

(1987) 05 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 28 of 1987

Amol alias Amolkumar Gajanan Naik	APPELLANT
Vs	
Director of Municipal Administration and Others	RESPONDENT

Date of Decision : 12-05-1987

Acts Referred:

Goa, Daman and Diu Municipalities Act, 1968 — Section 46(1), 46(3), 46(4)

Citation : (1987) 3 BomCR 721

Hon'ble Judges : G.F. Couto, J;G.D. Kamat, J

Bench : Division Bench

Advocate : S.G. Dessai and R.V. Kamat, for the Appellant; F.J. Colaco and Party-in-person, for the Respondent

Judgement

G.D. Kamat, J.—This petition bring to the fore section 46(c) of the Goa, Damn and Diu Municipalities Act, 1968 for short "the Act". That section reads :---

"46. Disqualification of Councillor during his term of office.---(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he---

(a)

(b)

(c) is professionally interested or engaged in any case for or against the Council;
or

(d)

and he shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant;

Provided that ---

(i) a Councillor shall not be disqualified under clause (c) if he is engaged for the Council without receiving any remuneration therefore or appears and conducts

his own case in a Court of law or before any authority under this Act against the Council irrespective of whether such a Councillor is a legal practitioner by profession or not;

(ii)

(2)

(3) In every case the authority to decide whether a vacancy has arisen shall be the Director. The Director may give his decision on receipt of the report of the Chief Officer under sub-section (2) or on his own motion or on an application made to him by a voter and such decision shall be communicated to the Councillor concerned, the Chief Officer and the applicant. Until the Director decides that a vacancy has arisen and such decision is communicated as provided above, the councillor shall not be deemed to have ceased to hold office.

(4) Any person aggrieved by the decision of the Director may within a period of fifteen days from the date of receipt of the decision of the Director by him, appeal to the Administrative Tribunal and the orders passed by the Administrative Tribunal shall be final :

Provided that no order shall be passed under sub-section (3) by the Director or under sub-section (4) by the Administrative Tribunal in appeal, against any Councillor without giving him a reasonable opportunity of being heard.

Explanation.---If any elected, co-opted or nominated Councillor were subject to any disqualification specified in section 16, at the time of his election, co-option or nomination, as the case may be, and continues to be so disqualified, the disqualification shall, for the purposes of this section, be deemed to have been incurred during the term for which he is elected, co-opted or nominated."

2. Before we come to the details of the facts on which the present petition is based or for that matter the basis on which the jurisdiction of the Director of Municipal Administration was invoked by the fifth respondent, it will be advantageous to understand and discern the scheme and object of the section in question. It maybe seen that the section comes into operation once the election is held and during the term of his office a Councillor is sought to be disqualified because he is professionally interested or engaged in any case for or against the Council. On a bare reading of this section it is clear that the section is of quasi penal nature and seeks to disturb the elected office of a representation of the people and being so, the interpretation of such quasi penal statute must be strictly done. The underlying policy of this section is that the object and purpose to be achieved is the purity of public life and viewed in that context it must be held that this section has been introduced in the Municipality Act so that there may not be a conflict between interest and duty. From a point of view of a Councillor who is professionally interested or engaged in any case for or against the Council, that Councillor is not permitted to misutilize his position as such to satisfy his professional interest which may be in conflict with the interest of the

Municipal Council and it is in this context that a bar has been imposed and the Councillor becomes disqualified and his seat is declared vacant.

3. Under sub-section (3) of section 46 the Director of Municipal Administration is the authority to decide whether a vacancy has arisen either on receipt of a report from a Chief Officer under sub-section (2) or on his own motion or on an application made to him by a voter. An appeal is provided against the decision of the Director of Municipal Administration to the Administrative Tribunal and it is needless to mention that there can be no such decision unless the Councillor concerned is given a reasonable opportunity of being heard in the matter.

4. The petitioner in this case is an Advocate by profession and he avers that he took Sanad in the year 1982 and started his professional career as an Advocate by firstly being a junior of Advocate J.F. Colaco and subsequently as junior of Advocate S.G. Dessai. He contested the elections held to the Panjim Municipal Council in May 1985 from Ward No. 5 and he was declared elected as a Councillor on 19th May 1985. His name was accordingly notified under sub-section (2) of section 20 of the Act vide Notification bearing No. 10/9/85-DMA/VOL.7/413 dated 24th May, 1985 duly published in the Government Gazette Series II, No. 9 at page 97 dated 30th May, 1985. The petitioner has been disqualified to hold office as a Councillors was convened. The petitioner has been disqualified to hold office as a Councillor under sub-section (c) of section 46 of the Act pursuant to an order made by the Director of Municipal Administration dated 7th March 1986 as also by its order dated 2nd January, 1987 made by the Administrative Tribunal in his appeal which while dismissing the appeal confirmed the order of the Director of Municipal Administration.

5. Having regard to the various arguments advanced and the findings rendered by the two authorities below it is of utmost importance to set out facts in detail. Aires Rodrigues the fifth respondent made a representation u/s 46 of the Act to the Director of Municipal Administration claiming it to be in the interest of the citizens of Panaji and as a vigilant citizen and demanded that the petitioner should be immediately disqualified as a Councillor of the Panjim Municipal Council. He alleged therein that the petitioner has been engaged in 6 cases filed against the Panjim Municipal Council in Civil Courts at Panaji, giving all the relevant particulars of those Civil Cases and at the same time filed certified copies of the complaints, roznamas etc. He then averred that the petitioner should have withdrawn his Vakalatnama before taking charge as a Councillor. He also referred that the petitioner though a Councillor appeared on behalf of the All India Stall Holders Association before the Collector and presented a caveat application on 26th November, 1985 and in paragraph 12 he mentioned that the petitioner being a Member files. Having said all this, according to him, the petitioner thus betrayed the interest of the Municipal Council and of the citizens of Panji by appearing against the Council in all those cases and, therefore, invoked the action u/s 46(c) of the Act.

