

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2232 OF 2021

Shyam M. Agarwal	...	...Petitioner
v/s.		
State of Maharashtra & ors.		...Respondents

...

Mr.Ranjit Thorat, Sr.Advocate i/b Mainak Adhikary for the Petitioner.
 Mr.Gautam J. Jain i/b Mr. Manoj J. Bhatt for Respondent No.2.
 Mr.Ram Apte, Sr.Advocate a/w Mr. N.R.Bubna for Respondent No.3.
 Mr.Mandar Limaye for Respondent No.4.
 Mr.K.S.Thorat, AGP for the Respondent-State.

**CORAM : A.A. SAYED &
S.G.DIGE, JJ.**

DATED : 9 May 2022

ORDER: (Per A.A.Sayed, J.)

1 The above Writ Petition is filed by the Petitioner essentially challenging the decisions of the Respondent No. 3-Mayor whereby the Petitioner has been removed from the post of Leader of the House of the Respondent No. 2-Bhiwandi Nizampur City Municipal Corporation and later replaced by the Respondent No. 4-Vikas Sakharam Nikam as a new Leader of the House.

2. The Respondent No.1 is the State of Maharashtra. The Respondent No.2 is Bhiwandi Nizampur City Municipal Corporation (hereinafter referred

to as “Respondent No. 2-Corporation”), Respondent No.3 is the Mayor of the Respondent No. 2-Corporation. Respondent No. 4 is the newly appointed Leader of the House of the Respondent No. 2-Corporation in place of the Petitioner.

3. The Petitioner is an elected Councillor from Ward No.22-C of the Respondent No. 2-Bhiwandi Nizampur City Municipal Corporation in the elections held in the year 2017. On 22.01.2021, the Petitioner was appointed as a Leader of the House of the Respondent No. 2-Corporation by the Respondent No. 3-Mayor.

4. The case of the Petitioner is as follows:

(i) Pursuant to the letter dated 16.12.2020 of Shri Hanuman Ramu Chaudhari, the group leader of the Bharatiya Janta Party (BJP) in the Respondent No. 2-Corporation informing the Respondent No.3-Mayor the intention of the party to appoint the Petitioner as the Leader of the House under section 19-1A of the Maharashtra Municipal Corporation Act,1949 (hereinafter referred to as “the said Act”), the Petitioner was declared as the Leader of the House by the Respondent No.3-Mayor in the meeting held on 22.01.2021.

(ii) On 12.03.2021, in the General Body Meeting of the Respondent No. 2-Corporation, Respondent No. 3-Mayor declared Smt. Kamini Ravindra Patil, BJP Councillor from Ward No. 18(A), as the new Leader of House in place of the Petitioner. By the impugned letter dated 15.03.2021, the Respondent No. 2-Corporation informed the said decision of the Petitioner. However, Smt. Kamini Ravindra Patil declined to accept the post of Leader of the House and by her letter dated 15.03.2021 addressed to the Respondent No. 3-Mayor, asserted that it was the BJP's decision to appoint the Petitioner as the Leader of the House and requested to continue the Petitioner as the Leader of the House.

(iii) By the impugned letter dated 16.03.2021 addressed by the Respondent No. 2-Corporation, the Petitioner was informed about the decision of appointment of Respondent No.4-Vikas Sakharam Nikam as the Leader of the House of the Respondent No. 2-Corporation.

(iv) The Congress Party was having the greatest numerical strength in the Respondent No. 2-Corporation. However, in view of the cross-voting by a faction of 18 Councillors of the Congress Party, the Congress Party has chosen to sit in the opposition. Shri

Javed Dalvi Gulam Mohammad, belonging to the Congress Party was appointed as the Leader of the Opposition in Respondent No. 2-Corporation as per section 19-1AA of the said Act and was recognized by the Respondent No. 3-Mayor as the Leader of the Opposition. Therefore, the Congress Party is not entitled to have a say in the appointment of the Leader of the House.

(v) Under section 19-1A of the said Act, it is the duty of the Respondent No.3-Mayor to appoint the Leader of the House of the party having the greatest numerical strength and the power to choose the candidate for the same lies only with the party and the Respondent No.3-Mayor has no authority to remove the Petitioner as Leader of the House without the consent of the party i.e. the BJP in the present case, which is the ruling party. Any change of the leader of the Municipal party is to be effected by the party and not by any outsider. The decision of the Respondent No. 3-Mayor is on the basis of alleged personal remarks by Petitioner against the Respondent No. 3-Mayor and her family. Therefore, the decision of the Respondent No.3-Mayor to remove the Petitioner from the post of the Leader of the House is illegal and arbitrary.

