

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 11341 OF 2014

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|----|---|-----|-------------|
| 1] | Akramkhan s/o Gulam Kadar Khan
Pathan Age 38 years, Occu. Business,
R/o Khakapura, Ausa, Tq. Ausa,
District : Latur. | | |
| 2] | Rashidabee w/o Mukhtar Tamboli,
Age 45 years, Occu. Household,
r/o M.C. Colony, Behind Bus Stand
Ausa, Tq. Ausa, District Latur. | ... | Petitioners |

VERSUS

- | | | | |
|----|--|-----|-------------|
| 1] | The Collector, Latur
Collector Office, Latur. | | |
| 2] | Dr. Afsar Nawabobdin
Shaikh, Age 35 years,
Occu. Service, R/o Khadak
Galli, Ausa, Tq. Ausa,
District : Latur | | |
| 3] | Suryya w/o Mukhtar Kureshi
Age 40 years, Occu. Household,
r/o Sefa Nagar, Opp. Khakee
Pir Darga, Ausa, Tq. Ausa,
District Latur. | ... | Respondents |

.....
Mr. V.J. Dixit, Senior Advocate holding for
Mr. S.P. Katneshwarkar, Advocate for petitioners
Mr. U.H. Bhogle, AGP for respondent No. 1
Mr. R.N. Dhorde, Senior Advocate holding for
Mr. P.S. Dighe, Advocate for respondent No. 2
.....

CORAM : RAVINDRA V. GHUGE, J.

Date of Reserving Judgment:- 04-03-2015
Date of pronouncing judgment:- 08-04-2015

JUDGMENT:-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have heard Shri V.J. Dixit and Shri R.N. Dhorde, learned Senior Advocates on behalf of the petitioners and respondent No. 2, respectively and also the learned AGP, on 04-02-2015, 11-02-20215, 17-02-2015, 25-02-2015, 03-03-2015 and 04-03-2015.

3. The petitioners seek to challenge the order dated 29-11-2014 passed by respondent No. 1- District Collector, Latur thereby disqualifying the petitioners on an application filed by respondent No. 2 under Section 3(1)(b) of the Maharashtra Local Authority Members' Disqualification Act, 1986.

4. The litigating parties to this petition, were earlier before this Court since the petitioners had filed Writ Petition No. 1451 of 2014. The request made by the petitioners before respondent No. 1 - District Collector in the disqualification application case No. 2013/NAPA/KAVI-661, for referring certain documents to the hand writing expert, had been rejected. By order dated 21-08-2014,

this Court had dismissed the petition by observing in paragraph Nos. 10 and 14 as under :-

"10. In the light of the above, no interference is called for at this stage, with the impugned order. The petition being devoid of merits, is, therefore, dismissed. Nevertheless, as and when the proceedings are finally concluded and in case the result of the same is adverse to the petitioners, they may raise a comprehensive challenge thereafter.

"14. In my view, the documents statutorily maintained by the Government officials referred to herein above, clearly indicate that the petitioners have recklessly adopted a stand against the record, only to rescue themselves from the clutches of law."

5. The petitioners submit that a Special Leave petition was preferred by the petitioners before the Apex Court and the same has also been dismissed.

6. The submissions of Shri Dixit, learned Senior Advocate can be summarized as follows :-

a] The elections to the Ausa Municipal Council, Dist. Latur took place on 31-12-2011. The petitioners and respondent Nos. 2 & 3, who belong to the Nationalist Congress Party (NCP), were elected as councillors.

b] Respondent No. 2 is said to have been elected as Group Leader of the NCP (Gat Neta) in the Municipal Council, Ausa.

c] Mr. Shivajirao Garje, State General Secretary of the NCP is said to have issued a directive (whip) with regard to the election of the President of Ausa Municipal Council, which post had fallen vacant in view of the President Sangameshwar Sureshappa These having resigned on 23-04-2013.

d] The District Collector, Latur declared the election programme on 23-04-2013.

e] The election for the post of President was scheduled on 07-05-2013.

f] Shivajirao Garje was not competent to issue the directive that all councillors of the NCP shall vote in favour of respondent No. 2 herein, since he did not have any authority and he was not chosen as the leader of the party at the local level, but State General Secretary.

g] Reliance is placed upon Section 2(i), (ii) and (iii), and Section 2 (j) of the Maharashtra Local Authority Members Disqualification Act, 1986 (here-in-after referred to as "Maharashtra Act").

h] Reliance is also placed upon Rule 2 (b) (b-1) (i) and form Nos. I, II, III and IV of the Maharashtra Local Authority Members disqualification Rules 1987 (here-in-after referred to as " Rules of 1987").

i] Document at Page No. 91 is purportedly the proceedings in which the Gat Neta was elected.

j] Page No. 93 is the letter to the District Collector, informing him that respondent No. 2 has been elected as Gat Neta.

k] Page No. 94 is the newspaper publication carrying the news about the election of respondent No. 2 as the Gat Neta.

l] Page No. 95 is the communication dated 22-12-2011 by which the District Collector, Latur intimated the Sub Divisional Officer about the election of Gat Neta.

m] Page No. 96 is the intimation to all the Councillors of the election of Gat Neta.

n] All the documents produced by respondent No. 2 before the District Collector in the disqualification proceedings, are denied.

o] Section 3 of the Maharashtra Act is relied upon by the petitioners which provides for disqualification for violation of the 'Whip' only if the Local party Group Leader has issued the directive (whip).

p] Page No. 124 is the directive dated 03-05-2013 issued by the Secretary of the Maharashtra Pradesh Nationalist Congress Party, informing all their members that the party had issued a directive that respondent No. 2 was nominated as the candidate of the party for contesting the election of President of AUSA Municipal Council and that all Councillors belonging to NCP should vote in favour of respondent No. 2.

q] Page No. 125 and 126 is the newspaper publication dated 03-05-2013, thereby publishing the directive issued by Mr. Shivajirao Garje.

r] Page No. 143 is the charge sheet under Rule 7 [(6) (7)] of the 1987 Rules, issued by the District Collector, Latur calling upon the petitioners to file / submit an explanation as to why action should not be taken against them for having violated the party directive.

s] The above charge sheet was served upon the petitioners on 25-09-2014.

t] Respondent No. 1 by its judgment dated 29-11-2014 has allowed the application filed by respondent No. 2 thereby disqualifying the petitioners from continuing as members of the Municipal Council.

u] The issues cast by the District Collector are set out in the impugned order.

v] The District Collector has erroneously concluded that Mr. Garje has rightly issued the directives.

w] Reliance is placed upon the judgment of this Court in the case of *Suresh Madhaorao Bhange Vs. Collector, Wardha and others*, 1990 (2) *Mh.L.J.* 848 and *Sahebrao S/o Narayan Kharat and another Vs. Collector, Jalna*, 2011 (4) *Mh.L.J.* 389.

x] The petitioners had denied signing on certain documents and communications, which are addressed to the statutory authorities.

y] The petitioners had privately obtained the opinion of a handwriting expert who has concluded that the signatures on some documents are not of the petitioners.

z] Written notes of arguments had been placed on record before the District Collector, Latur by the petitioners herein.

aa] The authorization given by Mr. Madhukar Pichad, State President of NCP to Mr. Garje to issue a directive was not placed on record before the District Collector.

ab] It is, therefore, prayed that the impugned order of the District Collector be quashed and set aside and this petition be allowed.

7. The submissions of Shri Dhorde, learned Senior Advocate can be summarized as follows :-

a] Respondent No. 2 has filed an affidavit in reply.

b] He was elected as a leader of the Municipal party (Gat Neta), which can not be disputed.

c] Dates and events in the form of synopsis have also been placed on record.

d] It is not disputed that the petitioners are the members of the NCP, contested elections on the basis of the NCP nomination and symbol and were elected as Councillors representing the NCP.

e] That the District Collector was informed of the election of respondent No. 2 as Gat Neta by communication dated

17-12-2011 bearing the signatures of the petitioners at serial Nos. 2 & 6.

f] A public notice was published in Daily 'Gurudharma' daily 'Mukteshwar Samachar', daily 'Gavkaryanche Manogat' etc. informing all party Councillors including the petitioners that respondent No. 2 was elected as Gat Neta.

g] In the general proceeding book of the NCP (copies are placed on record), the election of respondent No. 2 as Gat Neta is recorded and the petitioners were present in the said meeting. Proceeding book indicates that the councillors were made aware of this fact.

h] Being leader of the party at the Municipal Council level respondent No. 2 was nominated as the NCP candidate for the position of President of the Ausa Municipal Council.

i] The consequences of disobeying the party directive to vote in favour of respondent No. 2 with reference to the election of President, Ausa Municipal Council, was also made known to all the NCP councillors, in the meeting held on 28-04-2013.

j] The party directive was also published in Daily 'Sakal' dated 06-05-2013 informing all NCP Councillors that they would have to vote in favour of respondent No. 2 in the election to the post of President AUSA Municipal Council.

k] Shri Garje was the General Secretary of the State unit of NCP and he had legally issued the party directives (Page 124 and 125).

l] So also, respondent No. 2 Group Leader of the NCP at the Municipal Council level, also issued a directive on 04-05-2013 (Page 127) and served the directive on all the NCP elected councillors, including both the petitioners.

m] The NCP has not questioned the authority of Shri Garje in issuing party directive, inasmuch as, it is not the stand of the NCP that Shri Garje was not authorised to issue the party directive.

n] The copies of the directives were affixed on the main doors of the residential houses of the petitioners on 05-05-2013, and a panchanama was accordingly drawn.

o] The meeting for electing the president of the Ausa Municipal Council was convened on 07-05-2013 and the business transacted in the meeting has been recorded by videography.

p] The Videography recording indicates that the respondent No. 2 was the candidate of the NCP for the post of President. The party directive was also read out in the meeting.

q] Respondent No. 2 lost the election as both the petitioners and respondent No. 3 voted in favour of another candidate.

r] Respondent No. 2 filed disqualification proceedings before the District Collector under Section 7 of the Maharashtra Act, on 10-06-2013.

s] The District Collector, framed the issues.

t] By the impugned judgment dated 29-11-2014, the petitioners have been disqualified.

u] Reliance is placed upon the following judgments :-

- i] Sadashiv H. Patil Vs. Vithal D. Teke and others
[AIR 2000 SC 3044],
- ii] Kedar Shashikant Deshpande Vs. Bhor Municipal
Council and others [2011(1) ALL MR 934(SC)] &
- iii] Jitendra Himmat Biraris Vs. Kiran Gulabrao Patil
[2011 (5) ALL MR 555].

8 Looking at the conspectus of the matter, I have formulated the issues involved and dealt with them as follows :-

A] Whether respondent No. 2 was elected as a leader (Gat Neta) of the political party at the Municipal level?

B] Whether respondent No. 2 was the official candidate of the NCP for contesting the election of President AUSA Municipal Council?

C] Whether the party directive (whip) was issued by Mr. Garje as General Secretary of the Maharashtra Pradesh NCP and /or whether respondent No. 2 had issued the party directive?

D] Whether the petitioners were aware of the party directive?

E] Whether a reference / petition under Rule 6 was maintainable in the light of Section 3(1)(b), its proviso and Rule 3(5) read with Form II of the Rules?

A] Whether respondent No. 2 was elected as a leader (Gat Neta)
of the political party at the Municipal level?

9. The petitioners have specifically stated in paragraph No. 1 of the petition that they were elected along with respondent No.2 and 3 (who subsequently resigned) from their respective wards as Councillors of AUSA Municipal Council on the ticket of the NCP. Subsequent to their elections, they have not resigned from their membership of the NCP. This, therefore, settles the issue that the petitioners belong to the NCP.

