

(2019) 12 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 6952 Of 2018

Dinesh And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 06-12-2019

Acts Referred:

Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965 — Section 42, 42(3)
Maharashtra Land Revenue Code, 1966 — Section 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244

Citation : (2019) 12 BOM CK 0053

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : S.P. Bhandarkar, Kalyani Deshpande, D.M. Kale, Omkar Deshpande, Anand Parchure

Final Decision : Allowed

Judgement

1. Heard.
2. Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the rival parties.
3. The petitioners herein are elected members of the Municipal Council Nagbhid, District Chandrapur, who were elected to the said posts in election held on 26/05/2017. They have challenged order dated 18/09/2018 passed by respondent No.1-State of Maharashtra under section 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "Act of 1965"), disqualifying the petitioners from membership of the said Municipal Council, upon finding them guilty of misconduct and disgraceful in meeting of the Municipal Council held on 17/06/2017.
4. The allegation against the petitioners and some other members of the

Municipal Council was that they had created ruckus in the said meeting and that they allegedly broke microphones, tables and chairs, thereby interrupting the proceedings and further that they tore important documents and meeting attendance registers. In fact, an FIR was caused to be registered at the behest of the Chief Officer of the Municipal Council against the petitioners and others members.

5. On 19/07/2017, respondent No.3-Sub-Divisional Officer issued a show cause notice as to why action should not be taken against them for alleged misbehaviour. The petitioners submitted their reply and written submissions before the Sub-Divisional Officer. On 04/10/2017, the Sub-Divisional Officer submitted his opinion before the Collector, stating that the petitioners had misbehaved in the said meeting. This opinion was forwarded by the Collector to respondent No.1-State by letter dated 09/10/2017. On this basis, respondent No.1 issued notice to the petitioners on 26/12/2017, to show cause as to why they should not be disqualified from holding the position of members of the Municipal Council. The petitioners filed Writ Petition No.545 of 2018 challenging the said show cause notice. This Court directed the petitioners to file reply to the show cause notice and further directed that no adverse order should be passed against the petitioners till the next date of listing of the said writ petition. The petitioners filed their reply to the show cause notice and on 18/09/2018 the impugned order was passed disqualifying the petitioners from being members of the Municipal Council. The petitioners filed civil application in the pending writ petition before this Court to bring on record subsequent events, including the order dated 18/09/2018. A Division Bench of this Court passed order on 03/10/2018 in the said writ petition by holding that the petitioners could challenge the said order, being a quasi judicial order, before the learned Single Judge of this Court, and directed that the interim protection granted to the petitioners would continue for a further period of two weeks.

6. The petitioners filed the present petition in which notice was issued and interim protection was granted in favour of the petitioners. During the pendency of the writ petition, reference was made to a CD (compact disc), which was prepared when the aforesaid meeting had taken place in which the events had been recorded. As a consequence, this Court directed the record along with the CD to be placed before this Court and copies of the same to be given to the rival parties. But, it was found that the CD was damaged and that the CD produced by the learned Assistant Government Pleader could also not be copied. In this situation, this Court found it fit to hear the rival parties on the basis of the pleadings in the petition and the replies as well as the record that was made available.

7. Mr. S.P. Bhandarkar, learned counsel appeared for the petitioners and submitted that in the present case, principles of natural justice were violated because firstly, copy of the enquiry report prepared by the Sub-Divisional Officer was never served on the petitioners before passing the impugned order dated

18/09/2018. Secondly, in the order passed by respondent No.1, a reference was made to findings given by the Divisional Commissioner on the report of the Sub-Divisional Officer, yet copy of the same was never served on the petitioners. A larger question was also raised on behalf of the petitioners by stating that on perusal of section 42 of the Act of 1965, it would be apparent that there is no procedure prescribed for conducting enquiry, while the consequences of action under section 42 of the Act of 1965 are drastic, as it results in disqualifying an elected member of the Municipal Council. A reference was made in the grounds added by way of amendment in the writ petition that respondent Nos.3 and 4 had claimed in their affidavit that procedure contemplated under sections 224 to 244 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "Code") had been followed for conducting the enquiry, while even the said procedure was not followed. It was submitted that in the interest of justice, it was necessary for this Court to dilate on this issue as to the applicability of the said provisions of the Code for conducting enquiries before taking action under section 42 of the Act of 1965. It was submitted that this was necessary, particularly because action under section 42 of the Act of 1965 for disqualification of elected municipal councilors was initiated in most cases due to political rivalry and there was every possibility of political overtones in the decision taken by the State Government of the day in such cases.

8. On the other hand, Mrs. Kalyani Deshpande, learned Assistant Government Pleader appearing for respondent Nos.1, 3 and 4, submitted that proper enquiry was conducted in the present case wherein the Sub-Divisional Officer had issued notice and granted opportunity to the petitioners to respond. It was submitted that the only requirement prescribed under section 42 of the Act of 1965 was to give reasonable opportunity of showing cause by the elected member against whom action was contemplated as per sub-section (3) of section 42 of the Act of 1965 and that such procedure had been indeed followed in the present case. It was submitted that the material on record did demonstrate the misbehaviour of the petitioners, thereby making them liable for disqualification under section 42 of the Act of 1965. On this basis, it was submitted that the writ petition deserved to be dismissed.

