
(2020) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 12425 Of 2019

Ibrahim @ Arif Kadir Deshmukh

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965
— Section 10(1), 10(2), 63, 63(2B)
Maharashtra Local Authorities Members Disqualification Act, 1986 — Section 3, 3(1), 7

Citation : (2020) 11 BOM CK 0025

Hon'ble Judges : Mangesh S. Patil, J

Bench : Single Bench

Advocate : R. N. Dhorde, V.R. Dhorde, A. A. Jagatkar, Shivaji T. Shelke, V. S. Bedre, B. Kadethankar

Final Decision : Dismissed

Judgement

1. Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for respondent Nos. 1 to 3, learned advocate Mr. Shelke waives service for respondent No. 4, learned advocate Mr. Bedre waives service for respondent No. 5 and learned advocate Mr. Kadethankar waives service for the respondents No. 6. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The question that arises for determination in this Petition is as to if a Councillor elected under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter the 'Municipal Act') who along with other elected Councillors of recognized parties or registered parties or groups, forms an Aghadi or Front post election incurs disqualification under the provisions of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter the 'Disqualification Act').

3. The facts are as necessary and give rise to the issue can be summarized as under :

(a) The petitioner was elected as a Councillor of the respondent No. 5-Municipal Council for a term 2016 to 2021. He was set up by a political party by name Nationalist Congress Party (N.C.P.). The respondent No. 4 was also one of the contestants but was defeated. During that election the party-wise strength of the elected candidates was as follows :

Sr. No.

Name of the Parties

Candidates

(i)

Indian National Congress (I.N.C.)

23

(ii)

Nationalist Congress Party(N.C.P.)

01

(iii)

Bhartiya Janta Party (B.J.P.)

01

(iv)

Shivsena

02

(v)

Independent

01

Incidentally, the petitioner was the only candidate elected of N.C.P.. A post poll Aghadi was formed purportedly as contemplated under Section 63 of the Municipal Act for setting up members to the Subjects Committees. It was styled as 'Indian National Congress Aghadi, Sangamner'. Requisite information as contemplated under the Rules framed under the Disqualification Act and under Section 63 of the Municipal Act was furnished to the respondent No. 3-Collector. In the affidavit to be furnished as per Rule 4(1) in Form-III in column 4 -1(i) the petitioner mentioned as being a nominee of 'National Congress Party'.

(b) The respondent No. 4 referring to this affidavit of the petitioner filed an application with the respondent No. 3-Collector under Section 7 of the Disqualification Act alleging that the petitioner having voluntarily given up his

membership of N.C.P. had incurred a disqualification under Section 3(1) of the Disqualification Act.

(c) After conducting necessary hearing, the respondent No. 3-Collector rejected the application inter alia holding that the petitioner was set up as a candidate by N.C.P. He along with other councillors had formed a post poll Aghadi for setting up members to be nominated on the Subjects Committees as contemplated under Section 63 of the Municipal Act. Though it was mentioned in his affidavit as he was set up by 'National Congress Party' it was a typographical mistake. There was no evidence to show that he had voluntarily given up his membership of N.C.P. and had not incurred the disqualification under Section 3 of the Disqualification Act.

(d) The respondent No. 4 challenged the judgment and order of the respondent No. 3-Collector before the State Government. By the impugned judgment and order the respondent No. 2 the learned Minister for State (Urban Development) allowed the appeal, quashed and set aside the judgment and order of the respondent No. 3-Collector and declared the petitioner having incurred the disqualification for continuing as a Councillor. The learned Minister concluded that the so-called typographical mistake was a lame excuse put up for avoiding disqualification. The petitioner had voluntarily surrendered the membership of N.C.P. by disclosing that he was a candidate of Indian National Congress and the mischief was done to some how get nominated to the Standing Committees.

