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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4065 OF 2020

Sonal Dilip Shinde
Age – 36 years, Occ – Business
R/o 233-K, Gitai Bungalow
Near Nutan Padvi High School,
Station Road, Dhule
Taluka and District - Dhule

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. Divisional Commissioner,
Nashik Division, Nashik
3. Dhule Municipal Corporation
Through its Commissioner,
Dhule, Taluka and District – Dhule
4. The Learned Collector,
Dhule
5. The State Election Commission
Maharashtra State,
6. The Election Commission of India,
New Delhi,

RESPONDENTS

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Mr. D. S. Bagul, Advocate for the petitioner
Mr. S. B. Pulkundwar, AGP for respondent - State
Mr. Ajit B. Kadethankar, Advocate for respondents No.2 and 5
Mr. A.C.Sisodiya h/f Mr. N.N.Desale, Adv. for respondent No.3
Mr. Alok M. Sharma, Advocate for respondent No.6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th SEPTEMBER, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition, filed under Article 226 and 227 of the Constitution of India, takes exception to the order dated 17th January, 2020 passed by respondent No.2, published in Government Gazette dated 6th February, 2020, thereby disqualifying the petitioner from the post of Councillor for a period of three years, on the ground of non submission of election expenses.

3. The facts, in nutshell, are that, in the year 2018, elections of respondent No.3 – Dhule Municipal Corporation were held. On 20th November, 2018, the petitioner filed his nomination form from Prabhag No.14-D. The petitioner, however, withdrew the said nomination on 26th November, 2018 and thus not contested the said election. On 9th December, 2018, election results were declared. Thereafter, in the first general meeting of the Corporation, the petitioner was nominated as Councillor.

4. By the impugned order, published in the official Gazette on

6th February, 2020, the Divisional Commissioner, disqualified the petitioner from the post of Councillor, on the ground that the petitioner has failed to submit the details of election expenses, within the stipulated time.

5. After filing of this petition, this Court on 20th March, 2020, referred following two issues for decision of the Division Bench;

“(a) Would a nominated Councillor, as defined u/s 2 (11) incur a disqualification u/s 10 (1E) for having entered the election fray and having failed in submitting the accounts of election expenses and would such disqualification unseat a nominated Councillor?”

(b) Is a nominated councillor exempted from any disqualification under the Maharashtra Municipal Corporations Act and cannot be unseated even if he incurs a disqualification for continuing as a councillor?”

and directed that the post of the petitioner as nominated Councillor be kept vacant till decision of the writ petition.

6. Learned Division bench has answered the reference holding that -

“20. It would appear that in view of the said order, the candidates who have withdrawn their nominations are not required to submit the account of election expenses. The orders of the Election Commission issued in exercise of powers conferred by Articles 243-K and 243-ZA of the Constitution has the force of law. The nominated candidates are not required to under go the process of election and they are only nominated.

In view of that, they are not required to submit the election expenses. So the question of disqualification U/Sec. 10(1E) and 49 of the Act 1949 would not arise. Had the nominated councillor required to undergo the process of election as was provided in the erstwhile 1995 Rules, then the disqualification U/Sec. 10 (1E) of the Act 1949 would have been attracted. But the said position is not countenanced under 2012 Rules. The disqualification attributable to a member of a local body for failing to lodge election expenses within the time and manner as specified by State Election Commission is applicable only to such member, who “had been a contesting candidate, but no one else”. If the member of a local body, councillor of municipal corporation is not chosen vide an election of whatsoever nature, such member shall not be susceptible to the disqualification on the ground of non submission of election expenses. However, if the person nominated as a Councillor had earlier contested election and had failed to submit the election expenses as may be required under law and was disqualified by any order, then, in that case, he will be disqualified to be nominated as Councillor. The issue No. (a) is answered accordingly”.

7. The learned Division Bench has held that a person, who is nominated as a Councillor is not required to undergo process of election, therefore, he is not required to submit election expenses. Nominated candidates do not undergo election process and, they are only nominated, therefore, they are not required to submit election expenses and, therefore, question of disqualification under section 10 (1E) and 49 of the Act of 1949 does not arise.

8. It is also held that the candidates who have withdrawn

their nomination forms are not required to submit their account of election expenses, as per order issued by the Election Commission on 7th September, 2021.

9. In view of the aforesaid ratio of the Division Bench, the impugned order is unsustainable in law and facts. The writ petition is, therefore, allowed in terms of prayer clause "B". The impugned order passed by respondent No.2 dated 17th January, 2020 is hereby quashed and set aside. Rule is made absolute accordingly. No costs.

[NITIN B. SURYAWANSHI]
JUDGE