
(1998) 09 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 4867 of 1998

Ashok Yashwantrao Patil and others

APPELLANT

Vs

District Collector, Satara and others

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Citation : (1998) 4 ALLMR 256 : (1999) 1 BomCR 52 : (1998) 3 BOMLR 486 : (1998) 3 MhLj 569

Hon'ble Judges : S.S. Nijjar, J;A.C. Agarwal, J

Bench : Division Bench

Advocate : Anil V. Anturkar, for the Appellant; V.M. Parshurami, A.G.P. for Respondent No. 1 and A.A. Kumbhakoni, for the Respondent

Judgement

A.C. Agarwal, J.—Order passed by the Collector, Satara on 4th September, 1998 in Petition No. 4260 of 1997 disqualifying the petitioners under Maharashtra Local Authority Members Disqualification Act, 1987 and the Rules framed thereunder from their membership in the Karad Municipal Council is impugned in the present petition.

2. We have perused the order which is impugned. We have also heard the learned Counsel appearing for the contending parties at considerable length and we find that the present petition is devoid of merit and. therefore, does not merit consideration.

3. Petitioners have been elected in the election held on 1st December, 1996 having been sponsored by the Nagar Vikas Aghadi. Elections for electing the President of the Municipal Council were held on 12th December, 1997. Prior to that a meeting was convened on 18th October, 1997 which was attended amongst others all the 11 elected members belonging to Nagar Vikas Aghadi. In a unanimous Resolution passed in the meeting, to which petitioners were parties, Dr. Erram and Mr. Pawaskar were authorised to issue whip. Prior to the election of the President scheduled on 12th December, 1997, a meeting of the Aghadi was convened on 6th December, 1997 where a whip was issued directing its

members to attend the meeting of 12th December, 1997 and vote for Mr. Ravindra Maruti Shinde who had been sponsored by the Aghadi as its candidate. In the meeting of 12th December, 1997, petitioner No. 4 contested for the post of President by opposing the official candidature of Mr. Ravindra Maruti Shinde and was declared elected. Petitioners in violation of the whip issued by the Aghadi voted in favour of Petitioner No. 4. Similarly a General Body Meeting was scheduled to be held on 15th December, 1997 where certain important Resolutions were to be tabled. Prior to the meeting, a meeting of the Aghadi was convened on 10th December, 1997 where a whip was issued giving directions in regard to the pattern of voting for the Resolutions which were to be tabled on 15th December, 1997. Petitioners in defiance of the whip have voted to the contrary. Mr. Pawaskar who was a party to the issue of whip thereupon moved the Collector u/s 3(1)(a)(b) of the Disqualification Act and by the impugned order Collector has declared Petitioners as disqualified. The same is impugned herein. A perusal of section 7 of the Act would show that decision of the Collector in respect of disqualification has been made final and as long as the order is not shown to suffer from the vice of being unreasonable, arbitrary or being perverse, the same cannot be interfered with in writ jurisdiction. In the present case there is no breach of rules of natural justice. The order has been passed by the Collector while acting in a quasi-judicial capacity. We find that the reasons given by the Collector are cogent and germane for the decision of the controversy between the parties.

4. Shri Anturkar, appearing on behalf of the petitioners, has strenuously urged that the Resolution passed at the meeting held on 18th October, 1997 authorising Dr. Erram, who is the president of the Aghadi and Mr. Pawaskar, who is the leader of the Aghadi in the Municipal Council, is illegal and cannot be said to be a decision issued by the members of the Aghadi in the Municipal Council. According to him, the meeting was attended not only by the 11 members of the Aghadi in the Municipal Council but others also. Since the decision was taken not by the Aghadi of the Municipal Council alone but by others also, the same is vitiated. Hence the whip issued by Dr. Erram and Mr. Pawaskar is not a valid whip. Hence violation of that whip would not entail disqualification.

