

## **Sadashiv H. Patil vs Vithal D. Teke & Ors.!Ashok Y. Patil & ... on 31 August, 2000**

**Equivalent citations: AIR 2000 SUPREME COURT 3044, 2000 (8) SCC 82, 2000 AIR SCW 3377, (2000) 9 JT 604 (SC), (2001) 1 ALLMR 282 (SC), 2000 (6) SCALE 209, 2000 BOM CR 829, 2000 (8) SRJ 348, 2001 (1) ALL MR 282, 2000 (2) UJ (SC) 1335, (2001) 1 MAH LJ 312, (2001) 1 MAHLR 454, (2000) 6 ANDHLD 46, (2000) 6 SUPREME 194, (2000) 6 SCALE 209, 2001 (1) BOM LR 253, 2001 BOM LR 1 253**

**Author: R.C. Lahoti**

**Bench: Chief Justice, R.C. Lahoti, K.G. Balakrishnan**

PETITIONER:

SADASHIV H. PATIL

Vs.

RESPONDENT:

VITHAL D. TEKE & ORS.!Ashok Y. Patil & Ors.VsDistrict Collector, Satara & Ors.

DATE OF JUDGMENT: 31/08/2000

BENCH:

CJI , R.C. LAhoti & K.G. Balakrishnan

JUDGMENT:

R.C. Lahoti, J.

L...I...T.....T.....T.....T.....T.....T.....T...J Leave granted in S.L.P.C) No.21085 of 1998.

In all these appeals the controversy arising for decision is whether certain members of the municipal council have incurred disqualification on ground of defection.

The Maharashtra Local Authority Members Disqualification Act, 1986 (Act No.20 of 1987) (hereinafter the Act, for short) was enacted to provide for disqualification of members of certain local authorities on the ground of defection and for matters incidental and connected therewith. In exercise of the powers conferred by Section 9 of the Act, the Government of Maharashtra has framed the Rules known as the Maharashtra Local Authority Members Disqualification Rules, 1987 (hereinafter the Rules, for short).

XXX                      XXX                      XXX                      XXX

XXX                      XXX                      XXX                      XXX

(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.

(b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti 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

(4) Notwithstanding anything contained in the foregoing provisions of this section a person who on the commencement of this Act, is a councillor, or as the case may be, a



In the appeals before us we are required to deal with an Aghadi or front relating to Municipal Council. We would therefore analyse the provisions of the Act from the angle of Municipal Council leaving aside Municipal Corporation, Zilla Parishad or Panchayat Samiti. In the scheme of the Act, it is clear that the formation of an Aghadi or front by a group of persons must precede the election to a local authority. The politico-legal doctrine of disqualification by defection has been percolated to the elections of local authorities in Maharashtra by enacting the Act. The Act proposes to encourage the elections being fought by group of persons bringing themselves together so as to have a common purpose and by contesting election on a common symbol propagating the principles and purpose which which that group proposes to administer the local authority if returned to power by the electorate. Such group of persons having a common ideology though not necessarily belonging to a political party of State or National level may form themselves into a party, the immediate purpose whereof is to set up candidates for election to the local authority. The collective name assigned to such group of persons is an Aghadi or front. On the elections being accomplished, a Municipal Council comes into existence which includes elected Councillors belonging to any political party, Aghadi or front. Once a candidate set up by a political party, Aghadi or front is declared elected he shall be fictionally deemed to be belonging to the political party or Aghadi or front by which he was set up as a candidate at the elections. He has no option in the matter. The elected Councillors of a particular political party, Aghadi or front constitute a Municipal Party identified with any political party or Aghadi or front by which the candidature of such Councillors was sponsored. The Municipal Party gets a statutory recognition. Rule 3 contemplates a leader of such Municipal Party being elected or appointed who shall furnish within 30 days from the date of its formation a statement in writing in Form I being filed with the Collector wherein the names of members of such party(which means a municipal party) shall be mentioned. The statement shall also mention the names and designation of the members of such party authorised to communicate with the Collector. A copy of the rules and regulations(whether known as such or a constitution or by any other name) of the Municipal Party and of the parent party, Aghadi or front are to be filed with the Collector. There is a system of cross-check provided by the Rules. Not only a statement by the leader of Municipal Party is to be filed under Rule 3(1)(a), every Councillor in relation to Municipal Party shall, before he has taken his seat, furnish a statement of particulars and declaration in Form III. The information so furnished shall be published in the Maharashtra Government Gazette and subject to rectification of such discrepancy as may be pointed out and necessary corrigendum if necessary being published in the Gazette, the information shall be maintained in the records of the Collector in a register in Form IV under Rule 5. In this manner the evidence of formation of a Municipal Party comes into existence and any doubts or disputes relating to formation of a particular Municipal Party, and the members thereof along with the requisite particulars furnished, filed, notified and entered in the register are ruled out.

