

A AJAY RAMDAS RAMTEKE AND ANR.
v.
MAHANAGAR SUDHAR SAMITI, AKOLA & ORS.
(Civil Appeal No. 1388 of 2015)
FEBRUARY 02, 2015

B **[FAKKIR MOHAMED IBRAHIM KALIFULLA
AND PRAFULLA C. PANT, JJ.]**

Maharashtra Municipal Corporations Act, 1949: s.31A(2)
– *Formation of group/agadi by elected members –*
C *Application for registration – There arose controversy as to*
whether two of the elected members projected to be part of
the group were actually members of the agadi (respondent
no.1) or another group (respondent no.6) – On 28.8.2012,
D *Divisional Commissioner passed order rejecting application*
for registration – Said order not challenged – Meanwhile
resolution dated 29.4.2013 passed by Municipal Corporation
nominating the appellants and respondents no.9 to 14 in the
Standing Committee as members – Resolution challenged
E *– High Court quashed resolution dated 29.4.2013 – Held:*
Order dated 28.08.2012 passed by Divisional Commissioner
was not challenged and, therefore, had attained finality – As
such, writ petition questioning validity of resolution dated
F *29.04.2013 was liable to be dismissed – Maharashtra Local*
authority Members Disqualification Rules, 1987 – r.5.

Allowing the appeal, the Court

HELD: 1. The object of allowing elected members of
the Municipal Corporation to form an aghadi as post-poll
G **alliance is to give proportional representation of its**
members to the various standing committees
constituted for functioning of the Corporations. The
second proviso to sub-section (2) of Section 31A of
Maharashtra Municipal Corporations Act, 1949 allows the

councillors to form an aghadi after the election to a Municipal Corporation. An aghadi formed after election is required to be registered as provided in sub-section (2) of Section 31A of 1940 Act. Rule 5 of Maharashtra Local authority Members Disqualification Rules, 1987 relates to maintaining a register of information as to councilors and members. [Paras 9, 10, 12] [105-E-G; 110-E]

2. Order dated 28.08.2012 passed by Divisional Commissioner whereby the application for registration was disposed of, showed that the application of the writ petitioners was rejected as affidavits of respondent no. 14 and one 'MSB' were not complete. The two, who were elected as independent candidates, failed to file any document to show as to which group they belonged. Their names figured in two groups. In the said order, the Divisional Commissioner also referred to a serious infirmity in accepting the proposal, as he found that the affidavit was sworn to and attested on 22.02.2012, whereas the stamps were purchased on 23.02.2012 which the Divisional Commissioner held to be an incomprehensible act of the proposer. Such serious infirmities cannot be found fault with. [Para 19] [118-C-G]

3. Order dated 28.08.2012 passed by the Divisional Commissioner was not challenged, as such the same has attained finality. That being so, respondent no.1 cannot be said to be a registered group as required under second proviso of sub-section (2) of Section 31A of the Act of 1949. The High Court erred in law by ignoring the above order of the Divisional Commissioner, and holding that respondent no. 1 stood registered. If there was objection to registration of an aghadi, on the ground that names of certain members were falsely or wrongly shown in the list, the Commissioner had no option but to verify the same. And, in such cases, unless the

- A verification is done, an aghadi cannot be said to have got registered, by merely submitting an application within one month of election to Municipal Corporation. Had the writ petitioners challenged order dated 28.08.2012 with the Resolution dated 29.04.2013, the situation would have been different. But order of Divisional Commissioner rejecting application for registration has attained finality, and same cannot be ignored. As such, writ petition filed by respondent nos. 1 to 3 questioning validity of resolution dated 29.04.2013 was liable to be dismissed. [Para 20] [119-B-F]

Jeevan Chandrabhan Idnani and Anr. vs. Divisional Commissioner, Konkar Bhawan and Ors. (2012) 2 SCC 794: 2012 (3) SCR 32 – relied on.

D

Case Law Reference

2012 (3) SCR 32

relied on. Para 7

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1388 of 2015

[From the Judgment and Order dated 14.08.2013 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 2571 of 2013]

F Shekhar Naphade, Manish Pitale, Chander Shekhar Ashri, for the Appellants.

