

**(2022) 08 BOM CK 0030**

**In the Bombay High Court**

**Case No : Writ Petition No. 11625 Of 2021**

Bhagatram Ravalmal Balani

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

**Date of Decision : 12-08-2022**

**Acts Referred:**

Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 3, 3(1), 3(4), 4, 6, 8  
Maharashtra Land Revenue Code, 1966 — Section 6  
Maharashtra Municipal Corporations Act, 1949 — Section 30, 31, 31A(2)

**Citation : (2022) 08 BOM CK 0030**

**Hon'ble Judges :** Mangesh S. Patil, J;Sandeep V. Marne, J

**Bench :** Division Bench

**Advocate :** Shailesh P. Brahme, A.S. Shinde, V.B. Patil, Mahesh S. Deshmukh, Sandesh Patil, D.P. Palodkar

**Final Decision :** Allowed

## Judgement

Mangesh S. Patil, J

1. Heard. Rule. The Rule is made returnable forthwith. Learned AGP waives service for the respondent Nos.1 and 2. Learned advocate Mr. V.B. Patil waives service for respondent No.3. Learned advocate Mr. Deshmukh holding for Mr. Sandesh Patil waives service for respondent No.4. Learned advocate Mr. Palodkar waives service for respondent No.5. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The issue that calls for decision in this proceeding is as to whether a Divisional Commissioner has a power to take a decision as to whether an individual is a group leader of a municipal party under the provision of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter the Disqualification Act) and the Maharashtra Local Authority Members' Disqualification Rules, 1987 (hereinafter the Disqualification Rules) framed thereunder.

3. The facts as are necessary for the decision of the Writ Petition may be summarized as under :

i. Election to the Jalgaon Municipal Corporation was held on 03.08.2018, for electing councillors on 75 seats. 57 candidates set up by Bharatiya Janata Party (BJP), 15 candidates of Shiv Sena and 3 candidates of MIM were elected.

ii. As per Rule 3 of the Disqualification Rules, the 57 councillors of BJP elected the petitioner amongst themselves to be the group leader who furnished information about the municipal party to the Commissioner (Respondent No.2).

iii. After two and half years, when the elections of Mayor and Deputy Mayor were to be held the petitioner issued a whip on 14.03.2021 but 27 councillors from his municipal party allegedly defected and cast vote in favour of one Ms. Jayashree Mahajan.

iv. The petitioner initiated a proceeding for disqualification under the Disqualification Act against those 27 members.

v. On 17.06.2021 allegedly a meeting was held wherein the respondent No.5 was elected by the municipal party as its group leader.

vi. The petitioner raised an objection before the respondent No.2 Divisional Commissioner apprehending the change for replacing him as a group leader.

vii. The respondent No.5 independently claiming to be the group leader by submitted information to the respondent No.2 Commissioner.

viii. In view of such a controversy the Municipal Commissioner of the respondent No.3 Corporation addressed a letter to the respondent No.2 Commissioner and sought guidance.

ix. The respondent No.2 Commissioner in response, by his letter dated 14.09.2021 expressed that he had no power to determine and acknowledge any change in the group leader.

x. It is this communication which is under challenge in this petition.

4. The learned advocate Mr. Brahme took us through the provisions of the Disqualification Act and the Disqualification Rules and submitted that it is a statutory obligation of the councillors to elect a group leader who in turn is under a similar obligation under Rule 3 to submit information to the Commissioner. He would submit that such information under Rule 4 is thereafter to be maintained by the Commissioner. Any change, thereafter occurring is to be reported to him and if there are rival claims it is implied that he would take a decision as to who between these two persons can be recognized as a group leader. The conduct of the respondent No.2 Commissioner in expressly stating that he had no power demonstrates his refusal to exercise the jurisdiction vested in him. He could not have acted as a postman. A statutory duty has been cast upon him to decide as to who is the group leader when rival claims are being set up. Though there are

no elaborate provisions to expressly indicate that he has such power of adjudication, it is implicit in the scheme of the Act and the Rules for him to take some decision. He cannot refuse to act when the duty requires him to take a decision. The respondent No.2 has abdicated his duty and it be so declared by issuing a mandamus to decide the dispute.

5. Mr. Brahme in support of his submissions would place reliance on the following decisions:

a. Sunil Haribhau Kale Vs. Avinash Gulabrao Mardikar and Ors.; (2015) 11 SCC 403.

b. Sangeeta Sunil Shinde Vs. State of Maharashtra and Ors.; 2021 (5) Mh.L.J. 572.

c. Ajay Ramdas Ramteke and Anr. Vs. Mahanagar Sudhar Samiti, Akola and Ors.; 2015 (17) SCC 457.