The disqualification with which we are concerned is contemplated by Clause (b) of sub-section (1) of Section 3 of the Act. Voting or abstaining from voting in any meeting of the Municipal Council may entail disqualification, if:-

- 1) such voting or abstention is contrary to any direction issued by (a) the political party or Aghadi or front to which he belongs, or (b) by any person or authority authorised by the political party or Aghadi or front in this behalf; 2) such voting or



nomination for the post of President proposed by Badshah Akbar Tamboli, respondent no.2. Nandkumar B. Patil and Sadashivrao H. Patil also filed their nominations as the primary and substitute candidates for the post of the President as resolved in the meeting of Municipal Party of Janta Aghadi. On 15.12.1997, two directions, popularly known in the political parlance as whip, were issued. One direction was issued to Vithal Dhondiram Teke, respondent no.1 and Badshah Akbar Tamboli, respondent no.2 asking them to withdraw the nomination and the proposal respectively for candidature of the respondent no.1 for the post of President as having been filed in violation of the resolution passed at the meeting of Municipal Party of Janta Aghadi. This direction bears the signatures of one Hanumant Rao who claims to be leader of the political party known as Janta Aghadi, Vita. It is also signed by Sadashiv Patil, the appellant in the capacity of Janta Aghadi Chief/Leader of Municipal Party. Another direction (whip) dated 15.12.1997 was issued to all the Municipal Councillors of Janta Aghadi directing them to remain present at the meeting of Vita Municipal Council scheduled to be held on 16.12.1997 and to cast vote in favour of the authorised candidate nominated by Janta Aghadi, namely, Nandkumar Baburao Patil. This whip is signed by the appellant, Sadashiv Hanumantrao Patil in the capacity of party leader, Janta Aghadi, Vita. These whips were served on all the 12 Councillors belonging to Janta Aghadi. Copies of the whips were served on the Sub-Divisional Officer who was to conduct the elections in question and were also pasted on a Board placed at the entrance of the meeting hall. The validity of the nomination filed by respondent no.1 was objected to on the ground of defiance of the whips issued by Janta Aghadi but the objection was overruled. The election was held. Nandkumar Patil, the official candidate of Janta Aghadi received 9 votes as against 10 votes received by Vithal D. Teke, the respondent no.1. He was declared elected as President of the Municipal Council. The respondent nos.1, 2 and 3 voted for the respondent no.1. A meeting of Janta Aghadi was held on 19.12.1997. It was unanimously resolved not to condone the defiance of whip by respondent nos.1, 2 and 3. The appellant and two other members of Janta Aghadi made a reference for disqualifying respondent nos. 1, 2 and 3 from the membership of the Municipal Council under Section 3 of the Act. After affording the respondent nos. 1, 2 and 3 an opportunity of hearing and holding an enquiry as contemplated by the Act and the Rules, the Collector declared the respondent nos. 1, 2 and 3 disqualified under the provisions of the Act. The three respondents preferred three writ petitions before the High Court which have been heard and disposed of by a common order impugned in these appeals. The High Court has allowed the writ petitions and quashed the order dated 22.6.1998 passed by the Collector.

