

(2013) 05 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No's. 7124 and 7125 to 7126 of 2013

Chamanbhai Maganbhai Vinzula and Another APPELLANT
Vs

D.H. Brahmbhatt - I.A.S. The Designated Authority and RESPONDENT
Secretary and Others

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 3 GLR 2233

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : B.M. Mangukiya and Ms. Bela A. Prajapati, for the Appellant; Nisha Thakore, A.G.P. for Respondent No. 1 in Spl. C.A. Nos. 7124 and 7126 of 2013, Ms. Shruti Pathak, A.G.P. for Respondent No. 1 in Spl. C.A. No. 7125 of 2013 and C.B. Upadhyay, for the Respondent

Judgement

Harsha Devani, J.—By these petitions under Art. 226 of the Constitution of India, the petitioners have challenged the common order dated 15th April, 2013 passed by the respondent No. 1-Designated Officer whereby the application made by the petitioners for restraining the second respondents in each of the petitions from taking part in any meeting of the Corporation be it General Board and/or any Committee or Sub-Committee in any manner whatsoever including the meeting scheduled to be held on 17th April, 2013 has been rejected. Since the controversy involved in each of these petitions is common, the same were taken up for hearing together and are disposed of by this common judgment. For the sake of convenience, reference is made to the facts as appearing in Special Civil Application No. 7124 of 2013. The facts as averred in Special Civil Application No. 7124 of 2013 are that the Gandhinagar Municipal Corporation (hereinafter referred to as "the Corporation") came to be constituted under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the B.P.M.C. Act"). The Corporation comprised of thirty-three Councillors and the elections were held on 21st April, 2011. Both, the Indian National Congress (hereinafter referred to as "the Congress") as well as the Bharatiya Janata Party

(the party in power in the State of Gujarat), set up their official candidates in the said election. Eighteen candidates set up by the Congress got elected whereas fifteen candidates set up by the Bharatiya Janata Party (hereinafter referred to as "the B.J.P.") also got elected. The first petitioner is stated to be the leader of the Congress in the Gandhinagar Municipal Corporation whereas the second petitioner is the President of the Gandhinagar City and Congress Committee. The first meeting of the newly elected councillors was convened on 7th May, 2011 wherein one Mr. Subhashbhai Laxmanbhai Pandav, the second respondent, who was elected from Ward No. 3, was elected as Corporator of the Corporation. After assuming charge as Corporator of the Gandhinagar Municipal Corporation, the respondent No. 2 herein remained loyal to the Congress, however, subsequently he changed his loyalty and joined hands with the B.J.P. on 2nd November, 2012 and since then has become a member of the said party. Since the second respondent had defected from the Congress since about six months and had joined the B.J.P. and was supporting the same, according to the petitioners, he had incurred disqualification on the ground of defection under the provisions of the Gujarat Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as "the Act"). The petitioners preferred an appeal being Appeal No. 9 of 2012 before the respondent No. 2-Designated Officer under Secs. 3, 4 and 5 of the Act. However, since the petitioners had not complied with the requirement of sub-clauses (iv), (v) and (vi) or Rule 6 of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987 (hereinafter referred to as "the Rules"), the respondent No. 1 dismissed the appeal preferred by the petitioners vide order dated 9th January, 2013.

2. The General Meeting of the Executive Committee of the Gandhinagar Municipal Corporation was scheduled to be convened on 19th February, 2013 at 2-30 p.m. in the meeting hall of the Gandhinagar Municipal Corporation. The petitioner No. 2 had served a copy of the whip, viz., Order 1 and Order 2 to the Secretary of the Gandhinagar Municipal Corporation vide communication dated 18th February, 2013. Such mandate was also served upon the second respondents in each of the petitions. Accordingly, the said respondents were mandated to vote in favour of the Budget passed in the Standing Committee as per the orders of the first petitioner and to vote against the Budget presented by the Commissioner. It appears that the second respondents in Special Civil Application Nos. 7124 and 7125 of 2013 accepted the whip issued by the President whereas the second respondent in Special Civil Application No. 7126 of 2013 who was elected as Mayor refused to accept the whip. Subsequently, in a meeting convened on 19th February, 2013, the second respondents in Special Civil Application Nos. 7124 of 2013 and 7125 of 2013 also acted against the whip issued by second petitioner, and therefore, according to the petitioners, they had incurred disqualification under the provisions of the Act.

3. The petitioners, therefore, forwarded a communication dated 5th March, 2013 to the designated officer informing him that the general meeting of the Executive

Committee of the Gandhinagar Municipality was held on 19th February, 2013 at 2-30 p.m. and that the second respondents in each of the petitions were mandated by the whip of the second petitioner, however, they had disobeyed such mandate and the party had not condoned the said act of the respondents, hence, the needful be done. Since, it is the case of the petitioners that the second respondents had defected and willfully disobeyed the mandate, three separate appeals came to be filed before the designated officer, which came to be registered as Appeal Nos. 7 to 9 of 2013 wherein notices have been issued and the proceedings are still pending. During the pendency of the proceedings, the Mayor called a meeting of the General Board of the Corporation for election of six members of the Standing Committee since those six persons were retiring and the meeting was scheduled to be held on 17th April, 2013. It was the case of the petitioners that the second respondents who wanted to take part in the said election of six Councillors, if permitted, would harvest the benefit of their own wrongs, and therefore, they moved applications for interim direction before the designated officer to restrain the second respondents from functioning as Councillor of Gandhinagar Municipal Corporation and from taking part in any meeting of the Corporation, be it the General Board and/or any committee or sub-committee, in any manner whatsoever including the meeting scheduled to be held on 17th April, 2013. However, by the impugned order dated 15th April, 2013 the said application came to be dismissed by the designated officer which has given rise to the present petitions.

