

(2005) 03 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No. 3986 of 2004

Sunil Ramdas Kotkar and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 19, 19AA, 19IA, 19IAA, 19IAA(2)
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 78(2), 81
High Court Appellate Side Rules — Rule 10
Maharashtra Legislatures Salaries and Allowances Act, 1978 — Section 2
Maharashtra Local Authority Members Disqualification Act, 1986 — Section 3, 3(1), 3(6), 4, 7
Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 2(B1), 3
Salaries and Allowances of Leaders of Opposition of Parliament Act, 1977 — Section 2

Citation : (2005) 3 ALLMR 143 : (2005) 4 BomCR 117 : (2005) 4 MhLj 375

Hon'ble Judges : Naik A.B., J; Dabholkar N.V., J

Bench : Division Bench

Advocate : R.N. Dhorde and N.B. Suryawanshi, instructed by Santosh Bhosale, for the Appellant; N.B. Khandare, A.G.P. for Respondent No. 1, V.P. Latange, for Respondent No. 2, B.L. Sagar Killarikar and P.M. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

NAIK A.B., J.—Heard respective Counsel.

2. By this order, we propose to dispose of this writ petition finally, at the stage of motion hearing, in view of the order passed by this Court on 3rd November, 2004 whereby, our Brothers; Zoting and Deshpande, JJ, have passed the following order :

"Parties are put on notice that, the matter will be decided at the admission stage after vacation."

In view of this, we heard this writ petition on 28th February, 2005 at length,

which remained part heard. On 1st March, 2005 we completed the hearing and the matter was posted for judgment.

3. By this petition, as many as nine petitioners are seeking following reliefs:

"(B) Issue a writ, order or direction in the nature of writ of certiorari for quashing and setting aside the impugned order dated 19-5-2004 passed by the respondent No. 3 appointing the respondent No. 4 as a Leader of Opposition in respondent No. 2 Corporation and for that purpose issue necessary orders.

(C) Issue writ of mandamus or direction directing the respondent No. 3-Mayor to grant recognition to the proposal dated 24-02-2004 for the post of Leader of Opposition submitted by Indian National Congress I party to its group leader Shri Bhanudas Eknath Kotkar as a Leader of Opposition in respondent No. 2 Council and for that purpose issue necessary orders.

(D) Hold and declare that Shri Bhanudas Eknath Kotkar elected Councillor from Ward No. 8-B from Indian National Congress party who is elected as a group leader by the Indian National Congress (I) party is a Leader of Opposition in respondent No. 2 Corporation and allow him to perform the duties and to avail the statutory benefits u/s 19-IAA(2j of Bombay Provincial Municipal Corporations Act, 1949." (Rest of the prayers for interim reliefs, need not be mentioned.)

4. The petitioners are the Corporators of Ahmednagar Municipal Corporation elected in general election held on 14-12-2003. The respondent No. 2 Ahmednagar Municipal Corporation (hereinafter referred to as the "said Corporation") created and established u/s 5 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). The respondent No. 3 is the Mayor of the said Corporation, duly elected as per the provisions of Section 19 of the Act. The respondent No. 3, in exercise of powers conferred on him by Section 19-AA of the Act, nominated the respondent No. 4 as a Leader of Opposition in the House and this action of respondent No. 3, is impugned in this petition filed under Article 226 of the Constitution of India, 1950 (for short "the Constitution") seeking the above-mentioned reliefs.

5. Before proceeding to advert to several contentions advanced before us by the Counsel appearing for the respective parties, we may note down some undisputed facts.

On 17th September, 2003, the State Election Commission declared the election programme of the said Corporation, to elect 65 Corporators. On 14-12-2003 the voting took place and on 17-12-2003 the results were declared. It is stated across the Bar that the elections were contested by the candidates sponsored by various political parties, besides some independent candidates. In the said election, 18 candidates belonging to Shiv Sena, 15 candidates belonging to Bhartiya Janata Party (for short "BJP"), 15 candidates belonging to Indian National Congress (I) 5 candidates from Nationalist Party. 10 independent candidates, 2 candidates from Aghadi Front (Seva) panel were declared elected.

After the declaration of the election results, the first, meeting of the Corporation was held on 30-12-2003 to elect the Mayor and Deputy Mayor, respectively. In the said meeting (election) the respondent No. 3 got elected as Mayor, by securing 38 votes and one Dnyaneshwar Sadashiv Khandre, came to be elected as Deputy Mayor, who too secured 38 votes. It is stated that the respondent No. 3 who was elected as Mayor belonged to Shiv Sena and Dnyaneshwar Khandre, Deputy Mayor was from BJP, The respondent No. 3, thereafter, in exercise of powers u/s 19-AA of the Act, nominated the respondent No. 4 as Leader of Opposition. It is contended in the petition that respondent No, 4 belonged to BJP and as Shiv Sena and BJP had a pre-poll alliance which together had secured 33 seats of the Corporators who contested the election as candidates sponsored by these parties, got elected and became a ruling party in the House and that candidate belonging to BJP cannot be recognized as Leader of Opposition. It is further contention that Indian National Congress (I) having secured 15 seats in the House, being the largest party in opposition, a candidate from that party could have been nominated as Leader of Opposition. However, since the Mayor/respondent No. 3 has nominated the respondent No. 4 Leader of Opposition, the same is contrary to the letter and spirit of Section 19-IAA of the Act.

Since the respondent No. 3 delayed recognition of Leader of Opposition, some of the Corporators approached this Court by way of petition being Writ Petition No : 1413/2004, seeking a writ of mandamus against the respondent No. 3 to recognize a Corporator as Leader of Opposition. This petition was disposed of by this Court on 6th May, 2004 on the statement made by the Advocate for the respondent No. 3-Mayor. It was stated before this Court that appropriate action/decision on the representation dated April, 24, 2004 submitted to the respondent No. 3 (the Mayor) on 27th April, 2004 will be taken and the decision thereon will be communicated to the petitioners in that petition on or before 19th May, 2004. Accepting the statement made by the Advocate on behalf of the respondent No. 3, the said petition came to be disposed of. Accordingly, on 19th May, 2004 the respondent No. 3 took up the decision and passed the following order which reads thus :

"For the post of Leader of Opposition, in Ahmednagar Municipal Corporation, for the purpose of appointment, Bhartiya Janata Party and Indian National Congress I party have given proposals of Shri Bahirnath Tukaram Wakale and Shri Bhanudas Eknath Kotkar.

I have after minutely perusing both the proposals, considering the mandate given by public in the development of city, the strength of parties, and status of parties, I am exercising the powers u/s 19-IAA of the Bombay Provincial Municipal Corporation Act, 1949, accepting the proposal of Bhartiya Janata Party, and thereby appoint Shri Wakale Bahirnath Tukaram as a Leader of Opposition. And reject the proposal of Indian National Congress (I) party." (original copy of the letter was not made available to this Court).

6. On receipt of the order, the present petition is lodged in this Court on 9th

June, 2004 and it was placed for motion hearing on 23rd June, 2004. On that day, the Division Bench of this Court, at the request of the Advocate for the petitioners, adjourned the petition to 5th July, 2004. The matter did not appear thereafter for quite some time. Then the petition was circulated for motion hearing on 2nd September, 2004. On that day this Court issued notice before admission making it returnable on 23rd September, 2004. On 23rd September, 2004, the petition appeared for motion hearing and by consent of the parties, the same was adjourned. On 26th October, 2004, the petition was placed for motion hearing. On that day, the learned Advocate for the respondent No. 4 sought time to file affidavit. Accordingly time was granted and the petition came to be adjourned to 2nd November, 2004. The petition was listed for hearing on 2nd November, but it reached on 3rd November, 2004 and this Court put the parties on notice that the matter will be decided at admission stage, which we have already referred to above.

7. The respondent No. 3 has filed his reply on 30th October, 2004. The respondent No. 4 also filed his reply on 30th October, 2004. No affidavit is filed on behalf of the respondents 1 and 2 though both were represented by their respective Advocates.

8. In support of the petition, we heard Shri R.N. Dhorde, by Shri Santosh Bhosale, learned Counsel for the petitioner; Shri N.B. Khandare, learned AGP for respondent No. 1; Shri V.P. Latange, for respondent No. 2; Shri Sagar Killarikar for respondent No. 3; and Shri P.M. Joshi, learned Advocate for respondent No. 4. The respondents 1 and 2 did not make any specific submissions before us. Thus, the real contest is between the petitioners and the respondents 3 and 4.

Shri Dhorde, learned Counsel, has raised the following submissions;

(i) That the order passed by the respondent No. 3 nominating the respondent No. 4 as Leader of Opposition is arbitrary, illegal and is passed with mala fide and deliberate intention to avoid the sanction to appoint the group leader of the Indian National Congress-I party, which had in its kitty as many as 15 Corporators in the House.

(ii) The recognition and appointment of respondent No. 4 as Leader of Opposition is against the well-established and well-recognised democratic principles. To elaborate this contention, the Counsel submitted that the Shiv Sena and BJP have formed a pre-poll alliance and contested election on a common agenda/plank and in the said election Congress-(I) to which the petitioner No. 1 belongs to, opposed the candidature of Shiv Sena and BJP combine. He further elaborated that Shiv Sena and BJP alliance appealed to the voters by drawing common agenda and opposed the candidature of Congress-(I) candidate and in the result of election, 18 candidates sponsored by the Shiv Sena were elected as Corporators-15 each candidates from BJP and Indian National Congress-(I) got elected. He submitted that at the election of Mayor and Deputy Mayor, Shiv Sena and BJP voted their candidate as one unit and, as a matter of fact, the Shiv Sena

and BJP have become a ruling party. The Counsel submitted that Mayor and Deputy Mayor are from the very same alliance i.e. Shiv Sena BJP; and as such, the Leader of Opposition cannot be from amongst the Ruling party. He contended that the action of respondent No. 3 to nominate the respondent No. 4 as Leader of Opposition is issued in colourable exercise of powers by respondent No. 3. He said that in a democratic set up, the ruling party at the same time cannot become opposition party.