9. Mr. D.M.Kale, learned counsel appeared for respondent No.2 and Mr. Omkar Deshpande, counsel holding for Mr. Anand Parchure, learned counsel appeared for respondent No.5 and they supported the impugned order passed against the petitioners.

10. Heard learned counsel for the rival parties and perused the material on record. The admitted facts on record are that notice was issued by respondent No.3-Sub-Divisional Officer and he submitted his report to the Collector, which was then forwarded to respondent No.1-State Government. The petitioners were served with show cause notice by respondent No.1 on 26/12/2017 asking them as to why they should not be disqualified as members of the Municipal Council under section 42 of the Act of 1965. Upon the petitioners filing their replies to

the show cause notice, the impugned order dated 18/09/2018 was passed against the petitioners, disqualifying them from the position of elected members of the Municipal Council.

11. A perusal of the impugned order shows that specific reference and reliance was placed by respondent No.1 on the enquiry report of the Sub-Divisional Officer as well as the findings/opinion of the Divisional Commissioner, while holding against the petitioners. It was specifically contended on behalf of the petitioners that they were neither served with the report of the Sub-Divisional Officer, nor with the findings/opinion of the Divisional Commissioner and that therefore, the impugned order was vitiated by violation of the principles of natural justice.

12. Perusal of the affidavits along with the material placed on record, this Court finds that there is nothing on record to show that copy of report of the Sub-Divisional Officer was served on the petitioners. In fact, on a pointed query put to the learned Assistant Government Pleader appearing for respondent Nos.1, 3 and 4, as to whether there was any proof of service of report of the Sub-Divisional Officer on the petitioners, the learned Assistant Government Pleader submitted that there was indeed no such acknowledgment or proof on record. Further, the material on record shows that there were no findings/opinion of the Divisional Commissioner in respect of the report of the Sub-Divisional Officer or on the alleged misbehaviour of the petitioners in the meeting of the Municipal Council held on 17/06/2017. Therefore, there could not have been any question of serving copy of such findings/ opinion of the Divisional Commissioner on the petitioners. As noted above, respondent No.1 specifically relied upon the report of the Sub-Divisional Officer and the findings/opinion of the Divisional Commissioner to pass the order disqualifying the petitioners. This was in flagrant violation of the principles of natural justice, thereby completely vitiating the impugned order passed against the petitioners. The respondents have not been able to demonstrate that the principles of natural justice and fair procedure were followed before passing the impugned order dated 18/09/2018. Considering the fact that action taken and order passed under section 42 of the Act of 1965 has the drastic consequence of disqualifying elected members like the petitioners, such violation of principles of natural justice and fair procedure must lead to setting aside of the order passed against the petitioners.

13. The learned counsel appearing for the rival parties have also made submissions on the necessity for this Court to consider the question of reading the procedure contemplated in sections 224 to 244 of the Code into the procedure to be adopted by respondent No.1 while taking action under section 42 of the Act of 1965. This was based on a statement made in the affidavit filed on behalf of respondent Nos.1, 3 and 4 that such procedure was indeed followed in the present case when enquiry was conducted by the Sub-Divisional Officer, thereby showing that no error could be attributed to the order of disqualification passed against the petitioners.

14. A perusal of the Code shows that the aforesaid sections 224 to 244 thereof are included under Chapter XII providing for procedure of Revenue Officers. The said chapter applies to proceedings before Revenue Officers, wherein elaborate procedure is provided concerning issuance of summons, compelling attendance of witnesses, mode of serving notice and other such details during the process of enquiry. But, the said provisions of the Code necessarily pertain to enquiries that are made under the Code by Revenue Officers pertaining to a subject, which is different from what is contemplated under section 42 of the Act of 1965. The Revenue Officers under the Code are concerned with various enquiries pertaining to entries in the records of rights and other such matters concerning revenue to be collected by the State. It is in the context of the said subject that the procedure for Revenue Officers and their enquiries is provided under Chapter XII of the Code. Therefore, the said procedure contemplated under Chapter XII of the Code cannot be imported into section 42 of the Act of 1965, as the subject matter of the action sought to be undertaken under section 42 of the Act of 1965 is materially different and clearly distinguishable.

15. The submission made on behalf of the petitioners that grave prejudice is suffered as no specific procedure is prescribed under section 42 of the Act of 1965 and, therefore, the procedure under Chapter XII of the Code could be imported into the same, cannot be accepted. The submission that when State Government on its own motion contemplates action under section 42 of the Act of 1965 and some enquiry is conducted by a subordinate official, absence of detailed procedure is prejudicial and therefore, at least some procedure needs to be laid down by a judicial order of this Court, also cannot be accepted. In order to examine the said contentions raised on behalf of the petitioners that absence of detailed procedure leads to grave prejudice to the elected members, who are sought to be disqualified, perusal of section 42 of the Act of 1965 becomes necessary. The said provision reads as follows:

"42. Liability of Councillors to removal from office.- (1) The State Government may on its own motion or on the recommendation of the Council remove any Councillor from office if such Councillor has been guilty of any misconduct in the discharge of his duties, or of any disgraceful conduct, during his current term of office or even during his immediately preceding term of office as a Councillor.

