

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 559 OF 2020

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Mangal Kiran Waghmode & Ors.

... Petitioners

Vs

The State of Maharashtra & Ors.

... Respondents

.....
Mr. Abhijit Kulkarni i/b. D. D. Abhijit Advocates for the Petitioners.

Mr. A. A. Kumbhakoni, Advocate General a/w. Mr. P. P. Kakade,
Government Pleader and Mr. Akshay Shinde, "B" Panel Counsel for
the Respondents Nos. 1 to 3.

Mr. Ashutosh M. Kulkarni a/w. Mr. Akshay A. Kulkarni, for the
Respondent No.4.

.....
**CORAM : S. C. GUPTA AND
MADHAV J. JAMDAR, JJ.**

**RESERVED ON : 15 OCTOBER 2020
PRONOUNCED ON : 20 OCTOBER 2020
(THROUGH VIDEO CONFERENCING)**

JUDGMENT : (PER MADHAV J. JAMDAR, J)

By the present writ petition the Petitioners have sought quashing and setting aside of the substance of the imputations of the disqualification and articles of charges dated 13 January 2020 framed in Case No. 1 of 2020 by the Collector of Solapur and seeking that the application of the Petitioners be allowed. The Petitioners have also sought quashing of said Case No. 1 of 2020.

2. The factual position on record shows that election of the councillors of Zilla Parishad, Solapur took place on 21 February

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2017 and result of the same was declared on 23 February 2017. At that time, the post of President of Solapur Zilla Parishad was to be filled up by electing a councillor from “General” category and accordingly person from said category was elected for a period of about 2^{1/2} years i.e. upto 31 December 2019. On 31 December 2019 the seat of President of Zilla Parishad was to be filled up by electing a councillor to the seat of President from reserved category viz. Scheduled Caste. On 31 December 2019 the special meeting for election of President and Vice-President was called by Returning Officer. In the said meeting the Petitioners were present and voted as per their will as according to the Petitioners there was no directions/whip in compliance with Maharashtra Local Authority Members’ Disqualification Act, 1986 (*hereinafter referred to as “said Act”*).

3. On 6 January 2020 the Respondent No. 4 filed an application bearing application No. 1 of 2020 before the Respondent No.3-Collector, Solapur under Sections 7 and 3 of the said Act read with Rule 6 of the Maharashtra Local Authority Members’ Disqualification Rules, 1987 (*hereinafter referred to as “said Rules”*). In the said application, the Respondent No. 4 has *inter alia* raised following contentions:-

- (i) He has been elected as Leader of N.C.P, Zilla Parishad Party, Solapur.
- (ii) All the Petitioners i.e. Respondent Nos. 1 to 6 in said application were elected as members of Zilla Parishad Solapur by contesting the election from National Congress Party (N.C.P), Solapur from different Zilla Parishad Gat Numbers as

more particularly set out in the application.

- (iii) The election was scheduled for the post of President and Vice-President of Zilla Parishad, Solapur on 31 December 2019 and Tribhuwan Vinayak Dhajje was the candidate from N.C.P. for the post of President and Shri Vikrant Rajan Patil was the candidate from N.C.P. for the post of Vice-President. A whip was issued on 31 December 2019 and served on all the members of N.C.P. to vote for the aforesaid candidates of the N.C.P.
- (iv) In spite of this the Petitioners voted in favour of opposite party candidate and therefore, are liable to be disqualified under the provisions of said Act.

4. The Petitioners after receipt of notice of the aforesaid application No. 1 of 2020 appeared before the Collector on 9 January 2020 and thereafter filed detailed application dated 13 January 2020 raising several objections and prayed as follows:-

“That considering the reasons mentioned in the Objection application, provisions of the Act and Rules as well as Judgments of Apex Court, it be directed to the petitioner to cure the defect in the petition and failing to cure the same petition may kindly be dismissed with cost.”

5. On 13 January 2020 the Respondent No.3-Collector rejected the aforesaid application dated 13 January 2020 filed by the

Petitioners and framed substance of imputations and charges. The said substance of imputations and charges are concerning the breach of the whip issued by the authorized person of the N.C.P. by voting to the opposite party candidate in the election of President and Vice-President and not voting in favour of the official candidate of the N.C.P.