4. Vehemently assailing the impugned order, Mr. B.M. Mangukiya, learned Counsel for the petitioners drew the attention of the Court to the provisions of Sec. 3 of the Act to submit that by virtue of the said Section, a member belonging to any political party shall be disqualified for being a councillor or a member if he has voluntarily given up his membership of such political party or if he votes or abstains from voting in any meeting of a Municipal Corporation or panchayat or as the case may be, municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party and that such voting or abstention has not been condoned by the political party within fifteen days from the date of such voting or abstention. It was submitted that in the present case, the second respondents have defected from the Congress before about six months and joined the B.J.P. and are also supporting the same and as such have incurred disqualification on the ground of defection. It was urged that if the second respondents are permitted to take part in the meeting and permitted to cast their votes, the members would be elected in the said Committees and the very mischief which is sought to be eradicated by the Act would get further fortified since the vote of such persons are tainted and as such they cannot be permitted to cast their votes. The attention of the Court was drawn to the Statement of Objects and Reasons of the Constitution (Fifty-second Amendment) Act, 1985 to point out that the Act has been framed as the evil of political defections has been a matter

of national concern. It was found that if it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. It is with this object that the amendment has been brought about in the Constitution whereby a member who has been elected as a candidate set up by a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting contrary to any direction of such party or is expelled from such party. It was submitted that in the facts of the present case, it is evidently clear that the requirements of Sec. 3 of the Act have been duly satisfied, inasmuch as, the second respondents in each of the petitions have defected from the party for a period of more than six months and have disobeyed the whip and such conduct of the respondents has not been condoned by the party. It was submitted that the proceedings for disqualification that are initiated by the petitioners would take some time. In the meanwhile, if the second respondents are permitted to act as councillors, they would take the benefit of their own wrong and would vote in favour of the mandate of the opposite party, and thereby, create a situation which would be fait accompli. It was accordingly urged that the designated officer was not justified in rejecting the application made by the petitioners seeking to restrain the second respondents from acting as councillors and taking part in the proceedings of the Corporation. The learned Counsel placed reliance upon the decision of the Supreme Court in the case of *A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another*, for the proposition that although the Statement of Objects and Reasons contained in the Bill leading to enactment of the particular Act cannot be made the sole basis for construing the provisions contained therein, the same can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The Statement of Objects and Reasons can also be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by the enactment of the particular Act or for judging reasonableness of the classification made by such Act.

4.1. It was argued that two issues arise in the present case namely, as to whether there is any prohibition under the Statute which prohibits the designated officer from passing any order of restraint, and secondly, as to whether the second respondents can be permitted to perpetuate the wrongs committed by them and cast votes in the election. It was submitted that the doctrine of implied power is required to be read into the provisions of Sec. 6 of the Act, inasmuch as, when power is reposed in the authority to decide on the question of disqualification, all consequential powers are also reposed. In support of such submission, the learned Counsel placed reliance upon the decision of the Supreme Court in the case of *Savitri Rawat Vs. Govind Singh Rawat*, wherein the Supreme Court while considering the power of the Magistrate under Sec. 125

of the Code had held that it is the duty of the Court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under Sec. 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is common that applications under Sec. 125 of the Code take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under Sec. 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the Court. Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. Whenever anything is required to be done by law and it is found impossible to do that thing, unless something not authorised in express terms be also done, then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case, however, would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.

4.2. Reliance was also placed upon the decision of the Supreme Court in the case of *Deoraj Vs. State of Maharashtra and Others*, for the proposition that an order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the Court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the Courts leaning not in favour of maintaining status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. It was further held that situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. However, in such cases, the availability of a very strong prima facie case - of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end, the Court would not be able to vindicate the cause of justice. It was accordingly urged that in the facts of the present case, the petitioners have made out a strong prima facie case and that not granting the interim relief would do violence to the ends of justice resulting in injustice being perpetuated, inasmuch as, the respondents herein though having

incurred disqualification by their conduct, would be permitted to vote in the elections, and thereby, an irreversible situation would be created. Thus, the respondents would benefit from their own wrong and as such, the designated officer was not justified in not entertaining the application. It was further submitted that the designated officer has rejected the application on the ground that the interim relief granted is in relation to the provisions of the B.P.M.C. Act, and as such, the designated officer does not have any such power to prevent proceedings under the B.P.M.C. Act. It was submitted that the petitioners did not seek any action to be taken under the provisions of B.P.M.C. Act, but to restrain the respondents from acting as councillors in view of the fact that they had incurred disqualification under Sec. 3 of the Act. It was urged that if the respondents are permitted to vote at the election, there would be nothing left at the end of the proceedings. It was pointed out that the matter had been fixed for hearing on various dates and that on each date, the matter was adjourned for some reason or the other and that till date the second respondents have not filed their replies. Drawing the attention of the Court to Rule 8 of the Rules, it was pointed out that by virtue of the said rule, the designated officer is required to endeavour to determine the question referred to him within two months from the date on which the petition is made under Rule 6, whereas in the facts of the present case, despite the fact that two months are almost over, the proceedings have not gone any further. Thus, on the one hand, the second respondents are not proceeding further with the proceedings under Sec. 6 of the Act and on the other hand, seek to exercise powers as councillors.

