

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8414 OF 2015

Dattatray Vijay Salvi & Ors. .. Petitioners
vs.
Sudesh Sadanand Mayekar & Ors. .. Respondents

Mr. Rajendra V. Pai with Mr. P. D. Dalvi for Petitioners.
Mr. C. G. Gavnekar with Mr. Rajesh Bhatkar for Respondent No. 1.
Mr. A. R. Metkari – AGP for Respondent nos. 2 and 3.
Mr. S. B. Shetye for Respondent No. 5.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 22 September 2015

Date of Pronouncing the Judgment : 05 October 2015

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is primarily to the judgment and order dated 23 July 2015 made by the Collector of Ratnagiri District (Respondent no. 2) disqualifying the Petitioners as councillors of the Ratnagiri Municipal Council (Council) under the provisions of Sections 3(1)(a) and 3(1)(b) of the Maharashtra Local Authority Members Disqualification Act, 1986 (said Act).

3] The Petitioners were elected as Councillors to the council at the General Municipal Elections held on 12 December 2011. The Petitioners were put up as candidates by the Nationalist Congress Party (NCP) and were elected as such. In all, at the Municipal General Elections held on 12 December 2011 six councillors belonging to the NCP including the four Petitioners were duly elected. Although, there is dispute with regard to the meeting of the NCP Municipal Party purportedly held on 13 December 2011, in which Sudesh Mayekar (Respondent no. 1) was elected / nominated as Leader of the Party (LOP), there is no dispute that the Respondent no. 1 in terms of the Rule 3(1) of the Maharashtra Local Authority Members' Disqualification Rules, 1987 (said Rules) furnished necessary information to the Collector. In this information, it was stated that the Petitioners and two other councillors, amongst others, constituted the NCP Municipal Party and that the Petitioners and two other councillors are members of the NCP. The Petitioners and two other Councillors also furnished information to the Collector in prescribed Form III, in terms of Rule 4 of the said Rules. Even in such information, it was asserted that the Petitioners belong to the NCP. This position continued upto November 2014.

4] The elections to the post of Vice President of the council were scheduled for 11 November 2014. It is the case of the

Respondent no. 1 that the NCP i.e. the Original Political Party as well as the NCP Municipal Party had taken decision to support Ms. Pradnya Bhide, a candidate for the post of Vice President. Directives to this effect were issued by Shekhar Nikam, office bearer of NCP to the Respondent no. 1, LOP on 4 November 2014. In pursuance thereof, on 6 November 2014, the Respondent no. 1, LOP issued a whip to all the Councillors of NCP, including *inter alia* the four Petitioners. It is the case of the Respondent no. 1, that the Petitioners, despite receipt of such whip, failed to vote for Ms. Bhide at the election held on 11 November 2014. Instead, the Petitioners formed a separate front, thereby voluntarily giving up membership of the political party.

5] On the basis of the aforesaid, the Respondent no. 1 on 21 November 2014, instituted before the Collector of Ratnagiri, a petition seeking disqualification of the Petitioners under the provisions of the said Act.

6] The Petitioners filed a common written statement / reply on 31 December 2014. The Petitioners denied that any decision was taken by either the Original Political Party (NCP) or NCP Municipal Party to support candidature of Ms. Bhide. In any case, the Petitioners contended that Shekhar Nikam had no authority to issue

any directives and the Respondent no. 1 had no authority to issue any whip. It was also contended that the document dated 6 November 2014, as served upon the Petitioners, was not at all a whip as contemplated under the said Act. It was further contended that there was no valid service of the so-called whip. The Petitioners, however, did not rest at that. The Petitioners further pleaded that even before the whip dated 6 November 2014 was published in the newspaper on 11 November 2014, the Petitioners on or about 8 November 2014 formed an '*independent group*' under the name and style of '*Ratnagiri Sahar Vikas Aghadi*' and on 8 November 2014 itself, the Collector granted registration to such independent group. The Petitioners claim that since such independent group was formed by four out of the six NCP Councillors, (i.e. 2/3rd of the Councillors), the formation of such independent group, was a '*split*', which was duly protected under the provisions of the said Act. Consequent upon the formation of such independent group, the Respondent no. 1 lacked authority to issue whip and in any case, the whip issued by the Respondent no. 1 was neither applicable nor binding upon the Petitioners. For all these reasons, the Petitioners submitted that they had not incurred any disqualification under the provisions of the said Act.