4. The learned Senior Advocate Mr. Dhorde for the petitioner vehemently submitted that the mistake in mentioning the name of the political party in the affidavit submitted by the petitioner in Form-III Rule 4(1) was clearly an error on the face of the record. The Collector had rightly appreciated the fact. It was rightly concluded that there was no defection. The respondent No. 3-Collector had also rightly concluded that it was a post poll Aghadi which was formed pursuant to the enabling provision contained in Section 63 of the Municipal Act while setting up members for the Subjects Committees. Without there being any error or illegality committed by respondent No. 3 Collector, the respondent No. 2-learned Minister without even referring to the provisions of Section 63 of the Municipal Act readily allowed the appeal and reversed the well reasoned judgment and order of the respondent No. 3-Collector, which smacks of some political motive.

5. The learned Senior Advocate would then endeavoured to demonstrate as to how there is a distinction between a pre poll alliance/ Aghadi as contemplated under Section 3 of the Disqualification Act and a post poll Aghadi formed for setting up candidates for Subjects Committees under the enabling provision contained in the first Proviso to Sub Section 2B of Section 63 of the Municipal Act. The learned Senior Advocate submitted that when a post poll Aghadi is formed with a limited object of setting up candidates for nomination to the Subject Committees, a Councillor does not incur disqualification. In support of his submission he placed reliance on the decisions of this Court in case of Shah

Faruq Shabir & Ors. Vs. Govindrao Ramu Vasave & Ors.; 2016(5) ALL M R 786 (F.B.) and Sanjay Devram Bhoir Vs. Divisional Commissioner & Ors.; 2012 (6) ALL MR 54.

6. The learned advocate Mr. Shelke for the respondent No. 4 vehemently submitted that the very conduct of the petitioner declaring in Form III filled under Rule 4(1) of being a candidate of 'Indian National Congress', is sufficient to infer that he had voluntarily surrendered the membership of N.C.P. which is a ground for incurring disqualification under Section 3 of the Disqualification Act. He would therefore submit that the respondent No. 3 Collector had failed to appreciate this fact and to address this issue in the proper perspective and the error committed by him has been rectified by the respondent No. 2-learned Minister in the impugned order. Learned advocate Mr. Shelke then referring to the decision of a Single Judge of this Court in case of Sunil Sapadu Mahajan Vs. Manoj Dayaram Choudhari and anr.; 2011(4) ALL M.R. 68 submitted that even in that case, on a similar set of facts, it was held that the Councillor therein had incurred disqualification by giving up his membership.

7. The learned A.G.P. adopted the arguments of learned advocate Mr. Shelke for the respondent No. 4.

8. As far as the factual aspects are concerned there is not much of a difference. The petitioner was set up as a candidate by N.C.P. and was duly elected and was the sole successful candidate set up by that party. Admittedly, no pre poll Aghadi or front was formed by the parties who had set up separate candidates for the election of the Municipal Council. There is also not a dispute that after the elections were over, 25 Councillors who were elected comprising of 23 Councillors of I.N.C., one candidate of N.C.P. (Petitioner) and one Independent, had formed a post poll Aghadi styled as 'Indian National Congress Aghadi, Sangamner'. One of the Councillors Murtadak Vishwas Ratan was elected as a leader of the Aghadi. Pursuant to the provisions contained under the Municipal Act and the Disqualification Act, he submitted an application dated 14.12.2016 to the respondent No. 3- Collector along with necessary Annexures i.e. the Constitution and the Regulations, the personal information of the Councillors who had come together to form the Aghadi. There is also no dispute that in his affidavit the petitioner mentioned in Column No. 4(1)(i) that he was a nominee of 'National Congress Party'.

9. As far as this aspect is concerned, ex-facie the mistake in filling the information in Form III by the petitioner is apparent on the face of the record. One can easily infer about this being a mistake by bearing in mind the fact that there is no political party by name National Congress Party. There is Nationalist Congress Party i.e. N.C.P. and Indian National Congress i.e. I.N.C. Therefore when there is no political party by that name in existence much less which had set up the petitioner as its candidate in the election, it is more than clear that it is a sheer mistake in using that nomenclature. This is what has been correctly appreciated by the respondent No. 3-Collector while rejecting the application of

respondent No. 4.

10. Without there being any discussion the respondent No. 2/learned Minister without assigning any reasons has brushed and set aside these observations by branding them to be a lame attempt on the part of the respondent No. 3-Collector to ignore the mistake. The observations and the conclusions drawn by the learned Minister in the impugned order in this respect are clearly perverse and arbitrary.

