allowed to be given by them for disqualification of major lot elected councillors is sought.

15. The matter has been kept open on merits by this court and that appellate authority under its order dated 6th July, 2018 has also observed that the Chief Officer be consulted to see as to whether the resolution is justified or not.

16. Having regard to the observations of the Supreme Court referred to above and also the observations of the learned Single Judges and of Division Bench of this Court quoted here-in-above, it appears to be expedient that petitioners would have opportunity, according to the observations including that of examination and cross-examination and while the same is sought, it would not be improper that the same be considered accordingly. In the long run it would obviate procrastination of the *lis* on being it defective on that count.

17. Albeit, there appears to be some substance in

contentions advanced on behalf of respondent that the summons to Taluka Congress Party President and the then Taluka Nationalist Congress Party President may not be necessary. It is for petitioners to take appropriate efforts in that respect. It appears that to have healthier contesting on merits the application for witness summons dated 14th January, 2019 can be allowed to the extent of prayer clause (अ) (b) and (क)(c) excluding summons to the aforesaid party position persons.

18. Learned Senior Advocate Mr. Hon, on instructions, states that petitioners would not employ any strategies for procrastination. It is also pertinent to consider pleadings concerning vice president based on law provisions, will not be hindered by rejection of the application for framing of preliminary issues.

19. In the circumstances, the petition is partly allowed. Rejection of application for framing preliminary issues shall not hinder petitioners' submissions in respect of section 55A and 55B.

20. The application for issuing witness summons stands partly allowed to the extent of prayer clause (b) and (c), as referred to above, excluding functionaries referred to in application from political parties, as aforesaid.

21. The whole process of issuing summons to the witnesses of their examination and/or cross-examination be completed within a period of three weeks from the date of receipt of this order. Petitioners shall undertake to assist service of summons on witnesses.

22. The matter be heard and decided finally affording opportunity to parties, by 11th March, 2019.

23. Needless to refer to that the matter is open to the parties on merits.

24. Accordingly, the time limit prescribed under order dated 19th December, 2018 stands extended upto 11th March, 2019. This would not mean that observations under clause (II) of paragraph No.3 of order dated 19th December, 2018 in Writ Petition No. 9669 of 2018 are affected.

25. Rule is made absolute accordingly.

**(SUNIL P. DESHMUKH)
JUDGE.**