
(2009) 06 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 7391 of 2008

Umesh Shrikant Shetye

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 2, 2(1), 3, 3(1), 3(2)

Citation : (2010) 1 ALLMR 201 : (2009) 6 BomCR 368

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

Bench : Division Bench

Advocate : Y.S. Jahagirdar, S.G. Deshmukh and Sangita S. Bhole, for the Appellant; C.J. Sawant and P.D. Dalvi, for Respondent No. 3, Niranjana Mogre and V.A. Sonpal, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Judgement

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

2. The petitioner was a Councilor of the Ratnagiri Municipal Council. Elections were held to the Ratnagiri Municipal Council on 19th November, 2006. The Petitioner contested on the party symbol of Nationalist Congress Party (hereinafter referred to as N.C.P.). The Respondent Nos. 3 to 10 were also elected on the ticket of the same party. After elections, a meeting was convened by the party where all the 12 councillors met and according to the Petitioner they agreed that the petitioner would be the leader of the N.C.P. Municipal party. Accordingly, the party General Secretary Shri Gurunath Kulkarni by letter dated 20th December, 2006 wrote to the Respondent No. 1-Collector informing that the petitioner is the leader of the N.C.P. Municipal Party. Elections were to be held for the post of President and the petitioner was nominated to contest the same. The Respondent Nos. 3 to 10 were, however, not in favour of the nomination of the petitioner. Consequent thereto some other candidate was elected as the President.

3. Respondent Nos. 3 to 10 by letter of 20th December, 2006 informed the

respondent No. 1 that they are forming a party called "Ratnagiri Vikas Aghadi Gat" in which three councillors of Indian National Congress (hereinafter referred to as "I.N.C.") would also merge and all together 11 councillors will form a part of the new front. Again at about 4,00 p.m., on 20th December, 2006 the Respondent Nos. 3 to 10 addressed another letter to Respondent No. 1, that they are in fact merging with the I.N.C. (Indian National Congress) of their own choice and that the letter which was addressed a few hours earlier should be cancelled as that was done without proper knowledge.

4. According to the petitioner after Respondent Nos. 3 to 10 left the N.C.P., General Secretary Mr. Gurunath Kulkarni by his letter dated 23rd December, 2006 informed respondent No. 1 that 8 councillors of N.C.P., who remained absent purposely in the meeting of 20th December, 2006 and claimed to form a new front or party was against the Act and, therefore, they had incurred disqualification. The petitioner was appointed as opposition leader. The petitioner on 30th December, 2006 had filed a Petition No. 2 of 2006, against the Respondent Nos. 3 to 10 for their disqualification which was dismissed by order dated 26th February, 2007.

5. Respondent Nos. 3 to 10 again by letter of 29th May, 2007 addressed to Respondent No. 1 along with the affidavits declared that they are merging themselves into N.C.P., from I.N.C. According to the petitioner this was totally illegal as the I.N.C. Is not their original political party. On 9th June, 2007 Mr. Suhas Shetye called upon the councillors of N.C.P., to convene a meeting urgently on 14th June, 2007 for accepting 8 councillors i.e. Respondent Nos. 3 to 10 in the N.C.P., and declaring the Respondent No. 5 as leader of N.C.P. It is stated that the entire meeting was illegal.

6. According to the petitioner a whip dated 15th June, 2007 was served upon all the councillors of N.C.P. Including Respondent Nos. 3 to 10, directing them to attend the meeting for election of the Vice President which was to be held on 18th June, 2007, where a candidate of the N.C.P., was elected. Respondent Nos. 3 to 10 did not take any objection to the issuance of the said Whip. The petitioner also wrote a letter dated 15th June, 2007 addressed to the Collector being leader of the N.C.P., stating that he is the only leader of N.C.P. so far and if anybody is claiming to be leader of N.C.P., then the same is illegal and invalid.

7. According to the petitioner he has filed Petition No. 4 of 2008 for declaration that the respondent Nos. 3 to 8 are disqualified as Corporators. The respondent No. 1 thereafter by his order dated 14th October, 2008 dismissed the complaint. Hence, the present petition.

8. There was another complaint made for disqualification of the Petitioner alongwith another. This was based on a complaint that the petitioner had defied the Whip issued by the Party i.e. N.C.P.