6. The Petitioners by the present petition have challenged the legality and validity of the imputations and charges framed on 13 January 2020 and also prayed that application filed by the Petitioners be allowed.

7. We have heard Mr. Abhijit Kulkarni, learned Counsel for the Petitioners, Mr. A. A. Kumbhakoni, learned Advocate General for the Respondent Nos. 1 to 3 and Mr. Ashutosh M. Kulkarni, learned Counsel for the Respondent No.4.

8. It is the contention of Mr. Abhijit Kulkarni on behalf of the Petitioners that the Respondent No.3 before framing the charges failed to hold any preliminary enquiry as required by Rule 6 of the said Rules. He submitted that there was no whip issued and only appeal was made to vote for the official candidate of N.C.P. and as there was no whip, the entire proceedings are required to be quashed and set aside. He submitted that in any case the alleged whip was issued by the Respondent No.4 in his capacity as the District President of the N.C.P. Party and not in his capacity as Leader of Zilla Parishad Party. He submitted that in absence of any notification published in the Government Gazette as contemplated

under Rule 4(3) of the Rules there was no Zilla Parishad Party and therefore, no action can be taken against the Petitioners and the proceedings are liable to be quashed and set aside. He relied on the judgment of Supreme Court in the case of ***Sadashiv Patil Vs. Vitthal Teke & Ors. reported in (2008) 8 SCC 82*** and judgment of this Court in the case of ***Suresh Madhaorao Bhange Vs. Collector, Wardha reported in 1990 Mh.L.J. 848.***

9. Mr. Kumbhakoni, learned Advocate General appearing for Respondent Nos. 1 to 3, contended that the contention of the Petitioners to the effect that in the absence of any notification published in the Government Gazette, there is no Zilla Parishad Party which came into existence, as contemplated under Rule 4(3) of the said Rules, is completely misconceived and misdirected. He submitted that, in law no such publication is necessary. He relied on the judgment of this Court in the matter between ***Tukaram Ganpat Kale and Another Vs. Ankush Kondiba Jadhav and Others*** reported in ***2011 (6) Mh.L.J. 243***. He pointed out application dated 13 January 2020 filed by the Petitioners and particularly the prayer clause of the same wherein the prayer was made to the effect that the Petitioner therein i.e. the Respondent No. 4 be directed to cure the defects in the petition and failing which the petition be dismissed. He pointed out portion of the said application raising contention in view of Supreme Court Judgment that provisions of Rule 6 are directory and the defects can be cured. He therefore, submitted that when the proceedings before the Collector are only proceeded upto the stage of framing of charges, the interference by this Court at this stage is not warranted.

10. Mr. Ashutosh M. Kulkarni, learned Counsel for the Respondent No.4 adopted the arguments of learned Advocate General and submitted that the petition be dismissed.

11. Before considering the rival submissions it is necessary to set out the factual position:-

- (i) Election of the members of Zilla Parishad, Solapur took place on 21 February 2017 and the result of the same was declared on 23 February 2017.
- (ii) On 14 March 2017, the President of National Congress Party (N.C.P), Solapur District namely Shri Deepakaba Salunkhe-Patil informed the office of Collector, Solapur that Respondent No. 4 Baliram Bhaurao Sathe has been appointed as leader of N.C.P. Zilla Parishad Party, Solapur.
- (iii) On 14 March 2017 the leader of N.C.P party namely Shri Baliram Bhaurao Sathe furnished information as per Rule 3 (1)(c) of the said Rules in Form-I.
- (iv) On 5 March 2017 the party members of N.C.P have also furnished information as per Form-III to the office of Collector, Solapur as required under Rule 4(1) of the said Rules.
- (v) The office of Collector of Solapur has maintained the register as mentioned in Rule 5 of the said Rules in Form-IV.
- (vi) The record of the office of the Collector shows that as per Rule 4 (3) of the said Rules there is no publication made in the

Government Gazette.