10. The judgment of this Court (Coram : B.P. Dharmadhikari-J.) in the case of *Sahebrao Narayan Kharat* (supra) lays down the law on the election of the Group Leader in paragraph Nos. 4, 28, 33, 38, 39 and 40, which are as follows :-

"4. Advocate Mr. Deshpande has contended that most important question involved in the matter was about the formation & existence of the Municipal party i.e. Ambad Municipal party and the person elected by that municipal party as its group leader (Gat Neta). He has urged that in present facts one Shri. Ankushrao Tope has claimed himself to be the District President of N.C.P. He has further alleged that he has nominated/appointed respondent no.2- Shri. Suresh Gude as group leader. His contention is, in accordance with provisions

of Rule 3-C and the definition of phrase 'Leader in relation to Municipal party' as given in Rule 2(b-1)(i) of 1987 Rules such leader needs to be elected by the members constituting municipal party. As no such meeting or then election of Shri. Suresh Gude has been proved on record, the constitution of municipal party itself has not been proved. In absence thereof there is no question of any whip being issued, its violation or then further action under the provisions of 1986 Act. He has further contended that the alleged communication of constitution of Municipal Party to the office of Collector is not sent by alleged group leader and it is claimed to have been forwarded by Shri. Ankushrao Tope. It is urged that the provisions of Rules again require elected group leader to forward that information in Form-I to the Collector. His contention is, though there are no documents in this regard, the Collector has erred in observing that material on record reveals status of Shri. Tope as District President of NCP and the communication dated 18.12.2006 forwarded by him has been accepted as valid for returning a finding of constitution of municipal party. He urges that even minutes of meeting held for election of group leader are not produced before Collector. He further contends that decision to field Smt. Jayashree Sodani for the post of President in 2009 elections was not taken by municipal party and it was decision of individual viz. Shri. Tope. As there is no material on record to show any such democratic process and support to Smt. Sodani, Collector erred in treating her as official N.C.P. candidate. He invites attention to records to show that on 16.06.2009, two N.C.P. candidates had filled nominations for the post of President, and therefore, it could not have been said that on 14.06.2009 when

whip was attempted to be served on petitioners, Smt. Sodani was the official candidate or there was any party decision.

28. To bring on record the formation of Municipal party of N.C.P. in relation to Ambad Municipal Council deeming fiction in Section 3(1) Explanation (a) has been pressed into service by the respondents along with the provisions of Section 2(I)(ii). Provision of Rule 2(i) define Municipal party in relation to Councillors belonging to any political party in accordance with Explanation to section 3. Under clause II, it is laid down that group consisting of all the Councillors of Municipal Council for the time being belonging to that political party in accordance with the said explanation shall constitute a municipal party. Obviously reference is to Explanation to section 3. Perusal of Section 3 shows that it deals with disqualification on the ground of defection. Its Explanation (a) states that a person elected as Councillor shall be deemed to belong to political party by which he was set up as candidate for election as such Councillor. Before me, it is not in dispute that all three petitioners were set up by N.C.P. and hence, if this explanation is to operate, they are to be deemed to belong to a political party of N.C.P. in Ambad municipal Council.

33. In facts before me, the provision of Section 3(1) Explanation (a) are clearly attracted. The Section itself stipulates that such person contesting election as a member of a particular political party shall be deemed to be belonging to that political party by which he was set up as candidate for that election. I therefore find no substance in objection of Advocate Mr. Deshpande in this respect.

38. *The claim of Shri. Tope that Shri. Gude has been elected as group leader or then claim of Shri. Gude that he was so elected needs to be evaluated in this background. The pleadings that there was meeting on 18.12.2006 and in that meeting unanimously he was so elected has not been substantiated and no such proceeding of any date are filed on record. On the contrary before this Court, learned Counsel Mr. Salunke and Mr. Patil both appearing for respondent no.3 have attempted to urge that Constitution of political party and 1987 Rules do not contemplate election of group leader at all and the same can be by selection i.e. by nomination. The relevant provisions of 1987 Rules therefore need to be looked into for this purpose. The provisions of 1986 Act as such do not throw any light on the concept of group leader. The said phrase coined as "Leader in relation to Municipal Party" is employed in 1987 Rules. Rule 2 (b-1)(i) define this phrase to mean Councillor "chosen" by each political party and its inclusive part shows that any other Councillor "authorised by it" to act in absence of such chosen leader is included in that definition. Thus, this Rule does not use the word election or elected.*

39. *This definition also needs to be looked into from Rules in Marathi. In those Rules, for English word "Chosen" word used in Marathi is "Elected". Words in Marathi are "Nivdun Dilela". The leader in relation to Panchayat Samiti Party and Leader of Zilla Parishad Party are separately defined in Rules and though in English word Chosen has been used, the Marathi Rule show the use of word 'Nivdun Dilela'. These words in Marathi without any ambiguity indicate "election" only.*

40. Constitution of Ambad Municipal party in its clause 1(gh) define group leader to mean a person elected (may mean selected) by N.C.P. ward members in Ambad Municipal Council and approved by District President. Respective Counsel appearing for respondent no.3 have urged that word "Nivadlela" used in Constitution also means the candidate selected. Contention is that said word does not necessarily mean election. Clause 2 of the Constitution lays down the obligation of political party and in its opening part it is prescribed that District President has to summon a meeting of ward members elected on N.C.P. tickets before the Collector convenes the meeting for election of President of Municipal Council. In this opening clause, the Marathi words "Nivadnuk and Nivdun alele" both are used. About meaning of Marathi word 'Nivadnuk', there is no dispute and even according to learned Counsel appearing for respondent no.3, it means election. The meeting to be convened is of "Nivdun Aalele Sadasya". It is not in dispute that all ward members of N.C.P. are elected as such and none of them is selected. Thus, word "Nivadun" used in this Rule again indicates election only and nothing else. Clause 'A' of this Rule 2 states that in such meeting declaration of formation of municipal party and its associates shall be made. Again there word used in relation to such associate is "Nivadun" and it clearly makes a reference to election. Thereafter in clause (b), the further business to be transacted in that meeting is given. In that clause, it is mentioned that a group leader of ward members or of Aghadi is to be elected (or selected as argued) as per respondent no.3. Again Marathi word used there is "nivad karane". In Rule 3 which deals with the said aspect ,business to be transacted is mentioned as "Nivad of Group Leader of Municipal

Councillors of N.C.P.". In later clause word used is "Nivad" and it has to be from amongst the members of N.C.P. party and associates members. When this provision in Constitution are read together, it is apparent that word "Nivad" employed in Marathi in these Rules signifies nothing else but election. If concept of election is to be ignored and it is to be held that it also permit selection, it is apparent that the same word is required to be given two different meanings. Such different meaning is not even warranted by the context. Such different interpretation of any word in Rule/Rules is not accordance with settled norms of interpretation. Therefore the provisions of Constitution read with 1987 Rules (Marathi) clearly show that contentions of Respondent no.3 that Shri. Suresh Gude could have been nominated by Shri. Tope can not be accepted. The group leader is required to be elected by all N.C.P. ward members elected to Ambad Municipal Council, from amongst themselves and then the District President has to give his approval to that election. Thereafter only such elected person can become group leader within the meaning of clause 1(gh) of the Constitution of Ambad Municipal party. Here, as already noted though it is claimed that such business was transacted on 18.08.2006, there is absolutely nothing to support it. It is therefore difficult to accept that Shri. Suresh Gude has been elected at any point of time as group leader as required by Constitution of political party & therefore by 1986 Act."

11. I have gone through the record and proceedings placed before me. The NCP at its AUSA unit held a meeting of the 7 elected councillors on 17-12-2011 at 1 pm in the Azad College,

Ausa. The proceeding book duly verified indicates that the meeting was convened and conducted by the NCP District President. Issue No. 1 was as regards electing the leader (Gat Neta) of the local party. Respondent No. 2 was elected as the Gat Neta.

12. In the said meeting, issue No. 6 was as regards communicating the election of the Gat Neta and furnishing the resolution thereof to the District Collector. The proceeding book bears the signatures of all the elected NCP councillors, the District President and Taluka President of the NCP, inclusive of the petitioners.

13. The petitioner No. 1 in his cross-examination has admitted that he was present in the Municipal Council meeting dated 30-12-2011 and that the notings set out in the official proceeding book are correct. Several committees were formed in the said meeting as a part of governance of the Municipal Council and the petitioner No. 1 was elected as 'Sabhapati' on a few committees. He admitted that he was made Sabhapati on few committees on the recommendation of the Gat Neta- respondent No. 2. He also admitted that petitioner No. 2 was also elected member of few committees under the signature of the Gat Neta.

14. The Communication dated 17-12-2011 is placed on record which indicates that the decision of electing respondent No. 2 as the Gat Neta, was communicated by all the seven councillors to the District Collector. Copy of the resolution passed by the NCP on 17-12-2011 was annexed to the said letter. The inward stamp of the office of the District Collector indicates of having received the said letter.

15. The record and proceedings further indicate that respondent No. 2's election as Gat Neta of the NCP in the Ausa Municipal Council was informed by the District Collector to the Presiding Officer of the Ausa Municipal Council by letter dated 22-12-2011.

16. The record and proceedings indicate that petitioner No. 1 was elected as Sabhapati of the water supply committee, and the Health and cleanliness committee in 2011 and 2012, respectively. Petitioner No. 2 was elected as the Sabhapati of the Health and cleanliness committee in 2011 and was a member of the water-supply committee, construction committee and planning committee in 2012. These elections were held in the different meetings of the Ausa Municipal Council and respondent No. 2 had approved the same in his capacity as Gat Neta of the NCP which

party was being represented on the various committees of the AUSA Municipal Council.

17. The Written statement filed by the petitioners before the collector is of complete denial. The petitioners have denied every aspect contended by the respondent No. 2 in the disqualification proceedings. The cross-examination of petitioner No. 1, however, clearly indicates that despite the denial in the Written statement, the petitioners have admitted certain aspects as recorded above.

18. At this juncture it would be necessary to advert to few provisions under the Maharashtra Act, 1986 and the Rules 1987. Section 2(i) of the Maharashtra Act defines a Municipal party as follows :-

"2(i). in the case of a councillor of a Municipal Corporation, the group consisting of all councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said explanation;"

This indicates that a political party, even at the Municipal level has a recognised existence. This is the law as laid down by the Division Bench of our Court in the case of *Suresh Madhaorao Bhange* (supra), which I have adverted to in the later part of this judgment.

19. Section 2 (j) of the Maharashtra Act defines an original political party as follows :-

2 (j) “ original political party”, in relation to a Councillors or a member, means the political party to which he belongs for the purposes of sub-section (1) of Section 3;

It is admitted that both the petitioners have been elected as councillors representing the NCP.

20. Section 2 (l) of the Maharashtra Act defines the Panchayat Samiti as follows :-

"2 (l) “Panchayat Samiti Party”, in relation to a member belonging to any political party or aghadi or front in accordance with Explanation to Section 3, means the group consisting of all the members of the Panchayat Samiti for the time being belonging to the political party or aghadi or front in accordance with the said Explanation;"

21. Section 2(e) of the Maharashtra Act defines a local authority as follows :-

"2 (e) “local authority” means-

- i) a Municipal Corporation,*
- ii) a Municipal Council,*
- iii) a Zilla Parishad, or*

iv) *a Panchayat Samiti."*

22. It is thus clear that the Municipal party in relation to the councillors would mean that political party or aghadi or front to which the councillors belong. Such an aghadi can consist of group of councillors of the Municipal council / Corporation who, for the time being belong to a political party.

