

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4164/2022

Sandeep s/o Somaji Tale and others **VS** The Collector, Bhandara and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.L. Khapre, Senior Advocate with Shri A.B. Dangore, Advocate for the Petitioners.

Shri A.M. Deshpande, AGP for respondent No.1.

Shri A.M. Ghare, advocate for the respondent No.2.

Shri N.S. Khubalkar, advocate for the respondent No.3.

CORAM : ANIL S. KILOR, J.

DATED : 16/01/2023

1. Heard.
2. In this writ petition, a challenge is raised to the rejection of preliminary objection filed by the petitioners to the tenability of the petition filed by the respondent No.2 to disqualify the petitioners under the provision of the Maharashtra Local Authorities Members Disqualification Act, 1986 (for short 'the Act of 1986'), by the Collector vide order dated 15/07/2022.
3. The facts in brief are as follows:-

The general election of Zilla Parishad, Bhandara was conducted on 21/12/2021. The total 52 members were elected as a Councilors. On 10/05/2022, the elections of the President and the Vice President of Zilla Parishad were held and the petitioner No.1 was elected as the Vice President. Thereupon, the respondent No.2 filed a disqualification

petition under Rule-6 of the rules framed under the Maharashtra Local Authority Members Disqualification Rules, 1987 (for short 'the Rules of 1987').

4. Thereupon, the petitioners filed a preliminary objection and raised a question as regards validity of the 'Whip' along with other grounds, as stated in the preliminary objection.

5. The Collector Bhandara heard both the parties and vide order dated 15/07/2022, rejected the preliminary objection filed by the petitioners, the same is impugned in the present writ petition.

6. I have heard the learned counsels for the respective parties.

7. Shri R.L. Khapre, learned Senior Advocate submits that, after the general election of Zilla Parishad, a meeting of elected councilors of Bhartiya Janta Party (for short the 'BJP') was held on 27/01/2022. In the said meeting, in all 22 elected councilors of the BJP was present, including the petitioners. It is submitted that, in the said meeting Gat Neta and Upneta were elected and further BJP Party's own rules for disqualification were framed as per the provisions of Act of 1986 and Rules of 1987. It is submitted that, as per the said Rules to constitute a valid Whip, it is necessary to call a meeting two hours before Zilla Parishad meeting and any decision by way of resolution passed by majority shall be binding on each councilor of BJP Party and

disobedience of such decision or absence in the meeting would attract the provisions of the Act of 1986 and the Rules of 1987.

8. It is further submitted that, the elections of the President and the Vice President were scheduled to be held on 2.00 p.m. on 10/05/2022, thus, as per the above referred Rules, the meeting of the BJP Councilors ought to have been held at 12.00 noon on 10/05/2022, to make a decision binding upon each and every councilor of BJP Party.

9. It is pointed out that, no such meeting was held on 10/05/2022 at 12.00 noon. But the resolution which is the basis for filing disqualification petition against the petitioners, was passed in the meeting dated 09/05/2022 held at Nagpur. It is, therefore, submitted that the resolution passed in a meeting which was held one day prior to the meeting of the Zilla Parishad, cannot be said to be held as per the Rules and therefore, any decision in the said meeting is not binding on the petitioners and the same cannot be considered as valid Whip.

10. In the said backdrop, it is further argued that no disqualification therefore, attracts against the petitioners under the provisions of the Act of 1986 and the Rules of 1987.

11. Shri R.L. Khapre, learned Senior Advocate submits that unless the compliance of Rule-6 is shown, the

Collector cannot proceed with the disqualification petition under Rule-7 of the Rules 1987. It is submitted that, in absence of any valid Whip, there is no compliance of Rule-6 and therefore, the Collector ought to have rejected the petition by allowing preliminary objection raised by the petitioners.

12. On the other hand, Shri A.M. Deshpande, learned Government Pleader has opposed the present writ petition and submits that the petitioners have not argued the point which is argued before this Court that, the Whip is not as per the Rules dated 27/01/2022. It is further pointed out that, even in this writ petition, there is no ground raised by the petitioners that the said point was argued before the Collector and it was not considered by the Collector.