6. Per contra, the learned AGP and the learned advocates for the respective respondents would submit that the petition itself is not maintainable as the petitioner does not have any locus standi. They would submit that it was an internal communication between the respondent No.2 Commissioner and the respondent No.3 Municipal Commissioner. The petitioner was not a party to that communication and cannot challenge it. They would submit that he had not independently submitted any application or a petition calling upon the respondent No.2 Commissioner to decide any dispute nor was any such petition moved by even the respondent No.5. In the absence of any such step, merely because an opinion was expressed, that would not give rise to any right in the petitioner to question it. For this reason alone the petition be dismissed.

7. The learned AGP and the learned advocates for the respondents would then submit that there is no specific provision either in the Disqualification Act or the Disqualification Rules which require a Commissioner to adjudicate anything muchless in respect of the dispute as to who legally is the group leader of a municipal party. They would submit that it is an internal matter of the municipal party to elect its leader in a democratic manner and if this has happened, neither the petitioner has a right to challenge it before the respondent No.2 Commissioner nor the latter has such a power to adjudicate it.

8. However, the learned AGP and the learned advocates for the respondents would fairly concede that since information or a change is to be reported under Rule 3 of the Disqualification Rules to a Commissioner, any proceeding for disqualification which is required to be adjudicated in the light of the provisions of the Disqualification Act and the Rules a Commissioner may have to collaterally enter into and decide the dispute as to whether the petitioner or the respondent No.5 could be legally recognized as a group leader. However, in the absence of any such inquiry into a disqualification, a Commissioner does not have any adjudicatory power to decide the dispute regarding group leader.

9. The learned AGP and the learned advocates would submit that the Commissioner has no adjudicatory power in this regard and acts only in exercise of his administrative powers as has been held in the matter of Mahadeo Bhaiyalal Bunde Vs. State of Maharashtra, Writ Petition No.4664/2008 dated 01.12.2008 (Nagpur Bench). They would further point out that the decision was subsequently followed by a single Judge in the matter of Ajay Shrawan Gondane Vs. The State of Maharashtra and Ors.

(Writ Petition No.2616/2014 dated 26.02.2015).

10. In addition, Mr. Palodkar for the respondent No.5 submitted that when the legislature in its wisdom has not provided for and conferred adjudicatory powers on the Commissioner in deciding anything in respect of legality of the information submitted by a municipal party concerning its group leader, the doctrine of casus omissus does not arise. There is no ambiguity, as the principle has been laid down in the matter of Padma Sundara Rao (Dead) and Ors. Vs. State of T.N. and Ors.; (2002) 3 SCC 533.

11. Having considered the rival submissions, it would be proper to first of all recapitulate relevant parts of some of the provisions to understand the scheme of the Disqualification Act and the Disqualification Rules and also the role of a group leader in municipal administration :

“ The Maharashtra Local Authority Members’ Disqualification Act, 1986

2. Definitions.

In this Act unless the context otherwise requires,--

(a) “aghadi” or “front” means a group of persons who have formed themselves into party for the purpose of setting up candidates for election to a local authority;

(i) “municipal party”, in relation to the Councillor belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means --

(i) in the case of a Councillor of a Municipal Corporation, the group consisting of all Councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(ii) .....

3. Disqualification on ground of defection.

(1) Subject to the provisions of [section 5], a councillor or a member belong to any political party or aghadi or front shall be disqualified for being a councillor or a member, -

(a) if he has voluntarily given up his membership of such political party or aghadi or front; or

(b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:

Provided that, such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;

7. Decision on question as to disqualification on ground of defection.

If any question arises as to whether,-

(a) a councillor of a Municipal Corporation ; or

(b) a councillor of a Municipal Council; or

(c) a councillor of a Zilla Parishad; or

(d) a Member of a Panchayat Samiti, has become subject to disqualification under this Act, the question shall be referred-

(i) in the case of a councillor of a Municipal Corporation, to the Commissioner, and

(ii) in the case of any other councillor or member, to the Collector;

and the decision of the Commissioner, or as the case may be, Collector shall be final.

The Maharashtra Local Authority Members Disqualification Rules, 1987

3. Information to be furnished by a leader of a Party. -

(1) The leader of each municipal party or a Zilla Parishad party in relation to a councillor - - - - -

shall, within thirty days from the date of commencement of these rules or where such party is formed after such date, within thirty days from the date of its formation, or in either case, within such further period as the Commissioner, in the case of a Councillor of a Municipal Corporation, or the Collector, in the case of any other Councillor or member may for sufficient reason allow, furnish the following information to the Commissioner, or, as the case may be, to the Collector, namely:-

(a) a statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form I, and the names and designations of the members of such party who have

been authorised by it for communicating with the Commissioner or, as the case may be, Collector for the purposes of these rules;

(b) a copy of the rules and regulations (whether known as such or a constitution or by any other name), of the municipal party, Zilla Parishad party or the Panchayat Samiti party concerned, as the case may be; and

(c) where such party has any separate set of rules and regulations (whether known as such or as constitution or/by any other name), also a copy of such rules and regulations.

