
(2016) 04 BOM CK 0164
In the Bombay High Court
Case No : Writ Petition No. 1921 of 2015

Shahin

APPELLANT

Vs

Divisional Commissioner

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Bombay Municipal Corporation Act, 1949 — Section 31 A(2)

Citation : (2017) 1 BCR 702 : (2016) 5 MhLJ 895

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : Shri U.J. Deshpande, Advocate, for the Petitioner; Shri N.S. Rao, AGP, for the Respondent No. 1; Shri Sambare, Advocate, for the Respondent No. 2; Shri S.V. Sohoni, Advocate, for the Respondent Nos. 3 and 4; Shri Gordey, Senior Advocate with Mrs. R.D. Ras

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.(Oral)—In these Writ Petitions filed under Article 226 of the Constitution of India challenge is to the nominations for constitution of Standing Committee of Akola Municipal Corporation in April, 2015, though grounds of challenge are different.

2. Since the facts giving rise to challenge are identical, it appears that the matters have been clubbed together. In WP 1921 of 2015, general body meetings conducted on 7th as also 13th April, 2015 nominating 8 members each are in question while in WP 2429 of 2015, denial of its due seat to Petitioner on Standing Committee on 13-4-2015 is in dispute.

3. Accordingly, we have heard learned Senior Advocate Shri Gordey with learned Advocate Smt. R.D. Raskar for the petitioners in Writ Petition No.2429 of 2015, learned Advocate Shri U.J.Deshpande, for the petitioner in Writ petition No.1921 of 2015, learned Advocate Shri Gadhiya for respondent no.1 Mayor in Writ Petition No.2429 of 2015, learned Advocate Shri S.V. Sohoni for respondent no.2 therein, learned A.G.P. for respondent no. 3 while learned Advocate Shri S.R.

Charpe for respondent nos. 6 to 10 in Writ Petition No. 2429 of 2015, learned Advocate Shri Sambare for respondent no. 2 Mayor in Writ Petition No. 1921 of 2015 and learned Advocate Shri Sohoni for respondent nos. 3 and 4 in Writ Petition No. 1921 of 2015.

4. Total 73 Corporators are elected as General Body Members of Akola Municipal Corporation on 16-02-2012. The first Standing Committee consisting of sixteen members was constituted on & it was challenged in Writ Petition No.1426 of 2012. That Writ Petition was decided on 08-05-2012 and said judgment is reported in 2012(4) Mh.L.J., 874 (Mahanagar Sudhar Samiti, Akola v. Akola Municipal Corporation and others). 08 members of that Standing Committee retired on 29-04-2013. The exercise undertaken to fill in those vacancies came to this Court in Writ Petition No.2571 of 2013 at the instance of the Mahanagar Sudhar Samiti, Akola. That Writ Petition was allowed on 14-08-2013 and the said judgment is reported at 2013 (5) Mh.L.J., 538 Mahanagar Sudhar Samiti & ors v. Mayor, Akola Municipal Corporation & ors. The matter was taken to the Hon'ble Apex Court in Civil Appeal No.1388 of 2015 and the Hon'ble Apex Court has allowed the said Appeal on 02-02-2015. The said judgment is reported at 2015(2) SCALE 136 Ajay Ramdas Ramteke and another v. Mahanagar Sudhar Samiti, Akola and others. The Hon'ble Apex Court found that the Divisional Commissioner had on 28-08-2012 refused to grant registration to the 'Aghadi' under Section 31A(2) of the Maharashtra Municipal Corporations Act, 1949 [for short, 'the Act, 1949?']. This exercise dated was undertaken by the Divisional Commissioner because of the directions issued in judgment reported at 2012(4) Mh.L.J., 874 Mahanagar Sudhar Samiti, Akola v. Akola Municipal Corporation and others (supra). It could not be looked into when Mahanagar Sudhar Samiti & ors v. Mayor, Akola Municipal Corporation & ors, (supra) came to be decided by the Division Bench on 14-08-2013. The Hon'ble Apex Court concluded that the said order of the Divisional Commissioner rejecting the application for registration had attained finality and therefore the Writ Petition filed before this Court questioning Resolution dated 29-04-2013 was liable to be dismissed. Hence, the judgment dated 14-08-2013 of this Court has been set aside and Resolution dated 29-04-2013 effecting nominations to the Standing Committee was restored.