13. Shri A.M.Ghare, learned counsel for the respondent No.2 submits that the disqualification petition filed under the provisions of the Act of 1986 needs to be decided within three months from the date of filing. It is submitted that, if the scheme of the Act is perused, there is no stage provided for filing preliminary objection and as such the preliminary objection itself is not maintainable and therefore, the petitioners cannot challenge the order passed on such untenable objection.

14. In the said backdrop of rival submissions, I have perused the writ petition, the documents filed along with the

writ petition and the impugned order dated 15/07/2022 passed by the Collector.

15. Before examining the matter on merit, it would be appropriate at this stage to refer the Rules 6 and 7 of the Rules of 1987.

6. References to be by petitions.- (1) No reference of any question as to whether a councillor in relation to a municipal party and a *Zilla Parishad* party, or member in relation to a *Panchayat Samiti* party has become subject to disqualification under the Act shall be made except by a petition in writing to the Commissioner in the case of a councillor of a Municipal Corporation and the Collector in the case of any other councillor or member, by any other councillor or, as the case may be, member, in relation to such councillor or, as the case may be, member.

(2) Before making any petition in respect of a councillor in relation to a municipal party and a *Zilla Parishad* party or a member in relation to a *Panchayat Samiti* party, ¹[the petitioner shall satisfy himself] that there are reasonable grounds for believing that a question has arisen as to whether such councillor or, as the case may be, member has become subject to disqualification under the Act.

(3) Every petition -

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such person and the gist of such information as furnished by each such person.

(4) Every petition and any annexure thereto shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908) for the verification of pleadings.

7. Procedure.- (1) On receipt of a petition under rule 6, the Commissioner or, as the case may be, Collector shall consider whether the petition complies with the requirements laid down in that rule.

(2) If the petition does not comply with the requirements of rule 6, the Commissioner or, as the case may be, Collector shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Commissioner or, as the case may be, Collector shall forward copies of the petition and of the annexures thereto -

(a) to the councillor in relation to a municipal party and a *Zilla Parishad* party and member in relation to a *Panchayat Samiti* party, in respect of whom the petition has been made, and

(b) where such councillor in relation to a municipal party and a *Zilla Parishad* party or member in relation to a *Panchayat Samiti* party belongs to any political party or *aghadi* or front and such petition has not been made by the leader thereof, also to such leader; and such councillor, member or leader shall, within seven days of the receipt of such copies, or within such further period as the Commissioner or, as the case may be, Collector may for sufficient reason allow, forward his comments in writing thereon to the Commissioner or, as the case may be, Collector.

(4) After considering the comments, if any, in relation to the petition received under sub-rule (3) within the period allowed (including the extended period), the Commissioner or, as the case may be, Collector shall proceed to determine the question after making a preliminary enquiry.

[(5) The procedure which shall be followed by the Commissioner or, as the case may be, Collector for the purpose of making a preliminary enquiry to determine any question under sub-rule (4) shall be as prescribed in sub-rules (6) to (15).

(6) The Commissioner or, as the case may be, Collector shall draw up or cause to be drawn up,-

(i) the substance of the imputations of disqualification into definite and distinct articles of charge;

(ii) a statement of the imputations of disqualifications in support of each article of charge, which shall contain -

(a) a statement of all relevant facts including any admission or confession made by the Councillor or the Member, and

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The Commissioner or, as the case may be, Collector shall deliver or cause to be delivered to the Councillor, or as the case may be, the Member, a copy of articles of charge, the statement of the imputation of disqualification and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice, require the Councillor or, as the case may be, the Member to submit to him within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person.

(8) On receipt of the written statement of defence, the Commissioner or, as the case may be, the Collector, may himself inquire into such of the articles of charge as are not admitted, and where all the articles of charge have been admitted by the Councillor or Member in his written statement of defence, the Commissioner or, as the case may be, the Collector, shall record his findings on each charge after taking such evidence as he may think fit and shall act in the manner laid down in rule 8 of these rules.

(9) If no written statement of defence is submitted by such Councillor or Member, the Commissioner or, as the

case may be, the Collector shall proceed to inquire as if the Councillor or Member has nothing to say.