6. At the relevant time one Mr. Bhatia was the Director of Municipal

Administration. On receipt of the representation of the fifth respondent a notice dated 17th December, 1985 was accordingly issued to the petitioner and also the Panjim Municipal Council to be heard in the matter in respect of the complaint thereof. The petitioner contested the matter by filing his affidavit-in-reply and for that matter the Panjim Municipal Council also filed its written statement. On hearing the parties the Director of Municipal Administration held that the petitioner has incurred disqualification u/s 46(c) of the Act and declared the petitioner's seat to be vacant and to be filled in by fresh elections. The petitioner did not succeed in the appeal which was decided by the Administrative Tribunal with the result the petitioner now lands in this Court under Articles 226 and 227 of the Constitution of India praying for quashing and setting aside these two orders of the authorities below.

7. The petitioner's case before the authorities below and presently in this petition and which is not disputed is that he was never professionally interested or engaged in any one case against the Municipal Council by accepting fresh briefs once he became a Councillor and that whatever 6 suits in which Vakalatnama had been filed as an advocate appearing for the plaintiff therein had been much prior to the elections held suggesting thereby that he did not accept any brief against the Council during his term as a Councillor once he was declared elected to the Council.

For the purpose of appreciation, in our view, we may make the position clear in relation to these 6 suits.

Coming to the 6 suits the position that emerges is : 1. Regular Civil Suit No. 160/1983/C is instituted by one Matias Afonso and another on or about 14-6-1983; 2, Regular Civil Suit No. 222/1983/B is by one Ratnakumar N. Virnodkar on or about 14-9-1983; 3. Regular Civil Suit No. 86/1984/D is by one Ulhas Narayan Pathakar on or about 16-5-1984; 4. Regular Civil Suit No. 90/1984/D is by one Shantibai Vinayak Naik and her husband on or about 19-5-1984; 5. Regular Civil Suit No. 105/1984/D is by one Govind B. Gauns on or about 14-6-1984 and 6. Regular Civil Suit No. 34/1985/B is instituted by one Janu Velingkar on or about 18-2-1985. In all these suits, needless to mention that the Panjim Municipal Council is the defendant and the petitioner was appearing as an Advocate for the plaintiff. In any event the petitioner had riled his appearance as a legal practitioner against the Panjan Municipal Council much prior to 18th May, 1985 the day on which elections were held and before the petitioner was elected as a Councillor.

8. According to the petitioner once he assumed the charge of his office as a Councillor the suit at Serial no. 1 for the first time came on board on 3rd July, 1985 for evidence and the petitioner moved an application for adjournment of the case which was granted by the Court and the suit was fixed accordingly for recording evidence on 4th September 1985. On 4th September, 1985 the suit was again called out in the Court but, however, as the Presiding Judge was busy in other matters the suit was adjourned to 19th February, 1986. There can be no

dispute as to what happened on 3rd July, 1985 and the 4th September, 1985 as the very roznama for these two dates shows this position but, however, according to the petitioner he wanted to withdraw his appearance in this case on 3rd July, 1985 itself but as the plaintiff No. 1 in the suit had not remained present personally in the Court and the petitioner having not indicated to his client his intention to withdraw, he was forced to seek an adjournment on that day. Petitioner's further case is that he did not appear on the next, adjourned date, that is, on the 4th September, 1985 and instead his colleague Advocate Durgaram Naik who is working in the same office of Advocate S.G. Dessai appeared on that day and in any event the suit got automatically adjourned.

The suit at Serial No. 2 came on board for trial on 25th June, 1985 and the roznama for that day reads; "Called out today. Plaintiff in person. Defendant represented by Advocate Colaco. Adjourned for lack of time to 1-10-85 at 10.30 a.m.". The roznama for 1-10-1985 reads : "Called out today. Plaintiff represent by Advocate A. Naik. Defendant absent. Adjourned for lack of time." The petitioner moved an application for withdrawal from the said suit and the same was granted.

The case at Serial No. 3 was fixed on 12-7-1985 for filing written statement by the defendant on which day an application was moved for withdrawal by the petitioner which was granted and the matter was fixed for 12-10-1985 and the petitioner never more appeared in that case.

The fourth case was fixed on 12-7-1985 for filing of draft issues on which day the petitioner moved an application for withdrawal which was granted.

The fifth case was fixed on 12-7-1985 for filing of draft issues on which day the petitioner moved an application for withdrawal, which was again granted.

The suit at Serial No. 6 was fixed on 4-7-1985 for filing the written statement on which day the matter was adjourned to 18-7-1985 as defendant's Counsel sought time to file written statement. On 18-7-1985 the defendants further sought time and the matter was posted to 20-8-1985 on which day the plaintiff himself appeared in person and the matter was adjourned for written statement on 24-9-1985 on which day the petitioner's colleague Shri Durgaram Naik appeared and that the petitioner did not appear in that case at any time after 18-7-1985.

Having regard to all these 6 suits and the averment that the petitioner never filed any caveat application before the Collector on behalf of the All India Stall Holders Association nor put in any appearance in the High Court, it has been contended by Shri S.G. Dessai, Counsel for the petitioner that section 46(c) is not attracted to the petitioner's case as petitioner did not accept any brief and that way became professionally interested or engaged in any case against the Council during the term of his office as a Councillor and, therefore, section 46(c) is not attracted and the petitioner is not entitled to be disqualified.

