

(2013) 12 BOM CK 0148

In the Bombay High Court

Case No : Writ Petition No. 6074 of 2013

Rajendra Narayanji Narnaware and Others

APPELLANT

Vs

The Regional Director, Municipal Administration and Others

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 BOM CK 0148

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Rohit Deo, for the Appellant; S.M. Bhagde, A.G.P. for Respondent Nos. 1 and 2, Mr. M.I. Dhatrak, for Respondent No. 3, Mr. Sunil Manohar, Mr. S.W. Sambre and Mr. J.B. Kasat, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—Rule made returnable forthwith. Heard submissions advanced by the learned Counsel for the respective parties. The petitioners herein have filed this petition under Articles 226 and 227 of the Constitution of India impugning the order dt. 28.10.2013 passed by respondent no. 1 in Appeal No. 2/2012-13.

2. The question that is raised is as to whether the petitioners as Councilors of Municipal Administration, Municipal Council, Saoner would incur disqualification for their absence from the meetings of the Municipal Council.

3. The facts, briefly stated, are as under:

There was a special meeting of Municipal Council on 15.2.2012 which was attended by the petitioners. The next meeting was scheduled on 12.4.2012, which was cancelled. The another meeting of the Municipal Council was on 14.6.2012, during which the petitioners remained absent without seeking or obtaining any leave for their absence. The learned Counsel for the petitioners submitted that from 14.6.2012 it was essential for the Municipal Councilors to attend the meeting of the Council or atleast to seek leave for their absence to

justify their absence. A meeting of the Municipal Council was thereafter also held on 29.6.2012. But the petitioners remained absent. Thus, on the ground of absence of all the petitioners herein/Municipal Councilors in the special meetings held on 14.6.2012 and 29.6.2012, an application was preferred by respondent nos. 4 and 5 for absentee Councilors' disqualification in view of Section 44(1)(d) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. The provision required the Municipal Councilor to attend the meeting of the Municipal Council during his tenure of Office. Thus, if the Councilor remains absent from the meetings of the Municipal Council during six successive months except when leave of absence granted for such absence, such Municipal Councilor shall be disqualified subject to provision of sub-section (3) from continuing to be a Councilor and his Office shall become vacant. Sub-section (3) of Section 44 relates to decision of the Authority as to whether the vacancy has arisen and the Collector may give his decision upon receipt of the report from the competent Officer from the Municipal Council under sub-section (2) of Section 44 or on his own motion or on the application made to him by any voter. The object of law is to ensure consistent presence of Municipal Councilors at its meetings in the interest of Municipal Administration. Hence, absence beyond tolerable limits fixed statutorily without any excuse may result in disqualification and vacancy of seat.

4. In this connection, my attention is invited to the legal position stated in the ruling by the Division Bench in the case of Chirak Chandu Khatik Vs. G.V. Kshirsagar, . It appears that the Division Bench of this Court, while dealing with the question in respect of provision which was *pari materia* to the provision under consideration in that case, referred to Section 40 of the Village Panchayats Act. It was held that six months of absence must be reckoned from the date of meeting at which the Member remained absent and not from the date of the meeting at which the Member was last present.

5. Reference is also made to the ruling in the case of V.P. Singh Vs. Chairman, Metropolitan Council of Delhi and Others, to indicate that during the period of six successive months if a Member remains absent without permission of the Council, the Council may declare the seat of such member as vacant.

6. In another ruling in the case of Kapilaben Chimanlal Kothari Vs. The Commissioner of Revenue, Baroda Division and Others, , an identical question was considered by the Gujarat High Court. In that case, making reference to the relevant provision, it was observed that if a Councilor remains absent during four successive months from the meetings of the Municipality except with the leave of the Municipal Council, he shall be disabled from continuing in the Office and the Office shall be made vacant.

7. Thus, in the rulings afore-cited, it appears that if a Councilor remains absent for the period successively i.e. for statutory period of six months in this case, without obtaining leave from the Municipal Council concerned, such a Councilor would incur disqualification and his seat may be declared vacant on the ground of

continued absence for statutorily prescribed period without any excuse.

8. Mr. S.V. Manohar, learned Senior Counsel fairly submitted that the ruling of the Division Bench would be binding upon this Court. According to him, there is no exact judicial precedent by the Apex Court on the subject under consideration. It is submitted that deliberate absence of the Councilor for entire block of six months to attend the meetings of the Municipal Council need to be considered for holding him responsible for incurring disqualification as a Municipal Councilor. In other words, according to the learned Senior Counsel, if a Councilor is not available for a block period of six months for the meetings and he is deliberately remaining absent, then only disqualification ought to incur in such cases.

9. Considering the rulings cited before me and submission at the bar, in the present case, it is true that since 14.6.2012 the Municipal Councilors/petitioners were continuously absent in the meetings of the Municipal Council, but, in the facts and circumstances of the case, disqualification to hold Office as Councilors has not yet occurred. There was no valid reason nor cause of action for preferring a pre-mature application for disqualification of Councilors u/s. 44(1) (d) of the Act. Municipal Councilors had not remained absent continuously and beyond statutory limits of six months applicable in this case. Anticipatory application apprehending absence of Councilors for entire block period of six months could not have been entertained in this case. Hence, the impugned order dt. 6.5.2013 passed by respondent no. 2 in Application No. 7 of 2012 and the impugned order dt. 28.10.2013 passed by respondent no. 1 in Appeal No. 2/2012-13 are unsustainable and required to be quashed and set aside. They are accordingly quashed and set aside. The petition is, thus, allowed in terms of the prayer made in the petition. Rule is made absolute accordingly. At this stage, Mr. S.V. Manohar, learned Senior Counsel prays for grant of stay to the operation of this order for ten days to seek appropriate relief. Hence, operation of the above order shall remain stayed for a period of ten days.