23. Section 3 deals with disqualification on the ground of defection, which reads as under :-

"3.(1) Subject to the provisions of [Section 5] a councillor or a member belonging 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 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 agghadi 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) a “nominated member”, in relation to a Panchayat Samiti, includes an associate member, referred to in clause (c) of sub section (1) of Section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

(2) An elected councillor, or as the case may be, member who has been elected as such otherwise than a candidate set up by 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 was 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) * * * * **

Section 3(1) (b) and its proviso are relevant to this case.

24. Rule 2 (b) (b-1) pertains to a leader in relation to a municipal party and which reads as under :-

"2. Definitions :-
 2(b)
 2 (b-1) (i) *Leader in relation to a municipal party:
 means a councillor chosen by each political party or
 aghadi or front in the Municipal Corporation or as the
 case may be in the Municipal Council as its leader
 and includes any other Councillor of such party or
 aghadi or front authorised by it to act in the absence
 of the leader as, or discharge the functions of the
 larder of such party or aghadi or front for the
 purposes of these rules."*

25. As such, in the light of the law laid down, the above provisions of the Act and Rule 2 (b-1) (i) the leader (Gat Neta) in relation to a municipal party shall mean a councillor who has been chosen by the said political party as its leader. In the instant case, respondent No. 2 is evidently elected as a Gat Neta/ leader of the NCP. Issue No. A is, therefore, answered accordingly.

B] Whether respondent No. 2 was the official candidate of the NCP for contesting the election of President AUSA Municipal Council?

26. The district president of the NCP convened a meeting on 28-04-2013 at 1.00 pm in the office of the NCP at AUSA to choose the candidate of the NCP for contesting the election of President of AUSA Municipal Council scheduled on 07-05-2013. The said document is signed by the District President, Taluka President, AUSA and Gat Neta respondent No. 2. Copies of the said letter were served upon all the seven elected municipal councillors.

27. The proceeding book of the NCP indicates the Minutes of the meeting dated 28-04-2013 having been recorded. Both the petitioners did not attend the said meeting. In all five councillors attended the meeting along with the District President and the Taluka President. The NCP publicized its meeting convened on 28-04-2013 through paper publication in various daily news papers like 'Daily Gurudharma', 'Mukteshwar Samachar', 'Gavkaryanche Manogat' etc. It was also stated that the decision in the meeting would be binding on all NCP councillors and they shall not abstain from the election meeting on 07-05-2013.

28. Issue No. 1 in the meeting dated 28-04-2013 was as regards choosing the candidate for contesting the election. Respondent No. 2 was unanimously chosen as the NCP candidate. Issue No. 3 was as regards authorising a person to issue the party directive (commonly used word being "WHIP"). It was unanimously decided that respondent No. 2 as the Gat Neta, shall be empowered to issue the party directive and which shall be communicated to the abstaining councillors i.e. the two petitioners and respondent No. 3, by RPAD, SMS, Telegram, E-mail and public notice in the news paper. It was decided to serve the said party directive on the residence of the petitioners and respondent No. 3 and the same would be recorded by videography.

29. Issue No. 4 in the said meeting was as regards initiating action against those councillors who would violate the decision of the party to vote in favour of respondent No. 2 in the election to be held on 07-05-2013.

30. It has been brought on record that both the petitioners and respondent No. 3 were informed of the decisions taken on various issues by the Municipal party of the NCP in its meeting dated 28-04-2013, by RLAD and by publishing the said decision in the

news papers like Daily 'Sakal' (29-04-2013), Daily Gurudharma. It is, therefore, evident that respondent No. 2 was chosen as the official candidate of the NCP for contesting the election to the position of President AUSA Municipal Council.

C] Whether the party directive was issued by Mr. Garje as General Secretary of the Maharashtra Pradesh NCP and/ or whether respondent No. 2 had issued the party directive?

AND

D] Whether the petitioners were aware of the party directive?

31. In the light of the record and proceedings placed before me and adverted to here-in-above, it is clear that respondent No. 2 was authorised to issue the party directive.

32. Mr. Shivajirao Garje, Secretary Maharashtra Pradesh NCP has issued a party directive dated 03-05-2013 with copies to respondent No. 2, the District President, Latur NCP, the District Collector, Latur and other political leaders/ Ministers. The said directive was published in several newspapers. Grievance of the petitioners is that the directives have been issued by Mr. Garje and they have not been issued by respondent No. 2 who is the leader of the Municipal party of the NCP.

33. Shri Dixit has relied upon the judgment of this Court in the matter of *Sahebrao S/o Narayan Kharat and another Vs. Collector, Jalna, (Coram:- B.P.Dharmadhikari- J.) 2011 (4) Mh.L.J. 389* (which has considered the judgments in the case of *Sadashiv H. Patil Vs. Vithal D. Teke and others, 2001 (1) Mh.L.J. (S.C.) 312* and *Suresh Madhaorao Bhange & others Vs The Collector, Wardha and others, 1990, Mh.L.J. 848*). Reliance is placed by Shri Dixit upon paragraph Nos. 41, 42, 43, 44, 46, 47, 49, 50, 51, 52, and 53, which are as under :-

“41. The other important question which arises in the matter is about the whip of which disobedience is alleged. The relevant pleadings in this respect are in paragraph nos.5 to 7 of the petition as filed before Collector. In paragraph no.5, it is mentioned that N.C.P. declared the candidature of Smt. Jaishree Sodani for the post of President and Shri. Sahebrao Kharat for the post of Vice President and accordingly the nomination papers were filled. As the applicant no.1 before the Collector namely Shri. Suresh Gude happened to be group leader, he issued a whip accordingly and it was served upon 7 ward members personally on 14.06.2009. The other allegations then show effort made to serve this whip dated 14.06.2009 upon the petitioners or their family members and its service by pasting. It is also mentioned that it was published in daily news paper Sakal on 20.06.2009. Then in paragraph no.8, the business transacted in the meeting dated 20.06.2009 has been disclosed.

42. Before proceeding further, it will be appropriate to find out what is whip. Reference thereto as such is not in definition given in Section 2 of 1986 Act. Section 3 which prescribes the disqualification on the ground of defection stipulates that voting or abstaining from voting in any meeting contrary to any direction issued by political party or aghadi or front to which the Councillor belongs results in disqualification. Therefore, the voting has to be contrary to any directions issued by the political party. There is no dispute that here reference to political party, therefore, is to political party of N.C.P. constituted for Ambad Municipal Council i.e. Ambad Municipal party. Pleadings noted above nowhere show that there was any such decision by Municipal party. Before Collector and before this Court, the petitioners have categorically urged that candidature as such of Smt. Jaishree Sodani was not authorised by Municipal Party and she was candidate of Shri. Tope only. Leaving aside the word in which contention is raised, it is apparent that the petitioners have come up with defence that there was no decision of Ambad Municipal party to field either Smt. Sodani or then Shri. Kharat as official candidates of Ambad Municipal party. Decision of political party can be only through resolution passed in a meeting. There is no pleading or proof of any such meeting or resolution. This aspect is totally lost sight of in the process of his consideration by the Collector.

43. The copies of whips which are annexed along with the Petition for ready reference to this Court are carrying date 14.06.2009. The said whip is on the letterhead of respondent no.2 and his description has been mentioned as group leader of N.C.P. It is signed at the bottom by him and on the left hand

side it is addressed to concerned Councillor and said Councillor has to sign it above his name at the left hand side bottom corner in token of receipt of that whip.

44. Language in that whip shows that it is Shri. Suresh Gude who has decided the names of Smt. Sodani and Shri. Kharat on behalf of N.C.P. and it is he who has issued the whip. There is nothing to hold that these two persons were resolved to be the official candidates of the Municipal party in the meeting convened prior thereto. The provisions of the Constitution particularly Rule 4 enables group leader to call the monthly meeting of all members of Municipal party. Thus, this whip does not show that decision of Ambad Municipal Party was being communicated to the respective ward members or petitioners for its obedience. It uses present tense every where and hence demolishes even idea of any decision earlier reached by a group of persons or a party.

46. The consideration of this aspect by Collector is very cryptic. Provisions of Constitution show that whip can be issued by group leader if he is authorised to do so in writing by District President. The alleged whip dated 14.06.2009 or then the paper publication dated 20th June, 2009 no where show such written authorisation by the District President in favour of Shri. Suresh Gude. In his application for disqualification, Shri. Suresh Gude has not pleaded any previous meeting or resolution of Ambad Municipal party and has not also pleaded any such authorisation by Shri. Ankushrao Tope in his favour. Paper advertisement only carries name of Ankushrao Tope. The Collector has drawn presumption of such authorisation in favour of Shri. Suresh Gude because of documents filed along

with disqualification petition before him. It appears that such communication in writing by Shri. Tope to Shri. Gude is produced along with the said petition before the Collector. When, there is dispute between the parties and in present state of affairs, it was necessary for the Collector to go into details of the legal provisions and to find out whether, whip issued on 14.06.2009 complied with the requirement of 1987 Rules and Constitution of the political party. The contention of petitioners that on 16.06.2009, two members of N.C.P. had filed nomination papers for the post of President again show absence of any previous meeting and an open declaration in favour of Smt. Sodani as official candidate of political party. Language of alleged whip dated 14.06,2009, on the contrary, supports the theory of absence of any such authorization by Shri Tope in favour of Shri Suresh Gudhe. There is nothing on record to show that any such decision of political party or written authorization in favour of Shri Gudhe was even attempted to be communicated to petitioners before 20.06.2009.

47. The Division Bench Judgment of this Court reported at "1990(3)Bom C.R. 199" (Suresh Madhaorao Bhange and others V/s Collector, Wardha and others) in paragraph no.14 has noted that original party like N.C.P. is a genus whereas the Municipal party like Ambad Municipal Party or political party here is species and sphere of these species is restricted to that particular geographical area over which it has jurisdiction. It is then found that Section 3(1)(a) and (b) of the 1981 Act contemplates species and not genus. The Division Bench therefore has found that it is such Municipal party which forms species which has to issue direction to its

members/Councillors. The function of apex body like N.C.P. is only to give direction to its units i.e. species and nothing more.

49. As this Court has found that alleged communication dated 14.06.2009 is not a whip within the meaning of provisions of 1987 Act and it is also noticed that there is material difference between the whip as issued on 14.06.2009 and as published in news paper on 26.02.2009. Material to constitute it a binding whip is found missing in both. Even if its service is presumed upon the petitioners, its disobedience is not sufficient to attract disqualification legally as contemplated under Section 3(1)(b) of 1986 Act. It may render petitioners liable for disciplinary action by NCP. For very reasons it is not necessary to consider the arguments of Advocate Mr. Deshpande that Collector has placed negative burden upon the petitioners to show that their acts of defection have not been condoned by political party i.e. Ambad Municipal party of NCP.