(iii) Shri Dhorde, submitted that once Shiv Sena and BJP have entered into pre-poll alliance, they for the sake of their own convenience cannot form a group of opposition in the House and nominate its own candidate as Leader of Opposition. The Counsel further elaborated that the opposition must be the "real opposition". He contended that since both the parties have contested the election on common agenda, now, one of them cannot turn around and say that the party can be called itself as a opposition party and nominate one of its Corporators as Leader of Opposition. Shri Dhorde submitted that u/s 19-IAA of the Act, the respondent No. 3 should have recognized a Corporator from the party, having greater numerical strength as Leader of Opposition. He submitted as per the numerical strength, Indian National Congress-(I) is best suited to the said post, it having 15 Corporators i.e. party having greatest numerical strength. As such, the leader of that party is required to be recognized as Leader of Opposition by respondent No. 3. It is contended that as there was pre-poll alliance between Shiv Sena and BJP, by no stretch of imagination, the said party who got elected as such, the candidate from one of such parties can be recognized as Leader of Opposition. He submitted on the facts which are brought on record and which were before the respondent No. 3, recognition of respondent No. 4 as Leader of Opposition is per se illegal and respondent No. 4 cannot be appointed as Leader of Opposition.

(iv) Shri Dhorde, finally, submitted that the contentions that are taken in the writ petition, are not specifically controverted by the respondent No. 3, who has filed his reply to the petition. He submitted that the documents annexed to the petition and the contention, which are on oath, have to be accepted. He submitted that by reading the petition as a whole, it is abundantly clear that there was pre-poll alliance between Shiv Sena and BJP which tantamounts to formation of an Aghadi, in as much as, candidates are elected on their party tickets, one of the associates of that Aghadi cannot be called as the party-in-opposition and, as such, the respondent No. 4 cannot be appointed as a Leader of Opposition, who belong to the party which had its pre-poll alliance with Shiv Sena.

(v) Shri Dhorde, then, brought to our notice several newspaper clippings/ reports which are made part of the petition, in order to substantiate the above-said contentions. In addition to that Shri Dhorde, submitted that in the meeting which was called to elect Mayor and Deputy Mayor respectively, the candidates belonging to Shiv Sena and BJP got their respective Corporators elected as Mayor and Dy. Mayor. Both Mayor and Deputy Mayor secured an identical number of

votes i.e. 38. On this basis, the learned Counsel contended that Shiv Sena and BJP are the ruling parties in the House and, therefore, the Corporator who is elected on the ticket of BJP, cannot be recognized as the Leader of Opposition. Shri Dhorde, further, pointed out that in accordance with the pre-poll alliance, neither the Shiv Sena nor the BJP have contested on seats against each other.

(vi) Shri Dhorde submitted that on 30-12-2003, the Ahmednagar District Congress-I Working President communicated the fact that the Corporators belonging to Indian National Congress-I (for short "Congress-I") have chosen Shri Bhanudas Eknath Kotkar as their leader who was elected from Ward No. 8-B on Congress-I ticket, and he was selected to act as the Leader of Opposition. Shri Dhorde pointed out that though the letter was given to the Mayor on 30-12-2003 he has not taken any note of it. Shri Dhorde, also pointed out that the other Corporators elected from different parties, such as, Nationalist Congress Party (for short "NCP"), Republican Party of India (for short "RPI") have also supported the stand of the Congress-(I) and they have also selected Shri Bhanudas Kotkar to act as Leader of Opposition and have no objection if he is appointed. Shri Dhorde submitted that inspite of the letter addressed to the Mayor to appoint Leader of Opposition by exercising his powers given to him u/s 19(IAA) of the Act, with some ulterior motive and for the reasons best known to the Mayor, the Mayor did not exercise his powers. Therefore, some of the Corporators have approached this Court and this Court has given direction to the respondent No. 3 to take a decision and recognize the Leader of Opposition, He submitted that after this Court directed the respondent No. 3 to take a decision, only thereafter he has exercised his power and rejected the claim put forth by the petitioners, but illegally and unauthorisedly, appointed the respondent No. 4 as Leader of Opposition. Shri Dhorde, further submitted that the Mayor has rejected the proposal or suggestion submitted by the Congress-I regarding appointment of Leader of Opposition. Hence, the said action is arbitrary, and illegal which runs contrary to the democratic principles. He requested that both the orders passed by the Mayor be set aside and he may be directed to recognize the petitioner No. 1 as Leader of Opposition.

(vii) Shri Dhorde, learned Advocate took us to some of the provisions of the Act and also to the provisions of Maharashtra Local Authority Members' Disqualification Act, 1987, to substantiate his contention that Shiv Sena and BJP are parties for purpose of election and they are ruling parties in the Corporation.

9. Per contra, Shri B.L. Sagar-Killarikar, learned Advocate for respondent No. 3 submitted that the instant petition is not maintainable at all since the same is bad for non and misjoinder of necessary parties. He submitted that there was no pre-poll alliance, as alleged by the petitioners. He submitted that the Corporators got elected as official candidates sponsored by two different parties i.e. Shiv Sena and BJP. He submitted that both the parties have neither formed any Aghadi nor sponsored any candidates as candidate of Aghadi. On the other hand, he submitted that Shiv Sena and BJP have nominated and sponsored their

respective candidates at the elections. He brought to our notice the publication of results published in the Government Gazette dated 17th December, 2003 (Exh. H : page 37 of the paperbook). He submitted that Gazette notification which is authenticated one, clearly established that the Corporators were elected as a candidates of their respective parties. He pointed out that the said Gazette nowhere refers to the Aghadi or Yuti as tried to be contended by the learned Counsel for the petitioners. He specifically brought to our notice from the said Gazette the name of Shri Suresh Chhaburao Shelke who was elected from Ward No. 19 and was sponsored by Aghadi and stated so in the column meant for the name of the party. He showed us the entry made in Column No. 5 as "Aghadi Front Seva Panel". Similar is the case of Sunita Dattatraya Mudgal, who was also elected from the said Aghadi. He, therefore, submitted that if Shiv Sena and BJP would have formed an Aghadi, then, the Gazette notification should indicate so. He submitted that there was limited support to the candidates of both the parties on "issued based politics". There was no Aghadi or Yuti as such, as tried to be contended by the learned Advocate for petitioners. He submitted that neither Shiv Sena nor BJP is a municipal party. Those are two different parties at national level and they have sponsored their respective candidates for the purpose of election of the Corporation. He, therefore, submitted that on considering the material produced before the respondent No. 3, the respondent No. 3 took a decision and recognized the R-4 as Leader of Opposition. He submitted that the decision of the Mayor appointing the respondent. No. 4 as Leader of Opposition cannot be gone into by this Court, that too in a petition filed under Article 226 of the Constitution, as it involves a political issue. He further submitted that the respondent No. 3 has considered relevant material which was placed before him and, on the basis of material, he took the decision. He submitted that the Congress(I) and BJP have equal number of candidates in the House. Moreover, there was a specific demand from the President of BJP Ahmednagar Unit to the effect that the Corporators belonging to BJP decided to have a separate sitting arrangement as party in opposition in the House. The Corporators from BJP were insisting for their separate sitting arrangement in the House, It was stated by the Corporators of BJP that they have decided to sit in opposition and accordingly the Mayor has received written request from the President of BJP Ahmednagar city unit. He submitted that there were two proposals received from the BJP and Congress-(I), both the parties have equal number of strength i.e. 15 and, therefore, by considering the provisions of Section 19-IAA explanation, the Mayor has exercised his power and recognized the respondent No. 4 as Leader of Opposition. He submitted that such a decision taken by the Mayor in exercise of statutory powers and as such, this Court has no jurisdiction to question the validity or otherwise of the said decision. However, he submitted that the action of the respondent No. 3 may be open for limited judicial review, i.e. within the parameters of jurisdiction qua judicial review. He submitted that judicial review is confined not to find out whether the decision is right or wrong, it is only confined to the process from which the decision is taken. Shri Killarikar, brought to our notice the orders passed by the respondent

No. 3 rejecting the request made by the Congress-I and accepting the request made by the BJP. He pointed out the order dated 21st April, 2004 (Exh. "R" page 77 of the paperbook), wherein the Mayor has considered the request made by the Corporators of Congress (I) and considering the request in positive manner, he arrived at a conclusion that considering the situation in the House it is was not possible to accord approval to the proposal made by the Congress I for appointing Shri Bhanudas Kotkar as the Leader of Opposition. Hence, the Mayor having considered the explanation to Section 19-IAA recognized the respondent No. 4 as Leader of Opposition and no fault can be found at that action. Shri Killarikar, submitted that the petition has to be dismissed as it is based on no sound ground, in as much as the petitioners have not annexed any authentic document so as to establish that there was Aghadi or Yuti, prior to the election. He submitted that reference to the provisions of the Maharashtra Local Authorities Members' Disqualification Act, 1987 (for short "Disqualification Act") and the Rules framed thereunder, wherein it was incumbent on the parties or Aghadis to get themselves registered by submitting information to the Commissioner after the election as provided under the Rules. He submitted after election, neither Shiv Sena nor BJP have registered themselves as the Municipal party, meaning thereby they have their independent status as Shiv Sena and BJP in the House. Furthermore, BJP has, in fact, expressed its desire to sit separately as party in opposition in the House and to oppose the ruling party. He brought to our notice the communication from the President of BJP City Unit addressed to the Mayor, wherein, in an unequivocal terms, it was stated that the BJP desires to be in opposition and to oppose any move which can be contrary to the larger public interest. He specifically referred to us the letter dated 8th April, 2004 annexed to the reply at page 114 of the paperbook. He pointed out from this communication that the Corporators belonging to BJP have elected Shri Bahirnath Tukaram Walke as their leader and they demanded separate sitting arrangement and further stated that they will be performing the duties as opposition party. Considering this aspect, Shri Killarikar, submitted that the respondent No. 3 the Mayor, has considered the relative merit of the claims put forth by the Congress-(I) and BJP and since both these parties have equal number of Corporators, the Mayor has selected BJP Corporator as elected on the ticket of BJP as Leader of Opposition which, according to the learned Counsel, is just and proper on the situation which prevailed in the House. He, therefore, submitted that the petitioners have no right to seek any writ from this Court as they have no right much the less any fundamental right or common law right. He, therefore, submitted that the petition requires to be rejected.

