
**(2013) 2 ABR 1 : (2013) 2 ALLMR 77 : (2013) 1 BomCR 868 : (2013) 1 LLN 104 :
(2013) 2 MhLj 433**

Bombay High Court

Case No: Writ Petition No. 9771 of 2012

Shri Kiran Ramchandra
Suryavanshi

APPELLANT

Vs

The State of
Maharashtra and
Others

RESPONDENT

Date of Decision: Jan. 3, 2013

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 " Section 20(3), 20(4), 20(5), 30,
31#Constitution of India, 1950 " Article 14, 226#Maharashtra Local Authority Members
Disqualification Act, 1986 " Section 3(1)(b)

Citation: (2013) 2 ABR 1 : (2013) 2 ALLMR 77 : (2013) 1 BomCR 868 : (2013) 1 LLN 104 :
(2013) 2 MhLj 433

Hon'ble Judges: R.Y. Ganoo, J; A.M. Khanwilkar, J

Bench: Division Bench

Advocate: Girish Godbole assisted with Drupad Patil, for the Appellant; V.S. Gokhale, AGP, for
Respondent No. 1, Mr. Sudhir Prabhu for Respondent No. 2, Mr. A.V. Anturkar instructed by
S.B. Deshmukh for Respondent No. 3 and Mr. Amit Borkar for Respondent Nos. 4 to 12, for the
Respondent

Final Decision: Allowed

Judgement

A.M. Khanwilkar, J.

Heard Counsel for the parties. Rule. Rule made returnable forthwith, by consent. Counsel
appearing for the

respective respondents waive service for the concerned respondents. By consent, taken
up for final disposal.

2. This Writ Petition, under Article 226 of the Constitution of India, is filed for issuance of Writ of Certiorari to quash and set aside the Resolution

passed by Respondent No. 2-Corporation on 31.8.2012 and the appointments of Respondent Nos. 4 to 12 herein as elected members of the

Standing Committee of the Respondent No. 2 Corporation and/or to issue a Writ of Mandamus directing the Respondent Nos. 2 and 3 to

withdraw the Resolution dated 31.8.2012 forthwith.

3. These reliefs are claimed on the assertion that the election of Respondent Nos. 4 to 12, as members of the Standing Committee of the

Respondent No. 2-Corporation, was in gross violation of the procedure stipulated in section 31A of the Maharashtra Provincial Municipal

Corporations Act, 1949 and the guidelines issued by the State of Maharashtra vide notification dated 6.7.2010. The official translation of the said

Government circular dated 6.7.2010, is as under:

Procedure to be followed

while nominating members on various

committees including standing

Committee of the Municipal Corporation.

Government of Maharashtra

Urban Development Department,

Government Circular No. Miscellaneous-2010/M. No. 85/UD 32,

Mantralaya, Mumbai 400032

Date-6th July, 2010.

Preface-After General elections of the Municipal Corporations or thereafter, when a member of any Committee of the Municipal Corporation

retires, taking in to account the comparative strength of the recognised parties or registered parties or groups in such Committee of the Municipal

Corporation in the Municipal Corporation and after having consultations with the Leader of the House, the Leader of opposition and leader of such

each party or group, as far as possible, Municipal members are nominated in the proportion of the strength of such parties or Groups in the

Municipal Corporation. Accordingly, for appointing by nomination the members on Standing Committee and various other Committees of the

Municipal Corporation on the basis of comparative strength of each registered party or group, the names of the members to be nominated on the

Committees are informed to the Mayor by the Party Leader of the Concerned Party or Group leader of the Group and on that basis, the members

are nominated on the Committees.

2) In view of making more transparent the procedure of sending names for nominating members on the standing Committee and other Committees

of the Municipal Corporation in this fashion, the issue of giving guidelines thereon was under consideration of the Government.

Circular

As regards the procedure to be followed while nominating members on the Standing Committee or other Committees of the Municipal

Corporation, guidelines are issued thereon as follows:-

1) While sending names of the Municipal Members for appointing them by nomination on the Standing Committee or other Committees through

(by) Leader of opposition or Group Leader on the basis of Comparative strength, the same should be put in a closed envelope and handed over to

the Mayor at the time of the meeting. If the said names are to be handed over to the Mayor in a closed envelope before the day of the meeting,

then a copy of the said letter in a closed envelope only should be given to the Commissioner as well.