5. It is not in dispute that after the judgment of Hon. Apex Court, Municipal Commissioner issued notices on 30-03-2015 and convened the meeting of General Body on 07-04-2015. On the said date, two sets of notices were issued; by first set, 8 vacancies in Standing Committee which would have otherwise occurred in February, 2014, were sought to be filled in; while by the other set of notices, remaining 8 vacancies which could have occurred in February, 2015, were sought to be filled in. It is not in dispute that all 16 seats in Standing Committee were thus sought to be filled in the meeting then scheduled on 07-04-2015.

6. Only first 8 vacancies of February, 2014 could be filled in on that day and the remaining 8 vacancies have been filled in the meeting taken on 13-04-2015. It is

this exercise which has been questioned in both these petitions.

7. Learned Senior Advocate Shri Gordey has submitted that the petitioner no.1 Maha Sangh has three members in General Body and considering this strength, it is entitled to have one seat on the Standing Committee. In view of the fact that the first election to the Standing Committee took place on 20-03-2012 and as per the rotation, the seat to which the petitioners are/were entitled, becomes available in election which has been conducted on 13-04-2015. To substantiate his submission he has taken us through a note prepared by the Municipal Secretary for this purpose. He points out that as per the said note, the Bhartiya Janta Party gets 4 seats, Bharatiya Rashtriya Congress gets 4 gets, Shiv Sena and Akola Vikas Aghadi get 2 seats each while Bharip Bahujan Mahasangh, Rashtrawadi Congress Party, Akola Shahar Vikas Aghadi and Petitioner Akola Vikas Mahasangh get 1 seat each on the Standing Committee. He submits that when the elections were actually held on 13.04.2015, that seat came to be denied to the petitioners and it came to be given to the Bharip Bahujan Mahasangh. He contends that, the said election is therefore liable to be quashed and set aside.

8. He has referred to Section 31A(2) of the Act 1949 to urge that as per the scheme of that provision, full or complete number in relative strength of Corporators belonging to any Aghadi or Front is separately recognised in law while the fraction number has been independently recognised. Both the complete & fraction number are given distinct treatment. He contends that the intention of the State Legislature is to have representatives of even small Fronts/Aghadis which may not procure full number when the relative strength is determined, and hence this peculiar scheme has been worked out to see that all groups get an opportunity & are represented on Standing Committee. Taking hypothetical illustration he submits that if any seat is left after entitlement of such small groups is fulfilled, then only it can revert back to the larger parties with full number as relative strength.

9. He fairly points out that three preliminary objections have been raised by the respondents. According to him, the remedy under Section 451 of the Act, 1949 is not an alternate remedy & an absolute bar as held by this Court in 2012(4) Mh.L.J., 874 (supra). He further contends that the challenge that the petitioner no.1 is not the registered Aghadi or Front is misconceived because by order dated 28-08-2012, the status of the petitioner with three members as such has been recognised. He further submits that the representatives elected on Standing Committee on 20.03.2012, because of the judgment reported at 2012(4) Mh.L.J., 874 (supra) have already completed their tenure. All representatives elected or nominated on 13.04.2015 are not necessary parties in this challenge as the representative of party likely to be displaced i.e. the representative of Bharip Bahujan Mahasangh is respondent no. 11 before this Court. Hence, the objection that the necessary parties are not joined is erroneous.