Nikhil Nayyar, Akanksha, N. Sai Vinod, Rabin Majumdar, Nishant Ramakantrao Katneshwarkar, Suhas Kadam (For Lemax Lawyers & Co.), for the Respondents.

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The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. Leave granted.

H 2. The question involved in this appeal is whether respondent no. 1 - *Mahanagar Sudhar Samiti, Akola*, an

"*aghadi*" or "*front*" formed by some of the elected councillors of respondent no. 5 -Akola Municipal Corporation in March, 2013, without its registration under second proviso to Section 31A(2) of the Maharashtra Municipal Corporations Act, 1949 (for short "1949 Act") stood registered and recognized as a party or group for the purposes of representation, and as such whether the petition filed by respondent no. 1 before the High Court challenging the Standing Committee constituted under the 1949 Act was maintainable. A B

3. Brief facts of the case are that elections were held for Akola Municipal Corporation in February, 2012, wherein 73 councillors were elected to the House. From amongst elected members, initially 23 members, and thereafter in all 26 members claimed to have formed an "*aghadi*" (group of persons) with the name "*Mahanagar Sudhar Samiti*". On 5.3.2012, within one month of the election, leader of the said group submitted an application before the Divisional Commissioner for its registration under second proviso to Section 31A(2) of the 1949 Act. It appears that in the meantime there was a controversy as to whether two of the elected members projected to be part of the group were actually members of the aghadi (respondent no.1) or another group Akola Vikas Mahaaghadi (present respondent no.6). The said issue was decided by the High court by a detailed judgment dated 08.05.2012 passed in writ petition no. 1426 of 2012 holding that the aforesaid two members were not part of either respondent no. 1 or 6. Thereafter, the Divisional Commissioner passed a detailed order on 28.08.2012 whereby the application for registration of respondent no.1 as *aghadi* filed in March 2012 was rejected. Said order was not challenged by any party. However, meanwhile Resolution dated 29.04.2013 was passed by the Akola Municipal Corporation whereby the present appellants and six others (present respondent nos. 9 to 14) were nominated in the Standing Committee as members thereof. The Resolution was challenged by respondent nos. 1 to 3 by filing a Writ Petition C D E F G H

A no. 2571 of 2013 before the Nagpur Bench of the High Court of
Judicature at Bombay. A preliminary objection was raised on
behalf of Mayor (respondent no. 4) before the High Court that
the writ petition was not maintainable. Defending the Resolution
dated 29.04.2013, it was stated that there was no illegality in
B nominating the members whose names figured in the Standing
Committee constituted vide Resolution dated 29.04.2013.

4. After hearing the parties, the High Court took the view
that since the application for registration, in the register
maintained in Form IV as per Rule 5 of Maharashtra Local
C Authority Members' Disqualification Rules, 1987 (for short "1987
Rules"), was made within time, the respondent no. 1 should have
been treated as separate *aghadi*, and as such non-inclusion of
names of its members for proportional representation in the
D Standing Committee invalidates the Resolution dated
29.04.2013. Accordingly, the High Court quashed the Resolution
dated 29.04.2013 and allowed the writ petition.

5. Aggrieved, by the above order dated 14.08.2013,
E passed by the High Court, in Writ Petition No. 2571 of 2013,
this appeal is filed by the appellants who were respondent nos.
6 and 7 before the High Court, through special leave.

6. It is pleaded on behalf of the appellants that the High
Court has erred in law by accepting the writ petition filed by
F respondent nos. 1 to 3 which was not maintainable. It is stated
that the High Court ignored the fact that vide order dated
28.08.2012, the Divisional Commissioner had rejected the
application for registration moved by respondent No. 1 as
separate *aghadi*. It is further pleaded that registration of post-
G poll group or alliance was mandatory under Section 31A of
1949 Act read with 1987 Rules. It is argued before us that
unregistered *aghadi* is not an *aghadi* in the eyes of law, and
as such, neither the same could have been recognized for its
representation in the Standing Committee nor maintain the writ
H petition in the High Court.