9. It is true that insofar as the 6 civil suits are concerned before the Civil Courts in which the petitioner appeared as an advocate for the plaintiff and considering the gravamen in the representation made by the fifth respondent that the petitioner had been representing the plaintiff as a legal practitioner much prior to elections were held to the Panjim Municipal Council, all these suits were admittedly, instituted before 18th May, 1985 and admittedly, therefore, the petitioner did not accept a single brief against the Council once he was declared elected but, however, the fact remains that the petitioner continued to be the advocate in the 6 suits even after he got himself elected as a Councillor to the Panjim Municipal Council. The argument that the petitioner did not professionally become interested or engaged in any case against the Council during his term of office as a Councillor and, therefore, section 46(c) cannot be invoked cannot be accepted. Having regard to the expression used in section 46(c) it is clear from the expression in section 46(c) that even when the Councillor who had accepted a brief as a legal practitioner prior to his election continues his engagement as an advocate after he gets elected would be sufficient to disqualify him. In our view, therefore, that only acquisition of new matters would attract section 46(c) to disqualify is misconceived inasmuch as the object of the section is that a Councillor once being elected must not be professionally interested or engaged in any case for or against the Council. Hence even when a Councillor is engaged prior to his election in a case must cease to represent his client once he is so elected and therefore, taking any view of the matter it is not possible to hold that because the petitioner was engaged in all these 6 suits prior to his election, therefore, he does not incur disqualification spoken to in section 46(c) cannot be accepted.

10. We well, however, come to the allegation against the petitioner that he represented the All India Stall Holders Association a little later in this judgment.

11. The Counsel for the petitioner next urged that the fact remains that the petitioner was representing the plaintiffs in the 6 suits much prior to his election and having not accepted a single brief once he got elected and having further regard to the fact that the petitioner withdraw from several suits, there was a clear intention on the part of this petitioner to withdraw from suits against the Council. It is urged that mere continuation of Vakalatnama or making an appearance in the suit against the Council cannot be taken against the petitioner and in a correct perspective what is important is the petitioner's intention. In this it is pointed out that petitioner wanted to put an end to his contract with his clients in the suits and, therefore, petitioner clearly intended to withdraw in each and every suit and this intention is clear from his conduct and viewed thus there is no question of disqualification of the petitioner as sought by the fifth respondent.

In this connection Shri Desai after strenuously urging before us pointed out that in Civil Suit Nos. 86/84, 90/84 and 105/84 at Serial Nos. 3, 4 and 5, the petitioner filed applications for withdrawal on the very first date and in Civil Suit

no. 222/83 he filed an application for withdrawal on the very second date after the election and in Civil Suit Nos. 160/83 and 34/85 the petitioner never appeared for the plaintiffs after a certain date and this according to Shri Desai is not disputed by the fifth respondent nor by the Panjim Municipal Council.

Insofar as this aspect of the matter is concerned it may be relevant to consider that Civil Suit Nos. 86/84, 90/84 and 105/84 came up on board for hearing on 12th July 1985, for the first time, much after the petitioner got elected as a Councillor and it is indisputable on this date that the petitioner filed applications for withdrawal from the suits and the Court permitted him to withdraw his appearance therein. Insofar as the Civil Suit No. 222/83 is concerned, it came up on board on 25-6-1985 and according to the roznama for that day plaintiff was present in person. The defendant represented by an advocate and the same was adjourned for lack of time to 1-10-1985. However, on 1-10-1985 the roznama says that the plaintiff was represented by an advocate Durgaram Naik (not the petitioner). The defendant absent. Adjourned for lack of time and it is on this date that the petitioner filed an application for withdrawal and it was granted. In Regular Civil Suit No. 160/83 it may be seen that it came up on board on 3-7-1985 for the first time after the petitioner got elected and the roznama shows that the parties were present through their advocates ; that advocate for plaintiff filed application for adjournment, which was granted and suit accordingly posted to 4-9-1985. On 4-9-1985 it is again mentioned that the parties are represented through their advocates and as the Presiding Judge was busy the matter was adjourned and posted to 19-2-1986. In this case the petitioner has never filed an application for withdrawal although the petitioner has made a statement in the petition that he has never appeared in the suit any time after 4-9-1985. Insofar as this suit is concerned the petitioner avers that the petitioner wanted to move an application for withdrawal on 3-7-1985 itself but the petitioner could not do so as the petitioner found that the plaintiff No. 1 in the suit was not present in the Court and as he had not given prior intimation to his client about his withdrawal from the suit, the petitioner could not have failed the plaintiffs but, however, he had orally informed the Judge about his intention to withdraw from the suit. Equally he mentions that on 4-9-1985 he never appeared in the Court and instead his colleague Advocate Durgaram Naik appeared. Coming to the last case being Civil Suit No. 34/85 it came up on board for the first time after elections on 4-7-1985, on which day the petitioner appeared for the plaintiff and the defendants" Counsel asked for adjournment for filing their written statement and the suit was accordingly posted to 18-7-1985. On 18-7-1985 petitioner again appeared for the plaintiff. Again the matter was adjourned for filing written statement to 20-8-1985. On 20-8-1985 plaintiff himself appeared in person as no advocate was present, the defendants" Counsel again asked for an adjournment, which was granted and matter posted to 24-9-1985. On 24-9-1985 the roznama says that the plaintiff was represented by Advocate Naik and as the defendants were absent, suit was ordered to proceed ex parte. The averment of the petitioner insofar as this suit is concerned is that