7] The Respondent no. 1 examined himself and produced

certain documents in support of the disqualification petition. The Petitioners also examined themselves and produced documents in support of their defence. The Collector of Ratnagiri by impugned order dated 23 July 2015 has held that the Petitioners had incurred disqualification under Sections 3(1)(a) and 3(1)(b) of the said Act and consequently are deemed to have vacated the seats of Councillors held by them. Hence, the present petition.

8] Mr. Pai, the learned counsel for the Petitioners made the following submissions in support of the petition :

(A) That the provisions of the said Act are required to be strictly construed and in the absence of specific authorization in favour of the persons issuing directives, such directives cannot be held to be binding upon the elected Councillors. In the present case, the resolutions, if any, of the Original Political Party or for that matter the NCP Municipal Party with regard to the support to the candidature of Ms Bhide were never produced. The authority of Mr. Nikam to issue directives to the Respondent no. 1, was never clarified. In such circumstances, the Collector of Ratnagiri erred in treating the directives dated 6 November 2014 as a '*whip*'. The disqualification of the Petitioners on the basis of such whip, was therefore ultravires the provisions of the said Act. In this

regard, reliance was placed upon the decision of the Hon'ble Apex Court in the case of *Sadashiv H. Patil vs. Vithal D. Teke & Ors.*¹, the decisions of this Court in the case of *Sahebrao Narayan Kharat & Anr. vs. Collector, Jalna & Ors.*² and *Kiran s/o. Narhari Wattamwar & Anr. vs. Collector, Nanded & Ors.*³

(B) In the present case, the disqualification petition only alleged disqualification on the ground contained in Section 3(1)(b) of the said Act. In such circumstances, the Collector exceeded jurisdiction in disqualifying the Petitioners on the grounds contained in both Sections 3(1)(a) and 3(1)(b) of the said Act. The disqualification upon the ground contained in Section 3(1)(a) is clearly *ultravires* and in excess of jurisdiction. Further, the disqualification under Section 3(1)(a) of the said Act is also in violation of principles of natural justice and fair play.

(C) In any case, consequent upon the registration by the Collector on 8 November 2014 of the party / independent group under the name and style of '*Ratnagiri Sahar Vikas Aghadi*' the disqualification under Section 3(1)(a) of the said Act could not be said to have been attracted in view of the provisions contained in Section 63 (2B) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships

1 2001 (1) ALL MR 282

2 2011 (4) Bo. C. R. 354

3 2012 (5) Mh. L. J. 668

Act, 1965 (1965 Act). In as much as this aspect has been ignored by the Collector, the impugned order is vitiated by error apparent on face of record, non application of mind and perversity.

9] Mr. Gavnekar, the learned counsel appearing for the Respondent no. 1 defended the impugned order made by the Collector of Ratnagiri. Mr. Gavnekar submitted that in the meeting held soon after the general elections on 13 December 2011, NCP Municipal Party appointed the Respondent no. 1 as LOP and also invested him with the authority to issue the whip on behalf of the Original Political party as well as the Municipal Party. In compliance with the said Rules, necessary information was furnished to the Collector in the prescribed form, indicating that the Petitioners belonged to the NCP and further, the Respondent no. 1 is the LOP. This position continued for over three years, without any demur. In such circumstances, the whip was validly issued by the Respondent no. 1 and the same was unlawfully defied by the Petitioners. Further, the Petitioners, in order to circumvent the whip, went to the extent of splitting the NCP Municipal Party and forming a separate independent group / party, as has been pleaded by them in their written statement / reply. Mr. Gavnekar pointed out that from the year 2006 'split' whether by 2/3rd of the elected members or

otherwise, is no longer a valid defence under the said Act. Therefore, on the basis of the categorical admissions by the Petitioners in their pleadings, the Collector of Ratnagiri very correctly declared the Petitioners to be disqualified under Section 3(1)(a) of the said Act as well. Mr. Gavnekar submitted that in paragraph 4 of the disqualification petition, the Respondent no. 1 had made averments with regard to the formation of '*Ratnagiri Sahar Vikas Aghadi*' and had submitted that such formation was patently illegal and impermissible under the said Act. Therefore, Mr. Gavnekar contended that there was no violation of principles of natural justice and the Collector, on the basis of the admissions contained in the written statement / reply filed by the Petitioners, was justified in disqualifying the Petitioners in clauses (a) and (b) of Section 3(1) of the said Act. Mr. Gavnekar placed reliance upon the decision of the Apex Court in the case of *Dattatraya Maruti Bawalekar & Ors. vs. Pandurang Dagadu Parte & Ors.*⁴ and *Kedar Shashikant Deshpande etc. etc. vs. Bhor Municipal Council & Ors.*⁵

10] Rival contentions now fall for determination.