4.3. Reliance was placed upon the decision of the Supreme Court in the case of Tata Power Company Ltd. and Another Vs. Reliance Energy Ltd. and Others, and more particularly, Paragraphs 89, 93 and 100 thereof. The decision of the Supreme Court in the case of P. Nirathilingam Vs. Annaya Nadar and Others, was cited for the proposition that the principle is well settled that an interpretation of the statutory provision which defeats the intent and purpose for which the statute was enacted should be avoided. If a decision runs counter to the very intent and purpose for which the enactment was made, the decision needs to be corrected and this has to be done despite the lapse of time. It was urged that the decision of the designated officer runs counter to the very intent and purpose of the enactment namely, to prevent the evil of political defection. According to the learned Counsel, if Sec. 6 is interpreted to construe that the designated officer has no power to grant interim relief, the object and intent of the Act stands frustrated. Reliance was placed upon the decision of the Supreme Court in the case of Shail Kumari Devi and Another Vs. Krishan Bhagwan Pathak @ Kishun B. Pathak, wherein the Supreme Court relying upon its earlier decision in the case of Savitri v. Govind Singh Rawat (supra) held that having regard to the nature of proceedings under Sec. 125 Cr.P.C. the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrapheap of society so as to be tempted to commit crime or to

tempt others to commit crime in this regard, the Magistrate had an implied power to make an order granting interim maintenance. The Court held that the remedy under Sec. 125 Cr.P.C. was a summary remedy for securing reasonable sum by way of maintenance subject to a decree passed by a competent Civil Court. Hence, in the absence of any express bar or prohibition, Sec. 125 could be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome of the application.

4.4. Reliance was placed upon the decision of the Supreme Court in the case of Sakiri Vasu Vs. State of U.P. and Others, wherein the Court was of the opinion that Sec. 156(3) Cr.P.C. was wide enough to include all such powers in the Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Though briefly worded, Sec. 156(3) Cr.P.C. is very wide and will include all such incidental powers as are necessary for ensuring a proper investigation. The Court held that it is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

4.5. The decision of the Supreme Court in the case of Income Tax Officer Vs. M.K. Mohammed Kunhi, was cited for the proposition that by the provisions of the Income Tax Act or the Income Tax Appellate Tribunal Rules, 1963, powers have not been expressly conferred upon the appellate Tribunal to stay proceedings relating to the recovery of penalty or tax due from an assessee. The Court after considering the provisions of Secs. 220(6) and 246 of the said Act held that the right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate Tribunal. The Tribunal has been given very wide powers under Sec. 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to appeal. If the Income Tax Officer and the appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the appellate Tribunal is entirely helpless in the matter of stay of recovery, the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. Mr. Mangukiya submitted that if the designated officer is entirely helpless in the matter of restraining the second respondents from acting as councillors, the entire purpose of the appeal preferred by the petitioners would be defeated if ultimately the second respondents are held to be disqualified under Sec. 3 of the

Act. The decision of the Supreme Court in the case of State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, was cited for the proposition that the cardinal principle of interpretation of statute is that the Courts and Tribunals must be held to possess power to execute their own orders. Moreover a statutory Tribunal which has been conferred with a power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Consumer Protection Act, 1986 which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective. The learned Counsel submitted that disqualification is acquired under Sec. 3 of the Act upon default. The designated officer is an original authority. The only question that the petitioners urge today is as to whether during the pendency of disqualification and removal, the petitioners can press into service the doctrine of implied power. Reference was made to the decision of the Supreme Court in the case of Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal and Co., for the proposition that a construction which permits one to take advantage of ones own wrong or to impair ones own objections under the statute should be disregarded. The interpretation should as far as possible be beneficial in the sense that it should suppress the mischief and advance the remedy without doing violence to the language.

4.6. The decision of the Supreme Court in the case of Swantraj and Others Vs. State of Maharashtra, was cited wherein the Court upheld the implied authority to grant suitable licences under Rules 61 and 62 of the Rules framed under the Drugs and Cosmetics Act, 1940. The Court held thus:

7. The statutory scheme does provide for retail and wholesale sales and storages for sale. It does prescribe forms for itinerant retailers for specified areas travelling representatives supplying samples and the like. But storage for sale in mobile wagons or vans resorted to by wholesalers is not expressly covered by statutory forms. That is why Exh. 39 is an adaptation not found in the fasciculus of prescribed forms. There is no express power to modify the forms conferred by the Rules, or innovate according to need, desirable though it is. As the law now stands, we are disinclined to invalidate Exh. 39. On the other hand, the Act and the Rules must prevail over the terms, and therefore, we are inclined to overlook the technical deficiencies in the Rules and, bending the law to save life, uphold the implied authority to grant suitable licences under Rules 61 and 62 (proviso) even if liberties have to be taken with those given in Schedule A. This will extend to grant of such licences for wayside depots or emergency stores. But licences there must be for every storage for sale [Sec. 18(c)].