10. Shri Killarikar, submitted that the documents annexed to the petitions are inadmissible as they are cuttings from newspapers and this Court may refrain itself from taking any cognizance of the same. In addition, he submitted that Exh. "H" page 37 is the authentic document i.e. Gazette published after the election of the results were declared, which clearly indicates that the names of the Corporators who were elected from their respective parties and considering

the documents i.e. page 37 the Gazette, Shri Killarikar, submitted that the contentions raised by the petitioners that the Shiv Sena and BJP have formed an Aghadi or Yuti cannot be accepted and the same has to be rejected. He further submitted that the respondent No. 3 specifically denied the contention raised in the petition. He pointed out the statement made in the affidavit and referred to in Para No. 5 to show that the deponent has denied in toto all the allegations raised in the petition. Shri Killarikar, submitted that selection of Leader of Opposition is a question of political wisdom and, therefore, this Court should be very slow in interfering in the said order. He contended that the Court cannot review the decision taken by the respondent No. 3.

11. Shri P.M. Joshi, learned Advocate appearing for the respondent No. 4, wholeheartedly supported the contention of Shri Killarikar. He contended that the BJP Corporators have taken a decision to work, for the general welfare and benefit of society, on issue based politics, and on this aspect, it was decided by the Corporators of the BJP to sit in opposition in the House of the Corporation. He, therefore, submitted that acting upon the representation made by the Corporators belonging to BJP, the Mayor has accepted the request and appointed the respondent No. 4 as Leader of Opposition and, therefore, that this Court may not interfere in the said order.

12. Shri V.P. Latange, learned Counsel for respondent No. 2 who has filed the affidavit on behalf of the Municipal Corporation, Ahmednagar has not made any specific submissions. In the affidavit, it is stated by the respondent No. 2-that the Mayor had an authority and power to recognize the Corporator as Leader of Opposition which he has used and, as such, no specific contentions were necessary, on behalf of the Corporation.

13. The learned Counsel for the petitioners and respondents have placed reliance on various judgments of this Court and the Apex Court in order to substantiate their respective contentions. Shri Dhorde, for the petitioners has placed reliance on the following judgments :

(1) Abdul Rashid s/o Abdul Sattar v. Vikas Jain, reported in 2003(Supp.) Bom.C.R. 457 : 2003(3) Mh.L.J. 902.

(2) Maruti Dattatraya Bawalekar v. Pandurang Parte, reported in 1998(2) Mh.L.J. 532.

(3) Jayantbhai Manubhai Patel and Others Vs. Arun Subodhbhai Mehta and Others, .

Mr. Killarikar, learned Advocate has placed reliance on the following judgments :

(1) Vishnu Shivram Mehre v. City of Akola Municipal Corporation and Ors. 2004(5) Bom.C.R.847 : 2004(3) All.M.R. 151.

(2) Rohidas Shankar Patil Vs. Smt. Mayra Gilbert Mendosa, the Hon"ble Mayor of the Municipal Corporation of the City of Mira Bhayander, The Municipal

Corporation of the City of Mira Bhayander, The State of Maharashtra and Parshuram Damodar Patil, .

(3) Anis Khalil Momin v. Commissioner Municipal Corporation, for the city of Bhiwandi, Nizampur and Ors., reported in 2005(1) All.M.R. 3.

Besides the above judgments, both the learned Advocates have relied on the provisions of Section 19, 19 (I-AA) and provisions contained in Chapter II of the Act, dealing with the proceedings of the Corporation, Standing Committee and Transport Committee etc.

14. The learned Counsel are ad idem that the term "Leader of the Opposition" is not defined under the Act and, therefore, in order to have the definition of the term Opposition Leader, certain provisions of Disqualification Act and Maharashtra Legislature Salaries and Allowances Act, 1978 are required to be referred.

15. From the above contentions raised before us, the following points emerged for our consideration:

(1) Whether there was any Aghadi or Yuti formed before the election, by the Shiv Sena and BJP political parties ? .. No

(2) Whether the decision taken by the respondent No. 3 to recognize the respondent No. 4 as Leader of the Opposition can be amenable for judicial review and, if yes, to what extent ?

.. Yes, as stated in the judgment

(3) Whether this Court has jurisdiction to interfere with the decision of the respondent No. 3 to recognize the respondent No. 4 as Leader of Opposition ? ..Yes.

(4) Whether Shiv Sena & BJP are the ruling parties in the House ? ..No

(5) Whether this Court can consider the newspaper items annexed with the petition as piece of evidence and whether those are admissible in evidence under the Indian Evidence Act ? ..No

16. Before answering the above-coined issues, it will be appropriate to refer to the statutory provisions. Section 19 (I-AA) reads thus :

"19-IAA : The 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 recognized 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, recognize the leader of any of such parties as a leader of the opposition for the purposes of this Act and such recognition shall be final and conclusive.

(2) There shall be paid to the leader of the Opposition such honoraria and allowance and other facilities as may be provided by the regulations made in this behalf by the Corporation."

The expression "Leader of Opposition" is not defined under the Act nor there is definition of the "party in Opposition". As there is no definition of these two clauses, to understand the definitions, we may conveniently look to the definitions given to these terms under the Maharashtra Legislature Salaries and Allowances Act, 1978. The said terms in that Act reads thus :

"In this Act, "Leader of Opposition" in relation to either House of the State Legislature, means that member of the State Legislative Assembly or the State legislative Assembly, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the State Government having the greatest numerical strength and recognized as such by the Speaker of the Assembly or the Chairman of the Council, as the case may be."

At this stage, it will also be convenient to refer to the definitions of "Municipal party" "Aghadi" or "Front". "Municipal Party" as defined under the Disqualification Act and Rules thereof. Section 2(a) defines "Aghadi" or "front":

2(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."

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

"Original political party" is defined in Section 2(j) as under :

"20): Original political party, in relation to a Councillor or a member, means the political party to which he belongs for the purposes of Sub-section (1) of Section 3."

17. Now we make a reference to some definitions under the Disqualification Rules, 1987.

The term "Leader of the Municipal Party" is defined in Rule 2(b-1)(i),

"Rule 2(B-1)(i) : Leader, in relation to a municipal party, means a Councillor chosen by each political party or aghadi, front, in Municipal Corporation 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 absence of

the leader or discharge the functions of the leader of such party or aghadi or front, for the purpose of these Rules."

Rule 3 of the Rules requires the Leader of the Municipal party to furnish information to the Commissioner in the prescribed form, the names of the party, the names designation of the members, copy of rules regulations of the Municipal party or Constitution of such party etc. Shri Killarikar has relied on this provision in order to substantiate his contention that there is no such party in the House as Aghadi/ party, no information is submitted by leader of any party to the Commissioner as required. On the basis of these statutory provisions, it was tried to be contended by the learned Counsel that there was no aghadi or yuti or front. Merely because the two parties i.e. Shiv Sena & BJP have not contested the election against each other, that will not be called as aghadi or front. The Counsel submitted both the parties contested election of the Corporation on their party basis and Shiv Sena and BJP have sponsored their own candidates. We have quoted the those provisions (supra), with a view to find out which of the rival contentions are to be accepted in considering the question raised before us, i.e. whether there was pre-poll alliance between Shiv Sena & BJP. It is vehemently submitted by the Advocate for the petitioners that there was a pre-poll Aghadi or yuti between Shiv Sena and BJP. The Corporators elected from their respective parties have elected Mayor and Deputy Mayor from the respective parties by supporting each other. Therefore, one of the component of that Aghadi cannot be considered to be Opposition party and a Corporator elected on the ticket of BJP cannot be called as Opposition party for this purpose, we have gone through the pleadings of the parties, but on those averments, we cannot jump to the conclusion that there was pre-poll alliance between Shiv Sena & BJP and that alliance is ruling party in the Corporation.

18. This petition is filed under Article 226 of the Constitution and as per the Appellate Side Rules, the petition has to be verified in the prescribed manner. The form of verification is provided in Part II, Rule 10 of the High Court Appellate Side Rules. The petition is filed by nine petitioners, annexing therewith several newspaper clippings and some other printing material, in order to establish that there was Yuti or Aghadi between Shiv Sena and BJP. Several contentions have also been raised in the petition which runs into 42 paragraphs and all those contentions are raised on the basis of newspaper reports and some other printed material. Verification clause of the petition is not in accordance with the format provided under Appellate Side Rules. The verification of the petition reads thus :

"I Sunil s/o Ramdas Kotkar Aged 22 years, occu: Social service R/o Kedgaon Taluka and Dist. Ahmednagar, do hereby states on solemn affirmation that the contents of this writ petition in para Nos. 1 to 47 are true and correct and what is stated in para No. 48 i.e. prayer clause explained to me by my Advocate is also true and correct.

Hence,,,,,,,,,"

The verification clause as provided and prescribed under the Appellate Side Rules which reads thus :

"I... the

appellant/respondent, applicant/opponent the above-named do solemnly declare that what is stated above in paragraph is true to my own knowledge and that what is stated in the remaining paragraphs is true to the best of my information which I obtained from the following sources.

I believe the information to be true for the following reasons :

Solemnly declare at...above said this...day of 19..

Signature." In verification by the deponent, the deponent, nowhere disclosed the source of his information, from which statements are made. Unless that source is disclosed the statement made in petition cannot be accepted. As such, in our opinion, the verification is not in consonance with proper form and, therefore, the question arises whether we can accept the several contentions raised in the petition and pressed in service by Shri Dhorde, which are mainly based on newspaper reports or printed material which are admittedly not the public documents. At this stage we will refer to some of the judgments of the Apex Court wherein the Apex Court has an occasion to consider the evidentiary value of the newspaper reports. We are dealing with this issue as we have come across that it has become usual practice adopted by the litigants to file petition by annexing newspaper cuttings on which petitioners and/or respondents desire the courts to believe and accept what is stated in the newspaper reports to be true and correct. Shri Killarika has made submission that these documents are not admissible in evidence and this Court cannot consider the same for that purpose we are considering this aspect. The first judgment we may refer to is Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, where the Apex Court was considering the facts stated in the news items published in newspapers. The Apex Court has thus, held :

"Judicial notice cannot be taken of the facts stated in the news item being in the nature of hearsay secondary evidence unless proved by evidence aliunde. A report in newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act by which an allegation of fact can be proved. The presumption of genuineness attached u/s 81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein. A statement of fact contained in newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported."

