

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

WRIT PETITION NO.11434 OF 2016

- | | |
|--|-----------------|
| 1. Shri. Kumar Gorakhnath Shinde |] |
| Aged about 30 years, Occ: Business, |] |
| R/at 254, Bony view Bungalow, |] |
| Mahabaleshwar, District – Satara. |] |
| 2. Shri. Sandeep Vasant Salunke |] |
| Aged about 40 years, Occ: Business, |] |
| R/at 445, Mari Peth, Mahabaleshwar, |] |
| District – Satara. |] |
| 3. Sou. Sangita Dattatraya Wadkar |] |
| Aged 38 years, Occ: Household, |] |
| R/at Shivprasad Bungalow, |] |
| Opposite Hotel Anarkali, |] |
| Mahabaleshwar, District – Satara. |] |
| 4. Sou. Surekha Prashant Aakhade |] |
| Aged 30 years, Occ: Household, |] |
| R/at 67, Ranjanwade, |] |
| Mahabaleshwar, District – Satara. |] |
| 5. Sou. Ujjwala Ratikant Toshniwaal |] |
| Aged 58 years, Occ: Household, |] |
| R/at 59, Dr. Sabne Road, |] |
| Mahabaleshwar, District – Satara. |] |
| 6. Leela Nandkumar Mankumare |] |
| Aged 38 years, Occ: Household, |] |
| R/at 17, Shri. Gurudatta Housing |] |
| Society, Mahabaleshwar, |] |
| District – Satara. |] |
| 7. Sou. Vimal Pandurang Parte |] |
| Aged 51 years, Occ: Household, |] |
| R/at 289, Mari Peth, Hotel Ashoka Inn, |] |
| Mahabaleshwar, District – Satara. |] |
| |]...Petitioners |

Versus

- | | |
|-------------------------------------|----------------|
| 1. The State of Maharashtra |] |
| 2. The Collector, |] |
| District – Satara, Satara. |] |
| 3. Shri. Dattatraya Maruti Bavlekar |] |
| Aged 65 years, Occ: Business |] |
| and Agriculturist, |] |
| R/at Hotel Sunny International |] |
| Majjid Road, Mahabaleshwar, |] |
| District – Satara. |] |
| 4. Mahabaleshwar Municipal Council, |] |
| Mahabaleshwar, District – Satara. |]..Respondents |

**ALONGWITH
WRIT PETITION NO.11557 OF 2016**

- | | |
|-------------------------------------|---------------|
| Shri. Prakash Ramchandra Patil |] |
| Aged about 52 years, Occ: Business, |] |
| R/at 74, Dr. Sabne Road, |] |
| Mahabaleshwar, District – Satara. |]..Petitioner |

Versus

- | | |
|--------------------------------------|----------------|
| 1. The State of Maharashtra |] |
| 2. The Collector – Satara |] |
| District – Satara. |] |
| 3. Shri. Dattatraya Maruti Bavlekar, |] |
| Aged 65 years, Occu: Business |] |
| and Agriculturist, |] |
| R/at Hotel Sunny International, |] |
| Majjid Road, Mahabaleshwar, |] |
| District – Satara. |]..Respondents |

**Mr. R. D. Soni i/by Mr. Siddharth R. Karpe for the Petitioners in Writ
Petition No.11434 of 2016.**

Mr. V. D. Patil for the Petitioner in Writ Petition No.11557 of 2016.

Mr. S. D. Rayrikar & Mr. S. H. Kankal, AGPs for Respondent Nos.1 and 2.

Mr. A. V. Anturkar, Senior Advocate i/by Mr. Prathamesh Bhargude for the Respondent No.3.

Mr. Dilip Bodake, for the Respondent No.4.

CORAM : R. M. SAVANT, J.

RESERVED ON : 15.12.2016

PRONOUNCED ON : 23.01.2017

ORDER

1 The above Writ Petitions principally take exception to the order dated 27.09.2016 passed by the Respondent No.2 herein i.e. the Collector, Satara, by which order, the disqualification application filed by the Respondent No.3 herein came to be allowed and the Petitioners above named came to be disqualified under Section 3(1)(a) of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as "the Disqualification Act"). In so far as the sole Petitioner in Writ Petition No.11557 of 2016 and the Petitioner Nos.1 and 5 in Writ Petition No.11434 of 2016, they were disqualified to be Councilors from 22.03.2012. In so far as the Petitioner Nos.2, 3, 5, 6 and 7, they were disqualified from 09.10.2012. The Writ Petitions also take exception to the orders dated 30.11.2015, 04.01.2016 and 20.01.2016 passed by the Respondent No.2 allowing application Exh.58 filed by Respondent No.3 and rejecting applications Exh.91 and Exh.104 to Exh.106 filed by the

Petitioners.

