

SUPREME COURT OF INDIA

Sunil Haribhau Kale

Vs.

Avinash Gulabrao Mardikar

C.A.No.2080 of 2015

(Kurian Joseph and M.Y.Eqbal JJ.)

20.02.2015

JUDGMENT

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 (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: "... 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 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.

3. 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 "Nationalist Congress Party Front. ..."

(Emphasis supplied) The affidavit filed by the members of the group, reads as follows: "...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 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 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) 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. 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 nominated as a Group Leader of the alliance of the Nationalist Congress Party (NCP) in Amravati Municipal Corporation, Amravati; and that the group under his leadership only be approved of. Hence, it is requested to take the necessary action, accordingly.

Thanking you, Yours sincerely, Sd/-

Shivajirao Garje.

To, The Divisional Commissioner, Amravati Division, Amravati."

(Emphasis supplied) The Divisional Commissioner, by order dated 16.06.2014, registered the appellant herein as the group leader based on the letter of the Secretary of the Nationalist Congress Party. The relevant portion of the order reads as follows:

"... It appears that from the letter of Shri Shivajirao Garje appointment of Shri Sunil Kale has been made as Group Leader of the Party in Amravati Municipal Corporation. There is a prevailing system of appointing group leaders/parted on the elected groups of all political parties by the political parties themselves. Under these circumstances giving approval to the appointment of Shri Sunil Kale on the post of Group Leader appears to be correct.

Hence by way of rejecting the application of the applicant Name of Shri Sunil Haribhau Kale is being registered as Group Leader of Rashtravadi Congress Party in Amravati Municipal Corporation. ..."

(Emphasis supplied) 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.

Aggrieved, the appeal.

Heard the learned counsels appearing on both sides.

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;"

xxx xxx xxx "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, -

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;

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;"

"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) 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:

"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."

(Emphasis supplied) 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 process of induction, in the absence of any other method prescribed under the Rules concerned.

4. 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).

5. 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.

6. There shall be no order as to costs.