

(2023) 03 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No.12628, 12635 Of 2022

Shobha And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-03-2023

Acts Referred:

Maharashtra Local Authority Members' Disqualification Act, 1986 — Section 3, 3A, 3(1), 3(1)(a), 3(1)(b), 3A(2), 7

Citation : (2023) 03 BOM CK 0025

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : Rajendrraa Deshmukh, Shriram V. Deshmukh, Hareshkumar D. Patil, Devang R. Deshmukh, D.R.Kale, V.D.Hon, A.V.Hon, N.R.Dayama

Final Decision : Partly Allowed

Judgement

Arun R. Pedneker, J

1] By the present Writ Petitions, the petitioners are challenging the order dated 18.10.2022 passed by the Principal Secretary of Urban Department, Jalgaon – respondent no.1, dismissing the appeal filed by the petitioners and confirming the order dated 18.07.2022 passed by the Collector, Jalgaon – respondent no.2 whereby the application for disqualification of the petitioners filed by the respondent no.4 under Section 7 of the Maharashtra Local Authority Members' Disqualification Act, 1986 [for short 'the Act of 1986'] is allowed.

2] Both the Writ Petitions are taken up together for hearing since the common question of fact and law are involved.

Brief facts leading to filing the present Writ petitions can be summarized as under:

3] The petitioners in both Writ Petitions and the respondent no. 4 – complainant were elected in the general election of the Bhusawal Municipal Council from the Bhartiya Janta Party [for short 'BJP']. The term of the Municipal Council was from

28th November, 2016 to 29th December, 2021. On completion of the term, the State appointed an Administrator on 27.12.2021. However, on 17th December, 2021 the petitioners joined the group of Nationalist Congress Party [for short 'NCP'] by joining them on the public meeting / platform.

4] The complaint was filed under Section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986 to the Collector that the petitioners should be disqualified as they have defected from the party from which they are elected and has shifted their alliance to another party before completion of their term.

5] It is the contention of the respondent no.4 that the petitioners defected from the BJP party on 17th December, 2021 and the news item in that respect was published on 18th December, 2021 in the news paper. After hearing all the parties, the Collector accepted the complaint and disqualified the petitioners. The Collector has held in the operative part of the order dated 18.07.2022 [true translation], as under:-

ORDER

1) The application of applicant is admitted.

2) As Respondent Nos.1 to 10 defected, they are being disqualified from 18.12.21 to one further term of the Municipal Council with retrospective effect (from 18/12/2021.)

3) No orders for expenditure.

4) The said decision be intimated to all concerned through a separate notice.

6] In Appeal before the State, the Principal Secretary of Urban Department, Jalgaon upheld the order dated 18.07.2022 passed by the Collector and has held as under :-

Reasons for order

. The General Election of Bhusawal Municipal council was held in 2016. Shri Raman Devidas Bhole, people elected Mayor also, Shri Amol Manohar Ingle, Smt. Lakshami Ramesh Makasare, Smt. Savita Ramesh Makasare, Shri Pramod Purushottam Nemade, Smt. Megha Devendra Wani, Shri Bodhraj Dagadu Choudhary, Smt. Shobha Arun Nemade, Shri Kiran Bhagwat Kolte, Smt. Shailaja Purushottam Narkhede all members was elected on the symbol of Bhartiya Janata Party in the Election.

. Shri Bhole and 9 others also and other councilors in all 29 councilors front / Aghadi was duly registered as Bhartiya Janata Party and Independence Front / Aghadi.