2) In order to satisfy the persons present that at the time of the meeting, the said closed envelopes are in the original state itself and that the same

have not been opened earlier, the closed envelopes should be shown to the meeting.

3) The said closed envelopes should be placed on the table and the Mayor should open the same serially in front of all and after every envelope is

opened, the names therein should be got read over in the meeting by any other person present for the meeting.

4) As regards the names of nominated Municipal members read over in the meeting, if the Group leader from whom the said names have been

received has no objection, then further action in the direction of selection by nomination should be taken.

5) If the concerned have objection in this regard, then the another envelope given to the Commissioner should be opened and it should be

confirmed that the names therein and the names in the envelope with the Mayor are same and if it is confirmed, then further action in the direction

of selection should be taken. However, if the names are not same, then the names in the envelope given earlier should be treated as cancelled and

the names of Municipal members to be nominated afresh should be taken in writing from the Leader of opposition or Group Leader with their

signature and on that basis, further action should be taken.

6) Video shooting of the said entire proceeding should be made.

By order and in the name of the Governor of Maharashtra.

(Signature Illegible)

(Manu Kumar Shrivastava)

Secretary, Government of Maharashtra.

4. The facts mentioned hereinafter are not in dispute. The petitioner is an elected Councillor of the Respondent No. 2-Corporation. After being

elected, the petitioner became a member of the Vikas Maha Aghadi (hereinafter referred to as ""the said Aghadi""). In the meeting of the elected

Councillors of the said Aghadi held on 31.08.2010, the Petitioner was appointed as the group leader of the said Aghadi. Intimation in that behalf

was given to the Appropriate Authority and since then, the petitioner was performing the role and duty of the group leader of the said Aghadi in the

House till the relevant date.

5. As eight members of the Standing Committee were due to retire on 1.9.2012 and a vacancy caused on account of resignation of one Shri Arif

Choudhary from the membership of the Standing Committee, the Secretary of the Corporation issued notice convening a special meeting to be

held on 31.8.2012 for ""nominating"" nine elected Councillors as members of the Standing Committee in accordance with the provisions of section

31A of the Act. It appears that the Mayor of the Corporation, vide letter dated 22.8.2012, informed the petitioner, being the group leader of the

said Aghadi, and one Munna Kurne, Leader of Opposition to attend meeting for consultation on 23.8.2012 at 5 p.m. in his office. Respondent No.

3, in his reply affidavit, has asserted that the petitioner did not attend the said meeting for reasons best known to him. This fact has not been

countered by the petitioner by way of rejoinder affidavit.

6. The special meeting of the Corporation was accordingly held at the scheduled place and time in which resolution No. 102 was passed in respect

of subject No. 1. The said resolution reads as under:

The official translation of the abovesaid resolution reads thus:

Sangli, Miraj and Kupwad City Municipal Corporation

Date:-31/08/2012

Special General Body Meeting No: 01

Resolution No.:-102

Subject No.:-01.

Perused the accompanying agenda dt. 26/07/2012 of the Dy. Commissioner (Municipal Secretary Department).

As provided u/s 20(3) and 20(4) of The Bombay Provincial Municipal Corporations Act, 1949, eight members on the Standing Committee are

getting retired on the date 01.09.2012 after noon. In order to make appointment of eight members on the said eight vacant seats as per Section

20(5) of the Said Act, when the Leader of the Group and Leader of the Opposition submitted sealed envelopes for making nomination of

members as per the comparative strength of members, as per the proposal received in connection with making appointment of the members as

standing Committee members by way of proportional representation, after making consultations with the Leader of the Group and Leader of the

Opposition as per the provisions of Section 31(A) of the Said Act, pursuant to the revised order dt. 27 February 2007 of Govt. of Maharashtra,

Urban Development Department, Mantralaya, Mumbai; and when the Hon"ble member Shri Suresh Auti raised objection thereon as regards

selection of members by nomination, considering the same and on perusing the judgment of the year 2011 passed by the Hon"ble High Court in

respect of Akola Municipal Corporation, cited by him in connection therewith, it was found that as the General Body is the Sovereign to select the

standing Committee members, the powers to select the members are vested in the General body meeting. Therefore this meeting resolves by

majority that voting should be conducted to finalize the names of members to fill up the vacant seats of standing Committee members by

nomination.

