
(2023) 01 BOM CK 0055

Bombay High Court

Case No: Writ Petition No. 6852 Of 2022

Hanif Musa Kazi

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Jan. 9, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Maharashtra Municipal Councils, Nagar Panchayats And Industrial Township Act, 1965 - Section 16(1)(1B), 16(1)(1B)(a), 16(1)(1C)(a), 16(1)(1C)(b), 16(1)(1C), 44

Citation: (2023) 01 BOM CK 0055

Hon'ble Judges: R. D. Dhanuka, J; M.M.Sathaye, J

Bench: Division Bench

Advocate: Chintamani K. Bhangoji, Hamid Mulla, A.I. Pate, M.S. Bane, Shashank C. Mangle

Final Decision: Dismissed

Judgement

M.M.Sathaye, J

1. Rule. The learned AGP waives service for Respondent Nos. 1 and 3. Adv. Mangale waives service for Resp. No. 2. Rule made returnable

forthwith. The Petition is heard finally by consent of the parties.

2. By this Petition, filed under Article 226 of the Constitution of the India, the Petitioner seeks writ of Certiorari for quashing and setting aside order

dated 25th November 2021 passed by the Respondent No. 3- Collector, Ratnagiri, exercising powers under Section 16(1)(1C)(b) and other enabling

provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (hereinafter referred to as "the said

Act, thereby disqualifying the Petitioner from being a member of Respondent No. 2 -Municipal Council or to be elected as such, from 22nd May

2017, for a period of 6 years.

3. The brief facts of the case, necessary for disposal of this Petition are as under:-

(a) The Petitioner contested the election from a reserved category and was elected as President of Respondent No. 2 Rajapur Municipal Council in

the year 2016. The Petitioner contested the said election on the claim that he belongs to Machhimar (Daldi) community and as such a member of

OBC. The Petitioner relied upon his caste certificate for the said purpose.

(b) As per the provisions of law, Petitioner's caste certificate was subjected to verification and the Scrutiny Committee on appreciation of material

before it, invalidated the claim of the Petitioner.

(c) Being aggrieved by the invalidation, the Petitioner filed Writ Petition in this Court. This Court remitted the matter back to Scrutiny Committee for

reconsideration. The scrutiny Committee in its second round too, maintained earlier decision thereby invalidating the caste claim of the Petitioner. The

Petitioner, thereafter, again filed a Writ Petition bearing No. 614 of 2018 and same was dismissed by order dated 16th January 2018.

(d) It appears that the Petitioner carried the matter to the Supreme Court by filing Special Leave Petition, however, the same was also dismissed.

Having lost the caste claim upto the Supreme Court, the Petitioner resigned on 26th February 2018. As the seat of Respondent No. 2 fell vacant, the

State Election Commission conducted by-election and one Shri Jamir Khalife was declared as successful candidate.

(e) In view of the fact that the Petitioner's caste claim was found false, the necessary action for his disqualification was initiated. By the

impugned order dated 25th November 2021, Respondent No. 3- Collector, Ratnagiri passed the impugned order, as above stated.

4. Heard learned Counsel Mr. Chintamani Bhangoji for the Petitioner and Mr. A.P. Patel, learned Additional Government Pleader for Respondent

Nos. 1 and 3 i.e State of Maharashtra and Collector, Ratnagiri and Adv. Shashank Mangle for Respondent No. 2-Rajapur Municipal Council. Perused

the record.

5. It is argued on behalf of the Petitioner that the impugned order could not have been passed by the Collector without first passing an order thereby

disqualifying the Petitioner for remaining term. It is further argued that the disqualification for 6 years is different from the disqualification from the

remaining term of office. Learned Counsel for the Petitioner invited our attention to the provisions of Section 16(1)(1C)(b) and Section 44 of the said

Act, and argued that the opportunity available to the Petitioner to challenge the order passed under Section 44 of the said Act, cannot be taken away

and directly an order disqualifying the Petitioner for 6 years can not be passed in the facts of the case.

