

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 4736 OF 2015

Padma w/o. Satish Deshmukh,
Age 41 years, Occu. Councilor,
Municipal Council, Sonpeth,
R/o. Deshmukh Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani

.....Petitioner.

Versus

1. Vaishali w/o. Krishna Kusumar,
Age Major, Occu. Councilor,
R/o. Dhobi Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.
2. [Jijabai w/o. Chandrakant Rathod
Age Major, Occu. President,
M.C. Sonpeth, R/o. Vita Road,
Sonpeth Tq. Sonpeth, Dist.
Parbhani.]
Deleted as per order dated
16.3.2013.
3. Shaikh Shaheenbee w/o. Ansar,
Age Major, Occu. Councilor,
R/o. Near Sonkhed Masjid,
Sonpeth, Tq. Sonpeth, Dist.
Parbhani.
4. Digamber s/o. Bapurao Patil,
Age Major, Occu. Councilor,
R/o. Near Balaji Mandir, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.
5. Rajraisabegam w/o. Jamaloddin,
Age Major, Occu. Councilor,
R/o. Raj Galli, Sonpeth.
6. Qureshi Osman Quadri,
Age Major, Occu. Councilor,
R/o. Qureshi Mohalla, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.

7. Chandrakant s/o. Namdevrao Rathod,
Age Major, Occu. Councilor,
R/o. Vita Road, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.
8. The District Collector, Parbhani/
The competent authority under the
Maharashtra Local Authority Members
Disqualification Act, 1986.
Collector Office, Parbhani, Dist.
Parbhani.

....Respondents.

...
Mr. Sachin S. Deshmukh, Advocate for petitioner.
Mr. A.P. Basarkar, AGP for respondent /State.
Mr. A.A. Mukhedkar, Advocate for respondent Nos. 1, 3 to 6.
Mr. V.D. Hon, Senior Counsel i/b. Mr. A.V. Hon, Advocate for
respondent No. 7.

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**WITH
WRIT PETITION NO. 11010 OF 2015**

Chandrakant s/o. Namdevrao Rathod,
Age 49 years, Occu. Councilor,
R/o. Vita Road, Tq. Sonpeth,
Dist. Parbhani.

Ori. Res. No. 7

....

**Petitioner.
(Ori. Respondent)**

Versus

1. Padma w/o. Satish Deshmukh, ...Ori. Petitioner
Age 42 years, Occu. Councilor,
R/o. Deshmukh Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.
2. Sow. Vaishali w/o. Krishna Kusumkar,
Age 38 years, Occu. Councilor,
R/o. Dhobi Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani. ...Ori. Res. no.1.
3. Sow. Shaikh Shaheenbee w/o. Sk. Ansar,
Age 35 yrs., Occu. Councilor,
R/o. Near Sonkhed Masjid,
Sonpeth, Tq. Sonpeth,

- Dist. Parbhani. ...Ori. Res. no. 3.
4. Digamber s/o. Bapurao Patil,
Age 54 years, Occu. Councilor,
R/o. Near Balaji Mandir, Sonpeth,
Tq. Sonpeth, Dist. Parbhani. ...ori. Res. No. 4.
5. Sow. Rajraisabegam w/o. Jamaloddin,
Age 48 years, Occu. Councilor,
R/o. Raj Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani. ...Ori. Res. No. 5.
6. Qureshi Osman Quadri,
Age 65 years, Occu. Councilor,
R/o. Qureshi Mohalla, Sonpeth,
Tq. Sonpeth, Dist. Parbhani. ...Ori. Res. No. 6.
7. [Jijabai w/o. Chandrakant Rathod
Age 44 years, Occu. President,
R/o. Vita Road, Tq. Sonpeth,
Dist. Parbhani.] ...Ori. Res. No. 2.
Deleted as per order dated
16.3.2013.
8. The District Collector, Parbhani.**Respondents.**

...
Mr. V.D. Hon, Senior Counsel i/b. Shri. A.V. Hon, Advocate for
petitioner.

Mr. Sachin Deshmukh, Advocate for respondent No. 1.

Mr. A.P. Baraskar, AGP for respondent/State.

...