As two different suggestions were received from Vikas Maha Aghadi for 5 Seats as per their Comparative Strength, in order to consider the

opinion of meeting as regards these suggestions, voting was held by raising hands to finalize the names of 5 members of Vikas Maha Aghadi,

suggested by the Hon"ble member Shri. Suresh Auti, for the seats of standing committee members. As per said voting, this meeting finalizes by

majority of 42 votes, the names of Shri. Shivaji Baburao Durve, Sau. Sangeeta Vitthal Khot, Shri. Vikramsingh Subhash Patil, Vivek Appa

Kamble and Shri. Balasaheb Jagannath Gondhale on behalf of Vikas Maha Aaghadi for the seats of standing Committee members of Municipal

Corporation and appoints them as standing Committee members. Moreover, as per the Comparative Strength of Congress party, the name of

Shri. Ajit Narayan Dorkar, Sau. Sunita Shivdas Patil and Sau. Wahida Shaukat Dhage were called out for making appointment of 3 members to

the seats of standing Committee members, to which this meeting hereby unanimously grants its approval and makes appointment of all the three

members as the members of standing Committee.

Proposed by-Sd/-Suresh Auti

Seconded by-Sd/-(illegible)

Resolution passed by majority

Sd/-

Mayor

7. The other relevant facts asserted in the petition are reinforced from the contents of the abovesaid resolution. According to the petitioner, the

general body meeting started at 3 p.m. on 31.8.2012. The Petitioner, as leader of the Aghadi, handed over a sealed envelope containing the names

of six elected Councillors of his Aghadi, for being nominated as members of the Standing Committee, to the Mayor. However, one Shri Suresh

Auti, who incidentally is member of the same Aghadi, objected to taking cognisance of the recommendation made by the petitioner. He then

pointed out that Resolution dated 6.7.2010 has been set aside by the High Court for which reason it was not necessary to follow the procedure

mentioned therein. The petitioner, on the other hand, insisted for compliance of the guidelines specified in the notification dated 6.7.2010. Similar

request was made by the other group leaders and various members. The Mayor, disregarding the said request of the petitioner, instead, acted

upon the suggestion made by Shri Suresh Auti to nominate the nine members named by him i.e., Respondent Nos. 4 to 12. The members of the

General Body were then called upon to vote and Respondent Nos. 4 to 12, who were recommended by the said Shri Suresh Auti were declared

as elected, having secured a margin of 42 majority votes in respect of 5 members viz., Shri Shivaji Baburao Durve, Smt. Sangita Vitthal Khot, Shri

Vikramsingh Subhash Patil, Shri Vivek Appa Kamble and Shri Balasaheb Jagannath Godhale. Further, other 3 members of Congress Party viz.,

Shri Ajit Narayan Dorkar, Smt. Sunita Shivdas Patil and Smt. Wahida Shoukat Dhage were also declared elected.

8. The petitioner, on the same day, made a complaint to the Commissioner of the Corporation requesting him to declare the said election process

as illegal, null and void and instead, to nominate the members recommended by the petitioner as members of the Standing Committee. The

petitioner also addressed communication to the Chief Minister of the State of Maharashtra on 3.9.2012 to quash and set aside the said election

process and the Resolution because of the stated illegalities and irregularities committed by Respondent No. 3. Since the illegality in nominating

Respondent No. 4 to 12 as members of the Standing Committee was not remedied, the petitioner approached this Court by way of present Writ

Petition on 5.10.2012 for the reliefs already adverted to in paragraph 3 hitherto.

9. The petition was taken up for admission on 17.10.2012. On that date, the Court not only issued notice to the respondents, who were not

represented by advocate, but also, by a speaking order, directed the Standing Committee not to take any policy decisions on any issue until the

next date of hearing by allowing the nine members nominated as members of the Standing Committee pursuant to Resolution dated 31.8.2012. The

matter was made returnable for hearing on 25.10.2012. Although respondent Nos. 4 to 12 were served by Advocate's notice as per the liberty

given to the petitioner in terms of order dated 17.10.2012, no appearance was made on their behalf. The Court deferred the hearing till

31.10.2012, to be taken first on Board and noted that if the said Respondent Nos. 4 to 12, inspite of service, fail to appear on that date, the

matter will proceed ex-parte against them. The Court permitted the petitioner to serve the said respondents afresh in terms of order dated

25.10.2012. Accordingly, the matter was notified on 31.10.2012 as first on board, on which date, all the respondents were represented by their

respective Counsel and were fully heard. Only Respondent No. 3 has filed reply affidavit to oppose this petition.