50. Judgment of the Hon'ble Apex Court reported at "2000 (Supp.) Bom. C.R. 829 (Sadashiv H. Patil V/s Vithal D.Teke and others) shows the scheme of Act and also how the same needs to be construed. In paragraph no. 14, the Hon'ble Apex Court has noted the finding as to the disqualification under the Act and the effect of unseating a person from an elected office and consequences thereof are not individual but also on constituency which he represents. Looking at the penal consequences flowing from an elected Councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body, the provisions have been

construed strictly. It is declared that a rigorous compliance with the provisions of the 1986 Act and the 1987 Rules must be shown to have taken place while dealing with a reference under Section 7 of the 1986 Act. Consideration in paragraph no.15 shows that in facts before the Hon'ble Apex Court there were no Rules or regulations of Janata Aghadi and the Hon'ble Apex Court noted that had they been there, an effort could have been made to find out "authorisation to issue whip" provided therein. The Hon'ble Apex Court then had asked the learned Counsel for appellant before it to show any resolution of Janata Aghadi authorising signatories of whip to issue it and it noted that no such resolution was filed either before the Collector or before the High Court or then was shown to it. The contents of whip did not contain any recital spelling out the existence of any such authorisation and hence the Hon'ble Apex Court gathered that therefore there was no such authorisation. It has been held that in absence of such authorization to issue whip, violation thereof would not attract applicability of Section 3(1)(b) of 1986 Act. The Hon'ble Apex Court has found that act contrary to resolution however strongly worded may render delinquent members liable to disciplinary proceedings at party level but he can not incur disqualification under 1986 Act. There must be direction issued and such direction must be either by Municipal party or Aghadi or front to which Councillor proceeded against belonged. These observations of the Hon'ble Apex Court are attracted with full force even in the present facts.

51. *Observations made by the Hon'ble Apex Court show that after formation of Municipal party or Aghadi or Front it gets statutory recognition. It has then found that thereafter the*

leader of such municipal party is to be elected or appointed and such leader has thereafter to furnish within 30 days from the date of its formation , a statement in writing in Form I to the Collector. Not only statement of leader of Municipal party is to be filed under Rule 3(1)(a) but then every Councillor in relation to Municipal party before taking seat, has to furnish the statement of particulars and declaration in Form No.III. The information so furnished is to be published in Maharashtra Government Gazette and to be maintained in the records of Collector in register in Form IV under Rule 5. The Hon'ble Apex Court has pointed out that in this manner the evidence of formation of municipal party comes in to existence and any doubts or disputes relating to formation of particular municipal party and member thereof along with the requisite particulars furnished while entering in the register, are ruled out. The finding in paragraph no.9 about the power to issue whip are on same lines and the Hon'ble Apex Court has noted that authorisation to the person or authority can be determined by looking into such documents which will be available on the record of Collector having been filed accompanying in statement-I under Rule 3(1). The Hon'ble Apex Court has clarified that otherwise availability of such authorisation in this behalf shall have to be proved to the satisfaction of Collector dealing with reference under Section 7 of the Act r/w Rules 6, 7 and 8. In other words, the office of Collector has to cross check such claims with documents already in its custody and thereafter it can proceed further to adjudicate the issue of disqualification. In present matter, such effort is conspicuously missing though a genuine dispute was raised by the petitioners.

52. Accordingly, it has to be held that though formation of political party of Councillors elected to Ambad Municipal Council on NCP ticket by name Ambad Municipal party can be presumed in the present facts, still election of Shri. Suresh Gude as group leader has not been established. Not only this communication of formation of such municipal party with required details by him to the office of Collector is also not established. Requisite decision in the shape of resolution of Ambad Municipal Party i.e. political party authorising issuance of whip for the purpose of election of President and Vice-President on 20.06.2009 is also absent. Written authorisation by District President Shri. Tope in favour of Shri. Suresh Gude to issue such whip and its communication to the petitioners is also not established. Intimation as issued on 14.06.2009 or as published on 20.06.2009 can not be construed as a whip within four corners of 1986 Act or 1987 Rules so as to attract provisions for disqualification as contained in Section 3(1) (b). The impugned order of Collector dated 25.01.2011 is therefore unsustainable.

53. It is apparent that previous conduct of petitioners pressed into service to show that they accepted Shri Gudhe as their leader is irrelevant because there is no evidence of any previous whip issued by him & of adherence thereto by the petitioners. Unless & until, election of Suresh Gudhe as group leader in meeting of NCP Councillors in 2006 after general election & prior to meeting convened by Collector to elect president is established, there can not be any estoppel in this connection. Moreover, there has to be a legal whip for regulating the conduct of petitioners in meeting held on 20.06.2009 and in its absence, the argument is

misconceived. "Deeming fiction" noted above can not engulf these aspects."

34. In the Sahebrao judgment (supra), this Court had come to a conclusion that the leader of a municipal party under Rule 2(b-1) (i) of the 1987 Rules needs to be elected by the members constituting the municipal party. Since no such meeting was held, this Court concluded that the election of Shri Suresh Gude was not proved. When he was not proved to be elected as the leader of the party, there was no question of any whip being issued.

35. In the instant case, it has been proved on the basis of oral and documentary evidence that respondent No. 2 was elected as the leader of the Municipal party. Pursuant to his election as Gat Neta, he had got both the petitioners nominated as the 'Sabhapati' and members of various committees of the AUSA Municipal Council. Both the petitioners and respondents No. 3 had accepted the said nominations as Sabhapati/ members of various committees and had enjoyed the said positions. It has been admitted in the cross-examination that respondent No. 2 had recommended their names being Gat Neta of the municipal party.

36. The record and proceedings in the instant case, indicate that respondent No. 2 in his capacity as Gat Neta has referred to

the letter of Mr. Garje dated 03-05-2013 and has also referred to the resolution passed by the NCP in its meeting dated 28-04-2013 authorising the Gat Neta to issue a party directive with regard to the election scheduled on 07-05-2013. Based on the said authorisation, respondent No. 2 in his capacity as Gat Neta has issued the party directive dated 04-05-2013 that all the municipal councillors belonging to the NCP shall vote in favour of Dr. Shaikh Afsar Nawabobdin (respondent No. 2) who has been nominated as the official candidate of NCP for contesting the election to the post of President Ausa Municipal Council scheduled on 07-05-2013.

37. Copies of the said party directive were served upon the District Collector, the Presiding Officer cum SDO of Ausa Municipal Council, the Chief Officer of Ausa Municipal Council, and the District President Latur District NCP and few others. Copy of the said party directive was specifically issued to the petitioners and respondent No. 3. The said party directive was published in several newspapers, telegrams were issued to all the NCP municipal councillors and the same were affixed on the residences of the petitioners and respondent No. 3 duly videographed, photographed and panchanama drawn.

38. It is noteworthy that original copies of all the newspapers referred to here-in-above in which various public notices were published, various RPAD letters, various resolutions, party directives, telegrams etc. (120 documents), were placed on record before the district Collector in the disqualification proceedings.

39. The petitioners, as is evident from the Written statement, have denied every document. They seemed to be in a constant mode of denial. Cross-examination of petitioner No. 1 has exposed false-hood on his part.

40. The Petitioners have heavily relied upon the Division Bench judgment of this Court (Coram :- M.S. Ratnaparkhi and A.A. Desai, JJ.) in the case of *Suresh Madhaorao Bhange* (supra). The factual matrix in this case is set out in paragraph Nos. 2 & 3 which are as under :-

"2. There were elections to the Zilla Parishad at Wardha in 1979 of so and the petitioners Nos. 1 and 3 to 6 contested those elections on the official symbol of Congress-(I) and they were elected on that symbol. Other persons have also contested the elections and they were also elected. One Mr. Raut was elected as President of the Zilla Parishad. One Mr. Ingole (present respondent No. 4) was elected as a Vice President. One Mr. Gopal Tukaramji Zate (respondent No. 5)

was elected a Chairman of the Works and Health Committee of the Zilla Parishad. They also belong to the congress-(I) party. Special meeting of the Zilla Parishad was sought to be convened on 18-12-1987 for consideration of the motion of no-confidence against the President and the Vice-President. The General Secretary of the Maharashtra Pradesh Congress Committee issued a letter dated 7-12-1987 not to vote in favour of the motion of no confidence. In spite of this directive from the party, the petitioners voted in favour of the motion of no-confidence. The motion was passed. Another meeting was sought to be convened on 28-12-1987, for considering the motion of no confidence against Gopal Tukaramji Zate. The Secretary of the Maharashtra Pradesh Committee Congress-(I) issued a directive to all the members of the Zilla Parishad not to vote in favour of that motion as a result of that mandate, the petitioner No. 1 to 6 voted in favour of that motion as a result of which the motion came to be passed.

3. *Three petitions came to be filed against the present petitioners and others under section 3 of the Maharashtra Local Authority Members Disqualification Act, 1986 (hereinafter referred to as the Disqualification Act) before the Collector, Wardha. It was alleged that the petitioners and others, voted contrary to the directives issued by the Maharashtra Pradesh Congress Committee (1) without obtaining any prior permission and therefore, they made themselves liable to the disqualification under section 3(i) of the Disqualification Act. It was their case that all the petitioners and others were elected to the Zilla Parishad on the Congress (I) ticket and they formed the Zilla Parishad party after the elections. In spite of the fact that the*

appropriate authority issued the letter with a mandate not to vote in favour of the no-confidence motion, these petitioners and others acted contrary to the mandate, as a result of which the motion came to be passed and as such they have incurred the disqualification under section 3(1)(b) of the Disqualification Act."

41. As such, it needs to be noted that the issue before the Division Bench was with regard to the Zilla Parishad at Wardha. A motion of no confidence was moved against the President and Vice-President in the special meeting of the Zilla Parishad. The General Secretary of the Maharashtra Pradesh Congress Party had issued a letter dated 07-12-1987 directing the members of the Zilla Parishad not to vote in favour of the motion of no confidence. Despite the directive, the motion was carried.

42. There were three petitions filed before the Collector seeking disqualification of those councillors under Section 3(1)(b) of the Maharashtra Act, who had voted in favour of the motion against the directives of the party. The contentions of the parties before the Collector are set out in paragraph No. 4, 5 & 6 of the *Suresh Madhaorao's* (supra), which read as under :-

"4. The petition was opposed on various grounds. It was alleged that the Zilla Parishad party was not at all in existence since 1982. It was already dissolved in 1982 and it was never

reconstituted thereafter. It was, their contention that there was no leader of this party elected by the party itself and, therefore, no mandate could be given to the members. The letter written by the General Secretary of the Maharashtra Pradesh Congress-(I) Committee was a letter from the leader of the Zilla Parishad Party and, therefore, contravention of that letter could not disqualify the members including the petitioners. It was also their contention that the Secretary of the Maharashtra Pradesh Congress (I) Committee was incompetent to issue such letter because what is contemplated under section 3(1)(b) of the Disqualification Act is the direction by the leader of the party or by a person or authority authorised either by the party or by the Aghadi or the Front. The letter issued by the President of the Zilla Parishad also was not in the nature of a mandate because he was not the leader of the party. It was also contended that the petitioners did not receive the directions issued by Shri Chandrakant Raut in time and, therefore, they cannot be said to have contravened the mandate issued by the authority.

5. *Another objection raised was that the Collector was incompetent to take any action under the Act as there was no compliance of the rules or rules 4 of the Rules framed under the Act. It was further contended that though initially the petitioners 1 and 3 to 6 were elected on Congress-(I) ticket, this party came to be dissolved in 1982 and liberty was given each member to vote according to his conscience. There was no Zilla Parishad Party in existence in 1987 and, therefore, the Disqualification Act had no application. The direction issued by the President of the Zilla Parishad could not be called as a valid direction under section 3(1)(b) of the Act because he was never elected as a leader of the party. It was lastly contended*

that the annexures of the petition have not been signed by the petitioners as per rule 6(4) and, therefore, the petition deserves to be rejected forthwith.

