
(2021) 02 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition (ST.) No.98279 Of 2020, Writ Petition No.3654 Of 2020

Ajit Bhagwan Patil And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Municipal Corporation (Qualifications And Appointment Of Nominated Councillors) Rules, 2012 — Rule 3, 4, 4(g)
Maharashtra Municipal Corporation Act, 1949 — Section 10(1)(f), 11(a), 451(1)

Citation : (2021) 02 BOM CK 0001

Hon'ble Judges : R.D. Dhanuka, J;V.G. Bisht, J

Bench : Division Bench

Advocate : Dr.Birendra Saraf, Aseem Naphade, Tarun Sharma, Sandesh Patil, Chintan Shah, Samit Shinde, P.P. Kakade, Y.D. Patil, Y.S. Jahagirdar

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J

1. None appears for the respondent no.4 when the matter was called out.
2. The petitioners in Writ Petition (St.) No.98279 of 2020 have invoked Article 226 of the Constitution of India and have prayed for setting aside the decision dated 7th December 2020 and communication dated 8th December 2020 of the respondent nos.3 - Minister for Urban Development and Public Works Department and the respondent no.1 respectively.
3. The petitioner in Writ Petition No.3654 of 2020 has also invoked Article 226 of the Constitution of India and has impugned the resolution number 26 in respect of subject no.35 passed by the respondent no.1 in meeting dated 7th December 2020 and for other reliefs. Both the petitions were heard

together.

4. The petitioner nos.1, 2 and 3 in Writ Petition (St.) No.98279 of 2020 are the Nominated Councillors of the respondent no.2 -Mira Bhayandar

Municipal Corporation. The petitioner no.4 is the Group Leader and belongs to Bhartiya Janata Party (BJP). The respondent no.3 is the learned

Minister who has passed the impugned order granting stay to the resolution passed by Municipal Corporation on 7th December 2020. The respondent

no.4 is a complainant on whose complaint the respondent no.3 had granted stay to the resolution passed by the Municipal Corporation. The name of

the respondent no.5 is rejected in the said resolution for the time being however subject to further scrutiny.

5. In the month of August 2017, election for electing 95 Councillors in the respondent no.2 Municipal Corporation was held. BJP won 61 seats, Shiv

Sena won 22 seats and Congress Lokshahi Aghadi won 12 seats. As per Rule 3 of the Maharashtra Municipal Corporation (Qualifications and

Appointment of Nominated Councillors) Rules, 2012 (for short â??the said 2012 Rulesâ?), 5 persons are required to be nominated as Nominated

Councillors after the expiry of one month from the date of the notification of election results after general elections subject to the provisions of Rule 4.

6. On 24th January 2020, the Municipal Commissioner issued a public notice informing that 5 persons were to be nominated as Councillors in the

Municipal Corporation and called for necessary documents. The petitioner nos.1 to 3 submitted their forms to the Secretary of the Municipal

Corporation. Total 6 persons filed nomination forms pursuant to the notice dated 24th January 2020. Out of 6 persons, one of the candidate Shri Sohan

Singh Bhagirath Singh Rajpurohit who belongs to BJP withdrew his nomination. The petitioner nos.1 to 3 all belong to BJP. On 13th February 2020,

Municipal Commissioner issued a notice after scrutinizing the nomination forms of those 6 candidates and declared them as valid candidates.

7. An objection was raised by the Leader of House of Municipal Corporation on 3rd October 2020 to the Municipal Commissioner in respect of the

eligibility of the respondent no.5 for being a Nominated Councillor. Similar objection was also raised by the petitioner no.4 being the Group Leader of

BJP in the Municipal Corporation. On 22nd October 2020, a meeting of Municipal Corporation came to be held in which the Municipal Commissioner

stated that the objection raised in respect of the candidature of the respondent no.5 by the respondent no.4 and Mr.Prashant Dalvi was rejected. It is

further informed to the house that an appropriate decision in respect of the candidature of the respondent no.5 would be taken by the Municipal

Corporation since it is the supreme body. In this meeting, one of 6 candidates, Shri Sohan Singh Rajpurohit withdrew his candidature which withdrawal

was accepted by the Municipal Corporation.