10. Learned Advocate Shri Gadhiya for the respondent no.1 Mayor has opposed the petition & arguments noted supra. According to him, the mathematical exercise of finding out whether the petitioner is entitled to one seat on the Standing Committee or not, can be effectively looked into under Section 451 and this Court in the judgment reported at 2012(4) Mh.L.J., 874 (supra) reaches a finding on alternate remedy in the peculiar facts and circumstances of that case. He further points out that in that judgment, the petitioner claimed to be a part of Mahanagar Sudhar Samiti and refusal by the Divisional Commissioner to register Mahanagar Sudhar Samiti as a larger aghadi, does not mean that the petitioner no.1 Akola Vikas Maha Sangh has been registered. He, therefore, states that the petitioner has no locus or status to maintain such a petition.

11. He argues that under the scheme of Section 31A(2) of the Act, 1949, the treatment to full number or fraction in relative strength is only to advance the purpose of providing effective representation to the parties in proportion of their relative strength in General Body. He, therefore, contends that a body which has got only a fraction (without full number) cannot be given a single seat on Standing Committee, and it cannot be allowed to supersede the better claim of a party who has secured a full or complete number. He states that as Bharip Bahujan Mahasangh has, in relative strength, a complete number; its value exceeds the value of fraction only of relative strength to which the petitioner is found entitled to, Bharip Bahujan Mahasangh & Petitioner can not have equal representation on the Standing Committee. As this controversy squarely falls for determination in the writ petition, the Bharip Bahujan Mahasangh is necessary party & the question can not be decided behind its back.

12. Learned Advocate Shri Sohoni appearing for the respondent no.2 Municipal Corporation has invited our attention to the written submission filed on affidavit on record.

13. The learned AGP appearing for respondent no.3 supports the arguments advanced by learned Advocate Shri Gadhiya and learned Advocate Shri Sohoni.

14. Learned Advocate Shri Sanket Charpe has submitted that the petitioner in Writ Petition No.2429 of 2015, is deprived of its seat & due representation on 13.04.2015. He supports the calculations about relative strength & the seat entitlement worked out by the Municipal Secretary.

15. Arguments in W.P. 1921 of 2015 are then advanced in the above backdrop.

16. Learned Advocate Shri Deshpande for the petitioner in Writ Petition No.1921 of 2015 states that the Hon'ble Apex Court has specifically directed that the position as on 29-04-2013 should be restored. As per that position, the election of the said petitioner as the member of Standing Committee needed to be restored and thereafter further election to elect Chairman of Standing Committee ought to have been conducted. He submits that because of interim orders passed by this Court and thereafter by the Hon'ble Apex Court, 8 members elected on 29-04-2013 could not resume their office as there was no election for the post of

Chairman of the Standing Committee. Hence they ought to have been permitted to complete their term after adjudication of the dispute pertaining to their election held on 29.04.2013 by the Hon. Apex Court. As such, there were no 16 vacancies in Standing Committee on 7.04.2015 & only after completion of their term, the steps to fill in proportionate vacancies could have been initiated. He submits that had this exercise been followed, the arbitrary and artificial attempts to fill in all 16 vacancies in the general body meeting at one go, would not have been necessary. He further points out that Rajesh Wasudeorao Kale could not have acted as Group Leader of respondent no.7 Aghadi as said person had earlier admitted to have formed a Front or Aghadi with Akola Vikas Aghadi. As such, he cannot be legally recognised as member of the political party Maharashtra Nav Nirman Sena. Hence the strength of Maharashtra Nav Nirman Sena is reduced by one which results in reduction of its one seat on the Standing Committee. This seat then needs to be given to the party or Aghadi securing next below complete number or fraction. According to said petitioner, therefore, Akola Vikas Aghadi remains entitled only to one seat on the Standing Committee and independent members whose relative strength is next below the relative strength of Akola Vikas Maha Sangha, gets one seat. Hence, on this count also the entire process of nomination undertaken on 7th & 13th April, 2015 is vitiated.