10. According to the Petitioner, it is indisputable that as per the relative strength of the Aghadi, upto six councillors recommended by the group

leader of the said Aghadi could be nominated on the Committee, in terms of Section 31A(2) of the Act. The provision stipulates ""nomination"" of

the Councillors by virtue of their holding office of Councillor on the Committee as per the relative strength of the recognized parties or registered

parties or groups. It does not envisage ""election"" of the Councillors for being appointed on the Committee. Further, the nomination of Councillors,

who are members of recognized parties or registered parties or groups, can be done only in consultation with the Leader of the House, the Leader

of Opposition and the Leader of each such party or group. In other words, the Councillor, who is member of recognized parties or registered

parties or groups, must be the recommended of the Leader of the House, the Leader of Opposition and the Leader of each such party or group.

Recommendation made by any other Councillor, as a member of the recognized party or registered party or group cannot be reckoned at all, as it

would be in violation of the spirit of the Maharashtra Local Authority Members' Disqualification Act, 1986. This position is restated in the

Government Circular dated 6th July, 2010. According to the Petitioner, the six Councillors, who were members of the said Aghadi, of which the

Petitioner was admittedly the leader, came to be nominated in disregard of the names of other members of the said Aghadi suggested by the

Petitioner during the proceedings of the Corporation on 31st August, 2012. Moreover, the Mayor caused to appoint the Respondents 4 to 12 as

having been elected having secured majority votes in the same proceedings. This, according to the Petitioner, was impermissible and in the teeth of

Section 31A of the Act.

11. Mr. Anturkar, the learned Counsel for Respondent No. 3 Suresh Auti who had suggested the names of the private respondents, who have

been eventually appointed as members of the Standing Committee of the Corporation, submits that it is well established position by now that

Section 31A does not provide for any methodology for nominating Councillors on the Committees of the Corporation. In the present case,

substantial compliance of Section 31A has been done. In that, the said Suresh Auti, in the meeting convened on 31st August, 2012, suggested the

names of the concerned Councillors, who are incidentally members of the said Aghadi, to be nominated as members on the Standing Committee, in

presence of the Petitioner. The Petitioner had also suggested names of six other Councillors, who are members of the same Aghadi but, the

Corporation preferred to nominate the persons named by Suresh Auti. The Corporation was not bound to accept the names suggested by the

Petitioner as Leader of the said Aghadi. It could appoint any other Councillor as member of the Committee. That would be a political decision

taken on the basis of democratic principle of majority of members supporting the candidature of some other Councillor other than the Councillor

named by the Petitioner in his capacity as Leader of the said Aghadi. Such interpretation is reinforced from the proviso to Section 31A(2) of the

Act. For, the authority to nominate Councillor(s) as member(s) of the Standing Committee, primarily, vests in the Corporation. The Corporation,

having exercised that authority by majority in the meeting convened for consideration of that subject and more particularly in the presence of the

Petitioner, who had participated in the said meeting and putforth his point of view, it is not open to the Petitioner to challenge the decision of the

Corporation, as the Resolution passed by the Corporation is binding on him as well. As a matter of fact, the justness and legality of the Resolution

passed by the Corporation could be agitated by the Petitioner by resorting to remedy u/s 451 of the Act and even for that reason, no interference

in exercise of Writ Jurisdiction is warranted. As regards the Government Circular dated 6th July, 2010, the Counsel for Respondent No. 3 would

submit that even the said circular does not specify the manner in which the process of nomination of the Councillors on the Committees of the

Corporation should be followed.

12. The Counsel for Respondent No. 3 has relied on the decision in the case of Madan Bodulaji Bhargad and Others Vs. Akola Municipal

Corporation and Others, , and in the case of Sau. Sujata Vs. The Akola Municipal Corporation and Others, to buttress the abovesaid submissions

and has prayed for dismissal of the Writ Petition.