11] Section 3 of the said Act, reads thus :

"3. (1) Subject to the provisions of section 5 a Councillor or a member belonging to any political party or aghadi or front shall be

4 1998 (3) ALL MR 178

5 2011 (1) Bom. C.R. 531

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 purposes 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 candidate for election as such Councillor or member;

(b) a nominated Councillor shall

(i) where he is a member of any political party or aghadi or front on the date of his nomination 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 ;

(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 any 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)

(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 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)."

[Emphasis supplied]

12] In the context of disqualification under Section 3(1)(a) of the said Act, it is not possible to accept the contention of Mr. Pai that the disqualification petition instituted by the Respondent no. 1 had made no reference whatsoever to the ground as contemplated by Section 3(1)(a) of the said Act and that all the allegations were solely concerned with the ground contained in Section 3(1)(b) of the said Act. In paragraph 4 of the disqualification petition, the Respondent no. 1 had made specific reference to the formation of 'Ratnagiri Sahar Vikas Aghadi' by the Petitioners and the illegality involved in such an exercise. Obviously, such reference is relatable to the ground contained in Section 3(1)(a) of the said Act.

13] The Petitioners, filed a detailed response to the allegations contained in paragraph 4 of the disqualification petition. Such response is contained in paragraphs 8, 12, 13, 14 and 15 of the reply dated 31 December 2014. In these paragraphs, the Petitioners have themselves asserted that even before the so-called whip

could be published in the Daily Ratnagiri Times dated 11 November 2014, the Petitioners, on 8 November 2014 formed and got registered an independent group. The whip allegedly issued by the Respondent no. 1 was neither applicable nor binding upon such independent group formed by the Petitioners under the name and style of '*Ratnagiri Sahar Vikas Aghadi*'. In paragraph 12, the Petitioners asserted that out of six Councillors originally belonging to Original Political Party i.e. NCP, 2/3rd of the Councillors have formed a separate group on 8 November 2014, and the same has also been duly registered by the Collector of Ratnagiri. In paragraph 12 it was also asserted that the registration / recognition is within the period prescribed under the law i.e. within one month from the date of notification. On this ground it was asserted that the split and the consequent formation of the independent group in the name and style of '*Ratnagiri Sahar Vikas Aghadi*' is in accordance with law and the same constitutes the formation of a new Municipal Party by the Petitioners. In these circumstances, the Petitioners urged that the whip issued by the Respondent no. 1 was neither applicable nor binding upon them. In the light of such detailed response, there is no merit in the submission that there was any violation of principles of natural justice, on account of the ground as contemplated by Section 3(1)(a) of the said Act being not raised by the Respondent no. 1 in the disqualification petition.

14] The Collector, relying upon the pleadings in the written statement / reply filed by the Petitioners has held that the Petitioners, by forming themselves into an independent group or a new Municipal Party, have voluntarily given up their membership of the political party to which they belonged and therefore had incurred the disqualification under Section 3(1)(a) of the said Act. The Collector has taken note of the circumstances that split was no longer defence to the charge of voluntary giving up membership of the political party. Accordingly, the Collector has held that the Petitioners had incurred disqualification under Section 3(1)(a) of the said Act. There is really no perversity in the finding recorded by the collector, particularly, as such finding proceeds on the basis of the admissions made by the Petitioners themselves in their reply / written statement dated 31 December 2014.

15] On and from the date of coming into force of the Maharashtra Act 50 of 2006, the defence that more than 2/3rd of the members of the political party have split and therefore, not incurred the disqualification under Section 3(1)(a) of the said Act, is no longer available. In fact, the Hon'ble Apex Court in the case of *Kedar Deshpande* (supra) has taken specific cognizance of this legal position and at paragraph 17 noted that the clause relating to split is deleted from the provisions of the said Act and is no longer

available defence in the matter of qualification. The decision in the case of *Kedar Deshpande* (supra) also affords an answer to Mr. Pai's contention that the Collector has breached the principles of natural justice in disqualifying the Petitioners under Section 3(1)(a) of the said Act.

