

Sadashiv H. Patil

Vs

Vithal D. Teke

Civil Appeal Nos. 6266-68 of 1998 Etc.

(R.C. Lahoti and K.G. Balakrishnan, JJ.)

31.08.2000

JUDGMENT

R.C. Lahoti, J.:— Leave granted in S.L.P.(C) No. 21085 of 1998.

In all these appeals the controversy arising for decision is whether certain members of the Municipal Council have incurred disqualification on ground of defection.

The Maharashtra Local Authority Members' Disqualification Act, 1986 (Act No. 20 of 1987) (hereinafter the Act, for short) was enacted to provide for disqualification of members of certain local authorities on the ground of defection and for matters incidental and connected therewith. In exercise of the powers conferred by Section 9 of the Act, the Government of Maharashtra has framed the Rules known as the Maharashtra Local Authority Members' Disqualification Rules, 1987 (hereinafter 'the Rules', for short).

We will refer to a few relevant provisions from the Act and the Rules insofar as are necessary for the purpose of the appeals before us. Section 2 is the interpretation clause. The relevant definitions are 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;

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(e) "local authority" means -

(i) a Municipal Corporation,

(ii) a Municipal Council;

(iii) a Zilla Parishad; or

(iv) a Panchayat Samiti;

xxx xxx xxx xxx

(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;

(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;

(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.

3. Disqualification on ground of defection.

(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) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:

Provided that, such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;

Explanation. - For the purpose 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 a 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 cas 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) a "nominated member", in relation to a Panchayat Samiti, includes an associate member, referred to in clause (c) of sub-section (1) of section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

(2) An elected councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by political party or aghadi or front shall be disqualified for being a councillor, or as the case may be, a member if he joins any political party or aghadi or front after such election.

(3) A nominated or co-opted councillor, or as the case may be, member shall be disqualified for being a councillor, or as the case may be, if he joins any political party or aghadi or front after 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.

(4) Notwithstanding anything contained in the foregoing provisions of this section a person who on the commencement of this Act, is a councillor, or as the case may be, a member (whether elected or nominated or co-opted as such councillor or member) shall -

(a) where he was a member of a political party or aghadi or front immediately before such commencement, be deemed, for the purposes of sub-section (1), to have been elected as a councillor, or as the case may be, a member as a candidate set up by such political party or aghadi or front;

(b) in any other case, be deemed to be an elected councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front for the purpose of sub-section (2), or as the case may be, be deemed to be a nominated or co-opted councillor, or as the case may be, a member for the purpose of sub-section (3).

[emphasis supplied]

Under Section 7 any question arising as to whether a Councillor or member has become subject to disqualification under the Act has to be referred to the Commissioner in the case of Councillor of a Municipal Corporation and to the Collector in the case of any other Councillor or member. Finality has been attached to the decision of the Commissioner or Collector. The jurisdiction of Civil Court has been excluded by Section 8 from entertaining any dispute as to disqualification.

Under Rule 3 the leader of each Municipal Party in relation to a Councillor shall within 30 days from the date of its formation or within an extended time furnish the following information to the Collector:—

(a) A statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form I and the names and designations of the members of such party who have been authorised by it for communicating with the Collector for the purpose of the rule;

(b) A copy of the rules and regulations of the Municipal Party;

(c) A copy of rules and regulations of the party.

Certain changes in the information furnished are also required to be communicated with which we

are not concerned. Under Rule 4 every Councillor or relation to Municipal Party is required to furnish a statement of particulars and declaration in Form III wherein he is required to disclose his party affiliation also. A summary of information so furnished shall be published in the Government Gazette. The information is also required to be entered in a register maintained by the Collector in Form IV. Other provisions in the rules relates to the procedure by which a reference of any question as to a Councillor having suffered a disqualification shall be made, dealt with and disposed of.

