

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.35394 OF 2009

Umesh Shrikant Shetye ...Petitioner

VERSUS

The Collector, Ratnagiri District ...Respondents
and others

WITH

S.L.P.(C) NO.35395/2009 & S.L.P.(C) NO.35396/2009

O R D E R

These petitions are directed against orders dated 18.6.2009 passed by the Division Bench of Bombay High Court whereby the writ petitions filed by the petitioners questioning the legality and correctness of the orders of District Collector, Ratnagiri (respondent No.1) who refused to disqualify the private respondents from the post of Councilor, Ratnagiri Municipal Council (for short, 'the Municipal Council') and simultaneously disqualified them were dismissed.

The election for Municipal Council, Ratnagiri were held in November, 2006. The petitioners and the private respondents contested the election as candidates of Nationalist Congress Party (NCP) and were declared elected. Out of 28 elected Councilors, 12 were from NCP, 6 from Shiv Sena, 6 from Bhartiya Janata Party (BJP), 3 from Indian National Congress (INC) and 1 was an independent. Subsequently, 1 Shiv Sena Councilor died and in the by-election another Shiv Sena candidate was elected. One Councilor of NCP was dis-qualified and in the by-election, another candidate of that party was elected.

Soon after the election, respondent Nos. 3 to 10 sent letter dated 20.12.2006 to respondent No.1 intimating him that they are forming a new party named 'Ratnagiri Vikas Aghadi Gat'. On the same day, they sent another letter to respondent No.1 and informed him that they have merged with INC. As a reaction to this, General Secretary of NCP sent letter dated 23.12.2006 to respondent No.1 that respondent Nos.3 to 10 stand disqualified because they deliberately absented from the meeting of the party and formed a new party. After some time, Umesh Shrikant Shetye, who is the sole petitioner in SLP(C) No. 35394 of 2009 and has been joined by Mrs. Ujwalla Umesh Shetya in the other two special leave petitions, filed a petition under Rule 6 of the Maharashtra Local Authority Members Disqualification 3

Rules, 1987 (for short, 'the Rules') for disqualification of respondent Nos. 3 to 10 on the ground that they left NCP on their own and did not attend meeting of the party. By an order dated 26.2.2007, respondent No.1 dismissed that petition. He held that before merger of respondent Nos.3 to 10 in INC, the new party i.e., Ratnagiri Aghati Vikas Gat did not come to existence as a separate group and that INC had accepted merger of the 8 Councilors of NCP and necessary amendment had been carried out in its constitution.

After three months, respondent Nos.3 to 10 addressed another letter to respondent No.1 informing him that they were rejoining NCP. Their request was accepted by the President of Ratnagiri District NCP, who also issued notice dated 9.6.2007 for holding meeting of the NCP Councilors on 14.6.2007. In that meeting, rejoining of respondent Nos.3 to 10 in the party was approved and one of them, namely, Sudesh Mayekar was appointed as Gatneta/Pratod of NCP in the Municipal Council. On 12.5.2008, NCP circulated a letter to all its members informing them about the impending meeting for election of the Vice-President. The

petitioners abstained from that meeting. Thereupon, respondent No.3 filed Petition No.3/2008 under Rule 6 of the Rules for their disqualification on the ground of violation of the party

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whip. During the pendency of that petition, the petitioners and two other members of NCP joined Shiv Sena. Thereafter, the petitioners filed Petition No.4/2008 for disqualification of respondent Nos.3 to 10 from the post of Councilor.

By an order dated 14.10.2008, respondent No.1 allowed Petition No.3/2008 and dis-qualified the petitioners. By another order of the same date, respondent No.1 dismissed Petition No.4/2008 filed by the petitioners for disqualifying respondent Nos.3 to 10.

The petitioners challenged the aforementioned two orders of respondent No.1 in Writ Petition Nos.7391, 7392 and 7411 of 2008, which have been dismissed by the impugned order.

Learned counsel for the petitioners submitted that the provisions contained in the Maharashtra Local Authority Members Disqualification Act, 1987 do not contemplate second merger and as respondent Nos.3 to 10 already joined INC, their so called return to NCP was sufficient to disqualify them and respondent No.1 and the High Court committed serious error by refusing to order their disqualification. Learned counsel argued that the object of the Act is to prevent defections in the elected bodies

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at the grass root and if the members elected on the ticket of one party are allowed to cross floors without any limitation, the very sanctity of party based elections will be lost and this will give rise to horse trading and unethical practices. Learned counsel for respondent Nos.3 to 10 referred to paragraphs 1(c), 2 and 4 of the Tenth Schedule of the

Constitution and submitted that even though the Act was enacted in the light of those provisions, confusion has been created due to erroneous drafting/printing of Section 5 thereof.

