

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10893 OF 2015

Ajay Eknath Bhole,
Age: 47 years, Occu: Business & Social Works,
R/o: 399, Municipal Park, L.T. Road,
Bhusawal, Dist. Jalgaon ..PETITIONER

VERSUS

1. Pramod Purushottam Nemade,
Age: 43 years, Occu: Business,
R/o: Vrundavan, Bhole Colony,
Behind Technical School, Bhusawal,
Dist. Jalgaon
2. Bhavna Ajay Patil,
Age: 35 years, Occu: Private Service,
R/o: Vitthal Mandir Ward, Bhusawal,
Dist. Jalgaon
3. State of Maharashtra,
Through Secretary,
Department of Municipal Administration,
Mantralaya, Mumbai-32
4. The District Collector, Jalgaon,
District Jalgaon ..RESPONDENTS

Mr S. P. Shah, Advocate for petitioner;
Mr R. S. Deshmukh, Advocate holding for Mr. N. R. Dayama, Advocate for
respondent No. 1;
Mr B. R. Kedar, Advocate for respondent No. 2;
Mr R. V. Dasalkar, Asstt. Govt. Pleader for respondent No. 3 & 4

WITH

WRIT PETITION NO. 10409 OF 2015

Mrs Bhavna w/o Ajay Patil,
Age: 37 years, Occu: Social work,
R/o: Mahajan Galli,
Ram Mandir Ward – Bhusawal,
Tq. Bhusawal, Dist. Jalgaon ..PETITIONER

(2)

VERSUS

1. State of Maharashtra,
Through its Secretary,
Municipal Administration,
Mantralaya, Mumbai-32
2. The District Collector, Jalgaon,
3. Pramod Purushottam Nemade,
Age: Major, Occu: Business,
R/o: Vrundavan, Bhole Colony,
Behind Technical School-Bhusawal,
Tq. Bhusawal, Dist. Jalgaon
4. Mr Ajay s/o Eknath Bhole,
Age: Major, Occu: Business,
R/o: 399 Municipal Park,
Near Ram Mandir,
L.T. Road – Bhusawal,
Dist. Jalgaon
5. Raman Devidas Bhole,
Age: 52 years, Occu: Bhusawal City
President of BJP,
R/o: Municipal Park – Bhusawal,
Dist. Jalgaon
6. Uday s/o Bhikanrao Wagh,
Age: 50 years, Occu: District President BJP,
R/o: Vasant Smruti, BJP District Office,
Jalgaon ..RESPONDENTS

Mr B. R. Kedar, Advocate for petitioner;
Mr R. V. Dasalkar, Asstt. Govt. Pleader for respondent No. 1 & 2;
Mr R. S. Deshmukh, Advocate holding for Mr N. R. Dayama, Advocate for
respondent No. 3;
Mr S. P. Shah, Advocate for respondent No. 4

CORAM : N.W. SAMBRE, J.

**(Date of reserving
the order : 8th December, 2015)
(Date of pronouncing
the order : 11th December, 2015)**

ORDER :

Since both these petitions arise out of disqualification under the provisions of section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986 (for short "Act"), they are heard and are being decided by this common order.

2. Facts, as are necessary for decision of these petitions, are as under :-

The petitioner in Writ Petition No.10893 of 2015 belongs to a national political party, namely, Bharatiya Janata Party (for short "BJP") and it is claimed by the petitioner that all eleven elected Councillors of Bhusawal Municipal Council have appointed him the Group Leader as is apparent from the constitution, which is registered with the District Collector. According to the petitioner, pursuant thereto, the power to issue whip vests in him. According to him, under the constitution of party, since he was nominated the Group Leader for a period of five years, he has issued whip directing the elected Councillors to vote in favour of Pramod Nemade for the post of the President of the Municipal Council, Bhusawal and in absence thereof, not to exercise right of voting. He has relied upon the whip issued to that effect on 14th July, 2014.