(2) The State Government may likewise remove any Councillor from office if such Councillor has in the opinion of the State Government become incapable of performing his duties as a Councillor.

(3) No resolution recommending the removal of any Councillor for the purposes of sub-section (1) or (2) shall be passed by a Council and no order of removal shall be made by the State Government, unless the Councillor to whom it relates has been given a reasonable opportunity of showing cause why such recommendation or order, as the case may be, should not be made.

(4) In every case the State Government makes an order under sub-section (1) or

(2), the Councillor shall be disqualified from becoming a Councillor, or a Councillor or member of any other local authority for a period of five years from the date of such order."

16. The State Government under the said provision can on its own motion remove an elected councilor if such councilor is guilty of any misconduct in discharge of his duties or of any disgraceful conduct during his current term of office or even during his immediately preceding term of office as a councilor. When the State Government takes action under the said provision, it is necessarily expected to have appropriate material to proceed against an elected councilor. Sub-section (3) of section 42 of the Act of 1965, specifically provides that no order shall be made by the State Government under sub-section (1) or (2) unless the councilor is given a reasonable opportunity of showing cause why such an order should not be made. Thus, the fundamental principles of natural justice are clearly incorporated in sub-section (3) of section 42 of the Act of 1965. But, the grievance sought to be projected on behalf of the petitioners is that when the State Government contemplates taking action on its own motion against an elected councilor, before issuing show cause notice, under sub-section (3) of section 42 of the Act of 1965, there is no guideline as to what nature of enquiry the State Government may conduct before issuing such show cause notice, due to which grave prejudice is caused to elected councilors like the petitioners.

17. This Court is of the opinion that since the consequence of action taken under section 42 of the Act of 1965 is drastic, as it disqualifies an elected member of the Municipal Council, before taking or contemplating any such action, the State Government even while acting on its own motion needs to strictly adhere to the principles of natural justice. The consequences being drastic is obvious even from the impugned order dated 18/09/2018 passed in the present case where the petitioners have not only been disqualified from holding the post of elected councilors, but they have been disqualified from holding such position for the next five years. Considering such drastic consequences of action contemplated under section 42 of the Act of 1965, this Court is of the opinion that when the State contemplates taking action on its own motion under the said provision, and subordinate officials of the State take cognizance of complaints made against elected councilors seeking action under the said provision, any enquiry that is contemplated must adhere to the fundamental principles of natural justice. This would include issuance of notice, seeking replies, granting sufficient opportunity to the municipal councilors to place material on record to give their explanation and direction to the municipal council to place on record all relevant material. Since such an enquiry cannot be equated to enquiries being made by Revenue Officers under Chapter XII of the Code. Although the elaborate procedure prescribed under Chapter XII of the Code cannot be imported in such a situation, the officer of the State conducting an enquiry must necessarily follow all aspects of the principles of natural justice to ensure that no prejudice is caused to the elected councilors, even if the enquiry by its very nature may be summary. There

cannot be any doubt about the fact that the report prepared in pursuance of such an enquiry must be supplied to the municipal councilors against whom action is contemplated and if any opinion or finding is rendered by any superior officer on such enquiry report, copies of the same must necessarily be served on such elected municipal councilors.

18. Respondent No.1-State while passing an order under section 42 of the Act of 1965, must call for an explanation from the elected municipal councilor against whom action is contemplated, after serving copies of such enquiry and findings/opinion of superior officers, if any. Respondent No.1-State Government is expected to consider in a fair and impartial manner the material on record, including explanations given by the elected municipal councilors to the material sought to be taken into consideration by respondent No.1 while passing an order under section 42 of the Act of 1965. It is only after following such procedure adhering to the principles of natural justice that respondent No.1-State, can pass an order under section 42 of the Act of 1965, as order of disqualification against an elected municipal councilor is of a drastic nature and it annuls the will of majority of voters, who have elected such a municipal councilor.

19. Adherence to the principles of natural justice as indicated above as is of immense significance in such cases, because of the political overtones of the complaints made against elected municipal councilors by rival municipal councilors and political opponents. In many cases, the government of the day is run by a political formation, which is an opponent of the political formation to which the elected municipal councilors belong, against whom action is contemplated. Therefore, it becomes all the more necessary that the principles of natural justice are followed to the hilt, before action under section 42 of the Act of 1965 is taken by the State Government, so as to ensure that such an order is not vitiated by malice and political rivalry. If such care is not taken, it would lead to a situation where section 42 of the Act of 1965, would become a weapon in the hands of the State Government to settle political scores, which cannot be permitted in a democratic set up where will of the people to elect candidate of their choice as municipal councilor, cannot be compromised.

20. In view of the above, since on facts in the present case, this Court has found that the impugned order passed against the petitioners has been vitiated and rendered unsustainable, the writ petition is allowed. The impugned order dated 18/09/2018 is quashed and set aside.

21. Rule is made absolute in the above terms. No costs.