

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

WRIT PETITION NO. 119 OF 2018

Sunil Ramesh Kale

Age : 45 years, Occu. Service,

R/o. Ward No. 10, At Post Warangaon ,

Jagadambnagar, Tq. Bhusawal, Dist. Jalgaon. ... Petitioner

Versus

1. The State of Maharashtra
through its Principal Secretary, Urban Development
Department, Mantralaya, Mumbai.
2. The Collector,
Collector Office, Jalgaon.
3. Varangaon Municipal Council,
Varangaon, Tq. Bhusalwa,
Dist. Jalgaon.
4. Rohini Sudhakar Jawale,
Age : 50 years, Occu. Ward No. 2, At Post Warangaon,
Tq. Bhusawal, Dist. Jalgaon.
5. Arunabai Shama Ingale,
Age : 52 years, Occu. Household,
R/o. Ambedkarnagar, Vilhade Road,
Varangaon, Tq. Bhusawal,
Dist. Jalgaon.
6. Jagruti Sunil Badhe,
Age : 40 years, Occu. Household,
R/o. Badhewada, Varangaon,
Tq. Bhusawal, Dist. Jalgaon.
7. Vikin Narayan Bhangale,
Age : 44 years, Occu. Business,
R/o. Gandhi Chowk, Varangaon,
Tq. Bhusawal, Dist. Jalgaon.
8. Nitin Nivruti Mali,
Age : 38 years, Occu. Business,

R/o. Maliwada, Varangaon,
Tq. Bhusawal, Dist. Jalgaon.

9. Malabai Milind Medhe,
Age : 45 years, Occu. Household,
R/o. Behind Civil Hospital, Waman Gunjal Nagar,
Varangaon, Tq. Bhusawal, Dist. Jalgaon.
10. Nasrinbi Sajid Kureshi,
Age : 28 years, Occu. Household,
R/o. Pratibha Nagar, Gangaram Colony,
Varangaon, Tq. Bhusawal, Dist. Jalgaon. Respondents

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Shri. R. N. Dhorde, Sr. Advocate i/b Shri. V. R. Dhorde, Advocate for the petitioner
Smt. V. N. Patil – Jadhav, AGP for respondent/State
Shri. R. L. Kute, Advocate for respondents No. 9 & 10
Shri. V. J. Dixit, Sr. Counsel i/b Shri. A. N. Nagargoje, Advocate for respondents
No. 4 to 8
.....

AND

WRIT PETITION NO. 8769 OF 2018

1. Sunil Ramesh Kale
Age : 42 years, Occu. Councillor and
President of Municipal Council,
Warangaon, Tq. Bhusawal, Dist. Jalgaon,
R/o. Warangaon, Tq. Bhusawal, Dist. Jalgaon.
2. Mala Milind Medhe,
Age : 46 years, Occu. Councillor, Municipal Council,
Warangaon, Tq. Bhusawal, Dist. Jalgaon,
R/o. Warangaon, Tq. Bhusawal, Dist. Jalgaon.
3. Qureshi Nasreenbee Sajed,
Age : 36 years, Occu. Councillor Municipal Council,
Warangaon, Tq. Bhusawal, Dist. Jalgaon,
R/o. Warangaon, Tq. Bhusawal,
Dist. Jalgaon. ... Petitioners

Versus

1. The State of Maharashtra
through its Principal Secretary,

Urban Development Department,
Mantralaya, Mumbai.

2. The Collector,
Collector Office, Jalgaon.
3. Municipal Council, Warangaon,
Tq. Bhusalwa, Through its Chief Officer
4. Nitin Nivruti Mali,
Age : 39 years, Occu. Councillor,
Municipal Council, Warangaon,
Tq. Bhusawal, Dist. Jalgaon,
R/o. Kalbande Wada, Ward No. 6, Warangaon,
Tq. Bhusawal, Dist. Jalgaon. ... Respondents

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Shri. V. D. Sapkal, Advocate for the petitioners
Smt. V. N. Patil – Jadhav, AGP for respondent/State
Shri. V. J. Dixit, Sr. Counsel i/b Shri. A. N. Nagargoje, Advocate for respdt No. 4
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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

RESERVED ON : 14.02.2019
PRONOUNCED ON : 01.03.2019

JUDGMENT (PER A. M. DHAVALA, J.) :-

1. Both these petitions are filed by the same petitioners against the same respondents. They involve common question of law and facts and those are argued jointly. Hence, we proceed to decide them together.