6. In all there were three petitions filed before the Collector. All these petitions came to be heard by the Collector and a common order disposing of all these three petitions came to be passed. The learned Collector came to the conclusion that though the Zilla Parishad Party may not be in existence on the relevant date, still the original party, which had set up these people as candidates, was in existence and as such, the direction issued by the authorised person on behalf of the party should be a good mandate and as these persons have acted contrary so that mandate, they have exposed themselves to the penalty flowing from section 3(1)(b) of the Disqualification Act. The collector came to the conclusion that the rules framed under the Act were contrary to the provisions of the Act itself and, therefore, these rules cannot be looked into. The Collector agreed with the contention that the President of the Zilla Parishad cannot ipso facto be treated as a leader if the Zilla Parishad Party and, therefore, the directions issued by him do not take the form of a mandate, the contravention whereof exposes the members to the penalty. The learned Collector further held that though there is no compliance with the rules, since the rules are contrary to the provisions of the principal Act, they cannot be considered. According to the Collector, the question as to who was the leader of the Zilla Parishad Party was merely academic. The learned Collector found that the suppression of the Zilla Parishad Party in 1982 has no bearing on the operation of the

Disqualification Act. On these findings, he held that the direction issued by the secretary of the Maharashtra Pradesh Congress-(I) Committee was a valid direction and the contravention thereof exposed the petitioners to the penalty of disqualification envisaged under section 3 of the Disqualification Act. The Collector also found that all the petitioners except the petitioner No. 2, have admitted that they belong to the Congress-(I) party and that they contested the elections on that party symbol. Similarly the petitioners No. 2 admitted that he was a member of the Congress-(I) and he continues to be the member of the party. In view of this admission they were bound by the mandate issued by the General Secretary of the M.P.C.C. (I) and their voting, contrary to the directions, exposed them to the penalty. On these findings the learned Collector held that the petitioners have exposed themselves to the disqualification flowing from section 3(1) and accordingly he passed the order adjudicating them as disqualified from the membership of the Zilla Parishad. In consequence of this order, the Maharashtra Government appointed the Chief Officer of the Zilla Parishad, Wardha as Authorised Officer under section 91-B(b) of the Maharashtra Zilla Parishad and Panchayat Samitis Act. It is these two orders which have been challenged in this writ petition."

43. Issue before this Court is whether a party directive shall mean a directive binding upon the councillors. This issue is dealt with by the Division Bench in Suresh Madhaorao judgment (supra)

in paragraph Nos. 8, 10, 12, 13, 14, 16, 17, 17-A, 18, 19, 20, 21 and 22, which read as under :-

"8. What was strenuously urged before us by the learned Advocate for the petitioners was that the Zilla Parishad party was never in existence prior to 8-12-87 and 28-12-1987 when the motion of no-confidence came to be passed against the President, the Vice-President, and the Chairman of the Works and Health Committee. It was urged that as there was no party in existence, there could not be any leader. As there was no leader, there could not be any directions issued and in view of this, there could not be any breach of the directions. This was the main attack of the petitioners against the order passed by the learned Collector, Mr. Dharmadhikari, the learned Advocate for the petitioners 4 and 5, on the other hand, strenuously urged before us that though the Zilla Parishad Party may not be in existence on the relevant date, the Congress-(I) party, to whom all the petitioners owe their allegiance, was very much in existence and it was the authority authorised by the M.P.C.C. (I) party, who has issued the directions asking the members not to vote in favour of the motion. Mr. Adik was the General Secretary of the Congress-(I) party and he had all the authority to issue the directions to the members of the Zilla Parishad, the M.P.C.C.(I) being the Apex body. The mandate given by Mr. Adik not to vote in favour of the motion of no confidence was contravened by the petitioners and, therefore, they have exposed themselves to the disqualification incurred under section 3(1)(b) of the Disqualification Act. This was in short the rival arguments.

10. On the scrutiny of all these definitions, we have to find out what "Zilla Parishad Party" means. Though the term "Original Political Party" has been defined in section 2(j), no reference of that term can be found in any of the subsequent provisions of the Disqualification Act. The 'Zilla Parishad Party' has been defined in relation to a Councillor of a Zilla Parishad in accordance with the Explanation to sub-section (1) of section 3. It means a group consisting of all the members of the Zilla Parishad for the time being belonging to that political Party in accordance with the said Explanation. The reading of the definition shows that the "Zilla Parishad Party" means a group consisting of all the members of the Zilla Parishad for the time being belonging to the Political party. The definition proceeds on the assumption that there is a group consisting of the members of the Zilla Parishad for the time being belonging to that political party. It thus contemplates the factual existence of the group belonging to that political party. Explanation to section 3 creates a fiction inasmuch as it lays down that 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. Thus reading section 2(p) along with the Explanation (a) to section 3 leads to the inevitable conclusion that a factual existence of a group consisting of all the members of the Zilla Parishad for the time being belonging to that political party is envisaged and once this factual existence is there, the fiction helps in recognising the character of that group. Thus what the definition contemplates is the factual existence of the group. Thus what the definition contemplates is the factual existence of the group

belonging to the political party on the day when the disqualification flowing from section 3 occurs.

12. *As we have already seen, the Zilla Parishad Party has a separate local existence as envisaged under section 2(p) of the Disqualification Act. It is only the local party which is recognised under this Act. The original Party may be Congress-(I). It may be the apex body. But what sub-section (p) of section 2 envisages is not the apex party, but a specific Zilla Parishad Party.*

13. *The learned Advocate General reiterated that the party which is relevant for the purposes of the Disqualification Act is the "Zilla Parishad Party" and no other party. He tried to extract support for his argument from section 3(1) of the Disqualification Act. In order to appreciate the arguments, it will be necessary to reproduce the relevant portion of section 3(1). It reads as follows:-*

"3(1) : Subject to the provisions of sections 4 and 5, a Councillor or a member belonging 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.

(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 of Aghadi or front, person or authority within 15 days from the date of such voting or abstention.

Provided that, such voting or abstention without prior permission from such party of Aghadi or front at any election of any office, authority or Committee under any relevant Municipal Law of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause."

14. *We are not concerned with clause (a) above for the present. We are, however, much concerned with clause (b), as a consequence of which the disqualification follows. This subsection contemplates a direction to be issued by the political party or by any person of authority authorised by such party. If a member or the Councillor votes or abstains from voting contrary to such direction, then he exposes himself to the disqualification flowing from that section. However before voting or abstaining to vote, if he obtains the permission of such political party, then such Act can be condoned. The term "such political party" assumes considerable importance. What is contemplated by a political party to their members. If the member or a Councillor votes or abstains from voting contrary to such directions, then the disqualification follows. The section also provides that such voting or abstention to vote may be condoned if a member or a Councillor gets a prior permission of such political party for voting or abstaining from voting*

contrary to such directions. We have now to consider the meaning of "such political party" and for ascertaining this meaning we have again to go to the definition of "Zilla Parishad Party" in section 2(p) and "Original Political Party" in section 2(j) and also explanation (a) to section 3 of the Disqualification Act. The original party is a genus whereas the Zilla Parishad Party, Municipal Party, Panchayat Samiti Party are the species and the sphere of these species is restricted to that particular geographical area over which the jurisdiction of these different party is extended. Original political party may be the genus: but what section 3(1)(a) and (b) of the Disqualification Act contemplates is not the genus but the species, which may ultimately have their allegiance to the genus. It is these species who have to issue directions to the members of Councillors. It is these species who have to condone the contravention, if at all they went and it is from these species that the member or Councillor has to obtain prior permission before acting contrary to the directions. The scheme of the Act as contained in section 3 is very clear. These elections are after all local and it is after all the local units which context these elections and not the apex body. The function of the apex body, if at all, is only to give directions to the units and nothing more. The members so selected are responsible directly to the units. The controlling and advisory powers vest in the units and that is why the permission of "such political party" is necessary before acting contrary to the directions of such political party.

16. These rules taken together very positively lay down that the party means a Zilla Parishad Party. I has to elect its leader. The leader has to perform some duties inasmuch as he has to submit a list of all the members to the Collector. Rule 4 lays

down that every member so elected shall furnish the necessary information to the Collector in the prescribed form. Sub-rule (5) of the rule 3 lays down that if any member of the Zilla Parishad votes contrary to any direction issued by such party, or authority authorised by it in this behalf without obtaining the permission, the leader of such party has to inform the Collector within 30 days from the date of such voting. The rules have no doubt in the mind that the party contemplated is the Zilla Parishad Party and the leader contemplated is the leader of such party, and not of the apex party.

17. The learned Collector, however, has taken a view that the rules framed are inconsistent with the provisions of the Disqualification Act itself and at one stage, he went to the length of even ignoring these rules as they were inconsistent with the Disqualification Act. As a matter of fact, the vires of the rules was never challenged before the Collector. Even the vires of the rules has not been challenged in this petition. Mr. Dharmadhikari, the learned Advocate for the respondents 4 and 5 strenuously urged before us that he had no occasion to challenge the vires. We are not much impressed by these arguments. In fact, when the Collector proceeded to hold the rules as inconsistent with the Act, he could have challenged the vires of the rules in this petition or by a separate petition. But he was not done so. The vires of the rules, not having been challenged, we cannot now permit he challenge to these rules in this Court. This is after all a delegated legislation permitted under the statute and there would be a presumption of its validity. These rules are framed with the purpose of smooth implementation of the main statute. They have to be read

harmoniously with the statute. We do not find any dis-harmony or inconsistency in the rules and the statute. As we have already pointed out, rule 2(p) defines a "Zilla Parishad Party" and it is inherent in rule 3(1)(b) itself that it is the Zilla Parishad Party which has to give directions to the members. The rules are by way of clarification, but they do not artificially limit the Act. They lay down what the leader of the Zilla Parishad Party is expected to do after the election. He has to give some information to the Collector. He has to submit the names of the members of his party in the Zilla Parishad. The Collector is then required to publish the summary of the information so received in the Gazette. We do not find any inconsistency between the Statute and the rules framed thereunder. The rule of harmonious construction would thus unmistakably shows that it is the Zilla Parishad Party and not the apex party, which is referred to in sub-section (b) of section 3(1) of the Disqualification Act. We would, therefore, agree with the learned Advocate General that the party contemplated in rule 3(1)(b) is the Zilla Parishad Party and not the apex body, however strong it may be.

17-A. Thus what transpires from the discussion above is that it is the Zilla Parishad Party which has to give directions. It is incumbent upon the members or Councillors to follow those directions. Voting or abstention to vote contrary to these directions exposes the members to disqualification following from sub-rule (5) or rule 3(1). The apex party is nowhere in the picture. This is the legal position which we get from the definition in section 2 and the positive provisions of section 3.