the petitioner never appeared after 18-7-1985 and reference to Advocate Naik in the roznama of 24-9-1985 is to Advocate Durgaram Naik and not the petitioner. On a survey of the 6 cases one thing that is clear to us is that the petitioner withdrew from 3 suits on the very first date of the hearing, that from the fourth suit he withdrew from the second date and in the other two suits he never withdrew his appearance although he did appear on some occasions. The argument on behalf of the petitioner that the fact that the petitioner withdrew from 3 cases, the petitioner for one reason or the other could not withdraw from the other 3 cases, on the very first day for some impediment or the other reflects a clear intention of the petitioner to withdraw from all suits cannot be accepted for more than one reason. If the petitioner really wanted to withdraw as he did in 3 cases, it was clearly incumbent for the petitioner to have filed the necessary application and sought Court's order to permit him to be out of the suits. The intention of the petitioner to withdraw from each and every suit must be specific and merely because he withdraws from some suits therefore, he intended to withdraw from other suits cannot be straight away accepted. It may be possible to accept that insofar as Civil Suit No. 222/83 is concerned the petitioner did not withdraw on the very first date and did it on the second date, namely 1-10-1985 as according to the petitioner he was not present in the Court on 25-6-1985, the first time the suit was called after his election and going by the assumption that, this action could be condoned yet it is not possible for us to comprehend as to how the petitioner's intention to withdraw could be relegated to Civil Suit Nos. 160/83 and 34/85. Even according to the petitioner till the date of filing of this petition the petitioner never withdrew from this suit although the petitioner states he never appeared therein after a particular date. The theory, therefore, of the petitioner's general intention of withdrawing from all the suits will have to be rejected and even taking a benevolent view in favour of the petitioner the question that really requires to be determined is whether the petitioner has put an end to his contract in each and every suit and if so, by what time instead of importing the intention of the petitioner to generally withdraw from all suits.

12. Having seen these facts, it has been next contended by the learned Counsel for the petitioner that though the petitioner put in an appearance on one date or the other in the various suits there was no tangible step taken nor any effective hearing took place in any of the suits and this being the position, mere appearance made by the petitioner ought not to attract section 46(c) of the Act and there is no question of disqualification of the petitioner. It is urged that having regard to the roznama in all the 6 suits it must be held in favour of the petitioner that there was no tangible step taken nor there was any effective hearing in any of the suits and the matters were just adjourned for one reason or the other. This argument has been advanced by the learned Counsel to suggest that in the absence of tangible step or effective hearing there could not have been any conflict between the interest of the Panjim Municipal Council and the professional interest of the petitioner or the interest of his client. Reliance has been placed on the decision of Lomeshprasad Hariprasad Desai Vs. The State of

Bombay, . For better appreciation of this reported case it may be relevant to refer to this case in greater detail. Elections to the Baroda Borough Municipality was held on 17-2-1954 and for which the nominations had to be filed by 19-1-1954. The opponent No. 2 filed his nomination and the scrutiny thereof was fixed for 20-1-1954. Lomeshprasad objected to the nomination of opponent No. 2 on the grounds that opponent No. 2 was in the employ of the Municipality in a case before the Civil Judge, (Senior Division), Baroda, being Suit No. 7/1952, having filed his Vakalatnama in that suit on 14-4-1952. The opponent No. 2 with a view to contest the elections, a day prior to the filing of the nomination applied to the Municipality for relieving him as its lawyer and the Municipality passed a resolution on the same day accepting his resignation but, however, the Chief Officer of the said Municipality intimated to the Court that the Municipality had relieved the opponent No. 2 as its lawyer from 18-1-1954 and this intimation was made on 27-1-1954. This was a case of disqualification for being elected to the Baroda Borough Municipality unlike the present case but, however, the facts are akin to some extent. The objection raised by Lomeshprasad was rejected and election took place in which the opponent No. 2 was declared elected. An election petition was filed by Lomeshprasad challenging the election of opponent No. 2 on the ground that he was disqualified to be elected as a Councillor by reason of the fact that he was in the employ of the Municipality as its lawyer. The Collector upheld the contention and set aside the election of opponent No. 2. The Government then intervened and set aside the order of the Collector which was challenged by Lomeshprasad before the High Court. The Division Bench which heard the petition rejected the same on the ground that opponent No. 2 had ceased to be the pleader of the Municipality on 18-1-1954 as opponent No. 2 submitted his application for relieving him as its lawyer and the Municipality had passed a resolution on the same day thereby negating the contention on behalf of Lomeshprasad that merely because the Chief Officer intimated the Court on 27-1-1954, cannot be the relevant date for holding that on the date of filing the nomination, that is 19-1-1954 the opponent No. 2 could be held to have incurred that disqualification. What made the Division Court to so hold is the fact that the employment is between the Municipality and the opponent No. 2 and when there was cessation of that employment no reliance could be placed on Order 3, Rule 4 of the CPC though it provided that every such appointment shall be filed in Court and shall be deemed to be in force until determined by writing signed by the client or the pleader, as the case may be. The Division Court observed that the CPC though regulates the procedure of all Civil Courts it does not in any way affect the substantive law between the employer and the employee and in order to decide whether the opponent No. 2 was in the employment of the Municipality or not the Court cannot look to the CPC but to the ordinary law which regulates the contract between master and servant and in that context it was held that inasmuch as the contract of opponent No. 2 was terminated on 18-1-1954 he was no longer in the employ of the Municipality and he suffered no disqualification to file his nomination on 19-1-1954. What, therefore, transpired is that mere continuation of the vakalatnama cannot be imported against the

legal practitioner to have incurred the disqualification and the real test being whether the legal practitioner was still in the employ of the employer and in that context it was held that the provisions of the CPC cannot determine the issue.

