
(2005) 10 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 4478 of 2005

Abdul Latif Khatri

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 19(1AA)
Leader of Opposition in Maharashtra Legislature Salaries and Allowances Act, 1978 — Section 2
Members Disqualification Act — Section 3, 3(1), 4, 4(1), 4(1)(B)
Salaries and Allowances of Leaders of Opposition of Parliament Act, 1977 — Section 2

Citation : (2006) 1 ALLMR 768 : (2006) 1 MhLj 786

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Advocate : Rajeev Madkholkar, S.A. Gordey and A.P. Tathod, for the Appellant; Bharti Dangre, A.G.P. for respondent No. 1, A.M. Ghare and N.R. Borkar, for the Respondent

Judgement

D.D. Sinha, J.—Rule. Rule made returnable forthwith by consent of parties.

2. Heard Mr. Gordey, learned counsel for the petitioner, Mrs. Dangre, learned A.G.P., for respondent No. 1, Mr. Ghare, learned counsel for respondent No. 2, Mr. Borkar learned counsel for respondent No. 3 and Mr. Madkholkar learned counsel for intervenor.

3. The facts which are relevant for adjudication are as under :-

The petitioner has been recognized by respondent No. 3 as Leader of Opposition of Akola Municipal Corporation in the year 2003. This decision was challenged by Vishnu Shivram Mehre by filing Writ Petition No. 3418 of 2003 in this Court. This Court decided the said writ petition vide judgment dated 8-12-2003 reported in 2003(5) Mh.L.J. 522 2004(3) All MR 151. The issues involved in the said writ petition are reflected in para 30 of the judgment which reads thus -

(A) Whether u/s 19-1AA, the Mayor has a power to recognise an elected

councillor, who is, for the time being Leader of the Party in opposition having next highest numerical strength in the event of refusal by an elected councillor who is for the time being the Leader of the Party in opposition, having greatest numerical strength?

(B) Whether from the time of split in the INC/Congress (I) such faction or break-away group [consisting of five elected councillors] can be deemed to be the political party to which they belong for the purpose of Sub-section (1) of Section 3 and to be their original political party as contemplated in the Section 4(i)(h)(b) of the Member's Disqualification Act?

4. In the instant case, we are not much concerned about issue (A), however so far as issue (B) is concerned, the Division Bench has observed thus :

The next issue revolves around the interpretation of Section 4(1)(B)(b) of the Member's Disqualification Act. It lays down in case of split, the ground of disqualification mentioned in Section 3 of the said Act shall not apply; if the councillor, or as the case may be, a member makes claim that he and any other member of the municipal party constitutes group representing a faction which has arisen as a result of split in his original party or aghadi or front and where the total strength of the councillors or, as the case may be, members (a) does not exceed 20 and such group consists of one-half or; (b) exceed 20 and such group consists of one-third of the councillors of such municipal party, then such councillor or councillors or member or members shall not be disqualified under Sub-section (1) of Section 3 of the grounds mentioned in Sub-clauses (i) and (ii) of Clause (a) of Sub-section (1) of Section 4 of the Member's Disqualification Act. Clause (B)(b) of Sub-section (1) of Section 4 further prescribes that from the time of such split such faction shall be deemed to be a political party or aghadi or front to which it belongs for the purposes of Sub-section (1) of section (3) and such faction shall be treated as his original political party or aghadi or front for the purposes of Section 4. In other words, if the break-away group representing a faction answering qualifications laid down in Section 4(1)(B) which has arisen due to split in the original party then u/s 4(1)(B)(b) such faction or the group shall be deemed to be a political party or aghadi or front and shall be recognized as original political party for the purposes of Section 3(1) of the Member's Disqualification Act. This deeming fiction created by Section 4(1)(B)(b) will have to be assigned its logical meaning. Any other interpretation will defeat the very purpose and philosophy of the legislation, namely. Member's Disqualification Act. In this view of the matter, the contention advanced by Mr. Lohiya that five members of Indian National Congress, who have formed separate group, are still deemed to be the members of the Indian National Congress for all purposes of Bombay Provincial Municipal Corporation Act is devoid of any substance and the same is, therefore, rejected.

5. The Division Bench in Vishnu Shivram's case, supra, in view of the above referred legal position in para 58 observed thus :

As already found by us while dealing with the preliminary objection raised by the respondent No. 3/caveator as to who should be recognized as Leader of Opposition is a question in the political thicket. We recorded our finding that the wisdom of Mayor/Mayor is beyond judicial review and, consequently, the same is not justiciable, however, having heard the parties at length and considering clear-cut provision in explanation appended to Section 19-1AA of the Bombay Provincial Corporation Act, we may also observe that the said provision is pan materia with the explanation appended to Section 2 of the Leader of Opposition in Maharashtra Legislature Salaries and Allowances Act, 1978 and that of explanation to Section 2 of the Salaries and Allowances of Leaders of Opposition of Parliament Act, 1977 which specifically makes it clear that the recognition of the Leader of Opposition by Mayor is final and conclusive. Similar provision is also to be found in the legislation governing the salaries of the Leader of Opposition of the House of Commons in a statute known as the Ministerial and Other Salaries Act, 1975. In that legislation, the Speaker's decision on the identity of Leader of Opposition is made final and conclusive. In this view of the matter, considering the well recognized parliamentary practice, no further legal debate on this issue, in our opinion, is permissible." The Division Bench finally dismissed the writ petition and discharged the Rule.