2. Rule. Rule made returnable forthwith. By consent of the parties, matters taken up for final disposal at admission stage.

3. In Writ Petition No. 119 of 2018, the petitioner assails the order of Collector, Jalgaon dt. 27.11.2017 of substituting the petitioner by respondent No. 8 as Gatneta of BJP in Varangaon Municipal Council. He also seeks prohibitory orders against the Collector from taking up steps on the basis of such entry and injunction against the respondents No. 4 & 8 from taking action in pursuance of the order of the Collector.

4. In Writ Petition No. 8769 of 2018, the petitioner seeks writ of prohibition to prohibit the Collector from taking up disqualification proceedings against the petitioner by respondent No. 4 and to quash the proceedings initiated by respondent No. 4 against the petitioner for disqualification.

5. It is necessary to narrate the facts which are not much in dispute:

The petitioner in Writ Petition No. 119 of 2018 is petitioner No. 1 in Writ Petition No. 8769 of 2018. Respondents No. 9 and 10 in Writ Petition No. 119 of 2018 are the petitioners No. 2 and 3 in Writ Petition No. 8769 of 2018. The State, Collector Jalgaon and Varangaon Municipal Council are respondents No. 1 to 3 in both the petitions. Respondent No. 8 – Nitin Mali in Writ Petition No. 119 of

2018 is respondent No. 4 in Writ Petition No. 8769 of 2018. For the sake of convenience, the parties are hereinafter referred to as per their nomenclature in Writ Petition No. 118 of 2018.

6. On 23.04.2015, the petitioner Sunil Kale and respondents No. 4 to 10 (total 8) were elected as Municipal Councillors in Varangaon Municipal Council as authorized members of Bhartiya Janata Party (in short "BJP"). There were total 18 seats in the Municipal Council. BJP bagged 8 seats, Nationalist Congress Party (in short "NCP") bagged 5 seats, Independent bagged 4 seats and Shivsena Party bagged 1 seat. Since BJP emerged as the largest party, councillors of BJP held a meeting on 04.05.2015 and unanimously elected the petitioner as Gatneta. They submitted to the Collector the information about the same in the prescribed proforma along with the requisite documents on 22.05.2015. All the members appeared before the Collector and signed form No. 1 and endorsement to that effect was recorded by the Collector on the same. The BJP in the Municipal Council also submitted rules appointing the petitioner as Gatneta and giving him rights to issue whip. Rule No. 9 thereof also laid down that, Gatneta was to continue till the expiry of session of Municipal Council and the Gatneta was having the right to casting vote also. The Rules were unanimously signed by all the members. The posts of President and

the Vice-President were reserved for Scheduled Caste Category for a period of 2½ years. Accordingly, the President was elected on 05.06.2015 for a period of 2½ years. When his term came to an end on 15.11.2017, the Collector appointed Sub-Divisional Officer, Bhusawal to hold election for the post of President and Vice-President for the remaining 2½ years. Election programme was accordingly declared. On 22.11.2017, four nominations were received including that of the petitioner and respondents No. 4 and two others. On 22.11.2017, the scrutiny of the nominations was done and same was found to be valid. On 24.11.2017, the petitioner had issued a whip for voting himself for the post of President and one Mr. Shaikh for the post of Vice-President. The same was communicated by notices sent by Registered Post A.D. and also by paper publication in the newspaper Lokmat dt. 26.11.2017. On 27.11.2017, the other two candidates withdrew their nominations and the petitioner and respondent No. 4 remained in the fray.