The learned Counsel accordingly urged that the mischief which is sought to be remedied by the Act is to prevent defection. This menace is sought to be dealt with by the Tenth Schedule. It was argued that the language adopted in the Schedule and the language adopted in the Act is identical and that a person who commits a wrong of changing loyalty cannot be permitted to perpetuate his

wrong. It was submitted that in the light of the above principles laid down by the Supreme Court, by necessary intendment all powers are deemed to have been reposed in the designated officer. If the provision is not read in the above manner, the consequence would be catastrophic as the second respondents would keep on dragging the proceedings and continue to vote, which would defeat the very object and purpose of the Act. This is the very mischief which is sought to be remedied by the legislation, and hence, any other answer would defeat the very purpose of the Act. Therefore, this is a case where the only irresistible conclusion is that the designated officer has the power to grant the relief prayed for in the application, in the absence of which, the second respondents would harvest the benefits of their own wrongs. It was accordingly urged that the petitions deserve to be allowed by granting the relief as prayed for by the petitioners.

5. Vehemently opposing the petitions, Mr. C.B. Upadhyay, learned Counsel for the second respondents in each of the petitions invited attention to the provisions of Sec. 8 of the Act to submit that the same circumscribes the scope of powers and procedure which may be adopted while deciding an appeal under Sec. 6 of the Act. Reference was made to the provisions of Rule 7 of the Rules to submit that the designated officer is bound to limit himself to the powers vested in him under the said rules and cannot go beyond the same. It was submitted that the provisions of Sec. 6 of the Act are required to be read with Sec. 8 and Rule 7 of the Rules, and accordingly, the powers of the designated officer are required to be read as circumscribed by the provisions of Sec. 8 of the Act and Rule 7 of the rules. It was argued that the decisions on which reliance has been placed by the learned Counsel for the petitioners all refer to a situation where the Act was silent about the powers of a particular authority or Court, whereas in the facts of the present case, the Act is not silent about the powers of the designated officer. In fact, the powers of the designated officer are specifically laid down under Sec. 6 of the Act.

5.1. Attention was invited to Sec. 10 of the B.P.M.C. Act which provides for disqualification for being a councillor. It was pointed out that under sub-sec. (3) thereof, a person who at any time during the term of his office is disqualified under the provisions of Disqualification of Members of Local Authorities for Defection Act, 1986 for being a councillor shall cease to hold office as such. It was further pointed out that under Sec. 11 of the B.P.M.C. Act, a councillor ceases to hold office as such if at any time during his term of office he becomes disqualified for being a councillor by reason of the provisions of Sec. 10. It was urged that in terms of Sec. 10 of the B.P.M.C. Act, unless and until a person is declared to be disqualified by virtue of a final order under Sec. 6 of the Act, he does not cease to hold office as such councillor and cannot be restrained from acting as such. Therefore, any order passed on the said application would be in contravention of Secs. 10 and 11 of the B.P.M.C. Act. It was submitted that in the facts of the present case, none of the ingredients of Sec. 10 or Sec. 11 of the B.P.M.C. Act are satisfied, and as such, the designated officer was justified in not

entertaining the said application. Referring to the prayers made in the said application, it was submitted that the same are clearly in contravention of the provisions of Secs. 10 and 11 of the Act.

5.2. Reference was made to Art. 243V of the Constitution of India, to point out that under clause (2) thereof, if any question arises as to whether a member of any municipality has become subject to any of the disqualifications mentioned in clause (1), the question is required to be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide. It was submitted that accordingly the Legislature of the State has provided for the manner in which the question is required to be referred for the decision of the authority on the question of disqualification. Unless a final order is passed, there is no question of the second respondents incurring any disqualification under the Act, and as such, the designated officer was wholly justified in refusing to grant the interim relief as prayed for by the petitioners.

6. Ms. Nisha Thakore, learned Assistant Government Pleader, supported the order passed by the designated officer. Reliance was placed upon the decision of the Patna High Court in the case of *The Managing Committee, Adars Unchh Vidyalaya Vs. The President, Board of Secondary Education and Others*, wherein on the question regarding power of the President to pass an order of stay, it had been contended that although there is no express provision in Rule 40 enabling the President to pass such an order of stay, it may be treated to be an order passed under the inherent powers of the Board to take such action as may be consequential to entertaining a dispute between the parties. The Court did not accept the contention by observing that it is well settled that every authority or quasi-judicial authority does not have inherent powers and Sec. 151 of the CPC does not grant any inherent powers to the Court but merely saves the powers which are already inherent in Courts and which do exist apart from Sec. 151 of the Code. It is also well-settled that bodies or authorities which are creatures of statutes do not have any inherent powers at all. All their powers have to be found within the four corners of the statute which creates them. It was submitted that the designated officer is required to exercise power to the extent conferred upon him, and there being no inherent power in the designated officer to grant any injunction, the designated officer was justified in rejecting the application for interim injunction made by the petitioners.

