

(2004) 01 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 4962 of 2003

Vidyadhar Vinayak Mathane

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 16(1), 44(1)
Representation of the People Act, 1951 — Section 10A

Citation : (2004) 3 ALLMR 285 : (2004) 3 MhLj 328

Hon'ble Judges : J.N. Patel, J;B.R. Gavai, J

Bench : Division Bench

Advocate : A.B. Choudhary, for the Appellant; S.S. Wandile, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, J.—Rule returnable forthwith. Heard learned Counsel for the parties.

2. The petitioner was elected as Councillor (on the ticket of Shiv Sena) of Municipal Council, Pulgaon from Prabhag No. 5-C which is reserved for Other Backward Class in the election which was held on 9-12-2001. Prior to this, the petitioner had contested an election of Member of Legislative Assembly from Deoli-Pulgaon constituency in the General Elections to the Assembly held on 6-9-1999. In the said General Election, the petitioner was served with a show-cause notice during the course of the said election by the Election Commission of India vide dated 28-6-2000 and as per the notice he was required to file a statement of correct account of election expenses with necessary details and documents to the District Election Officer-cum-Collector, Wardha and upon failure thereof to do so, he was put on notice that he- will be liable to be disqualified u/s 10-A of the Representation of People Act, 1951 for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of the State or Union Territory for a period of three years from the date of order of

Commission declaring him to be so disqualified. It is undisputed that in spite of receipt of show-cause notice the petitioner did not comply with the said requirement and, therefore, the Election Commission of India by order No. 76/MTLA/99/4783 dated 7-6-2001 disqualified the petitioner for a period of three years.

3. On the basis of this disqualification by the Election Commission of India Communicated to the petitioner under a covering letter dated 4-8-2001 by the Collector, Wardha, it was ordered that the petitioner is disabled from continuing to be a Councillor of Pulgaon, Municipal Council and his office has become vacant. This order dated 28-10-2003 passed by Collector, Wardha in exercise of his powers vested u/s 44 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter to be referred to as "the Act" for short) was challenged in appeal which was dismissed by order dated 21-11-2003 by order dated 21-11-2003 by the State Government upholding the order dated 28-10-2003 of Collector, Wardha which is the subject matter of challenge before this Court.

4. Mr. A. B. Choudhary, the learned Counsel for the petitioner, submitted that the order disqualifying the petitioner from contesting any election for a period of three years is in respect of being a member of either House of Parliament or of Assembly or Council of State or Union territory and this would not come in the way of the petitioner to contest any election relating to local bodies including Municipal Council, Pulgaon and, therefore, the order on the face of record is bad in law.

5. It is further contended by Mr. Choudhary that the order is purported to be made by the Collector in exercise of powers vested in him u/s 44 of the said Act which is not permissible as such a disqualification was not incurred by the petitioner during his term of office and, therefore, the impugned order deserves to be quashed and set aside.

6. On the other hand, the learned Assistant Government Pleader submitted that it was well within the powers of the Collector to have disqualified the petitioner from holding the office of Councillor as he was disqualified under the Representations of People Act by the Election Commission for the purpose of elections to the Legislature of the State. The learned A.G.P. has placed reliance on Section 16(1) of the Act which reads thus:--

(1) No person shall be qualified to become a Councillor whether by election, or nomination, who --

(a-1) has been so disqualified by or under any law, --

(i) for the time being in force for the purpose of elections to the Legislature of the State."

and contended that in spite of these facts, the petitioner contested and won the

elections. The learned A.G.P. contended that as per Section 44(1)(b) of the Act, one who is subject to any of the disqualifications specified in Section 16, except some of the disqualification like age limit, shall be disabled from continuing to be a Councillor and his office shall become Vacant. The learned A.G.P. further submits that Section 44(3) is the enabling provision that vests the authority to decide these cases with the Collector. The learned A.G.P. submitted that it is admitted fact that the petitioner is disqualified for being chosen as and for being member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory. That being the case, Section 16(l)(a-l)(i) of the Act disqualifies him from becoming a Councillor. If he is disqualified u/s 16, Section 44(1)(a) of the Act disables him from continuing to be a Councillor. Section 44(3) gives jurisdiction to the Collector to decide these cases and the case was decided accordingly. The learned A.G.P. has also placed reliance on the decision of this Court rendered in the case of Dattatraya Narhar Pitale v. Vibhakar Dinkar Gokhale and Anr. reported in 1975 M.L.J. 701.

7. Mr. A. B. Choudhary, the learned Counsel for the petitioner, submitted that the ratio of the decision rendered by the Full Bench of this Court in the case of Dattatraya Pitale would not apply to the facts of the present case and the same can be distinguished on the ground that the disqualification for which the petitioner could have been removed should be incurred during his term of office. According to him, in case the petitioner has to be divested of his office of Councillor, the only remedy available was by way of an Election Petition.

8. We need not go into the various aspects of the matter and even examine as to whether the decision rendered by the Full Bench of this Court in the case of Dattatraya Pitale comes to the aid of the respondent. The Explanation to Section 44 of the said Act of 1965 provides as under :--

"Explanation :-- if any elected or nominated Councillor were subject to any disqualification specified in Section 16, at the time of his election, or nomination and continues to be so disqualified, the disqualification shall, for the purposes of this section, be deemed to have been incurred during the term for which he is elected or nominated."

Therefore, it is crystal clear that the Collector was competent to take cognizance of the fact that the petitioner was elected as a Councillor in spite of being disqualified by the Election Commission to contest any election u/s 10-A of the Representation of People Act for being a member of either House of Parliament or Legislative Assembly or Legislative Council of the State or Union Territory for a period of three years from the date of order of Commission declaring him to be so disqualified which was by order dated 7-6-2001 and communicated to the petitioner under a covering letter dated 4-8-2001 by the Collector, Wardha and the petitioner having contested the election to the post of Councillor of Municipal Council, Pulgaon which took place on 9-12-2001 and obviously, it was during the period he was debarred from holding such a post.

9. Therefore, we do not find that there is any merit in the petition. The petition stands dismissed with costs. Rule is discharged.