18. *With this legal as well as factual background, let us now go to the present case. It is clear from Annexure-A that on 15-8-1982 the official Zilla Parishad Congress (I) Party came to be dissolved and each member was given freedom to vote according to his conscience. This is a position which prevailed after 15-8-1982.*

19. *Nothing has been brought before us to show whether this party was revived or reconstituted thereafter. The dissolution which was directed from 15-8-1982 must be presumed to have continued and the inescapable conclusion that follows is that no party recognised as Zilla Parishad Congress (I) Party was officially in existence at Wardha thereafter. The members who continued to be the members of the Zilla Parishad were the members in their individual capacity and not members of the Zilla Parishad Congress(I) Party as no such party was in existence.*

20. *Mr. Dharmadhikari, the learned advocate for the respondents Nos. 4 and 5 strenuously urged before us that though the party may not be factually in existence, still the fictional existence of the party has to be presumed in view of the Explanation attached to section 3. His argument in short was that though the political party may not exist in fact, the existence thereof is presumed by fiction. We find ourselves unable to accept this argument of Mr. Dharmadhikari. "Zilla Parishad Party", according to the definition means a group consisting of all the members of the Zilla Parishad for the time being belonging to that political party or aghadi or the front in accordance with the said Explanation (to section 3). The term "for the time being belonging to that political party" envisages a*

factual existence of the party. It is interesting to note that the definition of the Zilla Parishad Party is in relation to a Councillor or a member. The Explanation merely states that such members shall be deemed to belong to the political party, which set up these persons for elections as Councillors or members. It may be that these members may be having their allegiance to the apex party, but they do not necessarily become the members of the Zilla Parishad Party, if it is not in existence. According to us, the Zilla Parishad Party must necessarily be in existence as a fact before section 3 is culled upon to operate. The scheme of the Act has also to be borne in mind. The scheme envisages the disqualification of the members of the Zilla Parishad Party and not of the apex party. For all practical purposes, it is the Zilla Parishad Party which is the controlling authority vis-a-vis these members or Councillors. A mandate has to flow from the Zilla Parishad Party and not from the apex party; and it is this mandate that the members or Councillors are under obligation to follow. The fiction created by Explanation (a) to section 3 merely means that if the members are elected on Congress-(I) tickets, they will be deemed to belong to Congress-(I) party. It does not traverse beyond that. The fiction does not bring into existence a party which is not at all in existence. It is from this point of view that we find ourselves unable to accept the arguments of Mr. Dharmadhikari.

21. *Thus according to us, the Zilla Parishad Party was not in existence in 1987. It is the party relevant for our purposes. What happened thereafter is undisputed. A meeting of the Zilla Parishad was convened on 8-12-1987 and the subject before the meeting was to consider a motion of no-confidence*

against the President, Vice President of the Zilla Parishad. Prior of the Commencement of this meeting, the Secretary of the Maharashtra Pradesh Congress Committee (I), one Mr. Govindrao Adik, had issued the directions to the members. The relevant directions have been reproduced in the order passed by the Collector. The directions were that the members should act in such a way that the motion of no-confidence could be defeated. The members were further warned that in case they did not follow these directions, they would expose themselves to the liability according to law.

22. It is an admitted position that inspite of these directions, the petitioners did vote in favour of the motion and as a result the motion was carried out. The learned Collector held the view that though the Zilla Parishad Party was not in existence, that point was irrelevant for his purpose. According to him, the petitioners were elected on the Congress-(I) tickets to the Zilla Parishad Party. The authority issuing the direction was the General Secretary, of the M.P.C.C.(I) and he was an authorised person to issue these directions. On these premises the learned Collector held that the petitioners voted contrary to the directions issued by an authority authorised by the M.P.C.C. (I) and, therefore, they exposed themselves to the penalty of disqualification. In coming to this conclusion the Collector has fallen into the errors more than one. Firstly, he came to the wrong conclusion that the dissolution of the party in 1982 was irrelevant for the present purposes. According to him, though the Zilla Parishad Party was dissolved, the Congress(I) party, who set up the petitioners as candidates for election was very much in existence and it was the

mandate from the Congress-(I) Party which was broken. We find ourselves unable to agree with this observation. Assuming for the time being that the MPCC-(I) was the apex body as far as disciplinary action was concerned, still it could not assume the local position of "Zilla Parishad Party" as defined in section 2. It may take the disciplinary action against their members, but it had no authority to take a penal action of disqualification as contemplated under section 3 of the Disqualification Act. It is only the Zilla Parishad Party, which could issue the directions. It is only such directions that the members were obliged to follow and it is only the voting or abstention to vote contrary to such direction, that the disqualification followed. The relations inter se between the members and the apex party of the original political party may be ethical or moral. But for attracting the legal disqualification, what was necessary was the mandate from the Zilla Parishad Party and that party alone. The General Secretary of the MPCC(I) may be an authority or may be authorised by MPCC(I), but the authority contemplated under section 3(1)(b) of the Disqualification Act is the authority authorised by the Zilla Parishad Party and non-else. The breach of the mandate issued by the General Secretary M.P.C.C-(I) does not entail a disqualification Act. The Collector was definitely wrong in identifying the M.P.C.C-(I) with the Zilla Parishad Party or in enlarging the sphere of jurisdiction of M.P.C.C-(I). The sphere of the Zilla Parishad is very much limited. The M.P.C.C-(I) may have the supervisory authority, but it was not competent enough to issue a mandate, the breach whereof could attract the mischief of section 3(1)(b) of the Disqualification Act."

44. Shri Dhorde has relied upon the judgment of this Court (Coram :- A.V. Nirgude, J.) in the case of *Sheshrao Trimbakrao Patil & others Vs. Trimbakrao Shrirangrao Bhise & others*, 2012 (1) ALL MR 716, which has considered the judgment in the case of *Sadashiv H. Patil* (supra) and has observed in paragraph Nos. 19 which reads as under :-

"19. As observed above, the petitioners are unable to plead ignorance to the fact that their party has regional committee which is known as Pradesh Congress Committee. They admitted that Shri Manikrao Thakare is the President of the State unit of their party. They are unable to question the party's decision to send an observer to Latur for this election. The observer has said that sending such observer is a usual practice of the party. It is obvious that due to intra party rivalry the members of the party, are required to be disciplined. For maintaining such discipline, an observer's presence is necessary. When Shri Ghorpade came to Latur with the brief of the President, the petitioners raised objection to his presence or authority to preside over meetings of the party held for deciding the strategy of the election. It is also on record that the party members including the petitioners ultimately agreed to accept the names of such councilors who would be named as official candidates by the party. So when the names were announced, they could not have defied the decision of the party and could not have raised issue of authority, its delegation to the observer of District President etc.. Neither

they raised such objection 15 W.P. 2905/2011 & 2906/2011 then. All these defences are untenable and unavailable to the petitioners if raised belatedly. In such situation, the members of the same party in my view, cannot question the observer's authority and the Court would also not go beyond his word in search of an appropriate provision in the party constitution. I am agreeing with the Collector's finding that the observer Shri Ghorpade had lawful authority to issue the whip. "

45. Shri Dhorde, learned Senior Advocate has relied upon the judgment of the Apex Court in the case of *Kedar Shashikant Deshpande etc. Vs. Bhore Municipal Council and Ors. etc.*, 2011 (1) ALL MR 934 (S.C.). He specifically relies upon paragraph Nos. 20, 21, 22, 23, 24, 25 & 26, which read as under :-

"20. An analysis of the above noted provisions makes it more than clear that a Councillor or a member belonging to any political party or aghadi or front shall be disqualified for being a Councillor or a member 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.

21. According to the explanation (a), for the purposes of Section 3 of the Act 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 candidate for election as such Councillor or member. The fact that each of the six appellants was set up as a candidate for election as Councillor of Bhore Municipal Council by NCP is not in dispute. Therefore, for the purposes of Section 3 of the Act, the appellants will have to be regarded as belonging to the political party namely NCP. The fact that the appellants had disobeyed the whip issued is not in dispute by them before this Court. Therefore, on the facts and in the circumstances of the case it will have to be held that appellants had also incurred disqualification in terms of Section 3(1)(b) of the Act.

22. *The contention raised by the learned counsel for the appellants is that the failure on the part of the Collector, District Pune, to comply with the provisions of Rule 4(3) of the Disqualification Rules 1987 namely failure to publish the summary of information furnished by the Councillor in the Maharashtra Government Gazette as also the failure to comply with Rule 5(1) of the said Rules i.e. failure to maintain in Form IV, a register based on the information furnished under Rule (3) and (4) in relation to the Councillor, are fatal and, therefore, the appeals should be accepted.*

23. *In answer to this argument it was pointed out by the learned counsel for the respondent Nos. 4 and 5 that this plea was not raised by the appellants before the High Court and, therefore, should not be permitted to be raised in the instant appeals and alternatively it was argued that the Rules in question do not lay down that a political affiliation of the Councillor comes into being only upon submission of Form-I, Form-III and/or publication of information in the Official Gazette. What was maintained by the learned Counsel for the*

respondent Nos. 4 and 5 was that the submission of Form-I, Form-III and/or publication of information in the Official Gazette etc. is/are only for the purpose/s of record and to furnish an evidence about the political affiliation of the Councillor. The failure to file Form-I, Form-III and/or publication of information in the Official Gazette does not mean that the appellants did not belong to NCP. It was pointed out by the learned counsel for the respondent Nos. 4 & 5 that Form-I, Form-III and/or publication in the Official Gazette merely have an evidentiary value and that apart there can be other evidence indicating the political affiliation of a Councillor. According to the learned counsel for the respondent Nos. 4 and 5, the party on whose ticket the Councillor has contested and won the election is the original political party to which he belongs and the evidence of the same can be through sources other than the aforesaid Form-I, Form-III and/or publication in the Official Gazette and, therefore, the submission made on behalf of the appellants has no substance and should not be accepted by the Court.

24. On scrutiny of the record, it becomes evident that a statement containing the names and addresses of councillors of NCP as prescribed in Form-I was not published in the Official Gazette. It is true that as per Rule 4 every Councillor has to furnish to the Collector a statement of particulars and declaration in Form-III, which inter alia, contains the information relating to the political party to which the Councillor belongs. As per rule 4(3) summary of information furnished by the Councillor to the Collector has to be published in the Official Gazette. Further, on a critical study of the provisions of rule 3 read with rule 4(3) of the Rules, it is evident that neither rule 3 nor rule 4 nor any other rule of the Rules mentions that a

political affiliation of the Councillor would come into existence only upon submission of either Form-I, Form-III and/or publication of information in the Official Gazette. It is rightly contended by the learned counsel for the respondent Nos.4 & 5 that these forms and publication in the Official Gazette have merely an evidentiary value which would prima facie establish that a Councillor belongs to a particular political affiliation and nothing more. The alleged non-availability of the evidence relating to the political affiliation of the appellants in the Form-I, Form- III and/or publication in the Official Gazette would not mean that the appellants did not belong to NCP. Form-I, Form-III and/or publication of information in the Official Gazette merely has an evidentiary value. Though in a given case apart from the same, there can be other evidence indicating the political affiliation of the Councillor Explanation to Section 3 of the Act clearly indicates that the Councillor belongs to that political party upon whose ticket the Councillor has contested the election and won the election.

25. Therefore, the contention that based on the alleged breach of Rule (3) and Rule (4) of the Rules of 1987 has no substance and cannot be accepted."

46. Shri Dhorde, has then placed reliance upon the judgment of the Apex Court in the case of *Sadashiv Patil* (supra). He has specifically relied upon paragraph Nos. 13,14,15,16,19,20,21 and 22 which read as under :-

"13. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him

pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected Councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section of the Act.

14. In Civil Appeal Nos. 6266-6268/98 on rules or regulations of Janta Aghadi are shown to have been filed with the Collector. The record does not show that any such rules or regulations exist. Had they been there an effort could have been made to find out 'authorisation to issue whip' having been provided therein. During the course of hearing we asked the learned Counsel for the appellant to show any resolution of Janta Aghadi authorising the signatories of the whip to issue the whip. No such resolution was filed before the Collector or the High Court and not even shown to us. The contents of the whip do not also contain any recital spelling out the existence of any such authorisation which also goes to show that there was no such authorisation given. In the absence of proof of the signatories of the whip having been authorised by the Janta Aghadi to issue the whip the violation thereof would not attract the applicability of Section 3(1)(b) of the Act. May be that the party, Aghadi or front had resolved to sponsor a particular

person's candidature at the election. Acting contrary to such resolution, however strongly worded, may render its member liable to disciplinary proceedings at the party level. But to incur disqualification under the Act there must be a direction issued and such direction must be either by the party, Aghadi or front to which the Councillor proceeded against belongs or be by any person or authority authorised in this behalf. Mere resolution is not a substitute for direction. On this single ground alone the judgment of the High Court deserves to be maintained.