11. In this regard it is further necessary to note that the provisions contained in the Disqualification Act result in penal consequences in as much as an elected Councillor gets disqualified. It is trite that while interpreting the provisions of a legislature of this kind which involves penal consequences, the provisions have to be interpreted strictly. When Section 3 of the Municipal Act inter alia contemplates voluntarily giving up a membership of a political party or Aghadi or front, there must be enough material to reach to a conclusion about a Councillor having incurred such disqualification. Merely by mentioning in the affidavit in Form III that he belonged to National Congress Party, one cannot legitimately draw any inference much less about he having voluntarily given up membership of N.C.P. more so when, neither the N.C.P. nor anybody else except the respondent No. 4 is coming with such a version. There being no other material to even remotely draw any inference about the petitioner having given up membership of N.C.P. de hors the mistake committed in filling Form III, it cannot be said that he had incurred disqualification as contemplated under Section 3 of the Disqualification Act.

12. As a result of the discussion herein above, it is quite clear that the decision taken by the respondent No.3 -Collector was clearly based on correct appreciation of facts and there was no scope for the respondent No. 2/learned Minister to draw any other inference.

13. In fact, this much of reasoning is enough to quash and set aside the impugned judgment and order and restore the one passed by the respondent No. 3-Collector. However, it is necessary to refer to the other aspects as well. As far as the provisions of Municipal Act and Disqualification Act are concerned, there can be no dispute that a Councillor would incur disqualification if he defects the pre poll alliance or voluntarily gives up membership of a political party which had set up him as a candidate. By virtue of Section 3 of the Disqualification Act any such defection invites disqualification.

14. However, as can be appreciated and understood from the provisions of Section 63 of the Municipal Act, the law contemplates even a post poll alliance for a limited purpose of setting up candidates for being nominated to the Subjects Committees, without incurring any disqualification under Section 3 of the Disqualification Act. This is precisely what has been discussed and decided by the full Bench of this court in case of Shah Faruq Shabir (supra). Without wasting any more time by indulging in scrutinizing the subject it would suffice to refer to

the following observations of the full Bench contained in paragraph nos.46 to 48,50 & 51:

"46. The provisions of Section 63(2B) are *pari materia* to Section 31A(2) of the Bombay Provincial Municipal Corporations Act. Section 63 of the Municipalities Act is included in Chapter III which relates to duties and functions of the council and the Municipal Executive. Part (4) of Chapter III refers to "Committees" which includes Sections 62 to 73. Section 63 relates to constitution of Subjects Committees of 'A' and 'B' Class Councils. Whereas, subsection (2B) of Section 63 prescribes procedure for nominating councillors. It is laid down that in nominating councillors, the Collector shall take into account the relative strength of 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 Council after consulting the leader of each such party or group. The methodology of calculating relative strength of the parties is provided in first proviso, whereas, second proviso provides relaxation to the recognised parties or registered parties or groups, or elected councillor not belonging to any such party or group may, notwithstanding anything contained in the Disqualification Act, to form aghadi or front within one month from the date of notification of election results and, on its registration as aghadi or front, the provisions of the Disqualification Act shall apply to the members of such aghadi or front, as if it is a prepoll aghadi or front.

47. It has been argued, placing reliance on the second proviso to subsection (2B) of Section 63 that in spite of definition recorded in Section 2(a) of the Disqualification Act, contemplating prepoll aghadi or front, there is liberty available to the elected members set up by the recognised parties or registered parties or groups not belonging to any such party or group to come together and form aghadi or front within one month from the date of declaration of results. It is further argued that the registration of such group or aghadi is also permissible and on such registration, provisions of Disqualification Act are made applicable as if the aghadi or front is prepoll aghadi or front. It is also contended that the non obstante clause contained in the second proviso shall have to be read in such manner that the provisions contained in the second proviso shall prevail over the provisions of the Disqualification Act.