17. Opposing this petition, learned Advocate Shri Sohoni has invited our attention to the written submissions filed by respondent nos. 3 and 4 on record. He states that on 01-03-2016 the term of 8 members of the Standing Committee expired and accordingly, on 29-02-2016, in General Body Meeting, 8 corporators have been elected in their place. He submits that the petitioners have not assailed these elections which are conducted on 29-02-2016. He adds that after these elections new Standing Committee Chairman has been elected and thus new Standing Committee has started functioning. If the petition is allowed, the rights of these new members & the Standing Committee shall be affected & hence, they are necessary parties. As W.P. 1921 of 2015 is not amended to incorporate & assail these subsequent developments & newly nominated members are not arrayed as parties, the petition must be dismissed.

18. Learned Advocate Shri Deshpande in reply arguments points out that while issuing notice in the petition 1921 of 2015 on 06-04-2015, this Court has permitted the meeting scheduled on to be held but its outcome is subjected to further orders of this Court in the matter.

19. Learned Senior Advocate Shri Gordey in reply arguments points out that in his petition 2429 of 2015 though there is no such order qualifying or subjecting the nomination, if petition is allowed as the election conducted on 13-04-2015 falls to ground, the subsequent election must also fall to ground. While dictating the above part, because of attempt made to add to this submission, we put the question to all as to whether the Standing Committee members who are elected on 29-02-2016 and body in office needs to be heard or not. Learned Senior Advocate Shri Gordey and learned Advocate Shri Deshpande both then submitted

that it is not necessary. Learned Senior Advocate Shri Gordey states that the seat which the petitioner is seeking in Writ Petition No.2429 of 2015, no election could have been held on as that the vacancy becomes available only in February, 2017. Respondent 11 nominated on that seat on 13.4.2015, is already party before this Court.

20. The affidavit filed by the Municipal Corporation and its Secretary in Writ Petition No.1921 of 2015 shows that 8 members have been elected to fill in 8 vacancies on 29.2.2016. The facts stated therein are undisputed. The Aghadi or Fronts represented by them are as under :

1

Shri Satish Ganeshrao Dhage

Bhartiya Janta Party

2

Shri Bal Pralhadrao Tale

Bhartiya Janta Party

3

Smt. Safiya Azad Khan

Bhartiya Rashtriya Congress

4

Smt. Sk. Rijwana Ajij Sk. Ajij

Bhartiya Rashtriya Congress

5

Smt. Rajkumari Rajkumar Mishra

Shivsena

6

Smt. Mangla Subhashrao Mhaisne

Akola Vikas Aghadi

7

Shri Mahadeo Amrutrao Jagtap

Bharip Bahujan Mahasangh

8

Smt. Shamsad Begam Sk. Farid

Nationalist Congress Party

21. In Writ Petition No. 1921 of 2015, this Court has ordered that though the meeting scheduled on 07-04-2015 could be held, its outcome would be subject to further orders of this Court in the matter. After the said order of this Court, the actual meeting has been held and prayer clauses in petition have not been amended to incorporate the challenge to the proceedings in that meeting. The said meeting filled in 8 vacancies in Standing Committee which had occurred in February, 2014. 8 members who are elected on 07-04-2015 completed their tenure in February, 2016 and hence the direction of this Court that the outcome of said meeting would be subject to further orders of this Court in the matter is rendered redundant. The 8 new members elected on 29-02-2016 are not parties before this Court and their elections are also not assailed in Writ Petition No.1921 of 2015. Remaining 8 members of the Standing Committee nominated on 13.04.2015 will complete their term in February, 2017. Hence, 50% of the new Standing Committee members are not before the Court. If we accept the contentions of Adv. Deshpande & restore the body as on 29.04.2013, all these members & entire Standing Committee functioning to say is removed. As such, we find that no effective orders can be passed in Writ Petition No.1921 of 2015 in absence of necessary parties. It is, accordingly, disposed of.

