

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

WRIT PETITION NO. 7045 OF 2020

1. Balaji Ramrao Gutte
Age: 46 years, Occu.: Agri.,
R/o Guttewadi, Tq. Ahmedpur,
Dist. Latur
2. Manik Balaji Narwate
Age: 40 years, Occu.: Agri.,
R/o Tambat Sangvi, Tq. Ahmedpur,
Dist. Latur
3. Gayatri Girish Deshmukh
Age: 38 years, Occu.: Household,
R/o Valsangi, Tq. Ahmedpur,
Dist. Latur

..PETITIONERS

VERSUS

1. State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The District Collector,
Latur, Dist. Latur
3. Kamlakar Wamanrao Patil
Age: 50 years, Occu.: Agri.,
R/o Dhanora(Bk.),
Tq. Ahmedpur, Dist. Latur

..RESPONDENTS

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Mr. S.S. Thombre, Advocate for petitioners
Mr. S.P. Tiwari, A.G.P. for respondent nos. 1 and 2
Mr. H.V. Patil, Advocate for respondent no.3

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 13th JANUARY, 2021
PRONOUNCED ON : 19th JANUARY, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. This writ petition is directed against the order passed by the District Collector, Latur (“the Collector”) on 04th June, 2020, whereby he rejected the application moved by the petitioners for framing of a preliminary issue as to maintainability of the disqualification proceeding initiated against them at the instance of Respondent No.3 on the ground of voting contrary to the whip/direction issued by the political party they belonged to.

FACTS OF THE CASE IN BRIEF :

3. The petitioners and Respondent No.3 are the members of Panchayat Samiti, Ahmedpur, Dist. Latur. The elections of the said panchayat samiti were held in the year 2017. The petitioners and Respondent No.3 were elected on the tickets of Bhartiya Janata Party (‘B.J.P.’), a national level political party. On 30th December, 2019, a general body meeting was held to elect chairman and vice-chairman of panchayat samiti. Respondent No.3 had contested the election of vice-chairman. Two days before the said election i.e. on 28th December, 2019, B.J.P. District and Taluka Unit had issued a whip

directing all of its members including the petitioners to vote in favour of Respondent No.3. In spite of said whip, the petitioners voted in favour of the candidate contesting election against Respondent No.3. As a result, both Respondent No.3 and his contestant secured equal votes. In a draw of lots contestant of Respondent No.3 was declared elected. Respondent No.3 thereafter moved the Collector a reference for declaring the petitioners to have incurred disqualification to continue to be the members of panchayat samiti on account of violating the whip of their party by voting against Respondent No.3. The Collector issued notice to the petitioners and Respondent No.3 as well. The petitioners moved the application for framing of preliminary issue as to maintainability of the proceeding on account of failure to comply with Rules 3 and 6 of the Maharashtra Local Authority Members' Disqualification Rules, 1987 ('Rules of 1987'). After hearing the parties, the Collector, vide impugned order dated 04th June, 2020, held that compliance of provisions of Rule 6 of the Rules of 1987 is not mandatory. He, therefore, rejected the application on the said ground. So far as regards issue of compliance of provisions of Rule 3 is concerned, the Collector decided to answer the said issue alongwith the main proceeding initiated for disqualification of the petitioners.

4. Mr. Thombre, learned counsel for the petitioners would submit that compliance of provisions of Rule 3 is mandatory. The Collector ought

not to have deferred the decision on the said issue. Answer thereto goes to the root of the matter. He adverted the Court's attention to paragraph no.6 of the reference dated 09th January, 2020 made by Respondent No.3 for disqualification of the petitioners. According to learned counsel, Respondent No.3 in his reference itself has admitted that none of the members of Panchayat Samiti, Ahmedpur, particularly belonging to B.J.P. made compliance of Rule 3. In view of this admission, the Collector was not to make a fact finding enquiry. According to him, the provisions of the Maharashtra Local Assembly Members' Disqualification Act, 1986 ('Act of 1986') have to be strictly construed. Learned counsel took me through the relevant provisions of the Act of 1986 and Rules of 1987. He also relied on the following authorities :-

1.	<i>Vasant Nivrutti Gite Vs. Municipal Corporation of City of Nashik and Others</i>	<i>2007 (4) Bom.C.R. 144</i>
2.	<i>Jeevan Chandrabhan Indani and Anr. Vs. Divisional Commissioner and Ors.</i>	<i>2012 DGLS (SC) 834</i>
3.	<i>Sanjay Devram Bhoir Vs. Divisional Commissioner and Ors.</i>	<i>2013 (3) Bom. C.R. 703</i>
4.	<i>Shah Faruq Shabir and Ors. Vs. Govindrao Ramu Vasave and Ors.</i>	<i>2016 DGLS (Bom) 307</i>
5.	<i>Avinash Gulabrao Mardikar Vs. Divisional Commissioner, Amravati and Ors.</i>	<i>W.P. No. 2772 of 2014</i>
6.	<i>Sunil Haribhau Kale Vs. Avinash Gulabrao Mardikar and Ors.</i>	<i>(2015) 11 SCC 403</i>
7.	<i>Fazalur Rehman Gulam Nabi Vs. Raziya Begam Sayyed and Ors.</i>	<i>2013 (6) Bom.C.R. 818</i>

5. Learned counsel for Respondent No.3 would, on the other hand, submit that the petitioners had moved the application with a view to protract the hearing of the main reference. The issue is no longer *res integra*. Compliance of Rule 3 is not mandatory. According to him, the Collector has simply deferred to answer the issue and not negated the ground raised by the petitioners. No prejudice is likely to be caused to the petitioners. Learned counsel supported the impugned order.