7. The facts as emerging from the record reveal that the petitioners had filed individual appeals before the designated officer against each of the second respondents, which came to be registered on 12th March, 2013 as Appeal Nos. 7 to 9 of 2013. In the said proceedings, notices came to be issued and hearing came to be fixed from time to time. In the said proceedings, the petitioners moved an application dated 15th April, 2013 before the designated officer praying that the respondents therein namely, the second respondents be restrained from functioning as councillors of Gandhinagar Municipal Corporation and be restrained from taking part in any meeting of the Corporation be it

General Board and/or any Committee or Sub-Committee whatsoever including the meeting scheduled to be held on 17th April, 2013. By the impugned order dated 15th April, 2013, the said application came to be rejected by the designated officer on the ground that the interim relief prayed for by the said applicant relates to the proceedings of the Municipal Corporation under the provisions of the B.P.M.C. Act and that as the designated officer has no powers under the B.P.M.C. Act, it is not possible for him to grant such interim relief. The designated officer has further observed that he has power only to decide the matter in terms of the powers vested in him under the Act and that he has no powers to restrain any action being taken under the provisions of the B.P.M.C. Act. It is in these circumstances that the designated officer has rejected the stay application.

8. The main question that arises for consideration in the present petitions is as to whether the designated officer acting under the provisions of the Disqualification Act is empowered to grant any interim relief as prayed for by the petitioners.

9. On behalf of the petitioners, it has been vehemently contended that Sec. 6 of the Disqualification Act is required to be interpreted in a manner which advances the intent and purpose for which the statute has been enacted and that an interpretation which defeats the same is required to be avoided. For this purpose, reliance has been placed upon the Statement of Objects and Reasons of the Constitution (Fifty-second Amendment) Act, 1985 which provides that the amendment has been brought in as the evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it. It is the case of the petitioners that if the injunction as prayed for is not granted, the second respondents would take part in the meetings and committees and would harvest the benefit of their own wrongs. According to the petitioners, the cardinal principle of interpretation of statute is that the Courts or Tribunals must be held to possess the power to execute their own orders. Moreover, a statutory Tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order and to grant all ancillary reliefs.

10. In the aforesaid backdrop, reference may be made to the provisions of Sec. 6 of the Act which reads thus:

Sec. 6. Decision on question as to disqualification on ground of defection:- If any question arises as to whether,-

- (1) a councillor of a Municipal Corporation;
- (2) a member of a Panchayat; or
- (3) a councillor of a Municipality

has become subject to disqualifications under this Act, the question shall be referred to the Chief Secretary to the State Government or to such officer not

below the rank of a Secretary of any Department of the State Government as may be designated by the State Government in this behalf and his decision shall be final.

A plain reading of the above provision makes it amply clear that under the said provision, the designated officer is required to decide the question referred to it under the said provision viz., as to whether a councillor of a Municipal Corporation has become subject to disqualification under the Act. The Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 is an Act to provide for disqualification of members of certain local authorities on the ground of defection and for matters connected therewith. Sub-section (3) thereof lays down that subject to the provisions of Secs. 4 and 5, a councillor or a member belonging to any political party shall be disqualified for being a councillor or member: (a) if he has voluntarily given up his membership of such political party; or (b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Panchayat or as the case may be, Municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. Sub-section (4) lays down that disqualification on the ground of defection shall not apply in case of a split and sub-sec. (5) provides that disqualification on the ground of defection shall not apply in case of merger. Section 7 of the Act bars the jurisdiction of Civil Courts and lays down that no Civil Court and no other authority or officer under the Bombay Provincial Municipal Corporations Act or the Gujarat Panchayats Act or the Gujarat Municipalities Act, 1963 shall have any jurisdiction to deal with or decide any question as to disqualification of a councillor or a member on the ground of defection or as to any matter connected therewith, which the Chief Secretary to the State Government or an officer not below the rank of a Secretary of any Department of the State Government designated by the State Government in this behalf is empowered to deal with or decide under Sec. 6 and no injunction shall be granted by any Civil Court or any authority or officer in respect of any action taken or to be taken by the Chief Secretary or the designated authority in pursuance of any power conferred on him by or under the Act. Section 8 makes provision for rules and inter alia lays down that the State Government may by notification in the Official Gazette make rules for carrying out the purposes of the Act. Sub-section 2(d) thereof provides for the procedure for deciding any question referred to in Sec. 6 including the procedure of any inquiry which will be made for the purpose of deciding such question.

11. In exercise of powers under Sec. 8 of the Act, the Government of Gujarat has framed the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987. Rule 6 of the rules bears the heading References to be by petitions and provides that no reference of any question as to whether a

councillor or member has become subject to disqualification under the Act shall be made except by a petition in relation to such councillor or member made in accordance with the provisions of this rule. Rule 7 provides for the procedure and reads thus:

7. Procedure:- (1) On receipt of a petition under Rule 6 the Chief Secretary to the State Government or the designated officer shall consider whether the petition complies with the requirement of rule.

(2) If the petition does not comply with the requirements of Rule 6, the Chief Secretary or as the case may be, the designated officer shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of Rule 6, the Chief Secretary or, as the case may be, the designated officer shall cause copies of the petition and of the annexures thereto to be forwarded.--

(a) to the councillor or member in relation to whom the petition has been made; and

(b) where such councillor or member belongs to any municipal party or a panchayat party and or such petition has not been made by the leader thereof also to such leader, and such or councillor member or leader shall, within seven days of the receipt of such copies, or within such further period as the designated officer may for sufficient cause allow, forward his comments in writing thereon to the Chief Secretary or the designated officer.

(4) After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule) the Chief Secretary or designated officer may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to such officer as he deems fit for making a preliminary inquiry and submitting a report to him.

