

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5059 OF 2021

**[Arising out of Special Leave Petition (Civil) No.5605 of
2021]**

SAU. SANGEETA W/O SUNIL SHINDE ...APPELLANT(S)

VERSUS

**THE STATE OF MAHARASHTRA
AND ORS.**

.... RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

- 1.** Leave granted.
- 2.** The appellant has approached this Court being aggrieved by the judgment and order dated 30.3.2021 passed by the Division Bench of the High Court of Judicature at Bombay, bench at Aurangabad, thereby dismissing the writ petition challenging the order passed by the District Collector, Ahmednagar dated 6.1.2020 whereby

the District Collector has granted approval to the selection of respondent No. 3 – Dr. Vandana Dnyaneshwar Murkute as Gatneta (Group Leader) of the Indian National Congress, Shrirampur Panchayat Samiti Party (hereinafter referred to as ‘INCPS Party’).

3. The facts, in brief, giving rise to the present appeal are as under:

The appellant along with respondent Nos. 3, 4 and 5 were elected as members of the Panchayat Samiti, Shrirampur in the elections, which were held in the year 2017. It is not in dispute that all four of them had contested the election to the Panchayat Samiti on the authorisation of the Indian National Congress Party (hereinafter referred to as ‘INC Party’). As such, the appellant and respondent Nos. 3, 4 and 5 formed a ‘Panchayat Samiti Party’ in the name of INCPS Party.

The first meeting of the INCPS Party was held on 1.3.2017. The said meeting was presided over by Shri Jayantrao Sasane, the then President of the Ahmednagar District INC Party. As per the resolution passed in the said meeting, it was resolved to select the appellant as Gatneta

(Party Leader/Party Whip) of INCPS Party. It was further resolved to authorise the appellant to prepare proposals by making rules and regulations and submit the same to the District Collector, Ahmednagar. In the said meeting, it was further resolved that in the event it was decided to change the Party Leader/Party Whip, Mr. Jayantrao Sasane, the then District President of INC Party will have all the powers, so also the power, to submit a proposal to the District Collector in accordance with the rules.

Accordingly, the necessary information was submitted by the appellant to the District Collector on 7.3.2017, informing about the formation of INCPS Party so also she being elected as the leader of the said Party. The District Collector, Ahmednagar vide order dated 8.3.2017 recorded in Form (4) as per Rule 5(1) of the Maharashtra Local Authorities Members Disqualification Rules, 1987 (hereinafter referred to as 'the said Rules') about the registration of the Aghadi; the name of the members; and the name of the Party Leader.

A complaint dated 19.12.2019 came to be filed by respondent Nos. 3 to 5 against the appellant before the

District President, Ahmednagar District INC Party alleging therein that the appellant during her tenure of two and half years had neither taken the members of INCPS Party into confidence nor had convened any meeting of INCPS Party.

According to the contesting respondents, a notice of meeting convened on 4.1.2020 came to be served upon the appellant for change of Gatneta on 26.12.2019.

In the meeting held on 4.1.2020 under the Chairmanship of Ahmednagar District INC Party President Mr. Balasaheb Salunke, which was attended by respondent Nos. 3 to 5, a unanimous resolution was passed for removing the appellant from the post of Party Leader of INCPS Party. Vide another resolution passed in the said meeting, it was resolved to appoint respondent No.3 as Party Leader/Party Whip of INCPS Party and she was also authorised for issuing whips. Respondent No.3 was also authorised to submit a proposal to the District Collector, Ahmednagar regarding change of Party Leader/Party Whip.

Respondent No.3 submitted a proposal on 6.1.2020, which came to be approved by the District Collector vide order of the same date.

It further appears that the election to the post of Chairman and Vice-Chairman of the Shrirampur Panchayat Samiti was held on 7.1.2020. In the said election, the appellant came to be elected as Chairman of the Panchayat Samiti.

It is pertinent to note that prior to the said election, two conflicting whips came to be issued insofar as INCPS Party is concerned. One whip came to be issued by respondent No.3 directing therein that in the election for the post of Chairman, she was given candidature by the INCPS Party whereas for the post of Vice-Chairman, respondent No.4 was given candidature by the INCPS Party. It was therefore directed that all the members of the INCPS Party should remain present in the election of the Chairman and the Vice-Chairman on 7.1.2020 and vote in favour of the aforesaid two candidates. It was further directed that in the event of failure to comply with the same, it would be treated as defection/anti-party activity and necessary action would be taken in accordance with law.