7. The controversial facts begin here. Respondent No. 8 – Nitin Mali on 27.11.2017 submitted application to the Collector, Jalgaon (R-2) that he was elected as Gatneta by BJP. The said application was signed by 5 councillors (Respondent No. 4 to 8). It was also accompanied by the rules of the constituted gut as unanimously accepted by 5 councillors in the meeting dt. 27.11.2017.

As per the rules, respondent No. 8 was appointed as Gatneta and he was given right to issue whip and he was to continue as Gatneta till the expiry of term of Municipal Council. Immediately on the same day, the Collector, Jalgaon acted upon the same and recorded the change in Gatneta of BJP. On the same day, whip issued by respondent No. 8 – Nitin Mali was published in the newspaper calling upon the members of BJP to vote in favour of respondent No. 4 – Rohini Jawale as President and in faovur of Yogesh Dhangar as Vice-President. Thereafter, election was held on 28.11.2017. The petitioner Sunil Kale bagged 11 votes including three from BJP (R-9, 10 & himself) whereas respondent No. 4 – Rohini Jawale bagged 7 votes (including R-4 to 8). There was similar voting for the post of Vice-President and an independent candidate – Mr Akhlakh Shaikh Yusuf supported by the group of the petitioner was elected.

8. Respondent No. 8 on behalf of respondents No. 4 to 8 filed affidavit. It is his contention that, the party President (who happens to be the husband of respondent No. 4 – Rohini Jawale) selected respondent No. 4 as candidate for President-ship. The petitioner took decisions abruptly without consulting the other members and issued directions to support non-BJP candidate for Vice-President and to himself for President-ship. He was acting against the interest of the party. Therefore, as per directions of the party the meeting was

convened on 25.11.2017 for change of Gatneta. The notices thereof were sent to the members. The petitioner, respondents No. 9 and 10 have refused to accept the notices. Therefore, they were served by alternate mode. Accordingly, meeting was held which was conducted by respondents No. 4 to 8. They unanimously selected respondent No. 8 – Nitin Mali as new Gatneta. Thereafter, as per the provisions respondent No. 8 communicated the decision of majority along with the necessary details to the Collector and the Collector acted upon it and changed the Gatneta and respondent No. 8 was substituted in place of the petitioner. Thus, respondent No. 8 was appointed as Gatneta by following due process of law and he thereafter issued whip directing the BJP councillors to vote in favour of Rohini (R-4) for the post of President and Yogesh for the post of Vice-President. The petitioner and respondents No. 9 and 10 refused to accept the notices of whip. Hence, the same were served by pasting, the notices on the outer door of their houses. Because of the activities of the petitioner, the BJP has lost the election. Hence, the proceedings are initiated against the petitioner for violation of the whip. There is no provision for giving hearing to the Gatneta before accepting Gatneta by the Collector.

9. Respondents No. 9 and 10 have supported the case of the petitioner.

10. The petitioner has made indirect allegations against the Collector that, by showing undue haste and in absence of meeting, he effected changes in the Gatneta. The petitioner alleged that, the Collector did not verify the facts and hurriedly effected change in the Gatneta which is illegal, contrary to the provisions of law and improper. Shri. R. N. Dhorde, learned Sr. Advocate for the petitioner in Writ Petition No. 119 of 2018 put up the petitioner's case as above and argued that the change of Gatneta by the Collector without following the due process is not sustainable. He submitted that, there was rule that Gatneta will continue till the expiry of period of the council. That rule was not changed before effecting change in the Gatneta. It was not permissible. He also argued that, as per the principles of natural justice, the Collector was bound to give opportunity of hearing to the petitioner. The same has not been done. Shri. Dhorde relied on following judgments.

