

Jeevan Chandrabhan Idnani & Anr vs Divisional Commr.Konkan Bhavan & Ors on 31 January, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1210, 2012 (2) SCC 794, 2012 AIR SCW 1299, 2012 (2) AIR BOM R 579, (2012) 4 MAH LJ 1, (2012) 3 RECCIVR 715, (2012) 2 SCALE 48, AIR 2012 SC (CIV) 910, (2012) 3 ALLMR 464 (SC), (2012) 5 BOM CR 446

Bench: J. Chelameswar, Altamas Kabir

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1192 OF 2012

(Arising out of Special Lave Petition (Civil) No.14988 of 2011)

Jeevan Chandrabhan Idnani & Anr.

...Appellants

Versus

Divisional Commissioner, Konkan Bhavan & Ors.

....Respondents

J U D G M E N T

CHELAMESWAR, J.

Leave granted.

2. The interpretation and purport of the second proviso to Sub-section(2) of Section 31(A) of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "Municipal Corporation Act") falls for the consideration of this Court.

3. The constitution of the "Municipal Corporations"¹ (in the State of Maharashtra), their powers, functions and various allied matters are regulated by the above-

mentioned Act. Section 5(2)2 of the Act declares, every "Corporation" shall consist of a definite number of elected and a few nominated councillors. The number of elected Councillors with respect to any Corporation is determined on the basis of the population of that Municipal Corporation. The case on hand pertains to the Ulhasnagar Municipal Corporation, the third respondent herein, which has a total of 76 elected Councillors.

4. Election to the third respondent took place sometime in the month of February, 2007 and the Corporation was duly constituted with 76 elected Councillors. The break-

up of the 76 Councillors is specified in the Judgment under appeal as follows:-

1 Sec.2(10) - "Corporation" means the Municipal Corporation constituted or deemed to have been constituted for a larger urban area known as a City.

Sec. 2(8) - "City" means the larger urban area specified in a notification issued in respect thereof under clause (2) of article 243-Q of the Constitution of India or under sub-section(2) of section 3 of the Act, forming a City.

22 Sec.5(2) Each Corporation shall consist of,-

(a) such number of councilors, elected directly at ward elections, as is specified in the table below-

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(b) such number of nominated councilors not exceeding five, having special knowledge or experience in Municipal Administration to be nominated by the Corporation in such manner as may be prescribed.

5. Apart from the fourteen Members elected as Councillors to the Ulhasnagar Municipal Corporation on behalf of the Lok Bharti Party, two more Councillors, one independent and the other a lone Councillor, belonging to the Republican Party of India (G), joined hands with the Councillors of the Lok Bharti Party and formed a front/aghadi immediately after the election availing the facility

provided under the 2 nd proviso to Section 31A(2) of the Municipal Corporation Act.

6. Respondent Nos. 6 to 13 herein were admittedly members of the said Aghadi.

However, they decided to quit the Aghadi and form a 'Swatantar Aghadi' and addressed a letter dated 23rd February, 2011 to the first respondent herein requesting the first respondent to make suitable changes in the records maintained under the Disqualification Act and the rules made thereunder.

7. The first respondent accepted the above-mentioned request. The same is evidenced by his communication dated 11th March, 2011 (hereinafter referred to as 'the impugned order').

8. Challenging the above-mentioned communication, two of the Councillors belonging to the Lok Bharti Party approached the Bombay High Court by way of a writ petition (civil) No. 2237 of 2011. By the judgment under appeal, the said writ petition was dismissed.

9. The substance of the objection to the legality of the impugned order is that in the light of the language of the second proviso to Section 31A(2), formation of a front or aghadi after the completion of the election process to the municipal body is permissible only when that is done within one month from the date of the notification of the results of the election. The impugned communication purports to recognise an aghadi/front beyond the above-mentioned period of one month which is clearly impermissible and hence illegal.