7. On the other hand, on behalf of the respondent nos. 1 to 3, who were the writ petitioners before the High Court, contended that since there was no rule or procedure prescribed for registration as such their only duty was to intimate the Divisional Commissioner under Rule 3 of 1987 Rules about the formation of *aghadi*, and the rest was the ministerial work to be completed. The contesting respondent nos. 1 to 3 placed their reliance in the case of ***Jeevan Chandrabhan Idnani and Another vs. Divisional Commissioner, Konkar Bhawan and others*** (2012) 2 SCC 794.

8. Before further discussion, we think it just and proper to mention as to what is the meaning of word '*Aghadi*', and for what purpose it is constituted by the councillors of Corporation. Word '*aghadi*' is defined in Clause (a) of Section 2 of Maharashtra Local Authority Members' Disqualification Act, 1986 (for short "1986 Act") which reads as under:

"2. In this Act unless the context otherwise requires,-

(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."

9. Object of allowing elected members to form an *aghadi* as post-poll alliance is to give proportional representation of its members to the various standing committees constituted for functioning of the Corporations.

10. Second proviso to sub-section (2) of Section 31A of 1949 Act allows the concillors to form an *aghadi* after the election to a Municipal Corporation. Section 31A reads as under:

"31A. Appointment by nomination on Committees to be by proportional representation
– (1) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, in the case

A of the following committees, except where it is provided by this Act, that the appointment of a Councillor to any Committee shall be by virtue of his holding any office, appointment of Councillors to these Committees, whether in regular or casual vacancies, shall be made by the Corporation by nominating Councillors in accordance with the provisions of sub-section(2):-

- B (a) Standing Committee;
- C (b) Transport Committee;
- (c) Any special Committee appointed under section 30;
- D (d) Any ad hoc Committee appointed under section 31"

(2) In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognized parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Corporation, after consulting the Leader of the House, the Leader of Opposition and the leader of each such party or group:

F Provided that, the relative strength of the recognized parties or registered parties or groups or *aghadi* or front shall be calculated by first dividing the total number of Councillors by the total strength of members of the Committee. The number of Councillors of the recognized parties or registered parties or groups or *aghadi* or front shall be further divided by the quotient of this division. The figures so arrived at shall be the relative strength of the respective recognized parties or registered parties or groups or *aghadi* or front. The

seats shall be allotted to the recognized parties or registered parties or groups or *aghadi* or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognized parties or registered parties or groups or *aghadi* or front in the descending order of the fraction number in the respective relative strength starting from the highest fraction number in the relative strength, till all the seats are allotted:

Provided further that, for the purpose of deciding the relative strength of the recognized parties or registered parties or groups under this Act, the recognized parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986 (Mah. XX of 1987), within a period of one month from the date of notification of election results, from the *aghadi* or front and, on its registration, the provisions of the said Act shall apply to the members of such *aghadi* or front, as if it is a registered pre-poll *aghadi* or front.

(3) If any question arises as regards the number of Councillors to be nominated on behalf of such party or group, the decision of the Corporation shall be final".

11. In ***Jeevan Chandrabhan Idnani*** (supra), this Court has made following observations interpreting the second proviso of sub-section 2 of Section 31A:

"26. The second proviso to sub-section (2) of Section 31-A enables the formation of an *aghadi* or front

- A within a period of one month from the date of notification of the election results. Such an aghadi or front can be formed by various possible combinations of Councillors belonging to either two or more registered parties or recognised parties or
- B independent Councillors. The proviso categorically stipulates that such a formation of an “aghadi” or “front” is possible notwithstanding anything contained in the Disqualification Act. Because an “aghadi” or “front”, as defined under the Disqualification Act,
- C clearly, can only be the combination of a group of persons forming themselves into a party prior to the election for setting up candidates at an election to a local authority but not a combination of political parties or political parties and individuals.
- D **27.** Therefore, the second proviso to Section 31-A(2) of the Municipal Corporations Act which is a later expression of the will of the sovereign, in contrast to the stipulation as contained under Sections 2(a) and
- E 3(2) of the Disqualification Act, would enable the formation of post-electoral aghadis or fronts. However, such a formation is only meant for a limited purpose of enabling such aghadis to secure better representation in the various categories of the
- F Committees specified under Section 31-A. The component parties or individual independent Councillors, as the case may be, in the case of a given front/aghadi do not lose their political identity and merge into the aghadi/front or bring into existence
- G a new political party. There is no merger such as the one contemplated under Section 5 of the Disqualification Act. It is further apparent from the language of the second proviso that on the formation of such an aghadi or front, the same is required to
- H be registered. The procedure for such registration is

contained in the Maharashtra Local Authority Members' Disqualification Rules, 1987. A