6. Learned Counsel invited our attention to the communication dated 5th February 2020 made by Desk Officer of Respondent No. 1 to Respondent

No. 3-Collector, Ratnagiri (Exh-F / page 37 of the Petition). It is argued that by the said communication, the Desk Officer had infact requested the

Collector to first complete the process of cancelling membership of Petitioner by giving retrospective effect and then send proposal for

Petitioner's disqualification for 6 years, since his caste certificate is invalidated, as per Section 16(1)(1C)(b) of the said Act.

7. Learned Counsel for Petitioner suggested an interpretation of this communication dated 5th February 2020, to mean that unless the direction given

in para 2(a) of the said communication is followed, direction in para 2(b) thereof, cannot be given effect to, and therefore, the Respondent No. 3 was

in error and has acted beyond his jurisdiction to pass the impugned Order.

8. On the other hand, Mr. Patel, learned Additional Government Pleader, contended that the Collector is an "Authority" as provided in Section

16(1)(1B) of the said Act and a conjoint reading of Sections 16(1)(1B), 16(1)(1C) and 44 of the said Act, will show that the Collector is well

empowered to decide and pass an order disqualifying the Petitioner for 6 years, since his caste claim is found false and is invalidated. So far as

communication dated 5th February 2020 is concerned, Mr. Patel contended that the Collector has followed the direction given by the Desk Officer

within four corners of law and has passed impugned Order within his power, keeping in view Section 16(1)(1B)(a) and Section 44 of the said Act.

9. Mr. Patel also invited our attention to the affidavit in reply filed by Collector Ratnagiri affirmed dated 14th July 2022 and annexures thereto, in

support of his case. It is submitted by the Respondent No. 3 in para nos. 3 to 7 of his affidavit that he has acted in terms of Circular dated 7th

November, 2019 issued by State Election Commission. He stated that in response to letter dated 13th January, 2020 issued by his office, instructions

were received under aforesaid communication dated 5th February, 2020 (Exhibit A) and thereafter, impugned Order dated 25th November,

2021 was passed and simultaneously by a letter on the same date, the matter was submitted to State Government for further necessary action.

10. We have heard the matter at length. We have perused Section 16(1)(1B), 16(1)(1C) & 44 of the said Act. Upon raising a specific query to the

learned Counsel for the Petitioner as to under which Section, according to him, Respondent No. 3-Collector was supposed to follow the instructions of

Desk Officer as per communication dated 5th February 2020 (Exhibit A), learned Counsel for the Petitioner fairly submitted that the Collector

was to act under Section 44 of the said Act for actions required under the said communication. In our view even otherwise on conjoint reading of all

these sections, clearly suggest that the Collector is the authority mentioned in section 16(1)(1B) to pass order under Section 44 of the said Act.

Provisions regarding disqualification for 6 years is given in Section 16(1)(1C)(b) of the said Act. It is, therefore, clear that the impugned order is

passed by Respondent No. 3-Collector exercising powers, also under Section 44 of the said Act and therefore, the impugned Order does not suffer

from any infirmity.

11. The interpretation suggested by learned Counsel for the Petitioner of communication dated 5th February 2020 cannot be accepted, in view of the

last line of the said communication which reads thus :

“hence, after the aforesaid action/process is completed, submit a proposal for disqualification.”

It is important to note that the aforesaid actions as meant in the said communication, included both actions stated in clause 2(a) and 2(b) thereof.

12. Learned Counsel for the Petitioner has relied upon the Order passed by this Court in Writ Petition (L) No. 20389 of 2021 dated 17th December

2021 (Sagun Vsant Naik Vs. M.C.G.M., Mumbai & Ors) and contended that unless notification is issued, it cannot be said that the Petitioner is

disqualified to contest the elections for a period of 6 years. Per contra, Mr. Patel, relied upon Judgment of this Court in case of Jagannath Vs. State of

Maharashtra, reported in 2007(2) Mh. L.J. 260, in which Section 16(1)(1C)(a) & (b) were directly involved. In our view, Mr. Patel is right in his

submission that the act of issuance of a notification in the official gazette by the Government under the provisions of section 16(1)(1C)(b) of the said

Act is merely a ministerial act and it could not be said that the Petitioner was not disqualified merely because the Government has failed to perform

the ministerial act of issuing a notification in the official gazette. On instructions, Mr. Patel submits that a notification will be issued in due course.

