

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12229 OF 2018
WITH
WRIT PETITION NO. 12249 OF 2018
WITH
WRIT PETITION NO. 12251 OF 2018

PUSHPATAI JAGAN SONAWNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. A.M. Karad.
Advocate for Petitioner in WP 12249/18 : Mr. Satej S. Jadhav.
Advocate for Petitioner in WP 12251/18 :
Mr. V.D. Hon (Senior Counsel) h/f. Mr. A.V. Hon.
AGP for Respondent Nos. 1 to 3 : Mr. S.W. Munde.
Advocate for Respondent No. 4 : Mr. B.S. Deshmukh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 21.02.2019

PER COURT :

1. I have heard Shri Hon, learned senior advocate, Shri Karad, learned advocate and Shri Jadhav, learned advocate on behalf of the petitioners. I have also considered the submissions of the learned AGP on behalf of respondent Nos. 1 to 3 and Shri Deshmukh, learned advocate appearing on behalf of the Chief Officer, Municipal Council, Bhusawal, Jalgaon.

2. Learned counsel appearing on behalf of the petitioner has canvassed a host of factors. It is also contended that the proceedings initiated by the authorities under Section 42 of the Maharashtra

Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, is not attracted and no Order of disqualification as against these petitioners could be passed under the said provision read with Section 42 (1) and 42 (4).

3. The reason for which I am setting aside the impugned order of the Hon'ble Minister dated 20.10.2018, would not warrant advertent to the entire submissions of the litigating sides.

4. The undisputed factors are as under :

(a) These petitioners were elected in November, 2016, as Councilors in the Municipal Council, Bhusawal.

(b) On 14.06.2017, the Under Secretary of the Government of Maharashtra, issued a show cause notice to the petitioners calling upon them to show cause within 15 days, as to why proceedings for removing them as members of the Municipal Council under Section 42, should not be initiated.

(c) These petitioners submitted their individual written replies on 17.07.2017, 27.07.2017 and 07.07.2017, respectively.

(d) On 07.09.2017, yet another notice was issued by these petitioners directing them to attend the hearing in the matter before the Hon'ble Minister on 12.09.2017.

(e) These petitioners appeared on 12.09.2017, and sought an adjournment as there was very little time for them to prepare themselves and they desired to engage legal representatives to defend themselves.

(f) On 20.10.2018, which is after one year, one month and eight days, the learned Minister passed the impugned order disqualifying these petitioners to continue as members and further imposed a disqualification from contesting elections to the said positions for a period of five years.

5. It is well settled that an order in a matter in which hearing has been conducted several months ago or a year ago, cannot be sustained and the concerned authority should re-hear the litigating sides.

6. In the instant case, these petitioners sought an adjournment on the very first day of hearing on 12.09.2017, and the impugned order was passed without conducting a hearing on 20.10.2018.

7. In the above backdrop, I granted a pass over to the learned AGP to collect instructions, as to whether the State desires to withdraw the impugned order rather than inviting an order of quashing the same. The learned AGP submits after lunch recess that the Deputy Secretary Shri Moghe, instructs him to make a statement

that the impugned orders shall be withdrawn and a hearing would be granted.

8. In view of the above, all these petitions are rendered infructuous. The impugned orders dated 20.10.2018, stand withdrawn. All these proceedings involving these petitioners are remitted to the office of the Hon'ble State Minister, Urban Development Department, State of Maharashtra, on the following conditions :

- (a) All these petitioners shall appear before the State authority on 15.03.2019, at 2:00 p.m.
- (b) Formal notices need not be issued.
- (c) The litigating sides are permitted to tender their written statements along with documents, if any, and also enter appearances of legal representatives, if so desired.
- (d) It is expected that the competent authority would hear all the litigating sides by giving them a reasonable opportunity.
- (e) After the conclusion of the hearing in the matter, it is expected that the competent authority would deliver a reasoned order on the scheduled date listed for pronouncement of his order and the same shall be preferably done within 60 days from the date of closing of the matter for passing orders.

(f) All the contentions of the litigating sides, including the contention that the proceedings are untenable, are left open to be canvassed.

(RAVINDRA V. GHUGE, J.)

S.P.C.