- (i) **Sunil Haribhau Kale V. Avinash Gulabrao Mardikar** (2015) 11 SCC 403
- (ii) **Shri. Mangesh S/o. Sudhakar Tambe Versus The State of Maharashtra & Ors.** 2018(5) Mh.L.J. 735
- (iii) **Automotive Tyre Manufacturers Association Vs. Designated Authority & Ors.** (2011) 2 SCC 258, (Para 76 to 83, to the effect that the principle of giving opportunity of hearing is a cardinal principle of natural justice and it must be followed even by administrative or *quasi* judicial authorities.

11. Reliance is also placed on **Sadashiv H. Patil Vs. Vithal D. Teke & Ors.** AIR 2000 SC 3044, wherein it is held that, there should be resolution by party authorising the signatories of the whip to issue the whip. The authority issuing whip need not be a councillor or member of the Municipal Party but, voting contrary to the directions to the whip attracts severe consequences not only to the member but also to the constituency to which he represents. Hence the violation of whip must be strictly construed. There should be specific authorization to the person issuing whip.

12. Shri. V. D. Sapkal, learned counsel for the petitioner in Writ Petition No. 8769 of 2018 argued that, the Collector has shown undue haste and has not followed proper procedure while effecting change in Gatneta. The appointment of respondent No. 8 – Nitin Mali as Gatneta itself was illegal and issuance of whip by him has no value. The facts disclose suspicious circumstances indicating that there was no meeting held by respondents No. 4 to 8 and the documents were fabricated later on. Hence, the Collector should not act upon the representations of respondent No. 8 as against the petitioner.

13. Shri. V. J. Dixit, learned Sr. Counsel holding for Shri. A. N. Nagargoje, learned advocate for respondents No. 4 to 8 argued as per the case put up by respondent No. 8 in his affidavit-in-reply.

14. We have also heard Smt. V. N. Patil – Jadhav, learned Assistant Government Pleader for respondents No. 1 and 2 and Shri. R. L. Kute, learned advocate for respondents No. 9 and 10.

15. Considering the facts on record and after giving thoughtful consideration, we find that the initial appointment of the petitioner as Gatneta of Municipal Party consisting of BJP is not in dispute. Municipal councillors were elected on 23.04.2015. The meeting was held and the resolution was passed by all the councillors unanimously, elected the petitioner as Gatneta. He was given specific powers to issue whip and it was also declared that he would continue as Gatneta till the expiry of the term of constituency. There is no dispute on this point. The issue raised before us is about change of Gatneta.

16. There is provision in Maharashtra Municipal Corporation Act u/s 19-IA and 19-IAA to appoint leader of the house and leader of opposition. On carefully going through the provisions of the Maharashtra Municipal Council Act, 1965, it is found that there is no similar provision for selection of Gatneta or the Leader of Opposition. The provision for selection of leader of Municipal Party is under the Maharashtra Local Authority Members' Disqualification Rules, 1987. The relevant provision is as under.

R-2(B-1)(i): Leader, in relation to a municipal party, means a Councillor chosen by each political party or aghadi, front, in Municipal Corporation 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 absence of the leader or discharge the functions of the leader of such party, or aghadi, or front, for the purposes of these Rules.

17. Thus, it is apparent that the post of leader of Municipal Party in Municipal Council as distinguished from the same as in Municipal Corporation is not a post of office. The leader has to be selected under the provisions of the Maharashtra Local Authority Members' Disqualification Rules for the purpose of those rules. In **Databhau Annasaheb Pathrikar v. State of Maharashtra & Ors.** 2007 (3) Bom. C. R. 667, it is observed that, 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.

18. These observations are made in respect of the Municipal Party of a Corporation and with respect to leader of opposition u/s 19-IAA. Nonetheless, these provisions will be applicable in respect of change of leader of Municipal Party under the Disqualification Rules.

19. In Mangesh Tambe's case (supra), we have held that, if there is a rule to the contra, the said rule will have to be amended

first before effecting change in Gatneta. In the present case, admittedly, the petitioner was unanimously appointed as the leader of Municipal Party and the rules furnished to the Collector unanimously by the members of the Council gave him right to continue till the end of the term of the office of councillors. It was necessary to change this rule first before changing the Gatneta.