**WITH
WRIT PETITION NO. 11023 OF 2015**

1. Sow. Vaishali w/o. Krishna Kusumkar,
Age 38 years, Occu. Councilor,
R/o. Dhobi Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.Ori. Res. no. 1
2. Sow. Shaikh Shaheenbee w/o. Sk. Ansar,
Age 35 yrs., Occu. Councilor,
R/o. Near Sonkhed Masjid,

Sonpeth, Tq. Sonpeth, Dist.
Parbhani.

...Ori. Res. no. 3.

3. Digamber s/o. Bapurao Patil,
Age 54 years, Occu. Councilor,
R/o. Near Balaji Mandir, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.

....Ori. Res. no. 4.

4. Sow. Rajraisabegam w/o. Jamaloddin,
Age 48 years, Occu. Councilor,
R/o. Raj Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.

....Ori. Res. no. 5

5. Qureshi Osman Quadri,
Age 65 years, Occu. Councilor,
R/o. Qureshi Mohalla, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.

....Ori. Res. no. 6

**...Petitioners.
(Ori. Respondents)**

Versus

1. Sow. Padma w/o. Satish Deshmukh,
Age 42 years, Occu. Councilor,
R/o. Deshmukh Galli, Sonpeth,
Tq. Sonpeth, Dist. Parbhani.

...Ori. Petitioner.

2. Chandrakant s/o. Namdevrao Rathod,
Age 49 years, Occu. Councilor,
R/o. Vita Road, Tq. Sonpeth,
Dist. Parbhani.

...Ori. Res.No.7

3. [Jijabai w/o. Chandrakant Rathod
Age 44 years, Occu. President,
R/o. Vita Road, Tq. Sonpeth,
Dist. Parbhani.]
Deleted as per order dated
16.3.2013.

..Ori. Res.No.2

4. The District Collector,
Parbhani.

...Respondents.

...
Mr. A.A. Mukhedkar, Advocate for petitioners.
Mr. Sachin Deshmukh, Advocate for respondent No. 1.
Mr. A.P. Baraskar, Advocate for respondent/State.

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CORAM : T.V. NALAWADE, J.
DATED : 25th August, 2016.

JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petitions are filed under Article 226 and 227 of Constitution of India and they are in respect of the decision given by Collector, Parbhani in case No. 1/12 (2012/A/MUN-1/Petition-1). The petition filed by the present petitioner before Collector for disqualification of respondent Nos. 1, 3 to 7 from membership of councillors is dismissed by holding that the whip issued by the political party of the petitioner on these respondents was not served on them. However, finding is given that the whip was issued by competent person of the political party. In view of this decision and the findings, both the sides have filed aforesaid petitions to challenge the decision and the findings.

3) In short, the facts leading to the institution of the petitions can be stated as follows :-

The petitioner, respondent Nos. 1 to 7 are members of political party, Congress I, a national party. In General Election

to Municipal Council Sonpeth, these persons had contested elections for the posts of councillors from different wards on the tickets of Congress I party. Congress I party had sponsored candidates for all the 17 wards. It is the case of petitioner that after the General Elections, after consulting the State Level Committee of the political party, she was asked to contest the election to the post of Vice President and respondent No. 2 was asked to contest the election to the post of President. Nationalist Congress Party (hereinafter referred to as 'N.C.P.' for short) was rival party in that election and its eight members were elected as councillors in the said election. In the elections, petitioner and respondent No. 2 defeated the candidates of N.C.P. and they were elected on the respective posts on 21.12.2011.

4) On 29.6.2012, respondent Nos. 1 to 7 signed on requisition given by councillors of N.C.P. for calling special meeting as they wanted to move no confidence motion against the petitioner. It is the case of petitioner that when she learned about such move, she informed about the activities of respondents to District President Shri. Suresh Deshmukh. It is her case that Shri. Deshmukh contacted General Secretary of the State Unit of the party and informed about the requisition given. It is the case of petitioner that high command, State

Committee directly contacted respondent Nos. 1 to 7 and respondents were warned not to support no confidence motion which was to be moved against the petitioner in the meeting. It is the case of petitioner that by letter dated 3.7.2012 Shri. Ganesh Patil, General Secretary of State Unit, high command gave authorization to District President Suresh Deshmukh to issue whip and prevent the members of Congress I party from voting against the petitioner.