Another whip came to be issued by the appellant directing the members of the INCPS Party stating therein

that the INCPS Party had given candidature to the appellant herself and all the members should cast vote in her favour. It also contained a similar direction, that on account of non-compliance with the same, the members will face action for disqualification under the provisions of the said Rules.

Subsequent to the election, disqualification proceedings being Disqualification Petition No.1 of 2020 came to be filed by the appellant against respondent Nos.3 to 5, whereas Disqualification Petition No.2 of 2020 came to be filed by respondent No.3 against the appellant.

It is pertinent to note that in the election for the post of Chairman (Sabhapati) that was held on 7.1.2020, except the appellant, all the members of the INCPS Party voted against the appellant. However, on account of the support of the members belonging to other Parties, the appellant came to be elected in the said election.

The appellant thereafter approached the Division Bench of the High Court of Judicature at Bombay, bench at Aurangabad, by way of Writ Petition No.1853 of 2020 challenging the decision of the District Collector, Ahmednagar dated 6.1.2020 approving the appointment of

respondent No.3 as Gatneta. Vide order dated 31.1.2020, a notice came to be issued in the said writ petition and by way of interim measure the disqualification proceedings filed by both the parties were stayed. Vide the impugned judgment, the High Court dismissed the said writ petition. Being aggrieved thereby, the present appeal by way of special leave.

4. We have heard Shri Shekhar Naphade, learned Senior Counsel appearing on behalf of the appellant, Shri Sachin Patil, learned counsel appearing on behalf of the State and Shri Ravindra Keshavrao Adsure, learned counsel appearing on behalf of respondent Nos. 3 to 5.

5. Shri Shekhar Naphade, learned Senior Counsel appearing on behalf of the appellant submits that in accordance with Rule 3(1)(b) of the said Rules, the INCPS Party had submitted rules and regulations of the Panchayat Samiti Party. He submitted that according to the said Rules, the appellant was elected as Party Leader for a period of five years. It is submitted that in the absence of any rule to the contrary the appellant could not have been removed as a Party Leader until completion of a period of five years.

The Learned Senior Counsel further submitted that the meeting to remove the appellant from the post of Party Leader was convened by the President of the Ahmednagar District INC Party, who was an outsider. It is further submitted that the meeting could have been convened only by the appellant. It is submitted that in the event the appellant did not convene a meeting, the only course available to respondent Nos. 3 to 5 was to give a requisition to the appellant and only in the event of her failure to convene a meeting, respondent Nos. 3 to 5 could have convened a meeting.

6. It is the submission of the appellant that the said Rules are enacted with the avowed purpose of preventing horse-trading and maintaining purity in political system. Learned Senior Counsel submits that with that object, the said Rules provided that once a Party Leader was elected, he/she should continue for a period of five years. He therefore submits that the High Court has erred in dismissing the writ petition.

7. Shri Sachin Patil, learned counsel appearing on behalf of the State submitted that the District Collector had

initially approved the appellant as Gatneta since the same was based on a resolution passed by all the four members of the INCPS Party. He submitted that subsequent approval granted to the selection/appointment of respondent No.3 as Gatneta was on the basis of resolution passed by the three-fourth majority of the INCPS Party and as such, the action of the District Collector was in accordance with law.

8. Shri Ravindra Adsure, learned counsel appearing on behalf of respondent Nos. 3 to 5, on the contrary, would submit that it is the appellant who has acted in breach of the provisions of the said Rules. He submitted that the appellant by breaking the INCPS Party chose to contest the election for the post of Chairman contrary to the mandate of the INCPS Party and was elected to the post of Chairman with the support of the rivals. It is submitted that the High Court has rightly considered the legal position and dismissed the writ petition filed by the appellant.

9. It will be relevant to refer to clause (l) of Section 2 of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as 'the said Act'), which reads thus:

“(l) “Panchayat Samiti party”, in relation to a member belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Panchayat Samiti for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;
[Emphasis supplied]

10. It could thus be seen that the ‘Panchayat Samiti Party’ has been defined to mean, the group consisting of all the members of the Panchayat Samiti for the time being belonging to that political party or aghadi or front in accordance with the Explanation to Section 3.