16] In case of *Kedar Deshpande* (supra), the Apex Court has held that Sections 3(1)(a) and 3(1)(b) of the said Act operate on their own force and the moment conditions prescribed therein are satisfied, the corporator stands disqualified. The reference to be made to the Competent Authority is only for the purpose of bringing to the notice of the Competent Authority the relevant information about the disqualification. Section 7 of the said Act does not contemplate a lis between two private parties in a disqualification petition. The issue of disqualification cannot and should not remain undecided due to any reason whatsoever as it involves issues of public importance and not merely private rights. The Apex Court, in the said decision held that the Councillors were disqualified under the said Act, as the pleadings of the Councillors suggested that they had *split* from the original political party and since the defence based upon such split was deleted from the said Act, the split Councillors could not escape disqualification under the said Act. The Apex Court rejected the submission that such an issue could

not be decided by the Apex Court for the first time by observing that the point raised, was a pure question of law and the Court had to merely look to the admitted facts of the case and ascertain whether the Councillors had incurred disqualification in terms of Section 3(1) (a) of the said Act. In view of such legal position, the plea of Mr. Pai regards violation of principles of natural justice or the Collector acting in excess of jurisdiction, cannot be accepted.

17] In the case of *Kedar Deshpande* (supra), the Apex Court made reference to its earlier decision in the case of *Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & Ors.*⁶ and held that though normally the Apex Court might not proceed to take a decision for the first time when the authority concerned has failed to do so, but if the decision of the Court is warranted for the protection of the constitutional scheme and the constitutional values, the Court can take such a decision for the first time. In the said case, 13 members of the BSP were sought to be disqualified under paragraph 2 of Xth Schedule to the Constitution on the ground that they had voluntarily given up their membership of their original political party. The MLAs had relied upon the provisions contained in paragraphs 3, 4 and 5 of the Xth Schedule to urge that since there was a split, the provisions relating to disqualification were not attracted. The Apex Court itself proceeded to examine the question

6 (2007) 4 S.C.C. 270

whether the 13 MLAs were disqualified or not by observing that if the 13 MLAs were found to be disqualified, then their further continuance in the Assembly even for a day would be illegal and unconstitutional. This is yet another reason as to why the submission of Mr. Pai based upon alleged violation of principles of natural justice or the Collector having allegedly exceeded jurisdiction, cannot be accepted.

18] The decision of the Apex Court in the case of *Kedar Deshpande* (supra) is relevant and applicable for yet another reason. In the said case as well, the six appellants had contested elections as Councillors of Bhore Municipal Council as candidates of the NCP. Upon their election, one Mr. Yashawant Baburao Dal was appointed as Leader of the Party (LOP). The LOP had submitted necessary information in Form I in compliance with the provisions contained in Rule 3 (1)(a) of the said Rules to the District Collector. The information made reference to the nine Councillors of the NCP including the six appellants. The six appellants also furnished information in Form III in compliance with the provisions contained in Rule 4(1) of the said Rules, confirming that each of them were elected as Councillors and were affiliated to the NCP. It was the specific case of the appellants that after the election of the President and Vice President of the Bhore Municipal Council on July

19, 2008, the appellants left the NCP and formed '*Bhor Shahar Vikas Swabhimani Sanghathana*' on December 22, 2009, of which Mrs. Jayshree Shinde was appointed as the LOP. On December 23, 2009 Ms Shinde addressed a letter to the District Collector confirming the formation of the *Sanghathana* and also filed Form I in purported compliance with the provisions contained in Rule 3(1) (a) of the said Rules. The six appellants also filed information in Form III in purported compliance with the provisions contained in Rule 4(1) of the said Rules. In these circumstances, the appellants raised the plea of split and the consequent inapplicability of the provisions for disqualification contained in Section 3(1)(a) of the said Act. As noted earlier, the Apex Court ruled that the clause relating to *split* stands deleted from the said Act and the defence based upon *split* is no longer available. Further, the Apex Court held that in view of the admissions of the appellants that they had left the NCP and formed the *Sanghathana*, the Appellants had voluntarily given up the membership of their political party and consequently incurred disqualification under Section 3(1)(a) of the said Act. The Apex Court proceeded to hold that Section 3(1)(a) of the said Act, without any qualification or rider, provides that Councillor or a member belonging to any political party, aghadi or front concerned shall be disqualified, if he has voluntarily given up the membership of such political party, aghadi or front. The