- (vii) On 31 December 2019 the seat of President of Zilla Parishad, Solapur was to be filled up by electing a member to the seat of President from reserved category viz. Scheduled Caste. On 31 December 2019, a special meeting for election of President and Vice-President was called by Returning Officer. In the said meeting the Petitioners were present and voted as per their will as according to the Petitioners there was no direction/whip in compliance with the said Act.
- (viii) It is the contention of Respondent No.4 that there was such direction/whip issued by him on 31 December 2019 and the same was served on the Petitioners before the said special meeting for election of President and Vice-President of Solapur Zilla Parishad.
- (ix) On 6 January 2020 the Respondent No. 4 filed an application bearing application No. 1 of 2020 before the Respondent No.3-Collector, Solapur under Sections 7 and 3 of the said Act read with Rule 6 of the said Rules. The Respondent No. 4 *inter alia* contended in the said application that the election was scheduled for the post of President and Vice-President of Zilla Parishad, Solapur on 31 December 2019 and Tribhuwan Vinayak Dhaije was the candidate from N.C.P. for the post of President and Shri Vikrant Rajan Patil was the candidate from N.C.P. for the post of Vice-President. A whip was issued on 31 December 2019 and served on all the members of N.C.P. to vote for the aforesaid candidates of the N.C.P. In spite of this

the Petitioners voted in favour of opposite party candidate and therefore, are liable to be disqualified under the provisions of said Act.

12. To appreciate the rival contentions it is necessary to consider relevant provisions of the said Act and said Rules, as applicable to the Zilla Parishad, since the Petitioners are the Councillors of the Zilla Parishad.

(i) Section 2(e) of the Act define- "local authority" means-(i) a Municipal Corporation,(ii) a Municipal Council, (iii) a Zilla Parishad, or (iv) a Panchayat Samiti;

(ii) Section 2(o) of the Act defines- "Zilla Parishad" as Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

(iii) Section 2(p) of the Act defines -"Zilla Parishad Party", in relation to a Councillor of a Zilla Parishad belonging to any political party or aghadi or front means the group consisting of all the members of the Zilla Parishad for the time being belonging to that political party or aghadi or front in accordance with the Explanation to Section 3 provides that (a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member.

(iv) Section 3 is regarding disqualification on ground of defection and provides that a councillor belonging to any political party or aghadi or front shall be disqualified for being a councillor if he votes or abstains from voting in any meeting of Zilla Parishad 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.

(v) Section 7 provides that if any question arises as to whether a councilor of a Zilla Parishad has become subject to disqualification under the Act, the same shall be referred to the collector. The decision of the collector can be challenged by filing Appeal before the State Government.

(vi) Section 8 is regarding bar of jurisdiction of Civil Courts.

(vii) The Rule 2(b-1) (iii) defines "Leader in relation to a Zilla Parishad Party" means a councillor chosen by each political party or aghadi or front in Zilla Parishad 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 leader of such party or aghadi or front for the purposes of these rules.

(viii) Rule 3 is concerning information to be furnished by a leader of a Party and Rule 3(1) provides that the leader of each Zilla Parishad party shall within thirty days from the date of its formation, furnish information to the Collector, namely the names of members of such party together with other relevant particulars regarding such members as prescribed in Form I, and the names and designations of the members of such party who have been authorised by it for communicating with the Collector for the purposes of these rules.

Rule 3(5) provides that where a councillor in relation Zilla Parishad party votes or abstains from voting in any of the meetings of the Zilla Parishad 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 the prior permission the leader of Zilla Parishad party within thirty days from the date of such voting or abstention inform the Collector in Form II whether such voting or abstention has or has not been condoned by such party, person or authority.

(ix) Rule 4 is regarding information to be furnished by individual councilor. Rule 4 (1) (b) provides that every councillor in relation to Zilla Parishad party who is elected to Zilla Parishad before taking his seat, shall furnish to the Collector within thirty days from the date of the declaration of the election results or within such further period as the Collector may for sufficient reason allow a statement of particulars and declaration in Form III.

