
(2014) 01 BOM CK 0274

In the Bombay High Court

Case No : Writ Petition Nos. 72 and 73-78 of 2014

Sau. Madhuri Vasantrao Arathe

APPELLANT

Vs

Manish and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Citation : (2015) 1 ALLMR 707

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : M.P. Khajanchi and M.I. Dhattrak, Advocates for the Appellant; M.A. Vaishnav, Advocates for the Respondent

Judgement

A.B. Chaudhari, J.—Rule. Rule is made returnable forthwith. Learned Adv. Mr. M.A. Vaishnav waives service on behalf of respondent No. 1 and learned AGP Mr. Dharmadhikari, for respondent Nos. 3 in all these Writ Petitions. By consent, these Writ Petitions are taken up for final hearing and disposed of by this common Judgment and Order. In support of the Writ Petitions, learned Adv. Mr. M.P. Khajanchi with Mr. M.I. Dhattrak for all the petitioners argued that during the course of arguments before Collector, respective petitioners had taken an objection to the proceedings launched by concerned respondents for their disqualification, by filing applications to that effect, on the ground that the Aaghadi was not shown to have been registered. It was argued before Collector that the leader of Aaghadi was not disclosed by appropriate evidence and, therefore, the preliminary objection was raised for dismissal of those applications for disqualification and there is a mandatory requirement under Rule 7 of the Maharashtra Local Authority Members Disqualification Rules, 1987, which ordained the Collector to decide such preliminary objection and dismiss the application for disqualification for noncompliance of the provisions of Rule 6 thereof. Learned Counsel for the petitioners then contended that the order made by the Collector impugned does not satisfy the test of the order deciding preliminary objection, since the Collector has stated in the impugned order that

he would decide the Preliminary Objection as well as main objection on merits simultaneously. Learned Adv. Mr. Khajanchi submits that this is not a proper course contemplated by the Rules in such matters like disqualification, and according to him, no insistence for filing Written Statement without deciding the Preliminary Objection can be made by the Collector.

2. Per contra, learned Adv. Mr. Vaishnav for the respondents in respective petitions, to justify the petitioners disqualification, opposed the Writ Petitions and argued that the only objection was about registration of Aaghadi, for which there is ample evidence available with the Collector and not only that the original applicants also tendered the evidence about registration of Aaghadi. He then argued that the objection about Aaghadi leader was never raised before the Collector, as can be seen from the pleadings in the applications raising preliminary objection. He then submitted that there is an attempt by the councilors, namely petitioners before this Court, to prolong a decision on the applications for disqualification.

3. At the hearing of the petitions and upon perusal of the pleadings, in the applications raising preliminary objection, it is seen that the only objection raised was about registration of Aaghadi; but there is no objection raised about the Aaghadi leader, as contended before Collector and before me. It is, however, a fact that the Collector has recorded his order based on the contention raised before him about leader of the Aaghadi in addition. But then the Collector has observed that the petitioners have not yet filed their respective Written Statements, and would like to consider the preliminary objection along with Written Statements. The said authority has, thus, not decided the preliminary objection raised on the said two counts. In view of the fact that the original applicants have stated before me through counsel that the Aaghadi was registered and there is a documentary evidence with the Collector who himself is supposed to notify such Aaghadi, in my view, the petitioners should be allowed to contest the said preliminary issue afresh, but subject to petitioners filing their reply on merits to the applications for disqualification. It is in that context Mr. Khajanchi, learned counsel for the petitioners, has fairly agreed to the said proposal that all the councilors would file reply on merits before the Collector, particularly because of lapse of time after filing of the applications for disqualification.

4. As already observed by me, the order made by the Collector showing that the preliminary objection would be decided along with merits of the disqualification applications, does not appear to be legal, correct and proper. It may be true that ultimately, there may be found any force in the preliminary objection, but then the settled legal position is that in such cases, preliminary objection ought to be decided, all the more so because it is ordained by Rule 7 of the said Rules. By making the aforesaid arrangement, namely of filing Written Statement/reply, in my opinion, the petitioners should be heard on preliminary objections which should be decided. As agreed by counsel for petitioners, Written Statements

should be filed within thirty days from today. That being so, in my opinion, the following order would subserve the ends of justice:--

ORDER

"[a] Writ Petition Nos. 72, 73, 74, 75, 76, 77 and 78 all of 2014 are partly allowed.

[b] The impugned order passed by the Collector, Yavatmal, is set aside.

[c] The proceedings are remitted to the learned Collector for deciding the preliminary issue raised by the petitioners in their respective applications in accordance with law and as per Rules 6 and 7 of the Maharashtra Local Authority Members Disqualification Rules, 1987, provided all the petitioners file their respective Written Statements within thirty days from today and no further extension shall be granted.

[d] After filing of the Written Statements, the Collector shall hear the preliminary objection and decide the same within two weeks after expiry of thirty days and then proceed to hear the matters in accordance with law."

In the circumstances of the case, there shall be no order as to costs.