6. Learned A.G.P. representing Respondent Nos. 1 and 2 would submit that the Collector was expected to decide the reference within a period of ninety days. If such applications are preferred, the time frame could not be adhered to. Since the petitioners have incurred disqualification, their efforts would be to see that the reference made in that regard is delayed for one or other reason.

7. Admittedly, the petitioners, Respondent Nos. 3 and five others have been elected as members of Panchayat Samiti, Ahmedpur as candidates of B.J.P. in the elections held in 2017. A reference to relevant definitions and provisions of the Act of 1986 and Rules of 1987 is necessary to decide the writ petition. Section 2 of the Act of 1986 gives definitions of certain terms.

“Section 2. Definitions.

(f) *“member” means a member of a Panchayat Samiti;*

(i) *“municipal party”, in relation to the Councillor*

belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means -

(i) in the case of Councillor of a Municipal Corporation, the group consisting of all Councillor of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(ii) in the case of a Councillor of a Municipal Council, the group consisting of all the Councillors of the Municipal Council for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(j) “original political party”, in relation to a Councillor or a member, means the political party to which he belongs for the purposes of sub-section (1) of section 3;

(k) “Panchayat Samiti” means a Panchayat Samiti constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;

(l) “Panchayat Samiti party”, in relation to a member belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Panchayat Samiti for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

Section 3. Disqualification on ground of defection.

(1) Subject to the provisions of section 5, a councillor or a member belong to any political party or aghadi or front shall be disqualified for being a councillor or a member,-

(a)

(b) if he votes or abstains from voting in any meeting of a

Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:

Provided that, such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;

Explanation-

(a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member;

Rule 3. Information to be furnished by a leader of Party.

(1) The leader of each municipal party or a Zilla Parishad party in relation to a councillor and the leader of Panchayat Samiti party in relation to a member (other than a municipal party or a Zilla Parishad party or a Panchayat Samiti party consisting of only one member) shall, within thirty days from the date of commencement of these rules or where such party is formed after such date, within thirty days from the date of its formation, or in either case, within such further period as the Commissioner, in the case of a Councillor of a Municipal Corporation, or the Collector,

in the case of any other Councillor or member may for sufficient reason allow, furnish the following information to the Commissioner, or, as the case may be, to the Collector, namely:-

(a) a statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form I, and the names and designations of the members of such party who have been authorised by it for communicating with the Commissioner or, as the case may be, Collector for the purpose of these rules;

(b) a copy of the rules and regulations (whether known as such or a constitution or by any other name), of the municipal party, Zilla Parishad party or the Panchayat Samiti party concerned, as the case may be; and

(c) where such party has any separate set of rules and regulations (whether known as such or as constitution or/by any other name), also a copy of such rules and regulations.”

8. According to learned counsel for the petitioners, since admittedly the elected members of the B.J.P. had not submitted the relevant information in compliance with Rule 3, the Collector cannot proceed with the reference for disqualification. Learned counsel meant to say that the persons, who have been elected on the ticket of B.J.P., have not got themselves registered as panchayat samiti party and therefore, there was no question of issuance of any whip by their leader and the petitioners flouting the same.

9. Learned counsel for the petitioners has read out only some portion of paragraph no.6 of the reference dated 09th January, 2020. Although it has

been admitted in paragraph no.6 that none of the members of Panchayat Samiti Ahmedpur, belonging to B.J.P., made compliance of Rule 3 of the Rules of 2087, said rules are discretionary in nature. The Collector has made publication of the members of Panchayat Samiti Ahmedpur in which it has been shown that parties to the petition belonged to B.J.P, a national level political party, do not require registration again at panchayat samiti level in the office of the collector.

10. Whether the Collector has made publication of the information of the members of panchayat samiti is a question of fact, that cannot be decided in an enquiry on the preliminary issue as to maintainability of the reference.

11. In case of ***Kedar Shashikant Deshpande Vs. Bhor Municipal Council and Others AIR 2011 SC 463***, it has been observed in paragraph no.24 :-

“24. Further, on a critical study of the provisions of rule 3 read with rule 4(3) of the Rules, it is evident that neither rule 3 nor rule 4 nor any other rule of the Rules mentions that a political affiliation of the Councillor would come into existence only upon submission of either Form-I, Form-III and/or publication of information in the Official Gazette. It is rightly contended by the learned counsel for the respondent Nos. 4 and 5 that these forms and publication in the Official Gazette have merely an evidentiary value which would prima facie establish that a Councillor belongs to a particular political affiliation and

nothing more. The alleged non-availability of the evidence relating to the political affiliation of the appellants in the Form-I, Form-III and/or publication in the Official Gazette would not mean that the appellants did not belong to NCR. Form-I, Form-III and/or publication of information in the Official Gazette merely has an evidentiary value.”

Failure on part of Collector to publish summary of information furnished by Councillor in Government Gazette and failure to maintain register in terms of Rule 3 is not fatal. Alleged non-availability of evidence relating to political affiliation of Councillors would not mean that they did not belong to political party. Publication of information in official gazette merely has an evidentiary value.

12. From reading of relevant provisions of Act of 1986 and Rules of 1987 it does appear that members of original political party need not be registered as panchayat samiti party. Since compliance of Rule 3 appears to be not mandatory, non-compliance thereof will not go to the root of the matter. Moreover, what the Collector has done is that he simply deferred answering the said issue (non-compliance of Rule 3) and decided to answer the same while deciding the main reference. No fault can be found with the impugned order of the Collector.

13. Writ petition is sans of merit. It is, therefore, dismissed. Rule is discharged. All contentions are kept open. Aforesaid observations are prima facie in nature.

(R.G. AVACHAT, J.)

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