20. We find that, the appointment of leader of Municipal Party involves political questions and political overtones. As held in Databhau Pathrikar's case (supra), this court will be always very slow to exercise writ jurisdiction in such matters, however, in the present case, the petitioner Sunil Kale on the basis of his appointment as leader of Municipal Party issued a whip on 24.11.2017, copies of the said whip were issued to all the members by R.P.AD. and he had also published the said news in daily newspaper 'Lokmat'.

21. Contrary to the above, respondents No. 4 to 8 claimed that, they held a meeting on 25.11.2017. In that meeting, respondent No. 8 – Nitin Mali was elected as leader of Municipal Party. As per admitted facts, respondent No. 8 submitted proposal for change of Gatneta on 27.11.2017 before the Collector and the Collector has immediately accepted the said proposal on the same day. Thereafter, respondent No. 8 – Nitin Mali has issued another whip. It is claimed that copies thereof were sent to the members.

22. Admittedly, on 28.11.2017, at the time of election of President and Vice-President there was a split in the party. Respondent Nos. 4 to 8 voted for respondent No. 4 – Rohini Jawale whereas the petitioner and respondents No. 9 and 10 have voted for the petitioner. The petitioner got elected.

23. The rules submitted by respondent No. 8 to the Collector also disclose authority granted to him to issue whip. Legality apart, it is a matter of fact that there was violation of both the whips. The whip issued by the petitioner was violated by respondents No. 4 to 8 while whip issued by respondent No. 8 was violated by the petitioner and respondents No. 9 and 10. Thus, this is not a simple issue of leader of Municipal Party involving only political questions. The dispute involves violation of whip which can have civil consequences of disqualification of the members duly elected by the people.

24. Considering these facts, we find that it is not only permissible but very much essential to invoke the writ jurisdiction in this case. The main issue for our consideration is whether the Collector (R-2) acted in legal and proper manner while accepting the change of leader of municipal party.

25. In this regard, we find that the petitioner was duly elected leader of the Municipal Party and was working as such for 2½ years.

His selection was unanimous. On 27.11.2017, a proposal for change of leader of Municipal Party was placed before the Collector and on the same day, he has accepted the same. In this regard, the following points will have to be noted.

- (i) The proposal for change of leader of Municipal Party was signed by only 5 members out of 8.
- (ii) There are no details submitted to the Collector about the meeting held for change of leader of Municipal Party.
- (iii) The declarations filed disclose that the meeting was held on 25.11.2017. Copy of the said resolution is on record. There is no document to show that, due notice of the same was issued to all the members as per the provisions of law or self-governing rules.
- (iv) The resolution and the declaration show that the meeting was held on 25.11.2017 whereas the letter given to the Collector dt. 27.11.2017 shows that it was held on the same day.
- (v) It appears that, the documents for making submission or proposal of Gatneta were prepared by using the earlier documents submitted at the time of selecting the petitioner as leader of Municipal Party and by using copy/cut-paste technique.
- (vi) It is shown that, Sanjay Savkare, MLA of Bhusawal was leader of the party on both the occasions.
- (vii) Clause 4 of the Rules provided that, the rules framed at the time of registration of the gut would be continued to be applicable to the working of the party and those would be binding on the parties. This rule has not been changed but it is maintained. It nowhere reflects that the rule providing for continuation of the petitioner as Gatneta till the end of the term was changed.

26. We find that the respondent No. 2 – Collector made undue and suspicious haste in accepting the proposal without giving any

opportunity of hearing to the petitioner. At the time of earlier proposal in May-2015, the petitioner was unanimously selected by all eight members and all the members were present before the Collector, still the proposal was accepted after eight days, whereas in the present case the issue was about change of leadership. The leaders and two other members were not present at the time of meeting and were not signatories to the proposal. There are circumstances indicating that the Collector should have carefully verified the facts before accepting the said proposal. He could not have blindly accepted the same.

