

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

WRIT PETITION NO. 7911 OF 2022

1. Sharad S/o Namdeo Pawar,
Age 42 years, Occu: Member of
Municipal Council, Loha, Tq. Loha,
Dist. Nanded.

2. Balaji S/o Venkati Shelke,
Age 30 years, Occu: Member of
Municipal Council, Loha, Tq. Loha,
Dist. Nanded.

... **Petitioners**

Versus

1. Karim S/o Mahoddin Mujawar,
Age: 46 years, Occu: BJP Nagar
Parisahd, Loha, Tq. Loha,
Dist. Nanded.

2. The Chief Officer,
Municipal Council, Loha, Tq. Loha,
Dist. Nanded.

3. The District Collector,
Nanded, Tq. & Dist. Nanded.

... **Respondents**

AND

WRIT PETITION NO. 7912 OF 2022

1. Sharad S/o Namdeo Pawar,
Age 42 years, Occu: Member of
Municipal Council, Loha, Tq. Loha,
Dist. Nanded.

2. Balaji S/o Venkati Shelke,
Age 30 years, Occu: Member of
Municipal Council, Loha, Tq. Loha,
Dist. Nanded.

... **Petitioners**

Versus

1. Karim S/o Mahoddin Mujawar,
Age: 46 years, Occu: BJP Nagar
Parisahd, Loha, Tq. Loha,
Dist. Nanded.
2. The Chief Officer,
Municipal Council, Loha, Tq. Loha,
Dist. Nanded.
3. The District Collector,
Nanded, Tq. & Dist. Nanded.

... Respondents

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Advocate for Petitioners : Mr. S.V. Kurundkar
Sr. Advocate for R/1: Mr. V.D. Hon/f. Mr. A.M. Gaikwad
Advocate for R/2 : Mr. R.P. Bhumkar
APP for Respondent-State-R/3 : Mr. S.B. Pulkundwar

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CORAM : M.G. SEWLIKAR, J.
DATE : 26th August, 2022

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. Both these petitions can be disposed of by common order as the issue involved in both the petitions is the same.

3. Petitioners are the Councilors of Loha Municipal Council, District. Nanded. Respondent no.1 is also elected as the Councilor of the Municipal

Council, Loha. Respondent no.1 claims himself to be a group leader of the BJP in the Municipal Council. The respondent no.1 issued *whip* directing the Councilors belonging to the BJP to cast vote in favour of the resolution removing petitioner no.1 from the post of the Vice President. According to the respondent no.1 the petitioners violated the whip by remaining absent in the meeting held on 29th March, 2022. Accordingly, reference was made to the Collector bearing no.39/2022.

4. In the meeting for election of Vice President held on 11th May, 2022, petitioners remained absent despite there being *whip* from the group leader-respondent no.1 and thereby violated the *whip* and therefore they incurred disqualification. On these allegations, reference was made to the Collector by respondent no.1 which was registered as reference no.46/2022.

5. The petitioners filed application before the Collector raising issue of non-compliance of Rule 6 and 7 of the Maharashtra Local Authority Members Disqualification Act, 1986 & Rules, 1987 (for short 'Disqualification Rules') alleging therein that the petition was not filed in accordance with the provisions of Rule 6 & 7 and therefore the petition deserves to be dismissed and preliminary issue in that regard be framed. Similar application was filed in reference no. 46/2022. The Collector-respondent no.3 dismissed both the applications holding that the rules are directory and not mandatory.

6. I have heard learned counsel for the petitioners Shri Kurundkar in both the petitions, learned senior counsel Shri Hon for respondent no.1 in both the petitions, learned counsel Shri Bhumkar for respondent no.2-Municipal Council and learned AGP Shri Pulkundwar for the respondent no.3-Collector.

7. Learned counsel Shri Kurundkar submits that the petitions are not filed in accordance with the provisions of Rule 6 & 7 of the Disqualification Rules. The petitions were not verified. He submits that there are other objections also. He places reliance on the case of **Sau. Madhuri Vasantrao Arathe V/s. Manish S/o. Ganeshprasad Dubey & Ors.** reported in **2014 BCI 225**, for the proposition that non-compliance of Rule 6 of Disqualification Rules entails dismissal of the application. He further submits that this Court has held that preliminary issue must be framed. He also places reliance on the case of **Sayyad Tahir Hussain Mainuddin & Anr. V/s. State of Maharashtra and Ors.** reported in **2007 (6) Bom. C.R. 214**, in which it is held that the defects in the petition for non-compliance of Rule 6 are incurable. Any and every, non-compliance of Rule 6 meets with only one fate i.e. dismissal of the reference petition. He submits that the petitions, therefore, deserve to be allowed.

8. Learned senior counsel Shri Hon submits that these rules are directory and not mandatory and for this purpose he has placed reliance on

the case of **Kedar Shashikant Deshpande V/s. Bhor Municipal Council & Ors.** reported in **DGLS (SC) 1012**. He submits that when the rules are directory there is no question of framing preliminary issue.

9. I have given thoughtful consideration to the submissions made by the learned counsel on both the sides.

10. In the case of **Kedar Shashikant Deshpande** cited (supra) the facts were that the petition was not verified in accordance with Rule 6(3) to 6(4) of the Disqualification Rules. Hon'ble Supreme Court in para 11 relying on the decision of **Dr. Mahachandra Prasad Singh V/s. Chairman, Bihar Legislative Council & Ors.** reported in **(2004) 8 SCC 747**, held that the provisions of Disqualification Rules, 1987 are *pari-materia* with the Bihar Legislative Council (Disqualification on the Ground of defection) Rules 1994 and held thus:

“11. ... It is, further, held by this Court that being subordinate legislation, the rules cannot make any provision which may have the effect of curtailing the content and scope of substantive provisions of the Act. It is also held in the said decision that the provisions of Rules 6 and 7 of the Rules of 1994 are only directory in nature and on non-filing of an affidavit as required under sub-rule 4 and order VI, Rule 15 CPC, the disqualification petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis would be adversely affected or rendered bad in any manner. It may be mentioned

that the Maharashtra Local Authority Members (Disqualification Rules) 187 are pari-materia with the Bihar Legislative Council (Disqualification on the Ground of defection) Rules 1994 and therefore, the principles laid down in the abovequoted decision would be applicable with all force to the interpretation to be placed on the Rules of 1987.”

11. Thus, the Rules 6 & 7 of the Disqualification Rules cannot be said to be mandatory in view of the judgment of the Supreme Court in the case of **Kedar Shashikant Deshpande** cited (supra). They are directory in nature. Therefore, the defects are curable defects. At this stage, learned counsel Shri Kurundkar submits that the learned Collector-respondent no.3 has posted both the references for evidence without giving any opportunity to the petitioners to file their written statement.

12. The petitions are devoid of any substance. Therefore, they are dismissed. The respondent no.3-Collector is directed to dispose of the reference bearing nos.39/2022 and 46/2022 within a period of four months. The Collector shall give an opportunity to the petitioners to file their written statement within fifteen days from today. Parties to act on an authenticated copy of this order. No costs. Rule discharged.

[M.G. SEWLIKAR, J.]