

(2007) 02 BOM CK 0076

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 5874 of 2006

Databhau Pathrikar

APPELLANT

Vs

State of Maharashtra
and Others

RESPONDENT

Date of Decision: Feb. 6, 2007

Acts Referred:

- Bombay Provincial Municipal Corporations Act, 1949 - Section 19(1)(AA), 19IAA
- Constitution of India, 1950 - Article 226
- Maharashtra Local Authority Members Disqualification Rules, 1987 - Rule 2(B1)

Citation: (2007) 2 ALLMR 789 : (2007) 3 BomCR 667 : (2007) 3 MhLj 76

Hon'ble Judges: R.M. Borde, J; Naresh H. Patil, J

Bench: Division Bench

Advocate: Talekar, for the Appellant; K.M. Suryawanshi, AGP, P.M. Shah, holding for P.F. Patni, for Respondent No. 4, D.U. Soman and B.L. Sagar Killarikar, for the Respondent

Final Decision: Dismissed

Judgement

R.M. Borde, J.

Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, this petition is heard finally at the stage of admission.

2. The petitioner by filing this petition has assailed the order passed by the Mayor, Municipal Corporation, Aurangabad (respondent No. 3) granting recognition for appointment as a leader of opposition in favour of respondent No. 4 in exercise of powers u/s 19(1)(AA) of the Bombay Provincial Municipal Corporation Act (hereinafter referred as the "Act").

3. The petitioner is elected member of Municipal Corporation, Aurangabad. The elections to the Municipal Corporation were held on 10-4-2005. It is stated that one Shri Tarvindersingh Dhillan was declared as a leader of opposition by the Mayor of

Municipal Corporation, Aurangabad. According to the petitioner, recognition in favour of Shri Dhillan as a leader of opposition was contrary to the established procedure as, at the relevant time, the petitioner was nominated to be the leader of opposition by the party High Command. The petitioner further contends that infact he was chosen as a leader so as to discharge the functions of the leader of opposition in the Municipal Corporation, Aurangabad. It is further contended that in the meanwhile, as many as 10 members belonging to Congress I party submitted an application under their signatures on 29-4-2006 requesting the respondent No. 3 Mayor to declare the petitioner as the leader of opposition in the Municipal Corporation, Aurangabad. It is also contended that the application tendered by the members of the corporation was supported by their affidavits. The Mayor of the corporation on being satisfied regarding the candidature of the petitioner of being supported by 10 out of 18 elected members of the Congress I party, accorded approval to the nomination of petitioner as a leader of opposition vide letter dt. 8-5-2006. The further development which has occurred in the matter is that the President of the Aurangabad City Congress I Committee tendered a letter requesting the Mayor of the Municipal Corporation to nominate respondent No. 4 Abdul Sajed Abdul Sattar as the leader of opposition. According to the petitioner, the President of the Aurangabad City Congress I Committee had no authority to nominate respondent No. 4. It is further contended that on 29-6-2006, respondent No. 4 tendered an application signed by 11 members requesting the Mayor to recommend him as a leader of opposition. It further appears that as no steps were taken by the Mayor in pursuance to the application tendered by respondent No. 4, he approached this court by filing Writ Petition No. 3862/06. The present petitioner was arrayed as party to said writ petition. Present petitioner as well as respondent No. 3 Mayor tendered their reply to the petition. It is further contended by the petitioner that as soon as the petition was withdrawn, respondent No. 3 immediately passed an order thereby nominating respondent No. 4 as a leader of opposition in the Municipal Corporation, Aurangabad on the ground that the candidature of respondent No. 4 is backed by 14 out of 19 counsellors belonging to Congress I party. According to the petitioner, the act of granting recognition for nomination of respondent No. 4 as a leader of opposition by the respondent No. 3 is a mala fide act. The petitioner as such is challenging the order of granting recognition to the nomination of respondent No. 4 as a leader of opposition, by filing this petition.