5. On the other hand, the case of the Respondent No. 3-Mayor and the Respondent No. 4 (newly appointed Leader of the House) is that the BJP is not the party having the largest numerical strength in the House. The party having the largest numerical strength is the Congress Party. By letter dated 15.03.2021, the group leader of the Congress Party nominated and supported the Respondent No. 4 for the post of Leader of the House. The Petitioner is nominated and supported by BJP having the strength of 20 Councillors, whereas the Respondent No. 4 is nominated and supported by Congress Party and Konark Vikas Aghadi having a total strength of 51 Councillors in the House of 90 Councillors. It is in these circumstances, the decision was taken to appoint the Respondent No. 4 as the Leader of the House of the Respondent No. 2-Corporation and the action was in accordance with law and in conformity with the provisions of the said Act.

6. We have heard learned Senior Counsel for the Petitioner, learned Counsel for Respondent No. 2-Corporation, learned Senior Counsel for the Respondent No. 3-Mayor and learned Counsel for the Respondent No. 4.

7. Before considering the challenge raised in the Petition, it is necessary to note the position of the successful elected Councillors of various political parties in the Respondent No. 2-Corporation after the elections in the year 2017. It is extracted hereunder:

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Sr.No.	Name of Party	No. of Councillors
1.	Indian National Congress	47
2.	Bhartiya Janata Party	20
3.	Shivsena	12
4.	Konark Vikas Aghadi	11
	Total	90

8. The Petitioner was declared as the Leader of the House by the Respondent No.3-Mayor on 22.01.2021. On 26.02.2021, the Respondent No. 3-Mayor in a letter addressed to the President, BJP, stated that after being appointed as the Leader of the House, the Petitioner has started defaming her and her family members thereby bringing disrepute to the post of the Leader of the House. It was further stated in the said letter that in the next General Body Meeting, the Respondent No. 3-Mayor will remove the Petitioner from the post of Leader of the House. On 12th March, 2021, in the General Body Meeting of the Respondent No. 2-Corporation, the Respondent No. 3-Mayor declared that she is appointing Smt. Kamini Ravindra Patil belonging to BJP as a Leader of the House in place of the Petitioner. The said Smt. Kamini Ravindra Patil, however, by her letter dated 15.03.2021 to the Respondent No. 3-Mayor stated that she cannot accept the post of Leader of the House as BJP has chosen the Petitioner as the

Leader of the House. The Respondent No. 3-Mayor thereupon appointed the Respondent No. 4 as the Leader of the House on 16.03.2021.

9. The contention on behalf of the Petitioner is that the Respondent No. 3-Mayor without having any authority, has illegally appointed the Respondent No. 4 as the Leader of the House and the same is communicated to the Petitioner vide the impugned letter dated 16.03.2021 of the Respondent No. 2-Corporation. On the other hand, the contention on behalf of the Respondent No. 3-Mayor and Respondent No. 4 is that the Respondent No. 4 is appointed as a Leader of the House in view of the letter dated 15.03.2021 of the group leader of the Congress Party supporting the candidature of the Respondent No. 4. It is contended that the Respondent No. 4 enjoys the support of the Congress Party and Konark Vikas Aghadi having strength of 58 Councillors in the House consisting of 90 Councillors.

10. The issue for consideration in the Petition is whether the Respondent No. 3-Mayor has committed any illegality or has acted contrary to the provisions of the said Act in removing the Petitioner as the Leader of the House and appointing the Respondent No. 4 as the Leader of the House. For deciding the controversy, it would be necessary to advert to sections 19-1A and 19-1AA of the said Act. The said sections are extracted hereunder:

19-1A. Leader of House –

(1) An elected Councillor who is, for the time being, the Leader of the Party having the greatest numerical strength and recognized as such by the Mayor shall be the Leader of the House.

Explanation.—When there are two parties in ruling having the same numerical strength, the Mayor shall, having regard to the status of the Party, recognize the Leader of any one of such parties to be the Leader of the House.