10. The High Court rejected the above-mentioned submission. On an examination of the various provisions of the Act, the Court rightly held that the appointment to the four categories of Committees specified under Sections 31A(1) takes place "at least more than once" "during the tenure of the Corporation". Therefore the High Court opined "the relative strength of the recognised parties or registered parties or groups at the time of appointments" whenever made "would be relevant". Hence, found no reason to find fault with the impugned order. The correctness of the said judgment is in issue before us.

11. To examine the correctness of the conclusion reached by the High Court, a brief survey of the relevant provisions of the Municipal Corporation Act is required. Section 20 of the Act contemplates the constitution of a Standing Committee consisting of 16 Councillors to be appointed by the Corporation out of its own body. It is further stipulated in Section 20(3) that half of the members of the Standing Committee shall retire every succeeding year.

12. Section 24 authorises the Standing Committee to delegate any of its powers and duties to any Special Committee appointed under Section 30 of the Act.

13. Section 31 contemplates the appointment of ad-hoc Committees for inquiring into or reporting or for giving opinion with reference to such subjects relating to the purpose of this Act.

14. Section 31(A) of the Act stipulates that in the case of (a) Standing, (b) Transport,

(c) Special or (d) ad hoc Committees, the appointment of Councillors to such Committees shall be made by the Corporation in accordance with the provisions of Sub-section (2) thereof.

"31A. Appointment by nomination 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 provisions of sub-

section (2):-

- (a) Standing Committee;
- (b) Transport Committee;
- (c) Any special Committee appointed under section 30;
- (d) Any ad hoc Committee appointed under section 31."

Sub-section (2) stipulates that in making nomination of the Councillors to the above-

mentioned Committees, the Corporation is required to take into account the relative strength of recognised or registered parties or groups in the Corporation and nominate members as nearly as in proportion to the strength of such parties or groups in the Corporation.

"31A(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."

In making such nomination, the Corporation is required to consult the Leader of the House and the Leader of the Opposition etc.

15. However, the first proviso to sub-section (2) would recognise the authority of the Municipal Corporation to nominate any Councillor to any one of the above-

mentioned Committees notwithstanding the fact that such a Councillor does not belong to any party or group.

"Proviso (1) - 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."

Second proviso - the exact meaning and scope of which is required to be examined in this appeal - reads as follows:

"Proviso (2) - 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, within a period of one month from the date of notification of elections results, from the aghadi or front and, on its registration, the provision 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."

16. We may mention here that some of the political parties to which the councillors of the 3rd respondent corporation belong to, such as Bhartiya Janata Party, Indian National Congress, National Congress, Shiv Sena, etc., are indisputably registered political parties under Section 29A of the Representations of the People's Act and also recognised political parties in terms of the allotment of the symbols orders 1968 made by the Election Commission of India. Unfortunately there is no material on record to indicate whether Lok Bharti Party is either a registered or a recognised political party.

17. As already noticed under Section 31A of the Municipal Corporation Act, the Corporation is required to take into account the relative strength of the recognised parties or registered parties or groups. The expressions (1) 'registered party', (2) 'recognised party', (3) groups and (4) 'front or aghadi' occurring in Section 31A of the Municipal Corporation Act are not defined under the said Act. However, the expression 'front' or 'aghadi' is defined under Section 2(a) of the Disqualification Act.

"2.(a) "aghadi" or "front" means a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority."

18. The expressions "recognised party" and "registered party" in the context of political parties have a definite legal connotation in this country.

19. Part IVA of the Representation of the People Act, 1951 provides for the registration of political parties. Section 29A prescribes the procedure for the registration of a political party. Such registration is not compulsory, but optional.

However, registration enables a political party to claim certain benefits under law such as accepting of a contribution (See Section 29B) from any person or company etc. Similarly under the Election Symbols (Allotment and Reservation) Order, 1968 certain symbols are reserved for a 'recognised

political party' for the exclusive allotment to the candidates set up by such political party. The above mentioned order stipulates the various conditions which are required to be satisfied before a political party is entitled for recognition under the said order.

20. The expression "political party" itself is defined under the said order to mean a political party registered under Section 29A of the Representation of the People Act, 1951.