Rule 4(2) provides that every councillor in relation to a Zilla Parishad party who takes his seat in the Zilla Parishad, shall before the Zilla Parishad taking his seat in the Zilla Parishad deposit with the Collector his election certificate or, as the case may be, a certified copy of the notification nominating him as a member and also furnish to him a statement of particulars and declaration in Form III. In Form III the concerned councilor inter alia has to submit information and declaration that he is affiliated to the particular political party.

Rule 4(3) provides that a summary of the information furnished by the councillor in relation to a Zilla Parishad under this rule shall be published in the Maharashtra Government Gazette and if any discrepancy therein is pointed out to the satisfaction of the, Collector, necessary corrigendum shall be published in the said Gazette.

(x) Rule 5 provides that the Collector shall maintain in Form IV, a register based on the information furnished under rules 3 and 4 in relation to the councillor of a Zilla Parishad Party.

(xi) Rule 6(1) provides that reference of any question as to whether a councillor in relation to a Zilla Parishad party has become subject to disqualification under the Act shall be made by a petition in writing to the Collector by any other councilor.

Rule (6) (3) provides that every petition shall contain a concise statement of the material facts on which the petitioner relies; and shall be accompanied by copies of the 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.

Rule 6(4) provides that 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, 1908 (V of 1908) for the verification of pleadings.

(xii) Rule 7 provides the procedure to be followed relating to such Petition. As per Rule 7(1) and (2) on receipt of a petition under rule 6, the Collector shall consider whether the petition complies with the requirements laid down in that rule and if the petition does not comply with the requirements of rule 6, the Collector shall dismiss the petition and intimate the petitioner accordingly. As per Rule 7(3) if the petition

complies with the requirements of rule 6, the Collector shall forward copies of the petition and of the annexures to the councillor in relation to a Zilla Parishad in respect of whom the petition has been made, and such councillor shall, within seven days of the receipt of such copies, or within such further period as the Collector may for sufficient reason allow, forward his comments in writing thereon to the Collector.

Rule 7(4) provides that after considering the comments, if any, in relation to the petition received under sub-rule (3) within the period allowed (including the extended period), the Collector shall proceed to determine the question after making a preliminary enquiry.

(xiii) As per Rule 7(5) the procedure which shall be followed by the Collector for the purpose of making a preliminary enquiry to determine any question under sub-rule (4) shall be as prescribed in sub-rules (6) to (15).

Rule 7(6) provides that the Collector shall draw up or cause to be drawn up the substance of the imputations of disqualification into definite and distinct articles of charge and a statement of the imputations of disqualifications in support of each article of charge, which shall contain a statement of all relevant facts and a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

Rule 7(8) provides that on receipt of the written statement of defence, the Collector, may himself inquire into such of the articles of charge as are not admitted, and where all the articles of charge have been admitted by the councillor in his written statement of defence, the Collector, shall record his findings on each charge after taking such evidence as he may think fit and shall act in the manner laid down in rule 9 of these rules.

(xiv) Rule 7(9) provides that if no written statement of

defence is submitted by such councillor the Collector shall proceed to inquire as if the councillor has nothing to say.

(xv) Rule 7(10) and 7(11) provides that the Collector shall require the complainant as well as the councillor who wishes to be heard either in person or through his Advocate to appear before him within ten days on such day and at such time as may be fixed by him.

(xvi) Rule 7(12) to 7(15) makes elaborate provision for conducting enquiry including inspection of documents, supplying copies of statements of witnesses, production of oral and documentary evidence by the Petitioner and examination and cross-examination of the witnesses of the Petitioner.

(xvii) Rule 8 is concerning decision of petitions and provides that at the conclusion of the consideration of the petition, the Collector shall, by order in writing dismiss the petition, or declare that the councillor in relation to the Zilla Parishad in respect of whom the petition has been made has become subject to disqualification under the Act.

(xviii) Rule 9 provides the Collector may from time to time issue such directions as he may consider necessary in regard to the detailed working of these rules.

(xix) Rule 10 provides that a councillor in relation to a Zilla Parishad who commits any breach of any of the provisions of these rules shall, on conviction, be punished with a fine, which may extend to one thousand rupees and in the case of continuing breach with a fine, which may extend to fifty rupees for every day, during which the breach of the provisions of the rules continues after conviction for the first breach.