provisions are absolute in terms and are mandatory. The mandate given by the legislature cannot be ignored by the Court even whilst hearing appeals arising out of the petitions filed in the High Court under Articles 226 and 227 of the Constitution. In these circumstances, the Apex Court ruled that the appellants stood disqualified under Section 3(1)(a) of the said Act, in view of their admissions of having left the original party and formed a *Sanghathana*.

19] The facts and circumstances in the case of *Kedar Deshpande* (supra) offer a parallel, at least in vital and material respects to the facts and circumstances in the present case. In the present case as well, the Petitioners have been elected as Councillors affiliated to the NCP. The respondent no. 1 was elected as LOP and had submitted information in Form I to the Collector indicating the names of the NCP Councillors, which included the four petitioners herein. The Petitioners had themselves submitted information in Form III, confirming that they were elected as Councillors and were affiliated to the NCP. The petitioners in their pleadings, have admitted that on or about 8 November 2014 i.e. after over three years since the date of their election as Councillors belonging to the NCP Party, the petitioners formed themselves into an independent group under the name and style of '*Ratnagiri Sahar Vikas Aghadi*'.

The petitioners too raised the defence that this constitutes a *split*, since more than 2/3rd of the elected Councilors had constituted themselves into an independent group. As noted earlier, the defence of *split* is no longer available to a charge of disqualification under Section 3(1)(a) of the said Act. The admissions in the pleadings with regard to the formation of an independent group under the name and style of '*Ratnagiri Sahar Vikas Aghadi*', do amount to the petitioners voluntarily giving up the membership of their political party and consequently incurring disqualifications under Sections 3(1)(a) of the said Act. As noted, by the Apex Court, the provisions contained in Section 3(1)(a) of the said Act are absolute in terms and are mandatory. If the jurisdictional facts with regard to voluntary giving up of membership are established on record, then the mandate of the legislature cannot be ignored by the Competent Authority, or for that matter the Constitutional Court. Viewed from this perspective, it cannot be said that the finding recorded by the Collector is either vitiated by perversity or is in excess of jurisdiction. In fact, the finding derives support, not merely from the material on record but also is consistent with the statutory provisions contained in Section 3(1)(a) of the said Act as interpreted by the Apex Court in the case of *Kedar Deshpande* (supra).

20] Mr. Pai however contended that since the independent group formed by the petitioners under the name and style of 'Ratnagiri Sahar Vikas Aghadi' was registered by the Collector himself on 8 November 2014, the independent group was required to be regarded as a pre poll aghadi or front, to which the provisions of disqualification contained under the said Act would not apply. In this regard, Mr. Pai placed reliance upon the provisions contained in Section 63 of the 1965 Act, which read thus :

“63. Constitution of Subjects Committees of 'A' and 'B' Class Councils

(1) Each Subjects Committee of the Council appointed under the last preceding section shall consist of such number of Councillors as the Council may determine, so however, that the number of members of a Subjects Committee shall not be less than one-fourth or more than one-third of the total number of Councillors:

Provided that, in so determining the number of the members of any Subjects Committee, a fraction shall be ignored:

Provided further that, on the Women and Child Welfare Committee, not less than seventy-five per cent of the members shall be from amongst women Councillors:

Provided also that, the Chairperson and the Deputy Chairperson on the Women and Child Welfare Committee shall be from amongst the Women Councillor members thereof.

Explanation.- For the purpose of computing the number of members at seventy- five per cent., fraction, if any, shall be rounded off to one.

(2) *The Collector shall, within seven days of the election of the President under section 51, call a special meeting of the Council for the purpose of, -*

(a) determining the number of the members of each of the Subject Committees referred to in the last preceding section, and the Subjects Committee of which the Vice-President shall be the ex-officio Chairman, and

(b) nominating Councillors on the Subjects Committees in accordance with the provisions of sub-section (2B)]:

Provided that, the President shall not be eligible for being a member of any of the Subjects Committees but he shall have the right to speak in, and otherwise to take part in the proceedings of, any Subjects Committee, except that he shall not be entitled to vote thereat.

