

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

WRIT PETITION NO.10123 OF 2018

Shri Mangesh s/o. Sudhakar Tambe,
Age: 45 years, Occup : Private Service,
Elected Councillor, Municipal Council,
Parola, R/o : "Shailja Niwas" Maharani
Laxmi Road, Motha Mahadeo Chowk,
Parola, Ta. Parola, District Jalgaon

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department
Mantralaya, Mumbai – 32.
2. The Collector, Jalgaon.
3. The Municipal Council, Parola,
Through : its Chief Executive Officer.
4. Shri Deepak Pandharinath Anushtan,
Age: 38 years, Occup. Business &
Councillor, Municipal Council, Parola,
R/o. 11, Venkatesh Nagar, Parola,
Ta. Parola, District Jalgaon.
5. Sau. Varsha Sudhakar Patil,
Age: Major, Occup. Elected Councillor,
Municipal Council, Parola
R/o. "Aai Niwas" Wardhman Road,
Undirkheda Road, Parola,
Ta. Parola, Dist. Jalgaon.

.. RESPONDENTS

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Mr.V.D.Sapkal, Advocate for the Petitioner
Mr.K.N.Lokhande, AGP for the Respondent /
State
Mr.P.B.Gamot, Advocate for respondent no.4
Respondent nos.3 and 5 served.

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 27.11.2018
Pronounced on : 10.01.2019

ORDER: [Per S.S.Shinde, J.]:

1] Learned counsel appearing for the petitioner submits that, the petitioner was elected as 'Gat Neta' of the Shiv Sena Party in the Municipal Council, Parola. Since he was unanimously chosen as Gat Neta of Shiv Sena Party, he would be Gat Neta and Party President of the Municipal Council, Parola. Whether to call meeting of councillors from Shiv Sena Party would be within exclusive power / domain of the present petitioner? The constitution, which was registered with the Collector within 30 days from the declaration of the result of the general

elections of the Municipal Council, Parola, clearly suggested that, the petitioner would continue as Gat Neta of the Party, till the general elections of the Municipal Council Parola, would be held. There is no provision to amend the constitution, which was registered with the Collector unanimously within 30 days from the date of declaration of result of election of the Municipal Council, Parola, till the next elections of the Municipal Council, Parola, is held. There is no provision for calling the meeting by any other person other than the present petitioner. Even the petitioner can not call the meeting for change of the constitution, because there are no provisions made in the Constitution for change of the constitution. In this situation, the meeting, which was called by respondent no.5 for change of the Constitution, was not only illegal, but it was arbitrary, and contrary to the

Constitution, which was registered with Collector. The entire exercise by respondent nos.4 and 5 for calling the meeting, passing Resolution under their Chairmanship, was not contemplated in the Rules, and therefore, the said Resolution was the outcome of illegal exercise. It is submitted that, when it is a party affair governed by the Rules, the Collector cannot hold that, there emerges such a situation for calling the meeting by respondent no.5. It is submitted that, the observations made by the Collector in the impugned judgment and order that, respondent nos.4 and 5 have followed the principles of natural justice, are out of context since there was no power for calling such meeting. It is only the petitioner, who is entitled to call the meeting of the councillors of Shiv Sena Party being Gat Neta. It is submitted that, when respondent no.5 or other councillors were not entitled to call

meeting, the question of further conducting meeting and observance of the principles of natural justice would not arise.

2] Learned counsel appearing for the petitioner submits that, respondent no.5 and other councillors made attempt to call the meeting. The petitioner assailed the communication of the Collector, Jalgaon, issued on 15.12.2017, declaring Deepak Anushthan as Gat Neta (Group Leader) of the party, by way of filing Writ Petition No.15218/2017. The said Writ Petition was allowed by the Division Bench [Coram : S.V.Gangapurwala & A.M.Dhavale, JJ.] on 27th April, 2018, and the aforesaid impugned communication was quashed and set aside by the High Court. In support of the aforesaid contentions, learned counsel appearing for the petitioner placed reliance upon the exposition in the case of Gajanan Subhashrao

Suryawanshi Vs. Sharad Namdeo Pawar & others¹.

3] Pursuant to the notices issued to the respondents, respondent nos.1 and 2 have filed affidavit in reply. Learned AGP appearing for the respondent – State relying upon the said affidavit in reply submits that, earlier the petitioner herein filed Writ Petition No.15218/2017 and taking note of the judgment and direction issued therein and after following due process of law, the respondent authority has passed the impugned order on 28th August, 2018. It is submitted that, on perusal of the constitution of the Shiv Sena Party Aghadi, it nowhere restricts the member of the Aghadi to call meeting, nor gives exclusive right to the petitioner to call a meeting for Aghadi. The said constitution does not speak that, meeting called by the other members of the Aghadi

1 2013 [6] Bom.C.R. 806

shall be deemed illegal or unauthorized. It is submitted that, the case before respondent nos.1 and 2 was for making changes / amendments in the constitution of Shiv Sena Aghadi, and it was not the proceeding for changing or electing Gat Neta. The prayer and demand of the applicant before the respondents was of carrying out amendment in the constitution, and not for change or election of new Gat Neta. Learned AGP also invites our attention to the reasons assigned in the proceedings before the Collector, Jalgaon, and submits that, since other four councillors of Shiv Sena Party attended the meeting, and keeping in view the fact that, such meeting was conducted by respondent no.5 after following due procedure, the decision taken in the said meeting was approved by the District Collector, Jalgaon.

4] We have given careful consideration to the submissions of the learned counsel

appearing for the petitioner, learned AGP appearing for the respondent-State and its Officials, and learned counsel appearing for respondent no.4. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, and the reasons assigned by the District Collector, Jalgaon, in the proceedings initiated before him by respondent no.4 for granting / recording amendment in the constitution of the Shiv Sena Party. Upon careful perusal of the impugned order passed by the Collector, it appears that, proper issues were framed; the Collector satisfied himself that, there exists adequate and sufficient reason to call meeting for carrying out the amendments in the constitution of the Aghadi. The Collector has also considered, whether the members of the Aghadi have power to call meeting for carrying out an amendment in the constitution

of the Aghadi? and the said issue has been answered in the affirmative that the said meeting called by respondent no.5 and attended by other members was conducted by following lawful procedure.

5] The contention of the learned counsel appearing for the petitioner that, only the petitioner can call meeting and other members had no authority to call meeting, deserves no consideration, for simple reason that, all other four members of Shiv Sena Party called the said meeting. It appears that, proper procedure was followed for calling such meeting, and thereafter, conscious decision has been taken by the other four members to apply for change in the constitution. The majority members of the Aghadi itself have taken decision to change the constitution, and accordingly, applied to the respondent – Collector to report change made in the constitution of Aghadi, and not

about report of change of group leader. It appears from the copy of minutes of meeting conducted by respondent nos.4 and 5 that, four members of the Aghadi were in favour of the change.

6] In that view of the matter, we do not think this is a fit case to invoke extraordinary writ jurisdiction and to grant relief as prayed for by the petitioner. Hence the Writ Petition stands rejected.

[K.K.SONAWANE]

JUDGE

[S.S.SHINDE]

JUDGE

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