4. We have heard arguments of learned Counsel Shri Talekar appearing for the petitioner as well as Shri P. M. Shah, the learned senior counsel with Shri P.F. Patni, the learned Counsel appearing on behalf of respondent No. 4, Shri Sagar Killarikar, learned Counsel appearing for respondent No. 3 and learned AGP. Shri Talekar, the learned Counsel for the petitioner has vehemently contended that once the petitioner was recognised as a leader of opposition on 8-5-2006, it was not open for the respondent No. 3 to entertain the request made by respondent No. 4 and

recognise him as a leader of opposition. It is contended by Shri Talekar that the term of the leader of opposition is co-terminus with the term of elected body of the Corporation and as such the petitioner was entitled to continue as a leader of opposition until the completion of tenure of the elected body of the Corporation. Another objection raised by Shri Talekar, the learned Counsel for the petitioner is that in view of provisions of Section 19(1)(AA) a leader of opposition is required to be chosen and is not necessarily a leader elected by the counsellors of party in opposition having greatest numerical strength. It is contended by the learned Counsel that nomination of petitioner was backed by the President of Maharashtra State Congress Committee and a communication nominating the petitioner as a leader of opposition was issued by the President of the Maharashtra State Congress I Committee on 10-5-2006. As such it is contended that it is only the petitioner who is entitled to continue as the leader of opposition. It is also further contended that the Writ Petition tendered by respondent No. 4 in this Hon"ble Court challenging the appointment of the petitioner as the leader of opposition having been withdrawn, it was not open for the respondent No. 3 Mayor to recognise respondent No. 4 as a leader of opposition. It is further contended that the order dt. 18-8-2006 amounts to review of the earlier order issued in favour of the petitioner by respondent No. 3 Mayor and the Mayor is not invested with the power to review his own orders.

5. Per contra Shri Shah, the learned senior counsel has contended that the petitioner has not been able to point out contravention of any legal provision and, as such the order passed by the respondent No. 3 Mayor is not capable of being reviewed under the extraordinary jurisdiction by this court. The learned senior counsel invited our attention to a communication dt. 3-5-2005 in respect of nomination of the petitioner as a leader of opposition. It was pointed out that although the name of the petitioner was recommended by the President of the Maharashtra State Congress I Committee during the year 2005, however, as Shri Dhillan, the then leader of opposition commanded majority, he was (Dhillan) recognised as a leader of opposition by an order dt. 3-5-2005. The learned senior counsel contended that the institutions of local self government are required to function in a democratic manner and a rule of majority is cardinal principle governing the functions of democratic institutions. The learned senior counsel further contended that initially although the petitioner could muster support of 10 counsellors out of 18 belonging to Congress I party, his name was considered by the respondent No. 3 on the strength of the support of elected counsellors and not on the basis of the letter issued by the President of Maharashtra Pradesh Congress Committee. It was pointed out by the learned Counsel for respondent No. 4 that infact, though the case of the petitioner was considered and order was issued by respondent No. 3 on 8-5-2006 in favour of the petitioner, the letter nominating the petitioner was infact dt. 10-5-2006. He further tries to canvass that the question of majority was considered while granting recognition in favour of the petitioner while issuing the order on 8-5-2006 and the order was not based upon the letter alleged

to have been issued by the President of Maharashtra Pradesh Congress I Committee. The learned Counsel further contends that though respondent No. 4 mustered support of 14 Counsellors out of total strength of 19, and had already tendered his claim before the Mayor, however, because of the pendency of the petition, the claim of the petitioner could not be considered by the Mayor. It was only after withdrawal of the petition, the Mayor got himself satisfied in respect of the claim lodged by respondent No. 4 and issued an order in favour of the respondent No. 4 recognising him as a leader of opposition. It is further contended that the satisfaction of the Mayor cannot be a subject-matter of scrutiny in writ jurisdiction. It is further pointed out that recognition by the Mayor as a leader of opposition is final and conclusive and there is no legal foundation to call in question the decision taken by the Mayor i.e. respondent No. 3.

6. Mr. Sagar, learned Counsel for respondent No. 3 supported the decision taken by the Mayor of recognizing the respondent No. 4 as a Leader of Opposition on 18-8-2006. It was contended by the learned Counsel for respondent No. 3 that the respondent No. 4 had already staked his claim for the post of Leader of Opposition as he i.e. respondent No. 4 had support of 14 Councillors out of total 19 Councillors belonging to Congress (I) party. It was further canvassed that because of pendency of the Writ Petition bearing No. 3862 of 2006 before this Court, the decision was deferred. However, after withdrawal of the petition by the petitioner, namely, Abdul Sajed s/o Abdul Sattar, respondent No. 3 got himself satisfied as regards the claim of respondent No. 4 that he wields support of 14 Councillors, the respondent No. 3 issued a letter of recognition in favour of respondent No. 4. It is further canvassed that there is no illegality committed by respondent No. 3 which calls for interference in the extraordinary writ jurisdiction by this Court.