2 The facts necessary to be cited for adjudication of the above Petitions can in brief be stated thus :-

The general elections to the Mahabaleshwar Municipal Council were held sometime in December 2011. The Petitioners above named contested the said elections as “independent” candidates and were elected from the respective wards from which they contested. The Petitioners post the elections came together and formed an “Aghadi” (front) known as the “Mahabaleshwar Vikas Aghadi” by virtue of Section 63(2B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as “the Municipalities Act”). It seems that after the formation of the said Aghadi, the members of the said Aghadi chose Shri. Sandip Vasant Salunke i.e. Petitioner No.2 as the leader of the said Aghadi. The Petitioners on 02.01.2012 after complying with the requirements of the Municipalities Act made an application to the Respondent No.2 for registration of the said Aghadi. The Respondent No.2 sanctioned the registration of the said Aghadi on 05.01.2012 and thereafter the name of the Aghadi alongwith the names of the Petitioners as members of the Aghadi were published vide notification dated 18.02.2012 issued by the Respondent No.1. The

Petitioners thereafter have contested the elections to various subject committees between the years 2012 to 2015. The Petitioners were also elected as the Chairman of the respective subject committees. The Petitioners could contest the elections to the said subject committees in view of Section 63(2B) of the Municipalities Act.

3 The Respondent No.3 herein, who the Petitioners claim belongs to a political party, had filed an application before the Respondent No.2 for disqualification of the Petitioners under Section 3(1) (a) of the Disqualification Act inter-alia on the grounds which were mentioned in the said application and more especially in paragraph 6(J) of the said application. The Respondent No.3 in the said application had referred to certain instances which according to the Respondent No.2 were indicative of the fact that the Petitioners have voluntarily resigned from the membership of the said Aghadi and thereby have fallen foul of Section 3(1)(a) of the Disqualification Act. After the application was served upon them in terms of the procedure contemplated by the rules in question, the Petitioners filed their comments as contemplated by Rule 7(3)(b) of the Maharashtra Local Authority Members Disqualification Rules, 1987 (hereinafter referred to as the “Disqualification Rules”). The Petitioners in their said comments, it seems denied the case of the Respondent No.3 that they had voluntarily resigned from the membership

of the said Aghadi. The Respondent No.3 pending the adjudication of the said disqualification application preferred an application Exh.58. By the said application, the Respondent No.3 had prayed for disposal of the said Disqualification Application No.1 of 2015 on the basis of the admitted facts which were on record. The said application Exh.58 was therefore analogous to an application under Order XII Rule 6 of the Civil Procedure Code and the Respondent No.3 had therefore sought disposal of the disqualification application upon the admission of the Petitioners that they were “independent” as borne out by the application forms filled by the Petitioners whilst contesting the elections to the subject committees as also whilst recommending the name of one Nandkishor Durgaprasad Bhangadia as a nominated councilor to the Municipal Council. In response to the said application Exh.58, the Petitioners filed their reply to the said application which was numbered as Exh.67. In the said reply, the Petitioners questioned the maintainability of the said application preferred by the Respondent No.3. The Petitioners had sought to justify the mentioning of the word “independent” in the application form by stating that the said word “independent” was mentioned as regards their status at the time of contesting the general elections to the Municipal Council. This, the Petitioners had done in view of the requirement of the form prescribed for contesting the elections to the subject committees.

4 In so far as the application Exh.58 is concerned, the Respondent No.2 vide his order dated 30.11.2015 held that the said application was maintainable and consequently framed the preliminary issues which according to him were required to be tried. The Petitioners filed Exh.80 for permission to lead evidence which was rejected by the Respondent No.2 by order dated 30.11.2015. The Petitioners thereafter on 21.12.2015 filed application Exh.91 in the said disqualification application. By the said application, the Petitioners had sought from the Respondent No.3 the list of the witnesses along with the documents and also stated that they have already filed their written statement. The said information was sought from the Respondent No.3 in terms of Rule 6(B) of the Disqualification Rules. The said application Exh.91 filed by the Petitioners was rejected by the Respondent No.2 vide his order dated 04.01.2016. The Petitioners thereafter filed applications Exhs.104, 105 and 106. In so far as application Exh.104 is concerned, the Petitioners questioned the locus-standi of the Respondent No.3 to file the said Disqualification Application No.1 of 2015 and sought the dismissal of the said application on the ground that the Respondent No.3 did not have the locus-standi to file the said application. In so far as application Exh.105 is concerned, the Petitioners contended that there was no cause of action to the Respondent No.3 to file the said disqualification application and in so

far as application Exh.106 is concerned, the Petitioners had sought an opportunity to lead evidence in the said proceedings. The said applications Exhs.104, 105 and 106 came to be rejected by the Respondent No.2 by order dated 20.01.2016. The said rejection was principally on the ground that application Exh.58 filed by the Respondent No.3 was allowed and three preliminary issues were framed which would accordingly be tried. The Petitioners aggrieved by the said order dated 20.01.2016 filed Writ Petition No.1271 of 2016 in this Court. The said Writ Petition came to be disposed of by this Court by order dated 29.04.2016 by leaving the contentions of the parties open for being urged at the appropriate time.