5) It is the case of petitioner that Suresh Deshmukh, the District President then issued whip to petitioner and all aforesaid respondents to inform about the instructions given by the high command, not to vote against petitioner in no confidence motion. It is the case of petitioner that to each of the councillor of the Congress I party including respondent Nos. 1 to 7, such intimation was given, but the approach of respondent Nos. 1 to 7 was to avoid contact and avoid to receive the communication of the whip. It is the case of petitioner that in view of this approach, the District President published the whip in daily newspapers like Lokmat and Sakal on 5.7.2012 and 6.7.2012.

6) It is the case of petitioner that inside of the house

also where the meeting was scheduled on 7.7.2012, before starting of the meeting, the petitioner had contacted these respondents and had informed them about the whip issued by the party and she had shown the whip to all of them. It is her case that the consequences of voting against whip were also informed to the respondents and their attention was brought to the provisions of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as 'the Act' for short). It is the case of petitioner that copy of whip was also handed over to the President, respondent No. 2. It is the case of petitioner that in spite of the whip issued and its communication, respondent Nos. 1 and 3 to 7 voted in support of no confidence motion moved by N.C.P. and the resolution was passed against the petitioner by majority, by 14 versus 2 votes. On these grounds, the disqualification was sought against respondent Nos. 1 and 3 to 7.

7) Respondent No. 2, the President, who is wife of respondent No. 7 appeared in the proceeding and contested the matter. She contended that she had not voted in support of the motion. As she had not voted and this facts was not in dispute, she was deleted from the proceeding by the Collector on 16.3.2013.

8) Respondent No. 7 filed reply and made following contentions in reply to the petition.

(i) No whip was issued in respect of no confidence motion moved against the petitioner by Congress I party or any competent person from Congress I party.

(ii) The whip was not communicated or served on respondent No. 7 or other respondents in any way.

(iii) The voting against petitioner was not in breach of the provision of section 3 of the Act.

(iv) After the General Elections to Municipal Council, respondent No. 7 was elected as the leader of the party in Municipal Council. This information was given as per the Rules to the Collector and it was registered.

(v) The activities of petitioner in Municipal Council and outside the Municipal Council were against the political party. She and her husband had started agitation against the Municipal Council even when they were members of Congress I party and Congress I party was ruling party in Municipal Council. The petitioner and her husband had started agitation by contending that there was no sufficient supply of drinking water to the people of the town even when steps were taken by

Municipal Council to see that everybody gets drinking water. The petitioner had distributed pamphlets in respect of agitation and so, these activities were against the political party and also respondent Nos. 1 to 7, including the leader.

(vi) The petitioner had walked out from the meeting of Municipal Council on 29.6.2012 as mark of protest and this was also a step in respect of agitation which she had started.

(vii) The activities of petitioner were anti-social and she was also causing damage to image of Municipal Council in the eyes of public.

(viii) There was feeling in the ruling party that the petitioner was not co-operating the ruling party and she was causing obstruction in implementation of welfare schemes.

(ix) Due to aforesaid activities of petitioner, respondent Nos. 1 to 7 took decision to remove the petitioner from the post of Vice President and so, they signed the requisition and almost all the members of Congress I party had signed on the requisition.

(x) As there was the requisition, special meeting was called by the President in which no confidence motion

was to be moved and it was scheduled on 7.7.2012.

(xi) The aforesaid steps were taken as the members of Congress I party in Municipal Council had approached respondent No. 7, leader of the group and then respondent No. 7 had given permission to them to give requisition and he had then permitted other respondents to vote in support of no confidence motion against the petitioner.

(xii) Respondent No. 7 was leader of group of members of Congress I party in Municipal Council and so, he had the power to issue such instructions to the members of Congress I party in Municipal Council.

(xiii) The opinion and the consent of respondent No. 7 was not sought by the Congress I party if at all the whip was issued and so, the whip had no meaning.

(xiv) There was no intervention of Congress I party high command, when petitioner and respondent No. 2 were asked to contest the elections to the post of Vice President and President and this decision was taken by the elected members of Congress I party in Municipal Council.

(xv) At the State level, Congress I party and N.C.P. were working together and so, aforesaid requisition

was given jointly by the members of these two parties.

(xvi) Petitioner was close to District President Suresh Deshmukh and she was acting against respondents at the instance of Suresh Deshmukh. In giving of requisition and for taking decision of no confidence motion, Suresh Deshmukh had no role to play.

(xvii) Shri. Ganesh Patil, General Secretary of State Unit had no authority to give authorization to Suresh Deshmukh for issuing whip and if such authorization is given, the said authorization was not as per the rules of the party.