13. Mr. Borkar, Learned Advocate appearing for the remaining private Respondents, in addition to having adopted the argument of Respondent

No. 3, submits that the expression consultation occurring in Section 31A will have to be construed narrowly to mean that the same has to be done

with the Leader of the House, the Leader of the Opposition and the Leader of each such party or group only to ascertain and decide the relative

strength of the recognized parties or registered parties or groups as the case may be, for being nominated as members of the Committees, to give

proportional representation. He further submits that the Aghadi, of which the Petitioner claims to be the leader, has already been given sufficient

representation by nominating six members of the said Aghadi on the Standing Committee, by the Corporation. Moreover, there has been

substantial compliance of Section 31A of the Act. As a matter of fact, the Petitioner was informed by the Mayor vide letter dated 22nd August,

2012 to remain present at the scheduled place, time and date, for consultation. However, the Petitioner failed to attend the said meeting. Instead,

chose to give names of six members of the Aghadi in a sealed envelop during the meeting of the Corporation convened on 31st August, 2012 itself.

In the said meeting Mr. Suresh Auti, being member of the same Aghadi, gave counter suggestion by naming six other members of the Aghadi to be

nominated as members of the Standing Committee. The House voted in favour of the names suggested by Suresh Auti, who was one of the

member of the same Aghadi. Thus, there was substantial compliance of Section 31A of the Act. For the aforesaid reasons, no interference in exercise of Writ Jurisdiction was warranted.

14. We shall first deal with the preliminary issue raised by Respondent No. 3 about the maintainability of this petition. In that, the Petitioner has

already resorted to remedy u/s 451 of the Act, by way of representation dated 3.9.2012. This objection does not commend to us. The petitioner

has approached this Court, by way of this Writ Petition, filed on 5.10.2012, complaining that no decision is being taken by the Appropriate

Authority in the proceedings u/s 451 of the Act and that in the meantime, the persons, who, according to the petitioner, have been illegally

appointed on the Standing Committee of the Corporation, are allowed to participate in the decision making process even on policy matters of the

Corporation, in their capacity as nominated members of the concerned Committee of the Corporation. The decisions taken by them may entail in

financial implications for the Corporation. Further, merely because remedy u/s 451 of the Act is also available, would not denude the petitioner

from invoking remedy under Article 226 of the Constitution of India for issuance of appropriate writ against the concerned Authorities and to

quash and set aside the action of the said Authorities, which, it is stated, is without authority of law and also infringes the fundamental rights

guaranteed including under Article 14 of the Constitution of India. In our opinion, therefore, the preliminary objection raised by Respondent No. 3

need not detain us from examining the issues raised on merits.

15. The other preliminary objection raised by the Respondent No. 3, in paragraph 5 of the reply affidavit, is that, the petitioner has since been

removed from the post of group leader of Vikas Maha Aghadi of Sangli, Miraj and Kupwad Municipal Corporation w.e.f. 25.9.2012. Therefore,

he has no locus standi to file the present petition or to pursue the cause of action any further. Even this preliminary objection does not commend to

us. In the present petition, we are not called upon to pronounce on the correctness of the decision of removing the petitioner from the post of

group leader of Vikas Maha Aghadi of Sangli, Miraj and Kupwad Municipal Corporation w.e.f. 25.9.2012. Moreover, it is not in dispute that the

petitioner continues to be the Member of the said Aghadi and is an elected sitting Councillor of the Corporation. Admittedly, the action impugned

by the petitioner has been taken whilst the petitioner was the group leader of the Aghadi. No doubt, by the time the Writ Petition was filed in this

Court, the petitioner allegedly came to be removed from the post of group leader of the Aghadi. However, the challenge is to the process of

nomination of the Councillors on the Standing Committee, which is stated to be contrary to the mandate of section 31A of the Act. The fact that

the petitioner has ceased to be group leader of the Aghadi is of no consequence. It cannot be gainsaid that even ordinary resident and voter of the

Corporation is competent to approach this Court to challenge the procedure and the manner of nomination of Councillors on the Standing

Committee of the Corporation, being contrary to the mandate of law. Accordingly, even this preliminary objection deserves to be rejected.