Thus it is clear that very elaborate provisions are made in the

said Act and Rules, to provide for disqualification of councilors of certain local authorities on the ground of defection and the procedure of such proceeding.

13. At the outset it is to be noted that the Hon'ble Supreme Court in the judgment between ***Kedar Shashikant Deshpande Vs. Bhor Municipal Council and Others reported in 2011 (2) SCC 654*** examined the nature of proceedings under the provisions of said Act and held that the proceedings under the said Act are not adversarial in nature and there is no lis between the person moving the petition and the councillor of the Zilla Parishad who is alleged to have incurred disqualification. Section 7 lays down that the Collector has to decide the question of disqualification on a reference made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1) (b) operates on its own force and moment the conditions prescribed therein are satisfied, a councillor stands disqualified. The reference to be made to the Collector is only for the purpose of bringing to the notice of the Collector the relevant information about the disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law. Thus, what is important to note is that even if the Respondent No.4 seeks to withdraw the petition filed before the Collector it will not make any difference as the duty is cast on the Collector to decide the said reference. It is further important to note that the jurisdiction of the

Civil Court is specifically barred under Section 8 of the said Act. In view of the above legal position, it is clear that even if there are any defects in the petition filed under the said Act, the same are not fatal and in any case they are curable.

14. In the light of this legal position we have examined various alleged defects mentioned in application dated 13 January 2020 and either the defects mentioned are not in existence or they are of very trivial nature not prejudicing the Petitioners in any manner. The defects mentioned in the Application are inter alia concerning want of a concise statement of material facts as also the name and address of the person who furnishes the information to the Petitioner and gist of such information, names of witnesses, signature to the petition and annexures by the Petitioner as well as want of verification in the manner laid down in the Code of Civil Procedure, 1908, non-furnishing of affidavit of the person verifying the pleading, and want of signature and verification for the four documents/annexures produced. It is further contended in the application that Collector under Rule 6 is obliged to consider whether the Applicant complies with the requirements under the said Rule and cures the defect and if he doesn't comply, then the petition is required to be dismissed.

15. A bare perusal of the petition filed before the Collector under Sections 7 and 3 of the said Act r/w. Rule 6 of the said Rules clearly shows that a very detailed petition has been filed giving all the particulars. It is further to be noted that before the charge was

framed eight documents/material were produced, some of which are as per following particulars:-

- (i) Minutes of meeting dated 31 December 2019
- (ii) CD of the meeting dated 31 December 2019
- (iii) The whip/direction served on the Petitioners on behalf of the N.C.P. Party.
- (iv) The information supplied by the Petitioners to the Collector as per the prescribed format.

16. Thus, it is clear that the Petitioners are completely made aware about the contentions which they are required to deal with as sufficiently detailed petition has been filed and all the relevant documents to support the said contentions are produced on record. Therefore, there is no prejudice whatsoever which has been caused to the Petitioners. We have perused the detailed petition filed before the Collector and some of the documents on which reliance is placed and we are satisfied that there is no prejudice whatsoever to the Petitioners and the requirements of Rule 6 are complied with. This is more so when as per the legal position Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition and limited purpose of the petition is to bring relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law. Therefore, there is no substance in the contention of the Advocate for the Petitioners that no preliminary enquiry as required by Rule 6 of the said Rules was conducted by the Respondent No.3-Collector.

17. It is also important to note the contents of the reply

dated 13 January 2020 filed by the Applicant- present Respondent No.4 to the application dated 13 January 2020 of the Petitioners seeking that the Respondent No.4 be directed to cure the defects or the petition be dismissed. It is contended in the said reply that the Applicant has furnished all the details in the application and documents are also filed on record. It is further stated that each and every document is signed by the Applicant and the application is also verified by the Applicant. It is contended that the Applicant has made proper compliance and the opponents are prolonging the matter. The Advocate for the Petitioners has not pointed out any material contradicting this position. No portion of the petition filed before the Collector was shown to us which specifies that the information mentioned in the petition is supplied by some third person and therefore, there is no substance in the contention that the name and address of the person who furnished the information to the Respondent No.4 and gist of such information is not mentioned in the petition. Therefore, there is no substance in the contention of the Petitioners that the charges were framed without holding any preliminary enquiry as contemplated under Rule 6 of the said Rules.