(2) There shall be paid to the Leader of the House such honoraria and allowances and other facilities as may be provided by regulations made in this behalf by the Corporation.

19-1AA – Leader of Opposition –

(1) 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.

Explanation.— Where there are two or more parties in the opposition, having the same numerical strength, the Mayor shall, having regard to the status of the party, recognize the Leader of any one of such parties as a Leader of the Opposition for the purposes of this Act and such recognition shall be final and conclusive.

(2) There shall be paid to the Leader of the Opposition such honoraria and allowances and other facilities as may be provided by regulations made in this behalf by the Corporation.

11. It is an admitted position before the Court that the Congress Party having 47 Councillors in the Respondent No. 2-Corporation has the greatest numerical strength in the Respondent No. 2-Corporation. It is also an admitted position that in view of the cross-voting by a faction of 18 Councillors belonging to the Congress Party, the Congress Party alongwith

12 Councillors of Shiv Sena decided to sit in opposition in the Respondent No. 2-Corporation and pursuant to the request of Congress Party, the Respondent No. 3-Mayor recognized Shri Dalvi Javed Gulam Mohammad belonging to the Congress Party as a Leader of the Opposition. The BJP with 20 Councillors thus has the highest numerical strength and is the party in ruling.

12. On plain reading of section 19-1A it is apparent that the Leader of the Party having greatest numerical strength is to be appointed as the Leader of the House. The Congress Party, which has decided to sit in opposition and at whose instance and request the Respondent No. 3-Mayor has recognized Shri Dalvi Javed Gulam Mohammad belonging the Congress Party as a Leader of the Opposition, can have no role or say in the matter of appointment of the Leader of the House.

13. In ***Sanjay Devram Bhoir & Anr vs. Moyor, Thane Municipal Corporation***, the Division Bench of this Court (Coram: S. A. Bobde & Mridula Bhatkar, JJ.) in its decision dated 6th July, 2012 in WP/3732/2012 while construing section 19-1AA which deals with the Leader of the Opposition, has held as under:

“7. On a plain reading of Section 19-IAA, we find that the mandate of the section is that the Leader of the party in opposition which

has the greatest numerical strength alone must be recognized by the Mayor as a Leader of the opposition. On a true construction of the entire section, including the explanation, leads to the conclusion that the provision casts a duty on the Mayor to recognize the Leader of the party in opposition by the only criteria laid down by the section i.e. the greatest numerical strength of a party in opposition. Thus, the section casts an obligation on the Mayor to determine, firstly, which party in opposition has the greatest numerical strength and then recognize the Leader of that party as a Leader of the opposition. The law in plain terms does not give the Mayor any choice as to who should be recognized as a Leader of the opposition but, on the other hand, mandates the recognition of a Leader of an opposition party which has the greatest numerical strength. In the present case, therefore, the contention on behalf of the petitioners that the Mayor ought to have chosen the Leader of NCP as the Leader of opposition since it is that party which had the greatest numerical strength deserves to be accepted.”

14. Section 19-1A and section 19-1AA are couched in same language. Though the Division Bench in the above case was construing section 19-1AA which deals with the appointment of Leader of the Opposition, the same principle would apply to section 19-1A which deals with the appointment of Leader of the House. The Division Bench while construing the section 19-1AA has held that section 19-1AA casts a duty on the Mayor to recognize the Leader of the party in opposition by the only criteria laid down by the said section i.e. the greatest numerical strength of a party in opposition and that the said section casts obligation upon the Mayor to determine firstly which party in opposition has the greatest numerical strength and then recognize the Leader of that party as the Leader of the Opposition and the law does not

give Mayor any choice as to who should be recognized as a Leader of the Opposition. Applying the principle as laid down by the Division Bench, we hold that section 19-1A also casts a duty and obligation upon the Mayor to determine firstly which party in ruling has the greatest numerical strength and then recognize the Leader of that party as the Leader of the House and the law does not give the Mayor any choice or discretion as to who should be recognized as a Leader of the House.