(xviii) Respondent Nos. 1 to 7 were out of station and they had gone to Pune at the relevant period. They had left the station on 5.7.2012 at about 7.00 p.m. and they had returned to the place of meeting at about 11.00 a.m. of 7.7.2012 directly. Due to these circumstances, they had no knowledge that the whip was published in the newspapers. They had gone to Pune for tour and they had stayed in the house of relative of respondent No. 7 during aforesaid period.

By making aforesaid contentions, respondent No. 7 contested the proceeding.

9) Respondent Nos. 1 and 3 to 6 filed written statement and they made contentions which were similar to the contentions made by the respondent No. 7 showing that they were all together.

10) Both the sides gave evidence before Collector. The petitioner produced the record of authorization given by high command of Congress I party and the record of whip and also the record of newspapers in which the whip was published on 5.7.2012 and 6.7.2012.

11) The learned Collector considered following three issues for deciding the petition.

"1. Whether the petitioner proved that, whip is issued by the competent authority ?

2. Whether the petitioner proved that whip is served on respondents ?

3. Whether the petitioner proved that respondents have disobeyed the whip and are liable for disqualification ?"

12) The findings on issue Nos. 2 and 3 have decided the fate of the matter and so, these findings and the decision are challenged by the Vice President, who lost the post by filing first

proceeding. The finding on issue No. 1 about the authority of Suresh Deshmukh to issue whip is challenged by the respondents in the remaining two petitions as it is held that Suresh Deshmukh had authority to issue whip. In view of these circumstances, the entire material is being discussed in the present proceeding.

13) Municipal Council Sonpeth consists of 17 members. It is not disputed that Congress I party had contested all the 17 seats and 9 members of Congress I party were elected. It is not disputed that eight members of N.C.P. were elected and due to this border line majority, there was contest in the elections to the posts of President and Vice President between Congress I party and N.C.P. It is not disputed that after contesting the elections for these posts, the petitioner and respondent No. 2 were elected respectively for the post of Vice President and President. This admitted position needs to be kept in mind while considering the rival contentions.

14) The contention of respondent No. 7 that he was elected as leader of group members of Congress I party as per the procedure is not disputed by the petitioner and District President of Congress I party Suresh Deshmukh. Suresh

Deshmukh has given evidence that respondent No. 7 has been member of Congress I party for many years and due to the party, respondent No. 7 had enjoyed the post of President of said Municipal Council for some years. Suresh Deshmukh has given evidence that due to association of respondent No. 7 with the Congress I party, his wife respondent No. 2 got opportunity and she was made President of the Municipal Council in the election.

15) Suresh Deshmukh, District President of Congress I party has given evidence that there was election to the post of Members of Legislative Council (M.L.C.) from the constituency of members of the Local Bodies and one Shri. Durrani of N.C.P. had contested the said election. He has given evidence that since the election of Durrani as M.L.C., respondent No. 7 joined hands with Durrani and he started helping Durrani in politics and giving the requisition was one more such step at the instance of Durrani. At the time of consideration of other evidence of Suresh Deshmukh, it needs to be kept in mind that it is not disputed that members of N.C.P. in Municipal Council had signed the requisition and that on the same requisition, the respondents had put their signatures. It is also not disputed that all the members of N.C.P. in the Municipal Council had voted against the petitioner on notice of no confidence motion. It is not

disputed that only two members of Congress I party voted against this motion and they were petitioner and one more lady member of Congress I party and the evidence of Suresh Deshmukh is to the effect that only these two members remained loyal to Congress I party and the respondents betrayed the party by joining hands with Durrani and by voting in support of no confidence motion.

16) Suresh Deshmukh, the District President has given evidence that petitioner and other lady member had given him information that such requisition is likely to be given and he immediately contacted respondents personally and he asked them not to go against the policies of Congress I party. He has given evidence that he had informed that such steps will cause harm to the party. He has given evidence that in spite of his instructions, respondents had signed on requisition and he learnt about giving of requisition on 29.6.2012. He has given evidence that on 29.6.2012 he again contacted the respondents on phone and he questioned them about their activities and he also warned them about the consequences if they vote in support of no confidence motion.