He then

submitted that the interpretation of Sections 3 and 5 of the Act by the High Court and its refusal to interfere with the orders of respondent No.1 do not suffer from any legal infirmity.

We have considered the respective submissions.

Paragraphs

1(c), 2 and 4 of Tenth Schedule of the Constitution, Sections 2 (i) and (j), 3(1) (a) and (b), 4 and 5 of the Maharashtra Local Authority Members Disqualification Act, 1987, which have bearing on this case are as under:

"1. Interpretation.- In this Schedule, unless the context otherwise requires,-

(a) to (b) xxx xxx xxx

(c) 'original political party', in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of

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paragraph 2;

(d) xxx xxx xxx

2. Disqualification on ground of defection.- (1)
Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

(a) if he has voluntarily gives up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.-For the purposes of this sub-paragraph,-

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,-

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been

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elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,-

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

4. Disqualification on ground of defection not to apply in case of merger.- (1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party-

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(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

Maharashtra Local Authorities Members
Disqualification Act, 1987

2. In this Act, unless the context otherwise requires,-

(a) to (h) xxx xxx xxx

(i) "municipal party", in relation to the Councillor belonging to any political party or aghadi or front in accordance with the Explanation to Section 3, means-

(i) in the case of a councillor of a Municipal Corporation, the group consisting of all the councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation.

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(ii) in the case of a councillor of a Municipal Council, the group consisting of all the councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation.

(j) "original political party", in relation to a councillor or a member, means the political party to which he belongs for the purposes of sub-section (1) of Section 3.

3. Disqualification on ground of defection.- (1) Subject to the provisions of Sections 4 and 5, a councillor or a member belonging to any political party or aghadi or front shall be disqualified for being a councillor or a member-

(a) if he has voluntarily given up his membership of such political party or aghadi or front; or

(b) if he votes or abstains from voting in any meeting of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Simiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in

either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention:

Provided that, such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;

Explanation:- For the purposes of this section-

(a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the

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political party or aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member;

4. Disqualification on ground of defection not to apply in case of split.- (1) Where a councillor, or as the case may be, a member makes a claim that he and any other member of the municipal party, Zilla Parishat party, or as the case may be, the Panchayat Samiti party constitute the group representing a faction which has arisen as a result of a split in his original political party or aghadi or front and where the total strength of the councillors or, as the case may be, members-

(A) does not exceed twenty and such group consists of one-half, or

(B) exceeds twenty and such group consists of one-third of the councillors of such municipal party, Zilla Parishad party, or as the case may be, the members of such Panchayat Samiti party-

(a) he shall not be disqualified under sub-section (1) of Section 3 on the ground-

(i) that he has voluntarily given up membership of his original political party or aghadi or front; or

(ii) that he has voted or abstained from voting in the meeting of such municipal corporation, Municipal Council, Zilla Parishad or as the case may be. Panchayat Samiti, contrary to any direction issued by such party or aghadi or front or by any person or authority authorized by any of them in that behalf without obtaining the prior permission of such party, aghadi, front, person or authority and such voting or abstention has not been condoned by such party, aghadi, front, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party or aghadi

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or front to which he belongs for the purposes of sub-section (1) of Section 3 and to be his original political party or aghadi or front for the purposes of this section.

(2) Notwithstanding anything contained in sub-section (1), a councillor, or as the case may be, a member shall be precluded from making such a claim as referred to in sub-section (i) for more than once during his term of office under the relevant municipal law or, as the case may be, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

5.A councillor or a member shall not be disqualified under sub-section (1) of Section 3 where his original political party or aghadi or front merges with another political party or aghadi or front and he claims that he and any other members of his original political party or aghadi or front -

(a) have become members of such other political party or aghadi or front or as the case may be, of a new political party formed by such merger, or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or aghadi or front or group, as the case may be, shall be deemed to be the political party or aghadi or front to which he belongs for the purpose of sub-section (1) of Section 3 and to be original political party or aghadi or front for the purpose of this sub-section.

(2) For the purposes of sub-section (1), the merger of the original political party or aghadi or front of a councillor, or as the case may be, a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of municipal party, Zilla Parishad party, or as the case may be, Panchayat Samiti party, concerned, have agreed to such merger."