The next judgment is the judgment of the Apex Court in the case of (1993) 3 SCC 151 S.A. Khan v. CH. Bhajan Lal and Anr. wherein the Apex Court has observed that newspaper report is hearsay secondary evidence which cannot

be relied on unless proved by the evidence. Even absence of denial of the statement appeared in the newspaper by its maker will not absolve the applicant of his obligation of proving the statement.

The next judgment on the point is in the case of *Shri Ravinder Kumar Sharma Vs. The State of Assam and Others*, wherein the Apex Court has reiterated the law declared by it in *Laxmi Shetty (supra)*, where the Apex Court has held that presumption of genuineness attached u/s 81 of the Evidence Act to newspaper report cannot be treated as proof of the facts stated therein. The statement of fact in the newspaper are merely hearsay. Therefore, in our view, the newspaper cuttings which are filed along with the petition are of no help to the petitioners to prove the fact that there was a pre-poll alliance/Aghadi/Yuti between Shiv Sena and BJP. We, therefore, straightway ignore those exhibits. We deprecate the practice of filing the petitions by annexing the newspaper cuttings, new items.

19. Now what remains to be considered are the statements made in the petition proper and which are pressed in service, can be accepted as true facts to prove that there was pre-poll alliance, as contended. Shri Dhorde, submitted that there is specific contention taken in the petition that the Shiv Sena-BJP decided to contest in all 65 seats jointly, at Corporation election and in such alliance, the Shiv Sena contested 36 seats and BJP contested 29 seats and they did not sponsor their candidates against each other. Shri Dhorde submitted that there is no denial of this specific contention raised in the petition. He further submitted that though the affidavit is filed by the respondents 3 and 4 respectively, they have not specifically denied this aspect. It may be true that there is no specific denial to the aspects stated in the petition but what is important to be noted is that all the statements so made regarding Yuti or Aghadi by Shiv Sena and BJP are based on the newspaper reports and other printed material annexed to the petition, as such, even if there is no denial by the contesting respondent-the statements or averments made in the petition cannot be accepted as proved or established facts. Hence applying the law laid down by the Apex Court to which we have referred to above, unless there is affidavit to support the news items so published by the maker of the statement appeared in the newspaper or other printed material, this Court cannot take any notice of those documents nor it can be read in evidence as such. Therefore, in our view, the contentions raised by the petitioners from para Nos. 4 to 19 which are based on inadmissible evidence, same cannot be accepted even though there is no specific denial of those facts. Even though giving some allowance to the petitioners, though verification clause of the petition is defective, the petitioner who has verified the petition has not disclosed the source of information on which the facts were stated in the petition. As it is very much necessary for the petitioner to state the source of information on which the statements and averments in the petition are made, as we have reproduced the verification clause to the petition, there is no such disclosure. In our opinion, the petition fell short to substantiate that there was Aghadi or Yuti by Shiv Sena and BJP prior to the election. We, therefore, do not find any substance in the contention of Shri Dhorde that there was pre-poll alliance.

20. Faced with the situation Shri Dhorde, then, invited our attention to the proceedings of the meetings to show that the Shiv Sena BJP have formed an Aghadi and voted to their respective candidates at the time of election of Mayor. Shri Dhorde brought to our notice the minutes of the meeting dated 30th December, 2003 (see age 54). These are the proceedings of the meeting dated 30-12-2003 conveyed for the purpose of election of Mayor/Deputy Mayor and Standing Committee members. Shri Dhorde, pointed out that at that meeting five Corporators submitted their nominations. He pointed out that Shri Londhe Sanjay Pandurang who was elected as an independent candidate, has submitted his nomination for the post of Mayor the proposer and the seconder respectively, were M/s. Kotkar Sunil Ramdas and Kotkar Bhanudas Eknath. Kotkar Sunil Ramdas, the proposer, was a Corporator elected on the ticket of Congress (I). Phulsunder Bhagwan Pralhad, a Shiv Sena candidate, submitted his nomination and his proposer and seconder were Smt. Kantabai Arun Shinde and Borude Anil Vasantrao. The proposer as well as seconder were from Shiv Sena. Shri Phulsunder has submitted in all three forms for the post of Mayor. The proposer and seconder to each nomination were Chopda Sanjay Phulchand, an independent candidate; Shendge Rohini Sanjay, a Shiv Sena candidate, Agarkar Abhay Jagannath, BJP candidate and Sakat Pavitra Bhau, Shiv Sena. One Krishna Dattatraya Jadhav also submitted his nomination; Shri Krishna Dattatraya Jadhav got elected as a candidate from NCP he was proposed by Pawar Namdeo Shantraram, NCP and his seconder was Kotkar Sandeep Bhanudas who was from Congress-(I). Shri Phulsunder has withdrawn his two nominations. Similarly, Londhe Sanjaykumar also withdrawn his nomination and there were only two candidates in the fray namely, Phulsunder from Shiv Sena and Shri Jadhav from NCP. In the election, Shri Phulsunder secured 38 votes and Shri Jadhav got 25 votes. As seen from record, the two have secured votes not from their own party candidates but also from some other Corporators (see page 10 of the petition). Shri Dhorde submitted that Corporator from BJP has voted in favour of Phulsunder who was from Shiv Sena, hence, they are the ruling party Corporator. It is not possible for us to accept this contention. Section 19 of the Act deals with election of the Mayor, Section 19 does not say that the election of the Mayor will be on the party basis. All Corporators will have to elect a Corporator as a Mayor or Deputy Mayor by election amongst themselves, as per Section 19 of the Act. Similar is the case of Deputy Mayor, three nominations were submitted two by Khandare Dnyaneshwar and Quareshi M. Ibrahim. Shri Khandare who submitted his two nominations forms, the proposers and seconders were namely, Shri Abhay Jagannath, Manish Sathe, Phulsunder Bhagwat Pralhad, Joshi Anant. Suryakant while proposer and the seconder for Shri Qureshi were Shandya Balsaheb Pawar and Varsha Arif Sayyad. Shri Khandare was elected on the ticket of BJP and he was proposed by Phulsunder who was elected from Shiv Sena and the seconder was from BJP. Shri Quareshi was elected from Congress-(I) and his proposer was from Congress-(I); his seconder was an "independent candidate". Considering this aspect and considering the votes pelted by these two Corporators at the election of Dy.

Mayor Shri Qureshi secured 25 votes and Dhyaneshwar Khandars secured 38 votes and, accordingly, Khandare was elected. These facts does establish that the election of Mayor or Deputy Mayor were not on the party basis in real sense. Therefore, it is not possible for us to accept, the contention of Shri Dhorde, particularly, on the basis of minutes of the meeting dated 30-12-2003 that there was a pre-election alliance, as we have seen that both got more votes than their Shiv Sena & BJP strength in the Corporation.

21. Shri Dhorde, then, brought to our notice the letter addressed by the Working President of the Ahmednagar City Congress (I), informing the Mayor that the Congress-I has chosen Shri Bhanudas Eknath Kotkar to be the Leader of the Opposition. Similarly, other parties, namely NCP and RPI have also informed the Mayor their approval to Shri B.A. Kotkar as Leader of Opposition. On the basis of this aspect, Shri Dhorde submitted that for the post of opposition leader not only the Congress I has selected Shri Bhanudas Kotkar but his candidature was also supported by the NCP & RPI. Therefore, he submitted that the decision of the Mayor to appoint respondent No. 4 as Leader of Opposition is not in consonance with the letter and spirit of Section 19-IAA.

22. We may now refer to Section 19-IAA. Section 19-IA deals with the "Leader of House" which says that an elected Councillor who is for the time being Leader of the party having greatest numerical strength and recognized as such by the Mayor shall be the Leader of the House. As Section 19-IAA deals with "Leader of Opposition" which shows that an elected Councillor who is for the time being the Leader of the party in Opposition having greatest numerical strength and recognized as such by the Mayor shall be leader of Opposition. What is contemplated by Section 19-IAA that the Councillor must be a leader of a (IAA) that the Councillor must be a leader of a party and/or leader of party must necessarily be in respect of party in House. The duty cast upon the Mayor to recognize the Councillor as Leader of Opposition. While doing so, the Mayor has to satisfy himself about the following aspects :

- (i) He must be an elected Corporator for the time being;
 - (ii) He should be a Leader of the party in opposition;
 - (iii) The said party in opposition should have greatest numerical strength;
- and;
- (iv) must be recognized as such by the Mayor.

Therefore, the role of the Mayor to recognize a Corporator as Leader of Opposition is to be judged from this aspect. As we have stated above, the term Leader of the Opposition is not defined under this Act and for that purpose we have taken help from the definition given of Leaders of Opposition in Maharashtra Legislature Salaries and Allowances Act, 1978 (for short "M.L.S.A. Act").

23. Section 2 deals with the definition of the Leader of Opposition. As per the definition the leader of the opposition means the member of the State legislative Assembly or the State Legislative Council, as the case may be, who is for the time being, the leader in that House of the party in opposition to the State Government having the greatest numerical strength and recognized as such by the Speaker of the Assembly or the Chairman of the Council as the case may be; while in the present case, Section 19-IAA the term used in is the Leader of the Party in opposition. As in the definition of the Leader of Opposition in Maharashtra Legislature Salaries and Allowances Act referred the term the party in opposition to the State Government. Therefore, we have to consider the word Leader of the party in opposition which means leader of party in opposition in the House (Corporation).