"Political party' means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951."

In the absence of any clear definition to the contra in either of the local acts of Maharashtra referred to earlier, coupled with the established practice in this country that the various 'recognised political parties' under the symbols Order, 1968 set up candidates at the elections to the local bodies such as the third respondent and they are permitted to use the symbols which are reserved for them under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968, the expressions 'political party', 'registered party' and 'recognised party' occurring in Section 31A of the Municipal Corporation Act, must necessarily be given the same meaning as assigned to them in the Representation of the People Act, 1951 and the Election Symbols (Reservation and Allotment) Order, 1968.

21. The expression "groups", occurring under Section 31A(2), once again, is not defined but in the context and scheme of the Section, in our view, the expression "group" must be understood only as meaning - Councillors not belonging to either a registered political party or a recognised political party, but persons set up at the Municipal election by an Aghadi as defined under the Disqualification Act.

22. Having arrived at the meaning of various undefined expressions employed in Section 31A of the Municipal Corporation Act, the scheme and purpose of the 2nd proviso to Section 31A(2) is required to be examined. To understand the purport and scheme of the 2nd proviso to Section 31A(2) of the Municipal Corporation act, we must first examine relevance of the reference to the Maharashtra Local Authority Members Disqualification Act, 1986 made in the said proviso, and the purpose sought to be achieved by the legislature by excluding the application of the said Act through the devise of employing a non obstante clause. For a ready reference the relevant portion of the second proviso may again be extracted which reads as follows:-

"***** notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986,*****"

The State of Maharashtra made an enactment called Maharashtra Local Authority Members Disqualification Act, 1986. The Act provides for the disqualification of Members of the Local Authorities i.e. Municipal Bodies and Panchayati Raj Institutions in certain circumstances. Section 3 of the said Act declares that an elected Councillor of a Municipal Corporation shall be disqualified for being (i.e. continuing as) a Councillor in three contingencies, if such person - (i) voluntarily gives

up the membership of the political party which had set him up as a candidate at the election to the Municipal Corporation, (ii) on voting or abstaining from voting in any meeting of the concerned municipal body, contrary to any directions issued by the political party to which such a person belongs. Section 3 of the Disqualification Act, in so far as it is relevant for the present purposes, reads as follows:-

" 3.(1) Subject to the provisions of [section 5] a councillor belonging to any political party or aghadi or front shall be disqualified for being a councillor
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(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 a Municipal Corporation, Municipal Council, contrary to any direction issued by the political party or aghadi, or front to which he belongs to 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 shall not be condoned under this clause;

Explanation.--For the purpose of this section--

(a) a person elected as a councillor, shall be deemed to belong to the political party or aghadi or front, if any, by which he was set up as candidate for election as such councillor ; "

[emphasis supplied]

(iii) under sub-section(2) that an elected councillor who had been elected as such otherwise than as a candidate set up by any political party or aghadi or front (i.e. an independent councillor) shall be disqualified if he joins any political party or aghadi after such election.

"(2) An elected councillor, ***** who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front shall be disqualified for being a councillor, or as the case may be, a member if he joins any political party or aghadi or front after such election."

23. Section 5 of the Act carves out an exception to the Rule contained under Section 3(1) i.e. it stipulates contingencies in which an elected councillor does not incur the disqualification

contemplated under Section 3(1) notwithstanding the fact that such person parted ways with the original political party to which he/she originally belonged to. The complete scheme of Section 5 may not be necessary for the purpose of this case but we must take note of the fact that Section 5 does not recognise any exception to the rule contained in Section 3(2) with respect to the independent councillors.

24. The second proviso to sub-section (2) of Section 31A enables the formation of a Aghadi or front within a period of one month from the date of notification of the election results. Such an Aghadi or front can be formed by various possible combinations of councillors belonging to either two or more registered parties or recognised parties or independent councillors. The proviso categorically stipulates that such a formation of an 'Aghadi' or 'front' is possible notwithstanding anything contained in the Disqualification Act. Because an "Aghadi" or "front", as defined under the Disqualification Act, clearly, can only be the combination of a group of persons forming themselves into a party prior to the election for setting up candidates at an election to a local authority but not a combination of political parties or political parties and individuals.