11. It will also be relevant to refer to Section 3 of the said Act, which reads thus:

“3. Disqualification on ground of defection. - (1) Subject to the provisions of section 5, a councillor or a member belong to any political party or *aghadi* or front shall be disqualified for being a councillor or a member,-

- (a) if he has voluntarily given up his membership of such political party or *aghadi* or front; or
- (b) if he votes or abstains from voting in any meeting of 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 by such political party or *aghadi* or front, person or authority within fifteen days from the date of such voting or abstention:

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

Explanation.-For the purposes of this section-

- (a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or *aghadi* or front, if any, by which he was set up as a candidate for election as such councillor or member;
- (b) a nominated councillor shall -
 - (i) where he is a member of any political party or *aghadi* or front on the date of his nomination, be deemed to belong to such political party or *aghadi* or front,

(ii) in any other case, be deemed to belong to the political party or *aghadi* or front of which he becomes, or as the case may be, first becomes a member of such party or *aghadi* or front before the expiry of six months from the date on which he is nominated;

(c)

(2) An elected Councillor, or as the case may be, member 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.

(3)

(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 member (whether elected or nominated as such councillor or member) shall-

(a) where he has a member of a political party or *aghadi* or front immediately before such commencement, be deemed, for the purposes of sub-section (1) to have been elected as a Councillor, or as the case may be, a member as a candidate set up by such political party or *aghadi* or front;

(b) in any other case, be deemed to be an elected Councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party

or *aghadi* or front for the purpose of sub-section (2).”

[emphasis supplied]

12. It could thus be seen that under sub-section (1) of section 3 of the said Act, a councillor or a member belong to any political party or aghadi or front would be disqualified for being a councillor or a member, if he has voluntarily given up his membership of such political party or aghadi or front; or if he votes or abstains from voting in any meeting contrary to any direction issued by the political party or aghadi or front to which he belongs. However, this could be condoned, if a member so does with the prior permission of the political party or aghadi or front, person or authority and such voting or abstention has been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention. The proviso is important. Such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the

Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under the said clause. Sub-section (1) of Section 3 is subject to the provisions of Section 5. Section 5 deals with disqualification on ground of defection not to apply in case of merger and as such, the same would not have any bearing on the facts of the present case.

13. It will also be relevant to refer to sub-rules (1) and

(4) of Rule 3 of the said Rules, which read thus:

“3. Information to be furnished by a leader of a Party. –

(1) The leader of each municipal party or a *Zilla Parishad* party in relation to a councillor and the leader of *Panchayat Samiti* party in relation to a member (other than a municipal party or a *Zilla Parishad* party or a *Panchayat Samiti* party consisting of only one member) shall, within thirty days from the date of commencement of these rules or, where such party is formed after such date, within thirty days from the date of its formation, or in either case, within such further period as the Commissioner, in the case of a Councillor of a Municipal Corporation, or the Collector, in the case of any other Councillor or member may for sufficient reason allow, furnish the following information to the Commissioner, or, as the case may be, to the Collector, namely:-

- (a) a statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form I, and the names and designations of the members of such party who have been authorised by it for communicating with the Commissioner or, as the case may be, Collector for the purposes of these rules;
 - (b) a copy of the rules and regulations (whether known as such or a constitution or by any other name), of the municipal party, *Zilla Parishad* party or the *Panchayat Samiti* party concerned, as the case may be; and
 - (c) where such party has any separate set of rules and regulations (whether known as such or as constitution or/by any other name), also a copy of such rules and regulations.
- (2)
- (3)
- (4) Whenever any change takes place in the information furnished by the leader of a municipal party or a *Zilla Parishad* party, in relation to a Councillor and by the leader of a *Panchayat Samiti* party, in relation to a member under sub-rule (1) or by a member under sub-rule (2), he shall as soon as may be thereafter and in any

case not later than thirty days from the date on which such change has taken place or within such further period as the Commissioner, or, as the case may be, Collector may for sufficient reason allow, furnish in writing the information with respect to such change to the Commissioner or, as the case may be, Collector.”

14. Perusal of sub-rule (1) of Rule 3 of the said Rules would reveal that the leader of each municipal party or a Zilla Parishad party in relation to a councillor and the leader of Panchayat Samiti party in relation to a member is required to give requisite information within thirty days of formation of a party. The said information includes a statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form I, and the names and designations of the members of such party who have been authorised by it for communicating with the Commissioner or, as the case may be, the Collector. The leader is also required to supply a copy of the rules and regulations (whether known as such or a constitution or/by any other name), of the municipal party, Zilla Parishad

party or the Panchayat Samiti party concerned, as the case may be. Where such party has any separate set of rules and regulations (whether known as such or as constitution or/by any other name), a copy of such rules and regulations is also required to be submitted.

