
(2016) 06 BOM CK 0176

In the Bombay High Court

Case No : Writ Petition No.1430 of 2016.

**Nandkumar alias Laxman Sahadu Borude, age: 65 years, Occ:
Agriculture, R/o At Post and Taluka Shrigonda, Pedgaon Road, District
Ahmednagar - Petitioner @HASH The State of Maharashtra, through the
Secretary, Urban Development Department, Mantralaya, Mumbai**

Date of Decision : 07-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 BCR 131 : (2016) 6 MhLJ 87

Hon'ble Judges : R.M. Borde and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Mr. V.D. Hon, Senior Counsel i/by Mr. Ashwin V. Hon, Advocate, for the Petitioner; Mr. A.R. Kale, A.G.P, for the Respondents No. 1 and 2; Mr. P.N. Khedkar, Advocate, for the Respondent No. 3; Mr. R.N. Dhorde, Senior Counsel i/by Mr. V.R. Dhorde, Advocate,

Final Decision : Dismissed

Judgement

R.M. Borde, J. - Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner, who was elected as a Councillor of Municipal Council, Shrigonda, in the elections held in 2014, is assailing the order passed by the State Government on 25th January 2016, holding him disqualified to continue to hold office of an elected councillor and further disqualifying him from becoming a councillor of the Municipal Council or any other local authority for the period of five years from the date of issuance of order.

3. The petitioner contends that he is an elected councillor of the Municipal Council and his term is to expire in the year 2019. He is continuously representing the local ward as representative since 1994 and was holding office of President for about seven and half years in the past. He is an elected leader of the aghadi consisting of 9 councillors, which is duly registered with the Collector. It is contended that there were no allegations in respect of misconduct levelled

against him in the past.

4. The petitioner contends that the then Chief Officer of the Municipal Council Shri Sonawane had called a Special Meeting of the Municipal Council on 21.02.2014, which was opposed by the petitioner and other councillors. On 20.02.2014, he had been to the office of Chief Officer for demanding certain information. The Chief Officer, according to the petitioner, has lodged a false and frivolous complaint against him, which is registered as Crime No.I- 25 of 2014 with Shrigonda Police Station for offences punishable under Sections 343, 504 and 506 of the Indian Penal Code. It is alleged by the Chief Officer that the petitioner has abused him and also threatened him by showing a chappal (footwear). The Chief Officer, according to the petitioner, maintained bad reputation and indulged in corruption. He was apprehended while accepting bribe and First Information Report has been registered against him by the Anti Corruption Bureau on 25.03.2014. The petitioner contends that in respect of the meeting conducted on 21.02.2014, there was a complaint lodged to the Collector and the Collector, taking cognizance of the complaint, had directed stay of the Resolutions adopted in the meeting.

5. The Chief Officer, Shri Sonawane tendered a complaint in respect of misconduct of the petitioner to the State Government through the Collector. The Collector, on receipt of the complaint, called for explanation from the petitioner by issuing a notice on 08.10.2014. The petitioner tendered his explanation to the Collector on 17.11.2014 denying all the allegations levelled against him. It does appear that the Collector has tendered his report to the State Government and in pursuance thereof, the State Government had issued a notice to the petitioner on 07.08.2015 calling upon him to explain as to why action should not be initiated against him under Section 42 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (for short, "the Municipalities Act"); and as to why he shall not be unseated as a councillor and shall not be further debarred from becoming a councillor for the period of five years.

6. The petitioner tendered explanation to the notice issued by the State Government on 10.09.2015. The petitioner contended that there after no steps were taken in respect of the complaint. However, it appears that one of the councillors Shri Shaikh Akhtar Hazi Sikandar tendered a complaint to the State Government, cognizance of which was taken and a notice was issued by the State Government calling upon the petitioner to remain present for hearing in the chamber of the Hon"ble State Minister on 06.01.2016. The petitioner was not in a position to attend the hearing on the said date and he sent his nephew for hearing. An application was tendered to the State Government requesting for issuance of copy of the complaint filed by Shaikh Akhtar Hazi Sikandar and certain other documents. It is contended that in spite of tendering an application demanding copies of certain documents, those were not supplied and without extending an opportunity of hearing, the order, impugned in this petition, has been passed by the State Government on 25.01.2016.

7. The petitioner submits that the order has been passed without observing the procedure prescribed under law. It is also contended that action has been vitiated on account of non observance of principles of natural justice. The petitioner contends that serious action of his removal and holding him disqualified for becoming a representative of local authority for further period of five years, is taken without complying with principles of natural justice. The petitioner contends that the State Government did not take any action suo motu as contemplated under sub-section (1) of Section 4, however, proceeded to take action on the complaint tendered by Shaikh Akhtar. Since there was no resolution adopted by the Council for removal of the petitioner, it was not permissible for the State Government to act upon the complaint tendered by Shaikh Akhtar and pass an order directing disqualification of the petitioner.

8. Section 42 of the Municipalities Act reads thus:

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 subsections (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-sections (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.

9. There are two modalities prescribed under Section 42 in respect of removal of a councillor from the office. The State Government may, on its own motion, take action or may act upon the recommendations of the council. In the event, the Municipal Council adopts a Resolution recommending removal of a councillor, it is not permissible to adopt such resolution unless the councillor, to whom it relates, has been given a reasonable opportunity of showing cause as to why such recommendation should not be made.