It is not possible to hold that no tangible step had been taken in all the 6 suits even when the petitioner appeared in those suits. At the most petitioner could be given benefit on this aspect of the matter in 4 suits. On 3-7-1985 in the absence of the plaintiff if the petitioner had not moved an application for adjournment the Suit No. 160/83 was liable to be dismissed under Order 9, Rule 8 of the Civil Procedure Code. Again Suit No. 34/85 was ordered to proceed ex parte as against the Panjim Municipal Council on 24-9-1985 as no one represented the Council on that day. These are certainly important and tangible steps in the suits and the petitioner being present at least admittedly on 3-7-1985 must be held to be professionally interested when he made that appearance. These facts are clearly distinguishable from facts in Lomeshprasad's case as the legal practitioner therein never made any appearance once he was removed by the Municipality.

13. Insofar as the present petitioner is concerned, he did not place on record any material to suggest that he intimated his clients that he would no more be available to them in the suits or that he communicated to his clients in writing that he has put an end to his contracts. All that the petitioner says is that he intimated orally to his client about the cessation of his contract and for one reason or the other he had to put in an appearance in Court. The finding of the authorities in this behalf is that the petitioner has not brought any material to render a finding in his favour that he effectively put an end to his contract in the suits and even from material placed before this Court it is not possible to accept that the petitioner had terminated his contract with the various plaintiffs in the suits filed against the Panjim Municipal Council. We are unable to disturb these findings of the Tribunal.

14. The Counsel for the petitioner however, argued that the petitioner has been elected to the Municipal council and insofar as his election is concerned there is nothing wrong with the same. He therefore, contends that once the people have expressed their Will and elected their representative having regard to very many decisions of the High Courts and the Supreme Court the result of the election must be upheld as far as possible and the elections are not to be easily disturbed. There is great force in the general propositions that elections are basic structure of democracy and once people have elected their representatives in an election the Courts must be slow in disturbing such elections and try as far as possible to uphold the Will expressed by the people. But it must be seen that no facts of two cases are alike and each case will have to be decided on its own merits. Mr. Desai relied upon the decision of the Supreme Court in *Madhukar G.E. Pankakar and another v. Jaswant Chobbildas Rajani and others*, reported in 1976 M.C.C. 171. A question arose in that case with regard to section 16(1)(g) of the Maharashtra Municipalities Act, 1965 as to whether the elections to the office of

President on the grounds of holding an office of profit was valid in law. The President elected had been an Insurance Medical Officer under the Employees State Insurance Act. It was held in that case that the doctor who was elected President of Bassein Council, though was Insurance Medical Officer under the Employee's State Insurance Act was not holding an office of profit under the Government. In the said authority various observations are made and it is on such observations that Mr. Desai places reliance. There are several observations made in that judgment with regard to the approach for interpreting statutes relating to elections and as far as possible to uphold elections rather than destroy the results of elections. In our view there is no necessity of extracting any of those observations as the propositions are well settled that in the matter of interpretation of election laws the approach should be to uphold elections rather than destroy the Will expressed by the people.

15. Mr. Desai next contended that from the facts involved relating to these suits once it is clear that the petitioner has withdrawn from 4 cases and did not put any appearance in the remaining two after certain dates, the act of the petitioner in not formally putting an application for withdrawal in Civil Suit Nos. 160/83 and 34/85 and not intimating his clients that he will not be any more available to them and will not represent them in their suits is an act of negligence on the part of the petitioner. In other words it is suggested that even if the conduct of the petitioner is found to be negligent, the petitioner can be held guilty for such negligence but cannot be disqualified u/s 46(c) of the Act. This argument is again Interconnected, according to Mr. Desai, with the petitioner's intention to withdraw from all cases. He urges that section 46(c) is not a punishing section for negligence and if the whole conduct of the petitioner is viewed in a proper perspective, even though the petitioner may be condemned for negligence, the petitioner cannot be disqualified as a Councillor. We do not see any merit in this argument. It is not the question of petitioner's negligence that comes into picture u/s 46(c). The real question being as we have set out earlier whether the petitioner put an end to his contract so that there may not be any conflict between the professional interest and duty.

This will be an appropriate occasion to refer to a decision of *Sakhawat Ali Vs. The State of Orissa*, . This was a case where a legal practitioner filed his nomination paper to contest the election of the Kendrapara Municipality but, however, his nomination paper was rejected by the Election Officer on the ground that he was employed as a legal practitioner against the Municipality in a case u/s 198 of the Bihar and Orissa Municipal Act. As against the rejection of the nomination paper he filed a writ petition before the High Court of Orissa praying for a writ or order of prohibition restraining the election Officer from holding elections to the Kendrapara Municipality. But that writ petition was rejected by the High Court. An appeal was taken to the Supreme Court and the challenge therein was that section 198 of the Bihar and Orissa Municipal Act which imposed a disqualification violated fundamental rights of a legal practitioner under Articles 14 and 19(1)(g) of the Constitution of India. While the challenge was rejected by

the Supreme Court in paragraph 9 the Court observed thus :---

"The classification here is of the legal practitioners who are employed on payment on behalf of the Municipality or act against the Municipality and those legal practitioners are disqualified from standing as candidates for election. The object or purpose to be achieved is the purity of public life which object would certainly be thwarted if there arose a situation where there was a conflict between interest and duty. The possibility of such conflict can be easily visualised because if a Municipal Councillor is employed as a paid legal practitioner on behalf of the Municipality there is a likelihood of his misusing his position for the purpose of obtaining municipal briefs for himself and persuading the Municipality to sanction unreasonable fees.