7. It would be appropriate to consider the provisions of Section 19-IAA of the Act, which reads thus:

19-IAA. The 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 recognized 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 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 the regulations made in this behalf by the Corporation.

8. On perusal of the provisions of Section 19-IAA it would be evident that before arriving at any decision, the Mayor has to satisfy himself about the following aspects, namely,

- (i) He must be an elected Corporator for the time being.
- (ii) He should be a leader of the party in opposition.
- (iii) The said party in opposition should have greatest numerical strength.
- (iv) Must be recognized as such by the Mayor.

9. The role of the Mayor to recognize a Corporator as Leader of Opposition is to be judged after taking into consideration the above noted aspects. The terminology "Leader of Opposition" is not defined under the Bombay Provincial Municipal Corporations Act. However, the said term is defined in Maharashtra Legislature Salaries and Allowances Act, 1978. It reads thus:

In this Act, "Leader of Opposition" in relation to either House of the State Legislature, means that Member of the State Legislative Assembly or the State Legislative Council, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the State Government having the greatest numerical strength and recognized as such by the Speaker of the Assembly or the Chairman of the Council, as the case may be.

10. The leader of Municipal party is defined under the Maharashtra Local Authorities(Members Disqualification) Rules, 1987. Rule 2(B-1)(i) reads thus:

Rule 2(B-1)(i): Leader, in relation to a municipal party, means a Councillor chosen by each political party or aghadi, front, in Municipal Corporation as the case may be in the Municipal Council as its leader and includes any other Councillor, of such party or aghadi or front, authorized by it to act in absence of the leader or discharge the functions of the leader of such party, or aghadi, or front, for the purposes of these Rules.

11. The definition of the leader of Municipal Party under the Disqualification Rules is for the purposes of the concerned Rules.

The contentions advanced by the learned Counsel for the petitioner that the term "Leader of Opposition" is co-terminus with the period of elected body of the Corporation, cannot be a matter of dispute. However, the further argument advanced relying on the analogy that as the petitioner who was once recognized as Leader of Opposition by the respondent No. 3 on 8-5-2006 is deemed to be continued until the completion of the term of the elected body of the Corporation cannot be accepted. The argument has inherent flaws in itself as the petitioner himself has accepted that on 3-5-2005 one Shri Tarvindersingh Dhillon was declared as Leader of opposition and at a later point of time the petitioner wielded the support of 10 Councillors out of 19 elected members of the Congress (I) Party, he staked his claim for the post of Leader of Opposition and as such was recognized as Leader of Opposition by order dated 8-5-2006. These facts itself contradicts the argument advanced by the learned Counsel for the petitioner. If the analogy put

forth by the petitioner is to be accepted, the petitioner could not have been recognized as Leader of Opposition by the respondent No. 3 on 8-5-2006. There is no legal bar to recognize any other Corporator as Leader of Opposition whenever change in numerical strength of the Councillors supporting a particular leader takes place. The office of the leader of opposition is co-terminus with the term of the elected body of the Corporation. It does not mean that a particular Corporator or an individual cannot be displaced as a Leader of Opposition even though some change takes place in relation to the numerical strength of the Councillors supporting him. The rule of majority is the cardinal principle governing all democratic institutions. As the Rule of majority applies in relation to the other elected offices as provided under the Municipal Corporations Act, the same principle needs to be applied also in the matter of recognition of the Leader of Opposition. There appears to be logically nothing wrong in an act of recognizing any other leader in place of the existing leader whenever the balance of numerical strength supporting a particular Corporator changes. In the instant case, as the respondent No. 4 mustered the support of 14 Councillors out of 19 Councillors belonging to Congress (I) Party which is the largest group amongst the opposition parties in the Corporation, the decision taken by the Mayor in recognizing him (respondent No. 4) cannot be faulted as the said decision is in accordance with the principle of rule of majority governing all democratic institutions.