24. Shri Killarikar, learned Counsel was right when he brought to our notice the letter from the President of the City Unit of BJP at page 11-A dated 8th April, 2004 whereby the President has informed the Mayor informing that the election of the Corporation were contested by Shiv Sena BJP candidates namely, 18 and 15 were elected and, thereafter the Corporators of the BJP have held a meeting on 30th April, 2004 in which they have elected Shri Bahirnath Walke as its Leader. The letter further states that BJP has decided to raise the issues of public importance from Ahmednagar; it wants to be opposition and, therefore, they demanded separate sitting arrangement. On the basis of this letter Shri Killarikar, submitted in unequivocal terms that without any reservation the BJP has informed the Mayor that they have decided to sit separately in opposition. On the basis of this letter and with the backdrop of the fact that there is no authentic or legal evidence or document to establish that there was a pre-poll alliance as contended by Shri Dhorde. We also cannot approve the contentions that Congress I, NCP and RPI have chosen Shri B.A. Kotkar as the leader of opposition as these parties together cannot be considered a party in opposition having greatest numerical strength, on the basis of the acceptable evidence brought on record of this petition. We have to accept the contention of Shri Killarikar that the Mayor has acted properly and without any partisan view he has judged the respective cases and selected the respondent No. 4 as Leader of Opposition. Shri Killarikar, also pointed out the order dated 21st April, 2004 wherein the Mayor has considered the proposal sent by Congress I. On this basis, Shri Killarikar submitted that before taking decision to recognize the respondent No. 4 the Mayor has applied his mind and followed the provisions of Section 19-IAA and rejected the request of the Congress-(I) and accepted the request made by BJP and recognized respondent No. 4 as Leader of Opposition. In our view perusing the order dated 21st April, 2004 and the impugned order, we are of the view that the decision taken by the Mayor was after considering the material placed before him. As such, no fault can be found. The scope of judicial review under Article 226 of the Constitution of India, to judge the action of Mayor, this Court is concerned with reviewing not the merit of the decision in support of which the petition for judicial review is made, but decision making process itself.

Thus, the jurisdiction of this Court is confined to :

- (i) Whether Mayor exceeded his power?
- (ii) has committed an error or law;
- (iii) reached a decision which no reasonable person would have reached;
- (iv) Whether he has abused his powers.

Applying these parameters to the case at hand, we do not think that the Mayor has acted beyond his powers conferred on him by Section 19-IAA in recognizing respondent No. 4 as Leader of Opposition. He has reached to that decision on the basis of material before him. Once the Court finds that the decision is taken after considering the relevant circumstances which are brought on record and if the Mayor exercises his discretion properly then it is not for this Court to sit over his decision as the Court of appeal and take a different view of the matter. We have found that the Mayor has power and authority conferred on him u/s 19-IAA to recognize the Councillor as the Leader of the Opposition and if this power is exercised by him properly and the decision is taken then this Court in its jurisdiction under Article 226 judicial review, cannot re-appreciate material and take a different view of the matter. Therefore, we are of the view that the decision to recognize the respondent No. 4 as Leader of Opposition being just and proper, no interference is required.

25. We will refer to submission of Shri Killarikar, Advocate. He contended placing reliance on the definitions of "Aghadi" or "front" under the Disqualification Act, that Aghadi should be formed by the group of persons into a party and that Aghadi or that front must be for the purpose of setting up a candidate for local authority. He submitted that the Shiv Sena and BJP are the political parties at the national level and they have sponsored their respective candidates for the election to the local authority i.e., Corporation. They have not sponsored any of the candidates as the candidate of Aghadi or front. He therefore, submitted that Exh. "H" which is a Gazette notification if perused in proper perspective and minutely, do indicate that the candidates/ Corporators who were elected were sponsored by various political parties, including some Aghadi. The Gazette also shows the names of the candidates who contested the election as independent candidates. Therefore, he submitted that the contention of the petitioners that there was Aghadi or front is not well-founded and should not be accepted by the Court. He further referred to the definition of the "Municipal Party" and the "original political party". He submitted that the term "Municipal party" as defined under the Act (referred supra). Therefore, all the corporators who are elected from the respective parties are in reference to the party from which they were sponsored or set up as the candidates to the election. The original political party as defined under Disqualification Act, means "the original party to which a member or Councillor belonged". He submitted that the respondent Nos. 3 and 4 belonged to Shiv Sena and BJP respectively which are separate political parties having their respective organization, constitution etc. and they have not formed

any Aghadi or Yuti in the House. He, therefore, submitted that as the Corporators from BJP have communicated their decision to be in opposition, the Mayor has no other option that to consider the rival claims of BJP and Congress (I) in terms of Section 19-IAA explanation and, accordingly, he has selected by using his discretion in favour of the respondent No. 4 a candidate from BJP. Shri Killarikar, also relied on the definition of the "Leader in relation to a Municipal party" (referred supra).

On the basis of the definition, Shri Killarikar, submitted that all the parties who contested the election of the Corporation have to chose a leader by that party. He submitted that all the parties in the House have chosen their respective Corporator as the leader of their own party, without registering it as Municipal party with the Commissioner and the parties i.e. BJP and Congress-(I) supported the name of their Corporator to be a leader in opposition. For this submission, Shri Killarikar, pointed out the documents produced on record, particularly the letters from the President of the City Unit of BJP as well as letters from Congress I at pages 66 and 67. He submitted that each of these parties have elected their respective leader and, on that basis, the decision is taken by respondent. No. 3 to recognize the respondent No. 4 as Leader of the Opposition as Congress I and BJP having same numerical strength. He submitted that while recognizing the respondent No. 4, the respondent No. 3 has applied the explanation to the said section and Mayor having regard to the status of the party i.e. BJP accorded recognition to respondent No. 4 as Leader of opposition. Shri Killarikar, submitted that once the recognition is enforced or given by the Mayor the said recognition is final and conclusive. He therefore, submitted that once the Mayor has exercised his discretion in recognizing the respondent No. 4, the decision became final and conclusive. He submitted that there was sufficient material before the respondent No. 3 to make a choice between petitioner No. 1 and respondent No. 4. He having noticed status of the party, recognized the respondent No. 4 as the Leader of the Opposition which is from BJP. He, therefore, submitted that this Court will be slow in interfering in the said decision of the Mayor. We find sufficient force in the contentions which deserves to be accepted.

26. Now we refer to the authorities which are relied on by the respective Counsel for the parties. The first judgment relied on by Shri R.N. Dhorde learned Counsel for the petitioners is the judgment of the Division Bench of this Court in Abdul Rashid Abdul Sattar (supra). This authority was cited by the learned Advocate to substantiate his contention that "the Leader of Opposition" in the Municipal Corporation, having greatest numerical strength is to be recognized as Leader of opposition. He also contended that the word "party" used in Section 19-IAA means municipal party in the Corporation. The facts are required to be stated in order to find out whether the question which is raised before us, fell for consideration before the Division Bench. No doubt, this Court, was called upon to consider the provisions of Section 19-IAA of the Act. That case pertains to Aurangabad Municipal Corporation, a Corporation constituted under the Act. The elections of the Corporations were held some time in 1999. At that time, as per

the practice prevailing, the then Mayor of the Municipal Corporation designated the petitioner No. 2 as Leader of Opposition in the Municipal Corporation, Aurangabad. Thereafter in 2002, the election of Mayor was held. When the elections of Mayor was held in 2002, a situation arose for the Mayor to designate Leader of Opposition of party, on commencement of this Act, as amended by Act No. XI of 2002, Congress-(I) claimed that its representative in the House be recognized as Leader of Opposition by the Mayor. According to the Mayor 22 independent Corporators from opposition by majority, have consented for recognizing the respondent No. 3 as Leader of Opposition. The respondent No. 3 is a Corporator elected in the elections of 1999 as an independent candidate. Considering the demand made by 22 Corporators the Mayor on 4th July, 2002 addressed a letter to the Commissioner recognizing the respondent No. 3 as Leader of Opposition. This letter was subject-matter of challenge in the above said writ petition. There was one more petition which was heard along with that petition; but the second writ petition which was heard by this Court was in connection with challenge of vires of Section 19-IAA hence we are not concerned about the second petition. A contention was advanced before this Court was that when there are opposition parties with unequal strength, then the Councillor of the party having greatest numerical strength has to be recognized as a Leader of Opposition and in that eventuality the role of Mayor in recognizing the Leader of Opposition is formal one and the Mayor is under obligation to recognize the Leader of the said party as Leader of Opposition. It was submitted that the role of Mayor becomes important when there are more opposition parties in the opposition, having same numerical strength. In that eventuality, the Mayor which have to take into consideration the status of a party while recognizing the leader of opposition. It was a case before the Division Bench that the Congress I having 12 Corporators staked its claim that its representative be recognized as Leader of opposition. As against this, demand was made by 22 independent candidates having come together and claimed that their leader be recognized as Leader of Opposition which was done by the Mayor in that case. On this aspect, the Division Bench recorded three points for its consideration. For our purpose, the Points No. 1 requires consideration. The learned Judges of the Division Bench, proceeded to answer the Point No. 1 with the help of the provisions of the Disqualification Act, 1987 and the Rules framed thereunder which we have also referred to in the above paragraphs of this judgment. This Court considered this aspect in the following paragraphs :

"14. In order to recognize a person as a Leader of Opposition, he must belong to a party in opposition and if the numerical strength of the said party in opposition is the greatest one, then the leader of the said opposition party is to be recognized as a Leader of Opposition. The phraseology and the language used in the said section clearly shows that the Councillor of the party in opposition and who is a leader of the said party, if the said party is having greatest numerical strength has to be recognized by the Mayor, as a Leader of Opposition. In case of unequal strength of the party in opposition, the Mayor has no other option but to

recognize the Councillor of a party having greatest numerical strength as a Leader of Opposition. The whole controversy which has been raised by the respondents is in respect of the word "party" and/or "party in opposition". According to the learned Counsel for the respondents "party" or "party in opposition" means all the parties or all the Councillors whether they belong to a party or independent together is a party in opposition for the purposes of this section, and therefore, the learned Counsel for the respondents submitted that all the opposition together has be considered as a party and a person having the greatest numerical strength and/or support shall be recognized as a Leader of Opposition. He submitted that meaning of the word "party" as given in the Maharashtra Local Authority Members' Disqualification Act, 1987 shall not be attributed to the word "party", "Aghadi" or "front" given in Section 19-IAA and according to the respondents, the Mayor has rightly designated and/or recognized the respondent No. 3, who is an independent candidate to be the leader of opposition. Thus, the learned Counsel for the respondent No. 3 tried to justify the act of the Counsel because the elections to the Municipal Corporations have been conducted on party basis. Not only that but the anti-defection law i.e. the Maharashtra Local Authority Members Disqualification Act 1987 is applicable to the members elected in the Municipal Council. This Act defines the Councillor as a Councillor of the Municipal Corporation or the Municipal Council or Zilla Parishad. "Local Authority" has been explained as a Municipal Corporation, a Municipal Council, a Zilla Parishad or a Panchayat Samiti. The words "original political party" have been defined in relation to a Councillor or a member means a political party to which he belongs for the purposes of Sub-section (1) of Section 3. Word "Municipal Party" has been denied 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 Municipal Corporation, the group consisting of all Councillors of the Municipal Corporation for the time being belonging to that political party of aghadi or front in accordance with the said explanation.