15. In **Anis Khalil Momin Vs Commissioner, Municipal Corporation for the City of Bhiwandi Nizampur & Ors. 2005(1) ALL MR 1**, the Division Bench of this Court (Coram: A. P. Shah & S. U. Kamdar, JJ) has considered a case where the Petitioner therein belonged to the Samajwadi Party which was the largest party in numerical strength in the opposition and held that the Petitioner therein ought to have been recognized as the Leader of the Opposition in Bhiwandi Nizampur Municipal Corporation (the same Corporation as Respondent No. 2 herein). The Division Bench has referred to the provisions of Maharashtra Local Authority Members Disqualification Act, 1987. The Division Bench followed the decision of another Division Bench (Coram: CJ & Dr. D. Y. Chandrachud, JJ) in **Rohidas Shankar Patil Vs. Smt. Mayra Gilbert Mendosa & Ors, 2003(2) ALL MR 792**. In paragraph nos. 11 to 13, the Division Bench has held as follows:

11. The learned counsel for the petitioner drew our attention to an unreported decision of this Court delivered by the Division Bench comprising of the Hon'ble the Chief Justice and Dr D.Y. Chandrachud J, in Writ Petition No. 6798 of 2002 (Rohidas Shankar Patil vs Smt. Mayra Gilbert Mendosa and ors) 2003(2) ALL MR 792. That was also a case of recognition to the post of Leader of the Opposition. In that case, the INC was the second highest in numerical strength and the member of the said party was recognised as the Leader of the Opposition. It was contended that there was an alliance or understanding between the Nationalist Congress Party and INC and, therefore, INC should be regarded as a party in ruling along with the Nationalist Congress party. The learned Chief Justice speaking for the Bench observed:

"21. The question which we are called upon to decide is, whether INC can be said to be party in opposition and whether respondent no.4 could have been recognised as leader of the party in opposition. According to the petitioner, INC is a party in ruling and party in ruling cannot be considered and recognised as party in opposition. In the circumstances party in opposition can be any party other than NCP and INC. From those parties, Leader of Opposition can be recognised. Now, considering other parties i.e. parties in opposition, BJP is the only party which is having greatest numerical strength. The said party, therefore, ought to have been recognised as such by the first respondent and the petitioner ought to have been recognised as leader of the party in opposition."

"22. We are unable to uphold the contention of the learned counsel. So far as pre-election aghadi, yuti, front or alliance is concerned, it has been clearly refuted and denied by the respondents. Affidavits have been filed by respondent nos.1, 3 and 4 asserting that the allegation levelled by the petitioner is incorrect and misleading. It is further stated that, there was no formal pre-election alliance between NCP and INC. That apart, both the parties contested the election against each other in several Wards. In the circumstances, it cannot be

said that there was pre-election alliance between NCP and INC."

(emphasis supplied)

12. Mr Jahagirdar and Mr. Damle, learned counsel appearing for respondent nos. 2 and 3 strenuously contended that the Samajwadi Party was a party in ruling and, therefore, it cannot get recognition as a Leader of Opposition. In order to support this submission, it was argued that there can be more than one party in ruling and such a situation has been recognised even by the Legislature. Explanation to section 19-1A clearly deals with the situation when there are two parties in ruling having the same strength by laying down how Mayor should be elected. The learned counsel are not wrong in interpreting the explanation. However, the question is whether there is any material on record to substantiate the claim that there was alliance between the INC and Samajwadi Party. In the absence of any such material we are unable to hold that INC and Samajwadi Party should be regarded as parties in ruling as contemplated by section 19(1)(A). It is an admitted position that there was no aghadi or pre-election alliance between these two parties and in fact in certain Wards both the parties contested the election against each other. The provisions of the Maharashtra Local Authority Members Disqualification Act, 1986 specifically rules out any post alliance between the political parties. In any event, there is not an iota of material to show that the INC and Samajwadi Party had post poll alliance. We have, therefore, no hesitation to hold that Samajwadi Party cannot be treated as a party in ruling.

13. The learned counsel for respondent nos. 2 and 3 urged that earlier one Javed Dalvi was appointed as Leader of Opposition and this appointment was not challenged by the Samajwadi Party and this shows that Samajwadi Party had an alliance with INC. We are not impressed by the submission of learned counsel. It is seen from the record that respondent no. 2 had initially appointed of Santosh Shetty was challenged in this court and was stayed. Thereafter respondent no. 2 again appointed one Javed Dalvi who was also elected as an independent. The appointment of Javed Dalvi was also not in consonance with section 19(1)(AA). Merely because the appointment of Javed Dalvi was not

challenged by the Samajwadi Party does not lead to the conclusion that the Samajwadi Party was a party in ruling. The learned counsel also contended that in **the letter of request the** Samajwadi Party has not specifically mentioned that it is a party sitting in opposition. The submission is stated only to be rejected by that the Samajwadi Party specifically asked the Mayor to give recognition to the petitioner as Leader of the Opposition. So it is obvious that the Samajwadi Party was claiming that it was party in opposition.