12. Another objection raised by the petitioner that on 18-8-2006 Writ Petition filed by respondent No. 4 was dismissed as withdrawn and on the same day the respondent No. 3 recognized respondent No. 4 as Leader of Opposition by issuing a communication in that behalf. The said act cannot be termed as a mala fide act as the respondent No. 3 has explained in his affidavit in reply that there was already a claim lodged by the respondent No. 4 on the strength of the support of more number of Councillors i.e. 14 out of 19 sitting Councillors belonging to Congress (I) Party which was higher in numerical strength than that of the petitioner. The decision was not taken because of the pendency and once the petition was withdrawn the decision was arrived at. The said decision therefore cannot be branded as mala fide as contended by the petitioner. Moreover, the petitioner has not pointed out violation of any legal provisions governing the recognition of the leader of opposition under the Municipal Corporations Act or the Rules framed thereunder.

13. Reliance is placed on the judgment of this Court in the matter of (i) [Sunil Ramdas Kotkar and Others Vs. State of Maharashtra and Others](#), (ii) Vishnu Shivram Mehre v. City of Akola Municipal Corporation 2003 (5) Mh.L.J. 522 : 2004 (3) All MR 151 and [Abdul Rashid and Kishor Tulsibagwale Vs. Vikas Jain, Mayor, Municipal Corporation, The Commissioner, Municipal Corporation, Afsar Khan and The State of Maharashtra](#). In Vishnu Mehre's case (supra) the question that was posed before the Court was whether on refusal by the party having greatest numerical strength in the Corporation to shoulder the responsibility of the leader of opposition, whether

the party having next higher numerical strength in the house could be permitted to set up their candidate for the post of Leader of Opposition. This Court came to the conclusion that there was nothing wrong in recognizing a Corporator belonging to a party having next higher numerical strength as a Leader of opposition in the circumstances where the party having greatest numerical strength in the house refuses to shoulder the responsibility. The Court while determining the issue has dealt with the political question doctrine. In para No. 32 of the judgment, the Court has observed thus:

32.As already noticed hereinabove, it is now well settled that the Courts are expected to decline jurisdiction over all "political questions". One of the important corollary of Court's refusal to exercise judicial powers is the doctrine of "political questions". In exercise of its powers of its judicial review; time and again it has been pointed out by the various courts that certain powers are vested in the legislative or executive departments of the Government to be exercised in a purely discretionary manner, and that whether they have been constitutionally exercised or not is a "political question" which the Court is not expected to undertake to decide, [see *Luther v. Borden* 7 Harward 1 : 12 Ed. 581) (1849).]

33. The political question doctrine limits the exercise, not the existence, of judicial power, thus even though a dispute may constitutionally be subject to judicial power, if a political question is present, a Court should decline to reach the merits....

14. In the instant case, applying the political question doctrine the Courts exercising the writ jurisdiction would be slow in entertaining the questions having the political overtones. Although the Courts are not precluded from determining the questions where neither of the conflicting political branches has clear and unequivocal title and it is or may be possible to establish an effective judicial settlement. In view of the facts presented in the instant case before us, we do not feel it appropriate to enter into the political questions presented for determination in the petition.

15. The other two decisions on which reliance is placed (*supra*) arise out of different facts and circumstances and are not relevant for the purposes of determining the controversy posed in this petition. The argument canvassed by the petitioner that there exists no power of review with the respondent No. 4 and the act of recognition of respondent No. 4 as a Leader of Opposition in view of the order dated 18-8-2006 amounts to review of the earlier order recognizing the petitioner as a Leader of Opposition vide letter dated 8-5-2006 is not worthy to be appreciated. In effect, the act of recognition of respondent No. 4 as a Leader of Opposition by respondent No. 3 within the meaning of Section 19.IAA cannot be termed as a review of the earlier order recognizing the petitioner as leader of opposition. Both the actions present different political scenario. While the earlier order dated 8-5-2006 was issued the petitioner presented his case with a contention that he mustered support of 10 Councillors out of 18 Councillors, whereas at a later point of time, the respondent No. 4 staked his claim with contention that he i.e. respondent No. 4 wields support

of 14 Councillors out of 18 Councillors. Both the decisions are taken in the different political scenario and as such the argument advanced by the learned Counsel for the petitioner that the order dated 18-8-2006 amounts to reviewing of the earlier order dated 8-5-2006 cannot be accepted.

16. As stated above, the petitioner has failed to point out infraction of any legal provisions which calls for interference at the hands of this Court in exercising of extraordinary powers conferred by Article 226 of the Constitution of India.

17. For the reasons stated above, there is no merit in the petition and the same deserves to be dismissed. Accordingly, Writ Petition is dismissed. Rule stands discharged. In the circumstances, there will be no order as to costs.