

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2242 OF 2020

Dattatraya S/o Radhakisan Gorde

Petitioner

versus

The Collector,
Collector Office, Aurangabad & others

Respondents.

Mr. V.D. Sapkal h/f Mr. Choudhari Y.S. advocate for the petitioner

Mr. A.S. Shinde, AGP for respondent No.1.

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CORAM: ROHIT BABAN DEO, J.

Date: FEBRUARY 3RD, 2020

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PER COURT :-

1 The petitioner is an elected councilor of Municipal Council, Paithan.

2 Respondent No.2 who claims to be the Gat-neta of Shiv Sena in the Municipal Council, preferred a petition under section 3 of the Maharashtra Local Authority Members Disqualification Act, 1986 read with rule 6 of the Rules framed thereunder. The disqualification is sought on the premise that the petitioner left Shiv Sena party and joined Nationalist Congress party.

3 The petitioner herein preferred an application dated 7.1.2020, contending that three preliminary issues in respect of the maintainability of the reference petition be framed. The

issues which according to the petitioner - respondent No.1 in the disqualification petition need to be framed as preliminary issues are thus:-

“ I. Whether the provisions of Maharashtra Local Authority Members Disqualification Act, 1986 and Rules, 1987 is applicable to the present case if the party is not registered as per the provisions of Rule 3 of the Act ?

II. Whether the provisions of Maharashtra Local Authority Members Disqualification Act, 1986 and Rules, 1987 are applicable after removal of respondent no.1 from the Shiv Sena on 21/04/2018 itself ?

III. Whether without registration of group under the provisions of Maharashtra Local Authority Members Disqualification Act, 1986 and Rules, 1987, the present Reference Petition is maintainable ?

IV Whether the present reference petition is maintainable ?”

4 Vide order dated 28.1.2020, the Collector has held that the disqualification petition is maintainable. A perusal of the order dated 28.1.2020 would show that the issue of maintainability is decided only on the basis of the averments in the disqualification petition. No finding, as such, is recorded on the contention that the petitioner did not voluntarily give-up the membership of Shiv Sena and that as a fact he was expelled.

5 In this view of the matter, it is not necessary to interfere in writ jurisdiction. It is however, made clear that every contention including the contention that the reference is not maintainable

shall be considered on its own merit and in accordance with law after the evidence is recorded, uninfluenced by any observation in the order dated 28.1.2020.

6 The learned counsel for the petitioner Shri Sapkal would however insist that even after the evidence is recorded, the issue as to maintainability be decided first. He expresses an apprehension that if all the issues are decided together the petitioner shall have to vacate the office automatically if he is held disqualified. In this view of the matter, if the order which may be passed by the Collector is adverse to the petitioner, the same may not be given effect-to for two weeks from the date of its service on the petitioner.

7 The petition is disposed of.

(ROHIT BABAN DEO, J)