Similarly if he was acting as a legal practitioner against the Municipality he might in the interests of his client misuse any knowledge he might have obtained as a Councillor through his access to the Municipal records or he might sacrifice the interests of the Municipality for those his clients. No doubt having regard to the best traditions of the profession very few legal practitioners could stoop to such tactics, but the legislature in its wisdom thought it desirable to eliminate any possibility of a conflict between interest and duty and aimed at achieving this object or purpose by prescribing the requisite disqualification."

Though in the above case the employment of the legal practitioner against the Municipality was a disqualification itself to contest the election, in the present case the disqualification spoken to is after the elections are completed and during his term of office as a Councillor, that Councillor, becomes professionally interested or engaged in a case for or against the Council. But however, it must be seen that insofar as the object, scheme and underlying policy are concerned, they are the same in both the cases.

From what is extracted above from the passage of the judgment of the Supreme Court it is clear that the stress is purity in public life and there may not be a clash between the professional interest and the duty as a Councillor. This being the position, it is clear from the angle of purity in public life a Councillor cannot appear for or against the Council by becoming professionally interested or engaged in any case and, therefore, viewed from this angle once the petitioner made his appearance in suits against the Municipality after he got elected, it is just not possible to hold that there is no infraction of section 46(c).

16. After arguing the matter for a considerable time Mr. Dessai challenged the orders of the two authorities below on the ground of violation of the principles of natural justice. In that he contended that the Director of Municipal Administration decided the case on merits although the matter before him was argued merely on the point of maintainability of the representation made by the fifth respondent. According to Mr. Dessai the arguments that took place on 12-2-1986 were on the maintainability and not on the merits of the case filed by fifth respondent invoking action against the petitioner u/s 46(c). He next made a

grievance that though this point was raised before the Administrative Tribunal in the appeal filed by the petitioner, the same has not been met by the Tribunal and even on this score the matter needs to be remanded to the fact finding Court for deciding the case on merits. Since the point raised was going to the very root of the matter and since the petition was styled to be a petition for certiorari under Articles 226 and 227 of the Constitution of India, we called for the records and proceedings of the two authorities below. On examination of the file pertaining to the case before the Director of Municipal Administration we are satisfied that the petitioner's contention that the matter was never argued on merits and it was only argued on the point of maintainability on 12-2-1986 deserves no consideration and no consideration and has to be rejected.

The roznama for 12-2-1986 reads thus :---

"Shri Amol Naik, Councillor, Panaji Municipal Council alongwith his Advocate Shri Suresh Lotlikar were present. Petitioner Shri Iris Rodrigues was also present. Advocates Shri F.J. Colaco was present on behalf of Panaji Municipal Council.

2. Petitioner Shri Iris Rodrigues appeared in person. Advocate Shri Suresh Lotlikar appeared on behalf of Advocate Shri Amol Naik.

3. After hearing the petitioner and the respondent No. 1, Advocate Suresh Lotlikar, Advocate F.J. Colaco, respondent No. 2 submitted a written statement and was also heard verbally on points of law. Respondent No. 1 Advocate Suresh Lotlikar was requested to submit certified copies of applications for withdrawal of the cases from the Court. The certificates are to be submitted on or before 21-2-1-1986.

Sd/- .12/2

(Denghnuna)

Director of Municipal Administration

12-2-1986."

From the above it is clear that the petitioner's Counsel argued the matter and Advocate Colaco who was appearing for Panjim Municipal Council was only heard on points of law. The reason as to why Advocated Colaco was heard on points of law is further clear when one looks at the roznama of the proceedings before the Director on 27-12-1985 when Mr. Colaco had indicated that he would restrict his case only to points of law. The petitioner was also further given an opportunity to produce his additional documents which he did on 25-2-1986 and this is also clear from the roznama dated 25-2-1986. Having regard to the roznama it is just not possible to hold that the matter was not heard on merits on 12-2-1986 and it was restricted only to the maintainability of the complaint made by the fifth respondent. Apart from the sanctity of the record of the proceedings before the authorities not even an affidavit of the Counsel who appeared for the petitioner before the Director has been filed to suggest that the recording of the roznama is

erroneous or under a mistake. Going by the records of this case, therefore, we will have to hold that the matter was heard on merits and enough opportunity was provided to the petitioner as contemplated by the law.

