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SUNIL HARIBHAU KALE

v.

AVINASH GULABRAO MARDIKAR AND OTHERS

(Civil Appeal No. 2080 of 2015)

FEBRUARY 20, 2015

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[M.Y. EQBAL AND KURIAN JOSEPH, JJ.]

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Maharashtra Local Authority Members' Disqualification Act, 1986 – s.2(a), 2(i) and 2(j) r/w r.2(b-1) of Maharashtra Local Authority Members' Disqualification Rules, 1987 – Municipal Corporation election – Some of the councillors belonging to different political parties formed a group/alliance (aghadi) and elected the first respondent as their group leader – Change of Group leader nominated by the General Secretary of the largest political party of the group (aghadi) – Propriety of – Held: Once a group (aghadi) is formed and duly recognized, it becomes a municipal party in terms of s.2(i) – If the municipal party is an aghadi, its leader can be chosen only by aghadi – In the same way change of leader also can be effected only by the aghadi and not by an outsider – Hence, the change of leadership was not correct.

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Dismissing the appeal, the Court

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HELD: The definition of the term 'leader' u/s 2(b-1) of Maharashtra Local Authority Members' Disqualification Rules, 1987 very clearly shows that where a municipal party is an *aghadi*, its leader has to be chosen by the *aghadi* or the front. Necessarily, any change in the leader of the municipal party is to be effected by the *aghadi* and not by any outsider. Once the Rules provide for the election of the group leader, it has to be done in that manner only and not in any other

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manner, even when there is change of the leader. The change of leader has to be in the same democratic process of induction, in the absence of any other method prescribed under the Rules concerned. Once an *aghadi* (group) is formed and duly recognized by the Divisional Commissioner, it becomes a municipal party in terms of Section 2(i) of the Act. Once original political parties form a municipal party by way of an *aghadi*, for all purposes, the group leader is chosen by the municipal party (*aghadi*) only. Rules do not provide for nomination of group leader. Similarly, the group leader of the *aghadi* can be changed only by the group and not by one of the political parties, big or small, belonging to the *aghadi*. [Para 12-13] [226-G, H; 227-A-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2080 of 2015

From the Judgment and Order dated 22.08.2014 of the High Court of Bombay, Nagpur Bench in W. P. No. 2772 of 2014

Babu H. Marlapalle, Kishor Lambat, Milind Vaishnav, Shryas Vaishnav (for Lambat & Associates) for the Appellant.

K. V. Vishwanathan, Satyajit A. Desai, Rahul Bhangade, Kishor (for Anagha S. Desai), Aniruddha P. Mayee, A. Selvin Raja, Suhas Kadam (for Lemax Lawyers & Co.), Charudatta Mahindrakar, A. S. Raja, Akash Kakade for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. Election to the Amravati Municipal Corporation was held on 16.02.2012. Of the total 87 Councillors, the Nationalist Congress Party with 17, Muslim League with 2, R.P.I. with 1, Samajwadi Party with 1 and 2 Independents formed an *aghadi*

A (group) and elected the first respondent as their group leader (*Gat Neta*). On 06.03.2012, the 23 members submitted the following application to the Divisional Commissioner, Amravati for approval of the alliance and registration of the group leader:

B “... The newly elected Corporators of the Nationalist Congress Party Nos. 1 to 17 along with other newly elected Corporators, totaling to 23, have unanimously elected Shri Avinash Gulabrao Mardikar as a Group Leader of the Nationalist Congress Party. The List of
C the names of the Corporators from the Nationalist Congress Party, in Form – I, under Rule 31(1)(A) is submitted herewith. Similarly, the affidavit duly signed by the honourable Corporators, in Form – III, under Rule 4(1) is also annexed herewith.

D The strength of our Alliance is the Corporators of the Nationalist Congress Party numbering 1 to 17 and that of 6 others, totaling to 23. Hence, it is requested to kindly register and approve this Alliance as a
E “Nationalist Congress Party Front. ...”

(Emphasis supplied)

3. The affidavit filed by the members of the group, reads as follows:

F “... We, all the newly elected members of the Amravati Municipal Corporation, Amravati, do hereby inform you that, we have formed Nationalist Congress Party Front; that we have the total strength of 23 members; that we have unanimously elected Shri Avinash
G Gulabrao Mardikar, the newly elected member from Ward No.26(B), Benoda Ward as a Group Leader of our Nationalist Congress Party Front; that the said Group Leader Shri Avinash Gulabrao Mardikar has hereby given his consent to work as a Leader of our
H group; and that we do hereby further undertake to bind

ourselves to elect, vote and support the members proposed and nominated by our group leader Shri Avinash Gulabrao Mardikar as a Mayor, Deputy Mayor, the President of the Standing Committee, and the Members and the Chair Persons of all the Committees; that we will not remain absent at the time of the voting of the said election; and that we are well aware of the fact that under the provisions of Rule 3 of the Maharashtra Local Authority Member Disqualification Act, it is binding upon us to obey the orders that would be passed by our group leader Shri Avinash Gulabrao Mardikar as regards the proceedings of the assembly of the Amravati Municipal Council, otherwise, the action can be taken against us under the provision of Rule 3(5) of the said Act for the infringement of such orders. ...”