. In the programme of Nationalist Congress Party Shri Bhole and other 9 announced that they have joined the Nationalist Congress Party and the news about it was published in a leading news paper of dated 18.12.21. Also, the applicant Smt.Batra has submitted to the District Collector, Jalgaon as evidence

the news of the party entry ceremony in the news on Television. Bhole and 9 others could not be deposed this evidence during the hearing before the Collector, Jalgaon. Also, the appellant attended the General Meeting dated 27.12.21 of Bhusawal Municipal Council, as a Mayor and councilors and the different resolutions has also passed. The Chief Officer, Bhusawal Municipal Council in the report dated 06.01.2022 has informed the office of the Municipal Council in any way about his defection as well as his resignation. From this it appears that Mr. Bhole and 9 others have publicly decamped on 18.12.2021 i.e. before the expiry of their term as Chairman and Members respectively and they appears to be eligible for disqualification as per Section 3A (2) (Amendment 2016), of the Maharashtra Local Authority Members Disqualification Act, 1986.

. As it becomes clear that Mr.Bhole and 9 others defected during their tenure, so I have come to the conclusion to disqualify them from 18.12.2021 to the next 6 years as per the provisions of the Maharashtra Local Authority Members Disqualification Act, 1986.

8) Considering the above all background, the orders passed by Collector, Jalgaon, available records, the written and oral say submitted by the present concerned members for hearing / statement on dt. 18.10.2022 and the above reasons I am giving the following orders:-

ORDER

. The appeal of Shri Raman Bhole and 9 others against the orders of District Collector, Jalgaon dtd. 18.07.2022 is hereby dismissed.

. As Shri Raman Bhole and 9 others defected, they are being disqualified for the period from 18.12.21 to next 6 years.

. The above orders be issued to all the concerned.

7] The petitioners have challenged the aforesaid impugned orders by filing the present Writ Petitions.

8] It is the contention of the petitioners that the Maharashtra Local Authority Members' Disqualification Act, 1986 is applicable only to the sitting councillor whose term has not expired. The complaint filed after the period of term having expired, is not maintainable. It is further the contention of the petitioners that Section 3A of the Act of 1986 under which the petitioners are held to be disqualified, deals with disqualification for appointment on remunerative political post and the case filed by the complainant is that the petitioners have defected from one party to another and as such there is no allegation of holding any remunerative political post, as such, Section 3A of the Act of 1986 is not applicable to the facts of the present case.

9] It is further the contention of the petitioners that even assuming that the entire case of the respondent no.4 is accepted as it is, the case made out, at best is only under Section 3 (1) (a) of the Act of 1986 and the disqualification

can be only for the remainder of the term and not beyond the term. Thus, the impugned orders, which disqualifies the petitioners for a period beyond the term of the Municipal Council are bad in law.

10] It is further the contention of the petitioners that the impugned orders passed by the authorities may be quashed and set aside as the petitioners are now intending to contest next elections and thus the present petitioners' challenge be considered on the ground of further disqualification of 6 years period, as the further disqualification is adversely affecting the petitioners right to contest the ensuing elections.

11] Per contra, as far as Section 3 (1) (a) of the Act of 1986 is concerned, Mr.V.D.Hon, learned Senior Advocate appearing for the complainant – respondent no.4 submits that disqualification is for a period of 6 years from the date of decision and that the proviso should be harmoniously construed and that purpose for disqualification is that the individuals, who are elected on a party ticket, remains to be elected with the party till the end of the term and in the event they jump the party, they have to be disqualified for the further period of 6 years.

12] The learned Government Pleader, Mr.D.R.Kale, appearing for the respondent nos.1 and 2 submits that both the authorities below have concurrently held that the petitioners are disqualified for next term i.e. for a period of 6 years, and as such, this Court under Article 226 and 227 should not interfere with the concurrent finding of fact.

13] The learned Government Pleader further submits that the word 'or' is used between section 3 (1) (a) and 3 (1) (b) of the Act of 1986 and on the basis of the word 'or', further disqualification of 6 years provided in the proviso to section 3 (1) would automatically be attracted because disqualification could be either under (a) or (b) of Section 3 (1) of the Act of 1986.

14] The learned counsel for the respondents Mr.Hon so also Mr.Kale argued that although the petitioners are disqualified for the period of 6 years, from the date of decision, section 3A of the Act of 1986, per se, would not be applicable. The disqualification incurred is apparently under Section 3 (1) (a) of the Act of 1986, and mere mention of wrong provision in the order, would not make the orders unlawful.