In the impugned judgment, the High Court referred to Section

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5(1)(b) of the Act as printed in the official publication of the

Government of Maharashtra and observed that the printed

provision does not make any sense. The High Court then referred

to the statement of objects and reasons contained in the Bill

which led to enactment of the Act and observed:

"Considering the clauses in the Bill as introduced and the printing in the Official Gazette as stated earlier we had our own doubts whether Section 5(1) has been printed and/or as contended on behalf of the petitioner by learned counsel that Legislature had made amendments. We could have called on the State to produce the original of the Bill as passed by the State Assembly, but in our opinion that exercise is

not called for. If section 5(b) is read as printed in the Official Publication of the Maharashtra Gazette the same would not make any sense. It is true that in Section 5(1) there are changes from the Bill as introduced, whereas in the Bill the reference was only to Original Political Party, in section 5(1) apart from the original party reference is also made to aghadi or front and consequential changes in Section 5(a). The effect of Section would be that the members of such other political party or aghadi or front or a new political form by such merger or political party, group or aghadi which has not accepted the merger and opted to function as a separate group then from the time of such merger such other political party or new political party or aghadi or front or group shall be deemed to be political party or aghadi or front to which he belongs for the purpose of sub-section (1) of Section 3 and to be the original political party or aghadi or front for the purpose of this sub-section.

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A look, therefore, at the provisions of Section 5(1) will make it clear that after the comma in Section 5(1)(b) the part commencing from "and" must be read both with Section 5(1)(a) and 5(1)(b). The object of

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Section 5(1) is not to disqualify a Councilor, who may fall either in Section 5(1)(a) or Section 5(b). If the argument advanced on behalf of the petitioner is accepted then the object of the section would be defeated. The object being not to treat a Councilor as disqualified if the merger has the necessary number of Councilors.

The criticism on behalf of the petitioner in this Court reading the provision in such manner was that, it would lead to horse trading and defeating the very object for which the Legislation was enacted. We have to consider both aspects of the matter. A case where there may be political horse trading for gain and also a case where there are genuine mergers. It is in that context we have to examine Section 4(2) which has since been deleted. Under Sub-section (2) there was a bar from changing the membership of the Municipal Party, Zilla Parishad Party or Panchayat Samiti party than once. This has been subsequently deleted. This only indicates that where there is a split in the original party as set out therein the member would not be disqualified. As noted earlier, the Bill had not sought to protect the disqualification of members of aghadi or front but the Bill as passed by the Legislature and indicated in the Act also gives protection to member of the aghadi or front. The consequence of that would be that the party, aghadi or front after the merger becomes the original political party, then subject to Section 5, the member would not stand disqualified under Section 3(1). In our opinion, therefore, we can draw from the language of sections 4(1)(ii) to note that the Legislature itself had intended in certain circumstances when a member of a political Municipal Party, Zilla Parishad party or Panchayat Samit Party could not change political horses twice. There is, however, a specific exclusion in Section 5. Apart from the construction that we have given earlier this would land added weight to

construe that if the merger is in terms of Section 5, then the new political party of remainder of the political party, aghadi or front becomes the original political party and the provisions of disqualification under the Act will not apply to such merger. It we not so read it would mean that those who may merge as

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for example on account of less numbers would be precluded from merging to join another political party or from a new political party, aghadi or front. This to our mind was not the intention of the Legislature. There can be, therefore, a second merger subject to the provisions of Section 5(2) of the Disqualification Act."

If Section 5(1)(b) is read in the light of para 4 of the Tenth Schedule of the Constitution, it becomes clear that the portion of the section commencing with the words "and from the time of such merger" has not been properly printed in the official gazette of the Government of Maharashtra and this is the reason why the Division Bench of the High Court observed that Section 5(1)(b) as printed in the official gazette does not make any sense and for proper construction the same has to be read along with other provisions relating to disqualification of the members.

We are in complete agreement with the High Court that the rejoining of respondent Nos. 3 to 10 did not result in their disqualification and respondent No.1 did not err in refusing to accept the prayer made in Petition No.4 of 2008. We also agree with the High Court that the conclusions recorded by respondent No.1 on the issue of disqualification of the petitioner was legally correct and did not call for interference under Article

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226 of the Constitution.

In the result, the special leave petitions are dismissed.

.....J.
(G.S. SINGHVI)

(A.D. Sharma)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed Order is placed on the file)