27. In Sadashiv H. Patil's case (supra), in respect of the same issue about disqualification under the same Rules, it is held by the Apex 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 on 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.”

. In this matter, it was held that there should be direct and specific intentions spelt out giving authority to a particular person to

issue whip and such person need not be a councillor or member of Municipal Party.

28. Learned advocate for the petitioner relied on Automotive Tyre Manufacturers Association's case (supra), (para 76 to 83) the principles of natural justice have equal applicability to quasi judicial or administrative decisions and the opportunity of hearing should be given to the parties which are likely to aggrieved by decisions or orders.

29. We find that, in the facts situation referred to above, the petitioner was entitled to get opportunity of hearing. The Collector erred in not giving opportunity of hearing before effecting the change.

30. In the present case also, the Collector was aware that the elections of President and Vice-President were to be held on 28.11.2017. Apparently, there was split in the BJP party. One party was led by the petitioner who was earlier unanimously elected as leader of Municipal Party. The other party / respondent Nos. 4 to 8 elected respondent No. 8 as Gatneta. In the light of this controversy, the Collector ought to have been more vigilant and should have taken the decision with utmost care.

31. In Mangesh Tambe's case (supra), we have held that, the legality of the meeting whereby the change is to be effected has to be considered by the Collector. In **Narendra S/o. Gotu Pardesi V. Mayor, Dhule Municipal Corporation, Dhule and others** [2007(6) Mh.L.J. 216], in connection with recognition of leader of opposition, it was observed that, there was no provision in the Act stipulating how the Mayor is to decide as to whether the councillor has the support of the numerical strength of councillors from his party. Mayor may satisfy himself in this regard in such manner as he deems fit. Thus, the personal satisfaction of the Collector about the claim of change of leadership was essential before accepting the said proposal.

32. In Sunil Kale's case (supra), it is observed thus:

“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.”

33. Thus, the change in the leadership of Municipal Party has to be effected in the same manner in which the leader of Municipal Party is elected. It is observed in Databhau Pathrikar's case that, before arriving at any decision Mayor has to satisfy himself about the aspect relating to the provisions of Section 19-1AA of the Maharashtra Municipal Corporation Act. The same rule will be applicable in the present case.

34. It is not for us to consider whether the meeting has actually taken place on 25.11.2017 or not and whether it was held as per the provisions or not and whether respondent No. 8 is duly elected as leader of Municipal Party in substitution of petitioner or not. It is for the Collector as a competent authority to decide the same in the light of the provisions and the rule. We find that the Collector has not followed the principles of natural justice and has not satisfied himself before acceptance of proposal and effecting change in the leader of Municipal Party. Hence communication by letter dt. 27.11.2017 is not sustainable and same deserves to be quashed and set aside.

35. The fate of both the writ petitions depend upon the Collector's decision about the change of leadership. The disqualification of the members will also depend upon this decision. In the result, we do not want to record any findings on the merits of the other prayers. The Collector being the competent authority shall decide afresh on the issue of change of leadership and thereafter decide on the issue of disqualification.

36. In the result, both the petitions are partly allowed. The impugned communication by the Collector, Jalgaon accepting the change of leadership of BJP by substitution of respondent No. 8 in

place of petitioner is hereby set aside. The Collector, Jalgaon, is directed to give opportunity of hearing to the petitioner and he shall verify the correctness and legality of the claim made by respondents No. 4 to 8 regarding change of leadership. After due verification, he shall take proper decision expeditiously. Thereafter, he shall proceed to decide the applications filed by both the parties for disqualification of members of the opposite groups. The parties aggrieved by the decision taken by the Collector shall be at liberty to avail appropriate remedies against the said decision. Till deciding the issue about change of leadership, he shall not proceed with the proceedings filed by both the parties for disqualification of each other. Needless to state that, he shall decide the applications expeditiously.

37. Rule is made absolute in the above terms with no order as to costs.

[A. M. DHAVALE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE