
(2009) 01 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 696 of 2008

Vandana Prabhakar Damedhar

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 2, 3, 3(1), 4, 5

Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 3(1), 6, 7, 8

Citation : (2009) 4 BomCR 888 : (2009) 2 MhLj 483

Hon'ble Judges : Bhatia J.H., J

Bench : Single Bench

Advocate : A.M. Gordey, for the Appellant; Thakre, A.G.P. for Respondent No. 1, N.R. Saboo and P.C. Madkholkar, for the Respondent

Judgement

Bhatia J.H., J.—Rule. Rule is made returnable forthwith. With consent of the parties, the matter is taken for final hearing immediately.

2. Heard the learned Counsel for the parties and perused the relevant documents.

3. To state in brief, admitted facts are that the petitioner was the member of Indian National Congress (I) and as a candidate of that party, she was elected as member of the Municipal Council, Shendurjanaghat. The election for the post of the President of Municipal Council was scheduled to be held on 17/12/2006. Respondent No. 3 was also one of the Municipal Councillor, who was elected as the candidate of Indian National Congress. A meeting was held on 17/12/2006 in which all the new elected members of the Municipal Council from Indian National Congress were present along with some other political leaders of the party from the districts. According to the complaint lodged by respondent No. 3 with the Collector under the provisions of the Maharashtra Local Authority Members Disqualification Act, 1987 (hereinafter referred to as the Act), in that meeting it was unanimously resolved to sponsor one Mr. Surendra Ande, as candidate of Indian National Congress Party, who was also elected as a Municipal Councillor,

for the post of President of Municipal Council. As per the said resolution one Mr. Virendra Jagtap, who was President of District Congress Party, Amravati (Rural) issued a whip or direction to all the elected members of that party to vote in favour of Surendra Ande for the post of President. When the meeting was held for the election for the post of President of the Municipal Council, there were in all three candidates. Out of them, one candidate withdrew and the actual election was held between the two candidates, one was Mr. Surendra Ande and another candidate was sponsored by Shivsena party. Members of Municipal Council were required to vote by raising their hands in favour of respective candidates. Eight members voted in favour of Surendra Ande and nine members including the present petitioner voted for Mr. Pintu @ Prashand Sawarkar - a candidate of Shivsena and he was elected. The petitioner, who was elected as candidate of congress party, did not vote for the candidate of her own party and voted for the candidate of the opposite party, due to which Surendra Ande was defeated. According to respondent No. 3 the petitioner had voted in breach of the whip and thus she had incurred disqualification under the Act. On his complaint, which was registered as Petition No. 9/2006, the Collector held the enquiry and after recording the evidence led by the concerned parties, the Collector declared the petitioner as disqualified for the post of Municipal Councillor as per Section 3 of the Act. That order has been challenged in the present petition by the petitioner.

4. Section 3 of the Act reads as follows-

3.(1) Subject to the provisions of Sections 4 and 5, a Councillor or a member belonging 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 aghadi or front; or

(b) if he votes or abstains from voting in any meeting of the Municipal Corporation, Municipal Council, Zilla Parishad, 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, 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 Samities Act, 1961 shall not be condoned under this clause.

5. Section 2(i) defines Municipal party as follows-

(i) "Municipal party", in relation to the Councillor belonging to any political party or aghadi or front in accordance with the Explanation to section, means-

(i) in the case of a Councillor of a Municipal Corporation, the group consisting of all the Councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said explanation,

(ii) in the case of a Councillor of a Municipal Council, the group consisting of all the Councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation.

6. A person who is elected as a member of the Municipal Council as a candidate of a particular political party becomes a member of Municipal party. We are not concerned in this matter with the constitution of aghadi or front for the purpose of deciding this matter. As per the provisions of Section 3(1)(b), if a member of a Municipal Council votes or abstains from voting in any meeting of a Municipal Council 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 aghadi in this behalf, without obtaining prior permission of the political party or aghadi or front or person or authority and if such voting or abstention has not been condoned such member shall be disqualified from being a councillor.

7. In *Sadashiv H. Patil Vs. Vithal D. Teke and Others*, the Supreme Court was dealing with the matter pertaining to disqualification as member of Zilla Parishad. Their Lordships observed as follows-

8. The disqualification with which we are concerned is contemplated by Clause (b) of Sub-section (1) of Section 3 of the Act. Voting or abstaining from voting in any meeting of the Municipal Council may entail disqualification, if: 1) such voting or abstention is contrary to any direction issued by (a) the political party or aghadi or front to which he belongs, or (b) by any person or authority authorised by the political party or aghadi or front in this behalf; 2) such voting or abstention is not accompanied by a prior permission of such political party or aghadi or front or person or authority having been obtained previously or condoned subsequently within 15 days from the date of such voting or abstention. Condoning is not permissible if such voting or abstention is not preceded by prior permission and is relating to election of any office, authority or committee under the relevant Municipal Law. Thus, the power to issue a direction, popularly called a whip, in order to attract penalty of disqualification has to be issued either by the political party or by aghadi or front to which the Councillor belongs. The political party or by aghadi or front may act collectively or may act through any person or authority. In the later case the person or authority must be, authorised by the political party or aghadi or front in this behalf, i.e., for issuing any direction (whip). If the political party, aghadi or front has any rules or regulations whether known as such or a constitution or called by any other name then the authorisation of the person or authority can be determined by looking into such document which would be available on the record of the Collector having been filed as accompanying the statement in Form I, under Rule 3(1), else the factum of such authorisation in this behalf having been given to the person or authority issuing the direction or whip shall have to

be proved to the satisfaction of the Collector dealing with a reference u/s 7 read with Rules 6, 7 and 8.

8. In the present matter, after hearing the evidence led by the concerned parties, the Collector came to the conclusion that all the elected members of the congress party were present in the meeting in which it was resolved to sponsor Surendra Ande as a candidate of the party for the post of President of the Municipal Council and in view of that decision Virendra Jagtap - the President of the District Congress Committee (Rural) had issued the whip or direction. During the argument before this Court, the learned Counsel for the parties in this matter conceded that the Collector had not discussed the evidence nor he had come to specific finding that Virendra Jagtap was authorised by the concerned political party to issue the whip or direction. In view of the legal provisions as interpreted by the Supreme Court in absence of such evidence or appreciation of such evidence, the Collector could not hold that the whip issued by Virendra Jagtap was valid or binding on all the members of that party. The concerned parties have already led sufficient evidence before the Collector but the Collector has not discussed the same. The learned Counsel conceded that no more evidence is required on this point and matter needs to be argued and the Collector has to come to conclusion whether Virendra Jagtap was or was not duly authorised to issue the whip. The Collector has not dealt with that aspect of the matter. It would not be proper for this Court to reach to any conclusion by appreciating the evidence for the first time. It will be in the interest of justice that the matter should be remanded back to the Collector to consider this question afresh and give a finding.

9. In view of the above, the writ petition is allowed.

The impugned order passed by the Collector, Amravati is hereby set aside and the matter is remanded back to the Collector for fresh decision after hearing the party in the light of the observations made above. The parties shall appear before the Collector on 2/2/2009 and the Collector may fix a date for hearing them. In any case the matter shall be heard and disposed of by the end of February, 2009.

Rule made absolute accordingly.