10. It is the contention of the petitioner that since the State Government has acted on the complaint lodged by one of the councillors i.e. Shaikh Akhtar Hazi Skandar, passing of resolution was a necessary precondition under law to hold

the petitioner disqualified. The contention raised by the petitioner does not appear to be sound for the reason that the Chief Officer, who was aggrieved, had tendered a report to the State Government through the Collector on 18.03.2014. It is also a matter of record that the petitioner was called upon to show cause as to why action shall not be taken against him on the proposal initiated by the State Government on receipt of the complaint made by Shri Sonawane, the then Chief Officer. The petitioner did tender his reply to the show cause notice issued by the Collector on 08.10.2014. It is also a matter of record that the Collector tendered his report to the State Government on 19.01.2015. In his report, the Collector has recorded that on the given date, in the chamber of Shri Sonawane, the petitioner abused him and threatened the Chief Officer by showing chappal (foot wear). This fact is disclosed in the CCTV footage, which was made available. Before taking action, again the State Government also issued a show cause notice dated 07.08.2015, which was received by him. The petitioner did tender his reply to the show cause notice on 10.09.2015. It, thus, appears that the petitioner has been extended an opportunity to answer allegations and the charges.

11. It also appears that a complaint was received from Shaikh Akhtar Hazi Sikandar by the State Government and same is referred to in the notice of personal hearing issued by the State Government on 02.01.2016. The petitioner did not appear for personal hearing on the given date and time and preferred to send his nephew to Mumbai to attend the hearing. His nephew was not authorised to argue the matter on his behalf. Pointing out title clause of the order issued by the State Government, which refers to the name of complainant Shaikh Akhtar, it is contended that order has been passed not on the basis of suo motu initiative taken by the State Government, however, the case is covered by sub-section (3) of Section 42 of the Municipalities Act, 1965.

12. The contention is erroneous for the reason that the very first paragraph of the order refers to the complaint of the Chief Officer to the State Government as well as report of the Collector received by the State Government and reply tendered by the petitioner. The order also refers to the show cause notice issued by the State Government and reply tendered by the petitioner on 10.09.2015. On reading text of the order, contention raised by the petitioner that the State Government has not acted in accordance with Section 42(1) of the Act, however, provisions of Section 42(3) are invoked, does not appear to be correct. The petitioner was extended an opportunity of hearing on two occasions. The Collector, before tendering his report to the State Government, has considered the explanation tendered by petitioner. The State Government also issued a notice to the petitioner calling upon him to explain as to why appropriate action shall not be taken against him under Section 42 of the Act, to which, petitioner did tender his explanation.

13. Considering above aspects, it will have to be inferred that requirement of complying with principles of natural justice has been fulfilled and the petitioner

has been extended fair opportunity to answer allegations and the charges levelled against him.

14. That, so far as disgraceful conduct of the petitioner is concerned, there is no room to draw any other inference that the petitioner did threaten the Chief Officer by showing him a chappal on 20.02.2014. A reference is made to the CCTV footage in the report of the Collector as well as in the impugned order. The CCTV footage was made available for perusal of the Court and we have seen the CCTV footage in the presence of learned Counsel for both the parties. On viewing the CCTV footage, it is abundantly clear that the petitioner did threaten the Chief Officer by showing a footwear (chappal). He was standing in a threatening posture. The conduct of the petitioner in threatening the Chief Officer, by showing him footwear and adopting a threatening posture, shall have to be branded as disgraceful. We are satisfied in respect of occurrence of incident upon viewing the CCTV footage. It has neither been contended in the petition nor has been argued that the CCTV footage is manipulated or morphed. The finding recorded by the State Government in respect of disgraceful conduct of the petitioner does not appear to be erroneous and need not be interfered with.

15. Section 42 of the Act prescribes that 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. Sub-section (1) of Section 42 stipulates that a councillor can be removed not only on account of misconduct in discharge of his official duties, however, he can be removed on account of "any" "disgraceful conduct", which need not be referable to his official duties. The misconduct pertains to the functions and duties of a member or an office bearer, whereas, "disgraceful conduct", contemplated under Section 42(1) is of an individual who is a member and not necessarily only in discharge of his duties, as such. The term "disgraceful conduct" is prefixed by the word "any" and as such, need not necessarily be "in discharge of the duties".

16. So far as expression "disgraceful" is concerned, the New Oxford American Dictionary explains it to mean shockingly unacceptable. In the New International Webster's Comprehensive Dictionary, "disgraceful" is set out as characterised by or causing disgrace, shameful. In P. Ramanatha Aiyar's Law Lexicon, "disgraceful conduct" is described as shameful behaviour. It further sets out that it need not be circumscribed to something done in the course of one's duty as member or office bearer. The term "disgraceful conduct" would mean any allegation which, because it is done by an elected member or office bearer, is sufficiently reprehensible to be classified as disgraceful.

17. Considering the meaning attached to the term "disgraceful", we are of the considered view that the alleged misconduct of the petitioner shall have to be branded as shameful behaviour and is shockingly unacceptable. We have adopted a democratic form of governance and functions of the local authorities are administered by the representatives of the people elected in a democratic

manner. The form of democratic governance is adopted by a civil society. In the civil society, any uncivilized behaviour is unacceptable. It assumes seriousness when the representatives of the people behave in uncivilized manner. The behaviour of the petitioner certainly cannot be branded as civilised behaviour.

18. It is contended on behalf of the petitioner that the penalty imposed of disqualification for further term of five years for becoming a councillor is harsh, is not acceptable for the reason that uncivilized behaviour of an elected member is a serious threat to the institutions governed in democratic manner.

19. Apart from this, sub-section (4) of Section 42 does not make available any option to the State Government once a conclusion is reached that the representative is guilty of misconduct or disgraceful conduct, he shall have to be disqualified from becoming a councillor or member of any other local authority for the period of five years from the date of such order.

20. For the reasons recorded above, the writ petition does not deserve any favourable consideration and as such stands dismissed.

Rule discharged. No costs.