

(2018) 04 BOM CK 0167
In the Bombay High Court
Case No : WRIT PETITION NO. 15218 OF 2017

MANGESH SUDHAKAR TAMBE APPELLANT
Vs
THE STATE OF MAHARASHTRA AND OTHERS S. RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Maharashtra Local Authority Members' Disqualification Act, 1986 — Section 3, 3(1)
Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 — Section (1)57

Citation : (2018) 04 BOM CK 0167

Hon'ble Judges : S. V. GANGAPURWALA, A. M. DHAVALÉ

Bench : Division Bench

Advocate : V. D. Sapkal, Vaishali N. Patil-Jadhav, AGP, Paresh B. Pati,
P. B. Gamot

Final Decision : Allowed

Judgement

A. M. DHAVALÉ, J.

1.The petitioner, a Municipal Councillor at Parola and elected from the Shivsena party, assails the communication of the Collector, Jalgaon (R2) dt.

15.12.2017 declaring Deepak Anushtan (R4) as Gatneta (Group Leader) of the party and claims incidental benefits.

2.In the month of NovemberÂ2016, Municipal Council Election of Parola, Dist. Jalgaon was held in which 5 candidates of Shivsena party including the

petitioner and respondent No. 4 were elected.Â On 27.11.2016, all the five candidates elected the petitioner as their party leader and submitted

representation with copy of resolution and copy of rules.Â The rule provided a right to the party leader to issue whip which would bind on all the

members.Â It was also declared that, the party leader shall continue to be the leader or Gatneta till the next general election.Â The Collector,

Jalgaon accepted the representation and declared the petitioner as Gatneta of Shivsena Municipal Party.Â

3. Some of the members felt aggrieved by the conduct of the petitioner and on 12.12.2017, a notice was issued by respondent No. 4 to convene a

meeting for taking decision on urgent matter.Â On 12.12.2017, the meeting was held which was attended by respondent No. 4 and two other

members.Â The petitioner and one member remained absent.Â The three members unanimously resolved to change Gatneta and selected

respondent No. 4 as "Deepak Anushtan as Gatneta. This decision was communicated to the Collector and the Collector by impugned communication

dt. 15.12.2017 recorded that respondent No. 4 had become Gatneta of Shivsena Municipal Party. Hence, this petition.Â

4. Shri. V. D. Sapkal, learned counsel for the petitioner, challenges the impugned communication on following grounds.Â Â Â Â Â Â

(i) Respondent No. 4 had no authority to call a meeting.

(ii) The notices of the meeting were not served properly.Â

(iii) The petitioner and two others were communicated that the meeting would be held on 13.12.2017 at 10:00 a.m. whereas; the meeting was held on

12.12.2017 and, therefore, the petitioner had no opportunity of hearing.

(iv) The rules framed and communicated by the Municipal Party to the Collector made no provision for making changes in the Gatneta.Â

(v) The rules in fact provided that the petitioner would continue to be the Gatneta till the next general election.Â Therefore, the meeting held on

12.12.2017 is illegal.Â The decision taken therein is not legal and the decision was without jurisdiction.Â Therefore, the communication impugned is

bad in law. He relied on following rulings.

(i) Sadashiv H. Patil Vs. Vithal D. Teke & Ors reported in 2000 (Supp.) Bom. C. R. 829.Â

(ii) Sunil Haribhau Kale Vs Avinash Gulabrao Mardikar and others reported in (2015) 11 SCC 403.

(iii) Gajanan Subhashrao Suryawanshi Vs Sharad Namdeo Pawar & Ors. reported in 2013 (6) Bom. C. R. 806.

5. Shri. P. S. Patil, learned Assistant Government Pleader for respondent/State, relied on the judgment in Sangram Arun Jagtap & Ors. Vs The State

of Maharashtra & Ors (Writ Petition No. 7956 of 2016) decided by the Division

Bench of this Court on 28th September, 2017.

6. Reliance is also placed on the judgment in the case of Shrikant @ Balasaheb M. Chaudhari Vs. State of Maharashtra reported in (2015) 2 Mh.L.J.

794, wherein it is observed that, the definition of the term 'Leader' very clearly shows that, where a Municipal Party has formed an Aghadi, he is to be

chosen by the Aghadi or front.Â Necessarily any change in the leader of Municipal Party is to be effected by the Aghadi and not by any outsider.Â

Once aghadi rule is formed and same is recognized by Divisional Commissioner, it becomes Municipal Party.Â Rules do not provide for nomination of

group leader even if the nomination is by Secretary of largest party holding maximum seats in the Aghadi.