28. Once such an aghadi is registered by a legal fiction created under the proviso, such an aghadi is treated as if it were a pre-poll aghadi or front. The proviso further declares that once such a registration is made, the provisions of the Disqualification Act apply to the members of such post-poll aghadi. We do not propose to examine the legal consequences of such a declaration as it appears from the record that a complaint has already been lodged against Respondents 6 to 13 herein under the provisions of the Disqualification Act. The limited question before us is whether the first respondent was legally right in registering an aghadi or front formed after the lapse of one month from the date of the notification of the election results. B
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30. In substance, the High Court held that the interpretation of Section 31-A depends upon the tenor and scheme of the subordinate legislation. Such a principle of statutory construction is not normally resorted to save in the case of interpretation of an old enactment where the language is ambiguous. We are conscious of the fact that there is some difference of opinion on this principle but for the purpose of the present case we do not think it necessary to examine the proposition in detail as in our opinion the language of Section 31-A is too explicit to require any other external aid for the interpretation of the same. Subordinate legislation made by the executive in exercise of the powers delegated by the legislature, at best, may reflect the understanding of the executive of the scope of the powers delegated. But there is E
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A no inherent guarantee that such an understanding is consistent with the true meaning and purport of the parent enactment.

B **31.** Such variations of the relative strength of aghadis would have various legal consequences provided under the Disqualification Act. Depending upon the fact situation in a given case, the variation might result in the consequence of rendering some of the Councillors disqualified for continuing as Councillors.

C Section 31-A of the Municipal Corporation Act only enables the formation of an aghadi or front within a month from the date of the notification of the results of the election to the Municipal Corporation. To permit

D recognition of variations in the relative strength of the political parties beyond the abovementioned period of one month would be plainly in violation of the language of the second proviso to Section 31-A."

E 12. We have already discussed that an *aghadi* formed after election is required to be registered as provided in sub-section (2) of Section 31A of 1940 Act. Rule 5 of 1987 Rules, which relates to maintaining a register of information as to councilors and members, provides as under:

F "Register of information as to councilors or members.-
(1) The Commissioner in the case of a councilor of a Municipal Corporation and the Collector, in the case of any other councilor or member, shall maintain in Form IV, a register based on the information furnished under rules 4 and 5 in relation to the councilor of a

G municipal party, Zilla Parishad party or, as the case may be, member of a Panchayat Samiti Party."

H 13. There is no detailed procedure prescribed for registration of an *aghadi*. It is evident from Rule 5 quoted above, that power to register vests with the Commissioner.

The word "Commissioner" is defined in clause (c) of Rule 2 of 1986 Act and the same is reproduced below: A

"(c) "Commissioner" means the Commissioner of a revenue division appointed under Section 6 of the Maharashtra Land Revenue Code, 1966". B

14. In earlier round, respondent no. 1 filed writ petition no. 1426 of 2012 challenging Resolution dated 20.03.2012 passed in the General Body Meeting of Akola Municipal Corporation which was decided by the High Court with the following two concluding paragraphs: C

"30. This discussion leads to conclusion that Respondent Nos. 5 & 6 could not have been treated as members either of Respondent No. 4 or then of the petitioner. The proportionate representation of the Petitioner & Respondent No. 4 on Standing Committee needed to be worked out by ignoring them. The Petitioner therefore, is rightly given 5 members. But then there has to be proportionate reduction in representation allotted to Respondent 4. Strength of Respondent No. 4 in general body of 73 is 33. It therefore gets 7.23 seats in Standing Committee i.e. 7 seats. One seat remains vacant and decision about it cannot be taken as Respondent No. 3 Divisional Commissioner has still not completed his exercise of verification. First proviso to Section 31A(2) does not prohibit Corporation from filling in such vacancy by nominating on the Committee any member not belonging to any such party or group. If no such member is available, Respondent Nos. 1 to 4 as also Petitioner have to start working with Standing Committee of 15 members only & continue till the Respondent No. 3 decides on the validity of change or then status of Respondent Nos. 5 & 6. It is settled position that law does not expect compliance D
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A with the impossibilities. Holding of a General Body Meeting for this limited purpose is essential. If Respondent 3 finds Respondent Nos. 5 & 6 not disqualified, Corporation can thereafter, proceed to fill in the sixteenth vacancy.