17) Admittedly, the requisition was given on 29.6.2012

and on that day, till 7.00 p.m. of 5.7.2012 respondents were present at the station as per the contentions made in the reply. Thus, after giving requisition respondents were available at the station and it was possible for Suresh Deshmukh to contact them before 7.00 p.m. of 5.7.2012 at the station. It is true that till 5.7.2012, there was no whip, but there is evidence of aforesaid nature of Suresh Deshmukh and rival contentions show that respondent No. 7 had stopped obeying the orders/instructions of Suresh Deshmukh. Here it needs to be kept in mind that if there was some dispute between District President and the group leader of members in Municipal Council or if there was some grievance against the petitioner to the group leader, he ought to have contacted the political party and he could have taken the matter to high command. Admittedly, that was not done by respondent No. 7 and he admits that he has taken such action on his own.

18) Suresh Deshmukh has given evidence that he then informed about the activities of respondent No. 7 to office bearers of State Unit of the political party. He has given evidence that the office bearers of State Unit had directly contacted respondents and they had warned respondents not to vote in support of no confidence motion and the consequences were

informed to the respondents. He has given evidence that Shri. Ganesh Patil, General Secretary of State Unit of political party then sent authorization to him as he was District President of political party and he was authorized to take necessary steps including issuing of whip in aforesaid regard. He has given evidence that on the basis of written authorization received from high command, he issued whip on 5.7.2012 to direct to respondents and other members of Congress I party not to support no confidence motion. He has given evidence that after issuing whip, he contacted almost every member of Congress I party in the Municipal Council and he informed them about the issuance of whip. He has given evidence that he had handed over copy of whip to the petitioner and her husband and they were asked to serve the whip on respondents. Admittedly, husband of petitioner was office bearer of Tahsil Committee of Congress I party at the relevant time. He has given evidence that when he learnt from the petitioner and her husband that respondents were avoiding to accept the whip, he published the whip in two daily newspapers like Lokmat and Sakal on 5th and 6th of that month. He has given evidence that there was news about such requisition given in the local newspapers. He has given evidence that other member Smt. Shirsat was loyal to the Congress I party and she had also informed to the respondents

about such whip.

19) Suresh Deshmukh, the District President has then given evidence that as per the procedure of his party, the District President of the party has responsibility to keep control over the members of party in Local Bodies like Municipal Council. He has given evidence that in the present case, respondent No. 7, group leader of the party in the Municipal Council had betrayed the party and he had given instruction to other respondents to vote in support of no confidence motion and so, the whip was issued by him on the basis of authorization given by the party. He has given evidence that the respondents need to be disqualified as they defied party instruction, whip.

20) In the evidence of Suresh Deshmukh, the District President, record like authorization given by State Unit is proved as Exh. A and it is dated 3.7.2012. The whip issued by Suresh Deshmukh is proved as Exh. B. Notice of whip was published in Lokmat and Sakal and these papers are produced at Exhs. C and D. This record is consistent with aforesaid version of Suresh Deshmukh and the case of petitioner. In the written statement, respondents had contended that this record, the record of authorization and whip is forged one. But, there is nothing on the

record to prove the forgery. On the contrary, an attempt was made by the respondents to show to the Collector that party had condoned this act by issuing letter in their support. Such letter was produced before the Collector. In view of the specific provisions of the Act, such condonation is not possible and the provision is being quoted at proper place. However, this circumstance can be used against the respondents to show that they had admitted their fault and they had prayed to the party for forgiveness. This circumstance is certainly against the respondents and this circumstance ought to have been considered as admission on the part of respondents, but the Collector has not considered this circumstance. Aforesaid record is however considered by the Collector to hold that Suresh Deshmukh had authorization of the party to issue such whip.

21) In the cross examination of Suresh Deshmukh, it is brought on the record that aforesaid Shri. Durrani had contested the elections to Legislative Council from the constituency of members of Local Body and in that election, the members of both Congress I party and N.C.P. from Municipal Council Sonpeth had voted for Durrani. The evidence shows that it was party's decision at State level. Due to these circumstances, inference is not possible that Congress I party and N.C.P. had prepared a

front or alliance in the Local Bodies also. Admittedly, no such record was created and no such information was given to the authority as required by the rules framed in that regard.