(5) The Chief Secretary or the designated officer shall, as soon as may be after referring a petition to the officer under sub-rule (4), intimate the petitioner accordingly and cause an announcement to be made with respect to such reference in a meeting of the Municipal Corporation, panchayat or municipality or if such meeting is not likely to be held soon, cause the information as to the reference to be published in the manner specified in clause (b) of sub-rule (3) of Rule 4.

(6) Where the Chief Secretary or designated officer makes a reference under sub-rule (4) to the officer he shall proceed to determine the question as soon as may be after receipt of the report from the officer.

(7) The procedure which shall be followed by the Chief Secretary or designated officer for determining any question and the procedure which shall be followed by

the officer for the purpose of making a preliminary inquiry under sub-rule (4) shall be consistent with the rules of natural justice and neither the Chief Secretary or designated officer shall come to any findings that a councillor or member has become subject to disqualification under the Act without affording a reasonable opportunity to such councillor or member to represent his case and to be heard in person.

Sub-rule (7) provides that the procedure which shall be followed by the Chief Secretary or designated officer for determining any question and the procedure which shall be followed by the officer for the purpose of making preliminary inquiry under sub-rule (4) shall be consistent with the rules of natural justice and neither the Chief Secretary or designated officer shall come to any findings that a councillor or a member has become subject to disqualification under the Act without affording a reasonable opportunity to such councillor or member to represent his case and to be heard in person. Rule 8 which bears the heading decision on petition lays down that a petition raising the question as to whether a councillor or member has become subject to disqualification under the Act shall be determined as expeditiously as possible and an endeavour shall be made to determine the question within six months from the date on which the petition is made under Rule 6. Sub-rule (1) thereof provides that at the conclusion of consideration of the petition, the Chief Secretary or designated officer shall by an order in writing (a) dismiss the petition or (b) declare that the councillor or member in relation to whom the petition has been made has become subject to disqualification under the Act and cause copies of the order to be delivered or forwarded to the petitioner, the councillor or member in relation to whom the petition has been made and to the leader of the municipal party or panchayat party, if any concerned. Sub-rule (2) thereof provides that every decision declaring a councillor or member to have become subject to disqualification under the Act shall be reported to the Municipal Corporation, the panchayat, or, as the case may be the municipality. Sub-rule (3) provides that every decision referred to in sub-rule (1) shall be published by affixing a copy thereof on the notice board of the office of the Municipal Corporation, panchayat or, as the case may be, municipality, and notified in the Official Gazette.

12. On an overall view of the above referred statutory provisions, insofar as the powers of the designated officer are concerned, the same appear to be limited to deciding the question referred to him viz., as to whether a councillor of a Municipal Corporation, a member of a panchayat or a councillor of a municipality has become subject to disqualification under the Act. After following the procedure as laid down under Rule 7 of the Rules, the designated officer is required to either dismiss the petition or declare that the councillor or member in relation to whom the petition has been made has become subject to disqualification under the Act and cause copies to be delivered to the petitioner, the councillor or member in relation to whom the petition has been made and to the leader of the municipal party or panchayat party as well as to the Municipal Corporation or to the Municipality.

13. At this juncture, it may be germane to refer to the decision of the Supreme Court in the case of Kedar Shashikant Deshpande Vs. Bhore Municipal Council and Others etc. etc., wherein the Supreme Court while considering the provisions of the Maharashtra Local Authority Members Disqualification Rules, 1987 has observed that Sec. 7 lays down that the Collector has to decide the question of disqualification on a reference made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1)(a) and 3(1)(b) operate on their own force and the moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the disqualification. Section 7 does not contemplate a lis between two parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty-bound to decide the petition in accordance with law. In the opinion of this Court, in view of the provisions of Sec. 3 of the Act, if a person has voluntarily given up his membership of a political party or votes or abstains from voting in any meeting of a Municipal Corporation, panchayat or municipality, contrary to any direction issued by the political party or any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention, such person is required to be disqualified for being a councillor or a member. However, such decision has to be taken by the designated officer under Sec. 6 of the Act. The designated officer under Sec. 6 of the Act is only empowered to decide the question as regards disqualification on the ground of defection of a member of a panchayat or a councillor of a Municipal Corporation or a councillor of a municipality. As rightly contended by the learned Assistant Government Pleader, the designated officer acting under Sec. 6 of the Act has no inherent powers to grant any injunction as prayed for in the present petitions. Every authority or quasi-judicial authority does not have the inherent powers and Sec. 151 of the CPC does not grant any inherent powers to the Court but merely saves the powers which are already inherent in the Courts and which do exist apart from Sec. 151 of the Code. In the present case, the designated officer is a creature of the statute namely the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 and does not have any inherent powers. The only powers vested in the designated officer are those vested in him under the provisions of Sec. 6 of the Act namely, to decide the question which is referred to him. Under the circumstances, while exercising powers under Sec. 6 of the Act, the designated officer does not have the power to grant any interim injunction as prayed for by the petitioners.

