

(2016) 12 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 6817 of 2016

Hemlatabai Deorao Tekade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 42(3)

Citation : (2017) 2 BCR 104

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : Shri Anand Jaiswal, Senior Advocate, assisted by Shri Nikhil Padhye, Advocate, for the Petitioners; Smt. Bharti H. Dangre, Government Pleader, assisted by Shri A.R. Chutake, AGP, for the Respondent Nos. 1 to 3

Final Decision : Dismissed

Judgement

R.K. Deshpande, J. (Oral) - Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

2. The challenge in this petition is to the order dated 29.11.2016 passed by the Minister, Urban Development Department of the State Government, disqualifying four Municipal Councillors, who are the petitioners, under Section 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the said Act") for a period of five years.

3. On 06.12.2016, this Court passed an order as under;

The petitioners who are the four Councillors of the Municipal Council, Narkhed, are disqualified under Section 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for a period of five years commencing from the date of passing of the order on 29.11.2016. The tenure of the petitioners as Councillors of Municipal Council, Narkhed, is coming to an end in the month of February, 2017, but the programme of election for further period

of five years commencing from February, 2017, has been published. The programme of election starts from 03.12.2016 and the nomination forms are required to be submitted by the candidates between 09.12.2016 to 17.12.2016. The petitioners are claiming stay of the impugned order so that they can be permitted to contest the election of the Municipal Council scheduled to be held on 08.01.2017.

The order of disqualification was passed on 29.11.2016 and the basic ground of challenge is that the petitioners were supplied the copies of documents on 21.11.2016 and the matter was heard on 23.11.2016 depriving the petitioners an opportunity to raise an effective defence. Perusal of the order shows that no finding are recorded on the merits of the charge and the order of disqualification has been passed only on the ground that the petitioners are trying to avoid the adjudication.

Issue notice to the respondents, returnable on 14.12.2016.

Shri A.R. Chutake, the learned A.G.P. waives service of notice for respondent Nos. 1 to 3".

In response to the aforesaid order, the respondent authority has filed reply along with the documents. The order of disqualification has been passed on the ground that in spite of several opportunities, the petitioners have failed to submit their reply on merits; the demand for supply of documents is found to be a part of delaying tactic. The Minister accepts the report submitted by the Collector in which the petitioners have been found guilty of acts of misconduct and the removal of the petitioners under Section 42 of the said Act has been proposed.

4. Shri Anand Jaiswal, the learned Senior Advocate appearing for the petitioners, assisted by Shri Padhye, has invited my attention to Section 42 of the said Act, relating to the liability of the Councillor to removal from the office and submits that there is no finding recorded independently by the State Government, the competent authority, holding the petitioners guilty of any misconduct in discharge of their duties as Councillors after giving the reasonable opportunity of showing cause.

5. In respect of the charges of misconduct alleged in the show cause notice, Shri Jaiswal has relied upon the decision of the Apex Court in case of Ravi Yashwant Bhoir v. District Collector, Raigad and others, reported in (2012) 4 SCC 407, more particularly paragraphs 17, 18, 19, 30 to 36 and 46 to urge that the democratically elected representatives of the citizens cannot be removed in a casual manner without adherence to the statutory provision meant for that purpose. He has further relied upon the decision of the Apex Court in case of Dipak Babaria and another v. State of Gujarat and others, reported in (2014) 3 SCC 502, more particularly paragraph 64 therein, to allege that the reasons cannot be supplemented by filing an affidavit to substantiate the order which falls short of recording the findings on relevant aspect of the matter.

6. Shri Jaiswal, the learned Senior Advocate has further alleged that the hearing was conducted on 23.11.2016 by the Minister concerned and prior to that date i.e. on 21.11.2016, a bunch of 4476 documents demanded by the petitioners was supplied by the Chief Officer of the Municipal Council and it was humanly impossible to go through all these documents and submit the reply on merits on or before the date of hearing. He submits that there is clear violation of the mandate of subsection (3) of Section 42 of the said Act which vitiates the ultimate order of disqualification.

7. Smt. Dangre, the learned Government Pleader has invited my attention to the show cause notice dated 27.04.2015 issued by the Collector to the petitioners; reply to it filed by the petitioners on 13.07.2015 before the Collector covering even some of the aspects on merits of the matter. She has further invited my attention to the show cause notice dated 21.01.2016 issued by the State Government along with which a report of the Collector dated 01.02.2016 was supplied to the petitioners. She has invited my attention to the order passed by the Minister impugned in this petition and submits that the order contains detailed reasons in respect of the opportunity given to the petitioners. The order refers to the show cause notice, reply filed by the petitioners and also the demand for the documents. She has pointed out that the order refers to the report of the Collector and that of the independent agency and keeping in view the fact that no reply was filed on the merits of the charges levelled, the order of disqualification was passed, accepting the report containing the findings about the petitioners being guilty of the charges of misconduct levelled against them.

8. To deal with the contentions of Shri Jaiswal, Section 42 of the said Act has to be seen which is reproduced below.

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 subsection (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 subsection (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".

Subsection (3) states that no resolution recommending the removal of any Councillor for the purposes of subsection (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.

9. In the present case, on the basis of an enquiry conducted and report dated 21.11.2014 submitted by the Sub Divisional Officer, Katol and a report of enquiry submitted on 18.03.2015 by an independent Committee of Mhada headed by Shri D.K.Ajwani, Engineer, the Collector had issued show cause notice to the petitioners on 27.04.2015, to which the petitioners had given reply on 13.07.2015. After considering the said reply, the Collector prepared his report on 01.01.2016 holding that the petitioners have committed the acts of misconduct and they are liable to be removed under Section 42 of the said Act. Thereafter, the State Government issued show cause notice to the petitioners on 21.01.2016, calling upon the petitioners to furnish an explanation as to why they should not be disqualified under Section 42 of the said Act on the basis of the report submitted by the Collector. A copy of the report dated 01.01.2016 was also forwarded to the petitioners along with documents running into 255 pages.

