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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5745 OF 2023**

Rohan Vishwanath Khedekar
Age: 38 Years, Occ. Service,
Residing at Jamsande Malai,
Jamsande Sindhudurg.Petitioner

V/s.

1. Devgad Jamsande Nagarpanchayat
At Post Devgad, District Sindhudurg,
Pin Code 416 613, Through its Chief
Officer.

2. Shri Yogesh Prakash Chandoskar,
At Post Jamsend, Velvadi Sada,
Tal. Devgad, District Sindhudurg.

3. The Collector,
Sindhudurg, District Sindhudurg.Respondents

Mr. N. V. Walawalkar, Senior Advocate a/w Mr. Vikram Walawalkar
i/b Mr. Suresh M. Sabrad a/w Mr. Amey C. Sawant a/w Mr. Jitendra
Sachadev Advocate for the Petitioner
Mr. A. Y. Sakhare, Senior Advocate i/b Mr. Ulhas T. Naik Advocate
for Respondent No. 1
Mr. A. I. Patel – Addl G.P. a/w Ms. Sushma Bhende- AGP for
Respondent No. 3-State
Mr. Vivek Salunke a/w Ms. Renuka Lele i/b Pradhan and Rao for
Respondent No. 2

**CORAM : R. D. DHANUKA &
GAURI GODSE, JJ.**

DATED : 25th APRIL 2023

ORAL JUDGMENT: (PER: R. D. DHANUKA, J.)

1. Rule. Mr. Sakhare, learned senior counsel waives service for Respondent No. 1. Mr. Salunke waives service for Respondent No. 2 and Mr. Patel waives service for Respondent No. 3. Rule is made returnable forthwith. By consent of the parties, Writ Petition is disposed of finally.

2. By this Petition under Article 226 of the Constitution of India, Petitioner has impugned the order dated 11th April 2023 passed by Respondent No. 3-Collector thereby allowing Complaint filed by Respondent No. 2 disqualifying the Petitioner as the Municipal Councillor of the Respondent No. 1 Devgad Jamsande Nagarpanchayat. Petitioner has also prayed for quashing and setting aside order dated 31st March 2023 thereby rejecting the Application dated 28th March 2023 preferred by the Petitioner in Disqualification Application No. 3 of 2022 for cross-examination.

3. It is the case of the Petitioner that brother of the Petitioner viz. Umesh Khedekar had entered into Sale Deed in respect of land bearing Survey No. 486, Hissa No. 3/2k/5 with Sachin Bhet. Though the Sale Deed was entered in the name of Umesh Khedekar, the

said land was jointly purchased by the Petitioner and his brother with intention to develop the same, according to the Petitioner, there was partition between him and his brother and accordingly the said land was allotted to the share of brother of Petitioner.

4. Sometime in the year 2020, Petitioner came to be elected as Councilor of Ward No. 7 of Respondent No. 1. It is the case of the Petitioner that on 30th June 2022, he filed online Application bearing proposal number 124551 seeking building permission in respect off the said land before Respondent No. 1 and paid all requisite fees for the purpose of the same. According to the Petitioner, all the requisite formalities were also complied with by the Petitioner. On 26th August 2022, Petitioner received e-mail from Respondent No. 1 informing him that the building permission has been approved. Petitioner thereafter received e-mail from Respondent No. 1 on 27th August 2022 informing him that the proposal for building permission had been forwarded to the higher authority for approval.

5. It is the case of the Petitioner that since there was no refusal to grant the said permission within the time prescribed under Section 189(6) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ('the said Act') the

said permission was deemed to have been granted in favour of the Petitioner after expiry of 60 days. On 7th November 2022, Respondent No. 2 filed an Application before Respondent No. 3 alleging that the Petitioner had carried out illegal construction on the said land and sought disqualification of the Petitioner from the post of Councillor of Ward No. 7. Petitioner was called upon to remain present by Respondent No. 3 by letter dated 22nd November 2022.

6. Petitioner applied for permission to cross-examine the Complainant on 21st December 2022. Since Respondent No. 3 refused to grant permission to cross-examine the Complainant, the Petitioner filed Writ Petition in this Court. This Court passed an order on 3rd February, 2023 directing the authority to permit Petitioner to cross-examine the Complainant and to dispose of the said Disqualification Application within three months from the date of the said order. The said order was passed on 3rd February 2023 in Writ Petition No. 1300 of 2023.