18. It is further contention of the Advocate of the Petitioner that in absence of any notification published in the Government Gazette as contemplated under Rule 4(3) of the Rules there was no Zilla Parishad Party and therefore, no action can be taken against the Petitioners and the proceedings are liable to be quashed and set aside. Section 2(p) defines Zilla Parishad Party to mean the group consisting of all the members of the Zilla Parishad for the time being

belonging to that political party or aghadi or front and explanation to Section 3, which is regarding disqualification on ground of defection, specifies that a person elected as a councillor, 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. It is also significant to note that Rule 4(2) of said Rules requires every councillor in relation to a Zilla Parishad Party before taking his seat in the Zilla Parishad, deposit with the Collector his election certificate or a certified copy of a notification nominating him as a member and also furnish to him a statement of particulars and declaration in Form-III. It is significant to note that in the said Form-III, the particular Councillor has to give a declaration that he is affiliated to a political party or aghadi or front as on that date. Rule 10 provides penalty for breach of the Rules. Thus, it is incumbent on the Petitioners to provide such information in Form-III to the Collector and declare their affiliation to the particular Zilla Parishad Party. Rule 3 (1) requires a leader of a party to furnish information to the Collector containing in writing names of members of such party together with relevant particulars as prescribed in Form-I. Form-I contains information regarding name of the political party or aghadi or front to which the members and leader of the party belong and particulars of names of members, their permanent address and name of the constituency from which the members are elected. It is very important to note that the information to be furnished by a leader of a party as provided in Rule 3 is not required to be published in the Maharashtra Government Gazette but the information provided by individual councilor as required under Rule 4 is required to be published in the Maharashtra Government

Gazette as per Rule 4(3) of the said Rules. In this particular case on 14 March 2017, the President of National Congress Party (N.C.P), Solapur District, namely, Shri Deepakaba Salunkhe-Patil informed the office of Collector, Solapur that Respondent No. 4 Baliram Bhaurao Sathe has been appointed as leader of N.C.P Zilla Parishad Party, Solapur. On 14 March 2017 the leader of N.C.P party namely Shri Baliram Bhaurao Sathe furnished information as per Rule 3 (1) (c) of the said Rules in Form-I. On 5 March 2017 the party members of N.C.P have also furnished information as per Form-III to the office of Collector, Solapur as required under Rule 4(1) of the said Rules. Therefore, it is clear that mere absence of notification published in the Government Gazette as contemplated under Rule 4(3) cannot give rise to the conclusion that there is no Zilla Parishad Party as by other evidence the existence of Zilla Parishad Party can be proved. Therefore, there is no substance in the contention of the learned counsel for the Petitioners that in absence of notification published in the Government Gazette as contemplated under Rule 4(3) of the said Rules there was no Zilla Parishad Party in existence and therefore, no action can be taken against the Petitioners and proceedings are liable to be quashed and set aside.

19. In this behalf it is again important to note that similar contentions were raised in the aforesaid decision of the Hon'ble Supreme Court in the matter of ***Kedar Shashikant Deshpande*** (*supra*). While dealing with these contentions the Hon'ble Supreme Court has held 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. It is important to note that as held in the said case, neither Rule 3 nor Rule 4 nor any other rule of the Rules mentions that a political affiliation of a councillor of the Zilla Parishad Party would come into existence only upon submission of either Form I, Form III and /or publication of information in the Official Gazette. 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 Petitioners have relied on the judgment in the case of ***Sadashiv Patil (supra)***. In the said case the Hon'ble Supreme Court has specifically recorded that in that case the Hon'ble Supreme Court was required to deal with an aghadi or front relating to Municipal Council and clarified that the provisions of the Act would be analyzed in the said case from the angle of Municipal Council leaving aside Municipal Corporation, Zilla Parishad or Panchayat Samiti. Therefore, the said judgment will not be applicable to the facts of the present case as we are dealing with the disqualification proceeding of councillor in Zilla Parishad. In any case in the said judgment also what is observed is as follows:-

“The information so furnished shall be published in the Maharashtra Government Gazette and subject to rectification of such discrepancy as may be pointed out and necessary corrigendum if necessary being published in the Gazette, the information shall be maintained in the records of the Collector in a register in Form IV under Rule 5. In this manner the evidence of formation of a Municipal Party comes into existence and any doubts or disputes relating to formation of a particular Municipal Party, and the members thereof along with the requisite particulars furnished, filed, notified and entered in the register are ruled out.”

