

PETITIONER:
SHRI DATTATRAYA MARUTI BAWALEKAR, & OTHERS

Vs.

RESPONDENT:
PANDURANG DAGADU PARTE AND ORS.

DATE OF JUDGMENT: 29/04/1998

BENCH:
S.C. AGRAWAL, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Rajendra Babu, J.

The appellants in this batch of cases were elected as members of the Mahabaleshwar Devanstan Municipal Council in the elections held on 1st December, 1996. There are 17 wards in the council and 17 councillors were elected. At the time of election the councillors so elected did not associate with any political party or Aghadi or Front. They having contested as independent candidates on 2nd December, 1996 a meeting of these councillors was held and they formed themselves into an Aghadi Front with the name Mahabaleshwar Giristhan Nagar Parishad Shahar Vikas Aghadi. On 17.12.1996 the appellants informed respondent No. 3 that they have formed a Front as aforesaid. On 18.12.1996 the names of the appellants were published in the official gazette. On 23.12.1996 elections were proposed to be held to the post of President as per a notification issued on 23.12.1996 to be held on 31.12.1996. An application was filed by respondent No.1 who is an elected councillor on 26.12.1996 intimating about the formation of the Front by the appellants and requesting the respondent No.3 to disqualify the appellants on the ground of defection as set forth in Section 3(2) of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as "the Act" for brevity). An order was made by respondent No.3 on 28.12.1996 rejecting the said application. A writ petition was preferred before the High Court challenging the decision of respondent No.3 in rejecting the application filed by respondent No.1.

On 23rd December, 1996, the Collector issued a notice convening a meeting to be held on 31st December, 1996 for electing the President of the council for which the Aghadi had sponsored appellant No.4 as its candidate and respondent No.1 had issued a whip to all its councillors to vote for the Aghadi candidate. In the meeting held on 31st December, 1996 respondent No.4 was declared elected President for the year 1997-98. She secured 9 votes as against 8 votes secured by candidate who was defeated. In terms of Section 3(1) of the Act, the High Court took the view that councillors or members belonging to any political party, Aghadi shall be

disqualified for being a councillor or a member if he voluntarily gives up his membership of such political party or Aghadi or front and, therefore, such Aghadi/front is placed at par with any political party in the same manner as giving up membership of parties attracts disqualification, similarly voluntarily giving up membership of an Aghadi or front would be a disqualification. The High Court also noticed that under Section 3 (1)(b) of the Act a member of a political party, Aghadi or front had to cast votes at the meetings of local authorities as per the directions of the party. If a member or a councillor fails to comply with the party directions, he would incur disqualification. In particular it noticed Clause (a) of the Explanation that a person elected as a councillor shall be deemed to belong to the party, Aghadi or front, if any, by which he was set up as a candidate for election and the High Court concluded on that basis that each of the appellants 1 to 9 having contested as independent candidates and on being so elected they formed themselves into an Aghadi and, therefore they ceased to be independent councillors. Before electing the President, formed themselves into an Aghadi and having chosen their leader and office bearers nominated a candidate for the presidential elections by issuing a whip calling upon its members to vote for that person and none else. They were covered by definition of Section 2(a) of the Act. The High Court was also of the view that appellants 1 to 9 are a group of persons who had formed themselves into a party, and the election of a President is also an election to the local authority. The High Court considered the argument advanced on behalf of the appellants that formation of Aghadi is not a case of joining a political party but one of constituting a political party or Aghadi and, therefore, could not incur disqualification. The High Court referred to the meaning of the expression "join" and took the view that this expression has a very wide connotation and includes constitution of a group by various individuals getting together for the purposes of forming an Aghadi. The appellants have united themselves to form the Aghadi and, therefore, they could be said to have joined Aghadi. The High Court drew a comparison of the provisions of the Act with the Tenth Schedule to the Constitution and while holding that the view taken by the Collector was not correct, quashed the said order and allowed the application declaring that the appellants incurred a disqualification as provided under Section 3(2) of the Act and, therefore, ceased to be councillors of the Municipal Council. Hence this appeal by special leave.

On behalf of the appellants contention put forth is that the appellants had not joined the Aghadi to set up a candidate to an election to the local authority; that even though appellants formed a group loosely called an Aghadi or Front, it was not really an Aghadi/Front in terms of the Act in as much as it had not been formed for the purpose of setting up candidates for election to a local authority, that it is open to independently elected members to agree to cooperate for running efficiently the management of a local authority and for that purpose need not form a party. In particular they attack the finding of the High Court that the appellants had nominated respondent No.4 as their candidate for the election of the President of the council, their joining the front would entail disqualification as election of the President in the view of the High Court is also an election to the local authority; that election to the local authority would not include an election to the post of a President of a council. Therefore, it was submitted that the High Court had misguided itself in not

appreciating as to what constitutes a defection and the circumstance in which the nine appellants formed a group which was not an Aghadi as defined under the Act particularly when it had not set up candidates for election to only local authority.

In order to correctly appreciate the contentions put forth on behalf of the parties it is necessary to refer to some of the provisions of the Act. The Act has a Preamble to the effect that it would provide for disqualification of members of certain local authorities on ground of defection and for matters incidental thereto. Section 2 (a) defines Aghadi or Front as meaning "a group of persons formed themselves into party for the purpose of setting up candidates for election to a local authority". Local authority is also defined in Clause (a) as meaning a Municipal Corporation; Municipal Council; Zilla Parishad; Panchayat Samiti. Clause (1) thereto defines municipal party, in relation to the councillor belonging to any political party or aghadi or front meaning the group consisting of time being belonging to that political party or Aghadi or Front. Section 3(1) provides for certain circumstances in which a member belonging to a political party or Aghadi or Front, if any, by which he was set up as a candidate for election as such member or councillor. The circumstances which attract disqualification and are set out in sub-section (1) of Section 3 have no relevance in the present case. We are concerned with the situation as arising in sub-section (2) thereto and which reads as follows:-

"(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 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."

We will revert back to the Section a little later. Sub-sections (3) and (4) are not relevant for the present purpose. Rules have been framed under the Act and Rule 3 thereof requires information to be furnished by a leader of the party as to the members who constitute the party. An affidavit was filed by Dattatraya Maruti Bawalekar, 1st appellant herein, in the said affidavit filed on January, 1997 (date is not clear), it is stated that the appellant Nos.1 to 9 contested elections as independent candidates without affiliation to any political party or Aghadi or front, as under:

"During the course of the day on 2.12.1996 I myself along with certain respectable persons including some of the respondents and other elected candidates sharing common concern for welfare and development of Mahabaleshwar had discussions and deliberations with one another. During such discussions and deliberations aforesaid, it was proposed to form a common Aghadi / Front in the house of respondent No.10 for the common concern of Mahabaleshwar town, its welfare and its developments. All this ultimately

culminated into the formation of an Aghadi/Municipal Party / Front titled as Mahabaleshwar Giristhan Nagar Parishad Shahar Vikas Aghadi on late on 2.12.1996 itself. Respondent Nos. 1 to 9 were also inclined and decided to take part in the formation of such aforesaid Aghadi / Municipal Party / Front and become members thereof to function in the house of Respondent No.10 as members of such Aghadi. The first meeting of the Aghadi was held late in the day on 2.12.1996 when the proceedings of the meeting were recorded. In the said meeting, it was decided to prepare constitution and the Rules of the Aghadi. Secondly, I was elected as the Leader of the Aghadi while Respondent No.5 was elected as the Treasurer of the Aghadi and Respondent No.1 was elected as the Secretary of the Aghadi. Thirdly, the decision also was taken to register the said Aghadi as per the provision of the said Act and the rules made thereunder. I crave leave to refer and rely upon the proceedings of the first meeting of the said Aghadi on 2.12.1996 when produced. Another informal meeting of the Aghadi was held on 4.12.1996 wherein respondent Nos.1 to 9 as also other 19 respectable persons supporting the said Aghadi took part in the proceedings. The local M.L.A. from the area was also present in the said meeting and it was agreed that all the members of the Aghadi will jointly endeavour together for the complete progress upliftment and development of Mahabaleshwar and act accordingly. A further meeting of the Aghadi was held on 16.12.1996, I also filled a form under Rule 3 of the Rules made under the said Act declaring the members of the Aghadi to be filed in the office of respondent No.11. Similarly respondent Nos. 1 to 9 also filled a form under Rule 4 of the Rules made under the said Act declaring their status. On 17.12.1996 I, myself along with respondent Nos.1 to 7 and 9 affirmed our individual affidavits declaring that we all have decided to form a Municipal Party in the house of respondent No.10 named as "Mahabaleshwar Giristhan Nagar Parishad Shahar Vikas Aghadi" and that I was elected as a leader of the party by consensus. The constitution and the rules were

also prepared and respondent Nos. 1 to 9 endorsed and consented to the said constitution and the rules on 17.12.1996. Thereafter, on 17.12.1996 I, as the Leader of the said Aghadi/Municipal Party, made an application to respondent No.11 under the provisions of the said Act informing her that we are forming the said Aghadi as a new party and the same be registered as per the provision of the said Act. The said application was accompanied by all requisite documents. The said forms under rules 3 and 4 were also filed on the same day. I crave leave to refer and rely upon the aforesaid documents when producing. In the circumstances it is clear that Aghadi was formed for the first time after the said elections were held on 1.12.1996 and the result thereof were declared on 2.12.1996....."

The translated copy of the Aghadi constitution and rules had been made available. The membership thereto indicates as follows:-

"Membership - Elected and nominated councillor of Mahabaleshwar Hill Station Municipal Council can become the member of the front. Membership fee shall be Rs.500/- (Rs. Five hundred only)

Proceedings of the front-

The proceedings of the front shall be carried out under Maharashtra Municipal Councils, Municipal Panchayats and Industrial Urban Act as well as Maharashtra Local Authority members Disqualification Act, 1996 and rules, 1987 and the said Acts and rules shall be binding on all members.

Procedure of Whip- A notice of whip issued by the Leader of Party in respect of any resolution, meeting and voting shall be given in person to the members of the front at the regd. with the front. If the member is not present, at the time of service of notice, the notice shall be pasted at the given address of the member and the notice which is pasted in this manner shall be treated as served upon the member and the said notice shall be binding on the members of the front."

A Joint Committee on the Maharashtra Local Authority Members Disqualification Bill made a report wherein it is noticed as follows:-

"The Committee however felt that elections to local authorities are not always fought on political or

party lines but individuals or groups come together on some common programme and form a front or aghadi for the purpose of contesting election. The committee therefore thought it necessary to define aghadi or front so that they could also be considered as a party for purpose of this Act. Clause 2 has been amended for this purpose."

S/Shri Harish N. Salve and V.A. Bobde, learned senior advocate for the contesting respondents pleaded that the allegations made in the affidavit filed in the High Court made it clear that the appellants form an Aghadi. The disqualification of Section 3(2) would attach when elected councillors join any political party after such elections. The requisites conditions to attract the provision of the Act are - (i) the councillors had been elected otherwise than as a candidate set up by a political party, Aghadi or front; (ii) Such councillor joins any political party, Aghadi or Front after such elections. The disqualification attaches if an elected councillor joins any political party after fresh election. The expression such election has reference to the process in which he was a candidate of a political party. If these conditions are satisfied then the elected councillor would stand disqualified. Section 3(2) deals with independents since candidates referred to are when a councillor has been elected otherwise than as candidate of a political party. The legislation imposes a condition that a person elected as an independent should continue as such without subjecting himself to any party affiliation and permitting independents to form a party after election would completely negate the policy of the law. The contention on behalf of the appellants is that such an interpretation would but the independents at greater disadvantage than the members of the political party, is misconceived in as much as splits or mergers would not arise in case of independent councillors. The spirit of enactment is that a member of a political party cannot join another or form a political front without incurring disqualification as provided under Section 3 unless he is expelled from his party. By the same token Section 3(2) mandates that a person elected as an independent retains his status as such.

Section 3(2) to which we have adverted to earlier with reference to a councillor or a member who has been elected otherwise than as a candidate set up by a political party or Aghadi or front such a candidate or such councillor or member shall be disqualified for being a councillor if he joins any political party or Aghadi or front after such election. The Section specifically provides that an independent candidate not set up by a political party or front incurs disqualification on his joining any political party after such election. This Court in *Kihato Hollahan v. Zachillhu*, 1992 Supp. (2) SCC 651 (680), while dealing with the effect of provisions of the Tenth Schedule to the Constitution noticed that the same yardstick has to be applied to a person who is elected as an independent candidate and wishes to join a political party after the election as is done with reference to a person who has been elected on a political plank. Therefore, no distinction could be made between a person belonging to a political party and a person who is elected as an independent and such distinction has not been made by the Act in question. On the other hand, it is made clear a councillor or a member has been elected not set up by a political party or front joins

such political party subsequently would incur disqualification.

If what we have stated is the correct legal position then the counter affidavit filed by Bawalekar who is leader of the Aghadi in question which we have extracted extensively earlier will indicate that the appellants were forming Aghadi as a new party and the same has to be registered under the provisions of the Act. When they form a new party the position is clear that a person elected as an independent would cease to be an independent and becomes a member of a political party or a front. His status as an independent will come to an end on becoming a member of a front or a group, he loses such status and is subject to the whio of the party to which we have referred to earlier. If elected councillors could become members of such Aghadi it is made clear that Aghadi would be bound by the provisions of the Act in question and is also authorised to issue a whio. These facts would make it clear that the appellants who could act independently prior to the election or immediately on the election became subject to discipline of the party or front on becoming members thereof. Such party whether would amount to formation of party or became members of such party is immaterial. We do not wish to be guided by or controlled by any etymological terminology but the substance of the matter. Therefore, in our view the High Court was justified in holding that the appellants have incurred disqualification.

In the result, the appeal stands dismissed. No costs.