8. The Municipal Commissioner issued Minutes on 4th December 2020 in respect of agenda at Item No.35 of the said notice dated 26th November

2020. The Municipal Commissioner recommended the names of 5 persons i.e. the petitioner nos.1 to 3 who belong to BJP, the respondent no.5 who

belongs to Shiv Sena and Mr.Shafique Ahmed Shadad Khan who belongs to Congress Lokshahi Aghadi as Nominated Councillors in the Municipal

Corporation.

9. On 7th December 2020, the respondent no.2 passed a resolution declaring the petitioner nos.1 to 3 as Nominated Councillors of the respondent

no.2- Municipal Corporation. Mr.Shafique Ahmed Shadad Khan was declared as Nominated Councillor of the Municipal Corporation from the

Congress Lokshahi Aghadi. The resolution further states that since the respondent no.5 was the Chairman of Pratap Foundation which was given a

work order dated 13th April 2020 issued by the Municipal Corporation for supply of food packets, he cannot be declared a Nominated Councillor as

per Section 10(1)(f) read with Section 11(a) of the Maharashtra Municipal Corporation Act, 1949 (for short 'the said Act'). Municipal

Corporation had not verified/ scrutinized the said complaint dated 3rd October 2020. The Municipal Commissioner was directed to conduct a fullfledged

enquiry after scrutinizing the complaint of the respondent no.5 and to take appropriate decision in that regard. 38 Councillors voted in favour of the

said resolution and 24 Councillors voted against it. It is the case of the petitioners that the respondent no.4 although belonging to BJP voted against the

said resolution.

10. On 7th December 2020, Shiv Sena proposed a resolution. In the said proposed resolution, it was proposed to resolve that the objection raised in

respect of the nomination of the respondent no.5 was not appropriate and hence along with the names of the petitioner nos.1 to 3 and the said

Mr.Shafique Ahmed Shadad Khan, the nomination of the respondent no.5 should also be accepted. The said resolution was, however, rejected by the respondent no.2 Municipal Corporation.

11. It appears that on 7th December 2020, according to the petitioners, the respondent no.4 who originally belonged to BJP, subsequently joined Shiv

Sena and made a complaint to the learned Minister alleging that 6 candidates, after scrutinizing of all the nomination forms of those candidates, were

declared as valid candidates on 13th February 2020. The Municipal Commissioner in the meeting held on 22nd October 2020 rejected the objection

received in respect of the nomination of the respondent no.5 by the respondent no.4. It was alleged in the said complaint filed by the respondent no.4

that the resolution passed was against the authority of the Municipal Corporation and ought to be suspended under Section 451 (1) of the said Act.

12. Our attention is invited to an order passed by the learned Minister on the said complaint which was made by the respondent no.4 stating that the

Municipal Commissioner of the respondent no.2 - Corporation to call for a detailed report and to keep the matter for hearing and pending the hearing,

stay order be granted.

13. Dr.Saraf, learned senior counsel for the petitioners in Writ Petition (St.) No.98279 of 2020 invited our attention to various documents annexed to

the petition including the complaint filed by the respondent no.4. He submits that the respondent no.4 originally belongs to BJP and after having been

defeated as member of Councillors of the Municipal Corporation, subsequently joined Shiv Sena. He invited our attention to photographs annexed to

the petition in support of this submission.

14. It is submitted that though the respondent no.4 had filed a limited complaint in respect of rejection of nomination of the respondent no.5 before the

learned Minister, learned Minister has stayed the entire resolution and that also in gross violation under Section 451(1) of the said Act. He strongly

placed reliance on Sub-section (1) of Section 451 of the said Act and would submit that for suspending the resolution passed by the respondent no.2

Corporation, learned Minister was required to form an opinion that the execution of such resolution or order of the Corporation was in contravention of

or in excess of the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to a breach of the peace or to

cause injury or annoyance to the public or any class or body of persons, or is likely to lead to abuse or misuse of or to cause waste of municipal funds

against the interest of the public or was likely to be against the financial interest of the Corporation or against larger public interest.

15. It is submitted that none of these situations attracting the provisions of Sub-section (1) of Section 451 of the said Act for suspending the resolution

by the learned Minister were demonstrated by the respondent no.4. He submits that in any event, learned Minister was required to form an opinion

after recording reasons before suspending the said resolution that the said resolution was in violation of any one or more of the situation set out in Sub-

section (1) of Section 451 of the said Act.