5 The Respondent No.2 thereafter proceeded to adjudicate upon the said Disqualification Application No.1 of 2015 and has by the impugned order dated 27.09.2016 allowed the same. The gist of the reasoning of the Respondent No.2 is that the Petitioners by their conduct from the year 2012 in the matter of contesting elections to the subject committees for which elections, in the form filled by them they have described themselves as “independent” and in their conduct in the special general body meeting dated 09.10.2012 wherein they have proposed the name of Shri. Nandkishor Durgaprasad Bhangadia to the Municipal Council in their capacity as “independents” and as persons belonging to

the group of “independents”, the Respondent No.2 came to a conclusion that the Petitioners had voluntarily given up their membership of the Aghadi which they had formed after the general elections and in terms of Section 63(2B) of the Municipalities Act. The Respondent No.2 has referred to various judgments of this Court and the Apex Court in support of the conclusion that he has reached. As indicated above, the Respondent No.2 has disqualified the Petitioners from two different dates. One set of Petitioners, he has disqualified from 22.03.2012, whereas the second set of Petitioners have been disqualified from 09.10.2012. As indicated above, it is the said order dated 27.09.2016 passed by the Respondent No.2 as also the orders dated 30.11.2015 passed on Exh.58 and Exh.80, order dated 04.01.2016 passed on Exh.91 and order dated 20.01.2016 passed on Exh.104 to Exh.106 which are taken exception to by way of the above Petitions.

SUBMISSIONS ON BEHALF OF THE PETITIONERS BY THE LEARNED COUNSEL MR. V. D. PATIL AND MR. R. D. SONI :-

6 Both the Learned Counsel urged contentions in support of their case that the principles of natural justice have been violated by the Collector, Satara, i.e. the Respondent No.2 in passing the impugned order, on account of the non-compliance of the Rules as the Respondent No.2

has proceeded on the basis of Exh.58 and rejected the applications Exh.80, Exh.91 and Exh.104 to Exh.106 filed by the Petitioners thereby not permitting the Petitioners to file their written statement and lead evidence in support of their case. It was the submission of the Learned Counsel that the Petitioners had a justifiable reason for mentioning the word “independent” in the forms filled by them for contesting the elections to the post of the Chairman of the subject committees. It was their contention that the column in the said form required the candidates to mention as to in which capacity they had contested the general elections to the Municipal Council, which the Petitioners in the instant case had done as “independents”. The Petitioners had therefore not given up the membership of the Aghadi. It was also the submission of the Learned Counsel that opportunity to file the written statement was all the more necessary in view of the fact that though the Petitioners have been contesting elections to the post of Chairman of the subject committees from the year 2012, the disqualification application was filed by the Respondent No.3 only in the year 2015 i.e. after the earlier terms had got over and therefore the said disqualification Petition was suffering from delay and laches which was an issue which was required to be adjudicated upon by the Respondent No.2.

It was the submission of the Learned Counsel that the Rules

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are mandatory and non-compliance of the said Rule results in vitiating the order passed by the Collector, Satara. In support of the said contention reliance was sought to be placed on the following judgments of the Learned Single Judges of this Court :-

(I) 2009(5) ALL MR 678 in the matter of Sau Malti w/o Rajesh Yawalkar and another Vs. Sagar s/o Raghunathrao Kautkar and others.

(II) 2015(2)ABR 759 in the matter of Avinash Vs. The Divisional Commissioner and others and

(III) Unreported judgment of a Learned Single Judge of this Court dated 29.07.2016 in Writ Petition No.87 of 2016 in the matter of Sau. Sharda W/o Gopal Kalore Vs. The Collector, Buldana Collectorate, Buldana and others.

7 Per contra, it was the submission of Mr. A. V. Anturkar, Learned Senior Counsel appearing for the Respondent No.3 that the Collector was right in allowing the application Exh.58 filed by the Respondent No.3 and proceeding on the basis of the admitted facts on record. The Learned Senior Counsel would contend that the Rules being directory in nature and considering the facts on record, no opportunity

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for filing the written statement and to lead evidence was required to be granted to the Petitioners. The Learned Senior Counsel placed reliance on the judgments of the Learned Single Judges of this Court reported in 2011(5) ALL MR 270 in the matter of Balaji Ganeshrao Bacchewar Vs. Laxman Ganeshrao Tahkharwar and others and 2011(4) Bom.C.R. 41 in the matter of Sunil Supadu Mahajan Vs. Manoj Dayaram Choudhari and another.