25. Therefore, second proviso to Section 31A (2) of the Municipal Corporation Act which is a later expression of the will of the sovereign, in contrast to the stipulation as contained under Section 2(a) and 3(2) of the Disqualification Act, would enable the formation of post electoral aghadis or fronts. However, such a formation is only meant for a limited purpose of enabling such aghadis to secure better representation in the various categories of the Committees specified under Section 31A. The component parties or individual independent Councillors, as the case may be, in the case of a given front/aghadi do not lose their political identity and merge in to the aghadi/front or bring into existence a new political party. There is no merger such as the one contemplated under Section 5 of the Disqualification Act. It is further apparent from the language of the second proviso that on the formation of such an Aghadi or front, the same is required to be registered. The procedure for such registration is contained in the Maharashtra Local Authority Members Disqualification Rules, 1987.

26. Once such an Aghadi is registered by a legal fiction created under the proviso, such an Aghadi is treated as if it were a pre-poll Aghadi or front. The proviso further declares that once such registration is made, the provisions of the Disqualification Act apply to the Members of such post poll Aghadi. We do not propose to examine the legal consequences of such a declaration as it appears from the record that a complaint has already been lodged against the respondents 6 to 13 herein under the provisions of the Disqualification Act. The limited question before us is whether the 1st respondent was legally right in registering an Aghadi or front formed after the lapse of one month from the date of the notification of the election results.

27. At paras 19 and 20 of the judgment under appeal, the High Court held:

"19. Once it is held that the appointment to the various Committees contemplated under Section 31A of the B.P.M.C. Act takes place more than once, the relative strength of the recognized parties or registered parties or groups at the time of their appointment would be relevant. In other words, the relative strength of the parties that was at the time of registration with a period of one month from the date of

notification of the election results, would be relevant only on the first occasion after the general elections are held.

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20. If the interpretation suggested by the petitioners is accepted, in our opinion, Rule 3(4) of the Rules would be rendered otiose. We have already held that the provisions of the Act and Rules are required to be taken into account while interpreting the provisions of Section 31A of the B.P.M.C. Act. In view thereof, we are clearly of the opinion that the appointment of various Committees under Section 31A of the B.P.M.C. Act not being one time affair, the relative strength of the recognized parties or registered parties or groups, subject to any change, if any, will have to be taken into account at the time of appointment of councillors to these committees."

In substance, the High Court held that the interpretation of the Section 31A depends upon the tenor and scheme of the subordinate legislation. Such a principle of statutory construction is not normally resorted to save in the case of interpretation of an old enactment where the language is ambiguous. We are conscious of the fact that there is some difference of opinion on this principle but for the purpose of the present case we do not think it necessary to examine the proposition in detail as in our opinion the language of Section 31A is too explicit to require any other external aid for the interpretation of the same. Subordinate legislation made by the executive in exercise of the powers delegated by the legislature, at best, may reflect the understanding of the executive of the scope of the powers delegated. But there is no inherent guarantee such an understanding is consistent with the true meaning and purport of the parent enactment.

28. Such variations of the relative strength of aghadis would have various legal consequences provided under the Disqualification Act. Depending upon the fact situation in a given case, the variation might result in the consequence of rendering some of the Councillors disqualified for continuing as Councillors. Section 31A of the Municipal Corporation Act only enables the formation of an aghadi or front within a month from the date of the notification of the results of the election to the Municipal Corporation. To permit recognition of variations in the relative strength of the political parties beyond the above mentioned period of one month would be plainly in violation of the language of the second proviso to Section 31A.

29. We are, therefore, of the opinion that the judgment under appeal, as well as the impugned order, cannot be sustained. We allow the appeal and set aside the impugned order.

.....J. (ALTAMAS KABIR)J. (SURINDER SINGH
NIJJAR)J. (J. CHELAMESWAR) New Delhi;

January 31, 2012.