22. In Writ Petition No.2429 of 2015, the challenge is only to the proceedings of General Body held on 13-04-2015 in which a vacancy or seat which otherwise would have fallen to the share of the petitioners has been given to the Bharip Bahujan Mahasangh. It is to be noted that one representative of Bharip Bahujan Mahasangh has been elected on while its another representative has been elected on 13-04-2015. The petitioners claim this second seat which has been filled in through Bharip Bahujan Mahasangh on 13-04-2015. The tenure of said member elected on 13-04-2015 against the seat claimed by the petitioners is to last up to February, 2017. Thus, the elections held on have got no bearing on the challenge raised in writ petition 2429 of 2015.

23. Section 31A of the Act, 1949 to the extent relevant for finding out the entitlement of the present petitioners reads as under :

"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 subsection (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 recognised 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 recognised 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 recognised parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognised 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 recognised 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 (Mah. XX of 1987), within a period of one month from the date of notification of election results, from 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."

24. Insofar as the contention about availability of alternate remedy is concerned, this Court has already dealt with that aspect in its earlier judgment reported at 2012 (4) Mh.L.J., 874 (supra). The discussion therein holds good even in the present matter. The issue is under litigation since the first election on 28-03-2012 and till date there had been two rounds of this Court and one round of the Hon'ble Apex Court. This is the third round in which the issue of composition of the Standing Committee of Akola Municipal Corporation is engaging the attention. In such situation, we find that the alternate remedy under Section 451 of the Act, 1949 can not operate as an absolute bar. The

preliminary objection of Adv. Gadhiya that the petitioners have an alternate remedy & therefore this writ petition should not be entertained, is erroneous.

25. Though the respondent no.1 Mayor has argued that the order of cancelling the registration of Fronts passed on 20-08-2012 does not result in grant of registration or recognition to the petitioners; it is obvious that, the very same logic then must apply to the other political parties who wanted a post pole alliance to be registered. The registration of Mahanagar Sudhar Samiti was cancelled on 20-08-2012 & it consisted of 24 members viz; 18 members were of Bhartiya Janta Party, 3 members of Akola Vikas Mahasangh, 1 member of Maharashtra Nav Nirman Sena and 2 independent members. The petitioner no.1 with its three members namely Sunil Meshram, Sujata Ahir and Madhuri Meshram joined this Mahanagar Sudhar Samiti afterwards i.e. in terms of scheme of Section 31A (2) of the Act, 1949. The initial order of registration of Mahanagar Sudhar Samiti or then of parties which constituted it as Municipal political parties or front, has not been provided on record. The copy of order dated 20-08-2012, cancelling registration of Mahanagar Sudhar Samiti, is also not provided on record. The other aghadi whose registration is cancelled on that day is Akola Vikas Mahasangh, consisted of 18 members from Bhartiya Rashtriya Congress, 5 members from Nationalist Congress Party, 7 members of Bharip Bahujan Mahasangh, 2 members of Akola Vikas Aghadi and 1 independent member namely Sahajan Parvin Mohd. Naushad. If the registration is cancelled or declined, it is apparent that, the registration of both these larger Fronts has been also cancelled.

26. However, the respondent no. 2 Municipal Corporation has in Writ Petition No. 2429 of 2015 filed a specific affidavit and therein it has been pleaded in paragraph no.2 that after the general elections were held in year 2012 the following political parties or aghadis were registered by the respondent no.3 Divisional Commissioner. The same are as under :

A

Akola Vikas Mahaghadhi

33 members

B

Mahanagar Sudhar Samiti

24 members

C

Shiv Sena

8 members

D

Akola Sahar Vikas Aghadi

5 members

In paragraph no.5, the respondent no.2 has pointed out that after decision of Hon?ble Apex Court the Divisional Commissioner has registered afresh the political parties/aghadis as under :