It was the submission of the Learned Senior Counsel that since the Petitioners were permitted to submit their comments to the disqualification application filed by the Respondent No.3 which the Petitioners have done, the principles of natural justice cannot be said to be violated. It was the submission of the Learned Senior Counsel that the judgments relied upon by the Learned Counsel for the Petitioners holding the Rules to be mandatory are *per-incurium* in view of the judgment of the Apex Court dated 24.05.2011 in the matter of Jitendra Himmat Biraris Vs. Kiran and another. In the said judgment, the Apex Court after referring to the judgment in Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and others reported in (2004) 8 SCC 747 held that the Learned Single Judge of the High Court and the Division Bench of the High Court did not commit any error by deciding the Writ Petition and the Letters Patent Appeals on the premise that Rules

6 and 7 of the Rules are directory and non-compliance thereof is not fatal to the maintainability of the Petitions. It was also the submission of the Learned Senior Counsel that the Learned Single Judge in ***Sau Malti's*** case (*supra*) has erred in observing that the Supreme Court in the judgment reported in **2001(1) Mh.L.J. 312** in the matter of **Sadashiv H. Patil Vs. Vithal D. Teke** has held that the Rules are mandatory, when in fact the Apex Court in the judgment in ***Jitendra Biraris'*** case (*supra*) has held that the said judgment has no bearing on the interpretation of Rules 6 and 7 of 1987 Rules. Hence according to the Learned Senior Counsel the Learned Single Judge in ***Sau Malti's*** case (*supra*) has proceeded on an erroneous premise that the judgment of the Apex Court in ***2001(1) Mh.L.J. 312*** holds that the Rules are mandatory in nature.

This is in so far as submissions regarding compliance of the Disqualification Rules and whether the Disqualification Rules are directory or mandatory.

8 On behalf of the Petitioners strong reliance is placed on the Full Bench judgment of this Court reported in **2016(5) Mh.L.J. 436** in the matter of **Shah Faruq Shabir and others Vs. Govindrao Ramu Vasave and others** to contend that the Petitioners could not have been disqualified under Section 3(1)(a) of the Disqualification Act. It was

contended on behalf of the Petitioners that Post-Poll Aghadi formed under Section 63(2B) of the Municipalities Act as held by the Full Bench does not attract the provisions of the Disqualification Act. It was contended on behalf of the Petitioners that the Full Bench has held that the proviso to Section 63(2B) of the Municipalities Act cannot travel beyond the scope of the substantive portion of Section 63 itself and therefore does not come within the definition of “Aghadi” as mentioned in Section 2(a) of the Disqualification Act. It was contended on behalf of the Petitioners relying upon the finding recorded in para 55 of the Full Bench judgment that formation of Post-Poll Aghadi is only for the purposes of securing better representation in the various committees specified therein and it cannot be equated with an “Aghadi” or “front” under Section 2(a) of the Disqualification Act for the purposes of invocation of the provisions of the Disqualification Act.

9 Per contra, in so far as the said issue of applicability of the Disqualification Act to Post-Poll Aghadi formed under Section 63(2B) of the Municipalities Act is concerned, it was the submission of the Learned Senior Counsel Mr. A. V. Anturkar appearing on behalf of the Respondent No.3 that the judgment rendered by the Full Bench in ***Shah Faruq***'s case (*supra*) is in the facts of the case that was before the Full Bench. The Learned Senior Counsel would point out that before the Full Bench, there

was a disobedience of the whip issued by the leader of the Post-Poll Aghadi for the election to the President of the Municipal Council. It was the submission of the Learned Senior Counsel that in the said context the Full Bench has observed that the Post-Poll Aghadi has no relevance in so far as the elections to the post of President and Vice-President are concerned. The Learned Senior Counsel sought to question the answer rendered by the Full Bench to the question No.1 framed by it. The Learned Senior Counsel would contend that the effect of the legal fiction as contained in the proviso to Section 63(2B) of Municipalities Act has not been considered by the Full Bench in its proper perspective. In fact, it was the submission of the Learned Counsel that the judgment of the Full Bench is *per-incurium* since it has been rendered in ignorance of the law as propounded by the Apex Court in so far as legal fiction and its consequences are concerned. In support of the said proposition, the Learned Senior Counsel placed reliance on the following judgment of the Apex Court :-

(2015) 4 SCC 1 in the matter of K. P. Manu Vs. Chairman Scrutiny Committee for Verification for the Community Certificate.

10 The Learned Counsel would also contend that the judgment of this Court i.e. R. M. Savant, J in ***Sulbha Lokhande***'s case was also not

brought to the notice of the Full Bench. The Learned Counsel would contend that in **Sulbha Lokhande**'s case, this Court has held that the Post-Poll Aghadis or fronts can be said to be for the purpose of enabling such Aghadis to secure better representation in the various categories of the committees specified under Section 31-A but in view of the legal fiction created the rigors of the Disqualification Act cannot be said to be restricted only to the nomination to the subject committees. The Learned Senior Counsel further contended that the consequences of a legal fiction appearing in the proviso to Section 63(2B) of the Municipalities Act do not seem to have been urged before the Full Bench and as a result the Full Bench without considering the consequences of the legal fiction has held that the Post-Poll Aghadi cannot be equated with a Pre-Poll Aghadi and therefore the provisions of the Disqualification Act cannot be invoked. It was further the submission of the Learned Senior Counsel that the said issue assumes great importance having regard to the present day scenario, wherein Post-Poll Aghadis are formed by the Councilors for representation in the subject committees. It was the submission of the Learned Senior Counsel that the interpretation of the Full Bench militates against the very purpose and object of the Disqualification Act and since the purposive construction is required to be given to the said provision, it would necessarily have to be interpreted to mean that in view of the legal

fiction created a Post-Poll Aghadi has to be equated with a Pre-Poll Aghadi for the purposes of the Disqualification Act.