13. Perusal of Order in Sagun Vasant Naik’s case (supra) relied upon by the Petitioner, more particularly last para (8), shows that in that matter,

the issue of “disqualification” per se, was not considered. Also it may not be out of place to mention that in that matter, mere communication was

under challenge and not an Order passed by Collector, as is the case in hand. Needless to repeat that the present impugned Order dated 25th

November, 2021 is an Order passed by Collector Ratnagiri by exercise of his powers as already held by us, above.

14. Perusal of the Judgment in Jagannath Vs. State (supra) shows that issue of “ministerial act of notification in official gazette by State” was

directly an issue and section 16(1)(1C)(a) and (b) and section 44 of the said Act, were directly under consideration. Para 12 thereof reads thus :-

“12. The provisions of Section 16(1)(1C)(a) of the Act of 1965 start with a non-obstante clause. The aforesaid provision provides that

notwithstanding anything contained in sub- section (1B) of section 16 (1), a Councillor shall be disqualified for being a Councillor consequent upon the

Caste Certificate Verification Committee or any other competent authority declaring the caste certificate of such Councillor to be invalid and

cancelling the same on the ground that it was based on a false claim or declaration. The provision stipulates that 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. The provision further stipulates that the office of the Councillor would be automatically vacated on the

invalidation and cancellation of the caste certificate of the Councillor concerned.

Sub-clause (b) of Section 16 (1)(1C) of the Act of 1965 then

stipulates that on any person having been disqualified for being a Councillor and consequently his seat having become vacant under clause (a), the

State Government shall, by notification in the official gazette, disqualify such person for being a Councillor or being elected as a Councillor for a period

of six years from the date of such order. A reading of clauses (a) and (b) of Section 16 (1)(1C) makes it clear that there is no discretion vested in the

State Government to issue or not to issue a notification in the official gazette disqualifying such Councillor or person for being a Councillor or being

elected as a Councillor for a period of six years from the date of such order. The act of issuance of a notification in the official gazette by the

Government under the provisions of Section 16(1)(1C)(b) of the Act of 1965 is merely a ministerial act and it could not be said that the Councillor was

not disqualified for being elected for a period of six years merely because the State Government had failed to perform the ministerial act of issuing a

notification in the official gazette, disqualifying such Councillor. Thus, a combined reading of sub-clauses (a) and (b) of Section 16 (1)(1C) of the Act

of 1965 leaves no doubt that a Councillor would be disqualified for being a Councillor and for being elected as a Councillor for a period of six years

after the order is passed by the Caste Certificate Verification Committee or any other competent authority declaring the caste certificate of the

Councillor to be invalid. No sooner the Caste Certificate Verification Committee or any other competent authority passes an order cancelling the caste

certificate of the Councillor than the Councillor is deemed to have vacated his office and is further disqualified for being a Councillor or being elected

as a Councillor for a period of six years from the date of such order. The 2nd Adhoc Additional District Judge was, therefore, not justified in holding

that the respondent No.5 could not have been held to be disqualified for being a Councillor or for being elected as a Councillor for a period of six

years, in the absence of issuance of a notification by the Government in the official gazette under the provisions of Section 16(1)(1C)(b) of the Act of

1965.

15. We agree with the above view taken by learned single Judge of this Court and, therefore, when the Petitioner's cast claim is found false, the

disqualification for 6 years has to follow, and notification in the official gazette is mere ministerial act.

16. This brings us to the last argument of Petitioner. Learned Counsel made an attempt to distinguish the Judgment of Jagannath Vs. State (supra) on

the ground that, there, an Order was passed by Collector and in the present case, there is no Order under Section 44 of the said Act and therefore

Petitioner's opportunity to challenge an order u/s. 44 is lost. There is no merit in this submission. Since the impugned order itself is an order passed

by the Respondent No. 3-Collector, under Section 44 of the said Act, therefore, no opportunity is lost as canvassed by the Petitioner. State

Government only performs ministerial act when it publishes the notification.

17. No other argument was advanced by the Petitioner. In view of the aforesaid, there is no merit in the Petition and same is dismissed. Rule is

discharged. No order as to costs.