The factual position set out hereinabove clearly demonstrate the fulfillment of the above compliance. Therefore, the contention based on the alleged breach of Rule 4(3) of the said Rules has no substance and the same is required to be rejected.

20. The Petitioners have also relied on the judgment in the case of **Suresh Madhavrao Bhange** (*supra*) and particularly paragraph 17 of the said judgment. It has been held in the said judgment that the said rules are framed with the purpose of smooth implementation of the Act and the rules are to be read harmoniously with the statute and that there is no disharmony or inconsistency in the rules and statute. There cannot be any doubt about the said legal position. The factual position in **Suresh Madhavrao Bhange** case reveals that on 15 August 1982 the official Zilla Parishad Congress(I) Party came to be dissolved and each member was given freedom to vote according to his conscience. In spite of the said position Collector disqualified the said councillors on the ground that though the Zilla Parishad Party may not be in existence on the relevant date, still the original party was in existence. In this background the Court has held that the party contemplated in Rule 3(1) (b) is the Zilla Parishad Party and not the Apex Party. The factual position in the said case is totally different from the present case and therefore, not applicable to the facts of the present case. In any case the said judgment is of no assistance to the Petitioners' case.

21. Mr. Abhijit Kulkarni also submitted that the whip or direction issued by Respondent No.4 was issued in his capacity as

District President of N.C.P. Party and what is required is the whip or direction issued by leader of the Zilla Parishad Party. It is true that while issuing the direction/whip the Respondent No.4 has described himself as District President of N.C.P. Party, District Solapur. However, it is to be noted that Section 3 of the Act regarding disqualification on the ground of defection specifies that if a councillor votes or abstains from voting contrary to any direction issued by the political party or by any person authorized by the political party and if such voting or abstention is not condoned within 15 days then such councillor is liable to be disqualified. Thus what is important is direction issued by political party or by any person authorized by the political party. It is not disputed before us that Respondent No.4 was appointed as the leader of the Zilla Parishad Party and had the authority to issue a whip or direction for voting in the election meeting of the Zilla Parishad. The direction/whip issued by the Respondent No.4 prima facie satisfies this requirement. Therefore, it is clear that there is no substance in the said contention and in any case what is challenged in the present petition is the substance of the imputations of the disqualification and the articles of charges framed by the Collector and the disqualification proceedings are still pending. The Petitioners will get full opportunity to place before the Collector their contentions in the disqualification proceedings. Therefore, we are keeping open the said contention for advancing before the Collector.

22. One more objection of the Petitioners was that the Collector was moving in a very hasty manner for malafide purpose. The Respondent No.3-Collector has filed affidavit dated 3 March

2020 and contended that he has been appointed as Collector, Solapur vide order dated 16 January 2020 and he has taken charge of the said post on 20 January 2020. The impugned action in the present petition is dated 13 January 2020 and therefore the apprehension of the Petitioners that the Collector is acting in malafide manner and undue haste is no more relevant. In any case it is to be noted that Rule 7(14) of the Rules contemplate that the enquiry shall be conducted as early as possible and Rule 7(7) contemplates 90 days period for disposal and Rule 8(1A) specifies that the petition or proceedings under the said Rules shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the said case within a period of six months from the date of service of notice on the opponent. Therefore, no fault can be found with the manner of conducting of the inquiry by the Collector. There is, thus, no substance in the said contention.

23. In the light of above reasoning, there is no substance in the present petition and the same is dismissed with no order as to costs. Interim relief granted earlier stands vacated.

24. This judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(MADHAV J. JAMDAR, J.)

(S. C. GUPTE, J.)