Shri Uday Lalit, the learned counsel for the appellant submitted that a clear case of voting by respondent nos.1, 2 and 3 contrary to the direction issued by the political party to which respondent nos. 1, 2 and 3 belonged was made out attracting applicability of Section 3 (1)(b) and hence the High Court was not justified in allowing the writ petitions and setting aside the well reasoned and detailed order of the Collector. The learned counsel for respondent nos.1, 2 and 3 has supported the order of the High Court on very many grounds. For the purpose of these appeals, it would suffice to deal with only one of the pleas raised on behalf of the respondents 1, 2 and 3 in support of the order of the High Court.

A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the

Brief facts and controversy in appeal arising out of S.L.P.(C) No.21085/98.

4. The District Collector registered the names in a register maintained for the purpose. The requisite gazette notification was also made on 16.1.1997. In the meeting of the Municipal Council held on 17.12.1996 Smt. Archana Patel, a councillor set up by Aghadi was elected unopposed as President of the Municipal Council, Karad for a term of one year. The controversy relates to the time when this term of one year was coming to an end and election of the President for the next term was due to be held. A meeting of the Aghadi took place on 18.10.1997. All the 11 Councillors belonging to the Aghadi participated in the meeting. A few independent Municipal Councillors and a few others were also present at the meeting. In this meeting a unanimous resolution was passed resolving that Dr. Erram, the President of the Aghadi, i.e., the parent body which had set up the candidates for election



shall have power to issue whip to the members and in his absence Mr. Pawaskar, a Councillor would have power to issue the whip. Dr. Erram was not a Municipal councillor. On 6.12.1997 again a meeting of Aghadi took place in which all Municipal Councillors of the Aghadi were present. The meeting was also attended to by two independent Councillors, 2 coopted Councillors and 2 supporters of the Aghadi. In this meeting a unanimous resolution was passed that at the ensuing meeting of the Municipal Council scheduled to be held on 12.12.1997 for electing President of the Aghadi, Shri Ravindra Maruti Shinde shall be the candidate of the Aghadi. It was further resolved that the Municipal Councillors should positively remain present at the meeting and vote for the official candidate of the Nagar Vikas Aghadi, i.e., Shri Ravindra Maruti Shinde. The Municipal Councillors of Aghadi were ordered not to remain absent from the meeting and not to cast any invalid vote nor abstain from voting which if done shall be considered to be the violation of whip. In terms of the resolution intimations were sent to the Municipal Councillors belonging to Aghadi signed by Dr. D.S. Erram. The whip was sent by post under certificate of posting and also published in local newspaper Daily Aikya dated 9.12.1997 on the front page along with the photograph of candidate Shri Shinde. It was displayed on the notice board of municipal council. We need not further belabour on this aspect as communication or knowledge of the whip to the appellants has been held proved by the Collector as also by the High Court and not seriously disputed at the hearing before us. On 11.12.1997 the Collector and Election Officer, Karad was informed that Shri Ravindra Maruti Shinde was the official candidate of the Aghadi for the post of President and whip to that effect has also been issued. The intimation is signed by Dr. Erram and Shri Pawaskar both in the capacity of President, Nagar Vikas Aghadi and party leader Nagar Vikas Aghadi respectively.

The whip issued to the Municipal Councillors was posted to their respective addresses under Certificate of Posting. In the meeting of the Municipal Council held on 12th December, 1997, Smt. Balutai Bhimrao Suryawanshi, the appellant no.4 offered her candidature for the post of President in opposition to Shri Ravindra Mantri Shinde, the official candidate of the Aghadi and was also declared elected. Smt. Balutai secured 16 votes while Shri Shinde the official candidate of Aghadi secured 10 votes. All the four appellants voted for Smt. Balutai. Another meeting of the Municipal Council was to be held on 15th December, 1997 wherein certain important resolutions were to be tabled. Prior to the meeting of the Municipal Council, a meeting of the Aghadi was convened on 10th December, 1997 wherein also a whip was issued giving directions in regard to the pattern of voting to be followed by the Municipal Councillors of the Aghadi. The appellants defied the whip and voted to the contrary.