(2) -----

(3) In the event of any increase in the strength of a municipal party or a Zilla Parishad party in relation to a Councillor and the Panchayat Samiti party in relation to a member, consisting of only one member, the provisions of sub-rule (1) shall apply in relation to such party as if such party had been formed on the first date on which its strength increased.

(4) Whenever any change takes place in the information furnished by the leader of a municipal party or a Zilla Parishad party, in relation to a Councillor - - - - -  
- - - - - in relation to a member under sub-rule (1) - - - - - he shall as soon as may be thereafter and in any case not later than thirty days from the date on which such change has taken place or within such further period as the Commissioner, or, as the case may be, Collector may for sufficient reason allow, furnish in writing the information with respect to such change to the Commissioner or, as the case may be, Collector.

(5) Where a Councillor in relation to a municipal party or a Zilla Parishad party -  
- - - - - votes or abstains from voting in any of the meetings of the Municipal Corporation - - - - -

- - - - - contrary to any direction issued by such party or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior permission of such party, person or authority, the leader of such municipal party or where such Councillor or member is the leader, shall as soon as may be thereafter and in any case within thirty days from the date of such voting or abstention inform the Commissioner or, as the case may be, Collector in Form II whether such voting or abstention has or has not been condoned by such party, person or authority.

Explanation. - A Councillor in relation to a municipal party and a Zilla Parishad party and a member in relation to a Panchayat Samiti party, may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

5. Register of information as to Councillors or members. -

(1) The Commissioner in the case of a Councillor of a Municipal Corporation and the Collector, in the case of any other Councillor or member, shall maintain in

Form IV, a register based on the information furnished under rules 3 and 4 in relation to the Councillor of a municipal party, Zilla Parishad party or, as the case may be, member of a Panchayat Samiti party.

(2) The information in relation to each Councillor in respect of a municipal party, a Zilla Parishad party and in relation to each member in respect of a Panchayat Samiti party shall be recorded on a separate page in the register.

6. References to be by petitions.

(1) No reference of any question as to whether a Councillor in relation to a municipal party and a Zilla Parishad party or member in relation to a Panchayat Samiti party has become subject to disqualification under the Act shall be made except by a petition in writing to the Commissioner in the case of a Councillor of a Municipal Corporation and the Collector in the case of any other Councillor or member, by any other Councillor or, as the case may be, member, in relation to such Councillor or, as the case may be, member.

(2) Before making petition in respect of Councillor in relation to a municipal party and a Zilla Parishad party or a member in relation to a Panchayat Samiti party, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such councillor or, as the case may be, member has become subject to disqualification under the Act.

(3) Every petition -

(a) shall contain - - - - -

(b) shall be accompanied by - - - - -

(4) Every petition and any annexure thereto shall be signed

- - - - -.

The Maharashtra Municipal Corporations Act, 1949:

31A. Appointment by nomination on committees to be by proportional representation. -

(1) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, in the case of the following Committees, except where it is provided by this Act, that the appointment of a Councillor to any Committee shall be by virtue of his holding any office, appointment of Councillors to these Committees, whether in regular or casual vacancies, shall be made by the Corporation by nominating Councillors in accordance with the provisions of sub-section (2) :-

(a) Standing Committee;

(b) Transport Committee;

(c) Any special Committee appointed under section 30;

(d) Any ad hoc Committee appointed under section 31.

(2) In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognised parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Corporation, after consulting the Leader of the House, the Leader of Opposition and the leader of each such party or group:

Provided that, the relative strength of the recognized parties or registered parties or groups or aghadi or front shall be calculated by first dividing the total number of Councillors by the total strength of members of the Committee. The number of Councillors of the recognized parties or registered parties or groups or aghadi or front shall be further divided by the quotient of this division. The figures so arrived at shall be the relative strength of the respective recognized parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognized parties or registered parties or groups or aghadi or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognized parties or registered parties or groups or aghadi or front in the descending order of the fraction number in the respective relative strength starting from the highest fraction number in the relative strength, till all the seats are allotted;

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this Act, the recognised parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986, within a period of one month from the date of notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a registered pre-poll aghadi or front.