(10) The Commissioner or, as the case may be, Collector shall require the complainant as well as the Councillor or Member who wishes to be heard either in person or through his Advocate to appear before him on such day and at such time as may be fixed by him.

(11) The Councillor or, as the case may be, the Member, shall appear in person before the Commissioner or, as the case may be, the Collector, on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of disqualification, as the Commissioner or, as the case may be, the Collector, may, by a notice in writing, specify in his behalf, or within such further time not exceeding ten days, as the Commissioner or, as the case may be, the Collector, may allow.

(12) The Commissioner or, as the case may be, the Collector, shall, if the councillor or, as the case may be, the Member, fails to appear within the specified time or refuses or admits to plead, produce the evidence by which he proposes to disprove article of charge, adjourn the case to a later date not exceeding thirty days, after recording an order that the Councillor or, as the case may be, the member, may for the purposes of preparing his defence, -

(i) inspect within five days of the order or within such further time not exceeding five days as the Commissioner or, as the case may be, the Collector, may allow, the documents specified in the list referred to in sub-rule (6) of this rule;

(ii) submit a list of witnesses to be examined on his behalf.

(13) Where the Councillor or, as the case may be, the Member applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (6) of this rule, the Commissioner or,

as the case may be, the Collector, shall furnish him with such copies as early as possible, and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(14) The enquiry shall be commenced on the date fixed in that behalf by the Commissioner or, as the case may be, the Collector, and shall be continued thereafter on such date or dates as may be fixed from time to time by him.

(15) On the date fixed for the inquiry, the oral and documentary evidence shall be produced by or on behalf of the petitioner. The witnesses shall be examined by or on behalf of the petitioner and may be cross-examined by the Councillor or Member, against whom there are charges of disqualification.]

16. From the above referred rules, it is evident that the petition under Rule 6 shall be in writing and every petition shall contain a concise statement of the material facts on which the petitioner relies and shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such person and the gist of such information as furnished by each such person.

17. Rule 7 (1) and (2) of the Act of 1987 further makes it clear that, on receipt of petition under Rule-6, the Commissioner or the Collector as the case may be shall consider whether the petition complies with the requirements laid down in Rule 6 of the Rules of 1987 and if

the petition does not comply with the requirements of Rule-6 of the Rules of 1987, such petition shall be dismissed.

18. Rule 7, sub rules 3 to 15 stipulate the procedure to be followed by the Commissioner or the Collector as the case may be, if the petition complies with the requirements of Rule-6 of the Rules of 1987.

19. From the contents of the impugned order passed by the Collector, it cannot be seen that the following arguments were made before the Collector by the petitioners.

(i) The respondent No.2 is not a group leader and he has no locus to file disqualification petition.

(ii) The petition is not maintainable as one of the members namely Smt Dhrupadabai Mehar never physically appeared before the Collector and her signature was forged one.

20. From the above two submissions recorded by the Collector in his order, it is clear that the arguments made before this Court about the validity of Whip in the light of Rules framed by the elected councilors of Zilla Parishad belonging to political party BJP, dated 27/01/2022, were though stated in the preliminary objection filed before the Collector, it was not argued and therefore, the Collector had no occasion to deal with the same and record its finding on the same.

21. Shri R.L. Khapre, learned Senior Advocate makes a statement at bar that the said argument was made, however, it was not recorded and dealt with by the Collector.

22. The said submission cannot be accepted in absence of any such ground taken in the present writ petition saying that the said point was argued but it was not recorded and dealt with by the Collector in the impugned order.

23. In the circumstances, the order of the Collector cannot be faulted with on the ground which was never argued before the Collector.

24. In the circumstances, for the above referred reason, the order of the Collector cannot be termed as illegal.

25. Moreover, the scruting as contemplated under Rule-7 is yet to be done by the Collector and therefore, it is open for the Collector to get satisfied before proceeding with the disqualification petition to find out whether there is a compliance of Rule-6 and on such satisfaction, he may proceed with the petition by following the procedure laid down Sub Rule-3 to 15 of Rule 7.

26. In the circumstances, I do not find any merit in the present petition. Accordingly, the writ petition is **dismissed**.

JUDGE