In the appeals before us we are required to deal with an Aghadi or front relating to Municipal Council. We would therefore analyse the provisions of the Act from the angle of Municipal Council leaving aside Municipal Corporation, Zilla Parishad or Panchayat Samiti. In the scheme of the Act, it is clear that the information of an Aghadi or front by a group of persons must precede the election to a local authority. The politico-legal doctrine of disqualification by defection has been percolated to the elections of local authorities in Maharashtra by enacting the Act. The Act proposes to encourage the elections being fought by group of persons bringing themselves together so as to have a common purpose and by contesting election on a common symbol propagating the principles and purpose which which that group proposes to administer the local authority if returned to power by the electorate. Such group of persons having a common ideology though not necessarily belonging to a political party of State or National level may form themselves into a party, the immediate purpose whereof is to set up candidate for election to the local authority. The collective name assigned to such group of persons is an Aghadi or front. On the elections being accomplished, a Municipal Council comes into existence which includes elected Councillors belonging to any political party, Aghadi or front. Once a candidate set up by a political party, Aghadi or front is declared elected he shall be fictionally deemed to be belonging to the political party or Aghadi or front by which he was set up as a candidate at the elections. He has an option in the matter. The elected Councillors of a particular political party, Aghadi or front constitute a Municipal Party identified with any political party or Aghadi or front by which the candidature of such Councillors was sponsored. The Municipal Party gets a statutory recognition. Rule 3 contemplates a leader of such Municipal Party being elected or appointed who shall furnish within 30 days from the date of its formation a statement in writing in Form I being filed with the Collector wherein the names of members of such party (which means a municipal party) shall be mentioned. The statement shall also mention the names and designation of the members of such party authorised to communicate with the Collector. A copy of the rules and regulations (whether known as such or a constitution or by any other name) of the Municipal Party and of the parent party, Aghadi or front are to be filed with the Collector. There is a system of cross-check provided by the Rules. Not only a statement by the leader of Municipal Party is to be filed under Rule 3(1)(a), every Councillor in relation to Municipal Party shall, before he has taken his seat, furnish a statement of particulars and declaration in Form III. The information so furnished shall be published in the Maharashtra Government Gazette and subject to rectification of such discrepancy as may be pointed out and necessary corrigendum if necessary being published in the Gazette, the information shall be maintained in the records of the Collector in a register in Form IV under Rule 5. In this manner the evidence of formation of a Municipal Party comes into existence and any doubts or disputes relating to formation of a particular Municipal Party, and the members thereof along with the requisite particulars furnished, filed notified and entered in the register are ruled out.

The disqualification with which we are concerned is contemplated by Clause (b) of sub-section (1) of Section 3 of the Act. Voting or abstaining from voting in any meeting of the Municipal Council may entail disqualification. If: 1) such voting or abstention is contrary to any direction issued by (a) the political party or Aghadi or front to which he belongs, or (b) by any person or authority authorised by the political party or Aghadi or front in this behalf; 2) such voting or abstention is not

accompanied by a prior permission of such political party or Aghadi or front or person or authority having been obtained previously or condoned subsequently within 15 days from the date of such voting or abstention. Condoning is not permissible if such voting or abstention is not preceded by prior permission and is relatable to election of any office, authority or committee under the relevant Municipal Law. Thus, the power to issue a direction, popularly called a whip, in order to attract penalty of disqualification has to be issued either by the political party or by Aghadi or front to which the Councillor belongs. The political party or Aghadi or front may act collectively or may act through any person or authority. In the later case the person or authority must be authorised by the political party or Aghadi or front in this behalf, i.e., for issuing any direction (whip.) If the political party, Aghadi or front has any rules or regulations whether known as such or a constitution or called by any other name then the authorisation of the person or authority can be determined by looking into such document which would be available on the record of the Collector having been filed as accompanying the statement in Form I, under Rule 3(1), else the factum of such authorisation in this behalf having been given to the person or authority issuing the direction or whip shall have to be proved to the satisfaction of the Collector dealing with a reference under Section 7 read with Rules 6, 7 and 8.

Having so stated the law, briefly and to the extent relevant for our purpose, we now proceed to deal with the appeals before us.

Brief facts and controversy in C.A. Nos. 6266-6668/98.

Janta Aghadi was constituted in the locality known as Vita for the purpose of contesting elections for Municipal Council, Vita. In the year 1996 the elections were announced for the purpose of electing Councillors for a period of five years. There were 19 wards. Janta Aghadi set up 19 candidates, one from each ward. The rival political group was Vikas Aghadi which also set up 19 candidates. Janta Aghadi candidates were allotted a common symbol, namely, 'motorcar'. Out of the 19 candidates of Janta Aghadi, 12 were declared elected. They were issued with election certificates. All the elected Councillors of Janta Aghadi submitted the requisite information in Form No. III to the Collector as required by Rule 4(1). The information was entered into the relevant register maintained by the Collector and also notified in the Government Gazette. Meeting of the newly elected Councillors for holding election for the post of President for a term of one year was scheduled to be held on 19.12.1996 which was held and President was elected. The controversy proposed up when the time reached for electing a President for the next term.

