

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

912. WRIT PETITION No. 1974 of 2019

1. Firoj Abdul Haji Kadar Dosani,
age 36 years occupation business
R/o Mahur Taluka Mahur District Nanded.
2. Rajkumar S/o Ambadas Bhopi,
age 56 years occupation Pujari
R/o Mahur Taluka Mahur District Nanded ...Petitioners

VERSUS

1. The Hon'ble Minister,
Urban Development Department,
Mantralaya, Mumbai – 32
2. The Collector,
Nanded District Nanded
3. The Chief Officer,
Municipal Council, Mahur
Taluka Mahur District Nanded.
4. Shivling S/o Baliram Taklikar,
age 70 years occupation agriculture
R/o Mahur Taluka Mahur District Nanded.
5. Saheblal Hardayal Dubey,
age 74 years occupation agriculture
R/o Lakhmapur Taluka Mahur District Nanded.
...Respondents

WITH
WRIT PETITION No. 1993 of 2019

1. Sheetal Meghraj Jadhav,
age 24 years occupation household
R/o Mahur Taluka Mahur District Nanded.
2. Vanita Bhagwanrao Jogdand,
age 48 years occupation household R/o as above.

3. Shakilabi Shaikh Shabbir,
age 40 years occupation and R/o as above.
4. Jyoti Vinod Kadam,
age 33 years occupation service
R/o as above.
5. Sharifabi Shaikh Ajij,
age 41 years occupation household
R/o as above.
6. Abdul Rafeek Abdul Rasheed Saudagar,
age 30 years occupation business R/o as above.
7. Rahematali Mahamadali Sayyad
age 48 years occupation agriculture R/o as above
8. Sagar Sudhirrao Mahamune,
age 32 years occupation business R/o as above.
9. Mohd. Iliyas Mohd. Haroon Bavani,
age 40 years occupation agriculture R/o as above.

...Petitioners

VERSUS

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Mantralaya, Mumbai – 32
2. The Collector,
Nanded District Nanded
3. The Chief Officer,
Municipal Council, Mahur
Taluka Mahur District Nanded.
4. Shivling S/o Baliram Taklikar,
age 70 years occupation agriculture
R/o Mahur Taluka Mahur District Nanded.
5. Saheblal Hardayal Dubey,
age 74 years occupation agriculture
R/o Lakhmapur Taluka Mahur District Nanded.

...Respondents

Mr. R.N. Dhorde, Senior Advocate, i./by Mr. V.R. Dhorde, Advocate for petitioners.

Mr. G.O.Wattamwar, Asstt.Govt.Pleader for respondents no. 1 & 2.

Mr. P.R. Katneshwarkar, Advocate, holding for Mr. Mohnish V. Thorat, for respondents no. 4 and 5.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 5th March, 2019

ORAL JUDGMENT:

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

2. Both these petitions have been moved primarily being aggrieved by common order dated 17th January, 2019 whereunder respondent no.1 has allowed the two appeals filed by respective petitioners, yet simultaneously has directed to initiate action for removal of petitioners pursuant to section 55A, 55B and section 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "The Act") and also by consequent notices of even date to show cause in respect of misconduct referred to in paragraph no. 7 of impugned order. Petitioners in writ petition no. 1974 of 2019 are elected as President and Vice President respectively, and petitioners in writ petition no. 1993 of 2019 are elected as councillors of Municipal Council, Mahur Taluka Mahur District Nanded in general elections held in 2016.

3. It appears that controversy had arisen in respect of resolution dated 14th February, 2017 passed for construction of shopping complex on the land from which encroachment had been removed, notice of auction of plots dated 28th May, 2017, resolution dated 8th June 2017 calling special meeting of councillors to take decision to give plots on lease and auction of the plots held and finalised on 8th June, 2017. Subsequent to the same, it appears that some lease agreements were executed and amounts were deposited in the account of the municipal council.

4. Notices dated 8th June, 2017 and 12th February, 2018 had been issued to respondent no.4 to remove illegal construction. Respondent no.4 had lodged complaints on 28th July, 2017 and 19th April, 2018 before the collector/respondent no.2 under section 16(1)(i) read with section 44 of the Act against petitioners. Parties had filed their respective replies and respondent no.2-collector, Nanded, had passed order on 19th December, 2018 disqualifying petitioners as councillors pursuant to section 16(1)(i), 16(3)(a) read with section 44(1) of the Act.

5. Petitioners preferred appeal against the decision of the collector before respondent no.1. Operation of the order passed by the collector had been stayed under interim relief granted. Respondent no.1 issued notices for hearing on 3rd

January, 2019. The parties accordingly had been before respondent no.1 on 3rd January, 2019 and the matter appears to have been proceeded with.

6. It is the contention of petitioners that 3rd January, 2019 had been the first date of hearing. Some documents and responses had been filed on behalf of present respondents no.4 and 5. The petitioners had asked for material being placed on that day on behalf of respondents no.4 and 5 and were expecting opportunity to deal with them. Factually, no hearing had been taken place. However, no next date had been given. On 4th January 2019 petitioners had placed an application before respondent no.1 reflecting upon situation in quite some details and demanding opportunity of hearing. However, without granting and affording opportunity to petitioners, impugned order has been passed, as aforesaid.