10. The order impugned recites in paragraph 3 that the Collector, Nagpur, was informed to furnish the copies of the documents demanded by the petitioners and accordingly, letter dated 22.02.2016 was also issued. It further recites in paragraph 4 that on 16.05.2016 and 09.08.2016, the hearing was conducted and at that time also the petitioners demanded certain documents so as to enable them to file their reply/explanation. In paragraph 5 of the impugned order, it is stated that by letter dated 28.08.2016, an explanation was called from the District Administrative Officer, Nagpur, in respect of non supply of documents and the reply from the said Officer on 29.09.2016 was that the petitioners were informed to collect the documents after payment of requisite charges, but they have avoided to take the documents by assigning reason of the demand for copying charges. It is also stated that the petitioners were asked to collect certain documents from the office of Chief Officer, Mhada, Nagpur, by written communication dated 23.09.2016, but the petitioners have avoided to get the documents from the said office. The petitioners are disputing all these facts.

11. Shri Jaiswal, the learned Senior Advocate has invited my attention to the letter dated 05.02.2016 addressed to the Secretary, Urban Development Department for demand of certain documents, in response to which the Urban Development Department of the State Government informs that the Collector has already been instructed to supply all the documents so demanded prior to 25.02.2016. It seems that the petitioners submitted an application dated 25.02.2016 to the Office of the Collector demanding information and documents

in respect of 6 items. Thereafter also another letter dated 06.04.2016 was delivered in the office of the Collector, Nagpur.

12. On 29.04.2016, the District Administrative Officer from the Department of Municipal Administration, Nagpur, in the office of the Collector, informs in writing to the petitioners that the entire information is ready for supply in his office and the petitioners were asked to collect the same. Again another letter dated 13.05.2016 was issued from the office of the Collector, Nagpur, informing the petitioners to collect certain information from the office of Mhada and remaining information from the office of Chief Officer, Municipal Council, Narkhed.

13. It further appears that the petitioners have again issued letter dated 04.07.2016 in the name of Principal Secretary, Urban Development Department, demanding certain documents. Again on 14.09.2016, a letter was given to the Chief Officer, Municipal Council, Narkhed, for supply of documents. On 18.11.2016, the Chief Officer informs the petitioners to deposit an amount of Rs.8,952/- for delivering the documents containing 4476 pages. The petitioners expressed their willingness by communication in writing dated 21.11.2016 to deposit the amount for getting the documents. Accordingly, the documents were tendered to the petitioners on 21.11.2016.

14. What weighs with this Court is that the petitioners are enjoying second term as councillors and were knowing that the programme for elections of the Municipal Council, Narkhed was likely to be published in the month of December, 2016, as the tenure of the body comes to an end in the month of February, 2017. If the petitioners were really interested in getting the documents and the information asked for in respect of six items mentioned in their application by paying the amount, the same could have been done immediately after 22.02.2016 when the State Government instructed the Collector, Nagpur, to supply the documents demanded by the petitioners. It is not the case of the petitioners that they were ready and willing to deposit the requisite amount prior to 21.11.2016 and in spite of it, there was refusal to supply the documents. The petitioners could have easily obtained it from the Chief Officer of the Municipal Council, who supplied them the documents on 21.11.2016. As soon as the petitioners deposited the amount on 21.11.2016, the documents were supplied. The supply of documents is in immediate deposit of the amount.

15. The petitioners were supplied earlier with the necessary documents running into 255 pages enclosed along with the Collector's report dated 01.01.2016. The petitioners approached this Court by filing Writ Petition No. 840 of 2016 to challenge the show cause notice dated 21.01.2016 issued by the Collector. Initially, this Court issued notice on 05.02.2016 and granted interim relief in terms of prayer clause (ii), staying thereby the proceedings of show cause notice. The petition was ultimately withdrawn on 10.03.2016 and thereafter again an application was made on 06.04.2016 for supply of information in respect of 6 items narrated in the application, addressed to the Collector, Nagpur. The ground on which the charges of misconduct levelled against the petitioners

are defended before this Court, could have easily been raised by filing reply to the show cause notice by reserving their rights to submit additional reply upon receipt of the documents or could have been heard by this Court upon demonstration as to how the documents demanded are relevant.

16. So far as the merits of the matter are concerned, the order passed by the Minister refers to the acts of misconduct contained in the report of the Collector dated 01.01.2016. The Collector had called upon the petitioners to furnish explanation in respect of the alleged charges. After considering the explanation, the report contains a finding that the petitioners are guilty of committing the acts of misconduct. In the absence of any explanation on merits before the Minister, the satisfaction about the report submitted by the Collector to disqualify the petitioners cannot be termed as contrary to the provisions of subsection (1) of Section 42 of the said Act. The satisfaction is about the guilt of the petitioners on the basis of the report along with the documents accompanied thereto.

17. The principles laid down by the Apex Court in the decisions relied cannot be disputed. No doubt, the democratically elected representatives cannot be removed from the office without giving them reasonable opportunity of being heard in the matter as contemplated by subsection (3) of Section 42 of the said Act. But, if the reasonable opportunity offered is not availed of and on the contrary, the record and events indicate wilful avoidance of adjudication of the matter prior to the end of tenure, then in such facts and of the case, the Court can refuse to exercise discretion to entertain a writ petition.

18. In view of above, I do not find any reason to interfere in the order impugned in this petition. The petition is dismissed. No order as to costs.