22) In the cross examination of Suresh Deshmukh, an attempt is made to show that he was not telling entire truth. He was cross examined to show that there was no possibility of personal communication of whip by him to respondent Nos. 1 to 7. He tried to say that on 5.7.2012 he had contacted respondent Nos. 1 to 7 to inform about the whip. There is no such record with him which he admits and on the other hand, respondents have come with specific case that they were at Pune and some record is produced in that regard. Even if it is presumed that there is little bit exaggeration made by the District President in respect of the communication of 5.7.2012 by him, this circumstance cannot go to the root of the matter as there are many other circumstances, on the basis of which inference is possible that whip was issued and there was knowledge to the respondents about issuance of whip.

23) The husband of the petitioner, Satish Deshmukh is examined to prove that he had communicated the whip to respondents in the hall where meeting was held on 7.7.2012 and

that was done prior to starting of the meeting. The cross examination of this witness need not be discussed at length as petitioner is not disputing that she and her husband had started agitation to take up the issue of public in respect of drinking water. He was office bearer of Congress I party and his evidence cannot be ignored that way as his wife was to lose seat due to no confidence motion.

24) The petitioner has examined herself to substantiate the contentions made by her in the petition. She has deposed that she had informed the activities of respondents to District President Shri. Deshmukh and she had informed about the steps taken like giving of requisition for moving no confidence motion. She has given evidence that on the basis of her information, the District President had taken aforesaid steps and he had then issued whip on 5.7.2012. She has given evidence that when she went to Municipal Council, where in a meeting, no confidence motion was to be moved, she informed all the respondents about the whip issued to all the members and she had even shown a copy of whip to all the respondents. Admittedly, she attended the said meeting and in view of this circumstance and as she was to lose the seat, she needs to be believed in respect of the contention that she had informed the respondents about

issuance of whip. She has given evidence that copy of whip was handed over to respondent No. 2, President and Clerk of the Municipal Council had even made endorsement but at the instance of respondent No. 7 the endorsement was scratched. This document was produced before the Collector.

25) In rebuttal, Digamber Patil, respondent No. 4, examined himself for respondent Nos. 1 to 6. His evidence is mainly about the conduct of petitioner viz. her agitation on the subject of insufficient supply of drinking water to the residents of Municipal Council. Other evidence of this witness is as per the contentions made in the written statement and he has denied that there was communication of whip to him. He has given evidence that they left the station for Pune on 5.7.2012 at about 7.00 p.m. and they were out of station till 11.00 a.m. of 7.7.2012. In support of this case, this witness produced the record like the tickets, counter-folio of the tickets issued by private travel company for Parli to Pune on 5.7.2012 and for Pune to Parli on 6.7.2012.

26) In the cross examination, Digambar admitted that the candidates of Congress I party for the General Elections of Municipal Council were selected by Congress I Committee and

District President. He admits that District President controls the campaign of election. He also admits that only after consultation with District President, office bearers in the Local Body are chosen and accordingly, election is contested and the members of the party in Municipal Council comply the directions given in that regard. He also admits that District President of his party works as per the directions of the State Committee of the party. He admits that at the relevant time, Ganesh Patil was General Secretary of State Unit of his political party and he used to communicate the decision of the State Unit to District President and District President used to act as per the instructions received from high command. He admits that Suresh Deshmukh was District President of this district for about two years.

27) In the cross examination, Digamber has admitted that since the General Elections, there was acute shortage of drinking water in the town. He has admitted that petitioner and others had given representation to Chief Officer of Municipal Council on this subject and procession was taken to protest the inaction on the part of Municipal Council on this subject. He has specifically admitted that the said procession was taken by the workers of Congress I party and due to the procession, respondents had become angry with the petitioner. He tried to

say that they had left the station for Pune at the relevant time at the instance of respondent No. 7, but he could not give any specific reason for leaving the station and going to Pune at the relevant time when requisition was given of meeting in which no confidence motion as against petitioner was to be moved.

28) Respondent No. 7, Chandrakant Rathod has examined himself and his evidence is as per the contents of his written statement. His evidence shows that he has gone to the extent of saying that only due to him all the members of Congress I party were elected in the General Election. He has given evidence that he was taking the decision in respect of affairs of Municipal Council as leader of the group of 9 councillors. In the cross examination, he has admitted that he did not inform about the decision taken by him to anybody and he had not informed to the party that they were signing on the requisition given by N.C.P. against the petitioner. He admits that they had taken decision to remove the petitioner from the post of Vice President due to agitation started by her. His evidence shows that he never tried to settle the dispute. Though he tried to say that he had orally communicated about the conduct of petitioner to State President, there is no such record and the State Unit is supporting the petitioner.

