

(2009) 12 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 4740 of 2009

Chandrakant Pise, Smt. Kamal Sadashiv Gaidhane, Smt.
Laxmi Sujit Bagade and Rameshwar Rushiya

APPELLANT

Vs

The Collector, The Municipal Council, Arvind Lodhi and
Ujjwalkumar Wasudeorao Bagde

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 15, Order 7 Rule 15(1), Order 7 Rule 15(2), Order 7 Rule 15(3), Order 7 Rule 15(4)
Constitution of India, 1950 — Article 101(2), 122, 141, 191(2), 212
Maharashtra Local Authority Members Disqualification Act, 1986 — Section 10, 3, 3(1), 7
Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 6, 6, 6(3), 6(4), 6(4)
Representation of the People Act, 1951 — Section 117, 59, 81, 82, 83

Citation : (2010) 1 BomCR 125 : (2010) 1 MhLj 268

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : M.I. Dhatrak, for the Appellant; A.S. Fulzele, AGP for respondent No. 1. and A.S. Chandurkar, for Respondents No. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The petitioners - the elected councillors of Respondent No. 2 Municipal Council, Saoner, challenge the order dated 7/9/2009 passed by the Respondent No. 1 Collector, Nagpur in Petition No. 4/2009 under Rule 6 of the Maharashtra Local Authority Members Disqualification Rules, 1987 (1987 Rules hereafter) in this writ petition under Article 226 & 227 of the Constitution of India. These 1987 Rules are framed under the Maharashtra Local Authority Members Disqualification Act, 1987 (1987 Act hereafter). It is not in dispute that Respondent No. 2 is local authority constituted under Maharashtra Municipalities, Nagar Panchayats & Industrial Townships Act, 1965.

2. Respondents No. 3 & 4 before this Court filed a reference application viz.

petition under Rule 6 of 1987 Rules for declaration that the present Petitioners are disqualified u/s 3 of 1987 Act and can not continue as councillors of Respondent No. 2 Municipal Council. Petitioners filed an application under Rule 7 (2) of the 1987 Rules contending that the application as filed did not fulfill requirements of Rule 6 & 7 thereof. By order dated 7/9/2009 the Respondent No. 2 Collector rejected it. Collector found that application as also the documents/annexures were signed by the applicants and it had proper solemn affirmation of applicant No. 1. Thus there was substantial compliance with Rule 6(4) and it was duly verified by him i.e. Collector and found it to be in accordance with Rule 7(1) of 1987 Rules. Collector therefore rejected that application of Petitioners and directed matter to be considered on merits.

3. I have heard Advocate M.I. Dhatriak for Petitioners, Advocate A.S. Chandurkar for Respondents No. 3 & 4 and learned AGP for Respondent No. 1. Nobody has appeared for Respondent No. 2 Council. Looking to the nature of controversy, Rule is made returnable forthwith and matter is heard finally by consent.

4. Advocate M.I. Dhatriak has contended that Collector did not verify the application as presented by the present Respondents No. 3 & 4 and said assertion in impugned order is factually incorrect. He has invited attention to relevant statutory provisions as contained in Rule 6(4) and Rule 7(1) and (2) and cited Hariharrao Vishwanathrao Bhosikar Vs. Datta Anandrao Pawar and Others, as also Sayyad Tahir Hussain Mainuddin and Rahul Ramesh Ambesange Vs. The State of Maharashtra and Others, . According to him as mandatory requirements are not fulfilled, the Collector refused to exercise jurisdiction by ordering its trial on merit. Learned AGP has produced the original records of Collector & urged that the substantial compliance noticed by the Collector can not be faulted with. He has pointed out that endorsement on application at Exh. 1 by the Collector himself in token of its due verification. Advocate A.S. Chandurkar for Respondents No. 3 & 4 has supplemented the stand of learned AGP for Respondent No. 1. He relies upon the impugned order and above endorsement made personally by the Collector to show compliance with 1987 Rules. He points out Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others, ., to argue that the judgments of this Court cited supra do not consider the law correctly. He states that the documents filed are signed by applicants only to show that the same are authentic and CPC does not require any verification.