17. Mr. Desai thereafter took up cudgels against the order of the Administrative Tribunal dated 7-3-1986. His first grievance is that the petitioner in support of his affidavit-in-reply had adduced evidence by filing 3 affidavits, one of Advocate Durgaram Naik and the other of two clients. He pointed out that while the Tribunal believed on the averments made by the fifth respondent, the Tribunal has failed to render a specific finding that the averments made by the petitioner and the 3 deponents of the affidavits are false. He, therefore, urges that in absence of such findings the impugned order of the Tribunal is vitiated and the matter ought to be, therefore, remanded to the Tribunal for fresh hearing to render findings in that behalf. He relied on the decision of Subhash Chandarnishat Vs. Union of India and Another, . This judgment is of a Division Bench of this Court, delivered by Kania, J., as then was in the matter of validity of evidence on affidavits. Having regard to the facts of the case it has been held that where affidavits are filed before an officer it would not be proper for him to arbitrarily reject them as incorrect and it further says that if an officer desires to challenge the correctness of such affidavits, he ought to call the deponents for being cross-examined for testing the averments made by them. This was a case where the dispute was whether certain items were cosmetics and toilet preparations and exigible to duty under Item 14-F of the First Schedule to the Central Excises and Salt Act, 1944. The question was as to how certain products were known in trading circles and treated as cosmetics. It is needless to mention that there was no material before the taxing authority to hold otherwise than what was deposed to in the affidavits and in the context of rejection of the evidence coming from one side in the peculiar facts of that case, the Division Bench held that when the officer was not accepting affidavits as to how the two products were accepted in trading circles the rejection of such affidavits was held to be erroneous and it was further held that the officer was bound to have called the deponents of the affidavits for cross-examination or test the averments made by them by any other means open to him. The Counsel for the petitioner thereafter brought to our notice that once the petitioner had filed his affidavit-in-reply to the complaint filed by the fifth respondent and duly supported by three affidavits, it was incumbent upon the Director of Municipal Administration to have decided to hold an inquiry into the matter and could not have restricted the whole controversy relating to the disqualification and subsequent declaration of the seat to be vacant on mere arguments. In this connection he also invited our attention that a prayer was made in the affidavit-in-reply that an inquiry be held by the Director of Municipal Administration. This grievance of the petitioner is again misplaced firstly because there was no prayer in that behalf in the affidavit-in-reply. All that the petitioner prayed was that if the Director of Municipal Administration should think it fit to hold an inquiry he should do it and in that event the petitioner should be given an opportunity to lead evidence. There is no

prayer by the petitioner that he be permitted to lead evidence and for that reason the Director must hold the inquiry. Apart from this there is nothing on record to suggest that at any time during the hearing of the matter the petitioner did make such request.

18. Mr. Desai then contended that the Tribunal is in error in holding that no inquiry is contemplated u/s 46(c) of the Act which according to him is erroneous having regard to the very section. There is considerable merit in the submission of Mr. Desai and we fully agree with him that the Tribunal has erroneously held that no inquiry is contemplated for disqualifying a Councillor u/s 46(c). We fail to understand as to how the Tribunal has said so. Proviso to sub-section (4) of section 46 clearly says that no order shall be passed under sub-section (3) by the Director or by the Administrative Tribunal in appeal against any Councillor "without giving him a reasonable opportunity of being heard." In our view, therefore, if the party before the Director of Municipal Administration seeks an inquiry since the matter relates to disqualification such request ought to be acceded to and there is no prohibition for an inquiry. On the contrary the reasonable opportunity of being heard would embrace in it an inquiry provided however it is sought by any of the parties thereto.

19. However, the grievance of the petitioner insofar as he never represented the All India Stall Holders Association is liable to be accepted. Firstly it must be seen that in his representation the fifth respondent made vague allegation in that behalf against the petitioner. Even when the fifth respondent made a grievance about the petitioner having appeared in High Court on behalf of the All India Stall Holders Association, he made that grievance based on a report appearing in newspaper. It is common knowledge that newspaper reports cannot be relied upon nor the fifth respondent adduced any evidence that in reality petitioner appeared in any matter in the High Court. The fifth respondent also did not adduce any evidence that the petitioner filed a caveat application before the Collector and in this view of the matter it is difficult to accept that petitioner had represented that Association in any litigation. There is another way of looking at this. It appears as it was made clear to us by Mr. Colaco on behalf of the Panjim Municipal Council that the case of Panjim Municipal Council and the All India Stall Holders Association was common and not going counter to each other. He mentioned that the Municipality had created leases of certain Municipal lands in favour of that Association for erecting some stalls. Viewed in this fashion it will be difficult to hold that even if petitioner did any act on behalf of the Association, it was for or against the Council and in any event it cannot be said that there could have been conflict between the interest of the Association and the Municipal Council.

20. Having dealt with the petitioner's case we will now make a brief reference to what was canvassed by Mr. Colaco, learned Counsel for the respondent No. 6 Panjim Municipal Council. In all fairness to the learned Counsel at the outset it must be stated that he made his position clear that he is not siding with the

petitioner and restricted his arguments only to question of law arising from the facts of the case. It must be said in favour of the learned Counsel for the Panjim Municipal Council that he put up his case on behalf of the Council very fairly though the fifth respondent who appeared in person without the assistance of a lawyer accused the Panjim Municipal Council of being in collusion with the petitioner. We are unable to hold that the Panjim Municipal Council acted in collusion with the petitioner in supporting the petitioner's case. Mr. Colaco made general submission that section 46(c) is a penal provision and therefore such provision must be construed strictly because it imposed disqualification. In this connection he places reliance on *S.S. Yusuf Vs. Rex*, ; *Attorney General v. Horner* (1886)14 QBD 245 ; *Martand Jiwaji Patil and another v. Narayan Krishna Gumast Patil and others*, reported in AIR 1939 Bom. 305 ; *Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another*, ; *Tirath Singh Vs. Bachittar Singh and Others*, ; *Shri Banwari Dass Vs. Shri Sumer Chand and Others*, ; *Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others*, ; *Sheopat Singh Vs. Ram Pratap*, ; *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, ; *Karbhari Bhimaji Rohamare Vs. Shanker Rao Genuji Kolhe and Others*, ; *Sakhawat Ali Vs. The State of Orissa*, . Besides he relied on Interpretation of statutes by Maxwell 11th Edition page 275-276. There could be no dispute on the general proposition that strict construction of legal provisions imposing disqualification or disability must be put on or that statutes taking away public rights are required to be strictly construed. He also argued that having regard to these facts the petitioner's formal appearance in the courts without doing anything effectively in suits must be viewed in the context of the petitioner's duty to his clients. Mr. Colaco naturally pointed out this to say that no pleader can disown his client merely because he got elected as a Councillor in the absence of proper notice for according to him the petitioner had great responsibilities as the Courts are empowered even to dismiss the suits if neither the party nor the pleader is present in Court. He also mentioned that leave to terminate the contract is necessary. In the matter of these arguments Mr. Colaco relied upon a number of authorities to which reference, in our view, is not necessary. As held by the Courts a pleader has a tripathy duty one to the Court, the other to the client and the third to the public. Once we have sufficiently addressed to the facts of this case there is no question of multiplying authorities. We can only record that Mr. Colaco in fact rendered great assistance to us.