11 The Learned Senior Counsel relying upon the course of action adopted by a Learned Single Judge of this Court in Second Appeal No.411 of 1990 by order dated 16.10.2009 made a request that considering the importance of the issue to the present day scenario where Post-Poll Aghadis or fronts are formed day in and day out, the matter may be referred to the Hon'ble the Chief Justice to constitute a Larger Bench for considering the said issue, of the effect of the legal fiction as comprised in the proviso to Section 63(2B) of the Municipalities Act the Learned Senior Counsel as regards the effect of a legal fiction, relied upon the following judgments of the Apex Court :-

(I) **(2010) 8 SCC 612** in the matter of **Ittiamam and others Vs. Cherichi @ Padmini.**

(II) **(1989) 2 SCC 645** in the matter of **Builders' Association of India and others Vs. Union of India and others.**

(III) **(2003) 2 SCC 211** in the matter of **Bhavnagar University Vs. Palitana Sugar Mills Pvt. Ltd.**

12 Upon this, the Learned Counsel appearing for the Petitioners Mr. R. D. Soni would contend that it is not upon this Court to take a different view than the view taken by the Full Bench in *Shah Faruq*'s case (*supra*). It was the contention of Mr. R. D. Soni that since the issue has been answered, this Court would have to follow the Full Bench judgment and accordingly answer the said issue. The Learned Counsel however in so far as the scope and ambit of the legal fiction as comprised in the proviso is concerned, relied upon the following judgments of the Apex Court to justify the finding recorded by the Full Bench in so far as the proviso to Section 63(2B) of the Municipalities Act is concerned :-

- (I) *AIR 2007 SC 168* in the matter of *Paramjeet Singh Patheja Vs. ICDS Ltd.*

- (II) *AIR 2005 SC 34* in the matter of *Nandkishor Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan Dombivali and others.*

- (III) *AIR 1955 SC 661* in the matter of *Bengal Immunity Co. Ltd. Vs. State of Bihar.*

- (IV) *AIR 2000 SC 467* in the matter of *State of Maharashtra Vs. Laljit Rajshi Shah and others.*

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(V) *AIR 2006 SCC 1454* in the matter of *Dove Investments Pvt. Ltd.*
Vs. M/s. Gujarat Industrial Investments Corporation Ltd.

(VI) *(1979) 3 ALL ER 876* in the matter of *London and Clydeside*
Estates Ltd. Vs. Aberdeen District Council and another.

The aforesaid judgments lay down that in so far as the legal fiction is concerned, the purpose for which the legal fiction is created is the paramount consideration. In my view, the aforesaid judgments (supra) cited by the Learned Counsel Mr. R. D. Soni as regards the scope and ambit of a legal fiction need not be considered by this Court at this stage as the legal implications of the legal fiction have not been considered by the Full Bench. However having regard to the course of action which this Court proposes to follow, the said judgments can be relied upon by Mr. R. D. Soni at the appropriate time.

13 It was therefore the submission of the Learned Counsel Mr. R. D. Soni that the reference to a Larger Bench is not necessary and this Court is only required to answer the issue in terms of the judgment of the Full Bench and therefore the Respondent No.3 if aggrieved by the same, may carry the matter higher. The Learned Counsel placed reliance on the observation made by the Larger Bench i.e. Bench of 5 Learned Judges of

this Court in the matter of **State of Maharashtra Vs. Murar Rao** reported in **2009(6) BCR 496**.

14 In so far as the contention raised by the Learned Senior Counsel Mr. A. V. Anturkar that the matter is required to be referred to a Larger Bench is concerned, the said issue would be dealt with a bit later.

 However the first issue that is required to be considered is whether the impugned order is vitiated on account of the fact that the Disqualification Rules in question have not been followed by the Respondent No.2 in the matter of permitting the Petitioners to file their written statement and to lead evidence. In so far as whether the Rules in question are directory or mandatory, the said issue need not detain this Court in view of the judgment of the Apex Court in **Jitendra Biraris'** case (*supra*), wherein the Apex Court in terms has held that the Rules are directory and in which judgment the Apex Court relied upon the judgment in **Dr. Mahachandra Prasad Singh's** case (*supra*), wherein the Disqualification Rules were *pari-materia* as the Rules in the instant case, which Rules the Apex Court held to be directory. There is therefore merit in the submission of the Learned Senior Counsel appearing on behalf of the Respondent No.3 that the judgments of the Learned Single Judges of this Court holding that the Rules are mandatory can be said to be *per-*