3. The petitioner would then claim that respondent no.1 Pramod Nemade, who was as per constitution Deputy Group Leader and was

(4)

entitled to exercise powers of Group Leader, in absence of the petitioner, initiated the proceedings for disqualification against him before the Collector, in exercise of powers under Rule 3 (1) (b) of the Maharashtra Local Authority Members' Disqualification Rules, 1987 (for short "Rules"), claiming therein that all the Councillors in the meeting held on 30th April, 2014, have elected him as a Group Leader, which change was appropriately notified to the Collector as provided under Rule 3 of the Rules and the Collector. Having taken note of the same, Collector has also intimated the Municipal Council, Bhusawal, about the change. It is further claimed that in exercise of said authority as a whip of the party in the Municipal Council, respondent no.1 Purushottam Nemade, issued whip on 15th July, 2014, directing the Councillors of BJP to vote in favour of one Yuvraj Dagdu Lonari for the post of the President of the Municipal Council. It is claimed that the said whip was served on all the parties and still the petitioner acted contrary to that.

4. The Collector, pursuant to the above referred proceedings before him, after following the due process, passed an order of disqualification against the petitioner on 1st October, 2015, which is impugned in the present petition.

5. The petitioner in In Writ Petition No.10409 of 2015, in the background of above, instead of following the whip issued by respondent no.3, has followed the whip of the earlier Group Leader, i.e. respondent no.4. Consequently, based on the complaint of respondent no.3 – the Group Leader, the petitioner was disqualified by the Collector by an order

(5)

dated 1st October, 2015, from the post of Councillor of Bhusawal Municipal Council and that is under challenge in the second writ petition.

6. Mr Subodh Shah, learned Counsel appearing on behalf of the petitioner in Writ Petition No.10893 of 2015, while trying to make out a case for quashing of the order impugned, would urge that the political party, namely, BJP has already elected him as a Group Leader and whip, pursuant to the constitution for a period of five years from the date of the election. According to him, the petitioner assumed the post of Group Leader and whip on 19th December, 2011, pursuant to the authority under the constitution and there is no question of removing him from the said post before the period of five years as mentioned in the constitution is over. He would then urge that the whip that was issued by him is in favour of the Deputy Group Leader of the party in the House and he has not committed any illegality as a Group Leader, in asking the Councillors to vote in favour of the party Deputy Group Leader for the post of the President of the Municipal Council. According to him, the whip that was issued by the complainant Mr Nemade – respondent no.1 to the present petition, is without any authority, as the said whip directs the Councillors to vote in favour of a candidate of another political party. He would then urge that while passing the order impugned, the respondent – Collector has committed an error of law by not evaluating whether authority and competence vested in the petitioner or respondent no.1 and without recording any finding thereon, the order of disqualification, which is impugned herein, is passed. He would then urge that the learned Collector

(6)

ought to have given finding on core issue as regards who is the Group Leader of the political party in the House of the Municipal Council and without going into that, the order impugned came to be passed.

7. Mr Shah has relied upon the judgment of this Court, in the matter of **Vandana vs. Collector, Amravati**, reported in **2009 (2) Mh.L.J. 483**, particularly paragraphs no.3 and 6, so as to substantiate his submission as to the manner in which the Collector should have dealt with the matter in accordance with the provisions of section 3 of the Act. He would then urge that since a political party conducts itself in the House in a democratic manner, according to him, in view of law laid down by this Court, in the matter of **Gajanan s/o Subhashrao Suryawanshi vs. Sharad Namdeo Pawar & ors.**, reported in **2013 (6) Mh.L.J. 505**, it is the Group Leader alone pursuant to the constitution is entitled to issue whip.

8. According to the learned Counsel, in absence of specific finding on the above referred issues, the writ petition is required to be allowed by quashing the order impugned in the petition.

9. Mr Kedar, learned Counsel appearing on behalf of the petitioner in Writ Petition No.10409 of 2015, while inviting attention of this Court to the facts, would urge that the petitioner was a elected Councillor and it is because of dispute between respondents no.3 and 4, the petitioner was under confusion as to which whip she should follow and pursuant to the provisions of the constitution, having felt that respondent no.4 is to be the

(7)

Group Leader and has an authority to issue whip for a period of five years from the date of election, followed whip issued by him. According to him, the order of the Collector does not reflect any particular reasons and has also not dealt with the issue as regards the entitlement of respondent no.3 or 4 to issue whip. Mr Kedar also adopted the arguments advanced by Mr Shah. He would then urge that as reasons are absent in the impugned order and the issues which were raised since have gone unanswered, the order impugned is not sustainable and is liable to be quashed and set aside.