A

Bhartiya Janta Party

18 members

B

Bhartiya Rashtriya Congress

18 members

C

Akola Vikas Aghadi

8 members

D

Bharip Bahuja Mahasangh

7 members

E

Nationalist Congress Party

5 members

F

Akola Vikas Mahasangh

3 members

27. It is pointed out in that affidavit that the number of members of Shiv Sena and Akola Vikas Aghadi remained unaltered. In the present matter, we need not to go into other challenges or other niceties. It is apparent that, the Divisional Commissioner has registered Akola Vikas Maha Sangh afresh with three members after the judgment of Hon?ble Apex Court. Petitioner Akola Vikas Mahasangha has produced communication dated 16.03.2015 sent by the Divisional Commissioner to its group leader stating that after verification conducted on 10.03.2015 as per directions of the Hon. Apex Court, petitioner is registered under Maharashtra Local Authority Members (Disqualification) Act, 1987. It is after this registration that the petitioner no.1 has stepped in the impugned nomination or election of Standing Committee. The preliminary

objection that petitioner no.1 is not registered therefore must fall to ground.

28. The objection that necessary parties have not been joined is equally misconceived as Rama Damodhar Tayde who has been elected on 13042015 against the seat claimed by the petitioners is already arrayed as respondent no.11 before this Court.

29. In this background, when the scheme of first proviso to Section 31A(2) of the Act, 1949 is looked into, it is apparent that, the seats available on Standing Committee must be given first in full number as appearing in their respective relative strength. The chart prepared by the Municipal Secretary in his note can be conveniently looked into for this purpose as under :

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i{kh; cykcy

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1-

Hkkjrh; turk ikVhZ

18

4.56 = 3.94

3+1=4

2-

Hkkjrh; jk"V~h; dkaxzsl

18

4.56 = 3.94

3+1=4

3-

f"kolsuk

8

4.56 = 1.75

1+1=2

4-

vdksyk fodkl vk?kkMh

8

$$4.56 = 1.75$$

$$1+1=2$$

5-

Hkkfji cgqtu egkla?k

7

$$4.56 = 1.53$$

$$1+0=1$$

6-

jk"V~oknh dkWaxzsl ikVhZ

5

$$4.50 = 1.09$$

$$1+0=1$$

7-

vdksyk "kgj fodkl vk?kkMh

5

$$4.56 = 1.09$$

$$1+0=1$$

8-

vdksyk fodkl egkla?k

3

$$4.56 = 1.65$$

$$0+1=1$$

9-

vi{k lnL;

1

$$4.56 = 0.21$$

$$0+0=0$$

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73

.

$$11+5=16$$

30. Thus, the relevant strength of Bhartiya Janta Party and Bhartiya Rashtriya Congress has been worked out to 3.94 each and therefore they have been initially given 3 seats as their relevant strength consists of whole or full or complete number as "3". This application of mind can also be seen in relation to parties at serial No.3 to 7 in chart mentioned supra.

31. After thus distributing 11 seats to political parties/aghadis/Fronts who have secured complete numbers in relative strength, 5 seats are still in balance. These 5 seats have been thereafter given in descending order to the political parties who also have fraction. Each party, ignoring the value of whole number, has been given a seat each in descending order as per value of fraction appearing in its relative strength. While allotting the remaining 5 seats, the Municipal Secretary has shown that the parties from serial nos. 1 to 4 in chart supra get an additional seat in lieu of or in recognition of the fraction number appearing in their relative strength. The highest fractions available in descending order thereafter pointed out. ".65" or "0.65" is the relative strength or ratio of the petitioner which is more than that of Bharip Bahujan Mahasangh for that he had given one seat to petitioner in WP No. 2429 of 2015.