7. On 28th February 2023, Respondent No. 2 submitted Affidavit in lieu of examination-in-chief. Respondent No. 2 was cross-examined on 21st March 2023. On 28th March 2023, Petitioner made an Application for cross-examination of the Chief Officer, Municipal

Engineer, Bit Officer of Respondent No. 1 and two other persons. Respondent No. 2, however rejected the said Application for cross-examination. The Petitioner was thereafter disqualified by Respondent No. 2 by passing an order on 11th April 2023 which is the subject matter of the Petition along with order dated 31st March 2023 passed by the Collector refusing to permit the Petitioner to cross-examine the witnesses.

8. Mr. Sakhare, learned senior counsel for Respondent No. 1 at the threshold raised an objection regarding maintainability of the Petition on the ground that under Section 44 (4) of the said Act, Appeal has to be preferred to the State Government against the order of Collector. After arguing the matter for sometime, learned senior counsel on instructions made a statement that his client has no objection if the impugned orders passed by the Collector are set aside and if the Disqualification Application filed by the Complainant are remanded back to the Collector for deciding the matter afresh after giving opportunity to the Petitioner to cross-examine the witnesses whose names are mentioned in the Application filed by the Petitioner on 28th March 2023. Learned counsel for the Petitioner, however, at this stage states that his client has now proposed to cross-examine only three witnesses out of those five

witnesses i.e. Chief Officer, Municipal Engineer and Bit Officer and does not propose to cross-examine the Panchas. Statement is accepted.

9. Mr. Salunke, learned counsel for Respondent No. 2-Complainant opposes this Petition on the ground that sufficient opportunities were given to the Petitioner to remain present. He submitted that in the earlier round of litigation, the Petitioner had proposed to cross-examine only the Complainant and not other five witnesses as sought to be cross-examined before the Collector. He submitted that deliberately the Petitioner has chosen to cross-examine the witnesses in piecemeal with a view to delay the outcome of the Disqualification Application. He submitted that all the documents were already furnished to the Petitioner and thus even otherwise no purpose would have been served by permitting the Petitioner to cross-examine other witnesses.

10. Mr. Patel, learned Additional Government Pleader for the State submitted that there is no provision for cross-examination of the witnesses and thus the Collector was justified in refusing the opportunity to cross-examine other five witnesses sought to be cross-examined by Application dated 28th March 2023. He tried to

justify the order passed by the Collector and submitted that order does not warrant any interference by this Court.

11. Mr. Walawalkar, learned senior counsel for the Petitioner in his rejoinder arguments submitted that since there is gross violation of principles of natural justice by the Collector, there is no bar in entertaining the Petition under Article 226 of the Constitution of India. In support his submission, he placed reliance on the judgment of the Supreme Court in the case of *Committee of Management and another Vs. Vice-Chancellor and Others*¹ and in particular paragraph Nos. 22 and 23. It is submitted by learned senior counsel that though this Court by order dated 3rd February 2023 had directed the Collector to dispose of the Disqualification Application within a period of three months and though the Collector had sufficient time to grant an opportunity to the Petitioner to cross-examine the Complainant and though sufficient time was available, for the reasons best known to the Collector, opportunity to cross-examine the other three crucial witnesses was refused and an order in violation of principles of natural justice is passed by the Collector thereby disqualifying the Petitioner from the post of Councilor of Ward No. 7 of Respondent No. 1.

¹ (2009) 2 Supreme Court Cases 630

12. In so far as the objection raised by Mr. Sakhare, learned senior counsel for Respondent that this Petition shall not be entertained on the ground that the Petitioner has not availed the alternate remedy is concerned, in view of the statement made by learned senior counsel for Respondent No. 1 that the matter can be remanded back, this argument does not survive. Be that as it may, in our view, since the Petitioner was entitled to seek an opportunity to cross-examine the other three witnesses which would have proved the case of the Petitioner or disproved the case of the Complainant, the Collector having refused to grant an opportunity to cross-examine those three witnesses to the Petitioner, the impugned order is in gross violation of principles of natural justice.