16. Before we proceed to analyse the efficacy of the rival submissions on merits, we deem it apposite to reproduce section 31A of the Act of

1949. The same reads thus:

31A. Appointment by nomination on Committees to be by proportional representation-(1) Notwithstanding anything contained in this Act or the

rules or bye-laws made thereunder, in the case of the following Committees, except where it is provided by this Act, that the appointment of a

Councillor to any committee shall be by virtue of his holding any office, appointment of Councillors to these Committees, whether in regular or

casual vacancies, shall be made by the Corporation by nominating Councillors in accordance with the provision of sub-section (2):-

(a) Standing Committee;

(b) Transport Committee;

(c) Any special Committee appointed u/s 30;

(d) Any ad hoc Committee appointed u/s 31.

(2) In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognised parties or

registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Corporation,

after consulting the Leader of the House, the Leader of Opposition and the leader of each such party or group;

Provided that, nothing contained in this sub-section be construed as preventing the Corporation from nominating on the Committee any member

not belonging to any such party or group:

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this Act, the

recognised parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, notwithstanding anything

contained in the Maharashtra Local Authority Members' Disqualification Act, 1986 (Mah. XX of 1987), within a period of one month from the

date of notification of election results, from the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of

such aghadi or front, as if it is a registered pre-poll aghadi or front.

(3) If any question arises as regards the number of Councillors to be nominated on behalf of such party or group, the decision of the Corporation

shall be final.

(Emphasis supplied)

17. We have adverted to the Government Circular dated 6.7.2010 which restates the requirements of section 31A of the Act. We have also

referred to the minutes of the meeting of the Corporation convened on 31.8.2012.

18. From the undisputed facts, it is noticed that the petitioner at the relevant time was the leader of the said Aghadi. The relative strength of that

Aghadi in the house in proportion to its strength in the Corporation, was around six. Accordingly, six Councillors of the said Aghadi could be

nominated on the Committee of the Corporation in consultation with the Petitioner. However, the Councillors of the said Aghadi, private

respondents herein, who have been purportedly nominated on the Committee of the Corporation in terms of resolution dated 31.8.2012, were the

recommendées of Shri Suresh Auti, another member of the same Aghadi and not of the petitioner. Their appointment is on the basis of majority

votes secured by them during voting, cast by the members present in the meeting of the Corporation held on 31.8.2012.

19. Reverting back to section 31A, on a bare perusal thereof, it leaves no manner of doubt that the appointment as a member on the Committees

referred to in sub-section (1), must be ""by nomination"". The legislature has advisedly used the expression ""nomination"" in contradistinction to the

expression ""election"". Further, the nomination must be so done as to give proportionate representation to the recognised parties or registered

parties or groups, as the case may be. This provision defines the composition of the Committees of the Corporation. It envisages that the

Committees must, as far as possible, comprise of Councillors of parties or groups as per relative strength in proportion to their strength in the

Corporation. The avowed purpose of this dispensation is to guarantee participation of all sections in the House and democratisation of every

decision taken by the Committees or the policy decisions to be taken by the Corporation, which are founded on the opinion of the Standing

Committees so constituted. This provision guarantees that the Committees are not completely controlled by a single largest party or the majority

party in the House-which will be the inevitable consequence of appointment by election. The Committees act as ears and eyes of the Corporation,

which, finally, takes collective decision by majority. This is the dispensation envisaged by section 31A, to provide for checks and balances in the

decision making and execution process in respect of the activities of the Corporation.

20. What is significant to note is that the Councillors to be nominated on any of the Committees referred to in subsection (1) must be after

consultation with the leader of the house, the leader of the opposition and the leader of each such party or group, as the case may be. That pre-

supposes that only Councillors as are recommended by the leader of the house, the leader of opposition or the leader of each such party or group,

as the case may be, can be considered for nomination as legitimate representatives of that party or group. To recommend suitable Councillors of

the party or group, is the prerogative of the Leader of the Party or Group. That prerogative is reinforced from the purport and sweep of the

Maharashtra Local Authorities Members" Disqualification Act, 1986. This is the consultation process predicated in section 31A of the Act. Any

other interpretation would be rewriting of this provision and lead to avoidable absurdity of permitting any member of the recognised party or

registered party or group to recommend the names of Councillors of his/her party or group to be nominated on the Committees referred to in

subsection (1). That would lead to multiple candidatures from the same party or group, which may inevitably give cause for indulging in unfair

practices as well.