Shri Pawaskar who was one of the signatories to the whip moved the Collector, Satara complaining of disqualification under Section 3(1)(b) having been incurred by the four appellants. The Collector after holding the enquiry arrived at a finding upholding the complaint and declaring the appellants disqualified from the membership of the Municipal Council under Section 7 of the Act. The appellants put in issue the order of the Collector by filing writ petition before the High Court of Bombay. The petition has been dismissed upholding the findings recorded by the Collector. The aggrieved four Municipal Councillors have filed this appeal by special leave.

The first submission made by Shri V.A. Mohta, the learned senior counsel for the appellants is that the meeting held on 10.12.1997 cannot be said to be a meeting of Aghadi or front and therefore any

resolution passed therein was not binding on the appellants. We find no merit in this submission. The meeting was attended to by all the Councillors belonging to the Aghadi. A few others also participated in the meeting. The resolution was unanimous. Nothing has been brought on record to suggest if there were any members other than those present and participating in the meeting or those who were informed of the meeting so as to hold that the meeting could not be called a meeting of the Aghadi or front. The resolution passed was unanimous. We do not find any valid reason to hold the meeting not to be of Aghadi or front.

It was next submitted that any copy of rules & regulations of the municipal party or Aghadi or front have not been placed on record nor filed with the Collector alongwith the statement in Form I and therefore the working of the Nagar Vikas Aghadi and the person authorised to issue whip cannot be spelled out. This contention has also to be rejected. The filing of the rules & regulations contemplated by clauses (b) & (c) of sub-rule 1 of Rule 3 is for the purpose of registration of a municipal party with the Collector. For the purpose of these appeals, we do not propose to go into the question as to what would be the effect of absence of rules & regulations on the formation of the Aghadi or front or the effect on the registration of non-filing of such rules & regulation, if there be one, for two reasons. Firstly, the registration of municipal party is complete consequent upon the entries having been made in the register Form IV and also having been notified in the Government Gazette. Nobody has raised any objection to the registration of the municipal party or validity thereof and sought for its cancellation. Secondly, for the purpose of the controversy arising for decision in these appeals, we could have spelled out from the rules & regulations, if available, who was the person or authority authorised in this behalf for the purpose of issuing a whip under Section 3(1)(b) of the Act. In the case at hand, such an authorisation was given in the resolution passed at the meeting dated 18.10.1997. It is nobodys case that such an authorisation was at any time questioned or revoked. Section 3(1)(b) does not provide for when and how such authorisation shall be given; all that the provision contemplates is that there must be any person or authority authorised in this behalf by the political party or Aghadi or front to which the Councillor belongs. The language of the resolution clearly spells out compliance with this requirement. Dr. Erram, the President of the Aghadi and in his absence Shri Pawaskar, a Councillor, were specifically authorised to issue a whip. The whips on the basis of which the disqualification is sought to be spelled out are signed by Dr. Erram or by Dr. Erram and Shri Pawaskar both. The whips issued satisfy the requirement of Section 3(1)(b) in view of the specific authorisation given in this behalf.

Lastly, it was submitted by Shri Mohta that Dr. Erram was the President of the parent body but not a Councillor and hence not a member of the municipal party and therefore he could not have been authorised to issue a whip. Section 3(1)(b) requires any person or authority to be authorised in this behalf by the political party or Aghadi or front. No provision either in the Act or in the Rules has been brought to our notice in support of the submission made spelling out that the person or authority authorised to issue the whip must be a Councillor or a member of a municipal party.

For the foregoing reasons we do not find any fault with the legality of the whip having been issued. The whip did not suffer with any such deficiency as would enable the whip being defied successfully and yet avoiding consequence of disqualification.

For the foregoing reasons, all the appeals are held liable to be dismissed and are dismissed accordingly. No order as to the costs.