6. In the instant case, when the petitioner was recognized as Leader of Opposition by the Mayor, the five Corporators belonging to Indian National Congress had defected from the party and this defected group was recognized as a separate political party of Aghadi or front and was also recognized as original political party for the purpose of Section 3(1) of the Member's Disqualification Act. It is in such a situation, the total strength of Corporators of Indian National Congress had gone down to four from nine and, therefore, the Indian National Congress did not remain the Opposition Party having largest numerical strength and therefore it was necessary for the Mayor to recognise Leader of another Opposition Party having highest numerical strength. Since the Nagar Vikas Front and Bharip Bahujaan Mahasangh did not stake claim, the Mayor recognized the petitioner belonging to Muslim League Party having five Corporators, as leader of Opposition.

7. At the later point of time, in the month of March, 2005, it appears that the defected group of five Corporators of Indian National Congress again decided to join the Indian National Congress. On 1-3-2005 a letter/representation is submitted by the Corporators of Indian National Congress to the mayor of Akola Municipal Corporation, Akola. This representation/letter was signed by all the nine Corporators of Indian National Congress and the Mayor was requested to recognise Leader of Opposition from their party since the Indian National Congress again gathered the strength of nine Corporations and was the largest opposition party. It is not in dispute that before the Mayor could give decision on this representation, three Corporators of Indian National Congress Party those who were alleged to have signed the letter dated 1-3-2005, disputed their signatures on the aforesaid letter and, therefore, the Mayor vide order dated

20-4-2005 rejected the representation/letter dated 1-3-2005 and confirmed the recognition of the petitioner as Leader of Opposition.

8. Once again, on 4-8-2005 the nine Corporators of Indian National Congress submitted an application/representation to the Mayor with the request that Indian National Congress is the largest opposition party and therefore their leader must be recognised as Leader of Opposition. It appears that since the Mayor did not consider the representation/letter dated 4-8-2005 submitted by the nine Corporators of Indian National Congress, the State Government vide letter dated 8-8-2005 directed the Mayor of Akola Municipal Corporation to consider the representation dated 4-8-2005 as per Section 19-1AA of the Bombay Provincial Corporation Act. In spite of this letter, the Mayor failed to consider the letter/representation dated 4-8-2005 and, therefore, once again a letter/representation dated 11-8-2005 was submitted by nine Corporators of Indian National Congress making a request to consider the Leader of Opposition their party, being the largest opposition party. It appears that the Mayor failed to consider even this representation dated 11-8-2005 submitted by the nine Corporators of Indian National Congress and therefore the State Government issued the impugned communication dated 26-8-2005 whereby the Mayor was asked to consider the representation dated 11-8-2005 submitted by the nine corporators of Indian National Congress in the light of the above referred factual aspect and as per the provision of Section 19-1AA of the Bombay Provincial Municipal Corporation Act and was further directed to elect the Leader of Opposition of Indian National Congress in the Akola Municipal Corporation and also to consider the amendment dated 1-1-2004 to the Constitution of India.

9. It is not in dispute that to consider as to who should be the leader of opposition is the job of the Mayor and it is he alone who is entitled to consider this aspect in the light of provisions of Section 19-1AA of the Bombay Provincial Corporation Act and the State Government, in our view, cannot issue direction to the Mayor to elect or recognise a particular councillor belonging to a particular opposition party. Under the provisions of the Act, the Mayor has to recognise Leader of Opposition only on the basis of the numerical strength of the party in opposition. It is, therefore, evident that the jurisdiction to elect Leader of Opposition vests in the Mayor alone and, therefore, the direction issued by the State Government in the impugned communication dated 26-8-2005 to elect the Leader of Opposition from Indian National Congress, in our view, is not sustainable in law. It is not in dispute that so far as the amendment to the Xth Schedule to the Constitution, which came into force on 1-1-2004, does not have any application so far as the present issue is concerned.

10. In view of the above referred facts and circumstances, we direct the Mayor of Akola Municipal Corporation to consider the letter/representation dated 11-8-2005 submitted by the nine Corporators of Indian National Congress as per the provisions of Section 19-1AA of the Bombay Provincial Corporation Act and take a decision in this regard as early as possible, in any case not beyond the

period of four weeks from the date of receipt of this order without being influenced by the communication dated 26-8-2005 issued by the State Government.

11. Writ petition is partly allowed in above terms. There shall be no order as to costs.