15] Having considered the rival submissions, I am only considering the submission of the learned counsel for the petitioners that in the facts situation accepting the finding that the petitioners have crossed over, whether the petitioners could have been disqualified for the term of 6 years from the date of disqualification or whether the disqualification of the petitioners should be restricted to the existing term of the Municipal Council.

16] The facts situation in the instant case is as recorded by the authorities below i.e. on 17th November, 2021 the petitioners have broken away from the BJP and they have joined the Nationalist Congress Party [NCP]. The news item in that

respect was published on 18th November, 2021. There was a publication of the same in the news item that the petitioners have defected on 18th November, 2021. The term of the Municipal Council come to an end on 28th December, 2021 and the complaint was filed on 29th December, 2021.

To deal with the issue raised, relevant provisions of the Maharashtra Local Authority Members' Disqualification Act, 1986 are required to be noted and as under :-

17] Section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986, is as under :

3. Disqualification on ground of defection.

(1) Subject to the provisions of [section 5], a councillor or a member belong to any political party or aghadi or front shall be disqualified for being a councillor or a member, -

(a) if he has voluntarily given up his membership of such political party or member, aghadi or front; or

(b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:

[Provided that, if a councillor or a member belonging to any political party or aghadi or front is disqualified under clause (b), he shall be disqualified for being a councillor or a member, for six years, from the date of his disqualification:]

[Provided further that], such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;

Explanation - For the purposes of this section-

(a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member;

(b) a nominated [councillor] shall -

(i) where he is a member of any political party or aghadi or front on the date of his nomination, [***] be deemed to belong to such political party or aghadi or front,

(ii) in any other case, be deemed to belong to the political party or aghadi or front of which he becomes, or as the case may be, first becomes a member of such party or aghadi or front before the expiry of six months from the date on which he is nominated [***];

(2) An elected Councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front shall be disqualified for being a Councillor, or as the case may be, a member if he joins any political party or aghadi or front after such election,

(3) (***)

(4) Notwithstanding anything contained in the foregoing provisions of this section a person who on the commencement of this Act, is a councillor, or as the case may be, a member (whether elected or nominated [***] as such councillor or member) shall -

(a) where he has a member of a political party or aghadi or front immediately before such commencement, be deemed, for the purposes of sub-section (1) to have been elected as a Councilor, or as the case may be, a member as a candidate set up by such political party or aghadi or front;

(b) in any other case, be deemed to be an elected Councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front for the purpose of sub-section (2), [***].

[(5) The period of disqualification under this section, shall be counted from the date of order of the officer referred to in section 7.]

18] Section 3 (1) (a) of the Act of 1986 deals with a situation where the elected member has voluntarily given up his membership of such political party or aghadi or front. Section 3 (1) (b) of the Act of 1986 deals with if the elected member votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorized by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention.

19] In the instant case, the petitioners have left BJP and having joined the group of NCP on a public platform and thus they could be said to be disqualified under Section 3 (1) (a) of the Act of 1986. This aspect is not disputed by the respondents. There was no direction for voting and abstention from voting by the political party, as such, Section 3 (1) (b) of the Act of 1986 would not be applicable to the facts of the present case.

20] In Section 3 (1) (a), disqualifies a councilor or a member and words used are

'shall be disqualified for being a councillor or a member', and that there is no disqualification mentioned for a further period. As regards Section 3 (1) (b) is concerned, the proviso which is added subsequently with effect from 16.12.2016, provides that if the elected member votes or abstains without prior permission from such party, he shall be disqualified for being a councillor or a member, for six years, from the date of his disqualification. Thus, only under Section 3 (1) (b) disqualification incurred is for a period of 6 years from the date of disqualification.