5. The aforesaid meeting has been attended by all the 11 members of the Aghadi in the Municipal Council which include the petitioners also. The Resolution authorising Dr. Erram and Mr. Pawaskar is a unanimous decision to which the petitioners are a party. Merely because the meeting is attended by members who are not members of the Aghadi in the Municipal Council would not, in our view, vitiate the Resolution. Petitioners, in any event, cannot and will not be permitted to impugn the Resolution as they are a party to the same and have voted in favour of the same. Petitioners are, therefore, clearly estopped from challenging the authority of Dr. Erram and Mr. Pawaskar.

6. Shri Anturkar has next urged and this he has done with even greater vehemence that the directions contemplated under the Act are the ones which

are issued by the Municipal Party. It is incumbent upon Councilors to follow the directions of the Aghadi in the Municipal Council alone and none else. It is only the violation of these directions that exposes the Councilors to disqualification. Any directions issued by the apex party will be of no consequence. Hence violation of directions of the apex party will not entail disqualification. Reliance is place on a decision of this Court in the case of Suresh Madhaorao Bhange vs. Collector, Wardha, 1990 Mh.LJ 848 where a Division Bench of this Court has, inter alia, observed as under:

14. ...We are, however, much concerned with clause (b), as a consequence of which the disqualification follows. This sub-section contemplates a direction to be issued by the political party or by any person or authority authorised by such party. If a member or the councilor votes or abstains from voting contrary to such direction, then he exposes himself to the disqualification flowing from that section""The scheme of the Act as contained in section 3 is very clear. These elections are after all local and it is after all the local units which contest these elections and not the apex body. The function of the apex body, if at all, is only to give directions to the units and nothing more. The members so elected are responsible directly to the units. The Controlling and advisory powers vest in the units and that is why the permission of "such political party" is necessary before acting contrary to the directions of such political party.

16. These rules taken together very positively lay down that the party means a Zilla Parishad Party. It has to elect its leader. The leader has to perform some duties inasmuch as he has to submit a list of all the members to the Collector. Rule 4 lays down that every member so elected shall furnish the necessary information to the Collector in the prescribed form. Sub-rule (5) of Rule 3 lays down that if any member of the Zilla Parishad votes contrary to any direction issued by such party, or authority authorised by it in this behalf without obtaining the permission, the leader of such party has to inform the Collector within 30 days from the date of such voting. The rules leave no doubt in the mind that the party contemplated is the Zilla Parishad Party and the leader contemplated is the leader of such party, and not of the apex party.

20. ...According to us, the Zilla Parishad Party must necessarily be in existence as a fact before section 3 is called upon to operate. The scheme of the Act has also to be borne in mind. The scheme envisages the disqualification of the members of the Zila Parishad Party and not of the apex party. For all practical purposes, it is the Zilla Parishad Party which is the controlling authority vis a vis these members or Councilors. A mandate has to flow from the Zilla Parishad Party and not from the apex party; and it is this mandate that the members or councilors are under obligation to follow.

22. ...Assuming for the time being that the MPCC (I) was the apex body as far as the disciplinary action was concerned, still it could not assume the local position of "Zilla Parishad Party" as defined in section 2. It may take the disciplinary action against their members, but it had no authority to take a penal action of

disqualification as contemplated u/s 3 of the Disqualification Act. It is only the Zilla Parishad Party, which could issue the directions. It is only such directions that the members were obliged to follow and it is only the voting or abstention to vote contrary to such directions, that (he disqualification followed. The relations inter se between the members and the apex party of the original political party may be ethical or moral. But for attracting the legal disqualification, what was necessary was the mandate from the Zilla Parishad Party and that party alone. The General Secretary of the MPCC (I) may be an authority or may be authorised by MPCC (I), but the authority contemplated u/s 3(I)(b) of the Disqualification Act is the authority authorised by the Zilla Parishad Party and none else. The breach of the mandate issued by the General Secretary, MPCC-(I) does not entail a disqualification contemplated u/s 3(I)(b) of the Disqualification Act.

