

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

WRIT PETITION NO.12526 OF 2021

Shri Virendrasing S/o Indrasing Girase,
Age : 53 years, Occu: Agriculture and Social Work,
R/o. Chimthane, Tq. Shindhkheda,
District Dhule.

... PETITIONER

VERSUS

1. The Additional Commissioner,
Nashik Division, Nashik
 2. The Chief Executive Officer,
Zilla Parishad, Dhule, District Dhule.
 3. Shri Bharat S/o Parsing Rajput,
Age : 35 years, Occu: Private Service,
R/o. Chimthane, Tq. Shindhkheda, Dist. Dhule.
- ... RESPONDENTS**

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Advocate for Petitioner : Mr. V.D. Hon, Senior advocate i/b. Mr. A.B. Girase
AGP for Respondents/State : Mrs. D.S. Jape
Advocate for respondent No.3 : Mr. S.P. Shah

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CORAM : MANGESH S. PATIL, J.

DATE : 17.11.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned AGP waives service for the respondent Nos.1, the learned advocate Mr. Shah waives service for respondent No.3, who is the contesting respondent. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner who is an elected member of the Zilla Parishad is assailing the judgment and order passed by the respondent No.1 Additional

Divisional Commissioner, disqualifying him under the provisions of Section 16(1)(i) read with Section 40 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (herein after the ZP Act) on the ground of conflict of interest. The respondent No.3 who is a person who was defeated at the election made a complaint on the ground that the petitioner was residing jointly with his son and the latter could procure a contract for improvement of a road from village Aarave to Aarave Phata which was in contravention of the provision of Section 16(1)(i).

3. The learned Senior advocate Mr. Hon for the petitioner would begin with the argument that the petitioner is elected as a member of a Zilla Parishad under the ZP Act, whereas, the work that was allotted to his son was being carried out at the behest of a Gram Panchayat which is regulated by the provision of the Maharashtra Village Panchayats Act, 1959 (herein after VP Act). He would submit that both these entities are different albeit both these enactments contain a similar provision as far as carrying out of construction, maintenance and repair of public roads, drains, bunds and bridges are concerned.

4. Mr. Hon takes me through the papers and points out that although it was a work which was to be undertaken under the supervision of the Zilla Parishad, it was essentially a work that was to be undertaken for and on behalf of the Gram Panchayat. He would therefore submit that in order to attract the provision of Section 16(1)(i) of ZP Act it was necessary that the work should have been undertaken by the Zilla Parishad itself.

Therefore, there was no conflict of interest in the strict sense. He had no direct or indirect interest in the work done by his son.

5. Mr. Hon would then submit that the petitioner's son is not dependent on him and has his own occupation. Even both of them do not reside together and do not carry on any business jointly. If he has secured the contract while pursuing his own occupation that should not be made to attract any liability to the petitioner.

6. Mr. Hon would submit that the impugned order has been passed without adhering to the principles of natural justice. No appropriate opportunity of being heard was extended to the petitioner. Though the respondent No.3 was allowed to change his lawyer, no such indulgence was shown to the petitioner and it has deprived him of his valuable right.

7. Lastly, Mr. Hon submits that the petitioner is elected as a people's representative and ought not to have been non seated without strict proof of the ground attracting disqualification.

8. Per contra, learned advocate Mr. Shah for the respondent No.3 would also take me through the papers to point out as to how the work that was allotted to the petitioner's son was undertaken pursuant to an order of the Zilla Parishad. He would submit that since it is a matter touching the conflict of interest of a publicly elected member of a Zilla Parishad and his duties, a broader interpretation needs to be put to the wording of Section 16(1)(i) of the ZP Act. Though it was a work which was ultimately to be carried out by the Gram Panchayat concerned, it could not have been done

without the intervention of the Zilla Parishad and without its approval. He would therefore submit that there was a direct conflict of interest in petitioner continuing as a member of the Zilla Parishad which had accorded approval and had sanctioned the work which was ultimately allotted to his son. The learned advocate would place reliance on the following decisions of this Court:

- i) **Raut Sudhakar Dhondiram Vs. The Divisional Commissioner and Ors.; 2016 SCC OnLine Bom 11631**
- ii) **Arshiyabegum Shaikh Rabib Vs. The State of Maharashtra and Ors.: Writ Petition No.7298 of 2019 dated 26.06.2019**

9. I have carefully considered the rival submissions and perused the papers. In order to appropriate the controversy it would be apposite to read the relevant provision which attracts the disqualification:

“Section 16. (1) Subject to the provisions of sub-section (2), a person shall be disqualified for being chosen as, and for being, a Councillor -
(a)....
(b)...
(c)...
(i) if he has directly or indirectly by himself or by his partner any share or interest in any work done by order of the Zilla Parishad or in any contract with, by or on behalf of, Zilla Parishad”

As can be appreciated, a councillor is liable to be disqualified if he has directly or indirectly, by himself or his partner any share or interest in a work done by order of Zilla Parishad or in any contract with, by or on behalf of Zilla Parishad, is liable to be disqualified. As the wording suggests, it is not only that he should have an interest in any work ‘of’ the Zilla Parishad but even he should not have an interest in a work done ‘by the

order' of the Zilla Parishad. The prerequisite is that the work should have been done by the order of Zilla Parishad. Conspicuously, the provision does not require that any such work to be done by the order of Zilla Parishad should be at its expense or otherwise. In other words, this provision does not require that the funds for the work done should be of Zilla Parishad. It is enough to attract the provision that the work is done by the order of the Zilla Parishad. Such an interpretation, which can be easily discerned from the plain reading of the provision would be decisive.