A meeting of Janta Aghadi Councillors of Vita Municipal Council was convened to take place at 4 p.m. on 16.12.1997. The appellant, Sadashiv Hanmantrao Patil was elected as "Paksha Pratod", i.e., Party Spokesman. It is not disputed that the meeting was attended by Vithal Dhondiram Teke, Badshah Akbar Tamboli and Smt. Lakmibal Waman Chothe, respondent nos. 1, 2 and 3. It was resolved that Nandkumar Baburao Patil shall be the official candidate of Janta Aghadi for the post of President and the appellant, Sadashiv Hanmantrao Patil shall fill in the nomination form as a substitute candidate. In spite of such resolution Vithal Dhondiram Teke, respondent No.1, filed his own nomination for the post of President proposed by Badshah Akbar Tamboli, respondent no.2. Nandkumar B. Patil and Sadashivrao H. Patil also filed their nominations as the primary and substitute candidates for the post of the President as resolved in the meeting of Municipal Party of Janta Aghadi. On 15.12.1997, two directions, popularly known in the political parlance as whip, were issued. One direction was issued to Vithal Dhondiram Teke, respondent no.1 and Badshah Akbar Tamboli, respondent no.2 asking them to withdraw the nomination and the proposal respectively for candidature of the respondent no.1 for the post of President as having been filed in

violation of the resolution passed at the meeting of Municipal Party of Janta Aghadi. This direction bears the signatures of one Hanumant Rao who claims to be leader of the political party known as Janta Aghadi, Vita. It is also signed by Sadashiv Patil, the appellant in the capacity of Janta Aghadi Chief/Leader of Municipal Party. Another direction (whip) dated 15.12.1997 was issued to all the Municipal Councillors of Janta Aghadi directing them to remain present at the meeting of Vita Municipal Council scheduled to be held on 16.12.1997 and to cast vote in favour of the authorised candidate nominated by Janta Aghadi, namely, Nandkumar Baburao Patil. This whip is signed by the appellant, Sadashiv Hanumantrao Patil in the capacity of party leader, Janta Aghadi, Vita. These whips were served on all the 12 Councillors belonging to Janta Aghadi. Copies of the whips were served on the Sub-Divisional Officer who was to conduct the elections in question and were also pasted on a Board placed at the entrance of the meeting hall. The validity of the nomination filed by respondent no.1 was objected to on the ground of defiance of the whips issued by Janta Aghadi but the objection was overruled. The election was held. Nandkumar Patil, the official candidate of Janta Aghadi received 9 votes as against 10 votes received by Vithal D. Teke, the respondent no.1. He was declared elected as President of the Municipal Council. The respondent nos. 1, 2 and 3 voted for the respondent no.1. A meeting of Janta Aghadi was held on 19.12.1997. It was unanimously resolved not to condone the defiance of whip by respondent nos. 1, 2 and 3. The appellant and two other member of Janta Aghadi made a reference for disqualifying respondent nos. 1, 2 and 3 from the membership of the Municipal Council under Section 3 of the Act. After affording the respondent nos. 1, 2 and 3 an opportunity of hearing and holding an enquiry as contemplated by the Act and the Rules, the Collector declared the respondent nos. 1, 2 and 3 disqualified under the provisions of the Act. The three respondents preferred three writ petitions before the High Court which have been heard and disposed of by a common order impugned in these appeals. The High Court has allowed the writ petitions and quashed the order dated 22.6.1998 passed by the Collector.

Shri Uday Lalit, the learned counsel for the appellant submitted that a clear case of voting by respondent nos. 1, 2 and 3 contrary to the direction issued by the political party to which respondent nos. 1, 2 and 3 belonged was made out attracting applicability of Section 3 (1)(b) and hence the High Court was not justified in allowing the writ petitions and setting aside the well reasoned and detailed order of the collector. The learned counsel for the respondent nos. 1, 2 and 3 has supported the order of the High Court on very many grounds. For the purpose of these appeals, it would suffice to deal with only one of the pleas raised on behalf of the respondents 1, 2 and 3 in support of the order of the High Court.

A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected Councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.