21. Notably, section 31A has been amended by Act 11 of 2007, which amendment came into force w.e.f. 27.2.2007. The amendment mirrors the

sweep of the Disqualification Act which obligates the members of the recognised parties or registered parties or groups to unflinchingly abide by

the decision of their party or group and to speak in one voice on important and political matters. In the Act of 1986, the term Aghadi or the Front

has been defined to mean a group of persons, who have formed themselves into a party for the purpose of setting up candidates for election to a

Local Authority. The purpose of forming Aghadi is to work together in harmony on common programmes and philosophy and not to encourage the

members of the same party or Aghadi to speak in different voices in the House on important and political matters. Failure to abide by this discipline

may entail in disqualification on the ground of defection. In that, section 3(1)(b) of the Act of 1986 envisages that if the Councillor or a Member

votes or abstains from voting in any meeting of the Corporation 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 would incur such disqualification. The leader of the Aghadi

has to discharge the onerous task of ensuring that the members of the Aghadi remain cohesive and speak in one voice through him on important

and political matters.

22. In the present case, the recommendees of the said Suresh Auti, one of the members of the Aghadi, of which the petitioner was the leader at the

relevant time, have been preferred and nominated as members of the Standing Committee instead of the six members of the Aghadi recommended

by the petitioner in his capacity as leader of the same Aghadi. That has been done by resorting to election, which is contrary to the spirit of section

31A and impermissible in law. In other words, the appointments of the private respondents on the Committees of the Corporation, referred to in

subsection (1), have been made dehors the prescribed norm of nomination after consultation with the leader of the Aghadi. Suffice it to observe

that the nomination of the private respondents so done, is completely in disregard and in the teeth of section 31A of the Act.

23. To get over this position, the argument of the respondents is that the names recommended by the petitioner in his capacity as leader of group

or Aghadi cannot be considered as binding on the Corporation. Relying on the proviso below sub-section (2), contends the respondents that, it is

the Corporation which is the final Authority and has to nominate the Councillors on the Committees. Indeed, the first proviso to subsection (2)

empowers the Corporation to nominate any other person on the Committee but that power can be exercised only to nominate the "member not

belonging to any such party or group". In other words, once the leader of a given party or group, which is entitled for representation on the

concerned Committee, identifies Councillor from his party or group for being nominated, no other member of "that party or group" or "anyone else

can suggest a counter name of some other Councillor of that party or group. In law, even the Corporation has no power to nominate any other

Councillor as a member of the Committee from that party or group. The proviso merely enables the Corporation to nominate any other Councillor

who does not belong to that party or group entitled to send its representative as member of the Committees as per its relative strength in

proportion to the strength in the Corporation. If such a party or group does not recommend any Councillor, it may, perhaps, be a different matter.

In another situation, if the Corporation is opposed to the nomination of a given councillor recommended by the leader of a party or group and

instead intends to nominate some other Councillor from another party or group, perhaps, then resorting to election process may become inevitable.

We are not concerned with any of these situations in the present case nor we intend to express any opinion in that regard.

24. Suffice it to observe that there can be no other interpretation of the expression "not belonging to any such party or group", occurring in the

proviso below subsection (2). Any other interpretation would not only result in whittling down the purport of subsection (2), but also rewriting the

express words "not belonging to" and "any such party" appearing in the said proviso.

25. A priori, the first proviso will be of no avail in the fact situation of the present case, as the names recommended by Suresh Auti were of

Councillors belonging to the same Aghadi, which could send upto six representatives on the Committee. As regards the second proviso below

section 31A(2), it governs the issue of determining the relative strength of recognised parties or registered parties or groups or elected Councillors

not belonging to any party or group. This proviso is in effect an exception to the mandate of the Disqualification Act of 1986 as it enables the

elected Councillors to form Aghadi or Front within a period of one month from the date of notification of election results and on registration of the

Aghadi, the members of such Aghadi are to be reckoned as if it is a registered pre-poll Aghadi or Front. Suffice it to observe that even the second

proviso is of no avail to the respondents.