9. A reply has been filed on behalf of respondent No. 1. It is not necessary to set out the facts in detail, except those which are necessary for deciding the

controversy. Initially it is pointed out that the respondent Nos. 3 to 10, had merged with the I.N.C. Thereafter those eight councillors again merged in N.C.P. on 29th May, 2007. The members of the original N.C.P., party Smt. Smital Pawaskar was present in the meeting in which this merger was accorded approval and Shri Sudesh Mayekar was elected as leader of the party. As per the records Smt. Smital Pawaskar never took objection to the said merger as also to the election of Shri Sudesh Mayekar as leader of N.C.P. Another Councillor of the original N.C.P. was disqualified at that time on ground of caste validity. The petitioner and his wife were absent at that meeting.

10. In the complaint filed against the Respondents, by the petitioner it is the case of the petitioner, that respondent Nos. 3 to 10 stood disqualified as they had changed parties on two occasions first by merging into I.N.C., and thereafter again by merging into N.C.P. The act of merging from I.N.C., into N.C.P., it is alleged amounts to voluntarily giving up the membership of I.N.C. and hence they stood disqualified.

11. At the hearing of this petition learned Counsel for the petitioner has restricted the challenge to only one contention. It is submitted that the respondent Nos. 3 to 10 had merged with the I.N.C. Under the Act, N.C.P. was their original political party. The second merger into N.C.P., therefore, was illegal under the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as the Disqualification Act). Elaborating learned Counsel submits that considering the explanation to Section 3 of the Disqualification Act the original party of the petitioner was N.C.P. As they had 2/3rd majority at the time of merging with I.N.C., that merger could not be disputed. However, once they merged into I.N.C., they could not again merge into N.C.P. considering Section 3 as I.N.C., then was not their original party and consequently they have deemed to have vacated the office. The learned Counsel drew our attention to the various provisions as also to the Statement of Objects and Reasons leading to the Act.

12. On the other hand on behalf of the contesting respondents as also the Collector, it has been submitted that a co-joint reading of Sections 3 and 5 must lead to an inevitable conclusion that there is no bar on second merger, provided the mandate of Section 5(2) is satisfied. In the instant case at the time respondent Nos. 3 to 10 merged into N.C.P. from I.N.C., I.N.C. had 11 members. Respondent Nos. 3 to 10 were 8 members and, therefore, they would not incur any disqualification. The submission on behalf of the petitioner that there cannot be a second time merger was contested considering the language employed in Section 5(1) of the Disqualification Act.

13. The question, therefore, for determination is whether the second merger of Respondent Nos. 3 to 10, from I.N.C. into N.C.P. amounts to, they having voluntarily given up the membership of the I.N.C., and consequently disqualified under the provisions of the Disqualification Act. To understand the controversy we may first gainfully refer to the Statement of Objects and Reasons to the

Disqualification Bill. The statement of objects and reasons records that this evil of political defection is also present in the local authorities which is the base of our democratic institutions. It is, therefore, expedient to prevent political defections in certain local authorities as also in the State.

14. We may also refer to some relevant provisions of the Disqualification Act, including the definitions. Section 2(j) defines "original political party" to mean:

(j) "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) or Section 3.

Section 3(1) the relevant portion reads as under:

(1) Subject to the provisions of Sections 4 and 5, a councillor or a member belonging to any political party or aghadi or front shall be disqualified for being a councillor or a member-

(a) if he has voluntarily given up his membership of such political party or aghadi or front; or

(b)....

Explanation.- For the purposes of this section-

(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 councilor or member;

(b)....

(c)....

The relevant portion of Section 5 reads as under:

(1) A councillor or a member shall not be disqualified under Sub-section (1) of Section 3 where his original political party or aghadi or front merges with another political party or aghadi or front and he claims that he and any other members of his original party or aghadi or front-

(a) have become members of such other political party, or aghadi or front or as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or aghadi or front or group, as the case may be, shall be deemed to be the political party or aghadi or front to which he belongs for the purpose of Sub-section (1) of Section 3 and to be original political party or aghadi or front for the purpose of this sub-section.