29) Respondents examined one Dr. Rathod, who has dispensary at Pune and who is relative of respondent No. 7. He has given evidence that on 6.7.2012 respondent No. 7 had contacted him as respondent No. 7 wanted medical examination of his wife, respondent No. 2 as she was not feeling well and as she was in Pune. The doctor has given evidence that on that day, respondent No. 7 came to his dispensary along with respondent No. 2 and also along with other lady respondents like Vaishali, Rajraisabegam and Shaikh Shaheenbee (respondent Nos. 1, 3 and 5). He has given evidence that he examined all these ladies and the record was created like making entry in his register. This evidence was given by respondents to show that atleast on 6th, the respondents were not present at the station and they were present in Pune. According to this doctor, examination was made on O.P.D. basis.

30) The aforesaid evidence of doctor and the circumstances, which are tried to be created by respondents show that every attempt was made by respondents to show that at the relevant time, they were out of station. Digambar, one respondent could not given convincing reason when he had also left the station for Pune along with respondent No. 7. The reason

given through this doctor by the respondents that all of them were not feeling well and they had approached the doctor for examination is not at all convincing. It is not their case that they had left for Pune for medical examination. These circumstances are sufficient to infer that respondents left the station without informing party as they wanted to avoid contact of their political party. The question, as to whether in such a situation they were entitled to leave the station is dealt with at subsequent stage, but on facts, it can be said that these respondents wanted to defy the orders of their political party on the step taken by them against the petitioner.

31) The evidence of witnesses examined by both the sides show that the issue of requisition given by N.C.P. councillors and respondents for moving no confidence motion had received wide publicity. Inference is easy that the members of the families of these respondents and the members of N.C.P. in Municipal Council were present at the station, even if it is presumed that the respondents had left for Pune on 5th. There was apparently no reason for respondents for not keeping contact with the relatives and also with the councillors of N.C.P. party. We are living in a period where there are many facilities of communication like landline phone, mobile phone and the

newspapers etc. The evidence given by the petitioner and her witnesses and aforesaid record is more than sufficient to prove that the instructions issued by the District President Deshmukh were communicated to the respondents. It cannot be believed that before the meeting of 7th in the hall of Municipal Council, no information was supplied to these respondents about the party's instruction by petitioner and other councillor of Congress I party. As per the version of respondent No. 7, there was discussion on the resolution and it was going on for more than one hour. This circumstance also shows that the respondents cannot be believed on their case that they had no knowledge about the whip issued by their political party. This record and circumstances are not at all considered by the Collector and the Collector has committed serious error in holding that there was no communication of whip to the respondents.

32) The political party has the power to take disciplinary action against its members if the activities of the members are against the interest of political party. Admittedly, the political party had not proposed any such action against the petitioner and there is no record to show that respondent No. 7 had requested for such action to the political party. In view of these circumstances and other circumstances already mentioned like

giving of the requisition by councillors of N.C.P. and signing on the requisition by the respondents, the only inference possible is that the respondents had joined hands with opposite party, N.C.P. and they wanted to unseat the petitioner. Though ultimate step like moving no confidence motion could have been taken on the basis of party's instruction, first it was the political party of these members which was expected to take decision as petitioner was Vice President in the Local Body. Such action definitely affects the image of political party also. Thus, even without considering the position of law, on facts, it can be said that political party was not involved by the respondent No. 7 in his action and he wanted to defy the directions of the political party.

33) So far as the position of law is concerned, both the sides placed reliance on some reported cases after taking this Court through relevant provisions of the Act. On the point of communication of whip, the relevant provision is section 3(1)(b) with proviso to it of the Act and it runs 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)

(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 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;"

34) On the point of way of communication of the whip, the learned counsel for petitioner placed reliance on some observations made by this Court in the case reported as **2011 (5) ALL MR 555 (Aurangabad Bench), [Jitendra Himmat Biraris Vs. Kiran Gulabrao Patil]**. The observations are at para No. 22 and they are as under :-

"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 'direction 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 own 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".