incurium in the light of the judgment of the Apex court in ***Jitendra Biraris'*** case (*supra*). However assuming that the Rules in question are directory, the question which begs an answer is whether the Respondent No.2 was not required to follow a modicum of procedure. The answer obviously has to be in the negative. Inherent to our system is the adherence to the principles of natural justice and implicit in the said principles is the concept of fair play in the matter of adjudication of judicial proceedings. In the instant case, it is required to be noted that the Petitioners were contesting the elections to the subject committees since the year 2012 and were also elected as Chairman of the subject committees. The disqualification application was filed in the year 2015 seeking disqualification of the Petitioners from the year 2012. The said disqualification Petition was also founded on the fact that the Petitioners had individually described themselves as “independent” on two occasions i.e. whilst nominating Nandkishor Durgaprasad Bhangadia as nominated member of the Municipal Council and filling up the forms for elections to the subject committees as “independent”. The Petitioners can be said to have justifiable reason for describing themselves as “independent”, as the column in the said form required the Petitioners to give information as to which capacity they had contested elections to the Municipal Council. The Petitioners having contested the elections as “independent”

candidates had accordingly filled up the said column by describing themselves as “independent”. Hence whether on account of the requirement of the form, the Petitioners having described themselves as “independent” would attract the provisions of the Disqualification Act also begs an answer. Hence the Petitioners ought to have been given an opportunity to file their written statement and also lead evidence as the same would have been in compliance with the principles of natural justice. The Collector, Satara, though required to follow a modicum of procedure has not done so and proceeded on the basis of the procedure as contemplated by Order XII Rule 6 of the Civil Procedure Code i.e. decree on admission.

15 Now coming to the judgments relied upon by the Learned Senior Counsel in so far as this aspect is concerned, the judgment in ***Sunil Supadu Mahajan***'s case (*supra*) would not aid the Respondent No.3 that the procedure contemplated under Rule 7(5) was not required to be followed. The facts in the said case were such that the Learned Single Judge of this Court need not find any fault with the procedure adopted by the Divisional Commissioner in deciding the disqualification application itself without deciding the maintainability of the application which issue was raised on behalf of the Respondent therein.

Similarly, the judgment in **Balaji Ganeshrao Bachhewar's** case (*supra*) would also be of no assistance to the Respondent No.3, as in the said case the objection raised was that the application for disqualification was not duly verified. The Learned Single Judge found that the same would not invalidate the proceedings as the rule was directory in nature and the default in question was a curable defect.

16 In my view, having regard to the serious consequences that an application for disqualification would have for the Petitioners, a modicum of procedure was required to be followed by the Collector, Satara. Merely because the Rules can be said to be directory, the same would not mean that the procedure is virtually to be thrown to the winds. In my view, therefore, the impugned order is required to be set aside and the matter is required to be relegated back to the Collector, Satara, for a de-novo consideration.

17 However what this Court is required to contend with, is the reliance placed by the Petitioners on the judgment of the Full Bench of this Court in **Shah Faruq's** case (*supra*) to contend that the Disqualification Act is not applicable and the contra submission made on behalf of the Respondent No.3 that the Full Bench has answered the issue which arose before it for consideration without considering the

consequences of the legal fiction comprised in Section 63(2B) of the Municipalities Act. Hence, no useful purpose would be served by remanding the matter back to the Collector, Satara, as the issue would still remain whether the Post-Poll Aghadi can be equated with a Pre-Poll Aghadi or front under Section 2(a) of the Disqualification Act. This conclusion, this Court has reached in view of the fact that assuming the Collector once again decides against the Petitioners the issue would still remain of the applicability of the Disqualification Act to the Petitioners which the Full Bench has held is inapplicable to a Post-Poll Aghadi. Hence the applicability of the Disqualification Act to a Post-Poll Aghadi is the contentious issue in so far as a Post-Poll Aghadi is concerned.

18 It would therefore be appropriate to consider the request made by the Learned Senior Counsel appearing on behalf of the Respondent No.3 for reference of the issue to a Larger Bench. In so far as the Full Bench judgment is concerned, the reference to the Full Bench was made on account of the order passed by a Learned Single Judge of this Court, in which order the two issues which were required to be answered by a Larger Bench came to be formulated and which issues were to the following effect :-

“I Whether the terms aghadi or front as defined under section 2(a) of the Disqualification Act of 1986 would

mean the party or aghadi on whose candidature the councillor is elected or would also include the aghadi of two or more municipal parties coming into existence after the elections are held ?

II Whether the term original political party or aghadi appearing in Sec. 5 would mean the party at its National level or would mean a municipal party ?”

19 Before adverting to the facts before the Full Bench, it would be necessary to refer to Section 2(a) of Disqualification Act and Section 63(2B) of the Municipalities Act which for the sake of ready reference are reproduced hereinunder :-

Section 2(a) of the Disqualification Act

“2. In this Act unless the context otherwise requires,-

(a) “aghadi” or “front” means a group of persons who have formed themselves into party for the purpose of setting up candidates for election to a local authority;”

“63. Constitution of Subjects Committees of “A” and “B” Class Councils -(1) Each Subjects Committee of the Council appointed under the last preceding section shall consist of such number of Councillors as the Council may determine, so however, that the number of members of a Subjects Committee shall not be less than one-fourth or more than one-third of the total number of Councillors:

Provided that, in so determining the number of the members of any Subjects Committee, a fraction shall be ignored:

[Provided further that, on the Women and Child Welfare Committee, not less than seventy-five per cent of the members shall be from amongst women Councillors:

Provided also that, the Chairperson and the Deputy Chairperson on the Women and Child Welfare Committee shall be from amongst the Women Councillor members thereof.