(2A) The meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council, when presiding over a meeting of the Council has, but shall not have the right to vote.

(ii) Notwithstanding anything contained in this act, for regulating the procedure at meetings (including the quorum thereat), the Collector or such officer may, for reasons which in his opinion are sufficient, refuse to adjourn the meeting convened as per the provisions of sub-section (2), after it was once cancelled or adjourned for want of quorum.

(2B) In nominating the Councillors, the Collector shall take into account the relative strength of recognized parties or registered 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 Council after consulting the leader of each such party or group:

Provided that, the relative strength of the recognized parties or registered parties or groups or aghadis 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 sub-section, the recognized parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, **notwithstanding anything contained in the Maharashtra Local Authority Members Disqualification Act, 1986 (Maharashtra XX of 1987), within a period of not more than one month from the date of notification of election results, form 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 pre-poll aghadi or front.***

(2C) If any question arises as regards the number of Councillors to be nominated on behalf of such party or group, the decision of the Collector shall be final.

(3) The Chairman of every Subjects Committee (other than the Subjects Committee of which the Vice-President is to be the ex-officio Chairman) shall be elected by the members of that Committee at the meeting convened under sub-section (2):

Provided that, no Councillor shall be eligible to be the Chairman of more than one Subjects Committee."

[Emphasis supplied]

21] The submission of Mr. Pai cannot be accepted for several reasons. Firstly, the provisions contained in Section 63 of the 1965 Act apply to constitution of Subjects Committees of 'A' and 'B' Class Councils. Sub section (2B) of Section 63, upon which considerable emphasis was laid by Mr. Pai, *inter alia* provides that in nominating the Councillors to the Subjects Committees, the Collector 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 the proportion to the strength of such parties or groups in the Council after consulting the Leader of each such party or group. The first proviso to sub section (2B) provides the manner for determination of relative strength of the recognized party or registered parties or groups or aghadi or front as the case may be. The second proviso, which is important for the purpose of dealing with Mr. Pai's submission, *inter alia* provides that for the purpose of deciding the relative strength of recognized parties or registered parties or groups under sub section (2B), 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, within a period of not more than one month from the date of notification of election results, form an 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 pre poll aghadi or a front.

22] Under the second proviso, in the context of determining the relative strength of recognized parties or registered parties or groups under sub section (2B), an opportunity is conferred upon the recognized parties or registered parties or groups or elected Councillors not belonging to any such party or group to form aghadi or front within a period of not more than one month from the date of notification of the election results, 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 pre poll aghadi or front. The provisions, including in particular, the provisions contained in the second proviso to sub section (2B) create a legal fiction and therefore in interpreting the same, regard must be had to certain well settled principles of interpretation of legal fictions.

23] In interpreting the provision creating a legal fiction, the Court is required to ascertain, the purpose for which such fiction is created. After ascertaining this, the Court is required to assume all those facts and consequences which are incidental to or inevitable corollaries in order to give effect to the legal fiction. But in so construing the legal fiction, the same cannot be extended beyond

the legitimate purpose for which the legal fiction is created or beyond the language of the section by which it is created. Further, the scope and import of the legal fiction, cannot be extended by importing another legal fiction. In the case of *Nandkishore Ganesh Joshi vs. Commissioner, Municipal Corporation Kalyan*⁷, the Hon'ble Apex Court has held that such principles for interpretation of legal fictions are '*well settled*'.

24] Although, full effect is required to be given to the legal fiction, it cannot be extended beyond the legitimate purpose for which it is created. In the leading judgment in the case of *Bengal Immunity Co. Ltd. vs. State of Bihar*⁸, it is held that legal fictions are created only for some definite purpose and a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond the legitimate field. In the case of *Radhakissen Chamaria v. Durga Prasad Chamaria*⁹, in construing Section 19(3) of the Bengal Public Demands Recovery Act, 1913, which provided that '*the Certificate holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof*', the Privy Council held that the legal fiction created thereby was for limited purpose of enabling the certificate holder to execute the

7 AIR 2005 SC 34

8 AIR 1955 SC 661

9 AIR 1940 Privy Council 167

decree and to satisfy his own claim out of the proceeds of such execution. But he was not in a position of an assignee of a decree, so as to acquire all the rights of the original decree holder in the decree.