5. 1987 Rules relevant here are as under:

6. References to be by petitions. (4) Every, petition and any annexure thereto shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908) for the verification of pleadings.

7. Procedure.: (1) On receipt of a petition under Rule 6, the Commissioner, or, as the case may be, Collector shall consider whether the petition complies with the requirements laid down in that rule.

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

6. This Court (learned Single Judge) in Hariharrao Vishwanathrao Bhosikar v. Datta Anandrao Pawar,(supra) considers the 1987 Rules as also judgment of Hon''ble Apex Court in Sadashiv H. Patil Vs. Vithal D. Teke and Others, and observes :

32. Now I have to find out on the backdrop of the Rules and the law as interpreted by the Apex Court. The Apex Court has an occasion to consider the rules, whether it is directory or mandatory. The Apex Court in the case of Sadashiv H. Patil v. Vithal D. Teke reported in 2000 (9) LJSOFT (SC) 116 : 2001 (1) Mh.L.J. 312 (SC) has an occasion to consider the Act and the Rules which I am now dealing with. The Apex Court noted the importance of Rule 7 which the attraction of penalty for violation of the whip. The Apex Court has stated thus:

13. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected Councilor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provision of the Act and the Rules must be shown to have taken place while dealing with a reference u/s 7 of the Act.

14. In Civil Appeals Nos. 62666268/ 98 no rules or regulations of Janata Aghadi are shown to have been filed with the Collector. The record does not show that any such rules or regulations exist. Had they been there an effort could have been made to find out authorization to issue whip having been provided therein. During the course of hearing we asked the learned Counsel for the appellant to show any resolution of Janata Aghadi authorizing the signatories of the whip to issue the whip. No such resolution was filed before the Collector or the High Court and not even shown to us. The contents of the whip also do not contain any recital spelling out the existence of any such authorization which also goes to show that there was no such authorization given. In the absence of proof of the signatories of the whip having been authorized by the Janata Aghadi to issue the whip the violation thereof would not attract the applicability of Section 3(1)(b) of the Act. May be that the party, Aghadi or front had resolved to sponsor a particular person's candidature at the election. Acting contrary to such resolution, howsoever strongly worded, may render its member liable to disciplinary proceedings at the party level. But to incur disqualification under the Act there must be a direction issued and such direction must be either by the party, Aghadi or front to which the councilor proceeded against belongs or be by

any person or authority authorized in this behalf. Mere resolution is not a substitute for direction. On this single ground alone the judgment of the High Court deserves to be maintained.

33. Having considered the abovesaid ratio of the Apex Court, there is no slightest doubt in my mind to hold that the rules are mandatory and it required to be followed rather scrupulously. Rules 6 and 7 if read carefully, calls upon the person filing the petition to seek disqualification, has to file the same in the manner prescribed. Rule 6(3)(b) mandates that the petition shall be accompanied by the copy of the documentary evidence, if any, on which the petitioner relies and if he relies on any information furnished by any other person, a statement to that effect should be made in the petition with the names of the persons who have furnished the information. In the case at hand, it is not the case that the petitions were filed on the basis of information issued by somebody. But it is based on the copies of the documentary evidence. As I have noticed from the files produced before me, I have my own doubt about the presentation of the petition by the petitioners before the Collector having strict adherence to the Rules. From the contents of the notice and its accompaniments, it is beyond pale of doubt that the present petitioners were served with only the copy of the petition and not the annextures thereof. Then Sub-rule (4) of Rule 6 requires that every petition and annextures thereto shall be sent by the petitioner and verified in the manner laid down in the CPC for verification of the pleadings. A bare glance to (the alleged) annextures contained in the original file, it is evident that there is no verification as required by Sub-rule (4) of Rule 6. As Rule 6 is in mandatory form, the petition has to be filed in the manner prescribed and there is no power or authority vested with the Collector to accept the petition which does not comply with the requirement.

It is very difficult for me to accept the contention of S/Shri Patil and Deshpande, Advocates for respondents in concerned petition, that as the certified copies of the documents were annexed, it was not necessary to verify those documents. In my judgment, if such contention is accepted, then, there will be total violation of Sub-rule (4) of Rule 6. When a statute requires that a particular thing should be done in a particular manner it has to be done in that manner alone unless the contrary indication is to be found in the statute. Therefore, in my judgment, bare perusal of the record produced before me in all those four petitions, the petitions filed are not at all petition as contemplated under the Act and the Rules. Therefore, in my judgment, the contention advanced by all the learned Advocates for the petitioners has to be accepted, as being valid one.

34. Once it is accepted and found that the petitions were not filed strictly in accordance with Rule 6, now, I have to find out what duties are cast upon the Collector under the Rules on receipt of the application. Rule 7 requires the Collector to consider whether the petition complies with the requirements laid down in Rule 7. If the Collector finds that the petition does not comply with the requirements, he has no other option than to dismiss the petition and intimate

the same to the petitioner. What I find from the record, that on receipt of the petitions, the Collector did not bother to exercise his power and jurisdiction conferred on him by Rule 7, but it appears that somebody else from his Office has gone through the petitions and put up a note for direction of issuing notices to other side. Such action or act on the part of the Collector and, for that purpose, the Officer concerned, is in utter defiance with the dictate of the statute. I have seen in all these petitions that the Collector who is authorized under the statute to disqualify and dislodge an elected representative from the elected post, has handled the matter in so casual and negligent manner as if he is dealing with some ordinary routine official business. Such practice has to be deprecated and condemned with strongest words. Therefore, in my opinion, issuance of notice by the Collector to the other side, that to in petitions which does not comply with mandatory requirement of Rule 6 discloses total non application of mind by the Collector. In my judgment, the Collector even should not have noticed the petitioners as the petitions so filed do not confirm the requirement of law and as those petitions are not petitions in the eye of law and the Collector should have dismissed them on the threshold.

But, in not doing so, the Collector, in my judgment, failed to exercise the jurisdiction conferred on him by law. Therefore,...filed in casual manner without.

7. Hon"ble Apex Court in "Sadashiv H. Patil v. Vithal D. Teke" (supra) has found the serious consequences flowing from 1987 Act as also 1987 Rules and in the backdrop of factual lacunae noticed by it like absence of Janata Aghadi rules or regulations or absence of legal whip, stated that provisions needed rigorous compliance and strict interpretation. The provisions dealing with verification or effect of non compliance therewith did not fall for its consideration. Judgment of this Court in Hariharrao Vishwanathrao Bhosikar v. Datta Anandrao Pawar, (supra) also does not deal with these issues and hence, can not be viewed as binding precedent here. Same learned Judge had earlier decided Laxmikant Tukaram Chaudhari and Others Vs. State of Maharashtra and Others, where scrutiny in the light of Rules 6 & 7 of 1987 Rules was held mandatory. Following observations therein are important: 14. Reading Rules 6 and 7, it is clear that it was permissible for the Collector to decide the objection objectively and then he should have passed a reasoned order and by recording findings either accepting the objections or rejecting the objections in the light of the submissions that are advanced by the parties before him. In my view, therefore, the order suffers from legal infirmity and the order does not disclose any valid reasons for overruling the objection petitions and directing the parties to rectify the objections. It was necessary for the Collector to point out or to notify about the objections so raised by pointing out which are the objections/ lacunae, those can be cured, which are the objections even if not cured does not affect the maintainability of disqualification petition and those objections if upheld result in dismissal of the disqualification petition. In absence of any detailed findings, it is not possible for this Court to ascertain on what ground the Collector has rejected the objection petition, on perusal of the Rules 6 and 7 which provides several