35) The facts of the reported case show that in newspaper, the whip was published and the members of the party in the Local Body were called for meeting as decision was to be taken and it was to be communicated to the members. In view of the facts of that case, this Court held that it needs to be inferred that whip was communicated to the members who had not obeyed the party's instructions. This Court holds that in view of the word 'issued' used in the aforesaid provision, the burden to prove that 'whip was issued' was on the political party and by giving the material like newspapers in which the whip was published, the burden was discharged. In the present matter, the explanation given by the respondents is not acceptable. The burden was on them in view of section 106 and 114 of the Evidence Act and it was not discharged.

36) On the aforesaid point, the learned counsel for respondents placed reliance on the case reported as **2012 (5) Mh.L.J. 668 [Kiran s/o. Narhari Wattamwar and ors. Vs. Collector, Nanded and Ors.]** decided by this Court (Aurangabad Bench). The facts of this reported case were different. On facts, this Court had held that the whip was not communicated. With due respect to the observations made in

this case by the other Hon'ble Judge, this Court would like to defer with the inferences drawn and the conclusions of the matter. This Court would like to go with the ratio laid down by the other Hon'ble Judge in the case of **Jitendra Himmat Biraris** cited supra. If the interpretation made in the case of **Jitendra Himmat Biraris** is not accepted, entire object behind provision like defection will be defeated. In the present matter the only inference possible was that the respondent Nos. 1 to 7 wanted to defy the instructions of the party and even when they had knowledge about the party's whip they voted in support of the no confidence motion. Due to not considering the relevant material and circumstances quoted already, the Collector committed error in holding that the whip was not communicated.

37) On the point of competency of District President and for that matter the competency of even State Unit to issue whip or authorize to issue whip reliance was placed by the learned counsel for respondents on the case reported as **1990 (3) Bom.C.R. 199, Nagpur Bench (Suresh Madhaorao Bhange & Ors. Vs. Collector, Wardha & Ors.].** The Division Bench of this Court had held in this matter that the whip, such directions emanate from the Local Body and not from the Apex Body. On the basis of these observations, the learned counsel for

respondent No. 7 submitted that as respondent no. 7 was leader of the group of party in Municipal Council only he had the power to issue instructions and the political party had no power to issue whip. This Court holds that this point is no more *res-integra* and the Apex Court has laid down the position of law. In the case reported as **(2000) 8 Supreme Court Cases 82 [Sadashiv H. Patil Vs. Ashok Y. Patil and Ors.]**, the Apex Court has considered all the possible situations which can be created by the parties and the provision of section 3 (1) (b) and section 7 of the Act and those provisions are interpreted. For the present matter, in **Sadashiv Patil's** case cited supra, law is laid down as follows :-

- (i) For proving the defection, voting in the meeting of Municipal Council must be shown to be contrary to 'directions issued by political party',
- (ii) The term 'political party' used in the section is different from the term 'municipal party' and so the leader of the group of members of a political party in Municipal Council cannot take decision different than the decision of his political party.
- (iii) The person authorized to issue whip by the political party need not be a member of a Municipal Council. So, the District President of political party can

be authorize by parent party to issue whip.

38) In view of the law laid down by the Apex Court in this case, the law laid down by the Division Bench of this Court in the case of **Suresh Bhange** cited supra is of no help to the present respondents.

39) The aforesaid discussion shows that on the point of the authority of District President of political party to issue whip the Collector has not committed error, but the Collector committed error in holding that the whip was not communicated to the respondents. This Court has avoided to discuss the object behind this legislation and the observations made by the Apex Court in the aforesaid case and other cases on the background for making such legislation. As law is well settled on the points involved in the present matter, such discussion is avoided. In the result, following order is made.

ORDER

(I) Writ Petition No. 4736/2015 is allowed. The order made by the Collector rejecting the application filed for disqualification is hereby set aside. Respondent Nos. 1 and 3 to 7 stand disqualified. Other two writ petitions stand dismissed. Rule is made absolute in those terms.

(II) The learned Senior Counsel for respondents prayed for stay to the order of disqualification. The time of four weeks is given to respondents to challenge the decision of this Court, but during this period the respondents are not to be allowed to vote in the Municipal Council though they will be entitled to attend the meeting of the members of Municipal Council held in connection with functioning of the Municipal Council and they will not be entitled to get any allowances in respect of their attendance of the meetings or other allowances to which they are entitled only because they are members of Municipal Council.

Rule is discharged in the remaining two writ petitions.

[T.V. NALAWADE, J.]

ssc/