25] In the case of *Nandkishore Joshi* (supra), construing the provisions contained in Section 73 of the Mumbai Municipal Corporation Act, 1949, which provided that the Standing Committee shall consider and dispose of the proposal made by the Commissioner within fifteen days from the date of which the item is first included in the agenda of any meeting of that Committee and failing which the approval to such contract shall be deemed to have been given by the Committee, the Apex Court held that if the Standing Committee in its meeting requires the Commissioner to place before the Committee relevant materials for deciding whether or not to grant approval, the fiction will not operate, as otherwise the provision requiring approval will not be workable and the object of providing for approval shall stand defeated.

26] Applying the aforesaid settled principles in the matters of interpretation of legal fictions, the provisions contained in the second proviso to sub section (2B) of Section 63 of the 1965 Act shall have to be construed in the context of the purpose for which

such fiction is created. The purpose is obviously to determine the relative strength of recognized parties or registered parties or groups. Further, the provision takes into consideration the position of elected Councillors not belonging to any recognized parties or registered parties or groups, so that they are not put to any disadvantage in the matter of their appointments to Subjects Committees. In the absence of such provision, the elected Councillors not belonging to recognized parties or registered parties or groups might face difficulties in the matter of appointments or nominations to Subjects Committees, as such appointment or nomination is made dependent upon the relative strength of the recognized parties, registered parties, groups, aghadis or fronts. At the same time, the anxiety of the legislature was to prevent, *inter alia* the elected Councillors not belonging to recognized parties or registered parties, groups, aghadis or fronts to incur disqualification under the said Act, in case, such elected Councillors were to form a aghadi or front, within a period of not more than one month from the date of notification of the election results. The legal fiction, upon which Mr. Pai placed reliance will therefore have to be interpreted in the light of such objective and such purpose. The legal fiction is not to be extended beyond such legitimate objective and purpose for which it is created or for that matter beyond the language of the provision by which it is created.

27] Even otherwise, in the facts and circumstances of this case, the legislative preconditions for the legal fiction to operate have admittedly not been fulfilled. For the legal fiction created under the second proviso to sub section (2B) to operate, the elected Councillors are required to form a aghadi or front within a period of not more than one month from the date of notification of the election results and upon registration of such aghadi or front, the provisions of the said Act are to apply to the members of such aghadi or front, as if it is a pre poll aghadi or front. In the present case, admittedly the independent group i.e. the aghadi or the front formed by the petitioners under the name and style of '*Ratnagiri Sahar Vikas Aghadi*' was constituted on or about 8 November 2014. Though, in paragraph 12 of the written statement / reply dated 31 December 2014, the petitioners have averred that the aghadi was formed within a prescribed period i.e. within period of one month from the date of notification, such averment is patently incorrect and admitted to be incorrect as such. In this case, the date of notification of election results was in the month of December 2011. The aghadi formed by the petitioners was on or about 8 November 2014 i.e. after period of about three years from the date of notification of the election results. Clearly therefore there was no compliance with one of the statutory pre conditions prescribed under second proviso to sub section (2B) for the legal fiction to

operate.

28] It is important to note that in the aforesaid second proviso to sub section (2B), the legislature has emphasized upon the formation of aghadi or front within a period of not more than one month from the date of notification of the election results. The legislature was not content with employing the expression '*within a period of*' but chose to lay excessive emphasis by employing the expression '*within a period of not more than one month from*'. The emphasis so laid by the legislature is required to be respected and due consideration accorded to the same, particularly whilst interpreting the scope and import of legal fiction created by the second proviso to sub section (2B).

