

ITEM NO.8

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).26984/2010

(From the judgement and order dated 01/09/2010 in LPA No. 152/2010 in WP No. 3875/2009 of The HIGH COURT OF BOMBAY AT AURANGABAD)

JITENDRA HIMMAT BIRARIS

Petitioner(s)

VERSUS

KIRAN &amp; ANR

Respondent(s)

(With appln(s) for and prayer for interim relief)

WITH

SLP(C) NO.26995 of 2010

(With appln.(s) for interim relief and vacating interim relief and prayer for interim relief and office report)

(For final disposal)

SLP(C) NO.27052 of 2010

(With appln.(s) for interim relief and vacating interim relief and prayer for interim relief and office report)

(For final disposal)

SLP(C) NO.27061 of 2010

(With appln.(s) for interim relief and vacating interim relief and prayer for interim relief and office report)

(For final disposal)

SLP(C) NO.27075 of 2010

(With appln.(s) for interim relief and vacating interim relief and prayer for interim relief and office report)

(For final disposal)

SLP(C) NO.29560 of 2010

(With prayer for interim relief and office report)

(For final disposal)

Date: 24/05/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

(VACATION BENCH)

For Petitioner(s)

Mr. Jayant Bhushan, Sr. Adv.

Mr. Sudhanshu S. Choudhari, Adv.

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Mr. Pralhad Bchale, Adv.

Mr. Satyajit A. Desai, Adv.

Ms. Anagha S. Desai, A.O.R.(Not Present)

For Respondent(s)

Mr. P.M. Shah, Sr. Adv.

Mr. Amol Sawant, Adv.

Mr. Nishant Ramakantrao Katneshwarkar, Adv.

Mr. Shashibhushan P. Adgaonkar, Adv.

Mr. Ashok Kumar Gupta, Adv.

Ms. Asha Gopalan Nair, Adv.

UPON hearing counsel the Court made the following  
O R D E R

These petitions are directed against the judgment of the Division Bench of the Bombay High Court, Aurangabad Bench whereby the Letters Patent Appeals filed by the petitioners questioning the correctness of the order passed by the learned Single Judge negating their challenge to the orders of Collector, Dhule and Collector, Jalna, who rejected the objections filed by the petitioners to the maintainability of the petitions filed by the private respondents under the Maharashtra Local Authority Members Disqualification Act, 1986 (for short, 'the Act') read with the Maharashtra Local Authority Members Disqualification Rules, 1987 (for short, 'the Rules') were dismissed.

We have heard Shri Jayant Bhushan, learned  
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senior counsel appearing for the petitioners and Shri P.M. Shah, learned senior counsel appearing for the contesting respondents at considerable length and perused the record. We have also gone through the judgments relied upon by learned counsel for the parties.

In our view, the impugned judgment as also the order passed by the learned Single Judge refusing to entertain the petitioners' challenge to the orders passed by Collector, Dhule and Collector, Jalna are based on correct interpretation of the relevant statutory provisions and the same does not call for interference by this Court.

The question whether Rules 6 and 7 of the Rules are mandatory or directory is no longer res integra. In Kedar Shashikant Deshpande etc.etc. Versus

Bhor Municipal Council and others etc.etc. (2010) 13

SCALE 289, the two Judge Bench analysed the provisions of the Act and the Rules, referred to various precedents including the judgment in Dr. Mahachandra Prasad Singh versus Chairman, Bihar Legislative Council (2004) 8 SCC 747 and observed:

"In the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and Others (2004) 8 SCC 747, while interpreting the provisions of Schedule X of the Constitution, in a petition

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involving the issue of disqualification of a Member of Legislative Council belonging to the Indian National Congress under the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994, this Court has considered the question whether infraction of those Rules would render the entire proceedings initiated by the Chairman invalid or without jurisdiction. After examining the scheme of the Rules, this Court has held that the Rules being in the domain of the procedure are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. It is, further, held by this Court that being subordinate legislation, the rules cannot make any provision which may have the effect of curtailing the content and scope of substantive provisions of the Act. It is also held in the said decision that the provisions of Rules 6 and 7 of the Rules of 1994 are only directory in nature and on non-filing of an affidavit as required under sub-rule 4 and order VI, Rule 15 CPC, the disqualification petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis would be adversely affected or rendered bad in any manner. It may be mentioned that the Maharashtra Local Authority Members (Disqualification Rules) 1987 are pari-materia with the Bihar Legislative Council (Disqualification on the Ground of defection) Rules 1994 and, therefore, the principles laid down in the abovequoted decision would be applicable with all force to the interpretation to be placed on the Rules of 1987. In the above quoted decision this Court has gone to the extent of saying that there is no lis between the person moving the petition and the member of the House who is alleged to have incurred disqualification. According to this Court it is not an adversarial kind of litigation and, therefore, even if the petitioner withdraws the petition it

will not make a difference as the duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provisions. This Court has held that the provisions of Xth Schedule of the Constitution read with Articles 102(2) and 191(2) operate on their own and the only purpose of the petition is to bring the relevant information about disqualification to the notice of the Chairman. In the present case also Section 7 lays down that the Collector has to decide the question of disqualification on a reference made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1)(a) and 3(1)(b) operate on their own force and moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law."

In view of the proposition of law laid down in the aforesaid judgment, it must be held that the learned Single Judge and the Division Bench of the High Court did not commit any error by deciding the writ petitions and the Letters Patent Appeals on the premise that Rules 6 and 7 of the Rules are directory and non-compliance thereof is not fatal to the maintainability of the petitions filed by the private respondents.

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The judgments of this Court in *Sadashiv H. Patel versus Vithal D. Teka and others* (2000) 8 SCC 82, *M. Karunanidhi versus Dr. H.V. Hande and another* (1983) 2 SCC 473 and *Balchandra L. Jarkiholi and others versus B.S. Yeddyurappa and others* [in Civil Appeal Nos.4444-4476 of 2011] on which reliance has been placed by *Shri Jayant Bhushan* do not have bearing on the interpretation of Rules 6 and 7 of the 1987 Rules.

We are further of the view that the Collectors of the two districts had rightly ruled that the petitions filed by the private respondents for disqualification of the petitioners were duly verified and absence of signatures on the exhibits was not such a defect which could justify outright dismissal thereof.

The special leave petitions are accordingly dismissed.

Interim order passed by this Court stand automatically vacated.

Collector, Dhule and Collector, Jalna are directed to dispose of the pending petitions within two weeks from the date of communication of this order.

The Registry is directed to communicate this order to Collector, Dhule (Maharashtra) and Collector, Jalna (Maharashtra) by fax.

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(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master