7. Learned Senior Advocate Mr. Dhorde appearing for petitioners vehemently submits that though ostensibly impugned order is setting aside the order of the collector disqualifying petitioners, yet the decision has been rendered hastily determining that the petitioners are guilty of misconduct. Contents of impugned order would evince the same. He submits that impugned order has been passed without affording proper

opportunity to petitioners. An inference is being drawn that petitioners are guilty of commission of misconduct and, thus, the proceedings are to be initiated against them and accordingly had directed to issue show cause notice for their removal. He further submits that such a procedure is not contemplated and is not compatible with the prevailing position. He submits that if an action is to be taken for removal of president or vice president, even issuing show cause notice is to be preceded by procedure prescribed therefor. He purports to refer to and rely on two circulars issued in the name of the Governor dated 1st November, 1989 and 4th September, 2010. He submits that it is not a case at all that notice is preceded by the procedure as stipulated under the two circulars. He, therefore, submits that the direction to initiate action and issue show cause notice under clause 2 of the operative part of the impugned order is in excess of said two circulars and the procedure prevailing. He submits that as on the date, it cannot be said that the direction is based on any material which can be considered worth attention, especially, in the absence of the report by the collector. He, therefore, submits that the direction is in excess of authority and is in colourable exercise of the power. He submits that the tenor of the order shows pre-determination of decision. In the process directions are given only for the sake of ostensible compliance with the

requirements under provisions.

8. On the other hand, learned counsel Mr. Katneshwarkar appearing for respondents no. 4 and 5 contends that the petition has been moved unnecessarily. As yet there is no show cause notice issued to petitioners. The petitioners would have ample opportunity to deal with show cause notice. The direction under clause (2) of the operative order is with reference to the material which had appeared before respondent no.1. Respondent no.1 has been empowered under statute to initiate proceedings under the Act, particularly, under sections 55A and 55B and also to issue direction for an action pursuant to section 42 of the Act. He submits that it is not a case at all that respondent no.1 has no power or authority to initiate and/or take action while events and circumstances, as referred to under the provisions of section 55A and 55B and section 42 have emerged and are available and produced. He submits that there are complaints against working of the councillors and the president and the vice president. Those have been verified before the collector, however, on the technical ground of want of power and jurisdiction those have been considered to be unsustainable. It would be not legitimate to question power of respondent no.1. While it has emerged from the record that there is substance in the allegations in the complaints, action pursuant to the same cannot be allowed to be

aborted by seeking truncation of exercise of powers vested by statute by a writ petition. The writ petition is based on apprehension, the case will have to be dealt with objectively and not subjectively as is sought to be made out by petitioners. Learned counsel submits that the circulars sought to be relied on are the circulars before various amendments to the statute have taken place. He further submits that the circulars which are contended to be relevant while passing order of disqualification, it would not be said that they have any nexus with the present case while the case involves circumstances contemplated under the provisions.

9. Sections 55A and 55B of the Act read, thus,

" 55A. Without prejudice to the provisions of 55-1A and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform, his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President, as the case may be, during the remainder of the term of office of the Councillors :

Provided that, no such President or Vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation. "

" 55B. Notwithstanding anything contained in section 55A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding or while he was holding the office of the President or Vice-President, as the case may be, the State Government may,—

(a) disqualify such Councillor to continue as a Councillor for the remainder of his term of office as a Councillor and also for being elected as a Councillor, till the period of six

*years has elapsed from the order of such disqualification ;
(b) disqualify such person for being elected as a Councillor
till the period of six years has elapsed from the order of
such disqualification. ”*

10. Whereas, section 42 of the Act is as under:

*” 42. (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-section (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 of any other local authority for a period of five
years from the date of such order. ”*

11. Having regard to aforesaid provisions, it cannot be said that the State Government would not be able to take action for removal pursuant to said provisions while such power is sought to be invoked and action pursuant to the same is being moved. It is not the case that grounds and defences taken by the petitioners would be unavailable to them to be canvassed in the proceedings as may ensue. In the circumstances, it appears that it would not be proper for this court to intercept the proceedings

for the reasons on which challenge is sought to be posed. All the points would be open to the parties to be taken up before the authority. It is not such a case wherein under extra ordinary powers interference is required. In view of the same, petitions are not entertained and are dismissed.

12. It is expressly made clear that while the proceedings are moved for removal of president, vice president and councillors, the same shall be decided on their own merits, without getting influenced by impugned order or for that matter observations in the decision in this writ petition.

13. However, since an apprehension has been expressed about tenor of impugned order is suggestive and the proceedings are likely to be influenced by the same, it would be expedient that if decision is adverse to the interest of petitioners, its effect be put on hold for a period of fortnight.

14. The writ petition is disposed of as above.

15. Rule is discharged.

(SUNIL P. DESHMUKH)
JUDGE