B 31. Accordingly, Respondent No. 4 Aghadi as also
Respondent Nos. 1 & 2 are directed to bring down
C representation of Respondent No. 4 on Standing
Committee from 8 to 7. Proceedings and meeting
D conducted on 20.03.2012 are quashed & set-aside
to that extent. Respondent Nos. 1, 2 & 4 to hold a
general body meeting to bring down the strength of
representatives of Respondent No. 4 from 8 to 7.
Respondent 1 Corporation is free to fill in resulting
E vacancy by nominating on the Standing Committee a
Councillor as per first proviso to Section 31A(2) of
the Corporation Act in this meeting. Said general body
meeting be held within period of three weeks from
today. If 16th seat in Standing Committee can not be
filled in, the Respondent Nos. 1 to 4 shall function with
Standing Committee of 15 members only. Petition is
thus partly allowed. Rule is made absolute in above
terms. However, there shall be no order as to costs.”

F But in that round of litigation, Divisional Commissioner
was neither a party, nor any direction was sought against him.

15. Shri Nikhil Nayyar, learned counsel for the respondent
no. 1 referred to a copy of letter dated 06.05.2013 (Annexure
R1/5) annexed with the reply on behalf of respondent no. 1
G and contended that respondent 1 was registered. Per contra
on behalf of appellants, Shri Shekhar Naphade, learned senior
counsel drew our attention to the copy of order dated 28.8.2012
(Annexure P-5) whereby application for registration of
Mahanagar Sudhar Samiti - respondent no. 1 as an *aghadi*
H was rejected by the Divisional Commissioner, Amravati.

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16. Copy of communication dated 06.05.2013 (Annexure A
R-1/5) issued by Municipal Secretary, Akola earlier informing
that *Mahanagar Sudhar Samiti* as one of the registered aghadi
is re-produced below:

"O.N.AMNC/NS/25/12
Office of Municipal Secretary
Akola Municipal Corporation
Akola Dated.6/5/13

To Shri Sunil Meshram
Member, MNC
Ward no.8-A

Subject – Regarding the list of Gatneta and Aghadi which
are approved by Divisional Commissioner, Amravati.

S.No	Name of Party/ Aghadi/Gat	Gatneta
1)	Akola Vikas Mahaaghadi	Shri Madan Babulal Bhargad
2)	Mahanagar Sudhar Samiti	Shri Harish Ratanlal Alimchandani
3)	Shivsena	Smt. Manusha Sanjay Shelke
4)	Akola Shahar Vikas Aghadi	Shri Beni Sh. Ganga Beniwale.

The Divisional Commissioner Amravati had issued a letter
bearing no. MNC/Namuna 5/akola/MNC/12/2012 Dtd.7/6/
2012 by which it is communicated to Municipal Corporation
that four Aghadi and Gatneta are registered under the
provisions of Maharashtra Local Authorities Members

A Disqualification Act and the list of the same is appended herewith

Sd/-
Municipal Secretary Akola”

B 17. Before above communication the Divisional Commissioner had passed order dated 28.08.2012, relevant extracts of the same are reproduced as under:

C “BEFORE SHRI GANESH THAKUR, DIVISIONAL COMMISSIONER, AMRAVATI DIVISION, AMRAVATI.

Case No. 3/Akola M.C/2011-12

D (1) Shri Harish Ratanlalji Alimchandani, Party leader, Mahanagar Sudhar Committee, Akola, Municipal Corporation, Akola, R/o. Aalsi Plots, Tq & Distt. Akola ...Applicant

(2) Shri Madan Bodulal Bhargad, Party Leader, Akola Vikas Mahaaghadhi, Municipal Corporation, Akola, R/o. Geeta Nagar, Tq & Distt. Akola ...Applicant

E Adv. Milind Vaishnav.... On behalf of Applicant No. 1

O R D E R

F As per Maharashtra Local Authority Membership Disqualification Act, 1986 (hereinafter referred to as “Disqualification Act”) and Rule 3(a) of the Maharashtra Local Authority Membership Disqualification Rules, 1987 (hereinafter referred to as “Disqualification Rules”) thereunder, on 05/03/2012

G Shri Harish Ratanlalji Alimchandani, Party Leader, Mahanagar Sudhar Samiti, Akola, Municipal Corporation, Akola submitted proposal in prescribed form for registration of “Mahanagar Sudhar Samiti, Akola”, sponsored by “Bhartiya Janata Party” in the

H registration book of Divisional Commissioner Office.

