

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7265 OF 2015**

Mr. Naganna Saibanna Divate

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

Dr.Ramdas P. Sabban for petitioner.

Dr.Mrs.K.R. Kulkarni, AGP for respondent Nos.1 and 2-State.

**CORAM : R. M. BORDE &  
N.J. JAMADAR, JJ.**

**DATE : 7<sup>TH</sup> JUNE 2019**

**P.C.**

1 The petitioner is seeking a direction to set aside the order holding him disqualified to continue as Councilor of Maindargi Municipal Council in view of the provisions of Section 44(1)(e) of the Maharashtra Municipal Councils & Nagar Panchayats & Industrial Townships Act, 1965 ('The Act of 1965').

2 The order holding the petitioner disqualified to continue as Councilor has been passed by the Collector, Solapur on 31<sup>st</sup> January 2015. The term of elective post of Councilor of the petitioner has come to an end in the year 2016. In view of completion of the term of elective post of the Councilor, the challenge raised in the instant petition to the order of disqualification passed by the Collector on 31<sup>st</sup> January 2015 has been rendered stale.

3     The counsel appearing for the petitioner contends that the order passed by the Collector is not sustainable in law and that the petitioner could not have been considered as a person who has raised unauthorised structure. According to the petitioner, the construction raised by him has been regularised and this aspect has not been taken into consideration by the Collector while passing the impugned order. The counsel further submits that the order holding him disqualified attributes a stigma on the petitioner and as such the order impugned in the petition deserves to be quashed and set aside.

4     Section 44 of the Act of 1965 would be attracted if the Councilor continues to occupy the elective post of the Councilor and the disqualification directed under Section 44(1)(e) does not extend beyond the period of the elective term of the Councilor. It would not be necessary, at this stage, to consider the merits of the contentions raised by the counsel for the petitioner since the effect of the order ceases to operate after completion of the elective term of the office.

5     On consideration of the provisions of Section 16 as well as Section 14 of the Act of 1965, it is clear that the disqualification under the provisions of Section 44(1)(e) is not liable to be continued beyond elective term of office of Councilor and as such the order passed by Collector

cannot be construed as an impediment for contesting election to elective office of Councilor. The technical objection raised by the petitioner in the instant petition need not be examined in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Petition as such stands rejected.

[ N.J. JAMADAR, J. ]

[ R. M. BORDE, J.]