23. ...The term "such party" has definitely a reference to the Municipal Party or Zilla Parishad Party or Panchayat Samiti Party. The mandate or the direction has, thus to flow from the Zilla Parishad Party. This rule also creates an obligation on the leader of the Zilla Parishad Party to report the matter to the Collector within 30 days. Thus what is plain from the Act and the Rules (if read in harmony with each other) is that it is the leader of the Zilla Parishad Party who has to issue directions, that the directions should come from within the party and not from outside the party and it is the duty of the members or the councilors to act according to the directions. It is the voting or abstention to vote in contravention of such directions that the disqualification flows.

24. What is apparent from the scheme of the Act is that the Zilla Parishad Party must be in existence. It must have a leader or the authority authorised on his behalf. The direction or mandate to the members must come within the party. The leader or the authority is the spokesman as far as this mandate is concerned. It is the voting or abstention to vote contrary to such directions or mandate which entail a disqualification u/s 3(I)(b) of the Disqualification Act.

25. In our opinion, therefore, the voting or abstention to vote contrary to the directions issued by the Secretary of the MPCC(I) does not fall within the mischief of section 3(1)(b) of the Disqualification Act.

The aforesaid observations are made in a case where the Zilla Parishad Party was not in existence having been earlier dissolved and in a meeting convened for considering the motion of no confidence against the President and Vice-President of the Zilla Parishad, the General Secretary of the Maharashtra Pradesh Congress Party had directed not to vote in support of the said no confidence motion and the members of the Zilla Parishad who belonged to the Congress Party ignored the said direction and voted in support contrary to the directions given by the General Secretary of the Congress Political Party. It is in these circumstances that it has been held that members of the Zilla Parishad who had contravened the directions of the Congress Political Party did not incur disqualification under the Act. As far as the present case is concerned, in a meeting held on 18th October, 1997 which was attended by all the 11 elected members of the Aghadi in the

Municipal Council and were a party to the unanimous decision taken at the meeting which had authorised Dr. Erram, who is the president of the Apex Body and in his absence Mr. Pawaskar who was the leader of the Aghadi in the Municipal body to issue the whip. Present whip has been issued both by Dr. Erram and Mr. Pawaskar. The whip is, therefore, squarely issued by the leader of the Aghadi in the Municipal Council. Merely because the same is also issued by the President of the Apex Body of the Aghadi, the same does not derogate the whip having been issued by the leader of the Aghadi in the Municipal Council. Since there has been a violation of the whip issued by the leader of the Aghadi in the Municipal Council, the disqualification under the Act is attracted. Decision of the Collector to that effect, in our view, is fully justified.

7. It is next contended by Anturkar that the whip in question has not been proved to have been duly served upon the Petitioners. As far as the whips which were issued in the meetings held on 6th December, 1997 and 10th December, 1997 are concerned, the same were served on the members by local servers. Since the petitioners had refused to accept, the same were sent under Postal Certificate. Further the same were duly published in the local newspapers and were also displayed on the Notice Board of the Office of the Municipal Council. The said whip was also announced at the time of the meeting held on 10th December, 1997 and 12th December, 1997. The Collector in the circumstances is fully justified in finding that the Petitioners were fully aware of the whip and that the petitioners had consciously violated the same. The violation has been proved both in respect of the meeting held on 10th December, 1997 as also on 12th December, 1997.

8. It may be useful at this juncture to reproduce the statements of objects and reasons behind the passing of the Disqualification Act.

Prefatory Note - State of Objects and Reasons. - The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.

2. The Bill seeks to amend the Constitution to provide that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party, an independent member of parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member

of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included in the Bill to enable a person who has been elected as the presiding officer of a House to sever his connections with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects.

In our view, the present case is a gross violation of the provisions of the Disqualification Act. Not only have the petitioners violated the whip by not voting for the official candidate of the Aghadi viz. Mr. Ravindra Maruti Shinde but they have proceeded to sponsor the candidature of Petitioner No. 4 to oppose the official candidate of the Aghadi and have voted in favour of Petitioner No. 4 and Petitioner No. 4 has been duly elected resulting in the defeat of the official candidate of the Aghadi. Petition in the circumstances, we find, is devoid of merit. The same is summarily rejected. Ad interim order passed on 14th September, 1998 is vacated.

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