(3) If any question arises as regards the number of Councillors to be nominated on behalf of such party or group, the decision of the Corporation shall be final."

12. A bare look at the provisions of the Disqualification Act and the Disqualification Rules demonstrates that a municipal party in relation to the councillors belonging to any political party are supposed to elect from amongst them a leader, albeit the words 'Group Leader' has not been defined. It is such a leader who thereafter is supposed to submit the information under Rule 3 (1) to the Commissioner who thereafter maintains the record. As contemplated under Rule 3(4) if any change takes place in the information furnished by the group leader of a municipal party, he has to report it within 30 days of the change to the Commissioner. Conspicuously, Rule 6 to Rule 8 lay down the provisions in respect of the manner in which the petitions for disqualification are to be presented, the procedure to be followed by the Commissioner in deciding such a

petition and his powers while deciding it.

13. So far as the information which is required to be furnished under Rule 3 or 4, a Commissioner has not been expressly conferred with and there are no provisions regulating the manner in which he is supposed to deal with the information. But then, hypothetically rival claims are certain to be put up by different groups, may be of the same municipal party or from the Aghadi. In case of such an eventuality it is implicit that the Commissioner takes some decision as to which of such rival claims are to be regard as a correct information to be recorded by him for the purpose of application of the Disqualification Act and the Disqualification Rules. Pertinently, in order to enforce the provisions of the Disqualification Act, at least whenever a disqualification proceeding is taken out, regarding which even the respondents have fairly conceded that during such inquiry in a disqualification proceeding, the Commissioner may have to go into the legality or otherwise of the change reported to him either under Rule 3 or Rule 4. Therefore, it does appear that even in the absence of any specific provision and express power a Commissioner may have to pass some order, may be in exercise of administrative power as has been held in the matter of Mahadeo Bhaiyalal Bunde (supra). It cannot be said that the Commissioner can remain a silent spectator whenever a change is reported to him.

14. In the matters of Sunil Haribhau Kale, Mahadeo Bhaiyalal Bunde, Ajay Shrawan Gondane and Ajay Ramdas Ramteke (supra) the Commissioner or the Collector had taken some decision when the change was reported to them. In our considered view, we need not, for the present, enter into the question as to the nature of such powers conferred upon a Commissioner, whether those are purely administrative or akin to a quasi judicial power. The issue may have to be considered in an appropriate matter. For the present, suffice for the purpose to observe that irrespective of a controversy on these lines, the respondent No.2 Commissioner has been conferred with the power and will have to take some decision whenever some information is submitted to him under the Disqualification Act and the Disqualification Rules.

15. True it is that in a given case like the present one the dispute as to who the group leader is could be a dispute inter se between the members of a municipal party and in that sense the respondent No.2 Commissioner may not have any role to play. However, still, he may have to resort to some inquiry at least to ascertain whether the majority of the members are in favour of such a change in nominating a group leader. Whether the change reported to him has in fact taken place or otherwise could be a subject matter of a dispute which would make it imperative for him to undertake some fact finding inquiry. He cannot merely be indifferent whenever a change is reported to him. If rival claims and changes are being reported to him obviously it is implicit and imperative for him to take a decision depending upon several factors touching the disputed facts.

16. We therefore have no manner of doubt that a Commissioner to whom information is furnished or a change is reported under Rule 3(1) or Rule 3(4) of

the Disqualification Rules, he has the power to embark upon an inquiry and take a decision.

17. In the matter of Ajay Ramdas Ramteke (supra), though the issue before us was not directly and substantially in issue, referring to the scheme of the Acts and the Rules following observations from paragraph No.13 and 18 to 20 are made which are relevant and decisive of the view which we are taking.

" 13. There is no detailed procedure prescribed for registration of an aghadi. It is evident from Rule 5 quoted above, that power to register vests with the Commissioner. The word "Commissioner" is defined in clause (c) of Rule 2 of 1986 Act and the same is reproduced below :

"(c) "Commissioner" means the Commissioner of a revenue division appointed under Section 6 of the Maharashtra Land Revenue Code, 1966".

18. We have gone through the above two documents. Order dated 28.08.2012 passed by Divisional Commissioner, Amravati, whereby the application for registration was disposed of, shows that the application of the writ petitioners was rejected as affidavits of Sanjay Babulal Badone (respondent no. 14) and Smt. Madhuri Sanjay Badone were not complete. The two, who were elected from Prabhag no.31 and Prabhag no. 34-B as independent candidates, failed to file any document to show as to which group they belonged. Their names figured in two groups.