48. Subsection (2B) of Section 63 relates to nomination of councillors on the Committees and the Collector is required to take into account the relative strength of recognised parties or registered parties or groups and nominate the members. It can, thus, be safely stated that the purpose of the proviso which provides for formation of aghadi or front within one month after the date of declaration of result of elections is to secure proper representation on the Sub Committees. The object of making provision for formation of aghadi or front of the recognised parties or registered parties or groups is only for securing proper representation to the Committees.

50. Thus, the scope and ambit of second proviso is limited to the extent of and only for the purpose of nomination of councillors on the Committees. These

words in the second proviso leave no room for doubt that it is only for the limited purpose of enabling such aghadi to secure proper representation on various categories of committees specified in Section 63. The formation of aghadi or group in terms of Section 63(2B) is totally irrelevant and inconsequential for the purposes of election of President under Section 51 as also election of Vice President under Section 51A. Schematically, section 63 is placed in Chapter III which comprises the provisions of Sections 49 to 73. These provisions deal with duties and functions of the Council and Municipal Executive. Whereas, Part (4) of Chapter III is titled as 'Committees'. This Part (4) is consisting of Sections 62 to 73. Section 62 enumerates Statutory Committees i.e. Standing Committees and other six Subjects Committees specified therein. The proviso to Section 63 (2B) would not be able to travel beyond the scope of substantive portion of Section 63 itself.

51. As has been stated above, the aghadi or front in terms of second proviso to Section 63 (2B) is confined only to formation of Subjects Committees and has no relevance in the context of election to the office of President and Vice President, since special meeting is required to be convened for constitution of Subjects Committees only after the elections to the office of President and Vice President. The aghadi or front specified under Section 2(a) of the Disqualification Act provides that "aghadi" or "front" means a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority i.e. a pre-poll aghadi and not post-poll aghadi. The elections to the Council are outside the provisions of Section 63(2B) and elections to the Subjects Committees are required to be held after elections to the post of President and Vice President. The formation of such aghadi, as specified within meaning of second proviso to Section 63(2B) has no relevance to the general elections or the elections to the office of President and Vice President and is, thus, confined to the elections of Subjects Committees. The section itself deals with elections to the Subject Committees and considering language of the proviso, it is difficult to accept that post-poll aghadi, as permitted under Section 63 (2B) travels beyond the scope of the section and has no relevance in respect of any other elections.

15. It is pertinent to note that while making these observations, the full Bench has also referred to and reproduced the following observations of the Supreme Court in the case of Jeevan Chandrabhan Idnani and another Vs. Divisional Commissioner, Konkan Bhawan and others; 2012(3) ALL M.R. 464 (SC.) :

"26. The second proviso to subsection (2) of Section 31A enables the formation of an aghadi or front within a period of one month from the date of notification of the election results. Such an aghadi or front can be formed by various possible combinations of Councillors belonging to either two or more registered parties or recognised parties or independent Councillors. The proviso categorically stipulates that such a formation of an "aghadi" or "front" is possible notwithstanding anything contained in the Disqualification Act. Because as "aghadi" or "front" as defined under the Disqualification Act, clearly, can only be

the combination of a group of persons forming themselves into a party prior to the election for setting up candidates at an election to a local authority but not a combination of political parties or political parties and individuals."

27. Therefore, the second proviso to Section 31A (2) of the Municipal Corporations Act which is a later expression of the will of the sovereign, in contrast to the stipulation as contained under Sections 2(a) and 3(2) of the Disqualification Act, would enable the formation of postelectoral aghadis or fronts. However, such a formation is only meant for a limited purpose of enabling such aghadis to secure better representation in the various categories of the Committees specified under Section 31A. The component parties or individual independent Councillors, as the case may be, in the case of a given front/aghadi do not lose their political identity and merge into the aghadi/front or bring into existence a new political party. There is no merger such as the one contemplated under Section 5 of the Disqualification Act. It is further apparent from the language of the second proviso that on the formation of such an aghadi or front, the same is required to be registered. The procedure for such registration is contained in the Maharashtra Local Authority Members' Disqualification Rules, 1987".