Explanation.- For the purpose of computing the number of members at seventy- five per cent., fraction, if any, shall be rounded off to one.]

(2) [The Collector shall, within seven days of the election of the President under section 51,] call a special meeting of the Council for the purpose of,-

(a) determining the number of the members of each of the Subjects Committees referred to in the last preceding section, and the Subjects Committee of which the Vice-President shall be the ex-officio Chairman, and
(b) nominating Councillors on the Subjects Committees in accordance with the provisions of sub-section (2B)]:

Provided that, the President shall not be eligible for being a member of any of the Subjects Committees but he shall have the right to speak in, and otherwise to take part in the proceedings of, any Subjects Committee, except that he shall not be entitled to vote thereat.]

[(2A) The meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council, when presiding over a meeting of the Council has, but shall not have the right to vote.

[(2B) In nominating the Councillors, the Collector shall take into account the relative strength of recognised parties or registered parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Council after consulting the leader of each such party or group:

Provided that, nothing contained in this sub-section shall be construed as preventing the Collector from nominating on the Committee, any member not belonging to any such party or group:

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups, under this sub-section, the recognised parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members Disqualification Act, 1966 (Maharashtra XX of 1987), within a period of not more than one month from the date of notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a pre-poll aghadi or front.”

(Emphasis supplied)

20 The facts before the Full Bench were that the Petitioners therein were elected as Councilors of the Municipal Council, Navapur. The Petitioners were candidates of the Nationalist Congress Party i.e. (NCP). A Post-Poll Aghadi came to be formed consisting of 9 Councilors belonging to the NCP, 2 Councilors set up by the Bhartiya Janta Party (BJP) and 1 Councilor set up by the Shiv Sena, on 1st December, 2007. In terms of the provisions of the Disqualification Act, the Aghadi came to be registered by the Collector on 02.12.2007. The Respondent No.1 Govindrao informed the Collector that he is elected leader of NCP party as also of the Aghadi. The Respondent No.1 Govindrao came to be elected as the President of the Municipal Council for the term of two and

half years on 24.12.2007 with the support of the Councilors of the Aghadi.

21 It seems that on 18.06.2010, an application came to be presented by the Petitioners along with two others seeking approval to a separate group. A whip was issued by the Respondent No.1 on 18.06.2010 and also by the President of the Nandurbar District Nationalist Congress Party on 21.06.2010, calling upon the members of the Aghadi and members set up by NCP to cast their votes in favour of the Respondent No.1 during the election to the post of President which was scheduled to be held on 23.06.2010. The Petitioners violated the whip and a candidate belonging to the Indian National Congress (Congress I) was elected as the President and the Petitioner No.1 came to be elected as the Vice-President. An application was therefore filed by the Respondent No.1 for disqualification of the Petitioners under Section 3(1) (a) and 3(1)(b) of the Disqualification Act. The said disqualification Petition came to be allowed and the Petitioners were held to be disqualified under Sections 3(1)(a) and 3(1)(b) of the Disqualification Act. The said order of the Collector was assailed in the Writ Petition before the Learned Single Judge. It seems that in view of the contention raised before the Learned Single Judge to the effect that under the Disqualification Act, there is no concept of Post-Poll Aghadi after elections

that the issues referred hereinabove were formulated by the Learned Single Judge and were referred to a Larger Bench for being answered. The Full Bench as can be seen from its judgment has referred to the relevant provisions of the Disqualification Act as well as the Municipalities Act as also the judgments of this Court as well as the Apex Court. The Full Bench on such consideration has answered the issue No.1 by holding that the formation of a Post-Poll Aghadi under Section 63(2B) of the Municipalities Act is totally irrelevant and inconsequential for the purposes of election of President as also the election of the Vice-President under the Municipalities Act. The Full Bench has further held that the proviso to Section 63(2B) of the Municipalities would not be able to travel beyond the scope of the substantive portion of Section 63 itself. The Full Bench has thereafter concluded that it is clear that formation of such Aghadi or front is necessitated for the purposes of categories of subject committees specified therein and it cannot be said to be a Aghadi or front under Section 2(a) for the purposes of invocation of the provisions of the Disqualification Act. It is held by the Full Bench that the provisions of the Disqualification Act which are penal in nature shall have to be strictly construed and therefore there is little scope to hold that the term Aghadi or front specified in Section 2(a) of the Disqualification Act would include a Post-Poll Aghadi or front. Hence though a Post-Poll

Aghadi has the attributes of a Pre-Poll Aghadi, as it is required to be registered like a Pre-Poll Aghadi, the Full Bench has given it a cloak of informality.

