

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10262 OF 2016
(Sanjay Sudhakar Jadhav Vs.The State of Maharashtra and others)

Mr.V.J.Dixit, Sr.Counsel for Mr.P.D.Bachate, learned counsel for the petitioner.

Mrs.M.A.Deshpande, learned AGP for the State/respondent No.1.

Mr.Mukul S.Kulkarni, Advocate for respondent No.4.

Mr.S.P.Shah, Advocate for respondent No.2.

Mr.A.S.Sawant, Advocate for respondent No.3.

(CORAM : R.M.BORDE AND
K.L.WADANE, JJ.)

DATE : 04/04/2017

PER COURT :

1. The petitioner is objecting to the decision of the Mayor of Dhule Municipal Corporation, appointing respondent No.4 as the leader of opposition party by displacing the petitioner.

2. The elections of Dhule Municipal Corporation were conducted in the year 2013 and the petitioner is elected as a 'Corporator', as a candidate set up by Shivsena Political Party. Numerical strength of different political parties in the house is as under :-

Nationalist Congress Party	-	34
Shivsena	-	11
Indian National Congress	-	7
Bhartiya Janata Party	-	3

Samajwadi Party	-	3
B.S.P.	-	1
Loksangram	-	1
Independent candidates	-	11

3. The Mayor, belonging to Nationalist Congress Party, supported by 11 independent members and 3 members of Samajwadi party, was elected on 24/01/2014 immediately after the general elections. The elected Mayor, by order dated 20/01/2014, appointed one Gulab Mahajan, who is one of the independent candidates, as a leader of opposition in exercise of powers u/s 19-1AA of the Maharashtra Municipal Corporations Act. The said decision was challenged by the petitioner in WP No.1263/2014. The writ petition came to be allowed and the direction was issued to appoint the petitioner as a leader of opposition. In observance of the directions issued by this Court, the petitioner came to be appointed as a leader of opposition by an order issued by the Mayor on 08/08/2014. The Mayor, by issuing an order on 03/10/2016, directed appointment of one Gangadhar Lotan Mali, respondent No.4 herein by displacing the petitioner as a leader of opposition. The petitioner contends that, he could not have been displaced by appointing respondent No.4. The Mayor has not ascertained as to whether respondent No.4 wields support of the majority members. The provisions of Section 19-1-AA

do not empower the Mayor to displace the petitioner and appoint another member or leader of opposition party in his place. The petitioner contends that since he is appointed as a leader of opposition party, he is entitled to continue in office until the completion of his tenure as an elected Corporator.

4. The contentions raised by the petitioner are controverted by respondent No.4. It is the contention of respondent No.4 that he has been appointed as a leader of political party i.e. Shivsena in Dhule Municipal Corporation by all elected members belonging to Shivsena Political Party in the meeting held on 03/10/2016. A resolution in that regard has been adopted. The appointment of respondent No.4 as the leader of the party is also approved by the political party in view of the communication dated 03/10/2016. Respondent No.4 thus contends that, he being the leader of the political party in house, is entitled to be appointed as the leader of opposition in the house.

5. Section 19-1-AA of the Municipal Corporation Act provides that an elected Councillor who is, for the time being, the leader of the party in opposition, having greatest numerical strength and recognised as such by the Mayor, shall be the leader of the

opposition. It is thus contended by respondent No.4 that since he is recognized as a leader of the party in opposition, having greatest numerical strength, the Mayor was justified in directing his appointment as a leader of the opposition. The contention raised by the petitioner that the Mayor does not have an authority to change the leader, is also without any substance.

6. In the matter of Databhau Pathrikar Vs. State of Maharashtra and others [2007(3) Mh.L.J.76], decided by the Division Bench of this Court (to which Justice R.M.Borde was a member), has dealt with an identical issue concerning appointment of leader of opposition. In paragraph No.11 of the judgment, it is observed by the Division Bench as under :-

“1. The definition of the leader of Municipal Party under the Disqualification Rules is for the purposes of the concerned Rules. The contentions advanced by the learned Counsel for the petitioner that the term 'Leader of Opposition' is co-terminus with the period of elected body of the Corporation, cannot be a matter of dispute. However, the further argument advanced relying on the analogy that as the petitioner who was once recognized as Leader of Opposition by the respondent No. 3 on 8-5-2006 is deemed to be continued until the completion of the term of the elected body of the Corporation cannot be accepted. The argument has inherent flaws in itself as the petitioner himself

has accepted that on 3-5-2005 one Shri Tarvindersingh Dhillon was declared as Leader of opposition and at a later point of time the petitioner wielded the support of 10 Councillors out of 19 elected members of the Congress (I) Party, he staked his claim for the post of Leader of Opposition and as such was recognized as Leader of Opposition by order dated 8-5-2006. These facts itself contradicts the argument advanced by the learned Counsel for the petitioner. If the analogy put forth by the petitioner is to be accepted, the petitioner could not have been recognized as Leader of Opposition by the respondent No. 3 on 8-5-2006. There is no legal bar to recognize any other Corporator as Leader of Opposition whenever change in numerical strength of the Councillors supporting a particular leader takes place. The office of the leader of opposition is co-terminus with the term of the elected body of the Corporation. It does not mean that a particular Corporator or an individual cannot be displaced as a Leader of Opposition even though some change takes place in relation to the numerical strength of the Councillors supporting him. The rule of majority is the cardinal principle governing all democratic institutions. As the Rule of majority applies in relation to the other elected offices as provided under the Municipal Corporations Act, the same principle needs to be applied also in the matter of recognition of the Leader of Opposition. There appears to be logically nothing wrong in an act of recognizing any other leader in place of the existing leader whenever the balance of numerical strength supporting a particular Corporator changes. In the instant case, as the respondent No. 4 mustered the support of 14 Councillors out of 19 Councillors belonging to

Congress (I) Party which is the largest group amongst the opposition parties in the Corporation, the decision taken by the Mayor in recognizing him (respondent No. 4) cannot be faulted as the said decision is in accordance with the principle of rule of majority governing all democratic institutions.”

7. In view of the law laid down by this Court, as recorded above, the contentions raised by the petitioner that the Mayor does not have entitlement to change the leader of opposition and request made to recognize petitioner as the leader of opposition, does not appear to be sound. Writ petition is devoid of substance, and hence stands dismissed.

(K.L.WADANE, J.)

(R.M.BORDE, J.)