



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Writ Petition No.3812/2019

(Premnath S/o Atmaram Zhade Vs. The Collector, Nagpur & ors.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri F. Mira, Advocate for the Petitioner.
Ms. G. Tiwari, Assistant Government Pleader for respondent Nos. 1 & 2.

CORAM : S. M. MODAK, J.

DATE : 31.05.2019.

Heard the learned counsel for the petitioner and learned Assistant Government Pleader for respondent Nos. 1 and 2. The Collector respondent No. 1 has informed to the Chief Executive Officer, Wadi about change in the leader of Wadi Nagar Vikas Aghadi. Earlier, the present petitioner was the leader. However, as per the meeting held on 27.04.2019 (which is challenged by the petitioner) present respondent No. 3 is declared as leader of their Aghadi. The petitioner is challenging the validity of the said meeting and decision taken therein.

Issue notice before admission to the respondents returnable on 17.06.2019.

The learned Assistant Government Pleader waives notice for respondent Nos. 1 and 2.

There is also interim relief of stay to the impugned order dated 17.05.2019. Normally, today, the interim relief could not have been considered. But, there is meeting on 04.06.2019 called by the Collector in which the members of subject committees will



will be finalized. The Collector is supposed to consult the leader of the Aghadi in that behalf. In view of the challenge to the nomination of respondent No. 3, the issue arises about competency of leader of such Aghadi i.e. to say the petitioner or respondent No. 3.

The learned Assistant Government Pleader though tried her level best to verify about the holding of meeting on 04.06.2019, she could not get confirmation. The facts remain that the petitioner has averred by way of affidavit about the meeting to be held on 04.06.2019.

The main grievance of the petitioner is that he has been duly elected as the leader of the Aghadi and the Aghadi has also framed constitution/regulations dated 05.05.2015. His grievance is that even though there is provision for amendment in the Rules as per Clause 10, there is no specific provision in the Regulations for removal of the leader. For this reason, the petitioner is challenging the validity of the meeting dated 27.04.2019 called under the signature of the respondent No. 3 as Deputy Leader of the Aghadi. There are two subjects of the Agenda. Subject No. 2 is relevant. It talks about the appointing the new leader in place of petitioner.

The petitioner has protested to the said meeting as per his objection dated 23.04.2019. There are further correspondence in between the Chief Executive Officer and the Collector informing change of the leader and notifying the change.



The petitioners relied upon the judgment in case of Abdul Sajed S/o Abdul Sattar Vs. The State of Maharashtra & ors. in *Writ Petition No. 3683/2011* delivered by the Aurangabad Bench of this Court. In that case, the issue is that whether a person who is elected as a leader of a Aghadi, or Front in a local authority, can continue to act as such, till his terms as a councilor come to an end. The Aurangabad Bench of this Court has observed in para No. 26 is as under:-

“Taking a conspectus of the aforesaid judgment the proposition which emerges is that a person who has been elected to a particular post cannot be removed from that post, unless the statute under which he is elected specifically provides for such a step to be taken. In the present case no provision of law has been pointed out to us indicating that a leader of the Aghadi once chosen and treated as such both under the Disqualification Act, as well as the BPMC Act, can be removed. Furthermore, no rules were framed by the Aghadi in this regard.”

The learned Advocate Shri Mirza, for the petitioner read over the provisions Section 63(2-B) of the Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965. It deals with the consulting with the leader of the party of the group by the Collector while doing the exercise of nominating the councilors on the subject committees. He also read over the Rules 2(b-1)(i) of the Maharashtra Local Authority Members Disqualification Rules, 1987.

It is true that if the meeting is conducted on



04.06.2019, the Collector will have to consult with the respondent No. 3 and the members of the subject committee will be nominated. It is true that if that exercise will take place, it will lead with the multiplication of the proceeding. Prima-facie, I find that the Regulation No. 10 says about amendment or change in the Rules and prima-facie, I do not find any provision about change in the leader of the Aghadi in the said Regulations. So unless and until such provisions is incorporated in the regulations, the procedure for changing the leader of the Aghadi cannot be initiated. It has happened in this case. The petitioner is duly elected as a leader of Aghadi and he will lose the right to advise the Collector in nominating the members of the subject committee. So he has made out prima-facie case to grant interim relief. Hence, the order:-

(i) The effect of the communication dated 17.05.2019 addressed by the Collector to Chief Executive Officer is stayed till further date.

(ii) The meeting for nominating the members of the subject committee, if any to be organized on 04.06.2019 is also stayed.

JUDGE