29] There is again no clarity as to the precise provision under which the Collector has granted any registration to the '*Ratnagiri Sahar Vikas Aghadi*'. There is no clarity as to the manner and form of such registration. In any case, based merely upon such so-called registration, the petitioners cannot claim protection under the second proviso and urge that the aghadi formed by them on 8 November 2014 i.e. after a period of almost three years from the date of notification of the election results, is to be regarded as a pre poll aghadi or a front. Mr. Pai's contention that upon registration of

the aghadi, such aghadi must be deemed to have been formed by the petitioners within a period of not more than one month from the date of notification of the election results cannot be accepted. The acceptance of such a contention would virtually amount to extending the scope and import of a legal fiction by importing therein, another legal fiction. In the case of *C.I.T. vs. Moon Mills Ltd.*¹⁰, the Apex Court, in terms, has held that the scope of a legal fiction cannot be extended by importing therein, another legal fiction. The Collector in the present case, has duly considered the defence of the petitioners based upon the second proviso to sub section (2B) of Section 63 of the 1965 Act and rejected the same. There is no jurisdictional error in the making of the impugned order.

30] Since the finding in the impugned order that the Petitioners have incurred disqualification under Section 3(1)(a) of the said Act is being upheld, there is really no necessity to advert to the issue as to whether the Petitioners have also incurred disqualification under Section 3(1)(b) of the said Act, for having defied the whip issued by the Respondent No. 1 on 6 November 2014. At least *prima facie* however, there is substance in the contentions of Mr. Pai that disqualification under Section 3(1)(b) of the said Act has not been established in accordance with law. In this case, resolutions or authorizations of the Original Political Party or the NCP Municipal

10 AIR 1966 SC 870

Party, in the context of support to Ms Bhide and directions for issuance of whip have not been produced on record. Mr. Gavnekar attempted to argue that since the Respondent No. 1 was the LOP and since in the meeting of the NCP held on 13 December 2011, the Respondent No. 1 had been authorised to issue a whip, the whip issued on 6 November 2014 was legal, valid and binding upon the Petitioners. The case set out in the disqualification petition however, was that the whip was issued in pursuance of directives from Shekhar Nikam, who was, in turn, authorised by the Original Political Party to issue such a directive. As noted earlier, neither was the resolution of the Original Political Party nor the resolution of NCP Municipal Party produced on record. There was accordingly no legal material on record to establish that Original Political Party or the NCP Municipal Party had indeed resolved to support the candidature of Ms Bhide for the purposes of Vice President. Further, there was no legal material on record to establish that in pursuance of such decision, Mr. Nikam was authorised to issue directives and in pursuance of such directives, the Respondent No. 1 had issued the whip. There is vague reference to meeting of NCP Municipal Party wherein certain decisions were taken. However, neither are minutes of such meeting produced on record nor is any resolution produced on record.

31] In the case of *Sadashiv Patil* (supra) the Apex Court has held that rigorous compliance with the provisions of the said Act and the said Rules must be shown to have taken place, before the elected Councillor is unseated on the ground of disqualification under the said Act. In this case, at least *prima facie*, it cannot be said that there has been rigorous compliance in so far as ground of disqualification under Section 3(1)(a) of the said Act is concerned. In the case of *Sadashiv Patil* (supra), the resolution of the Janta Aghadi authorizing the signatories to the whip to issue the whip was neither filed nor produced before the Collector. The whip also did not contain any recitals spelling out the details, if any, with regard to such authorization. In these circumstances, the Apex Court observed that even if the party, aghadi or front may have resolved to sponsor a particular person's candidature at the election, acting contrary to such resolution, howsoever strongly worded, may render such member liable to disciplinary proceedings at party level. But to incur disqualification under the said Act, there must be a directive issued and such directive must be either by the party, aghadi or front to which the Councillor proceed against belongs or by any person or authority authorised in this behalf. Mere resolution is not a substitute for such authorised directive. Therefore, at least *prima facie*, there is merit in the submission of Mr. Pai that the disqualification of the Petitioners under Section 3(1)(b) of the said

Act is vulnerable. However, since the disqualification under Section 3(1)(a) of the said Act is liable to be upheld, no relief can be granted to the Petitioners in this petition.

32] In view of the aforesaid discussion, the present petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka

33] At this stage, learned counsel for the Petitioners seeks for stay, as the Petitioners would like to take recourse against this judgment and order before the Apex Court. The State Election Commission vide Notification dated 28 September 2015 has already declared and published the schedule of elections. As such, the election process is on, though the actual election has to be held on 1 November 2015. In such circumstances, it would not be appropriate to grant any interim relief, which might have effect of disturbing the election schedule. Therefore, the prayer for interim relief is denied.

(M. S. SONAK, J.)

Chandka

CERTIFICATE

“Certified to be true and correct copy of the original signed Judgment.”