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

15. *Elections for constituting Municipal Council, Karad were held on 1.12.1996. Prior to the election a group of persons formed a party under the name of Nagar Vikas Aghadi and contested the election on the common symbol of 'cycle'. The Aghadi had set up 20 candidates out of which 11 were elected. The names of these 11 persons as belonging to Aghadi were submitted to the District Collector as required in Form-Annexure I. The 11 Councillors also submitted particulars and declaration in Form III as required by Rule 4. The District Collector registered the names in a register maintained for the purpose. The requisite gazette notification was also made on 16-1-1997. In the meeting of the Municipal Council held on 17-12-1996 Smt. Archana Patel, a Councillor set up by Aghadi was elected unopposed as President of the Municipal Council, Karad for a term of one year. The controversy relates to the time when this term of one year was coming to an end and election of the President for the next term was due to be held.*

A meeting of the Aghadi took place on 18-10-1997. All the 11 Councillors belonging to the Aghadi participated in the meeting. A few independent Municipal Councillors and a few others were also present at the meeting. In this meeting a unanimous resolution was passed resolving that Dr. Erram, the President of the Aghadi, i.e., the parent body which had set up the candidates for election shall have power to issue whip to the members and in his absence Mr. Pawaskar, a Councillor would have power to issue the whip. Dr. Erram was not a Municipal Councillor. On 6-12-1997 again a meeting of Aghadi took place in which all Municipal Councillors of the Aghadi were present. The meeting was also attended to by two independent Councillors, 2 co-opted Councillors and 2 supporters of the Aghadi. In this meeting a unanimous resolution was passed that at the ensuing meeting of the Municipal Council scheduled to be held on 12-12-1997 for electing President of the Aghadi, Shri Ravindra Maruti Shinde shall be the candidate of the Aghadi. It was further resolved that the Municipal Councillors should positively remain present at the meeting and vote for the official candidate of the Nagar Vikas Aghadi, i.e., Shri Ravindra Maruti Shinde. The Municipal Councillors of Aghadi were 'ordered' not to remain absent from the meeting and not to cast any invalid vote nor abstain from voting which if done shall be considered to be the violation of whip. In terms of the resolution intimations were sent to the Municipal Councillors belonging to Aghadi signed by D.S. Erram. The whip was sent by post under certificate of posting and also published in local newspaper Daily Aikya dated 9-12-1997 on the front page along with the photograph of candidate Shri Shinde. It was displayed on the notice board of municipal council. We need not further be labour on this aspect as communication or

knowledge of the whip to the appellants has been held proved by the Collector as also by the High Court and not seriously disputed at the hearing before us. On 11-12-1997 the Collector and Election Officer, Karad was informed that Shri Ravindra Maruti Shinde was the official candidate of the Aghadi for the post of President and whip to that effect has also been issued. The intimation is signed by Dr. Erram and Shri Pawaskar both in the capacity of President, Nagar Vikas Aghadi and party leader Nagar Vikas Aghadi respectively.

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

17. Shri Pawaskar who was one of the signatories to the whip moved the Collector, Satara complaining of disqualification under Section 3(1)(b) having been incurred by

the four appellants. The Collector after holding the enquiry arrived at a finding upholding the complaint and declaring the appellants disqualified from the membership of the Municipal Council under Section of the Act. The appellants put in issue the order of the Collector by filing writ petition before the High Court of Bombay. The petition has been dismissed upholding the findings recorded by the Collector. The aggrieved four Municipal Councillors have filed this appeal by special leave.

18. The first submission made by Shri V.A. Mohta, the learned senior counsel for the appellants is that the meeting held on 10- 12-1997 cannot be said to be a meeting of Aghadi or front and therefore any resolution passed therein was not binding on the appellants. We find no merit in this submission. The meeting was attended to by all the Councillors belonging to the Aghadi. A few others also participated in the meeting. The resolution was unanimous. Nothing has been brought on record to suggest if there were any members other than those present and participating in the meeting or those who were informed of the meeting so as to hold that the meeting could not be called a meeting of the Aghadi or front. The resolution passed was unanimous. We do not find any valid reason to hold the meeting not to be of Aghadi or front.

19. It was next submitted that any copy of rules & regulations of the municipal party of Aghadi or front have not been placed on record nor filed with the Collector along with the statement in Form I and therefore the working of the Nagar Vikas Aghadi and the person authorised to issue whip cannot be spelled out. This contention has also to be rejected. The filing of the rules & regulations contemplated by Clauses (b) &

(c) of Sub-rule 1 of Rule 3 is for the purpose of registration of a municipal party with the Collector. For the purpose of these appeals, we do not propose to go into the question as to what would be the effect of absence of rules & regulations on the formation of the Aghadi or front or the effect on the registration of non-filing of such rules & regulation, if there be one, for two reasons, Firstly, the registration of municipal party is complete consequent upon the entries having been made in the register Form IV and also having been notified in the Government Gazette. Nobody has raised any objection to the registration of the municipal party or validity thereof and sought for its cancellation. Secondly, for the purpose of the controversy arising for decision in these appeals, we could have spelled out from the rules & regulations, if available, who was the person or authority authorised in this behalf for the purpose of issuing a whip under Section 3(1)(b) of the Act. In the case at hand, such an authorisation was given in the resolution passed at the meeting dated 18-10-1997. It is nobody's case that such an authorisation was at any time questioned or revoked. Section 3(1)(b) does not provide for when and how such authorisation shall be given; all that the provision contemplates is that there must be any person or authority authorised in this behalf by the political party or Aghadi or from to which the Councillor belongs. The language of the resolution clearly spells out compliance with this requirement. Dr. Erram, the President of the Aghadi and in his absence Shri Pawaskar, a Councillor, were specifically authorised to issue a whip. The whips on the basis of which the disqualification is sought to be spelled out are signed by Dr. Erram or by Dr. Erram and Shri Pawaskar both. The whips issued satisfy the requirement of Section 3(1)(b) in view of the specific authorisation given in this behalf.

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

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

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

47. Shri Dhorde, then relied upon the judgment of this Court (Coram :- S.V. Gangapurwala, J.) in the matter of *Jitendra Himmat Biraris Vs. Kiran Gulabrao Patil, 2011 (5) ALL MR 555*. This court has gone into the intent and object of the Maharashtra Act, 1986 and the Rules of 1987 framed thereunder. It has been observed by this Court that the provisions of the disqualification

Act, 1986 are salutary, are intended to strengthen the fabric of Indian Parliamentary Democracy by curbing unprincipled and unethical political defections and avoid abrasion of political values and political degradation.

48. It would be apposite to reproduce paragraph Nos. 14 and 15 of the *Jitendra* judgment (supra) as under :-

"14. The Apex Court while upholding and dealing with the provisions of the paragraph 2 of the X Schedule of the Constitution regarding the disqualification of the Members of the House in a case of *Kihoto Hollohan Vs. Zachillhu and others* reported in (1992) (Suppl.) 2 S.C.C. 651 has observed that the provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections. The anti defection law seeks to recognize the practical need to place the proprieties of political and personal conduct above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. The Court should defer to this legislative wisdom and perception. *The object underlying the provisions in the X Schedule of the Constitution is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the function of our democracy. The remedy proposed is to disqualify the member of either House of Parliament or to the State Legislature who is found to have defected from continuing as a Member of the House. (The grounds of disqualification are specific in para 2 of the X Schedule).*

15. *The Disqualification Act is enacted with same object. The object to be achieved by enacting the Maharashtra Local Authority Members' Disqualification Act can be viewed from its long title which states it is an act to provide for disqualification of members of certain authorities on ground of defection and for matters incidental and connected therewith. The said Act is modelled on the X Schedule of the Constitution wherein the Member of the either House of Parliament or of State Legislature is sought to be disqualified. The Act is introduced to curb the political immorality. "*

49. With regard to the service and validity of a whip, this Court in the case of *Jitendra* (supra) has observed in paragraph No. 19, 20, 21, 22 23, 27 and 31 as under :-

"19. The only controversy that would remain is regarding the service of the said whip. Perusal of Section 3 (1)(b), it is manifest that the legislature has used the term, "if he votes or abstains from voting in any meeting of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any directions "issued" by the political party or aghadi or front to which he belongs or by any person or authority authorized by any of them in this behalf". The legislature in its wisdom has nowhere used the term directions "served", but has restricted it to the term "issued". The only question is whether the said terminology directions issued shall have to be interpreted to mean served and that the word "issued" and "served" can be said to be inter-changeable terms. As per the Black's Dictionary the term

"issued" means "sent", to put into circulation, order to be sent, to entrust for service. The Apex Court in a case of Chintamani Gajanan Welkar referred supra by interpreting the word notice issued U/Sec. 2(f) of the Maharashtra Act of 1975 held that, the word issued does not mean service of notice on the land holder. The said section 2(f)(iii) of the Maharashtra Act of 1975 reads as under :

"Section 2(f) : "Private forest means any forest which is not the property to Government and includes -

(i)

(ii)

(iii) any land in respect of which notice has been "issued" under sub-section 3 of Section 35 of the Forest Act but excluding an area not exceeding 2 hectares in extent as the collector may specify in this behalf;"

Interpreting the said provisions, the Apex Court held that the said term notice issued is not synonymous to the term service and the issuance of notice itself was sufficient. There is no need for any service of such notice.

20. There is presumption that the words are used in the Statute correctly and exactly and not loosely and inexactly. Legislations when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has right to rely on ordinary words addressed. In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which every one conversant with the

word and the subject matter of statute and to whom the legislation is addressed will give if the terms were put to him.

21. It is also an accepted theory that the words and expressions used in a statute should ordinarily be understood in a sense in which they best harmonies with the object of the statute and which effectuates the object of the legislature. Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppresses the mischief as the legislature envisaged. The Courts are required to adopt an object oriented approach keeping in mind the principle that the legislative futility is to be ruled out so long as interpretative possibility permits.

22. In the present case, the object of the enactment as discussed in earlier paras is to provide for disqualification of members of certain authorities on ground of defection and for matters incidental and connected therewith. The object is to ensure that the voters of the constituency that the elected members represent should not be duped by him. They cannot be taken for a ride by the change of the affiliation by such a member to another political party. In the light of the said object the word "directions issued" as appearing in Section 3(1)(b) of the Disqualification Act will have to be interpreted. When the meeting is called, it is expected that all the members shall attend the same. When the meeting is called by the leader of the party, it is reciprocal duty of the members of the party to attend the same and in the said gathering if some directions are given or issued, it is expected and presumed that the same would be known to all the members. So specific service of the said directions is not contemplated by Sec. 3(1)(b). A

dishonest member to avoid the actual service would go into hiding or would see to it that the whip is not actually served upon him. As in the present case, stand is taken by the petitioners in evidence of Rajani Gharate one of the petitioners that all these petitioners on 20.12.2008 had gone for pilgrimage and were out of city and returned only on 30.12.2008. If the word directions issued is to be interpreted as served, then that would frustrate the very purpose of the enactment and the provisions. Keeping this in view, the legislation in its wisdom has used the terminology directions issued and not served. Otherwise, there was no impediment for the legislature to use the expression directions "served" instead of directions "issued".