10. Mr Kedar relied upon the judgment of the Apex Court, in the matter of **Sadashiv H. Patil, etc. vs. Vithal D. Teke & ors. etc. and Ashok Y. Patil & ors. vs. District Collector, Satara & ors.**, reported in **AIR 2000 SC 3044**, so as to urge that the finding of disqualification under the Act has an effect of unseating a person, who was democratically elected to a public office. According to him, the consequences of disqualification are serious and as such, the Collector ought not to have passed the order in a cryptic manner. He has invited attention of this Court to the observations made by the Apex Court in paragraphs 13 and 14 of the said judgment. He then would urge that the issues as were raised, were since not dealt with and no reasons are recorded, particularly as regards the finding on the issue of the lawful Group Leader of BJP party on the date of issuance of the whip, the order impugned is not sustainable and has sought to rely upon the judgment of this Court in the matter of **Sahebrao s/o Narayan Kharat & ors. vs. The Collector, Jalna & ors.**, reported in **2011 (1) ALL MR 781**.

11. While opposing the claim, Mr Deshmukh, learned Counsel appearing on behalf of respondent no.1 in the first petition and respondent no.3 in the second petition, would urge that respondent no.3 was duly elected as Group Leader prior to the date of election of the President and appropriate notice to that effect was also given to all the Councillors, which was duly acknowledged by the petitioner in Writ Petition No.10409 of 2015. He would then urge that the change of Group Leader was effected on 7th May, 2014 and the said fact was taken note of by the Collector, which issue is under challenge in writ petition before the Division Bench, at the behest of the petitioner in Writ Petition No.10893 of 2015. According to him, the requirement of section 3 and section 3 (1) (b) of the Act is duly taken care of while passing an order by the Collector. According to him, from the evidence of the respective parties, it could easily be inferred that the fact was well within the knowledge of the petitioners, as regards the change in the Group Leader, after an election to that effect and as such, according to him, the petitions being sans merit are liable to be rejected.

12. Leaned Counsel Mr Deshmukh, so as to substantiate his contentions about the election of the Group Leader, a duly recognized Aghadi/political party, would urge that the law laid down by the Apex Court in **Sunil Haribhau Kale vs. Avinash Gulabrao Mardikar & ors**, reported in **2015 (2) ALL MR 926 (S.C.)**, is required to be taken note of. He has invited attention of this Court to the findings recorded in paragraphs 12 and 13 of the said judgment, so as to substantiate his contention that the

change of the Group Leader was in a democratic manner and as such, is very much permissible in accordance with the terms of the constitution of the party. He then has placed reliance upon the judgment of this Court in the matter of **Shrikant @ Balasaheb M. Chaudhari vs. State of Mah. & anr.**, reported in **2015 (2) ALL MR 103**, so as to submit that in case of any dispute as regards the identification of Group Leader, the remedy of the petitioner is before the President of the political party by raising an appropriate dispute and not by questioning the authority of the Group Leader in the manner, as has been done in this case. He has placed reliance particularly upon the observations made in paragraph 15.

13. Having considered rival submissions of the respective parties, it is required to be noted that the petitioner in Writ Petition No.10893 of 2015 was undisputedly elected as Group Leader and pursuant thereto was having an authority to issue whip in terms of the constitution of the party, which is identified as a political party within the meaning of the Act and the Rules framed thereunder. It is further required to be noted that the said election of the petitioner was on 19th December, 2011 and the election was duly notified before the Collector, pursuant to the provisions of the Act and a notification thereto was also given to the Municipal Council.

14. However, it is equally true that the constitution also speaks of respondent no.1 being Deputy Group Leader and in absence of the petitioner will be entitled to look after the business of the House and the constitution itself confers power on such Deputy Group Leader to issue

whip. The constitution speaks that the petitioner would be a Leader of the group till the next elections.