26. That takes us to the decision of the Division Bench of our High Court in the case of Sujata Deorao Ahir (supra). In that case, the leader of the

party directed the respondent No. 3 to nominate the petitioner as a member of the Standing Committee. This communication was regarded by the

petitioner as a whip. The respondent No. 3, however, who was a Group Leader in the House nominated himself by letter dated 26th February,

2008 in disregard of the communication received from the party leader of the political party. The challenge, therefore, was to the nomination of

respondent No. 3 and further direction to the Corporation to accept the name of petitioner as a member of the Standing Committee. In the first

place, the Court observed that two stages are stipulated u/s 31A(2) of the Act. The first is to ascertain the relative strength of the recognised

parties or registered parties or groups in the Corporation. The second is of consulting Leader of House, the Leader of Opposition or the leader of

each such party or group to nominate Councillors on the Committees referred to in sub-section (1). It then opined that for ascertaining the relative

strength of the parties or groups or Aghadis, it would be a matter of arithmetics. However, with regard to the process of consultation referred to in

Section 31A(2), it was not decisive of the name of the person to be nominated. It went on to observe that-what is seen decisive is consultation

with the leader of a political party or of the group who has power to nominate. It, however, observed that Section 31A(2) does not specify the

procedure or methodology of consultation with the leader of party or group. At the same time, it noted that Section 31A does not envisage elective

process either expressly or impliedly. This decision, in our opinion, is of no avail to the respondents. On the other hand, it takes the view that

Section 31A does not contemplate appointment of the Councillors on the Committees by resorting to election process either expressly or

impliedly. It is to be done only by resorting to nomination after consultation with the leader of the party or group. The observation made in

paragraph 13 of this decision that the said process is directory in nature and is not decisive of the name of the person to be nominated, obviously,

is contextual. What it means is that the name recommended by the leader of the party or group need not necessarily meet the approval of the

Corporation as a body. As noticed earlier, the Corporation is free to disapprove the recommendation of the leader of party or group in part or as

a whole but that does not mean that the Corporation, on its own, can replace the candidature of some other Councillor of such a party dehors the

limits circumscribed by the first proviso to Section 31A(2). This decision, therefore, will be of no avail.

27. The next decision pressed into service is the case of Madan Bodulaji Bhargad (supra). In this case, the Mayor of the Corporation declared

respondents 4 to 7 as nominated on the Standing Committee. The said appointment was subject matter of challenge on the ground that the Mayor

had no right to nominate the said persons in absence of consultation contemplated in Section 31A(2) of the Act. The Court, after adverting to the

rival submissions, essentially relying on the decision in the above said case of Sujata Deorao Ahir (supra), proceeded to answer the controversy. In

the first place, it restated that consultation is a part of process of nomination of the Councillors on the Standing Committee. However, the mode

and manner of consultation has not been laid down by the Legislature. That is left to the choice of the parties to work out their methodologies. The

Court, then adverting to the exposition in the case of Sujata Deorao Ahir (supra) and quoting paragraphs 9 to 13 of the said decision, concluded

that whether the right has been constitutionally exercised by the Mayor or not, is a political question, which the Court was not expected to decide

in exercise of judicial review. The said exposition is in the facts of that case. The Court opined that it was not possible to go into the question as to

whether the Councillors nominated by the Mayor were proper, being a political decision of the Mayor. This decision is not an authority on the

proposition that the consultation process referred to in Section 31A(2) permits the Corporation to disregard the recommendation made by the

leader of the party or group and instead, approve the recommendation made by some another member of the same party or group.

28. Considering the above, we have no hesitation in taking the view that the appointment of respondents 4 to 12 as members of the Standing

Committee of the Corporation vide Resolution dated 31st August, 2012 passed by the Corporation is contrary to the mandate of Section 31A of

the Act. The said Resolution to the extent of appointing or nominating respondents 4 to 12 as members of the Standing Committee of the

Corporation is quashed and set-aside. As a result, the Corporation may have to initiate the process of nomination of members of the Committee

afresh from amongst its sitting Councillors including from the Vikas Maha Aghadi of Sangli-Miraj & Kupwas Municipal Corporation, from the

stage of consultation with the leader of the said Aghadi.

29. The fact as to whether the petitioner is competent to act as leader of the said Aghadi or otherwise, will have to be decided on its own merits in

appropriate proceedings. We are not expressing any opinion in that behalf. If some other member of the said Aghadi has been nominated and

authorised to act as leader of the Aghadi, then consultation will have to be done with him for complying with the requirement of Section 31A of the

Act. This petition, therefore, ought to succeed. Rule is made absolute on the above terms.