23. The respondent No. 1 on oath has stated that the petitioners were avoiding to receive the said whip. He also tried to read over the whip in the meeting, but was prevented and so he intimated personally. Even, if, it is assumed that the petitioners were not actually served with the whip, but the fact that the respondent No. 1 tried to read over the whip in the meeting is not denied, nor any suggestion was given to the respondent No. 1 in the cross examination that he had not tried to read over the whip. On the contrary, suggestion was that at the time when the business of election in the meeting was been transacted, whether the petitioners knew that to serve the whip is not permissible and for that action can be taken against him. There is no denial to this fact that the respondent No. 1 tried to read over the directions issued by him. As such, the said act satisfies the term "direction issued" and it will have to be held that the whip was issued. None of the petitioners except petitioner Sau. Rajani Baburao Gharate has stepped

into witness box to deny the same. Even assuming that the respondent No. 1 does not prove the fact averred by him that even vide mobile message he has served the whip, still these acts discussed above are sufficient to show that the whip was issued. It was sought to be made known to the petitioners and that would satisfy the test of the expression "directions issued".

27. When the Apex Court in the present proceedings itself has held that the Rules are directory in nature, then there is no scope for me to dilate on whether the rules are mandatory and have to be strictly applied as held in Sadashiv Patil case referred supra or as directory as held in a case of Dr. Mahachandra Prasad Singh and in a case of Kedar Deshpande referred supra. I am bound by the observations of the Apex Court made while disposing of the special leave petitions filed by the present petitioners at initial stage, when they had raised preliminary objection to the maintainability of the petitions itself.

31. This Court would not embark upon the said investigation in the present writ petitions. The petitioners are at liberty to take up appropriate proceedings if so advised. The petitioners have acted contrary to the directions issued by the respondent No. 1, as such, are disqualified U/Sec. 3(1)(b) of the Disqualification Act. The provision of Sec. 3(2) and 3(1)(a) are not attracted in the present case."

50. As such, this Court in the case of *Jitendra* (supra), has concluded in paragraph Nos. 19, 20, 21, 22 and 23 that the object

of the Act and the Rules is to ensure that the voters of the constituency whom the elected members represent, should not be duped. When the meeting was called by the leader of the party, it is a reciprocal duty of the members of the party to attend the same and if, in the said meeting some directions are issued, it is expected and presumed that the same would be known to all the members.

51. It was further held that specific service of said directions is not contemplated by Section 3 (1) (b). A dishonest member, in order to avoid the actual service of such a party directive, would go into hiding so as to ensure that the whip is not actually served upon him. This Court, therefore, concluded that the legislature in its wisdom has used the words “directions issued” and not “served”.

52. In the instant case, it is abundantly clear that though Mr. Garje had issued a party directive dated 03-05-2013 and even if the same is held to be discarded in the light of the conclusions of this Court in the case of *Sahebrao* (supra), respondent No. 2 had indeed issued a party directive on 04-05-2013 pursuant to the resolution passed in the meeting dated 28-04-2013 empowering respondent No. 2 to issue such a directive. This fact, therefore,

satisfies the legal requirement that a directive has to be issued by the local party leader, who is duly elected.

53. In the light of the observations of this Court in the case of *Jitendra* (supra), the petitioners can surely be said to have the knowledge of the party directive in the light of the RPAD letters, telegrams, affixing of the party directive on their residences and publication of the party directives in several newspapers. This, therefore, leads to the conclusion that the petitioners were made aware of the party directive.

54. I wish to deal with another angle of this case. The petitioners, as is observed above, have constantly been in the mode of denial in the disqualification proceedings. They have made every attempt to deny such documents/ resolutions which bear their signatures. Cross-examination of petitioner No. 1 has exposed the petitioners.

55. Their request to send their signatures to the hand writing expert, has been rejected by the Collector, then by the order of this Court dated 21-08-2014 in W.P. No. 1451 of 2014 and finally by the dismissal of their Special Leave Petition by the Apex Court.

56. Even if it is assumed that the petitioners have not signed the resolution which elected respondent No. 2 as the Gat Neta on 17-12-2011, yet respondent No.2 stood elected as Gat Neta, notwithstanding the claim of the petitioners and respondent No. 3 as he can be said to have secured four votes out of seven.

57. For the same reasons, the denial of the petitioners that they have signed any resolution would not be fatal to any resolution passed by the NCP municipal party since respondent No. 2 had garnered four votes out of seven in his favour. The resolution by which the Gat Neta was empowered to issue a party directive is also unaffected as five councillors voted in his favour and the petitioners chose to remain absent.

58. In this back ground, I do not find that the request of Shri Dixit to refer documents to the handwriting expert in relation to the signature of the petitioners, deserves any consideration.

E] Whether a reference / petition under Rule 6 was maintainable in the light of Section 3(a)(b), its proviso and Rule 3(5) read with Form II of the Rules?

59. Shri Dixit has contended that the leader of the party which could also mean the Gat Neta, has to indicate to any

councillor, the fact of violation of any party directive by him in FORM II under the Rules. Such communication in Form II must state the Act of a councillor which is contrary to the direction issued by the leader of the party or by a person authorised by it in this behalf.

60. Section 3 (1) (b) along with its proviso is a complete answer to the contentions of Shri Dixit and which is fortified by the observations of the Hon'ble Supreme Court in the case of Kedar Shashikant Deshpande (Supra) in paragraph Nos. 20 to 26 which are reproduced hereinabove.

61. Form II is provided under Rule 3 (5) of the Rules of 1987. Rule 3(5) reads as under :-

3. Information to be furnished by a leader of a party:-

(1).....

(2).....

(3)

(4).....

[(5) Where a councillor in relation to a municipal party or a Zilla Parishad party and a member in relation to a Panchayat samiti party votes or abstains from voting in any of the meetings of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchyat 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 it in this behalf, without obtaining in either case, the prior permission of such party, person or authority, the leader of such municipal party or Zilla Parishad party as the case may be, Panchayat Samiti party, or where such councillor or member is the leader or, as the case may be, the sole member of such municipal party, Zilla Parishad party or Panchayat Samiti party, such councillor or, as the case may be, member, shall as soon as may be thereafter and in any case within thirty days from the date of such voting or abstention inform the Commissioner or, as the case may be, the Collector in Form II whether such voting or abstention has or has not been condoned by such party, person or authority.]

62. Section 3(1)(b) leads to the disqualification of a councillor if he votes (as in this case) contrary to any direction issued by the political party and such voting has not been condoned by such a political party within fifteen days from the date of such voting. Rule 3(5) and Form II are in aid of Section 3(1) (b). Nevertheless, the phraseology used in Section 3(1)(b) and the conclusion of the Hon'ble Supreme Court in the case of *Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and others (2004)*

8 SCC 747, render the Rules of 1987, directory and not mandatory.

63. So also, the political party or aghadi or front or person or authority has to condone the act of a councillor falling under Section 3 (1) (b). Such condonation of the act is as serious and important as is the disqualification itself. As has been held in the cases of *Dr. Mahachandra* (supra) and *Jitendra* (supra), the object underlying the provisions in the Xth Schedule of the Constitution is to curb the evil of political defection (voting against the party direction as like the case in hand), motivated by the lure of office or other similar considerations which endanger the functioning of our democracy. The Act is introduced to curb political immorality.

64. Therefore, though a political party may not have issued a communication condoning the act of a councillor, it would not mean that the act stands condoned by implication or a deeming fiction. There may be such subsequent events which may be said to be indicators of the party having condoned such acts falling under Section 3(1) (b). Nevertheless, the proviso below Section 3 (1) (b) indicates that when there is no prior permission obtained from any party or aghadi or front for voting or abstention against a

party directive, such voting or abstention shall not be condoned under this clause.

65. Therefore, though the petitioners contend that, unless respondent No. 2 indicates that the alleged act of disobedience of the petitioners is condoned or is not condoned in Form II under Rule 3(5), no petition can be preferred by respondent No. 2 before the Collector, the said contention is wholly misconceived.

66. Reference of any question as to whether a councillor, in relation to a municipal party, has become subject to disqualification under the Act can be made by a petition in writing to the Collector. For the said purpose, it would be apposite to reproduce Rule 6 of the 1987 Rules as under :-

"Rule 6 :- Reference to be by petitions :-

(1) No reference of any question as to whether a councillor in relation to a municipal party and a Zilla Parishad party or member in relation to a Panchayat Samiti party has become subject to disqualification under the Act shall be made except by a petition in writing to the Commissioner in the case of a councillor of a Municipal Corporation and the Collector in the case of any other councillor or member, by any other councillor or as the case may be, member in relation to such councillor or, as the case may be, member.

(2) *Before making any petition in respect of a councillor in relation to a municipal party and a Zilla Parishad party or a member in relation to a Panchayat Samiti party[the petitioner shall satisfy himself] that there are reasonable grounds for believing that a question has arisen as to whether such councillor or, as the case may be, member has become subject to disqualification under the Act.*

(3) *Every petition -*

(a) *shall contain a concise statement of the material facts on which the petitioner relies; and*

(b) *Shall be accompanied by copies of documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person , a statement containing the names and addresses of such person and the gist of such information as furnished by each such person.*

(4) *Every petition and any annexure thereto shall be signed by the petitioner and verified in the manner laid down in the code of Civil Procedure Code, 1908 (V of 1908) for the verification of pleadings.*

67. I do not find from the provisions of the Maharashtra Act, 1986 or Rules of 1987 or through any judicial pronouncement that failure to comply with Rule 3 (5) and Form II, prohibits the filing of a petition for disqualification under Rule 6. No provision or

judicial pronouncement has been cited before me by the petitioners so as to justify their contention. Notwithstanding the same, I do not find any such scheme of law which mandates compliance of Rule 3 (5) in form II as a pre-condition for preferring a reference petition under Rule 6.

68. Rule 7(1) empowers the Commissioner or Collector, as the case may be, to consider whether the petition complies with the requirements laid down in Rule 6. Rule 7(2) empowers the Commissioner / Collector to dismiss the petition and intimate the petitioner accordingly, if such petition does not comply with the requirements of Rule 6.

69. In the light of the above, I am unable to read more than what meets the eye. In the absence of any specific prohibition on filing a petition under Rule 6 without the compliance of Rule 3(5), the contention of the petitioners that the petition under Rule 6 was untenable owing to non compliance of Rule 3 (5), deserves to be rejected. It is, therefore, evident that an act falling under Section 3(1)(b), in the absence of prior permission, shall not be condoned under this clause in view of the proviso to Section 3 (1)(b) and the law laid down in Dr. Mahachandra Prasad Singh Vs. Chairman

Bihar Legislative Council (2004) 8 SCC 747 and Sadashiv Patil (supra).

70. In the light of the above, I do not find that the impugned judgment could be termed as perverse or erroneous. Several issues which have been canvassed by the petitioner before this Court, do not appear to have been canvassed before the District Collector, who has delivered the impugned judgment. Nevertheless, I have considered the entire contentions of the petitioners as well as the respondents while dealing with this petition and I do not find any merit in the submissions of the petitioners as are set out in the petition and as are canvassed before this Court.

71. The petition is, therefore devoid of merit and is, hence, dismissed. Rule is accordingly discharged. Record and proceedings be returned to the Collector, Latur forthwith.

(**RAVINDRA V. GHUGE, J.**)

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