

(2009) 11 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 9371 of 2009

Shri Bhanji B. More

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 19IAA, 19IAA(1)

Citation : (2010) 1 ALLMR 782 : (2010) 1 BomCR 187 : (2010) 1 MhLj 524

Hon'ble Judges : J.H. Bhatia, J; Ferdino I. Rebello, J

Bench : Division Bench

Advocate : S.M. Oak and Sagar Joshi, for the Appellant; L.M. Patne, AGP for Respondent No. 1 and S.M. Kamble, for the Respondent

Judgement

Ferdino I. Rebello, J.—Rule. By consent, heard forthwith.

2. The petitioner claims to be the leader of the Republican Party of India, which has 5 seats in the Ulhasnagar Municipal Corporation. According to the petitioner, Lok Bharati Party, Shiv Sena, Congress (I) and B.J.P. Have formed a front which is the ruling front in the said Corporation.

3. NCP is a party having 15 seats in the Corporation and MNS is having 2. In other words, NCP is having the largest strength outside the Agadi in the Corporation.

4. Section 19-IAA of the Bombay Provincial Municipal Corporation Act, 1949 provides for appointment of a Leader of the Opposition. It reads as under:

19.IA. Leader of Opposition ? (1) An elected Councillor who is, for the time being, the Leader of the Party in opposition, having greatest numerical strength and recognised as such by the Mayor, shall be the Leader of the Opposition.

Explanation: Where there are two or more parties in the opposition, having the same numerical strength, the Mayor shall, having regard to the status of the party, recognise the Leader of any one of such parties as a Leader of the

Opposition for the purposes of this Act and such recognition shall be final and conclusive.

5. A perusal of Sub-section (1) of Section 19-IAA would show that an elected Councillor who is the Leader of the Party in opposition having the greatest numerical strength is to be recognised by the Mayor and he shall be the Leader of the Opposition. The statute therefore describes the member who can be the Leader of the Opposition and who has to be given recognition as such.

6. It appears that the Corporation passed a Resolution on 12.6.2008 appointing the Petitioner as the Leader of the Opposition. This Resolution of the Corporation has been suspended by the State Government and, consequently, the present petition.

7. It is now the case of the petitioner that the State Government could not have interfered with the resolution passed by the Corporation as it was within the competence of the Corporation to appoint an elected Councillor as the Leader of the Opposition.

8. We have heard the learned Counsel for the parties.

9. In our opinion, insofar as Section 19-IAA is concerned, the power conferred is not on the Corporation, but is a statutory power conferred on the Mayor to appoint the Leader of the Opposition. The language of the Section does not in any way provide that the Leader of the Opposition would be appointed by a resolution passed by the Corporation. Once there is a statutory provision and pursuant to the statutory provision, the power has been conferred on a named authority that authority alone must exercise the power to the exclusion of all others, unless there be a provision for delegation. In the instant case, there is no such provision. Therefore, the power has to be exercised by the Mayor and Mayor alone. The resolution by the Corporation was therefore illegal. The State Government therefore was within its jurisdiction to stay the resolution.

10. The other aspect of the matter is that if we permit the leader of a party having 5 seats to be appointed by the Mayor to the exclusion of a party having 15 seats and which is the largest party in opposition, that would amount to defeating the very basis of our Parliamentary democracy and the provisions of the Bombay Provincial Municipal Corporation Act, 1949. All Councillors, whether elected or nominated, must function within the provisions of the Act. A duty is cast on the Mayor as the Head of the party in the Corporation to maintain and uphold democratic principles and traditions. It is immaterial at what point of time which party is in power. What must be adhered to is the normal democratic principle, that the largest party in the opposition must have its leader recognized as the opposition Leader in terms of Section 19-IAA of the Act. This Court will not and cannot permit the destruction of these democratic principles by party or a group in power subverting these basic principles and appointing a minority party as Leader of the Opposition.

11. For the aforesaid reasons, we are clearly of the opinion that the State Government was within its jurisdiction to interfere. At the same time, we are very clear that the petitioner herein has chosen to approach this Court not to uphold the democratic principles, but to claim a post to which he in law is not entitled.

12. It is the petitioner who has come to this Court and not the main opposition party, NCP. We are of the opinion that as there is an authority by the Mayor to exercise his power u/s 19-IAA of the Act, the post of the leader of the opposition cannot be kept vacant. There is no legal impediment in filling the post. We, therefore, direct the Mayor of the respondent No. 2 to act strictly in terms of Section 19-IAA of the Bombay Provincial Municipal Corporation Act, 1949 and nominate a leader of the opposition from the leader of the opposition party having the maximum number of members. In the instant case, the NCP.

13. Rule made absolute accordingly. There shall be no order as to costs.