Alongwith the present application the applicant no. 1 has filed list of members (List of Councillors). The applicant no.2, Shri Madan Bodulal Bhargad, Party Leader, Akola Vikas Aghadi, Municipal Corporation, Akola on 16/03/2012 submitted proposal in prescribed form as per provisions of Disqualification Act for registration of Akola Vikas Mahaaghadhi sponsored by Bhartiya Rashtriya Congress in registration book of the office of Divisional Commissioner. Alongwith the proposal in prescribed form the applicant has submitted list of total 35 members (List of Councillors).

On scrutiny of both the proposals, it comes to the notice that, in the proposal submitted by applicant no.1 the name of Shri Sanjay Babulal Badone is at Sr.no.20 and name of Sau. Madhuri Sanjay Badone is at Sr.no.21. So also, in the proposal filed by applicant no. 2 the name of Shri Sanjay Babulal Badone is at Sr.no.(Five) (2) and name of Sau. Madhuri Sanjay Badone is at Sr.no.(Five)(3). As the names of Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone are mentioned in both the lists, confusion has been created as to which vanguard/front they are members. Therefore, by notice dt. 23/03/2012 both the applicants and City Secretary of Municipal Corporation were informed to remain present for hearing on 27/03/2012 alongwith original documents and proof.

On 27/03/2012 both the applicants alongwith their Advocates and City Secretary of Municipal Corporation Shri Gajanan Madhusudan Pande remained present for hearing. In the said case, Adv. G.B. Lohiya advanced argument on behalf of Municipal Corporation, Akola. Adv. Santosh Rahate advanced his argument on behalf of Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone.

A In the affidavit dt. 14/03/2012 sworn by Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone there is no name and signatures of witnesses and on 14/03/2012 the said affidavit has been recorded at Sr.no.174/12 by Notary Shri R.R. Deshpande, Adv.

B As per provisions of Indian Evidence Act, the said affidavit cannot be held as complete unless attested. Therefore, there is no sufficient scope to treat the said affidavit of Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone as valid.

C After considering all the aspects above in totality and on careful perusal of concerned documents filed in the case it comes to the notice that, from the entry made by Stamp Vendor on the stamp papers, the stamp papers appear to have been purchased on 23/02/2012 for the affidavit of Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone attached to the proposal dt. 05/03/2012 submitted by applicant no.1 Shri Harish Alimchandani to the Divisional Commissioner for registering the Mahanagar Sudhar Samiti sponsored by Bhartiya Janta Party as per provisions of rule 3 of the Disqualification Rules. Yet the date of attestation being not as '23/02/2012' it is "22/02/2012". How the affidavit has been sworn on 22/02/2012 by purchasing stamp papers on 23/02/2012 is an incomprehensible aspect. He filed Xerox copies of said affidavit after receipt of notice in the case before the Divisional Commissioner. It is a notable aspect that, Shri Harish Alimchandani has not submitted original copies of affidavits during hearing of present case.

H Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone have been elected from Prabhag no. 34-A and no.34-B in the Akola Municipal Corporation

elections as independent candidates. As the applicant no.1 and applicant no.2 have failed to file any kind of reliable documents in regard as to in which front created in the Akola Municipal Corporation Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone have participated, I have come to the conclusion that it does not become clear that definitely to which vanguard/Committee/front out of Mahanagar Sudhar Committee sponsored by Bhartiya Janta Party or Akola Vikas Mahaaghadhi sponsored by Bhartiya Rashtriya Congress, Shri Sanjay Babulal Badone and Sau. Madhuri Sanjay Badone are attached.

Therefore, the following order is being passed.