In Civil Appeal Nos. 6266-6268/98 no rules or regulations of Janta Aghadi are shown to have been filed with the Collector. The record does not show that any such rules or regulations exist. Had they been there an effort could have been made to find out 'authorisation to issue whip' having been provided therein. During the course of hearing we asked the learned counsel for the appellant to show any resolution of Janta Aghadi authorising the signatories of the whip to issue the whip. No

such resolution was filed before the Collector or the High Court and not even shown to us. The contents of the whip do not also contain any recital spelling out the existence of any such authorisation which also goes to show that there was no such authorisation given. In the absence of proof of the signatories of the whip having been authorised by the Janta Aghadi to issue the whip the violation thereof would not attract the applicability of Section 3(1)(b) of the Act. May be that the party, Aghadi or front had resolved to sponsor or particular person's candidature at the election. Acting contrary to such resolution, howsoever strongly worded, may render its member liable to disciplinary proceedings at the party level. But to incur disqualification under the Act there must be a direction issued and such direction must be either by the party, Aghad or front to which the Councillor proceeded against belongs or be by any person or authority authorised in this behalf. Mere resolution is not a substitute for direction. On this single ground alone the judgment of the High Court deserves to be maintained.

Brief facts and controversy in appeal arising out of S.L.P. (C) No. 21085/98.

Elections for constituting Municipal Council, Karad were held on 1.12.1996. Prior to the election a group of persons formed a party under the name of Nagar Vikas Aghadi and contested the election on the common symbol of 'cycle'. The Aghadi had set up 20 candidates out of which 11 were elected. The names of these 11 persons as belonging to Aghadi were submitted to the District Collector as required in Form-Annexure I. The 11 Councillors also submitted particulars and declaration in Form III as required by Rule 4. The District Collector registered the names in a register maintained for the purpose. The requisite gazette notification was also made on 16.1.1997. In the meeting of the Municipal Council held on 17.12.1996 Smt. Archana Patel, a councillor set up by Aghadi was elected unopposed as President of the Municipal Council, Karad for a term of one year. The controversy relates to the time when this term of one year was coming to an end and election of the President for the next term was due to be held. A meeting of the Aghadi took place on 18.10.1997. All the 11 Councillors belonging to the Aghadi participated in the meeting. A few independent Municipal Councillors and a few others were also present at the meeting. In this meeting a unanimous resolution was passed resolving that Dr. Erram, the President of the Aghadi, i.e., the parent body which had set up the candidates for election shall have power to issue whip to the members and in his absence Mr. Pawaskar, a Councillor would have power to issue the whip. Dr. Erram was not a Municipal councillor. On 6.12.1997 again a meeting of Aghadi took place in which all Municipal Councillors of the Aghadi were present. The meeting was also attended to by two independent Councillors, 2 cooted Councillors and 2 supporters of the Aghadi. In this meeting a unanimous resolution was passed that at the ensuing meeting of the Municipal Council scheduled to be held on 12.12.1997 for electing President of the Aghadi, Shri Ravindra Maruti Shinde shall be the candidate of the Aghadi. It was further resolved that the Municipal Councillors should positively remain present at the meeting and vote for the official candidate of the nagar Vikas Aghadi, i.e., Shri Raindra Maruti Shinde. The Municipal Councillors of Aghadi were 'ordered' not to remain absent from the meeting and not to cost any invalid vote nor abstain from voting which if done shall be considered to be the violation of whip. In terms of the resolution intimations were sent to the Municipal Councillors belonging to Aghadi signed by Dr. D.S. Erram. The whip was sent by post under certificate of posting and also published in local newspaper Daily Aikya dated 9.12.1997 on the front page along with the photograph of candidate Shri Shinde. It was displayed on the notice board of municipal council. We need not further belabour on this aspect as communication or knowledge of the whip to the appellants has been held proved by the Collector as also by the High Court and not seriously disputed at the hearing before us. On 11.12.1997 the Collector and Election Officer, Karad was informed that Shri Ravindra Maruti Shinde was the official candidate of the Aghadi for the post of President and whip to that effect has also been issued. The intimation is

signed by Dr. Erram and Shri Pawaskar both in the capacity of President, Nagar Vikas Aghadi and party leader Nagar Vikas Aghadi respectively.