15. From the record, it appears that by the notice issued under the signature of Deputy Group Leader of the party, i.e. respondent no.1, a meeting was convened for considering the subject of change of Group Leader in the House, which was scheduled on 30th April, 2014 and it was resolved that respondent no.1 will be the Group Leader in the House. The said change in accordance with statutory provisions was reported to the Collector and the Collector, vide communication dated 7th May, 2014, has taken note of such change and has issued an intimation to respondent no.1 about the same. Respondent no.1 then issued whip on 15th July, 2014 to all the party councillors, including both the petitioners, asking them to vote for one Yuvraj for the post of the President. It is also reflected on record that the petitioner questioned the said change, as is reported to the Collector, in his communication dated 7th May, 2014, in writ petition before this court, which is pending adjudication. I am informed at bar that there is no interim relief operating in the said matter.

16. The petitioner in Writ Petition No.10409 of 2015, a Councillor, without following the provisions of the Act, despite Pramod Nemade – respondent no.3 in said writ petition having been duly elected as new Group Leader of their party – BJP in the House, has not followed whip issued by him to vote in favour of Yuvraj Lonari, and on the contrary, has followed whip of earlier (ousted) Group Leader – petitioner in Writ Petition

No.10893 of 2015 to vote for respondent Pramod Nemade though his candidature was not sponsored by his political party – BJP. This is especially when it was well within her knowledge of petitioner, that Pramod Nemade was the new Group Leader of her political party as is evident from the communication dated 30th April, 2014. The said communication is signed by all the Councillors except the earlier Group Leader, including petitioner, requesting the Collector to identify respondent as Group Leader. The said conduct of petitioner of signing the proposal identifying the respondent Group Leader which was taken note of by the Collector, speaks double standard adopted by petitioner. From her own conduct, it is apparent that the petitioner was aware of appointing respondent as Group Leader and there was no scope for confusion in identifying who was the lawful Group Leader.

17. It is also required to be noted that in the disqualification proceedings, the Collector, after following due procedure, by impugned decision, has ordered disqualification of the petitioners from the post of Councillors of the Bhusawal Municipal Council. The Collector, in paragraph 7 of the order, has framed articles of charge, which read thus :-

“(1) Whether the petitioner is Gat Neta of the Aghadi ?

(2) Whether petitioner is competent to issue whip dated 15.7.2014 of the meeting to be held on 19.7.2014 for the election of President and Vice President of Municipal Council, Bhusawal ?

(12)

(3) Whether there is valid service of the said whip on respondents ?

(4) Whether the respondents had obtained prior permission of the petitioner to remain absent or to vote against the direction issued ?

(5) Whether defiance of the said whip has not been condoned ?

(6) Whether the respondents incurred disqualification under the provisions of section 3 (1) (b) of the Act of 1986 ?”

18. The Collector, then has proceeded to evaluate the articles of charge and has, upon considering evidence of present respondent no.1 Pramod Nemade and evidence of the petitioners in both the petitions, noted that respondent no.1 was appointed as Group Leader, as the change to that effect was already taken note of by his office on 7th May, 2014, which was duly informed to the Municipal Council also. The impugned order then deals with the competency of the petitioner in Writ Petition No.10893 of 2015 to issue whip and oral communication pursuant thereto to the party members directing voting in favour of respondent no.1 when his candidature for the post of President was never declared. He has also considered the service of whip on each of the members by Registered Post A.D., which was issued under the signature and authority of respondent no.1 to the first petition (respondent no.3 to the other petition) and has also dealt with the issue of Group Leader. He then noticed that an application for framing issue as regards who is the Group Leader of the party was moved, however, noted that the same was at the fag end of the

proceedings. The Collector, after evaluating evidence, has proceeded to pass the order of disqualification. It is further required to be noted that the issue as regards the notings taken by the Collector on 7th May, 2014, that respondent no.1 Pramod Nemade as a Group Leader, is already *sub judice* before this Court at the behest of the petitioner, which fact is not in dispute. Apart therefrom, it is required to be noted that once the petitioner has chosen to question the said issue before this Court, in my opinion, the act on his part of not pursuing the proceedings which were initiated before this Court in writ petition and again trying to agitate the said issue before the Collector, particularly in absence of any authority with the Collector to decide the issue as regards the Group Leader, is required to be weighed against the petitioner. It is further required to be noted here, that the petitioner in Writ Petition No.10409 of 2015 was a party to the communication issued under the signature of respondent no.3 Pramod identifying him as a Group Leader and the fact that he was elected as Group Leader, was well within her knowledge as is apparent from the communication dated 30th April, 2014.