7. Learned advocate for the respondents submit that the members of Municipal Party held a meeting and majority of them passed a resolution to

change the Gatneta.Â The same has been rightly accepted by the Collector and therefore no interference is called for.

8. In the light of the arguments advanced, the points for our consideration are whether the change of Gatneta or leader in the present case has taken

place after following the due process and whether the Collector has rightly accepted the change?Â

9. Certain definitions under the Maharashtra Local Authority Members' Disqualification Act, 1986 needs to be quoted.

2(a)Â ""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) ""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, Â?Â?Â?Â?Â?Â? (i) Not applicable.

(ii) in the case of a councillor of a Municipal Council, the group consisting of all the councillors of the Municipal Council for the time being belonging to

that political party or aghadi or front in accordance with the saidÂ? Explanation.

10. Explanation to Section 3(1) for the purpose of this Section Â?

(a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or aghadi or front, if any, by which

he was set up as candidate for election as such councillor or member;

(b) a nominated [councillor] shall (i) where he is a member of any political party or aghadi or front on the date of his nomination be deemed to belong to

such political party or aghadi or front, (ii) in any other case, be deemed to belong to the political party or aghadi or front of which he becomes, or

as the case may be, first becomes a member of such party or aghadi or front before the expiry of six months from the date on which he is nominated.

(c) a "nominated member", in relation to a Panchayat Samiti, includes an associate member, referred to in clause (d) of subsection (1) of section

57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

11. The Maharashtra Local Authority Members' Disqualification Rules, 1987, defines 'Leader' as follows: [(b) (i) "Leader in relation to a municipal

party" means a councillor chosen by each political party or aghadi or front in the Municipal Corporation or as the case may be in the Municipal Council

as its leader and includes any other Councillor of such party or aghadi or front authorised by it to act in the absence of the leader as, or discharge the

functions of the leader of such party or aghadi or front for the purposes of these rules. (ii) to (iii) - Not applicable.

12. In the present case, it is not in dispute that all the five elected members were belonging to Shivsena Party. They contested the election as members

of Shivsena and after the election, they formed a group of five as a Municipal Party. They have unanimously resolved to elect the petitioner

Mangesh Tambe as their leader immediately after the election. The resolution authorized the petitioner to issue whip which would be binding on all the

members. The leader was authorized to decide whether any breach should be condoned or not. The resolution, declaration and all necessary

particulars were forwarded to the Collector and the Collector had accepted the petitioner as leader of the group by a communication dt. 20.12.2016.

13. Subsequently, there were differences between the petitioner and some of the members. Respondent No. 4 on 12.12.2017 issued notices to all the

members including petitioner to attend urgent meeting at 10:00 am at Plot No. 1 in Vyankatesh Nagar, Parola. One of the agendas was to change

the Gatneta. The copies of these notices are filed. Those disclose that, the date of meeting as per notices issued to the petitioner and two

members Chhaya & Varsha Patil was 13.12.2017. Whereas, the date in other two notices was shown as 12.12.2017.

14. On 12.12.2017, a meeting was arranged wherein Chhaya Patil and petitioner Mangesh Tambe remained absent. Varsha presided over the

meeting and three members unanimously selected respondent No. 4 Deepak Anushtan as a Gatneta. The cause given was that the petitioner was

taking arbitrary decisions without taking into confidence the members of the group. Then the decision of the meeting was communicated to the

Collector on 13.12.2017. The Collector by communication dt. 15.12.2017 accepted the change and made entry of respondent No. 4 as Gatneta.

15. Pertinently, the earlier resolution appointing the petitioner as Gatneta had made a provision that he would be continued as a Leader till the next

general election. There is no reference to this condition in the subsequent resolution dt. 12.12.2017. There was no agenda to change the rules or

the constitution of the Municipal Party before changing the leader.

16. The judgment in Sadashiv Patil's case is in different context. It was held in the judgment that, the formation of Municipal Party or Aghadi or

front should be before the start of election. The due procedure should be followed for selection of Gatneta/Leader and there should be specific

authority authorizing the leader to issue whip. The facts of this case are consistent with these guidelines as far as appointment of the petitioner is

concerned.

17. In the case of Gajanan Subhashrao Suryawanshi V/s. Sharad Namdeo Pawar & Ors. reported in 2013(6) Bom.C.R. 806, there were no specific

rules or constitution framed by the Municipal Party. The issue was, in absence of rules what should be the remedy. It was observed that, "by

exercise of prudence, we are carried to believe that in such an eventuality basic democratic procedure will have to be resorted to. In absence of such

a recourse the laudable legislative Act i.e. Disqualification Act will have to go in suspension and the members of Municipal Party would be led to a

situation which is known in common parlance as a 'mobocracy' akin to anarchy. Such a situation would present a contrast with the ideology which is

the foundation of Disqualification Act."

18. In the said case, it was assumed that, the Gatneta or Leader has authority to issue whip. In the present case, there is a specific authority to the

petitioner to issue whip and, therefore, this ruling is not directly applicable.

19. In Sunil Haribhau Kale Vs. Avinash Gulabrao Mardikar and others reported in

(2015) 2 Mh.L.J. 501, there was Aghadi (group) consisting of 17 councillors from National Congress and 6 councillors from other parties or independent.Â They had selected Avinash Mardikar as Group Leader. After following the due procedure, the group was recognized.Â Subsequently, the General Secretary of Nationalist Congress Party sent a letter to change the leader and appoint Sunil Kale as Group Leader.Â The Commissioner accepted the same.Â The High Court quashed the order of Commissioner and Apex Court held that no outsider has authority to make change in the Gatneta.Â It was observed that, once the birth of a leader in a group is by way of election by the group, the group leader thus elected cannot be replaced otherwise than through the very same process of the election in the group, in the absence of any rules to the contra.Â The Group Leader must be elected by Aghadi.

20.This ruling lays down that, even if there is no provision prescribed for changing the Gatneta, the same procedure which is permitted for appointing the Gatneta can be followed for removal and replacing the Gatneta in absence of rules to the contra.Â

21.In Sangram Arun Jagtap (supra), the Division Bench of this Court had declined to exercise writ jurisdiction in the matters having political overtones.Â This Court observed that, although the Courts are not precluded from determining the questions where neither of the conflicting political branches has clear and unequivocal title and it is or may be possible to establish an effective judicial settlement. In view of the facts presented in the instant case before us, we do not feel it appropriate to enter into the political questions presented for determination.Â It was held that, the decision as to who is the leader of the aghadi is a question of political overtones.Â The nomination of councillor was made by the Leader of National Congress Party/Aghadi.Â It was held that, appointment made at the instance of leader of opposition is clearly violative of mandate of law.Â This ratio is not applicable to the facts of the present case.Â

22.In the present case, the question is raised whether the Gatneta or Leader can be changed in spite of specific provision that the first Gatneta or Leader will continue till the next generation election.Â

23.In Shrikant Balasaheb M. Chaudhari Vs. State of Maharashtra reported in (2015) 2 Mh.L.J. 794, the earlier Gatneta / Leader was suspended on

account of anti party activities and new leader was appointed on behalf of Indian National Congress Party.Â It was held that, the decision to change

the leader was unanimous. Considering the facts, it was held that there was no merit in the challenge to change of leadership.Â

24.In the present case, the petitioner was not suspended nor any action was taken against him by the partyÂ for anti party activities.Â

25.In the light of the various rulings, we find that the judgment in Sunil Kale's case is applicable to the facts of the present case to some extent.Â It

lays down that, the Gatneta can be changed by same process by which the leader was elected in absence of rules to the contra.Â In view of the

Apex Court's ruling that there should not be any rule to the contra, we find that the term providing that petitioner shall be continued as Gatneta till the

next general election shall remain in operation as long as it is not changed.Â

26.It is also material here to note that, there was no meeting held with proper and adequate notice.Â The petitioner's contention that the notice

received by him discloses the date of meeting as 13.12.2017 has not been controverted by respondent No. 4.Â Copies of three notices disclose the

date as 13.12.2017 and therefore the meeting held on 12.12.2017 cannot be said to be legal.Â Besides, the notices were served on 12.12.2017 and the

meeting was held on the same day at 10:00 AM.Â There was no sufficient opportunity for the parties to attend the meeting and take part in the

same.Â The petitioner and one of the members were absent at the time of meeting.Â

27.The Gatneta being Public Leader has to be selected by all members. We find that, respondent No. 2 â?" Collector has not considered these legal

aspects and has mechanically accepted the change which is not sustainable.Â It was essential for the group to first change the rules and then go for

changing the Leader.

28.In the light of the rules, the meeting for change of leadership could not have been held.Â Hence, the petition deserves to Â be allowed and the

impugned communication deserves to be set Â aside.Â Hence, the order.

ORDER

(i)The petition is allowed.Â

(ii)The impugned communication of the Collector, Jalgaon (R2) dt. 15.12.2017 declaring Deepak Anushtan (R4) as Gatneta (group leader) of the party

is quashed and set aside.

29. Rule is made absolute in the above terms. No order as to costs.