15. Section 4 is now repealed. Section 4 provided for split in the party. Section 4(2) though repealed may be reproduced, as reliance is placed on it in the course

of arguments on behalf of the Respondents 3 to 8 and it reads as under:

4(2) Notwithstanding anything contained in Sub-section (1), a councillor or, as the case may be, member shall be precluded from making such a claim as referred to in Sub-section (1) for more than once during his term of office under the relevant municipal law or, as the case may be, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

16. It would thus be clear on reading of Section 3(1)(a) that a Councillor stands disqualified, if he has voluntarily give up the membership of the political party or aghadi or front, but this is subject to the provisions of Section 5. Explanation to Section 3(1) sets out that a person is 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. Section 5 provides that the Councillor or member shall not stand disqualified under Sub-section (1) of Section 3 where his original party or aghadi or front merges with another political party or aghadi or front and such Councilors claim to have become members of such other political party, or aghadi or front or as the case may be, subject to what is provided in Sub-section (2) namely that the merger shall deemed to have taken place if, and only if, not less than two-thirds of the members of municipal party, Zilla Parishad party, or as the case may be, Panchayat Samiti Party, concerned, have agreed to such merger. Municipal political party for the purpose of explanation to Section 3 has been defined under u/s 2(1) of the Disqualification Act.

17. Argument of Learned Counsel for the petitioner is on the basis of the language of Section 5(1)(a) and Section 5(1)(b) and what is the original political party. It is contended that the portion after comma and starting with "and" in Section 5(1)(b) is referable only to Section 5(1)(b) and cannot be read with Section 5(1)(a). It is, therefore, submitted based on these contentions that a second merger is not possible. It was also submitted that considering the objects and reasons Clause the object of the Legislature being to prevent defections, the Legislature has permitted a merger only once, but not on a second occasion.

We had our own doubts about reading of Section 5(1)(b) as printed in the official publication of the Government of Maharashtra, as that to us made no sense. Section 5(1)(b) cannot be read in isolation and the proper construction was to read it in the following manner:

5(1) A councillor or a member shall not be disqualified under Sub-section (1) of Section 3 where his original political party or aghadi or front merges with another party or aghadi or front and he claims that he and any other members of his original political party or aghadi or front-

(a) have become members of such other political party, or aghadi or front or as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and adopted to function as a separate group, and from the time of such merger, such other political party or new political party

or aghadi or front or group, as the case may be, shall be deemed to be the political party or aghadi or front to which he belongs for the purpose of Sub-section (1) of Section 3 and to be original political party or aghadi or front for the purpose of this sub-section.

18. Learned Counsel for the petitioner had placed before us the Bill as introduced in the Maharashtra Legislative Council. Clause 5(1) of the Bill reads as under:

5(1) A councillor or a member shall not be disqualified under Sub-section (1) of Section 3 where his original political party merges with another political party and he claims that he and any other members of his original political party-

(a) have become members of such other political party, or as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group.

And from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of Sub-section (1) of Section 3 and to be his original political party for the purpose of this sub-section.

The Statement of Objects and Reasons from the Bill may now be set out and it reads as under:

With a view to eradicating the evil of political defection in the Parliament on the national level and in the State Legislatures on the State Level, the Parliament has amended the Constitution of India by the Constitution (Fifty-second Amendment) Act, 1985. At the level of district, taluka, city and town, different local authorities are charged with the administration of functions relating to Local Government. These local authorities are, in the main elective. The field of local Government constitutes a training ground for the State and National Government. Many of our ablest statesmen and legislators have received their earliest training to the sphere of Local Government. The local authorities may become the pioneers in various fields of political activity. This even of political defections is also present in the local authorities which is the base of our democratic institutions. It is, therefore, expedient to prevent political defections in certain local authorities also in the State.

19. Considering the Clauses in the Bill as introduced and the printing in the Official Gazette as stated earlier we had our own doubts whether Section 5(1) has been printed and/or as contended on behalf of the petitioner by learned Counsel that Legislature had made amendments. We could have called on the State to produce the original of the Bill as passed by the State Assembly. In our opinion that exercise is not called for. If Section 5(b) is read as printed in the Official Publication of the Maharashtra Gazette the same would not make any sense. It is true that in Section 5(1) there are changes from the Bill as introduced, whereas in the Bill the reference was only to Original Political Party, in Section 5(1) apart from the original party reference is also made to aghadi or

front and consequential changes in Section 5(a). The effect of Section would be that the members of such other political party or aghadi or front or a new political form by such merger or political party, group or aghadi which has not accepted the merger and opted to function as a separate group then from the time of such merger such other political party or new political party or aghadi or front or group shall be deemed to be political party or aghadi or front to which he belongs for the purpose of Sub-section (1) of Section 3 and to be the original political party or aghadi or front for the purpose of this sub-section.