16. Learned senior counsel invited our attention to the Rules 3 and 4 of the said 2012 Rules and would submit that the petitioner nos.1 to 3 were

qualified and thus were rightly nominated as Councillors in the respondent no.2-Corporation. The Municipal Corporation had followed the requisite

procedure for nominating the petitioner nos.1 to 3.

17. It is submitted by the learned senior counsel that the impugned order passed by the learned Minister is without application of mind and is in

contravention of Sub-section (1) of Section 451 of the said Act. He relied upon the judgment of the Division Bench of this Court in the case of

Siddheshwar Mogalappa Kamurthi Vs. State of Maharashtra & Anr., 2019 SCC OnLine Bom 845 and more particularly paragraphs 14 and 15 thereof

in support of the submission that unless the conditions of Sub-section (1) of Section 451 of the said Act were satisfied and strictly complied with,

resolution passed by the respondent no.2 Corporation could not have been suspended by the learned Minister. He also placed reliance on the judgment

of this Court in the case of Netaji Pratisthan Vs. Government of Maharashtra, 2004 SCC OnLine Bom 771 and in particular paragraph 6 thereof in

support of the aforesaid submission.

18. Learned AGP appearing for the respondent no.1, on the other hand, invited our attention to the averments made in the affidavit-in-reply filed by

the respondent no.1 and would submit that the impugned order passed by the learned Minister thereby suspending the resolution was based on the

complaint filed by the respondent no.4.

19. As far as the grievance of the petitioners in Writ Petition (St.) No.98279 of

2020 is concerned, a perusal of the record clearly indicates that the Municipal Corporation had issued a public notice in the local newspaper inviting the members of public to file their nomination forms in respect of Nominated Councillor of the respondent no.2 Corporation. In the meeting held by the respondent no.2, 6 candidates were declared as Nominated Councillors. One out of 6 members had resigned. It appears that there was dispute only in respect of one of the candidates whose nomination is kept in abeyance for further scrutiny. As far as the other 4 candidates nominated by the Municipal Corporation is concerned, there was no dispute. A perusal of the complaint filed by the respondent no.4 clearly indicates that the grievance was only in respect of rejection of nomination form of Shiv Sena candidate and not in respect of 4 other candidates. A perusal of the order suspending the said resolution passed by the learned Minister and the correspondence annexed to the petition indicates that the learned Minister has passed one line order on complaint made by the respondent no.4 and has stayed the said resolution.

20. A perusal of Sub-section (1) of Section 451 of the said Act clearly indicates that the power of the State Government to suspend or rescind any resolution or order, etc. of Corporation or other authority can be exercised only in the event of one or more such eventualities set out in the said provision if occurs to the opinion of the State Government. The opinion of the State Government that the case falls under one of the eventualities has to be supported by reasons.

21. A perusal of the order passed by the learned Minister however, indicates that no such opinion as contemplated in Section 451(1) of the said Act is expressed by the learned Minister while granting suspension to the resolution passed by the respondent no.2 Corporation.

In our view, the impugned order is ex facie contrary to and in violation of Sub-section (1) of Section 451 of the said Act.

22. The judgment of this Court in the case of Siddheshwar Mogalappa Kamurthi (supra) relied upon by Dr.Saraf, learned senior counsel for the petitioners holding that State Government not having recorded any specific reason while suspending the resolution as required under Sub-section (1) of Section 451 of the said Act deserves to be set aside as ex facie illegal and arbitrary. In our view, the said judgment of this Court squarely applies to

the facts of this case. The order passed by the learned Minister is ex facie illegal, arbitrary and shows non-application of mind on the part of the learned Minister.

23. In so far as the Writ Petition No.3654 of 2020 is concerned, the petitioner has impugned the resolution passed by the respondent no.2 Corporation thereby nominating 5 persons as Councillors which resolution came to be stayed by the learned Minister which is the subject matter of the Writ Petition (St.) No.98279 of 2020.

24. Mr.Jahagirdar, learned senior counsel for the respondent no.2 at the threshold raised an objection about maintainability of this writ petition filed by the petitioner on the ground that the petitioner is neither a voter of the respondent no.2-Corporation nor seeks any personal relief in the writ petition. There is no cause of action for the petitioner to file a writ petition.