ORDER

(1) As per provisions of Maharashtra Local Authority Membership Disqualification Act 1986 and Rule 3(a) of the Maharashtra Local Authority Membership Disqualification Rules, 1987, the proposal submitted by Shri Harish Ratanlalji Alimchandani, Party Leader, Mahanagar Sudhar Samiti, Akola, Municipal Corporation, Akola in prescribed form for registration of "Mahanagar Sudhar Samiti, Akola", sponsored by Bhartiya Janata Party on 05/03/2012 for registration in the Register Book of the office of Divisional Commissioner, is hereby rejected.

(2) As per provisions of Maharashtra Local Authority Membership Disqualification Act 1986 and Rule 3(a) of the Maharashtra Local Authority Membership Disqualification Rules, 1987, the proposal submitted by Shri Madan Bodulal Bhargad, Party Leader, Akola Vikas Mahaaghadhi, Akola, Municipal Corporation, Akola in prescribed form for registration of "Akola Vikas Mahaaghadhi Akola", sponsored by Bhartiya

A Rashtriya Congress Party on 16/03/2012 for registration in the Register Book of the office of Divisional Commissioner, is hereby rejected.

The said order passed today on 28th August, 2012 under my signature and seal.

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Sd/- 28.08.2012

(Ganesh Thakur)

Divisional Commissioner, Amravati”

C 18. We have gone through the above two documents. Order dated 28.08.2012 passed by Divisional Commissioner, Amravati, whereby the application for registration was disposed of, shows that the application of the writ petitioners was rejected as affidavits of Sanjay Babulal Badone (respondent no. 14) and Smt. Madhuri Sanjay Badone were not complete. The two, who were elected from Prabhag no.31 and Prabhag no. 34-B as independent candidates, failed to file any document to show as to which group they belonged. Their names figured in two groups.

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19. In the order dated 28.08.2012 the Divisional Commissioner also referred to a serious infirmity in accepting the proposal, as he found that the affidavit was sworn to and attested on 22.02.2012, whereas the stamps were purchased on 23.02.2012 which the Divisional Commissioner held to be an incomprehensible act of the proposer. Such serious infirmities which weighed with the Divisional Commissioner in passing the order of rejection dated 28.08.2012 cannot be found fault with. Considering the Scheme of the 1987 Rules, we are convinced that it was incumbent upon the Divisional Commissioner to hold a meaningful exercise of scrutinizing the proposal for registration and pass a positive order of registration and then alone the exception carved out under Section 31A(2) of the 1949 Act, even for the limited purpose to get rid of disqualification under the 1987 Rules can be allowed to operate. Viewed in that respect also the order dated

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28.08.2012 assumes greater significance and, therefore, A
unless and until the said order was set aside in the manner
known to law, the formation of the aghadi as claimed by the
first respondent could not have come into effect.

20. It is not disputed that no one challenged the order dated B
28.08.2012 passed by the Divisional Commissioner, as such
the same has attained finality. That being so, the Mahanagar
Sudhar Samiti, Akola (respondent no.1) cannot be said to be
a registered group as required under second proviso of sub- C
section (2) of Section 31A of the Act of 1949. In our opinion,
the High Court has erred in law by ignoring the above order of
the Divisional Commissioner, and holding that respondent no.
1 stood registered. If there was objection to registration of an D
aghadi, on the ground that names of certain members were
falsely or wrongly shown in the list, the Commissioner had no
option but to verify the same. And, in such cases, unless the
verification is done, an *aghadi* can not be said to have got
registered, by merely submitting an application within one
month of election to Municipal Corporation. Had the writ
petitioners challenged order dated 28.08.2012 passed by the E
Divisional Commissioner, with the Resolution dated
29.04.2013, the situation would have been different. But in the
present case, order of Divisional Commissioner rejecting
application for registration has attained finality, and same
cannot be ignored. As such, writ petition filed by respondent F
nos. 1 to 3 questioning validity of resolution dated 29.04.2013
was liable to be dismissed.

21. Therefore, this appeal deserves to be allowed.
Accordingly, the appeal is allowed and impugned order dated G
14.8.2013 passed by the High Court in Writ Petition no. 2571
of 2013 is hereby set aside, and the Resolution dated
29.04.2013 shall stand restored. No orders as to costs.