21. The Administrative Tribunal in the impugned judgment has held that when the petitioner filed his affidavit-in-reply in the proceedings before the Director of Municipal Administration on 31-12-1985 the same is required to be treated as a mere reply and not as an affidavit filed by the petitioner on the ground that it has not been duly sworn in by the petitioner. Mr. Desai made a grievance of this and contended that the affidavit-in-reply, which is in the form required, was duly signed by the petitioner before the Director of Municipal Administration and since the Director was a quasi judicial authority to decide about the disqualification of the petitioner merely because the Director failed to make his endorsement the

Tribunal has fallen in error in holding it as a reply and not giving it the value of an affidavit. According to Mr. Dessai the Tribunal has rejected very many averments made by the petitioner merely because the purported affidavit-in-reply was not verified before the authority and if the Tribunal were to hold it as an affidavit on behalf of the petitioner, the Tribunal Could have held in favour of the petitioner and accepted his cessation or termination of his contract and perhaps the Tribunal would have allowed the appeal of the petitioner. It is true that the petitioner had filed his affidavit-in-reply and after having signed it filed before the Office of the Director of Municipal Administration on 31-12-1985, but, however, Mr. Dessai is not right when he says that the petitioner signed that affidavit in presence of the Director of Municipal Administration leaving it for that Director to make the necessary endorsement that it was duly sworn before him. Factually the position is entirely different. The roznama for 31-12-1985 reads :---

"Shri Amol Naik respondent No. 1 filed his affidavit in reply to day. Advocate for respondent No. 2 also filed a written statement.

R.K. Bhatia (on leave)

Director of Municipal Administration."

From the above it is clear that the affidavit in-reply was filed in the office of Director of Municipal Administration when the Director of Municipal Administration was on leave. With a view to find out what it is we took pains to go through the file and it reveals that Mr. R.K. Bhatia who was the Director of Municipal Administration went on leave prior to 31-12-1985 and on the expiration of his leave joined some other post straight away. Mr. Denghnuna was appointed as Director of Municipal Administration in place of Mr. Bhatia by an order in the name of Administrator of Goa, Daman and Diu dated 20-1-1986 and that is how on assumption of charge he issued fresh notices to the parties on 31-1-1986. It is, therefore, clear that the affidavit-in-reply was not signed before the Director of Municipal Administration and in that context the Tribunal could be held to be correct when it treated it as a mere reply. There is no doubt some justification for Mr. Dessai to contend that this was a hypertechnical objection and we will concede in favour of the petitioner on this aspect. It is not known as to how the Tribunal could have missed the roznama dated 31-12-1985 when affidavit-in-reply was taken on record by the Director of Municipal Administration when admittedly he was on leave. It is not necessary to emphasize that the office of the Director of Municipal Administration is not like a Court that anybody on his behalf could have taken that affidavit-in-reply as the section clearly refers to the authority to decide disqualification to be the Director of Municipal Administration. Considering for a moment that neither a Court nor a Tribunal would ever work out injustice to a party, in fairness the Tribunal could have allowed the petitioner to make the deficiency good and allowed the petitioner to swear that affidavit and once when the Director of Municipal Administration was on leave on the date on which it was filed. The Tribunal not having done so, the question is whether we could adopt such course and we do not find any difficulty

in doing so but, however, there is no need of doing the same as in our view even treating the petitioner's reply as if it is an affidavit duly sworn it does not advance the case of the petitioner in any manner as several facts are not disputed and we, therefore, refrain from doing so. From all the discussion above it is clear that the petitioner failed to terminate his contract with his clients and as rightly held by the authorities below he did not adduce any satisfactory evidence for not having done so. Even taking a benevolent and large view in favour of the petitioner and having regard to the fact that the petitioner has been engaged in 6 suits prior to his election the fact remains that the petitioner did not withdraw his Vakalatnama in Suits Nos. 160/83 and 34/85 and, therefore, his engagement continued. Even if it is accepted that he has withdrawn at the earliest in other suits as rightly pointed out by the Supreme Court in *Sakhawat Ali Vs. The State of Orissa*, the whole object and purpose is the achievement of purity of public life which object would certainly be thwarted if there arose a situation where there was a conflict between interest and duty, because if a Municipal Councillor is employed as a paid legal practitioner on behalf of the Municipality or when he is appearing against Municipality, there is likelihood of his misusing his position with the knowledge that might acquired as a Councillor and in that he may sacrifice the interest of the Municipality for those of his clients. The Legislature clearly desires to eliminate any possibility of such conflict and hence enacted section 46(c). We are therefore, unable to grant any relief to the petitioner. In this view of the matter the petition fails. The rule is discharged. However, the parties are left to bear their own costs.