22 A reading of the judgment of the Full Bench discloses that the consequences of legal fiction comprised in a statutory provision has not been considered by the Full Bench. The submission of the Learned Senior Counsel in that regard can be said to be well founded. In so far as a legal fiction is concerned, the following quote from the judgment of Lord Asquith J in East End Dwelling Co. Ltd. Vs. Finsbury Borough Council which can be said to be a locus classicus, is reproduced hereinunder :-

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

23 The said quote has been relied upon in various judgments of the Apex Court which have been referred to by the Learned Senior Counsel appearing on behalf of the Respondent No.3. However before the Full Bench, none of the aforesaid judgments were cited. Hence the

judgment of the Full Bench can be said to be *per-incurium* in view of the fact that the judgments of the Apex Court on the consequences of a legal fiction were not brought to its notice.

24 This Court in ***Sulabha Lokhande's*** case (*supra*), having regard to the legal fiction comprised in Section 63(2B) of the Municipalities Act and after considering the judgment of the Apex Court in ***Bhavnagar University's*** case (*supra*), wherein quote of Lord Asquith J in ***East End Dwelling Co. Ltd's*** case (*supra*) was referred to as also considering the other judgments of the Apex Court, held that in view of the legal fiction the rigors of the Disqualification Act cannot be restricted only to the nomination of the subject committees and the Disqualification Act would also apply in respect of other business conducted by the house.

25 In so far as Sub Section (2B) of Section 63 of the Municipalities Act is concerned, the same has been introduced in the year 2007 on account of the substitution of the original Sub Section (2B) by the present Sub Section. The manner in which the proviso to Sub Section (2B) has been worded, indicates that the legislature was very much conscious of the Disqualification Act, and this explains the existence of the non-obstante clause in the said proviso. This was required to be done in view of the fact that the Disqualification Act is prior in point of time

then the introduction of Sub Section (2B) which as indicated above was introduced in the year 2007. However the said aspect which has relevance to the interpretation of the proviso to Sub Section (2B) and especially the effect of the legal fiction has not been brought to the notice of the Full Bench and has therefore not been considered by the Full Bench.

26 It is required to be noted that Section 63(2B) of the Municipalities Act which provides for a Post-Poll Aghadi can be said to be an exception to the Disqualification Act in the matter of the Councilors from different streams coming together after the elections. Once the facility of having a Post-Poll Aghadi is taken benefit of, then the concomitant of the same i.e. application of the Disqualification Act would apply with all its rigors. There can be no gain saying of the fact that the object of the Disqualification Act is to prevent defection and thereby maintain the purity of the electoral process.

27 In so far as the proviso to Section 63(2B) of the Municipalities Act is concerned, it cannot be said that the proviso travels beyond the substantive portion of Section 63(2B) of the Municipalities Act. By a legal fiction comprised in the proviso, the Post-Poll Aghadi is kept on the same pedestal as a Pre-Poll Aghadi and the provisions of the

Disqualification Act resultantly become applicable. The legal fiction as is well settled creates an imaginary state of affairs which in the instant case results in Post-Poll Aghadi being treated as Pre-Poll Aghadi for the purposes of the applications of the Disqualification Act. The proviso with the legal fiction comprised in it, does not create or add a category to which the Disqualification Act is to be applied, the category undoubtedly remains one i.e. Pre-Poll Aghadi under Section 2(a) to whom the Disqualification Act applies. The Post-Poll Aghadi and the Pre-Poll Aghadi can be said to be the two sides of the same coin.

The question also arises whether the conclusion arrived at by the Full Bench that a Post-Poll Aghadi under Section 63(2B) cannot be equated with a Pre-Poll Aghadi under Section 2(a) is well founded, in view of the judgment of the Apex Court in Idnani's case. In the said case, the Apex Court in para 26 of the said judgment has observed that once an Aghadi is registered by a legal fiction enacted under the proviso such an Aghadi is treated as a Post-Poll Aghadi or front, though the Apex Court did not go into the effect of the declaration that once an Aghadi or front is registered the provisions of the Disqualification Act become applicable. The said finding of the Full Bench is therefore contrary to the observation made by the Apex Court in the said judgment.

28 For all the aforestated reasons, I am unable to persuade myself to accept the view of the Full Bench. I am conscious of the observations made by the Larger Bench in the case of ***State of Maharashtra Vs. Murar Rao***'s case (*supra*), however, I would be failing in my duty by not referring the matter to the Hon'ble Chief Justice for constituting a Larger Bench, considering the importance of the issue involved in the present day scenario where Post-Poll Aghadis or fronts are the order of the day. Hence without in any way being disrespectful to the judgment of the Full Bench, but purely with a view to give a quietus to a issue which this Court feels is of some public importance, I deem it appropriate to follow the course of action adopted by the Learned Single Judge in Second Appeal No.411 of 1990 and accordingly by invoking Rule 7 of the Appellate Side Rules the matter is referred to the Hon'ble the Chief Justice for constitution of a Larger Bench to consider the implications of the legal fiction as comprised in the proviso to Section 63(2B) of the Municipalities Act. Hence the Registry may place the papers before the Hon'ble the Chief Justice to consider constituting a Larger Bench as the Hon'ble the Chief Justice deems appropriate to consider the said issue.

[R.M.SAVANT, J]