32. In first proviso under Section 31A(2) of the Act, 1949, it is very clear that the seats are to be allotted to such parties initially by considering the whole number appearing in their relative strength only. If after completing this exercise seats are still remaining, the balance seats are to be allotted one each to such parties in the descending order of the fraction number in their respective relative strength. Thus the value of fraction number alone is to be utilised in descending order and while doing so, only fraction number is to be looked into. The provision does not say that the balance seats left are to be allotted to "remaining" parties i.e. to the parties who could not get representation in first round as they did not have whole or full number. Similarly, the fraction cannot be associated with full number to determine its value because that would defeat the requirement of arranging such fraction numbers in descending order. Therefore, the Bharip Bahujan Mahasangh having relative strength of "1.53", as it has "one" as full number, it gets one seat in the Standing Committee which has been filled in on 07042015. The descending order of fraction number puts the petitioners at serial no.5 and Bharip Bahujan Mahasangh with fraction ratio of ".53" stands at serial no.6. Petitioners fraction is ".65" which is more in value than that of Bharip Bahujan Mahasangh. As all fronts, groups etc. are to the extent possible, to be provided representation on the Standing Committee, Bharip Bahujan Mahasangh which has a lesser fraction can not be given an additional seat & petitioner, which has greater fraction number, can not be deprived of it by associating the fraction ".53" of Bharip Bahujan Mahasangh with its whole or complete number "1" in relative strength. All parties who have whole number in their relative strengths, are first entitled to seats on Standing Committee as per that complete number.

There is no provision for "rounding off " of such fraction. After distribution as per complete number, the focus in the distribution scheme shifts to those parties who have fractional representation in their relative strength. This recognition of & separate treatment to whole number & fraction number in the legislative scheme appears to be to advance the object of providing the representation to all on the Standing committee. This object would be defeated if fraction numbers are arranged in descending order after associating them with whole number. In a hypothetical case, party with relative strength of "4" without any fraction will earn only 4 seats on the Standing Committee while its rival with relative strength of "3.09" will also have 4 seats due to fraction ".09" which it has over & above whole number 3. Similarly, two parties securing fraction numbers ".09" & ". 95" will also get fourth seat i.e. one more over & above the seats earned due to whole number 3. It is in this view of matter, that fraction & fractional representation appears to be segregated & treated separately independent of whole number. It is axiomatic that keeping in mind this scheme & spirit, the greater fraction needs to be catered to first. If legislature wanted to eliminate the parties which got seats in first round from zone of consideration in second round, it would have indicated accordingly in first proviso to Section 31A(2) of Act,1949. We can not add the word like "remaining" or on those lines, in the said legal provision & read it as "allotted one each to the "remaining" recognised parties or registered parties or groups or aghadi or front in the descending order of the fraction number". The provision is unambiguous & workable as it stands. Legislative intent is discernible from it clearly. When "balance" seats are being allotted & fraction number is the only factor to be looked at, greater fraction number can not be by passed. Hence, grant of one seat to the petitioners and said proposal of Municipal Secretary in his office note appears to be in consonance with the proviso to Section 31A(2) of the Act, 1949.

33. We find that, therefore, though the petitioners are not entitled to grant of a seat in first round of allotment when seats are allotted against whole number in relative strength; in later round because its relative strength, though in fraction, is more than Bharip Bahuja Mahasangh, petitioner no. 1 becomes entitled to 1 seat. The denial of that seat to the petitioners on 13.03.2015 is therefore unsustainable. Consequently the nomination of respondent no.11 against that seat on is also unsustainable.

34. In view of this discussion, the election of respondent no.11 against said seat on 13.03.2015 is quashed and set aside. The said vacancy needs to be filled in through a representative of Akola Vikas Maha Sangh i.e petitioner no.1. If any such nomination is already submitted by the petitioner no.1 Akola Vikas Maha Sangh the respondent no.2 shall arrange to hold a General Body Meeting in accordance with law at the earliest to consider that nomination.

35. Writ Petition No.2429 of 2015 is, thus, partly allowed and disposed of. Rule made absolute therein accordingly. No costs.

36. Writ Petition No.1921 of 2015 is, dismissed. Rule discharged. No costs.