21] The proviso to Section 3 (1) is added subsequently in the year 2016. Before the proviso was added, disqualification under Section 3 (1) (a) or (b) was for the remainder of the term. But, in view of the proviso, which is added subsequently, if the disqualification incurred is under Section 3 (1) (b) of the Act of 1986, the elected member is disqualified for a period of 6 years from the date of disqualification.

22] Similar inference can be drawn if we examine the proviso of Section 3A of the Act of 1986 relating to the appointment on remunerative political post. Section 3A of the Act of 1986 was introduced with effect from 19.10.2006 and Section 3A (2) was introduced with effect from 16.12.2016. Section 3A of the Act of 1986 reads as under:-

[3A. Disqualification for appointment on remunerative political post.

[(1)] A councillor or, as the case may be, a member belonging to any political party, aghadi or front who is disqualified for being a councillor or, as the case may be, a member, [under clause (a) of sub-section (1) of section 3] shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such councillor or, as the case may be, a member expires or till the date on which he contests an election to a local authority and is declared elected, whichever is earlier.

[(2) A councillor or, as the case may be, a member belonging to any political party, aghadi or front, who is disqualified for being a councillor or, as the case may be, a member under clause (b) of sub-section (1) of section 3, shall also be disqualified to hold any remunerative political post for duration of the period of six years commencing from the date of his disqualification]

Explanation. - For the purpose of this section, the expression "remunerative political post" means any office, -

(i) under the State Government where the salary or remuneration for such office is paid out of the public revenue of the State Government or Consolidated Fund of the State; or

(ii) under a body, whether Incorporated or not, which is wholly or partially owned by the State Government and the salary or remuneration for such office is paid by such body; or

(iii) under a local authority, where the salary or remuneration for such office is paid by the local authority out of such local authority's fund, except where such salary or remuneration paid is compensatory in nature]

23] Section 3A (1) of the Act of 1986 deals with elected member, who is disqualified for being a elected member, under clause (a) of sub-section (1) of Section 3 of the Act of 1986, and provides that the said member also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such councillor or, as the case may be, a member expires or till the date on which he contests an election to a local authority and is declared elected, whichever is earlier. Thus, an elected member disqualified under Section 3 (1) (a) of the Act of 1986, is also disqualified to hold remunerative post under Section 3A (1) of the Act of 1986 and the disqualification to hold remunerative post is only till the end of the term or till he contest elections to a local authority and is declared elected, whichever is earlier.

24] Section 3A clause (2) is relatable to Section 3

(1) (b) wherein it is provided that if an elected member or a member belonging to any political party, aghadi or front, who is disqualified for being an elected member under clause (b) of sub-section (1) of section 3, shall also be disqualified to hold any remunerative political post for duration of the period of six years commencing from the date of his disqualification.

25] Thus, from the above it is clear that a person disqualified under Section 3 (1) (a) would also suffer disqualification under Section 3A (1) for the remainder of the term whereas a person disqualified under Section 3 (1) (b) would further suffer disqualification under Section 3A (2) for duration of the period of six years commencing from the date of his disqualification.

26] The submission of the Government Pleader that the disqualification would be for a period of 6 years from the date of order of the authorities even if the disqualification is under Section 3 (1) (a) of the Act of 1986, on account of the word 'or' is not sustainable as the proviso to Section 3 (1) imposes further disqualification for the period of six years only in cases covered under Section 3 (1) (b) of the Act of 1986.

27] Thus, on the basis of proved facts before the authorities, in the instant case, the petitioners stand disqualified under Section 3 (1) (a) of the Act of 1986, and the disqualification cannot be beyond term of the Municipal Council.

28] Thus, the impugned orders are upheld only to the extent of disqualifying the petitioners to the term of the Municipal Council to which they were elected. The directions issued in the impugned orders disqualifying the petitioners beyond the period of the term of the Municipal Council to which the petitioners were elected [i.e. from 28th November, 2016 to 29th December, 2021] is set aside.

29] The Writ Petitions are partly allowed in above terms.