25. Mr. Patil, learned counsel for the petitioner to controvert the preliminary objection raised by Mr.Jahagirdar, learned senior counsel for the respondent no.2, invited our attention to the order passed by the Division Bench of this Court on 9th December 2020 filed by the petitioner herein against the State of Maharashtra & Ors. in Writ Petition (St.) No.96845 of 2020 inter alia praying for a writ of certiorari for quashing the nomination of Councillors to be held in the meeting dated 4th December 2020. He submits that by the said order, this Court while dismissing his client's writ petition as infructuous has granted liberty to file a fresh writ petition impugning the resolution passed by the Municipal Corporation in the meeting held on 4th December 2020.

26. A perusal of the said order dated 9th December 2020 passed by this Court clearly indicates that at that stage, this Court did not go into the issue of maintainability of the writ petition or locus of the petitioner to file the said writ petition. In paragraph 3 of the said order, it was made clear that all contentions of the parties were kept open.

27. On raising a query by this Court whether the petitioner has any locus to file this petition, Mr. Patil, learned counsel for the petitioner strongly placed reliance on the averments made in paragraph 2 of the writ petition stating that the petitioner is the resident of Mira Bhayander Municipal Corporation and he is a member of an NGO and is engaged in social work for more than 10 years. He also placed reliance on Rule 4(g) of the said

2012 Rules which provides for Qualification for nomination. Under the said Rule, a person shall be eligible for being nominated as a candidate for the

office of the nominated Councillors if he has experience of an office bearer of a Non-Government Organization registered under the Bombay Public

Trusts Act, 1950, engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.

28. Learned counsel however, could not point out any averments in his client's writ petition or even across the bar that his client has an

experience of an office bearer of Non-Government Organization registered under the Bombay Public Trusts Act, 1950.

29. A perusal of the prayers in the writ petition filed by Mr. Patil's client clearly indicates that no reliefs are sought by the petitioner in his favour in

the said writ petition. There is no averment in the petition that if the respondent no.2 Corporation would have issued a public notice in the newspaper

having wide circulation in the Corporation of Mira Bhayander, the petitioner could have also applied for nomination for the post of Councillor of the

respondent no.2. It is also not disclosed in the petition as to when the petitioner came to know about the public notice issued by the Municipal

Corporation. This Court in the catena of the decisions has held that a party filing a writ petition under Article 226 of the Constitution of India, must

disclose cause of action for filing a writ petition under Article 226 failing which the writ petition shall be rejected summarily.

30. Supreme Court in the case of Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr., (2004) 6 SCC 254 and more particularly paragraphs 18 and

19, has clearly held that the facts pleaded in the writ petition must have nexus on the basis whereof a prayer can be granted. Those facts which have

nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court. In paragraph

21 of the said judgment, it is held that a cause of action will arise only when the provisions of the Act or some of them which were implemented shall

give rise to civil or evil consequences to the petitioner. Similar views are also taken in several other judgments. We do not propose to burden our

judgment with additional judgments on this issue.

31. In our view, the petitioner in the said Writ Petition No.3654 of 2020 not having cause of action and not seeking any personal relief has no locus to

file a writ petition under Article 226. The said writ petition is thoroughly misconceived. Merely because in the earlier order, the petitioner was granted liberty to file a fresh petition, that liberty would not indicate that the petitioner had locus to file the said petition or would have locus to file petition in future though there was no cause of action or personal reliefs sought in the petition.

32. We accordingly pass the following order :-

(i) Writ Petition (St.) No.98279 of 2020 is made absolute in terms of prayer clause (a);

(ii) The respondent no.3 shall decide the matter afresh and shall pass appropriate order in accordance with law after hearing the petitioners as well as the respondent no.4 and other candidates who were nominated by the Municipal Corporation in the impugned resolution and in conformity with Sub-

section (1) of Section 451 of the said Act without being influenced with the impugned order.

(iii) The learned Minister shall also give hearing to the Municipal Corporation before passing any order.

(iv) The respondent no.3 shall pass an order within eight weeks from the date of hearing to the petitioners as well as the other parties stated aforesaid

and shall communicate the said order to the parties.

(v) It is made clear that if any adverse order is passed against any of the parties by the respondent no.3, the said order shall not be enforced for four

weeks from the date of communication of the said order.

(vi) Writ Petition No.3654 of 2020 is dismissed. There shall be no order as to costs.

(vii) All interim orders passed by this Court, if any, in both these writ petitions stand vacated.