13. The principles laid down by the Supreme Court in the case of *Committee of Management* would apply to the facts of this case. Hon'ble Supreme Court after considering the Judgment in the case of *Whirlpool Corpn. V. Registrar of Trade Marks*² has held that if there is violation of principles of natural justice or the order or proceedings are wholly without jurisdiction, there is no bar to entertain the Writ Petition under Article 226 of the Constitution of India although there exist alternate remedy. In our view, the case of

² (2003) 7 SCC 546

the Petitioner is squarely covered by the principles laid down by the Supreme Court in the said Judgment in the case of *Committee of Management (supra)*.

14. In so far as the submission of Mr. Salunke, learned counsel for Respondent No. 2 is concerned, perusal of record indicates that Petitioner had made an Application for cross-examination of five witnesses on 28th March 2023 i.e. much before the expiry of time granted by this Court for disposing of the earlier Writ Petition by order dated 3rd February 2023. According to the Petitioner, those three witnesses were crucial witnesses to be examined on the ground that the Petitioner had not carried out any unauthorised construction or in any event an Application for permission to carry out construction was made within time prescribed, the permission was not granted within the time prescribed. There is no substance in the submission made by Mr. Salunke, learned counsel for the Complainant.

15. In so far as the submission of Mr. Patel, Additional Government Pleader for the State that there is no provision for cross-examination of any witnesses under the provisions of the said Act and thus no infirmity can be found with the order passed by the

Collector refusing to grant an opportunity to cross-examine those witnesses is concerned, in our view, this submission of the learned AGP is totally without merit. A right of cross-examination of a witness is a right of fair opportunity and form part of principles of natural justice. Witnesses examined by the Complainant have to be made available, if Application for cross-examination is made. If any such opportunity is refused and Disqualification Application is allowed against the Petitioner without such opportunity, would have a serious impact on the membership of the Petitioner as a member of Council.

16. In our view, order passed by the Collector, initially on 31st March 2023 rejecting the Application dated 28th March 2023 refusing to permit the Petitioner to cross-examine the witnesses sought to be cross-examined by the Application dated 28th March 2023 followed by the order dated 11th April 2023 is in gross violation of principles of natural justice. Since the order passed by the Collector on 31st March 2023 is in gross violation of principles of natural justice, consequently the order of disqualification of the Petitioner is also illegal and deserves to be quashed and set aside.

17. We, accordingly, pass the following order.

- I. Writ Petition is allowed in terms of prayer clause (b) and (c). Rule is made absolute accordingly.
- II. Disqualification Application filed by Respondent No. 2 is restored to file before the learned Collector.
- III. Learned Collector to grant an opportunity to Petitioner to cross-examine three witnesses i.e. Chief Officer, Municipal Engineer and Bit Officer before passing any order on the said Disqualification Application made by Respondent No. 2. Chief Officer is directed to make these three witnesses available for the purpose of cross-examination, including himself on the date as may be convenient to all the parties including the Chief Officer and the Collector.
- IV. After cross-examination of these three witnesses, Petitioner would be at liberty to examine himself as a last witness to prove his case. Collector is directed to permit the Petitioner to examine himself also, in addition to cross-examination of these three witnesses before passing any order on the said Disqualification Application.
- V. All the parties agree that they will co-operate with each other and with the learned Collector to dispose of the

Disqualification Application within two months from the date of completion of evidence.

VI. It is made clear that balance evidence i.e. cross-examination of these three witnesses, examination-in-chief of the Petitioner and the cross-examination shall be completed within a period of two months from today. Learned Collector shall fix the date for recording the balance evidence accordingly, subject to co-operation of all the parties.

VII. It is made clear that none of the parties shall seek any unnecessary adjournment before the Collector.

VIII. Learned Collector shall pass an order in accordance with law and without being influenced by the observations made and the conclusions drawn in the order dated 31st March 2023 and 11th April 2023.

IX. It is made clear that order that would be passed by the Collector shall be communicated to the Petitioner, the Complainant and the Chief Officer within one week from the date of passing of such order.

X. If the order that would be passed by the Collector is

adverse to the Petitioner, no coercive steps shall be taken against the Petitioner for a period of four weeks from the date of communication of such order.

XI. All contentions of both parties on the merits of Disqualification Application are kept open. No order as to costs.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)