19. In my opinion, Mr Deshmukh, the learned Counsel appearing on behalf of respondent no.3 in second writ petition was right in relying upon the judgment of this Court, in the matter of Shrikant @ Balasaheb Chaudhari (*supra*), that in case of any dispute as regards the authority of Group Leader to issue whip, the remedy lies with the President of the political party and not before the Collector. The observations of this Court in paragraph 16, to that effect, are worth taken note of, which read thus :-

“16. The Collector, in the present case, had limited role to play i.e. to note the change informed by the political party concerned and to act according to law and had no business to sit over the decision of the Indian National Congress Party who changed its group leader which was unanimous decision of the political party concerned. That being so, the action taken on behalf of the Collector, Yavatmal to inform the Chief Officer of the Municipal Council, Yavatmal about the fact that the petitioner was suspended on account of his anti party activities and that he has been substituted by Jafar Sadik Gilani to represent the political party as a group leader on behalf of it in the Municipal Council, Yavatmal, was only to enable the Municipal Council concerned act upon information and to rectify its record and not beyond that. Therefore, the petitioner, to my mind, cannot question the communication made from the Collector's Office, Yavatmal to the Chief Officer, Municipal Council, Yavatmal. I do not find any fault with the impugned communication as it is nothing but mere intimation on behalf of Collector's Office, Yavatmal about the change which has been informed by Wamanrao Kasawar, President of Yavatmal District Congress Committee. Substitution of the petitioner by respondent no.4 was pursuant to unanimous decision by the Yavatmal District Congress Committee and role of the Collector was only to note about the change informed and to communicate it to the Municipal Council, Yavatmal and not beyond that. That being so, the petition is without any merits. Hence, the petition is dismissed. Rule is discharged.....”

In view thereof, the submission by Mr Shah and Mr Kedar that the Collector should have decided the authority of the petitioner or that of

respondent no.1 of issuing whip in the capacity of Group Leader does not hold any substance and as such is rejected.

20. The next contention as regards the authority and the manner of change of the Group Leader, it may be noted that in a democratic set up the will of the majority prevails. The object with which the Act and the Rules in question are framed by the Legislature is to maintain political discipline and pursuant thereto, even if it is noted that the petitioner was nominated as the Group Leader till the period of next election, still it cannot be claimed by the petitioner that in perpetuity he shall remain in that capacity, as the same can undergo change in democratically ruled political set up, subject to the terms of the constitution. Mr Deshmukh, as such was right in relying on observations in paragraphs 12 and 13 of the judgment in the matter of Sunil Haribhau Kale (*supra*).

21. In view of above, the submission of Mr Shah, that the power to issue whip vests with the Group Leader nominated by the constitution, is liable to be rejected, having regard to the subsequent developments as regards change in the Group Leader as was noted by Collector. Reliance placed by him on the judgment of this Court in the matter of Vandana Damedhar (*supra*), as such, will hardly be of any consequence.

22. So far as submission of Mr Kedar, particularly in regard to that the order of the Collector does not deal with all the issues is concerned, in my opinion, in the light of what has been observed herein-above and

(16)

especially having gone through the findings recorded by the Collector on the issue of articles of charge, the order is just and proper, even though is not to the convenience of the petitioners. Apart therefrom, if the power of disqualification vests with the Collector, pursuant to the Act and the Rules, the consequences of political indiscipline as are noted and brought to his notice by respondent no.1 are rightly dealt with.

23. In view of above, no case for interference is made out. Thus, the petitions fail and stand dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj