IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2155 OF 2021

Ravindra Hemraj Dhangekar ....Petitioner
V/S
Ganesh Madhukar Bidkar & Ors. ....Respondents

…

Mr. Kapil A. Rathor a/w Mr. Harshad Mandke and Mr. Heenesh Rathod for the Petitioner.
Mr. Ravi Kadam, Senior Advocate a/w Ms. Manjiri Parisnis for Respondent No.1.
Mr. Milind Sathe a/w Mr. Pralhad Paranjape, Ms. Druti Datar for Respondent No.2.
Mr. A.Y. Sakhare, Senior Advocate i/b Mr. Abhijit Kulkarni for Respondent No.3.
Mr. A.A. Kumbhakoni, Advocate General a/w Mr. P.P. Kakade, Government PLeader, Mr. Akshay Shinde, B Panel Counsel a/w Mr. R.M. Shinde, AGP for Respondent No.4.

…

CORAM : A.A. SAYED &
S.G. DIGE, JJ.

DATE : 28 FEBRUARY 2022.

JUDGMENT *(Per A. A. Sayed, J.)*

1 The issue that falls for consideration in the present Petition is - whether a nominated Councillor can be appointed as Leader of the House under section 19-1A of the Maharashtra Municipal Corporation Act, 1949.

2 The Petitioner is a Councillor elected at the Ward elections of the Pune Municipal Corporation held in February 2017. Respondent No. 1 is a nominated Councillor who is appointed as a Leader of the House in the Pune Municipal Corporation. Respondent No. 2 is the Mayor of the Pune Municipal

Corporation. Respondent No. 3 is the Pune Municipal Corporation. Respondent No. 4 is the State of Maharashtra.

3 The challenge in the Writ Petition is to the appointment of Respondent No. 1 as Leader of the House in the Pune Municipal Corporation (hereinafter referred to as 'the Corporation'). The elections to the Corporation were held in the February 2017. The Bharatiya Janata Party (BJP) emerged as the largest party with 99 elected Councillors. The Nationalist Congress Party (NCP) was declared as second largest party with 42 elected Councillors. 10 Municipal Councillors of Congress party and 10 Municipal Councillors of Shiv Sena party came to be elected.

4 Section 5 of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as 'the said Act') deals with the constitution of the Corporation. It provides that each Corporation shall consist of such number of 'elected Councillors' as mentioned in the table therein and 'nominated Councillors' not exceeding five having special knowledge and experience in the municipal administration can be nominated in the manner prescribed. In terms of Rule 5 of the Maharashtra Municipal Corporation (Qualifications and Appointment of Nominated Councillors) Rules, 2012 (hereinafter referred to as 'the 2012 Rules') in proportion to the strength of the House, BJP could nominate three Councillors, NCP could nominate one Councillor and Shiv Sena could nominate one Councillor.

5 The Petitioner and Respondent No.1 had contested the 2017 Ward elections of the Corporation from Ward No.16. The Petitioner secured highest number of votes and was elected to the Corporation. Respondent No.1 was the unsuccessful candidate. Even so, BJP proposed Respondent No.1 for his appointment as nominated Councillor. On 25 April 2017, Respondent No.1 was appointed as nominated Councillor in the Corporation. On 11 December 2020, in a meeting held of the Councillors of BJP, a resolution was passed appointing the Respondent No.1 as Leader of the Party (BJP) in the Corporation. Pursuant to the Respondent No.1 being appointed as Leader of the Party (BJP), he came to be appointed as Leader of the House under section 19-1A of the said Act, which appointment is the subject matter of challenge in the Writ Petition.

6 We have heard learned Counsel for the Petitioner, learned Senior Counsel for Respondent No.1, learned Senior Counsel for Respondent No.2, learned Senior Counsel for Respondent No.3-Corporation and learned Advocate General for Respondent No.4-State.

7 Before coming to the merits of the matter, we shall first deal with the contention on behalf of the Respondent Nos. 1 to 3 that the Writ Petition is not maintainable as the Petitioner has no *locus standi* to file the Writ Petition. It is contended that the Petitioner does not fall in the category of aggrieved person as no legal injury is caused to the Petitioner or no right of the Petitioner is

infringed by the appointment of the Respondent No.1 as Leader of the House. It is contended that the Petitioner belongs to the Congress Party and the Respondent No.1 belongs to Bharatiya Janata Party and the Petition is filed only in an attempt to settle political scores. It is contended that the Petitioner and Respondent No.1 had contested elections against each other and the Petitioner is harbouring a grudge since the Respondent No.1 came to be appointed as Leader of the House. Reliance is placed upon the judgments of the Supreme Court in **Vinoy Kumar vs. State of U.P., (2001) 4 SCC 734, Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors., (1976) 1 SCC 671** and **Charan Singh Sahu vs. Giani Zail Singh & Anr., (1984) 1 SCC 390.**

8 There can be no quarrel to the proposition that in order to have *locus standi* to invoke writ jurisdiction, a Petitioner should ordinarily be one who has personal or individual right in the subject matter of the Petition. It is, however, also well-settled that this legal position is relaxed when a Petitioner is seeking a writ like *habeas corpus* or *quo warranto*. In **Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and others, (2014) 1 SCC 161** relied upon by the learned Advocate General, the Supreme Court while considering the jurisdiction of the High Court for issuance of writ of quo warranto, held in paras 21 and 22 as follows:

> ‘21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to

> the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of *quo warranto* which is impermissible. The basic purpose of a writ of *quo warranto* is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.
>
> 22. While dealing with the writ of *quo warranto* another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of *quo warranto*. There is a difference pertaining to personal interest or individual interest on one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.'

9 In the present case, the Petitioner has questioned the appointment of the Respondent No.1 as Leader of the House on the ground that he is not eligible for such appointment and his appointment is against the statute. The Petitioner is therefore essentially seeking a writ of *quo warranto* in seeking the prayer to quash the appointment of Respondent No.1 as Leader of the House. In the circumstances, we are unable to accept the contention on behalf Respondent Nos.1 to 3, that the Petitioner has no *locus standi* to file the Writ Petition.

10 We now come to the merits of the matter. To decide the controversy at hand, it would be necessary to advert to the relevant provisions of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as 'the said Act'). They are extracted hereunder:

Section 2

2. **Definitions**
In this Act, unless there be something repugnant in the subject or context, -

…

(11) 'Councillor' means a person duly elected as a member of the Corporation; and includes a nominated Councillor who shall not have the right,-

(i) to vote at any meeting of the Corporation and Committees of the Corporation; and

(ii) to get elected as a Mayor of the Corporation or a Chairperson of any of the Committee of the Corporation;'

…

Section 19-1A

'19-1A. Leader of House.

(1) An elected Councillor who is, for the time being, the Leader of the Party having the greatest numerical strength and recognised as such by the Mayor shall be the Leader of the House.

Explanation.- When there are two parties in ruling, having the same numerical strength, the Mayor shall, having regard to the status of the Party, recognise the Leader of any one of such parties to be the Leader of the House.

(2) There shall be paid to the Leader of the House such honoraria and allowances and other facilities as may be provided by regulations made in this behalf by the Corporation.'

11 Section 19-1A lays down who can be appointed in the Corporation as the Leader of the House. It stipulates that only an 'elected Councillor' shall be eligible to be a Leader of the House. The entire controversy, therefore rests on the term `elected Councillor' appearing in section 19-1A.

12 According to the Petitioner, the term `elected Councillor' in Section 19-1A would mean a Councillor directly elected at the election of a Ward and the Respondent No. 1 being a `nominated Councillor' is not entitled to be

appointed and hold the office of a Leader of House. The Respondent Nos.1 to 3, however, contend that the term `elected Councillor' would also mean a `nominated Councillor' and therefore Respondent No.1, though a nominated Councillor, has rightly been appointed as the `Leader of the House'. The contentions raised on behalf of Respondent Nos. 1 to 3 can be summarized as under:

(i) The word 'elected' in section 19-1A would also mean 'nominated' as nomination is nothing but election. The word `Councillor' has been defined in section 2(11) to mean a person elected as a member of the Corporation and includes a nominated Councillor. A nominated Councillor is appointed by virtue of the process of nomination which is an elaborate process of election/selection as prescribed in the 2012 Rules. Therefore Respondent No. 1, though a 'nominated Councillor', is also an 'elected Councillor' under section 19-1A of the said Act.

(ii) Section 2(11), apart from defining 'Councillor', also sets out what are the restrictions imposed upon a nominated Councillor. There are only two restrictions, viz.- (1) to vote at any meeting of the Corporation and Committees of the Corporation; and (2) to get elected as a Mayor of the Corporation or a Chairperson of any of the Committee of the Corporation. Section 2(11) therefore does not restrict a nominated Councillor from being appointed as a Leader of the Party and consequently, Leader of the House.

There is, therefore, no bar in the said Act for appointment of a nominated Councillor as a Leader of the House. In support of this submission reliance is placed on the judgment of the Division Bench of this Court in **Balchandra Shirsat vs. Mayor, MCGM and others, 2021 SCC OnLine Bom 526.**

(iii) It is a cardinal principle of interpretation of statutes that a Court cannot add an additional disqualification when the same is not present or prescribed by the statute.

(iv) The term ‘election’ has not been defined under the said Act and in absence of the definition by the Legislature, the ordinary meaning of word ‘election’ has to be followed. In support of this submission, reliance is placed on the judgment of the Apex Court in **Dinesh Prasad Yadav vs. State of Bihar, 1995 Supp. (1) SCC 340** and the judgment of the Full Bench of this Court in **Anil (Vidyarthi) Chanderlal Ailani vs. State of Maharashtra, 2016 (2) Mh.L.J. 708.** It is contended that the Full Bench has interpreted the term ‘elected’ appearing in Section 16 of the said Act and has elaborately discussed the meaning of the term ‘election’ and held that ‘election’ would also mean ‘nominatoin’**.** The Full Bench judgment, therefore, covers the issue raised in the Petition and the said issue is no more res-integra**.**

(v) The Councillors have full freedom to take a decision as to who would be a ‘Leader of the Party’ and it is purely an internal

arrangement or decision of the political party, and any interference by a person who is not a member of that party is not permissible. The Act does not define the expression ‘Leader of the Party’. The BJP being the Party having largest numerical strength, has appointed the Respondent No.1 as a Leader of Party and the Respondent No.1 has been recognized by the Respondent No.2-Mayor as the Leader of the House as provided under section 19-1A of the said Act.

(vi) Leader of the House does not have any special power of voting and does not have financial powers or even administrative powers and these powers are vested with the Mayor, the Committees and General Body of the Corporation.

13 Having given our thoughtful consideration to the issues invloved, we are inclined to allow the Writ Petition and are not disposed to accept the contentions raised on behalf of the Respondent Nos.1 to 3, for the reasons we have indicated hereinafter.

14. In **Illachi Devi (Dead) By LRs. & Ors. vs. Jain Society, Protection of Orphans India & Ors., (2003) 8 SCC 413,** the Supreme Court while dealing with interpretation of statutes, observed in paragraphs 40 to 44 as follows:

> “40 It is well settled principles of law that a plain meaning must be attributed to the statute. Also, a statute must be construed according to the intention of the legislature. The golden rule of interpretation of a statute is that it has to be given its literal and natural meaning. The intention of the

legislature must be found out from the language employed in the statute itself. The question is not what is supposed to have been intended but what has been said. (See Dayal Singh v. Union of India, (2003) 2 SCC 593.

41 In Padma Sundara Rao (Dead) and Others v. State of T.N. and Others, (2002) 3 SCC 533, it was held : (SCC p.542. [para 12)

"12 The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The langauge employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand side, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage, (218 FR 547.) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, AIR (1990) SC 981 : (1990) 1 SCC 277."

42. This Court again in Harbhajan Singh v. Press Council of India and Others, (2002) 3 SCC 722 stated the law thus (SCC pp. 726-27, paras 7 & 9):

> "7. …No other meaning can be assigned except by doing violence to the language employed. The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule - legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material - intrinsic or external - is available to permit a departure from the rule.
>
> ……
>
> 9. Cross in Statutory Interpretation (3rd Edn., 1995) states :
>
> "The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different

> interpretation. ... Thus, an 'ordinary meaning' or 'grammatical meaning' does not imply that the judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings, unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society."

43. Yet again in Grasim Industries Ltd v. Collector of Customs (2002) 4 SCC 297 : JT(2002) 3 SC 551, it is stated: (SCC p.303, para 10)

> “10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions."

44. It is equally well settled that when the legislature has employed plain and unambiguous language, the Court is not concerned with the consequences arising therefrom. Recourse to interpretation of statutes may be resorted to only when the meaning of the statute is obscure. The Court is not concerned with the reason as to why the legislature thought it fit to lay emphasis on one category of suitors than the others. A statute must be read in its entirety for the purpose of finding out the purport and object thereof. The Court, in the event of its coming to the conclusion that a literal meaning is possible to be rendered, would not embark upon the exercise of judicial interpretation thereof and nothing is to be added or taken from a statute unless it is held that the same would lead to an absurdity or manifest injustice. It is well-established that a disabling legislation must be characterized by clarity and precision. In the present instance, the prohibitions laid down by Sections 223 and 236 of the Act are categorical and comprehensive, and leave no scope for creative interpretation.”

15. In **State of Maharashtra vs Indian Medical Association & Ors., (2002) 1 SCC 589,** the Supreme Court has observed:

> "7. In K. Balakrishna Rao and others v. Haji Abdulla Sait and others, 1980(1) SCC 321, it was held that a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. In Printers (Mysore) Ltd. and another v. Assistant Commercial Tax Officer and others, 1994(2) SCC 434, it was held that it should be remembered that the provisions which define certain expressions occurred in the Act opens with the words "in this Act unless the context otherwise requires" which shows that wherever the word so defined occurred in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definition clause. Ordinarily, where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied."
>
> (emphasis supplied)

16. The word 'means' employed in section 2(11) clearly indicates that the word 'Councillor' has to be interpreted in a restrictive manner to mean only an 'elected Councillor'. Section 2, which sets out the definitions of the terms used in the said Act, begins with the words – 'In this Act, unless there be something repugnant in the subject or context-'. Thus, depending on the subject or context, the word 'Councillor' would mean an 'elected Councillor' in some sections and may include a 'nominated Councillor' in other sections. In other words, throughout the statute, the word 'Councillor', apart from an elected Councillor, does not necessarily mean a nominated Councillor, and has to be interpreted depending upon the subject or context the word 'Councillor' is used. The word 'Councillor' used in section 19-1A is prefaced with the word 'elected'. There is therefore a clear and specific exclusion of all other types of Councillors including 'nominated Councillor'. Whenever intended to treat both

the categories of the Councillors equally, the said Act has simply used the word ‘Councillor’ without prefixing the term either as ‘elected Councillor’ or as ‘nominated Councillor’. The presence of prefixed word ‘elected’ to the word ‘Councillor’ cannot be ignored by an interpretative process. Therefore, the term ‘elected Councillor’ used in Section 19-1A would, in our view, mean only and only a Councillor who is directly elected at the election of the Ward and not a nominated Councillor. If the intention of the Legislature was to treat both the categories of Councillors equally and to include even a nominated Councillor to be eligible to be appointed as Leader of the House under section 19-1A, the said section would have simply said ‘Councillor’ and not ‘elected Councillor’. The term ‘Councillor’ is defined in the said Act, not the term ‘elected Councillor’, to include therein also ‘nominated Councillor’. Therefore, it is not possible to read the word ‘Councillor’ in the said Section 19-1A, by relying upon the definition of ‘Councillor’ under section 2(11) to include even a ‘nominated Councillor’. If so read, the term ‘an elected Councillor’ will have to be read as an ‘elected nominated Councillor’ which would lead to absurdity.

17. It would be doing violence to section 19-1A, if it is interpreted by ignoring the word ‘elected’ employed in the said section. It is well settled that the provisions of a statute must be read as it is and be given plain and simple meaning. If the words of the statute are clear and unambiguous, they are required to be interpreted in their plain, natural and ordinary sense. Every word used by the Legislature is presented to be with definite purpose. The

language of the law itself is depository of the intention of the Legislature. Therefore, when the language in Section 19-1A is clear and the meaning plain, effect must be given to it. The Court cannot read a law as if the language is different from what it actually is, as it would tantamount to amending the law. It is the primary duty of the Court to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention. Interpreting the word 'elected Councillor' to be inclusive of a 'nominated Councillor' in section 19-1A would be stretching the meaning of 'elected Councillor' out of context in reading the said section 19-1A.

18. It is a settled position of law that what the Legislature has 'not' said is as important to note as to what it has said. Had the Legislature intended to allow the nominated Councillor to be the Leader of the House, section 19-1A of the said Act would have stated so by simplicitor using the term 'a Councillor' instead of using a term 'an elected Councillor'. Only in that event, by applying the definition of term 'Councillor', it would have been possible to interpret Section 19-1A to say that even 'nominated Councillor' is eligible to become Leader of the House.

19. Thus, the term 'elected Councillor' is required to be applied in the context in which the said term is used in the provision of section. By way of illustration a reference may be made to section 19 of the said Act which

provides for election of Mayor and Deputy Mayor. Sub-section 1 of section 19 specifically provides that the Corporation shall ‘select from amongst the Councillors’ one of its member to be the Mayor and another to be the Deputy Mayor. If the interpretation of the Respondents is accepted, a nominated Councillor would also be eligible to be elected as a Mayor inasmuch as the term used in the said section 19-1 of the said Act is ‘the Councillor’ not ‘elected Councillor’. This would be plainly contrary to the definition of Councillor as stipulated in section 2(11) of the said Act which provides for restrictions of a ‘nominated Councillor’ to get elected as a Mayor of the Corporation.

20. Prior to the year 2004 there was no concept of nominated Councillor in the said Act. Chapter IX-A of the Constitution of India was introduced by the Constitution 74th Amendment Act, 1992 which laid down a basic framework to ensure that the Municipalities are in a position to function effectively as democratic units of self–government. Article 243-R contained in Chapter IX-A brought in the concept of ‘nominated Councillor’ and provided for composition of Municipalities. Article 243-R(2) by an enabling provision empowered the State Legislature to provide for the representation in a Municipality of persons having special knowledge or experience in municipal administration. The said Act (formerly known as the Bombay Provincial Municipal Corporation, 1949) was amended by the State Legislature by Maharashtra Act XLI of 1994. It added the concept of nominated Councillors to the said Act by amending

amongst other sections, section 5 which deals with Constitution of Corporation which, prior to amendment, spoke of only Councillors (i.e. Councillors elected directly at Ward elections). Section 5 was thus amended providing for representation in the Corporation by persons having special knowledge and experience in the Corporation, thereby creating a new and separate category of Councillors, namely, nominated Councillors.

21. It would be apposite to extract section 5 of the said Act. It reads as under:

> **'5. Constitution of Corporation.**
>
> (1) Every Corporation shall, by the name of 'The Municipal Corporation of the City of …….', be a body corporate and have perpetual succession and a common seal and by such name may sue and be sued.
>
> (2) Each Corporation shall consist of, -
>
> (a) such number of councillors, elected directly at ward elections, as is specified in the table below :-

TABLE

	Population	***Number of Councillors***
(i)	Above 3 lakhs and up to 6 lakhs.	The minimum number of elected councillors shall be 65. For every additional population of 15,000 above 3 lakhs, one additional councillor shall be provided, so however that the maximum number of **elected councillors** shall not exceed 85.
(ii)	Above 6 lakhs and up to 12 lakhs.	The minimum. number of elected councillors shall be 85.

		For every additional population of 20,000 above 6 lakhs, one additional councillor shall be provided, so however, that the maximum number of **elected councillors** shall not exceed 115.
(iii)	Above 12 lakhs and up to 24 lakhs.	The minimum number of elected councillors shall be 115. For every additional population of 40,000 above 12 lakhs, one additional councillor shall be provided, so however that the maximum, number of **elected councillors** shall not exceed 151.
(iv)	Above 24 lakhs and up to 30 lakhs.	The minimum number of elected councillors shall be 151. For every additional population of 50,000 above 24 lakhs, one additional Councillor shall be provided, so however that the maximum number of **elected councillors** shall not exceed 161.
(v)	Above 30 Lakhs.	The minimum number of elected Councillors shall be 161. For every additional population of 1 lakh above 30 laks, one additional Councillor shall be provided, so however that the maximum number of **elected Councillors** shall be exceed 175.

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

… … ...'

22. Section 5 reproduced above deals with the constitution of Corporation and specifically categorizes two distinct and separate types of Councillors viz. 'elected' and 'nominated'.

23. Section 5(2)(a) sets out the number of 'elected Councillors' that each Corporation shall consist of. It sets out a table wherein the number of Councillors who are elected directly at Ward Elections are specified in accordance with and in proportion to the population of the Corporation. It sets out the minimum number and maximum number of the Councillors that can be elected directly at the Ward Elections. What is important to note here is that the said section 5(2)(a) while making a reference to such Councillors who are elected directly at the Ward elections, uses the term 'elected Councillors'.

24. Section 5(2)(b), on the other hand, sets out the number of 'nominated Councillors' that each Corporation shall consists of and provides that such number of nominated Councillor shall not exceed 5. They are required to have special knowledge and experience in municipal administration and are required to be nominated by the Corporation in such a manner as may be prescribed. This prescription is now provided for in the 2012 Rules. Here again, it is required to be noted that section 5(2)(b) of the said Act, while referring Councillors nominated by the Corporation uses the term 'nominated Councillors'.

25. It is worthwhile to note that in every aspect these two types Councillors differ from each other, be it their route of entry into the Corporation, their right to vote, etc. Separate set of Rules are provided which lay down the method and manner of nominating Councillor to the Corporation. Therefore, only because in certain aspects and certain circumstances under the said Act, they are treated or judicially held to be treated equally, it would in our view, be fallacious to treat both the 'elected Councillors' and 'nominated Councillors' for all the provisions of the said Act and for all the purposes of the said Act, as one and the same. As an example, it may be stated that while considering a motion moved for 'no confidence' the nominated Councillors are not even counted as Councillors to consider whether said motion has been passed with requisite majority or not - obviously because the nominated Councillors do not have a right to cast vote. Article 243-R of the Constitution itself recognizes two separate and distinct classes of Councillors viz. elected and nominated, therefore, it can hardly be disputed that there is a clear distinction between elected and nominated Councillors. In **Ramesh Mehta Vs. Sanwal Chand Singhvi & Ors. (2004) 5 SCC 40**, the Supreme Court held in paragraphs 8 and 11 as under:

> 8. The question involved in the present civil appeals is whether nominated members in a Municipal Board are to be counted for calculating the majority required for carrying a no confidence motion against a Chairman/Vice-chairman of the board.
>
> 11. In the present case, on facts, we are concerned with post 1994 position. Article 243R brought about a drastic change in the matter of composition of municipalities. It lays down guidelines with regard to the constitution, composition, election and rights of the members of a municipality. Under the said Act, members of a

municipality are persons chosen by direct election by the residents of a municipal area (ward). Article 243R(2)(a)(i) allows the legislature of a State to appoint any person as a member of the board who has special knowledge in the field of municipal administration, however, the proviso appended to the said Article precludes persons nominated under sub-clause (i) from having a right to vote in the meetings of the municipality. The Constitution, therefore, makes a distinction between elected members and nominated members who play essentially an advisory role. …

(emphasis supplied)

26. Reference may be made to Rules 3 to 5 of the Rules of 2012. They read thus:

3. Meeting for nomination of Councillors:-

Subject to the provisions of rule 4, the Corporation shall, in its meeting held immediately after the expiry of one month from the date of notification of election results, after general election, nominate five persons to be nominated Councillors.

4. Qualification for nomination.-

A person shall be eligible for being nominated as a candidate for the office of the nominated Councillors if he has special knowledge or experience in municipal administration and he.-

(a) has been a recognized and registered medical practitioner in the State for a minimum period of five years, or

(b) has been an educationist including retired Professor, lecturer, Principal, Head-Master, etc. of recognized school or college for a minimum period of five years, or,

(c) has been Chartered Accountant or Cost Accountant for a minimum period of five years, or

(d) possesses a degree in engineering from a recognized University and has professional experience for a minimum period of five years, or

(e) has been an Advocate for a minimum period of five years or is a person possessing degree in Law form a recognized University with an experience in the legal field in the State for a minimum period of five years, or

(f) has experience of working for not less than five years as the Chief Officer of a Municipal Council as Assistant Commissioner or the Deputy Commissioner or has experience of not less than two years and the Commissioner of Municipal Corporation, and has retired from

service, or
(g) has experience of not less than five years as an office bearer of a Non-Government Organization registered under the Bombay Public Trust Act, 1950, engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.

5. Nomination of Councillors.

(1) For the purpose of nomination of Councillors, the Commissioner shall, after consulting the Leader of the House, Leader of Opposition and Leader of each recognized or registered party or group in the Corporation, and after taking into account the relative strength of such parties and groups recommend the names of suitable persons to the Corporation for being nominated as a nominated Councillor. The name of such persons recommended shall not exceed the number of Councillors to be nominated in accordance with rule 3;
…..

(2) The Corporation shall, after considering the recommendation by the Commissioner, nominate the Councillors;
…...

27. Under the 2012 Rules, for the purpose of appointing a person as ‘nominated Councillor’, the Commissioner has to consult the Leader of the House. Therefore, it is clear that much before i.e. even before the first ‘nominated Councillor’ enters the Corporation, the ‘Leader of the House’ gets recognized. In other words, the stage at which the ‘Leader of the House’ occupies his/her seat, the Corporation constitutes only of elected Councillors and there is not even a single nominated Councillor in the Corporation. Even the first nominated Councillor enters the Corporation only after an ‘elected Councillor’ is recognized as the ‘Leader of the House’. Thus, the pre-requisite for any person to get nominated as even the first nominated Councillor of the Corporation is the consultation with the ‘Leader of the House’ by the

Commissioner. The aforesaid Rules support the contention of the Petitioner that a nominated Councillor is not eligible to be appointed as ‘Leader of the House’.

28. The concept of nominated Councillor and the requisite qualification as spelt out by the 2012 Rules i.e. eligibility, demonstrates that these Councillors are not persons who necessarily belong to a political party. In fact, ideally they are expected to be apolitical and expert in their respective fields specified by the 2012 Rules. The basic philosophy in nominating such persons as Councillors is to advice the Corporation which may require their expertise for carrying out its duties and perform its functions more efficiently and effectively. Leader of the House is a position or post that is created by the Act and to get recognized as the Leader of the House is a statutory right and not a common law right or a Constitutional right, much less a fundamental right. Therefore, such a right is always governed by the Statute that creates such a right or such a position as that of the Leader of the House. As a legislative policy, the Legislature has restricted the eligibility/entitlement to be recognized as a Leader of the House, only and only to an elected Councillor by excluding nominated Councillor, out of the two types of the Councillors included in the definition of the term ‘Councillor’. We cannot by way of interpretative process hold that even a nominated Councillor can be recognized as ‘Leader of the House’ thereby interfere with a Legislative policy which is otherwise.

29. We note that there may be benefits attached to the office of the Leader of the House, in that, section 19-1A(2) of the said Act speaks of payment to the Leader of the House such honoraria, allowances and other facilities which may be provided by regulations made in this behalf by the Corporation.

30. In **Bhalchandra Shirsat Vs. The Mayor, Municipal Corporation of Greater Mumbai & Ors., (supra)** relied upon by the Respondent Nos. 1 to 3, the question for consideration before the Division Bench of this Court was whether a ‘nominated Councillor’ of the Municipal Corporation of Greater Mumbai can be inducted in the Corporation's Standing Committee. After considering sections 42, 43, 45, 46 and 48 of the Mumbai Municipal Corporation Act and the judgment of the Supreme Court in **Harbhajan Singh Vs. Press Council of India & Ors.**, **(2002) 3 SCC 722,** the Division Bench held that in the absence of a specific bar created by the statute, a ‘nominated Councillor’ is entitled to be inducted in the Standing Committee of the Corporation. It is pointed out that SLP filed against the judgment of the Division Bench was dismissed by the Supreme Court. In our view, this judgment has no application in the present case as the provisions considered by the Division Bench were altogether different.

31. In **Dinesh Prasad Yadav vs. State of Bihar (supra)** relied on behalf of the Respondent Nos. 1 to 3, the Supreme Court interpreted the term 'elections'. In paragraph 9 the Supreme Court held that the term ‘elections’ in

first proviso to Section 14(10) of the Bihar Cooperative Societies Act has been used in the broader sense and includes election by ballot as well as the choice by nomination. The Supreme Court held that this interpretation would make Rule 22(2) of the Rules workable. In the said case, the Supreme Court was interpreting the provisions of the Bihar Co-operative Societies Act, 1935. We do not see how this judgment would assist the case of the Respondent Nos. 1 to 3.

32. We now come to the decision of the Full Bench judgment of this Court in **Anil (Vidyarthi) Chanderlal vs. State of Maharashtra (supra).** Learned Senior Counsel for Respondent No. 1, Respondent No. 2 and Respondent No. 3 have placed heavily reliance on this decision. It is submitted that the Full Bench has held that a nominated Councillor can be equated with a Councillor elected at Ward election, and both direct election and nomination are nothing but elections. It is contended that the judgment of the Full Bench covers the issue raised in the present Writ Petition and the issue is no more res integra. Though in the first blush and on a cursory reading of the judgment of the Full Bench we found some substance in the submission, on closer scrutiny and on reading the judgment threadbare, we find that the judgment of the Full Bench is only in the context of section 16 of the said Act (and section 21 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, which is a similar provision, with which we are not concerned in the present case). The applicability of the judgment of the Full Bench would be

restricted to section 16 and cannot be extended to section 19-1A of the said Act with which we are concerned in the present case. The question that fell for consideration before the Full Bench is set out in paragraph 1 in the following terms:

> *"Whether the remedy of election dispute under section 16 of the said Act and section 21 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Council Act, 1965 is available to a voter who is entitled to vote in general Ward election for challenging the election/nomination of a Nominated Councillor?"*

The Full Bench answered the above question in paragraph 96 as under:

> *"(i) The remedy of election dispute under section 16 of the MMC Act or section 21 of the Municipal Councils Act is available to a voter entitled to vote in general Ward election to dispute or question the nomination of nominated Councillor.*
>
> *(ii) We clarify that the availability of this remedy to a candidate at the said election would depend upon the language of the two provisions and the difference therein as outlined by us in the forgoing paragraphs of this judgment in detail".*

33. Section 16 of the said Act, with which the Full Bench was concerned reads as under:

> "16(1) If the qualification of any person declared to be elected a Councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the State Election Commissioner of a nomination, or of the improper reception or refusal of a vote, or by reason of a material irregularity in the election proceedings, corrupt practice, or any other thing materially affecting the result of the election, any person enrolled in the municipal election roll may, at any time within ten days after the result of the election has been declared, submit an application to the Judge for the determination of the dispute or question.
>
> (2) The State Election Commissioner may, if it has reason to believe that an election has not been a free election by reason of the

large number of cases in which undue influence or bribery has been exercised or committed by order in writing, authorise any officer 5 [of the Commission] to make an application to the Judge at any time within one month after the result of the election has been declared for declaration that the election of the returned candidate or candidates is void.

(2A) No election to any Corporation shall be called in question except by an election petition presented to the Judge referred to in sub-section (1) and no Judge other than the Judge referred to in sub-section (1) shall entertain any dispute in respect of such election".

34. In paragraphs 20, 59, 60, 83 and 84 the Full Bench held:

*20. "In **broad sense**, both, direct election and nomination are nothing but elections. The word election is not defined in the statute and must, therefore, take its meaning from common parlance. In the context and backdrop in which it is appearing in the statute, it must take within its fold even a nomination."*

*59. **We are, in this reference, concerned with only the meaning to be assigned to the term 'Election Petition' and whether it can be presented to challenge the nomination of Councillors**. **If the section** provides the remedy to question the election, then, to make a distinction as is sought between 'election' and 'nomination' would run counter to the object and purpose of the Act. The Act envisages a Municipal Corporation comprising of both, the elected and the nominated Councillors. If that is how the Corporation is understood as a body or a legal entity, then, to hold that only such of the Councillors as are elected at a general election would have to face a challenge to their elections but the nominated Councillors are out of the purview of **section 16** would mean **plural remedies** created for challenging an identical process.*

*60. The word 'election' is not defined in the Act and the Rules. The words such as these would therefore have to be given their ordinary and plain meaning. The words 'election' and 'nomination' have been understood as 'to choose, to pick out, to select from a number or to make a choice of'. It also means to caste vote for the purpose of selecting members of any legislative, municipal or other authority of whatever character. **Thus, it would have to be construed in the context and the circumstances in which the process is required to be undertaken. It is well settled rule of interpretation that a word not defined in a statute its meaning has to be gathered from the context in which it has been used** [see AIR 1995 SC 1620 (Regnl. Executive Kerala F. W. F. Board vs. M/s. Fancy Food, para 8 at page 1623)].*

83. Once the above view is taken, then, all that remains is to refer to the judgments cited by Mr. Gorwadkar. He cited the judgment in the

case of Uttar Pradesh Power Corporation Limited vs. Ayodhya Prasad Mishra and Anr. reported in (2008) 10 SCC 139 only for the principle laid down therein that equals cannot be treated unequally likewise unequals cannot be treated equally. The basic argument being that the nominated Councillor cannot be equated with Councillor elected at the Ward election or the direct election. ***Once we do not accept that distinction and for the purposes of the remedy to challenge the nomination,*** *then, this judgment to the extent it lays down this principle can have no application. Ultimately, the principle laid down in this decision would apply depending upon the facts in each case.*

84. ***The argument of absence of certain words in section 16(1) of the MMC Act and presence of certain words in section 21(1) of the Municipal Councils Act need not detain us simply because we have found that in a broad and wide manner, both processes can be termed as elections****. It may not be the intent of the legislature to leave out one process from the purview of the Act and to enable aggrieved parties to challenge that process either by resorting to general law or by filing Writ Petition under Article 226 of the Constitution of India. If that intent was clear and explicit, the legislature would have spoken so. The legislature has not ruled out the inclusion of the process of nomination and therefore, employed broad words in both sections of both enactments. This would denote as to how the municipal administration has to be smooth, efficient and effective and anything which comes in the way or presents a hurdle in the management of affairs of the Corporation and the Council in above manner, should not be read into these enactments. Ultimately, they have a constitutional status. The composition and constitution is guided by Part IXA, and both categories of Councillors being subject to more or less identical disqualifications and disabilities, are capable of being removed by democratic process or by intervention of the State Government, then, all the more the above distinction and made by Mr. Gorwadkar and others has no basis.'*

(emphasis supplied)

35. Having read the aforesaid judgment of the Full Bench closely, as stated earlier, we find that the Full Bench was only concerned with section 16 of the said Act (and section 21 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, which is a similar provision). In paragraph 59, the Full Bench made it clear that in the reference it was

concerned with only the meaning to be assigned to the term “Election Petition” (as appearing in section 16 of the said Act) and whether an “Election Petition” can be presented to challenge the appointment of a nominated Councillor. The Full Bench was of the view that there ought not to be two different remedies – one for challenging the election of a Councillor elected at the Ward election by filing an Election Petition under section 16 - the other for challenging the appointment of a nominated Councillor by resorting to general law or by filing Writ Petition under Article 226 of the Constitution of India. It is in the context of section 16 that the Full Bench has equated nomination with election and in paragraph 20 stated that “in a broad sense, both direct election and nominations are nothing but elections”. In the present case we are interpreting section 19-1A of the said Act. The judgment of the Full Bench which interpreted section 16 of the said Act would therefore not apply in the present case.

36. In **Umabai w/o Uttamji Dangore Vs. State of Maharashtra & Ors. 2006(6) Mh.L.J. 33,** the learned Single Judge has interpreted the word ‘elected Councillors’ appearing in Section 51A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Paragraphs 13 and 18 of the said judgment read as under:

> *“13. Section 2 of the Municipal Council Act begins with the following words "In this Act. unless the context otherwise requires." It is therefore clear that all definition in the Act are subject to context. If otherwise required, said requirement of context has to prevail over the meaning given in the definition clause.*

> *18. It is therefore, clear that the word "elected Councillors" appearing in Section 51A, will also to be required to be interpreted with reference to context in which they are used. Perusal of Section 2(7) clearly shows that it includes a duly elected Member, a directly elected President and also nominated Councillor within its sweep. The sub-section therefore itself makes distinction between the person duly elected as Member of Council, person directly elected as President and nominated Councillor. Section 2(49) makes reference to elected Councillors. It is therefore, obvious that section 2(49), contemplates only a small group or fraction from the entire category of Councillor as defined, in Section 2(7). The Division Bench in case of Bagade, has accordingly interpreted the phrase - total number, of Councillors. When Secion 51A(1) is looked into, it again uses the word 'elected Councillors' and therefore, it only contemplates person duly elected as Member Councillor and by implication it does not therefore envisage directly elected President and nominated Councillor".*
>
> (emphasis supplied)

37. The principles of a democratic setup and polity need to be adhered to. A person who was not successful in the Ward elections cannot by an indirect method or backdoor entry become the Leader of the House, as in the present case. If the Legislature has placed an embargo upon a nominated Councillor by providing in section 2(11) that a nominated Councillor shall not have the right to vote or become a Mayor or for that matter even a Chairperson of a Committee, we do not think the Legislature intended to allow a nominated Councillor to become the Leader of the House. The word ‘Leader’ means a person who leads - he must lead by example. Prima facie, it seems illogical and difficult for us to comprehend that after being defeated by will of the majority at the Ward election by process of ballot, how Respondent can be eligible to be appointed as ‘**Leader** of the House’ of a Corporation comprising of 175 elected Councillors (elected by the process of ballot at the Ward

election) and only 5 nominated Councillors [who are in the Corporation essentially in an advisory capacity as held by the three-judge Bench of the Supreme Court in **Ramesh Mehta Vs. Sanwal Chand Singhvi** (supra). The term 'elected Councillor' in Section 19-1A would necessarily have to be read as an exclusion and bar to any other Councillor i.e 'nominated Councillor' to become the Leader of the House. The contention therefore that there is no bar in Section 19-1A to the appointment of a 'nominated Councillor' as Leader of the House cannot be accepted.

38. In **Nasiruddin & Ors Vs. Sita Ram Agarwal, (2003) 2 SCC 577,** the three-Judge Bench of the Supreme Court held:

> *"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. … … "*

39. It is not necessary for us to discuss the other judgments relied upon by the learned Advocate General and the learned Counsel for the Petitioner and burden this judgment. Suffice it to say that none of the said judgments which are of Division Bench of this Court, deal with section 19-1A of the said Act.

40. In light of the aforesaid discussion, we hold that a 'nominated Councillor' is not an 'elected Councillor' within the meaning of section 19-1A and unless a person is an elected Councillor, in that, he is directly elected at Ward elections, he is not eligible to be appointed as 'Leader of the House' under section 19-1A. Consequently, the Respondent No. 1 is not entitled to be

appointed or hold the post/position of Leader of the House under section 19-A of the said Act.

41. In the result, the Petition succeeds and is allowed. The appointment of Respondent No. 1 as Leader of the House in Pune Municipal Corporation is quashed and set aside.

(S.G. DIGE, J.) **(A.A. SAYED, J.)**

42. Upon pronouncement of the judgment, learned Senior Counsel for the Respondent No. 1 seeks stay to the operation and effect of the judgment for a period of 2 weeks. We informed the learned Senior Counsel that having held that the appointment of Respondent No. 1 is dehors the provisions of the said Act, it may not be appropriate and we may not be inclined to grant stay thereby allow the Respondent No. 1 to continue to hold office of the Leader of the House. Only on the assurance of the learned Senior Counsel that the Respondent No. 1 would not discharge functions as Leader of the House in the Corporation, we stay the operation of this order for a period of 2 weeks.

(S.G. DIGE, J.) **(A.A. SAYED, J.)**