15. Sub-rule (4) of Rule 3 of the said Rules provides that whenever any change takes place in the information furnished by the leader of a municipal party or a Zilla Parishad party, in relation to a Councillor or by the leader of a Panchayat Samiti party in relation to a member under sub-rule (1) or by a member under sub-rule (2), the information with respect to such change has to be communicated in writing to the Commissioner or, as the case may be, Collector.

16. It is the bone of contention of the appellant that in accordance with Rule 3(1)(b) of the said Rules, the rules were communicated by the appellant to the District Collector wherein it was provided that she would be the leader of the INCPS Party for a period of five years and since there was no provision for change of leader, the District

Collector could not have granted approval to removal of the appellant and appointment of respondent No.3 as President.

17. It will be relevant to note that the appellant got the authority to communicate to the Collector on account of the minutes of the meeting held on 1.3.2017. It is to be noted that the said meeting was presided over by Mr. Jayantrao Sasane, the then President of Ahmednagar District INC Party. The resolution in the said meeting also provided that in the event of a decision to change the Party Leader/Party Whip, the District President of the INCPS Party will retain all his powers as well as the power to submit proposals to the District Collector.

18. It could thus be seen that the very appointment of the appellant as Gatneta (Party Leader) is on the basis of the resolution of the meeting chaired by the President of the Ahmednagar District INC Party. The decision to remove the appellant from the post of Gatneta/Party Leader of the INCPS Party and to appoint respondent No.3 as Gatneta/Party Leader is also taken in a meeting which was presided over by the President of Ahmednagar District INC Party.

19. It is pertinent to note that in the meeting dated 1.3.2017 itself, the authority to take steps with regard to change of leader was given to the President of the District INC Party. The appellant therefore cannot be heard to make grievance with regard to the procedure which was followed while removing her inasmuch as the entry of the appellant as Gatneta/Party Leader is by following the very same procedure.

20. The so-called reference to rules and regulations under Rule 3(1)(b) of the said Rules cannot be stretched to be on par with the rules and regulations framed on the basis of any statutory power. The said rules are not happily worded. It appears from the record that the appellant has been the sole draftsman of the so-called rules and regulations referable to Rule 3(1)(b) of the said Rules. The source to submit the said Rules is on the basis of the resolution of the first INCPS Party meeting held on 1.3.2017. The resolution also contains that in the event of change of Party Leader, the President of Ahmednagar District INC Party will have the sole power and was also

authorised to take steps in that regard. The appellant conveniently framed the rules giving effect to some part of the resolution while ignoring other part thereof. We are therefore of the view that the so-called reliance placed on the said Rules would not be of any assistance to the case of the appellant.

21. It will be relevant to refer to the following observations of this Court in the case of ***Sunil Haribhau Kale v. Avinash Gulabrao Mardikar and others***¹

“10. The definition of the term “leader” very clearly shows that where a municipal party is an *aghadi*, its leader has to be chosen by the *aghadi* or front. Necessarily, any change in the leader of the municipal party is to be effected by the *aghadi* and not by any outsider. Once the Rules provide for the election of the Group Leader, it has to be done in that manner only and not in any other manner, even when there is change of the leader. The change of leader has to be in the same democratic process of induction, in the absence of any other method prescribed under the Rules concerned.

¹ (2015) 11 SCC 403

11. Once an *aghadi* (group) is formed and duly recognised by the Divisional Commissioner, it becomes a municipal party in terms of Section 2(i) of the Act. Once original political parties form a municipal party by way of an *aghadi*, for all purposes, the Group Leader is chosen by the municipal party (*aghadi*) only. **The Rules do not provide for nomination of Group Leader. Similarly, the Group Leader of the *aghadi* can be changed only by the group and not by one of the political parties, big or small, belonging to the *aghadi*. In a democracy, a leader is not imposed; leader is elected. Once the birth of a leader in a group is by way of election by the group, the Group Leader thus elected cannot be replaced otherwise than through the very same process of the election in the group, in the absence of any rules to the contra.** No doubt, Nationalist Congress Party has 17 members in the *aghadi* (group). That does not mean that the said party can impose a Group Leader in the *aghadi*. Imposition of a Group Leader otherwise than by the democratic process cuts at the roots of the democracy and certainly it is in violation of the Rules. It is always open to the original political parties to have their respective leaders in the *aghadi*. However, as far as Group Leader is concerned, he has to be elected by the *aghadi* (group)."