10. The material facts are not in dispute. The respondent No.2 Zilla Parishad, Dhule by the work order dated 09.06.2020 (Exhibit-D) specifically directed Gram Panchayat to undertake the work under the supervision of the Deputy Engineer of the Zilla Parishad. Even the communication addressed by the respondent No.2 Zilla Parishad to the Divisional Commissioner dated 03.03.2021 (Exhibit-I) mentions that the work that was allotted to the petitioner's son was undertaken pursuant to the order of the Zilla Parishad dated 09.06.2020 and that it was preceded by the building permission accorded by the concerned committee of the Zilla Parishad dated 02.03.2020. Again, the communication addressed to the petitioner by the concerned Executing Engineer of the Zilla Parishad, dated 28.10.2021 (page 62) reads that pursuant to his query he was informed that the road in question was approved and was being developed pursuant to the order of the Zilla Parishad that was being undertaken as per the proposal forwarded by the District Planning Committee from the Office of the Collector, Dhule

and that the Zilla Parishad, Dhule was the implementing and controlling agency who had disbursed the funds under a specific head. If such was the state of affairs, I do not find any hesitation in concluding that irrespective of the fact that it was the Gram Panchayat which was, in a sense, the user department, the work that was allotted to the petitioner's son was being carried out pursuant to an order of the Zilla Parishad within the meaning of Section 16(1)(i) of the ZP Act.

11. So far as the dispute as to if the petitioner and his son are residing together or otherwise, this Court cannot undertake any such scrutiny of disputed facts. In the impugned order the Divisional Commissioner by referring to the material on record has reached a plausible conclusion. He has specifically referred to the ration cards and particularly noticed absence of the ration card of the petitioner while drawing a reasonable conclusion that there was no clinching material to demonstrate that the father and son duo were residing separately. The view taken in the impugned order that merely because a ration card of the grandmother of the petitioner's son contains the son's name would not be sufficient to reach to a conclusion that the petitioner and his son are separate, is a plausible view and cannot be interfered with while exercising the writ jurisdiction.

12. The upshot of the above discussion leaves no manner of doubt that it is a clear case of conflict of interest which invites a disqualification under Section 16(1)(i) of the ZP Act.

13. This takes me to the second bone of contention regarding

alleged failure to follow the principles of natural justice, an argument advanced by Mr. Hon.

14. A perusal of copy of Roznama of the proceeding before the respondent Divisional Commissioner would show that the matter was first taken up on 05.02.2021. It was adjourned from time to time in the wake of the pandemic. It was then listed on 09.07.2021. The petitioner was present and sought time to file a written statement. The matter was then adjourned to 23.07.2021. The advocate for the petitioner was present on that day and again sought time to file reply. His request was accepted and the matter was adjourned to 20.08.2021. On that day neither the petitioner nor his advocate remained present and still by way of last indulgence, the matter was adjourned to 03.09.2021. Even on that day the matter was simply adjourned to 24.09.2021. On that day the petitioner filed his written statement and the matter was adjourned to 08.10.2021 for arguments. The arguments of the learned advocate for the respondent No.3 were heard on that day. Though the petitioner was present in person he orally requested for time on the ground that his advocate was ill. By directing that in spite of opportunity the petitioner was not ready to make submissions and further directing that his written statement would be treated as his argument, the matter was closed for passing order. It is thereafter that on 20.10.2021 the petitioner submitted an application and sought to be heard. His application was rejected by a detailed order dated 01.11.2021 and the impugned judgment was thereafter pronounced on 08.11.2021. Though an attempt

was made by Mr. Hon to submit that this order on his application dated 20.10.2021 was passed on 01.11.2021 but was not communicated to the petitioner, no such clear and specific pleading has been made in the petition. In fact the petition contains a specific statement about passing of such order and petitioner's knowledge about it.

15. Besides, as can be seen from the dates listed before the Divisional Commissioner, at no point of time the matter was listed hurriedly muchless to demonstrates that the decision was being taken with some uncalled for or undesired haste. In fact, even in the absence of the petitioner and his advocate, the matter was adjourned firstly to enable him to file his reply and then to put up his arguments. Even after his application seeking to be heard was rejected on 01.11.2021, the impugned order was not passed immediately but was passed 7 days thereafter. If at all the petitioner was having *bona fides*, he could have approached this Court no sooner his application was rejected on 01.11.2021. He took chance and waited for the impugned order to be passed. In the wake of such events, it cannot be said that the impugned order has been passed in breach of principles of natural justice.

16. Even otherwise, when all the facts as discussed herein above were available before the concerned Divisional Commissioner and when hearing the petitioner would have been clearly a mere formality and had no consequence of changing the fate of the matter, the petitioner cannot be said to have been put to any prejudice and cannot be allowed to put up the

argument regarding failure of the principles of natural justice. Suffice for the purpose to refer to the decision of the Supreme Court in the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Ors. ; (2015) 8 SCC 519**. After taking on stock of various decisions, following observations have been made in paragraph No.30 and 31:

30. *But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.*

31. *We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which*

*are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in **Malloch v. Aberdeen Corporation (1971) 1 WLR 1578 at 1595**, who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'. Relying on these comments, Brandon LJ opined in **Cinnamond v. British Airports Authority MANU/UKWA/0013/1980 : (1980) 1 WLR 582 at 593** that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing."*

17. Though the matter before the Supreme Court pertains to a case concerning recovery orders issued under the Excise Act, the principle would certainly govern the fact situation of the matter in hand. To repeat, there was least possibility of any change in the decision even if the petitioner would have been given any opportunity of being heard, when all the

aforementioned facts and circumstances unerringly indicated the clear conflict of interest inviting the disqualification under Section 16(1)(i) of the ZP Act.

18. The impugned order by no stretch of imagination can be said to be either perverse or arbitrary.

19. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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