The whip issued to the Municipal Councillors was posted to their respective addresses under Certificate of Posting. In the meeting of the Municipal Council held on 12th December, 1997, Smt. Balutai Bhimrao Suryawanshi, the appellant no.4 offered her candidature for the post of President in opposition to Shri Ravindra Mantri Shinde, the official candidate of the Aghadi and was also declared elected. Smt. Balutai secured 16 votes while Shri Shinde the official candidate of Aghadi secured 10 votes. All the four appellants voted for Smt. Balutai. Another meeting of the Municipal Council was to be held on 15th December, 1997 wherein certain important resolutions were to be tabled. Prior to the meeting of the Municipal Council, a meeting of the Aghadi was convened on 10th December, 1997 wherein also a whip was issued giving directions in regard to the pattern of voting to be followed by the Municipal Councillors of the Aghadi. The appellants defied the whip and voted to the contrary.

Shri Pawaskar who was one of the signatories to the whip moved the Collector, Satara complaining of disqualification under Section 3(1)(b) having been incurred by the four appellants. The Collector after holding the enquiry arrived at a finding upholding the complaint and declaring the appellants disqualified from the membership of the Municipal Council under Section 7 of the Act. The appellants put in issue the order of the Collector by filing writ petition before the High Court of Bombay. The petition has been dismissed upholding the findings recorded by the Collector. The aggrieved four Municipal Councillors have filed this appeal by special leave.

The first submission made by Shri V.A. Mohta, the learned senior counsel for the appellants is that the meeting held on 10.12.1997 cannot be said to be a meeting of Aghadi or front and therefore any resolution passed therein was not binding on the appellants. We find no merit in this submission. The meeting was attended to by all the Councillors belonging to the Aghadi. A few others also participated in the meeting. The resolution was unanimous. Nothing has been brought on record to suggest if there were any members other than those present and participating in the meeting or those who were informed of the meeting so as to hold that the meeting could not be called a meeting of the Aghadi or front. The resolution passed was unanimous. We do not find any valid reason to hold the meeting not to be of Aghadi or front.

It was next submitted that any copy of rules & regulations of the municipal party or Aghadi or front have not been placed on record nor filed with the Collector alongwith the statement in Form I and therefore the working of the Nagar Vikas Aghadi and the person authorised to issue whip cannot be spelled out. This contention has also to be rejected. The filing of the rules & regulations contemplated by clause (b) & (c) of sub-rule 1 of Rule 3 is for the purpose of registration of a municipal party with the Collector. For the purpose of these appeals, we do not propose to go into the question as to what would be the effect of absence of rules & regulations on the formation of the Aghadi or front or the effect on the registration of non-filing of such rules & regulation, if there be one, for two reasons. Firstly, the registration of municipal party is complete consequent upon the entries having been made in the register Form IV and also having been notified in the Government Gazette. Nobody has raised any objection to the registration of the municipal party or validity thereof and sought for its cancellation. Secondly, for the purpose of the controversy arising for decision in these appeals, we could have spelled out from the rules & regulations, if available, who was the person or authority authorised in this behalf for the purpose of issuing a whip under Section 391(b) of the Act. In the case at hand, such an authorisation was given in the resolution passed at the meeting dated 18.10.1997. It is nobody's case that such an authorisation was at any time

questioned or revoked. Section 3(1)(b) does not provide for when and how such authorisation shall be given.; all that the provision contemplates is that there must be any person or authority authorised in this behalf by the political party or Aghadi or front to which the Councillor belongs. The language of the resolution clearly, spells out compliance with this requirement. Dr. Erram, the President of the Aghadi and in his absence Shri Pawaskar, a Councillor, were specifically authorised to issue a whip. The whips on the basis of which the disqualification is sought to be spelled out are signed by Dr. Erram or by Dr. Erram and Shri Pawaskar both. The whips issued satisfy the requirement of Section 3(1)(b) in view of the specific authorisation given in this behalf.

Lastly, it was submitted by Shri Mohta that Dr. Erram was the President of the parent body but not a Councillor and hence not a member of the municipal party and therefore he could not have been authorised to issue a whip. Section 3(1)(b) requires any person or authority to be authorised in this behalf by the political party or Aghadi or front. No provision either in the Act or in the Rules has been brought to our notice in support of the submission made spelling out that the person or authority authorised to issue the whip must be a Councillor or a member of municipal party.

For the foregoing reasons we do not find any fault with the legality of the whip having been issued. The whip did not suffer with any such deficiency as would enable the whip being defiled successfully and yet avoiding consequence of disqualification.

For the foregoing reasons, all the appeals are held liable to be dismissed and are dismissed accordingly. No order as to the costs.