16. It is thus concluded by the Full Bench that a post poll Aghadi formed under the enabling provision contained in the first Proviso to Sub Section 2B of Section 63 of the Municipal Act has a limited purpose of setting up candidates for nomination to the Subjects Committees and it has nothing to do with a pre poll Aghadi contemplated under Section 3 of the Disqualification Act.

17. The Full Bench also considered the effect of Section 10 (1) and (2) vis-a-vis Proviso to Section 63 (2B) of the Municipal Act, by referring to the principles of interpretation of statutes and has concluded thus :

"60. Firstly, there is no conflict between the provisions of the Disqualification Act and the Municipalities Act. Even otherwise, since the field relating to Disqualification concerning disqualification of members of the local authorities is occupied by the special legislation, the general law i.e. the Municipalities Act shall give way to the special law. It also must be stated that provisions of the Disqualification Act are in addition to and not in derogation to the provisions of other law i.e. Municipalities Act.

63. While interpreting second proviso to Section 63 (2B) of the Municipalities Act, the principle that, the normal function of a proviso is generally, to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment, has to be borne in mind. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous,

a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its express terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope.

64. In the instant matter, Section 63 of the Municipalities Act deals with the constitution of Subjects Committees, so also the second proviso to Section 63 (2B) opens with the words, "provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups, under this subsection" itself limits scope of the proviso. By application of principle of liberal interpretation, it would not be permissible to expand ambit and scope of the proviso. The proviso to a particular provision of a statute only embraces field which is covered by the main provision.

71. The law concerning disqualification is a law imposing disentitlements. The law of election is a special branch of statutory law and secondly the entitlement to contest as well the matters of disentitlement in that regard are all specified matters originating in the statute. They cannot have any other source except the statute. The general principles of equity or other common law doctrines would not be relevant nor operative not applicable in such a field expressly defined by the statute. Not only the intendment but also its effects will have to be found in the given law and not outside. This equally applies to the definition, procedure jurisdiction and penalty attached to the stated act or omissions. The rule of strict construction is the basic canon that governs all matters of law concerning disqualification or disentitlement of those who seek the election as candidates and those who are chosen and are continuing to hold the elective offices, after being chosen.

The full Bench lastly concluded in following words :

75. In the result,

(I) The answer to the first issue, Whether the term aghadi or front as defined U/ sec. 2(a) of the Disqualification Act of 1986, would mean the party or aghadi on whose candidature the councillor is elected or would also include the aghadi of two or more municipal parties coming into existence after the elections are held, shall have to be recorded as the party or aghadi on whose candidature the councillor is elected. As a necessary consequence, the aghadi or front, within contemplation to Section 2(a) of the Disqualification Act of 1986, is a pre-poll aghadi or front."

18. In view of such emphatic decision of the Full Bench of this Court when the petitioner along with 24 other Councillors have formed a post poll alliance as contemplated under the first Proviso to Section 63(2B) of the Municipal Act and the information regarding which was submitted to the respondent No. 3-Collector pursuant to the provisions of both these enactments and the Rules framed thereunder, there can be no question about the petitioner's disqualification.

19. Interestingly, the respondent No. 2 -learned Minister has not even referred to the provisions of Section 63 of the Municipal Act and particularly the first Proviso to sub Section 2B, albeit he was apparently alive to the fact that the post poll Aghadi was formed for setting up the members to be nominated to the Subjects Committees, when he referred to the petitioner being interested in being nominated to the Standing Committee. I have no manner of hesitation in concluding that the respondent No. 2-learned Minister has grossly erred in interfering and reversing the well reasoned view of the respondent No. 3-Collector. The impugned judgment of the respondent No. 2-learned Minister is thus clearly arbitrary, perverse and illegal and is liable to be quashed and set aside.

20. The Writ Petition is allowed. The impugned judgment and order passed by the respondent no. 2-learned Minister is quashed and set aside and the one passed by the respondent no. 3-Collector is restored.

21. The Rule is accordingly made absolute.

22. After pronouncement of judgment the learned advocate Mr. Shelke for the respondent No. 4 requests that order may be stayed for a period of four the operation of the judgment and weeks. The request is rejected.