14. As regards the contention raised on behalf of the petitioners that the mischief rule which provides that an interpretation which defeats the very intent and purpose for which the statute was enacted should be avoided, in the opinion of

this Court, insofar as the intent and purpose of the Act is concerned, it is true that the same has been enacted with a view to do away with the evil of political defection which was a matter of national concern and which was likely to undermine the very foundation of the democracy and the principles which sustain it. However, the manner in which the provisions of the Act operate is that all that the designated officer is required to do is to give his decision on the question as to whether a councillor of a Municipal Corporation, a member of a panchayat or a councillor of the Municipality, as the case may be, has become subject to disqualification under the Act. Once, such decision is given, in the light of the provisions of Sec. 10(3) of the B.P.M.C. Act, the person who during the term of his office is disqualified under the provisions of the Act for being a councillor shall cease to hold office as such councillor. Thus, a person ceases to hold office of such councillor only if he incurs disqualification under the provisions of the Act. Thus, unless and until the designated officer decides the question as to whether the councillor concerned is disqualified under the Act, such councillor cannot be restrained from performing his duties as a councillor under the provisions of the B.P.M.C. Act. Any order passed by a designated officer restraining the councillor from functioning as a councillor would fly in the face of the provisions of sub-sec. (3) of Sec. 10 which lay down that a councillor shall cease to hold office as such councillor when he is disqualified under the provisions of the Act.

15. The learned Counsel for the petitioners has placed reliance upon the decisions of the Supreme Court in *Tata Power Company Ltd. v. Reliance Energy Ltd.* (supra) as well as *P. Nirathlingam v. Annaya Nadar* (supra) for the proposition that an intention of a statutory provision which defeats the intent and purpose for which the statute was enacted should be avoided. However, as discussed hereinabove, upon a plain reading of the Sec. 6 of the Act in the light of the scheme of the Act as well as the corresponding provisions of the B.P.M.C. Act, no such power to grant interim relief on the part of the designated officer can be read in the scheme of the Act. In the opinion of this Court, for the reasons stated hereinabove, having regard to the nature of the power conferred upon the designated officer, it cannot be said that not vesting any power in him to grant interim relief, defeats the intent and purpose of the statute. The said decisions also would, therefore, not come to the aid of the petitioners.

16. Insofar as the decisions of the Supreme Court in the case of *Shall Kumari Devi v. Krishan Bhagwan Pathak* (supra) and *Savitri v. Govind Singh Rawat* (supra) are concerned, the same have been rendered in the context of Sec. 125 of the Code of Criminal Procedure, 1973. The Court observed that the primary object of Sec. 125 of the Code was to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrapheap of society so as to be tempted to commit crime or to tempt others to commit crime in this regard and held that the Magistrate had an implied power to make an order granting interim maintenance. It is in the backdrop of the aforesaid observations that the Court read an implied power to make an order

granting interim maintenance. In the facts of the present case, as discussed hereinabove, the only power conferred on the designated officer is to decide the question as to whether a councillor of a Municipal Corporation or a municipality or a member of a panchayat has become subject to disqualifications under the Act. It is only after such question referred to the designated officer is decided by him that such person ceases to hold office as such councillor as postulated under Secs. 10 and 11 of the B.P.M.C. Act. Under the circumstances, apart from the fact that the designated officer is empowered to only decide the question referred to him, if the power to grant interim relief is read into Sec. 6 of the Act, the same would clearly be in conflict with the provisions of Secs. 10 and 11 of the B.P.M.C. Act. Thus, the above decisions would also not be applicable to the facts of the present case.

17. As regards the decision of the Supreme Court in *Sakiri Vasu v. State of Uttar Pradesh* (supra) the same was rendered in the context of Sec. 156(3) of the Code of Criminal Procedure, 1973 which are wide powers, whereas the power conferred on the designated officer is only to decide the question referred to him. Under the circumstances, the said decision would not in any manner support the case of the petitioners. Insofar as the decisions of the Supreme Court in *State of Karnataka v. Vishwabharathi House Building Co-op. Society* (supra), *income tax Officer, Cannanore v. M.K. Mohammad Kunhi* (supra) are concerned, the same would not be applicable to the facts of the present case, inasmuch as, under the provisions of the Disqualification Act, the designated officer has no inherent powers. The only duty cast upon him is to decide the question referred to him. As held by the Patna High Court in *Managing Committee, Adarsh Unchh Vidyalaya Samhuta v. The President Board of Secondary Education, Bihar, Patna* (supra) with which this Court is in complete agreement, it is well settled that every authority or quasi-judicial authority does not have inherent powers and Sec. 151 of the CPC does not grant any inherent powers to the Court but merely saves the powers which are already inherent in Courts and which do exist apart from Sec. 151 of the Code. It is also well-settled that bodies or authorities which are creatures of statutes do not have any inherent powers at all. All their powers have to be found within the four corners of the statute which creates them. As discussed hereinabove, under the statute, viz. the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986, the designated officer is not expressly conferred with any power to grant interim relief. At the cost of repetition, it is stated that the Act only empowers the designated officer to decide the question referred to him. No other provision is found in the statute into which such power of grant of interim relief can be read.

18. Having regard to the scheme of the Act as discussed hereinabove, the decision of the Supreme Court in *Commissioner of Customs (Preventive), Mumbai v. M. Ambalal and Company*, *Swantraj v. State of Maharashtra* (supra) also does not carry the case of the petitioners any further. In view of the fact that the designated officer does not have the power to grant any interim relief while exercising powers under the Act, the decision of the Supreme Court in

Deoraj v. State of Maharashtra (supra) would not come to the aid of the petitioners.