(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 said explanation.

Section 3 of the said Act provides for the disqualification on the ground of defection and in explanation it has been stated that:

(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 or co-opted Councillor or member shall-

(i) where he is a member of any political party or aghadi or front, on the date of his nomination, or as the case may be co-option as such Councillor, or as the case may be, member 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 or co-opted as such Councillor, or as the case may be member.

(c)...(Not applicable).

Word Aghadi or "front" have been defined to mean a group of persons who have formed themselves into party for the purposes of setting up of candidate for the election to the local authority.

15. Thus, on combined reading of the words referred to above, that the word "party" appearing in Section 19 has to be interpreted as a political party in opposition. What is further important to be noted is that for the purposes of implementation of the Maharashtra Local Authority Members' Disqualification Act, the Rules have been framed and as per those Rules, the leader of each Municipal Party is expected to submit the information about the members of his political party or municipal party to the Municipal Corporation or Council in the prescribed form. Not only that, but they have also to convey the leader of each party or front, aghadi to the Corporation or Council, and the said leader is to be elected from amongst the political party or front. Thus, the whole system is based on political party and in a democratic set up, it is the political party which sets up the candidates in the election can control its members from committing any defection. What is to be taken into considerations that Section 19-IAA of the Act does not contemplated an election of a person but it contemplates simpliciter recognition by the Mayor of an elected Councillor who is a leader of party in opposition having the greatest numerical strength is to be recognized as a Leader of Opposition, then in that circumstance, it violates the language of the said section because the Act of the great numerical strength and/or support is not contemplated in the said section. What is contemplated is the greatest numeric strength of a party in opposition. Therefore, the Mayor has to see that a person is an elected Councillor, belongs to party in opposition, and the said opposition party is having greatest strength in the house. One more thing required to be looked into is that an elected Councillor who is a leader of the party in opposition has to be recognized as a Leader of Opposition. Now, the leader of the party in opposition means that a leader of political party which is sitting in opposition because as per the anti-defection law, referred to hereinabove, the original party, aghadi, or front which has set up its candidates in the election, after election will have its municipal party in the house and each of the said municipal party is required to state the leader of that municipal party and if party sits in opposition, then in that circumstances, that party will be treated as 19-IAA of the Act will have to be looked into, namely, an elected Councillor who is leader of the party in opposition, having the greatest numerical strength, has to be recognized by the Mayor as Leader of Opposition and, therefore, the interpretation sought to be

made by the learned Counsel for the respondent No. 3 is not proper, and ;he same deserves to be rejected and accordingly, it is rejected.

16. In order to have complete democratic system in the Corporation law, which governs the democratic conduct of the elected Councillor or Corporators is required to be looked in harmony, and therefore, while interpreting Section 19-IAA of the Bombay Provincial Municipal Corporations Act, 1949, the provisions of the Maharashtra Local Authority Members' Disqualification Act, 1987 cannot be ignored and the word "party" appearing in Section 9 of the Act is required to be interpreted with reference to the original arty, front of Aghadi municipal party. Thus, what we find is that Section 19 does not contemplate any sort of election and the moment the Mayor tries to find out support from the political parties, the process of election amongst the total opposition commences, which is not at all contemplated by the provision of Section 19-IAA. The Mayor could have some better role when the case falls under explanation. The explanation also support the interpretation which we have given to Section 19-IAA It contemplates that when there are two or more parties in opposition having same numerical strength, then the Mayor will decide having regard to the status of the party the leader of opposition. If the opposition is to be treated as one arty, as per the contentions raised by the respondent, then in that eventuality the explanation becomes redundant. The learned Counsel for the respondents tried to submit that in opposition also there can be two groups and two groups can be treated as two parties and if here is equal strength, then the Mayor will have role, the said contention is incorrect. Because, in that eventuality, firstly the Mayor will have to see that what is the strength of the political party in the opposition and that can only be done by holding an election for the post of Leader of Opposition and in case of equal votes, it can be said that there is equal numerical strength. The legislature has not desired elections while recognizing Councillor as a leader of opposition, otherwise the language and the drafting of the said section would have been in different manner. The legislature wanted that a political party which has the greatest numerical strength and which sits in the oppositions, its Councillor shall be recognized as a leader of opposition and that is in order to give certainly to the post of leader of opposition. No doubt, it may happen that within a municipal party in opposition may change its leader in the house, but that is within the municipal party or political party and the rest of the parties which are in opposition will not be in any way participating in that process, what we find is that the proper and correct interpretation of Section 19-IAA of the Act is that the political party or municipal party which has the greatest numerical strength and which sits in opposition its elected Councillor has to be recognized as a Leader of Opposition. The party requires the formation of group. Similarly, for the purposes of front also, formation of group is required. However, under the Maharashtra Local Authority Members' Disqualification Act, 1987, this is not permissible. Prior to the election forming of a party, aghadi, or front is permissible, however, after the elections the same is not permissible and more so for the candidates elected as an independent candidates. For this purpose,

reference may be made to a decision reported in 1998(2) Mh.L.J. 532 in the case of Dattatraya Maruti Bawalekar and Ors. v. Pandurang Dagaduba Parte, and others wherein the Apex Court has considered the provisions of this Act. It was a case of Mahabaleshwar Municipal Council, wherein 17 Councillors were elected to represent various wards in the Council and each of them had contested the election as an independent candidate. Nine of the independent Councillors formed themselves into an Aghadi which was registered under the Maharashtra Local Authority Members' Disqualification Rules, 1987. In the meeting which was held on 31-12-1996 one of the Councillors representing the Aghadi was elected as the president. An application u/s 7 of the Maharashtra Local Authority Members' Disqualification Act, 1986 was filed by one of the Councillor praying that the nine Councillors who had formed themselves into an Aghadi be disqualified in view of the provisions of the Act. The Apex Court held that the said Councillors had formed an Aghadi as a new party and the same had to be registered under the provision of the Act. When they formed a new party the position is clear that a person elected as an independent would cease to be an independent and becomes a member of a political party or a front. His status as an independent would come to an end on becoming a member a member of front or a group. The said Councillors who could act independently prior to the election or immediately on the election became subject to discipline of the party or front on becoming members thereof. Such party whether would amount to formation of party or became members of such party is immaterial. The spirit of the enactment is that a member of a political party cannot, join another or form a political front without incurring disqualification as provided u/s 3 unless he is expelled from his party. The legislation imposes a condition that a person elected as an independent should continue as such without subjecting himself to any party affiliation."

(Emphasis by us)

The Division Bench on considering the law and the facts of the case, came to the conclusion that independent candidates forming the group cannot be recognized as Leader of Opposition and, accordingly, the letter issued by the Mayor dated 4th July, 2002 was quashed and set aside. We may say also that the Division Bench was called upon to consider about the jurisdiction of this Court to interfere in the order passed by the Mayor. This Court answered that the action of the Mayor can be judicially scrutinised. While answering this contentions, this Court has followed the law laid down by the Apex Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , and answered the question, in para No. 20 as under :

"20. Thus, the Apex Court has treated Speaker as a Tribunal and exercised the power of judicial review of the decision of the Speaker. What we find is that the attempt has been made in the resent matter by the respondents on the basis of propriety to rely on such constitutional provisions for protection of Mayor, but in the absence of a specific protective and/ or in the statute. Such inference cannot be drawn. We find that the argument and the submissions made in this behalf

are misconceived and even if for the sake of argument it is accepted for a moment, that it was properly submitted, still the above referred decision of the Apex Court answers it. In the result, we find that the grounds raised by the respondents in both the petitions, that the petitions are not maintainable is not sustainable in law and the same deserves to be rejected."

27. The second judgment which was cited is the judgment of the Division Bench of this Court, in Rohidas Shankar Patil (supra). This case also relates to interpretation of Section 19-IA and Section 19-IAA and the role of the Mayor of recognized Leader of Opposition. The writ petition was filed for quashing and setting aside the decision of the Mayor dated November 20, 2002, recognizing the respondent No. 4 as Leader of Opposition in Municipal Corporation of Mira Bhayandar. The petitioner who approached this Court, contended that he is the Leader of the BJP in the Municipal Corporation of Mira Bhayander and respondent No. 1 was elected as Mayoress of the Corporation u/s 19 of the Act, who recognized the respondent No. 4 as the Leader of the Opposition. It was case before the Division Bench that the election of the said Corporation were held on August 11, 2002 and various political parties had participated. The Indian National Congress and Nationalist Congress Party contested the election by forming an alliance i.e. Aghadi. There was, thus, pre-election alliance between these two parties. The results were declared and in that election Councillors from the Nationalist Congress party numbering 30 were elected; the Indian National Congress 18, BJP. 15, Shiv Sena 4, Shahar Vikas Aghadi 6 and Independents 3. The Mayor considering the opposition party which was more in numerical strength, recognized the candidate belonging to Indian National Congress as Leader of Opposition. It is the case of the petitioner that Mayoress was elected from amongst NCP and INC. One Musaffar Hussain, and elected candidate, was elected as Deputy Mayor. According to the petitioner the Mayoress as well as Deputy Mayor were elected in support of each other, the respondent No. 1 was leader of NCP and she got herself elected as Mayoress with support of INC in turn NCP supported INC and the Leader of INC thereby got elected as Deputy Mayor. The petitioner contended before this Court that the Mayoress should have recognized him as the Leader of Opposition as BJP has greatest numerical strength as Leader of Opposition. It was contended that BJP party in opposition was having greatest, numerical strength and, as such, leader of that party ought to have been recognized as Leader of Opposition by the Mayoress. But, ignoring the claim of BJP, Mayoress recognized the respondent No. 4 which action is illegal and contrary to law. It was contended that the action of the Mayoress in treating the respondent No. 4 as Leader of the party in opposition, is contrary to Section 19-IAA as it was contended that there was Aghadi or alliance between NCP and INC and respondent No. 4 could not have been recognized as Leader of party in opposition as respondent No. 4, was a Councillor belonging to INC. The contention was raised that there was pre-poll alliance between INC and NCP; the fact, was denied by the respondent therein. It was also contended by the respondents in the said petition that the action taken by the Mayor being final

and conclusive and this action cannot be challenged before the Court. The fact that there was Aghadi or front or Yuti was denied. It was specifically contended by the respondents that there was no pre-poll alliance between Congress and NCP. As such, they cannot be considered as ruling party. The Honourable the Chief Justice, as then he was, while negating the contention of the petitioner regarding pre-poll alliance, held thus :

"21. The question which we are called upon to decide is, whether INC can be said to be a party in opposition and whether respondent No. 4 could have been recognized as leader of the party in opposition. According to the petitioner, INC is a party in ruling and party in ruling cannot be considered and recognized as party in opposition. In the circumstances, "party in opposition" can be any party other than NCP and INC. From those parties, Leader of Opposition can be recognized. Now, considering other parties i.e. parties in opposition, BJP is the only party which is having greatest numerical strength. The said party, therefore, ought to have been recognized as such by the first respondent and the petitioner ought to have been recognized as leader of the party in opposition.

22. We are unable to uphold the contention of the learned Counsel. So far as "pre-election" Aghadi, Yuti, front or alliance is concerned, it has been clearly refuted and denied by the respondents. Affidavits having been filed by respondent Nos. 1, 3 and 4 asserting that the allegation levelled by the petitioner is incorrect and misleading. It is further stated that, there was no formal "pre-election" alliance between NCP and INC. That apart, both the parties contested the election against each other in several wards. In the circumstances, it cannot be said that there was pre-election alliance between NCP and INC.

24. The learned Counsel is right in interpreting the explanation. At the same time, however, in the case on hand, we are unable to hold that NCP and INC can be said to be "parties in ruling" as contemplated by the explanation to Section 19-IA. When there was no aghadi or pre-election alliance and in certain wards, both the parties contested the election against candidates of each other, in our view, it cannot be concluded that NCP and INC were "parties in ruling". It is no doubt true that both Mayoress as well as Deputy Mayor belonged to those two parties - Mayoress of NCP and Deputy Mayor of INC. It is also true that both the candidates obtained, equal number of votes against their rivals, i.e. 54 : 24. From that fact, however, it cannot be held that both the parties are parties in ruling. In politics, there may be several considerations by various parties to support a candidate of each other. These are questions which can be considered by them, keeping in mind diverse factors. A Court of law is ill-suited to resolve them.

29. In our judgment, in the case on hand, when there was no pre-election alliance between NCP and INC and both the parties contested the election of respondent No. 2-Corporation independently and even against each other at least in some wards, it cannot be said that by treating INC as a party in opposition having greatest numerical strength and by recognizing respondent No.

4 as leader the party in opposition, any illegality has been committed by the respondent No. 1.

30. The matter can be looked at from different angle as well. From the record, it is clear that INC had address a letter to the respondent No. 1 on November 20, 2002, stating therein that INC was a party in opposition, and as it was having "greatest numerical strength, its leader respondent No. 4 be recognized as leader of the party in opposition. If, in the light of the above letter, the respondent No. 1 had considered INC as party in opposition and had recognized respondent No. 4 as leader of the party in opposition, having greatest numerical strength, in our opinion, the said action of respondent No. 1 cannot be held arbitrary, unreasonable or contrary to Section 19-IAA of the Act. We are, therefore, of the opinion that the petitioner's grievance against the said action is not well-founded."

We respectfully agree with the view taken by this Court in the above two judgments.

28. The next Division Bench judgment of this Court is Vishnu Mehere (supra). In Vishnu Mehere case also the question regarding powers of the Mayor to appoint the Leader of the Opposition was raised but, in some slight different situation as the party in opposition having greatest numerical strength, refused the responsibility of having Leader of Opposition, then, the Mayor recognized another Corporation as Leader of Opposition having next higher numerical strength. Incidentally the question of maintainability of the petition qua judicial review was also pressed in service. The facts in Vishnu's case are:

In General elections to Akola Municipal Corporation which were held in February 2002 nine Corporators from Congress-I, 7 from Nagar Vikas Front, 6 from Bharip-Bahujan Mahasangh, five Muslim League, 4 Navnirman Manch and three Rashtravadi Congress, were elected. The BJP and Shiv Sena coalition took place prior to the election, could muster highest numerical strength and became ruling parties. The INC having greatest numerical strength became largest opposition party in the Corporation and as such, staked claim over the above post of Leader of Opposition. Accordingly, Congress I party informed the Mayor that they have chosen Shri Vishnu Mehere, the petitioner as their party leader who could be recognized as Leader of Opposition in the Corporation and, accordingly, he was recognized as Leader of Opposition. Thereafter on 31st July, 2003, five Corporators elected on National Congress party by the letter dated 31st July, 2003 informed the Mayor that they have formed separate group and elected one Ab Latif Din Mohd. Khatri as their group leader and he be designated and recognized as Leader of Opposition since INC has ceased to be party having greatest numerical strength. The Mayor after having satisfied with the contents of the letter dated 31st July, 2003 and taking into consideration the situation called the leader of Nagar Vikas Front to submit his consent or name of any other Corporator Councillor from his party for being recognized as leader of opposition, it being a party having greatest numerical strength after Congress-(I). However,

it was informed to the Mayor by the Nagar Vikas Aghadi that nobody from that Aghadi is interested and willing to hold the office of the Leader of Opposition. Since the Unit of Nagar Vikas having greatest numerical strength, refused to shoulder the responsibility as Leader of Opposition, then the Mayor called upon one Sunil Mishra, leader of Bharip Mahasangh, elected Councillors to submit his consent or name any other Councillor from his party for being recognized as Leader of Opposition in the Corporation. Sunil Mishra also expressed his inability to act as Leader of Opposition. However, he communicated that his party supports Shri Ab Latif Khatri, Corporator to be Leader of Opposition. The Mayor having received negative response from two parties she recognized the respondent No. 3 as Leader of Opposition in the Corporation, being leader of Muslim League in opposition having five Councillors. That decision was subject-matter of challenge in writ petition filed in this Court. It was contended that the Leader of Nagar Vikas Front should have been recognized a Leader of Opposition having greatest numerical strength in the House.

On the facts and submissions advanced before it, this Court raised two points for its consideration which are stated in para Nos. 30 as under :

"(A) Whether u/s 19-IAA, the Mayor has a power to recognize an elected Councillor, who is for the time being Leader of the party in opposition having next highest numerical strength in the event of refusal by an elected Councillor who is for the time being the leader of the party in opposition, having greatest numerical strength ?

B) Whether from the time of split in the INC/Congress (I) such faction or breakaway group (consisting of five (5) elected Councillors) can be deemed to be the political party to which they belong for the purpose of Sub-section (1) of Section 3 and to be their original political party as contemplated in the Section 4(i)(h)(b) of the Members' Disqualification Act?

Thus, the Court gave the following findings -

"55. The aforesaid principles can well be applied even to the State legislation dealing with the functioning of the democratic institutions which are expected to function exclusively on the basis of Parliamentary System. In the circumstances, we have no hesitation in reading down the said Section 19-IAA to hold that the said section contemplates recognition of a : "Willing Leader" of the party in opposition, having highest numerical strength as a Leader of the opposition.

56. In the above view of the matter, in our opinion, respondent No. 2 was perfectly justified in recognizing respondent No. 3 as Leader of Opposition, especially, when the parties having large numerical strength in the house refused to accept the responsibility of the Leader of Opposition. In no circumstance, the office of the Leader of Opposition in the Corporation could have been kept vacant by respondent No. 2. Therefore, no fault can be found with the procedure adopted by the respondent No. 2, rather the said procedure finds out approval."

With respect, on facts of this case, the judgment of Vishnu Mehere's case cannot be made applicable.

29. Shri Killarikar, on the question whether this Court can question the authority of the Mayor when the Mayor chose to elect the respondent No. 4 as Leader of Opposition, relied on para No. 58 of the judgment in Vishnu Mehere's case which reads thus :

58. As already found by us while dealing with the preliminary objection raised by the respondent No. 3/Caveator as to who should be recognized as Leader of Opposition is a question in the political thicket. We recorded our finding that the wisdom of Mayor/Mayoress is beyond judicial review and, consequently, the same is not justifiable, however, having heard the parties at length and considering clear-cut provision in explanation appended to Section 19-IAA of the Bombay Provincial Municipal Corporations Act, we may also observe that the said provision is *pari materia* with the explanation appended to Section 2 of the Leader of Opposition in Maharashtra Legislature Salaries & Allowances Act, 1978 and that of explanation to Section 2 of the Salaries and Allowances of Leaders of Opposition of Parliament Act, 1977 which specifically makes it clear that the recognition of the Leader of Opposition by Mayor is final and conclusive (underlines are ours).

Similar provision is also to be found in the legislation governing the salaries of the Leader of Opposition of the House of Commons in a statute known as the Ministerial and Other Salaries Act, 1975. In that legislation, the Speaker's decision on the identity of Leader of Opposition is made final and conclusive. In this view of the matter, considering the well recognized parliamentary practice, no further legal debate on this issue, in our opinion, is permissible."

There is no justification for us for not accepting the above-said proposition but, in fact, the point on this aspect of judicial review stands finally concluded by the judgment of the Apex Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , we prefer to follow this law.

30. The next judgment which requires reference is the judgment in the case of Anees Khalil Momin v. Commissioner (supra). This case also arose out of the action of the Mayor recognizing the Councillor as Leader of Opposition. The facts in Anis Momin's case are that a Corporator belonging to INC was elected as Mayor of the Corporation whereas the one Tabsul Hussain of Samajwadi Party was elected as Deputy Mayor. The Samajwadi party which is the second largest party in the House, has recommended the name of the petitioner i.e. Anees Momin for the post of Leader of Opposition in accordance with the provisions of Section 19-IAA. The petitioner claimed that he belonged to Samajwadi party which have 17 elected Councillors and therefore, the said Samajwadi party which is largest party in opposition, the petitioner has a right to be recommended for the post of Leader of Opposition but the Mayor by his letter dated 21st July, 2004 recognized the respondent No. 3 as Leader of Opposition. The contention which

was advanced before the Division Bench was that the Mayor was required to be recognized as the Leader of Opposition, having greatest numerical strength as Leader of Opposition. As per the numerical strength, the Samajwadi party which was a party in opposition was having greatest numerical strength and as such, the Leader of that party ought to have been recognized as Leader of Opposition by respondent No. 2. It was also contended that the Indian National Congress and Samajwadi party are working as ruling parties there was no pre-election alliance between the two parties as both the parties have put up their candidates independently in election and in several wards they contested against each other. Therefore, it was contended that there was no alliance Aghadi/Yuti between these two political parties. It was also contended that there was no material on record to show that there was post-election alliance between INC and Samajwadi party. As such, the action of the Mayor recognizing the respondent No. 3 as Leader of Opposition was bad and mala fide. The Division Bench in para Nos. 11,12 and 13 answered the contentions, as under :

"11. The learned Counsel for the petitioner drew our attention to an unreported decision of this Court delivered by the Division Bench comprising of the Hon'ble the Chief Justice and Dr. D.Y. Chandrachud. I in Writ Petition No. 6798 of 2002 dated 21-3-2003 Rohidas Shankar Patil v. Mayra Gilbert Mendosa and Ors. 2003(2) All.M.R. 792. That was also a case of recognition to the post of Leader of the Opposition. In the case, the INC was the second highest in numerical strength and the member of the said party was recognized as the Leader of the Opposition. It was contended that there was an alliance or understanding between the Nationalist Congress party and INC and therefore, INC should be regarded as a party in ruling along with the Nationalist Congress party. The learned Chief Justice speaking for the Bench observed:

"21. The question which we are called upon to decide is whether INC can be said to be party in opposition and whether respondent No. 4 could have been recognized as a leader of the party in opposition. According to the petitioner, INC is a party in ruling and party in ruling cannot be considered and recognized as party in opposition. In the circumstances party in opposition can be any party other than NCP and INC. From those parties, Leader of Opposition can be recognized. Now, considering the parties i.e. parties in opposition, BJP is the only party which is having greatest numerical strength. The said party, therefore, ought to have been recognized as such by the first respondent and the petitioner ought to have been recognized as leader of the party in opposition.

2. We are unable to uphold the contention of the learned Counsel. So far as pre-election aghadi, yuti, front or alliance is concerned, it has been clearly refuted and denied by the respondents. Affidavits have been filed by respondent Nos. 1, 3 and 4 asserting that the allegation levelled by the petitioner is incorrect and misleading. It is further stated that, there was no formal pre-election alliance between NCP and INC. That apart, both the parties contested the election against each other in several, Wards. In the circumstances, it cannot be said that

there was pre-election alliance between NCP and INC."

(emphasis supplied)

12. Mr. Jahagirdar and Mr. Damle, learned Counsel appearing for respondent Nos. 2 and 3 strenuously contended that the Samajwadi party was party in ruling and, therefore it cannot get recognition as a Leader of Opposition. In order to support this submission, it was argued that there can be more than one party in ruling and such a situation has been recognized even by the Legislature. Explanation to Section 19-IA clearly deals with the situation when there are two parties in ruling having the same strength by laying down how Mayor should be elected. The learned Counsel are not wrong in interpreting the explanation. However the question is whether there is any material on record to substantiate the claim that there was alliance between the INC and Samajwadi party. In the absence of any such material we are unable to hold that INC and Samajwadi party should be regarded as parties in ruling as contemplated by Section 19-IA. It is an admitted position that there was no aghadi or pre-election alliance between these two parties and, in fact, in certain Wards both the parties contested the election against each other. The provision of the Maharashtra Local Authority Members Disqualification Act, 1986 specifically rules out any post alliance between the political parties. In any event, there is not an iota of material to show that the INC and Samajwadi party had post poll alliance. We have, therefore, no hesitation to hold that Samajwadi party cannot be treated as a party in ruling.

13. The learned Counsel for respondent Nos. 2 and 3 urged that earlier one Javed Dalvi was appointed as Leader of Opposition and this appointment was not challenged by the Samajwadi party and this shows that Samajwadi party had an alliance with INC. We are not impressed by the submission of the learned Counsel. It is seen from the record that respondent No. 2 had initially appointed of Santosh Shetty was challenged in this Court and was stayed. Thereafter the respondent No. 2 again appointed one Javed Dalvi who was also elected as an independent. The appointment of Javed Dalvi was also not in consonance with Section 19-IAA Merely because the appointment of Javed Dalvi was not challenged by the Samajwadi Party does not lead to the conclusion that the Samajwadi party has not specifically mentioned that it is a party sitting in opposition. The submission is stated only to be rejected. By that letter the Samajwadi party specifically asked the mayor to give recognition to the petitioner a Leader of the Opposition. So it is obvious that the Samajwadi party was claiming that it was a party in opposition."

Accordingly, the action of Mayor recognizing the respondent No. 3 as Leader of Opposition, was struck down.

31. Having considered all the four judgments rendered by the Division Bench of this Court to which we respectfully agree, now we have to consider whether on facts and the ratio laid down can be made applicable to the present case. So far as the judgment can be made applicable to the present case. So far as the

judgment of Abdul Rashid (*supra*) is concerned, this Court interfered in the action of Mayor as the Mayor had recognized the Corporator who was elected as independent candidate and 22 independent candidates formed a group. This Court did not accept the action of the Mayor as the independents were not party or the political party within the meaning of the Disqualification Act. Hence the judgment is of no assistance to the petitioners. On the contrary, to some extent, it will support the respondents as it was contention of the respondents that there was no pre-poll Aghadi/Yuti/Alliance.

32. The ratio of Rohidas Patil and Anis Khalil (*supra*) can be made applicable because in both these cases the contention was advanced that the parties of whose Mayor and Deputy Mayor were elected have formed an Aghadi or Yuti, but having noticed that there was no such pre-poll alliance aghadi/ yuti the Court interfered with the action of the Mayor and directed the Mayor to issue fresh letter. The ratio laid down in Rohidas and Anis can be made applicable to the present case also. It was contention of Shri Dhorde that there was pre-poll alliance between Shiv Sena & BJP and that pre-poll alliance has to be considered as parties in power or ruling parties in the House. As we have already held that the petitioners fell short to establish the fact that there was pre-poll Aghadi/ Yuti/ alliance between Shiv Sena and BJP. There is no sufficient material which can be considered by this Court as legal evidence is not produced by the petitioners. On the contrary, having considered the Gazette notification issued in terms of Rule 39, Sub-rule (2) of the Election Rules, Schedule "D" of the Act, that being a authentic document can be considered. Where we find that all corporators who were elected their names were declared in the Official Gazette with the party who sponsored them. It is to be noted that while considering this aspect, this Court has to take note of the provisions of Disqualification Act. Thus, considering the provisions contained in the Disqualification Act, the word "party" appearing in Section 19 of the Act, means "municipal party" the political party in relation to a Councillor or a member means a political party to which he/she belongs for the purpose of Sub-section (6) of the Section 3 of the Disqualification Act. As per the provisions of Disqualification Act and the Rules made thereunder, a party or leader of such municipal party has to furnish the information to the Commissioner within the prescribed period the information and register as a municipal party. Whenever any change occurs in the Municipal party the change has to be recognized subject to the provision of the Disqualification Act and Rules. As we have stated and at the cost of repetition there is nothing on record to indicate that there was a pre-poll alliance Aghadi/Yuti between BJP and Shiv Sena. Merely because those two political parties have not sponsored the candidates against each other will not lead to an inference that there was a pre-poll alliance Aghadi/Yuti. It is for those political parties to sponsor the candidates in a particular ward which they feel that the voters in the said ward may vote in favour of a particular party or a candidate. Only because all the Corporators belonging to both the parties have not contested the election against each others in all wards is not at all a decisive factor. Unless there is positive and legal

evidence on record this Court cannot take any judicial notice not consider the facts stated in the newspapers items or newspaper clippings which are filed by the petitioners in order to substantiate their contention that there was a pre-poll alliance Aghadi/Yuti. The petitioners have utterly failed to put these facts positively on record. Whether there was a pre-poll alliance, Yuti/Aghadi is always a question of fact that has to be proved on the basis of legal evidence. Even in writ petition the fact can be considered and proved by means of affidavits but unfortunately the fact cannot be proved as it is done in the present case on the scanty record, such as cuttings of newspapers or some pamphlets or handbills/ leaflets which are published or distributed by the candidates at the time of election. There is no authenticate legal documentary evidence placed on record by the petitioners to substantiate their contention that there was a pre-poll Aghadi between BJP and Shiv Sena and as such, BJP Shiv Sena have become or formed a ruling party in the House. Such contention cannot be accepted. It is to be noted and at the cost of repetition we may say that the Mayor and Deputy Mayor can be elected by the Councillors elected in the general election in terms of Section 19 of the Act. Section 19 of the Act nowhere refer that a candidate must be from a particular political party. All the Councilors/Corporate in the House has to elect Mayor and Deputy Mayor from amongst themselves and, in such election, there may be some support here or there to get a particular candidate who contested election from a party as the Mayor and Dy. Mayor. We have seen from the record produced by the respondents that the corporators elected on the tickets of BJP decided to be in opposition and they have informed the Mayor about the same. Before the Mayor, there were two parties i.e. Congress I and BJP having equal numerical strength and, in such a situation, the Mayor has exercised his discretion in recognizing a Corporator as Leader of Opposition from BJP. In our view, considering the record which is produced before us and the limited judicial review available to this Court, under Article 226 of the Constitution, we have to consider as to whether the exercise of power by Mayor is based on wholly irrelevant consideration whether it is irrational whether it is discriminatory, mala fide or perverse. In our opinion, the petitioners have utterly failed to establish all these aspects and from the scanty material produced on record by the petitioners, it is not possible to accept the contention of Shri Dhorde that the order passed by the Mayor is tainted with mala fides, as held by this Court in Vishnu Mehere's case (supra). This Court cannot go and test the political issues as such. We find that there is no substance in the petition. Petition requires to be dismissed.

33. In the result, the writ petition is dismissed, with no order as to costs.