

(2007) 02 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 2219 of 2005

Ramdas Abbasaheb Deshmukh

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 02-02-2007

Acts Referred:

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 3(1)(a), 7, 7(c)

Citation : (2007) 4 ALLMR 276 : (2007) 2 BomCR 615

Hon'ble Judges : S.J. Vazifdar, J

Bench : Single Bench

Advocate : P. N. Patil, for the Appellant; V. Mhaispurkar, A.G.P., for the Respondent

Judgement

S.J. Vazifdar, J.—Rule. By consent, rule made returnable forthwith and heard.

2. The petition challenges an order dated 3-3-2005 passed by respondent No. 2, the Commissioner, Pune Division, Pune.

3. It would be appropriate to preface this judgment by noting that the order was passed without any notice to the petitioner. The petitioner claims to have learnt about the same only when he sought to contest the bye-elections for the Zilla Parishad. That however is not the only infirmity in the impugned order.

4. The petitioner was elected as a member of the Zilla Parishad, Solapur from 20-Mandave, Z.P. electoral division. The applicant, who had filed the Case against the petitioner, was elected from the Zilla Parishad, Solapur from 26 Yashwantnagar, Z. P. electoral division. The petitioner and the Applicant were elected from the Nationalist Congress Party (NCP). The petitioner had also contested the election in 225 - Malshiras Assembly Constituency which was held on 13-10-2004 on the ticket of the Bahujan Samajwadi Party (BSP).

5. Respondent No. 3, the Collector, Solapur, held that the petitioner had voluntarily given up the membership of the NCP and accepted the membership of

the BSP. He therefore held that the petitioner had violated section 3(1)(a) of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as the MLAMD Act) and consequently stood disqualified and ceased to be a member of the Zilla Parishad.

6. By an order dated 3-12-2004 the Collector, Solapur, disqualified the petitioner as a member of the Zilla Parishad u/s 7 of the MLAMD Act. The petitioner accepted this decision and has not challenged the same.

7. Section 7 of the MLAMD Act reads as under :

"7. Decision on question as to disqualification on ground of defection.-If any question arises as to whether, -

(a) a councillor of a Municipal Corporation; or

(b) a councillor of a Municipal Council; or

(c) a councillor of a Zilla Parishad; or

(d) a member of a Panchayat Samiti, has become subject to disqualification under this Act, the question shall be referred.-

(i) in the case of a councillor of a Municipal Corporation, to the Commissioner, and (ii) in the case of any other councillor or, member, to the Collector; and the decision of the Commissioner, or as the case may be, Collector shall be final." The petitioner's case would be covered by section 7(c) read with 7(ii).

8. Respondent No. 2, after referring to the above order dated 3-12-2004 passed by respondent No. 3, proceeded to pass the impugned order the relevant part whereof reads as under :

"..... and whereas the powers have been delegated through the Divisional Commissioner by virtue of sub-section (5)(b) of section 16 of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961.

Therefore I, P.D. Karandikar, Divisional Commissioner, Pune Division, Pune by exercising the aforesaid powers disqualify Shri. Ramdas Abbasaheb Deshmukh from remaining as the Councillor or to be elected as Councillor of Zilla Parishad for a period of six years from 03-12-2004.

Sd/- (P.D. KARANDIKAR) Commissioner, Pune Division, Pune."

9. The question that falls for consideration is whether respondent No. 2 had the power or the jurisdiction to pass the impugned order. The question must be answered in the negative.

10. Section 16(5) of The Maharashtra Zilla Parishads and Panchayat Samities Act, 1961, reads as under :

"(5)(a) Notwithstanding anything contained in sub-section (4), a Councillor who has been elected to a reserved seat [as mentioned in subsection (4)], shall be

disqualified for being such Councillor consequent upon the Caste Certificate Verification Committee or any other Competent Authority as specified by the State Government for the purpose of scrutiny of the Caste Certificates, declaring the Caste Certificate of such Councillor to be invalid and cancelling the same, on the ground of claiming to be belonging to the reserved category, and thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such Certificate to be invalid and cancellation of the same by the said Committee or the Competent Authority.

(b) On any person having been disqualified for being a Councillor and consequently, his seat as such Councillor having become vacant under clause (a), the Divisional Commissioner shall, by notification in the Official Gazette, disqualify such person for being elected or being a Councillor for a period of six years from the date of such order.]"

11. Section 16(5)(b) requires the existence of two conditions for the Divisional Commissioner to issue a notification disqualifying a person from being elected or being a councillor for a period of six years from the date of such order. Firstly, a person should be disqualified from being a councillor. Secondly, the disqualification must arise as a result of the provisions of section 16(5)(a). The two conditions must co-exist.

12. It is not every disqualification which would entail the issuance of a notification of disqualification u/s 16(5)(b). The disqualification must be one on account, for the reasons and on the grounds referred to in section 16(5)(a). This is clear from the use in section 16(5)(b) of the expression "consequently his seat as such councillor having become vacant under clause (a)."

13. Admittedly, in the present case, the disqualification of the petitioner was not on account of the reasons mentioned in section 16(5)(a).

14. As the petitioner's disqualification was not on account of the provisions of clause (a) of section 16(5), respondent No. 2 had no authority or jurisdiction to issue the impugned order/notification.

15. The impugned order is therefore set aside. The rule is made absolute. There shall however be no order as to costs.

All parties to act on an ordinary copy of this order duly authenticated by Sheristedar/Personal Assistant.