(Emphasis supplied)

4. The request was granted and, by order dated 11.04.2012, the group was recognized and the first respondent was registered as the group leader.

5. Seeking a change of the leader, the General Secretary of the Nationalist Congress Party, on 22.03.2014, addressed the following letter to the Divisional Commissioner, relevant part of which reads as follows:

Subject:- Nomination of the Group Leader of the alliance of Nationalist Congress Party in Amravati Municipal Corporation, Amravati.

Res / Sir,

The Honourable Shri Bhashkarraoji Jadhao, the President, Maharashtra Regional Nationalist Congress Party has been pleased to instruct that Shri Sunil Haribhau Kale be

7. The first respondent challenged the order before the High Court. By the impugned judgment dated 22.08.2014, the High Court allowed the Writ Petition and quashed the order. The High Court took the view that the General Secretary of one of the political parties forming the *aghadi* (group), was not competent to make a request to the Divisional Commissioner to register change of the group leader and that the Divisional Commissioner acted wholly without jurisdiction in registering the change as requested by one of the political parties.

8. Aggrieved, the appeal.

9. Heard the learned counsels appearing on both sides.

10. Section 2(a) defining "*aghadi*", Section 2(i) defining "municipal party" and Section 2(j) defining "original political party", of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as 'the Act') read as follows:

"2(a) "*aghadi*" or "front" means a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority;"

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"2(i) "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 councillors of the Municipal Corporation for the time being belonging to that political party or *aghadi* or front in accordance with the said *Explanation*;

A (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*;

B “2(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) of section 3,”

(Emphasis supplied)

C 11. Rule 2(b-1) of the Maharashtra Local Authority Members Disqualification Rules, 1987 (hereinafter referred to as ‘the Rules’) defines a ‘leader to a municipal party (group leader/*Gat Neta*), relevant portion of which reads as follows:

D “2(b) “Form” means the form appended to these rules; [b-1](i) “Leader in relation to a municipal party” means a Councillor chosen by each political party, or *aghadi* or front in the Municipal Corporation or as the case may be in the Municipal Council as its leader and includes any other Councillor of such party or *aghadi* or front authorized by it to act in the absence of the leader as, or discharge the functions of the leader of such party or *aghadi* or front for the purposes of these rules.”

F (Emphasis supplied)

G 12. The definition of the term ‘leader’ very clearly shows that where a municipal party is an *aghadi*, its leader has to be chosen by the *aghadi* or front. Necessarily, any change in the leader of the municipal party is to be effected by the *aghadi* and not by any outsider. Once the Rules provide for the election of the group leader, it has to be done in that manner only and not in any other manner, even when there is change of the leader. The change of leader has to be in the same democratic

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process of induction, in the absence of any other method prescribed under the Rules concerned. A

13. Once an *aghadi* (group) is formed and duly recognized by the Divisional Commissioner, it becomes a municipal party in terms of Section 2(i) of the Act. Once original political parties form a municipal party by way of an *aghadi*, for all purposes, the group leader is chosen by the municipal party (*aghadi*) only. Rules do not provide for nomination of group leader. Similarly, the group leader of the *aghadi* can be changed only by the group and not by one of the political parties, big or small, belonging to the *aghadi*. In a democracy, a leader is not imposed; leader is elected. Once the birth of a leader in a group is by way of election by the group, the group leader thus elected cannot be replaced otherwise than through the very same process of the election in the group, in the absence of any rules to the *contra*. No doubt, the Nationalist Congress Party has 17 members in the *aghadi* (group). That does not mean that the said party can impose a group leader in the *aghadi*. Imposition of a group leader otherwise than by the democratic process cuts at the roots of the democracy and certainly it is in violation of the Rules. It is always open to the original political parties to have their respective leaders in the *aghadi*. However, as far as group leader is concerned, he has to be elected by the *aghadi* (group). B C D E

14. Thus, although for a few other different reasons as well, apart from those sounded by the High Court in the impugned order, we agree with the view taken by the High Court. The appeal hence is dismissed. The interim order dated 05.09.2014 is vacated. F G

15. There shall be no order as to costs.