16. In the present case the party in ruling in the Respondent No. 2-Bhiwandi Nizampur City Municipal Corporation comprises of 20 Councillors from BJP, 4 Councillors from Konark Vikas Aghadi, 4 Councillors from RPI, 2 Councillors from Samajwadi Party and 1 independent Councillor. The BJP having 20 Councillors has the greatest numerical strength. Hence, only the leader of the BJP who is nominated by BJP can be appointed as the Leader of the House. The Respondent No.4 who belongs to Konark Vikas Aghadi cannot be appointed and hold the post of Leader of House on the basis of the support given by Congress Party which is the party in opposition. It is required to be noted that the Congress Party being the party in opposition having the greatest numerical strength has already nominated Shri Javed Dalvi Gulam Mohammad who is a member of the Congress Party, as Leader of the Opposition and who has accordingly been recognized and appointed the Leader of Opposition by the Respondent No. 3-Mayor. The Congress Party therefore cannot have any role or say in the appointment of the Leader

of House. It is inconceivable that the Party in Opposition and whose member is appointed as Leader of the Opposition will dictate as to who should be appointed as Leader of House as that would be completely contrary to the principles of democratic setup and polity. The Respondent No. 3-Mayor ought not to have taken cognizance of the letter dated 15.03.2021 issued by the group leader of the Congress Party supporting the candidature of Respondent No. 4 as Leader of the House.

17. It is pointed out on behalf of the Petitioner that the decision to remove the Petitioner from the post of Leader of House is taken unilaterally by the Respondent No.3-Mayor as there was no discussion in the General Body Meeting held on 12 March, 2021 for the removal of the Petitioner from the post of Leader of House. It is further pointed out on behalf of the Petitioner that the BJP which is having the greatest numerical strength and party in ruling is supporting the Petitioner and has objected to decision of the Respondent No.3-Mayor to remove the Petitioner from the post of Leader of House vide letter dated 15th March, 2021 inter alia on the ground under the provisions of the Act, the Respondent No.3-Mayor has no authority to remove the Petitioner from the post of Leader of the House.

18. In the three judgments referred to earlier, viz. Sanjay Devram Bhoir & Anr vs. Mayor, Thane Municipal Corporation (supra), Khalil Momin vs. Commissioner, Municipal Corporation for the City of Bhiwandi Nizampur & Ors (Supra) and Rohidas Shankar Patil Vs. Smt. Mayra Gilbert Mendosa & Ors (Supra), the Division Bench in similar circumstances has entertained the challenge to the decision of the Mayor. We therefore do not see any merit in the contention of learned Counsel for the Respondent Nos. 3-Mayor and Respondent No. 4 that the Petitioner ought to have invoked the remedy under section 451 of the said Act, particularly when we find that there are no disputed question of facts involved. Moreover, we find that the issue raised in the Petition is essentially a point of law.

19 We are of the view that the decisions of the Respondent No. 3-Mayor is removing the Petitioner from the post of Leader of the House and appointing the Respondent No. 4 as Leader of the House is arbitrary and contrary to section 19-1A of the Maharashtra Municipal Corporation Act, 1949. Besides, from the letter dated 26.02.2021 of the Respondent No. 3 - Mayor, we find that the decision of Respondent No.3 - Mayor was taken for extraneous reasons.

20. In light of the above discussion, the impugned decisions of the Respondent No.3-Mayor to remove the Petitioner from post of Leader of House and appointing Respondent No.4 as Leader of House cannot be sustained and deserve to be set aside. We, therefore, quash and set aside the said decisions of Respondent No. 3-Mayor and the impugned letters dated 15.03.2021 & 16.03.2021 of the Respondent No.2-Corporation. In view of the subsequent events, which have been pointed out by learned Counsel for the Respondent No.2-Corporation at the time of pronouncement of this judgement, no further directions are necessitated.

21. The Petition is allowed in the aforesaid terms with no order as to costs.

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(S.G. DIGE, J.)

(A.A. SAYED, J.)