20. Section 5(1) has to be read in that context. In interpretation of statute by Bindra it is observed that "Punctuation marks do not control the meaning of a statutory provision if it is otherwise obvious."

In Law Lexicon comma is defined as "The smallest division of a sentence in language. The comma and semicolon are both used for the same purpose to punctuation, namely, to divide sentences and part of sentences; the only difference being that the semicolon makes the division a little more prolonged than the comma."

Semi-colon is defined as "According to well established grammatical rules, this is a point only used to separate parts of a sense more distinctly than a comma."

In Dadaji alias Dina Vs. Sukhdeobabu and Others, , the Supreme Court was pleased to observe that "it is well known that punctuation marks by themselves do not control the meaning of a statute when its meaning is otherwise obvious. What the Court must see is the object of the Act. In that context the learned Counsel for the respondent Nos. 3 to 10 had brought to our attention the observations of the Supreme Court in a D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das, , where the Supreme Court in the case of letting under the Rent Act as under:

The Act professes to control letting and rent of accommodation and the eviction of tenants therefrom. The Act restricts the power of the landlord to let and to rack-rent at will. It also restricts his power to eject the tenant at will. Thus the direct and immediate object of the Act is to ensure occupation of accommodation by them who are in need of it. Broadly speaking, a construction which fulfils this purpose should be preferred to the alternative construction which frustrates it.

A look, therefore, at the provisions of Section 5(1) will make it clear that after the comma in Section 5(1)(b) the part commencing from "and" must be read both with Section 5(1) (a) and 5(1)(b). The object of Section 5(1) is not to disqualify a Councillor, who may fall either in Section 5(1)(a) or Section 5(1)(b). If the argument advanced on behalf of the petitioner is accepted then the object of the Section would be defeated. The object being not to treat a Councillor as disqualified if the merger has the necessary number of Councillors.

20. The criticism on behalf of the petitioner in this Court reading the provision in such manner was that, it would lead to horse trading and defeating the very

object for which the Legislation was enacted. We have to consider both aspects of the matter. A case where there may be political horse trading for gain and also a case where there are genuine mergers. It is in that context we have to examine Section 4(2) which has since been deleted. Under Sub-section (2) there was a bar from changing the membership of the Municipal party, Zilla Parishad party or Panchayat Samiti party more than once. This has been subsequently deleted. This only indicates that where there is a split in the original party as set out therein the member would not be disqualified. As noted earlier, the Bill had not sought to protect the disqualification of members of aghadi or front but the Bill as passed by the Legislature and indicated in the Act also gives protection to members of the aghadi or front. The consequence of that would be that the party, aghadi or front after the merger becomes the original political party and once it becomes the original political party, then subject to Section 5, the member would not stand disqualified u/s 3(1). In our opinion, therefore, we can draw from the language of Section 4(1)(ii) to note that the Legislature itself had intended in certain circumstances when a member of a political Municipal Party, Zilla Parishad party or Panchayat Samiti Party could not change political horses twice. There is, however, a specific exclusion in Section 5. Apart from the construction that we have given earlier this would lend added weight to construe that if the merger is in terms of Section 5, then the new political party or remainder of the political party, aghadi or front becomes the original political party and the provisions of disqualification under the Act will not apply to such merger. If we do not so read it would mean that those who may merge as for example on account of less numbers would be precluded from merging to join another political party or form a new political party, aghadi or front. This to our mind was not the intention of the Legislature. There can be, therefore, a second merger subject to the provisions of Section 5(2) of the Disqualification Act.

21. If we so construe, then the merger of Respondent Nos. 3 to 10 from I.N.C. To N.C.P. was legal. Once the same was legal the rejection of the application by the petitioner for disqualification of Respondent Nos. 3 to 10 cannot be said to suffer from any error or law apparent on the face of the record.

22. Consequently, Rule discharged. In the circumstances of the case, however, there shall be no order as to costs.