[emphasis supplied]

22. It could thus be seen that this Court has clearly held that the leader of a municipal party has to be chosen by aghadi or front and not by any outsider. It has been held by this Court that the change of leader has to be in the same democratic process of induction, in the absence of any other method prescribed under the Rules concerned. It has further been held that once the birth of a leader in a group is by way of election by the group, the Group Leader thus elected cannot be replaced otherwise than through the very same process of the election in the group, in the absence of any rules to the contra. It has been clearly held that imposition of a Group Leader otherwise than by the democratic process cuts at the roots of the democracy and certainly it is in violation of the Rules.

23. Though it is sought to be urged by Shri Shekhar Naphade, learned Senior Counsel that the appellant has been removed and respondent No.3 has been appointed as Group Leader by an outsider i.e. the President of Ahmednagar District INC Party, we are unable to accept the said contention. The election of the appellant as Group

Leader was under the resolution in the meeting attended by all the four elected members and the said meeting was only chaired by the President of the Ahmednagar District INC Party. Similarly, the removal of the appellant and appointment of respondent No.3 is by INCPS Party, however, consisting of three members since the appellant had chosen the different path.

24. Somewhat similar observations have been made by this Court in the case of ***Bhanumati and others v. State of Uttar Pradesh and others***² albeit with regard to the provisions of 'no confidence motion', which are as under:

"58. These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism....."

25. In the case of ***Usha Bharti v. State of Uttar Pradesh and others***³, a challenge was made with regard to the validity of Section 28 of the U.P. Kshettra Panchayat

² (2010) 12 SCC 1
³ (2014) 7 SCC 663

and Zilla Panchayats Act, 1961, which made a provision for 'no confidence' against Chairperson of Zilla Panchayat to be not consistent with Part IX and, in particular, Article 243N of the Constitution of India. Negating the said contention/challenge, this Court in **Usha Bharti** (supra) observed thus:

“31. We also do not find any merit in the submission of Mr Bhushan that permitting the provision contained in Section 28 of the Act to remain on the statute book would enable the executive to deprive the elected representatives of their fundamental rights enshrined in Part III and Part IX of the Constitution of India. In our opinion, the ratio of the judgment in *I.R. Coelho* [(2007) 2 SCC 1] relied upon by Mr Bhushan is wholly inapplicable in the facts and circumstances of this case. There is no interference whatsoever in the right of the electorate to choose. **Rather Section 28 ensures that an elected representative can only stay in power so long as such person enjoys the support of the majority of the elected members of the Zila Panchayat. In the present case, at the time of election, the petitioner was the *chosen one*, but, at the time when the motion of no-confidence in the petitioner was passed, *she was not wanted*. Therefore, the right to choose of the electorate, is *very much alive* as a conse-**

quence of the provision contained in Section 28.”

[emphasis supplied]

26. This Court upheld the provisions of Section 28 which ensured that an elected representative can only stay in power so long as such person enjoys the support of the majority of the elected members of the Zila Panchayat. As soon as such a person loses the confidence of the majority, he becomes unwanted. In a democratic set up, the will of the majority has to prevail.

27. The appellant was elected as Gatneta when she enjoyed the support of all the members of INCPS Party. However, after she decided to walk on a different path, she lost the support of majority of the INCPS Party and as such, could not have thrust her leadership on the majority. No doubt, that the said Act and the said Rules are in tune with the provisions contained in the Tenth Schedule of the Constitution of India, so as to prevent horse-trading and maintain purity in the political system but, at the same time, the provisions cannot be interpreted in a manner that

one person in minority will thrust himself/herself upon the other members who are in absolute majority.

28. We are amazed to hear the argument of horse-trading from the mouth of the appellant. It is the appellant who has acted contrary to the wishes of the Party and chose to contest the election of the Chairman of the Panchayat Samiti with the support of the rival group. It is for anybody to guess as to who has indulged in horse-trading.

29. We therefore do not find any reason to interfere with the view taken by the High Court. The appeal is accordingly dismissed. There will be no order as to costs.

....., J.
[L. NAGESWARA RAO]

....., J.
[B.R. GAVAI]

**NEW DELHI;
SEPTEMBER 01, 2021**