19. At this juncture, reference may be made to the decision of the Supreme Court in the case of Sri Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others, wherein the Speaker had a petition moved before him for disqualification of thirteen members of B.S.P. When that application was pending before him, certain members of the B.S.P. had made a claim before him that there had been a split in the B.S.P. The Supreme Court held that the Speaker, in the scheme of the Tenth Schedule and the rules framed in that behalf, had to decide the application for disqualification made and while deciding the same, had to decide whether in view of Para 3 of the Tenth Schedule, the claim of disqualification had to be rejected. The Court held that the Speaker had totally misdirected himself in purporting to answer the claim of 37 M.L.As. that there has been a split in the party even while leaving open the question of disqualification raised before him by way of an application that was already pending before him. This failure on the part of the Speaker to decide the application seeking a disqualification cannot be said to be merely in the realm of procedure. The Court held that it goes against the very constitutional scheme of adjudication contemplated in the Tenth Schedule read in the context of Arts. 102 and 191 of the Constitution. It also goes against the rules framed in that behalf and the procedure that he was expected to follow. It was further held that the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of whip issued to him. Therefore, the act that constitutes disqualification in terms of Para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within fifteen days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore, in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of Para 2 of the Tenth Schedule, with reference to the other Paragraphs of the Tenth Schedule, the position that emerges is that the Speaker should decide the question of disqualification with reference to the date on which the member voluntarily gives up the membership or defies the whip. It is really a decision *ex post facto*. The fact that in terms of Para 6, a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. The Court was,

therefore, of the view that the contention that it is only on a decision of the Speaker that the disqualification is incurred cannot be accepted. In the facts of the said case the Court held that the 13 M.L.As. stood disqualified from the Uttar Pradesh Legislative Assembly with effect from 27th August, 2003 the date on which the 13 members sought to be disqualified had defected which was manifest by their meeting with the Governor on 27th August, 2003 requesting him to call upon the leader of the Samajwadi Party to form the Government.

20. From the principles enunciated in the above decision, it is evident that the decision of the designated officer on the question of disqualification is a decision *ex post facto* and the disqualification would relate to the date when such disqualification was incurred viz. from the date they voluntarily gave up their membership of the Congress party and/or from the date when they voted or abstained from voting in any meeting of the Corporation contrary to any direction issued by the Congress party or by any person or authority authorised by it in this behalf.

21. To conclude, the designated officer while exercising powers under Sec. 6 of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 does not have any power to grant any interim relief restraining any person against whom proceedings under the provisions of the said Act are pending before him, from acting in the capacity of councillor of a Municipal Corporation, member of a panchayat or councillor of a municipality, as the case may be. However, the decision of the designated officer on the question of disqualification is a decision *ex post facto* and the disqualification would relate to the date when such disqualification was incurred viz. from the date such person voluntarily gives up his membership of the political party to which he belongs and/or from the date when he voted or abstained from voting in any meeting of the Municipal Corporation, panchayat or as the case may be municipality, contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf.

22. In the result, the petitions fail and are accordingly dismissed. For the reasons stated hereinabove, this Court is of the view that the designated officer has no inherent power to grant interim injunction during the pendency of a petition under Sec. 6 of the Act. However, the petitioners having approached this Court at a stage prior to the election of the members of the Standing Committee, in the light of the law laid down by the Supreme Court in the case of *Sri Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others*, if at the conclusion of the proceedings, the designated officer comes to the conclusion that the second respondents are disqualified under the provisions of the Act, the disqualification would relate to the date when the act of disqualification occurred namely, on the date when the second respondents voluntarily gave up their memberships of the Indian National Congress or at the point of defiance of whip issued to them. Accordingly, the result of the elections for the six members of the Standing Committee held on 17th April, 2013 shall be subject to the final outcome of the

proceedings under Sec. 6 of the Act before the designated authority. Rule 8 of the Rules mandates that the designated officer shall determine the question as expeditiously as possible and an endeavour shall be made to determine the subject of disqualification within two months from the date on which the petition is made under Rule 6. In the facts of the present case, it appears that the petition under Sec. 6 of the Act has been made on 12th March, 2013 hence, as on date, the period of two months had not yet expired. However, having regard to the averments made in the memorandum of the petitions and the facts which were brought to the notice of the Court, it appears that the designated officer is proceeding in a tardy manner and the matter is being adjourned from time to time on request made on behalf of the second respondents. Under the circumstances, with a view to balance the equities, the designated officer shall decide the petition under Rule 6 of the Rules as expeditiously as possible without wasting any more time. It appears that till date the second respondents have not filed their replies to the petitions under Rule 6 of the Rules. If at all the second respondents desire to file their replies, they shall do so within a period of seven days from today failing which they would lose their right to file reply. The designated officer shall thereafter proceed to decide the question referred to it in terms of the procedure laid down under Rule 7 of the Rules as expeditiously as possible and not later than a period of three weeks from the date of receipt of the operative part of this judgment.

23. However, while directing as above, this Court is not oblivious of the provisions of sub-rules (4), (5) and (6) of the Rules, accordingly if the designated officer after receiving comments from the second respondents deems it fit to make a preliminary inquiry, he may seek extension of time for the said purpose by filing appropriate application before this Court. Subject to the above, Rule is discharged with no order as to costs. The ad-interim relief granted vide order dated 16th April, 2013 stands vacated.

Direct Service today is permitted to the petitioners as well as to the private respondents.