19. In the order dated 28.08.2012 the Divisional Commissioner also referred to a serious infirmity in accepting the proposal, as he found that the affidavit was sworn to and attested on 22.02.2012, whereas the stamps were purchased on 23.02.2012 which the Divisional Commissioner held to be an incomprehensible act of the proposer. Such serious infirmities which weighed with the Divisional Commissioner in passing the order of rejection dated 28.08.2012 cannot be found fault with. Considering the Scheme of the 1987 Rules, we are convinced that it was incumbent upon the Divisional Commissioner to hold a meaningful exercise of scrutinizing the proposal for registration and pass a positive order of registration and then alone the exception carved out under Section 31A(2) of the 1949 Act, even for the limited purpose to get rid of disqualification under the 1987 Rules can be allowed to operate. Viewed in that respect also the order dated 28.08.2012 assumes greater significance and, therefore, unless and until the said order was set aside in the manner known to law, the formation of the aghadi as claimed by the first respondent could not have come into effect.

20. It is not disputed that no one challenged the order dated 28.08.2012 passed by the Divisional Commissioner, as such the same has attained finality. That being so, the Mahanagar Sudhar Samiti, Akola (respondent no.1) cannot be said to be a registered group as required under second proviso of sub-section (2) of Section 31A of the Act of 1949. In our opinion, the High Court has erred in law by ignoring the above order of the Divisional Commissioner, and holding that respondent no. 1 stood registered. If there was objection to registration of an

aghadi, on the ground that names of certain members were falsely or wrongly shown in the list, the Commissioner had no option but to verify the same. And, in such cases, unless the verification is done, an aghadi can not be said to have got registered, by merely submitting an application within one month of election to Municipal Corporation. Had the writ petitioners challenged order dated 28.08.2012 passed by the Divisional Commissioner, with the Resolution dated 29.04.2013, the situation would have been different. But in the present case, order of Divisional Commissioner rejecting application for registration has attained finality, and same cannot be ignored. As such, writ petition filed by respondent nos. 1 to 3 questioning validity of resolution dated 29.04.2013 was liable to be dismissed.”

18. Perhaps in view of such a position in law even the learned AGP and the learned advocates for the respondents have fairly conceded the fact that the Commissioner will have to hold a meaningful exercise of scrutinizing whenever an information or a change is reported to him, may be in a disqualification proceeding. The fact remains that Commissioner cannot turn a blind eye whenever some matter is reported to him regarding the information or the change to be effected in the information which is required by law to be furnished to him and maintained by him.

19. Here is not a question of resorting to any purposive interpretation. The Disqualification Act and the Disqualification Rules specifically require the information to be furnished or a change to be reported to the Commissioner which he is supposed to preserve in the prescribed form. When there cannot be any dispute that the whole object of having this Act and the Rules is to provide for a machinery whenever the issue regarding disqualification arises, anything which is required to be done by the Commissioner in aid of such an inquiry would make it imperative for him to take some decisions. Therefore the stand of the respondent No.2 Commissioner in the impugned communication that he did not have power to decide as to whether the petitioner or the respondent No.5 is the group leader of the municipal party is clearly refusal to exercise the statutory powers conferred upon him as discussed herein above.

20. As far as the objection regarding maintainability of the writ petition and the prayers are concerned, we are of considered view that such an objection is too technical to entertain. Even if the petitioner had not independently filed any petition to the Commissioner and even though the latter has by the impugned communication informed the respondent No.3 Municipal Commissioner that he was powerless to decide the dispute, when admittedly, such a dispute exists and the petitioner was the person who was initially appointed as a group leader by the municipal party, it cannot be said that he has no locus standi to seek the declaration challenging that communication.

21. However, the matter does not end here. Admittedly, both the sides have initiated separate disqualification proceedings. Admittedly, the question as to whether they were the group leaders who could have issued the whip would be a

subject matter to be gone into and decided in those disqualification proceedings. Obviously, the Commissioner will have to, even otherwise, decide the issue as to if the petitioner is the group leader or the respondent No.5. If such is the state of events, we feel that even if we have found that the respondent No.2 Commissioner was in error in refusing to decide the dispute, when he even otherwise has to decide it now in the disqualification proceedings, it would not be appropriate to direct him to decide that dispute independent of the disqualification proceedings.

22. In view of above, we allow the Writ Petition partly and declare that the respondent No.2 Commissioner has the power to decide the dispute as to who is and can be regarded as a group leader.

23. However, in view of the pendency of the disqualification proceedings he shall not decide the issue independently but shall decide it simultaneously with the disqualification proceedings hearing of both of which stands expedited. He shall decide the proceedings as early as possible and in any case within 10 weeks. The parties shall appear before him on 17. 08.2022.

24. Rule is made absolute in above terms.