

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1726/2019

Rakesh S/o Angadsingh Chouhan

..VS..

State of Maharashtra & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Manohar, Advocate for the petitioner
Ms. Shamsi Haider, AGP for the respondent nos. 1 to 3

CORAM : Z.A.HAQ, J.

DATED : 04/03/2019

Heard.

On complaint made by the petitioner, the proceedings under Section 44 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the Act of 1965") came to be initiated. According to the petitioner, the respondent no. 5 incurred disqualification for holding the post of Councilor of the Municipal Council as Crime No. 56/2015 came to be registered against him for the offences punishable under Sections 353, 186, 504 and 506 of the Indian Penal Code. By the order dated 29/09/2016, the learned Collector held that the respondent no. 5 is disqualified to continue as Councilor of the Municipal Council. This order was challenged by the respondent no. 5 before the State Government in appeal under Section 44 (4) of the Act of 1965 which is allowed by the Hon'ble Minister by the impugned order.

The Hon'ble Minister has held that the incident, because of which Crime No. 56/2015 is registered against the respondent no. 5 took place at a hotel and not in auditorium or premises of the Nagar Parishad.

The impugned order is challenged on various grounds, the substantive ground being that the petitioner was not impleaded in the appeal and the impugned order is passed without notice to the petitioner and without hearing the petitioner. It is submitted that after getting knowledge of the pendency of the appeal, the petitioner had filed an application seeking permission to intervene and to participate in the proceedings of the appeal, but without considering the application, the appeal is allowed in the absence of the petitioner.

Be that as it may, the petitioner has not been able to point out any provision which lays down disqualification of an elected Councilor in the circumstances as in the present case. The advocate of the petitioner has not been able to point out any provision under the Act of 1965, which lays down that an elected Councilor incurs disqualification on registration of crime/FIR against him. In these facts, in my view, the conclusions of the Hon'ble Minister cannot be faulted with. The order passed by the learned Collector disqualifying the respondent no. 5 is rightly set aside by the Hon'ble Minister.

I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

At this stage, the learned advocate for the petitioner submitted that if the respondent no. 5 is convicted, then the petitioner may be granted liberty to approach appropriate authority for removal of the respondent no. 5 from the post of Councilor of the Municipal Council.

If the respondent no. 5 is convicted and there is any provision which lays down disqualification of elected Councilor, law will take its own course and the petitioner will be at liberty to apprise the competent authority of the matter.

JUDGE

Ansari