requirements to be complied with by the petitioner filing the disqualification petition. The scheme of Rule 6 definitely cast an obligation on the Collector to scrutinize the applications so filed u/s 7 of the Act read with Rules 6 and 7 and then, proceed to determine the question so raised. In my judgment, therefore, cryptic order indicates nonapplicability of mind on the facts and law governing the disqualification petition. Therefore, such a nonspeaking, unreasoned order cannot be considered to be a valid order". In *Mirza Kadir Baig Rasul Baig Vs. District Collector and Others*, the same learned Judge has held that from the verification itself it was clear that a concise statement of material facts relied by the petitioner, was not produced and there was no statement in the verification as to which paragraphs were within personal knowledge or from which source he gathered the information. The petition did not comply the requirement of verification, as contemplated under Rule 6(4) of the said Rules. None of the thirteen documents relied upon by the petitioner before the Collector were signed or verified in the manner as provided by Order VI, Rule 15 of the C.P.C. The learned Single Judge has expressed that it was obligatory on the part of the Collector to consider it first, before issuing summons whether the Petition as filed under Rule 6 is in compliance with the Act and Rules and to note his satisfaction, and then to proceed to issue summons. The Collector on receipt of the Petition, cannot straight way issue summons and call the party to reply it. The requirement as provided under the rule were found mandatory, unless the Collector complies this mandatory duty, the Collector cannot proceed to decide and as the Collector failed in her duty the entire order stood vitiated. It is also held that the Petition so filed u/s 7 which does not comply any of the requirement of Rule 6 should have been dismissed at the threshold. In *Sau Malti Yawalkar and Sau. Durgabai Ganorkar Vs. Sagar Kautkar, The Collector and Municipal Council*, , this Court (Learned Single Judge) has held that impugned order could not be sustained and was liable to be set aside, specially as it entailed serious penal consequences and there was apparent noncompliance of the mandatory provisions of law and non adherence to the principles of natural justice. Recording of cross examination of material witnesses was found faulty and causing prejudice. Said order sans reasons was held not an order in the eye of law. Consideration in para 16 shows findings that the respondent No. 2 had not complied with the mandatory procedure prescribed under Sub-rules 1 to 6 of Rule 7 of the Rules of 1987. He had given a complete goby to the procedure prescribed under Sub-rule 1 to 6 of Rule 7 of the Rules of 1987, and directly issued a notice to the petitioners on the petition filed by the respondent No. 1, without holding any preliminary enquiry as required under the provisions of Sub-rules 4 and 5 of Rule 7. He also did not consider whether the petition complied with the requirements laid down under Rule 6 of the Rules of 1987.

8. The view of High Court in *Laxmikant Choudhari and Ors. v. State of Maharashtra* (supra) does not find any mention in later Division Bench judgment of this Court in *Sayyad Tahir Hussain v. State of Maharashtra* (supra). This later judgment does not consider the judgment of Hon"ble Apex Court in "*Sadashiv H.*

Patil v. Vithal D. Teke" (supra) and relies upon its other judgments. After noticing the difference in provisions of Representation of People Act, 1951 and 1987 Act, the Division Bench has concluded that defects in election petition were either curable or noncurable because of S.81 to 83 of Representation of People Act, 1951. However, it held that every noncompliance with Rule 6 of 1987 Rule calls for dismissal of disqualification application. Only relevant part of paragraph 8 of the judgment reads: "If we are to consider the two schemes together i.e. Sections 81 - 83 on one side and read with Section 86 of Representation of People Act, and Rules 6 & 7 on the other side, there is one more striking difference. On reference to Section 86(1) of Representation of People Act, 1951, it is evident that non compliances stand classified into two groups. Non compliance of Sections 81, 82 and 117 invite the High Court to dismiss an election petition, but for non compliance of Section 83, the High Court, while considering election petition, is not required to dismiss the same. Thus, Representation of People Act classifies the defects in the election petition into two groups i.e. curable and not curable. On reference to language of Sub-rule (2) of Rule 7, it is evident that none of the defects in the reference petition or in other words non compliances of Rule 6 are pardonable. Any and every non compliance of Rule 6 meets with only one fate i.e. dismissal of the reference petition either by the Commissioner or the Collector, as the case may be." Because of this conclusion the judgment of learned Single Judge of this Court reported at 2007(10) LJS 183 : Sayyad Tahir Hussain Mainuddin and Rahul Ramesh Ambesange Vs. The State of Maharashtra and Others, was set aside. There in para 10 the defect in verification was stated to be curable as per consent of petitioner. Those observations are: "10. Having considered the judgment of the Apex Court in the case of Baldev Singh (supra), the verification of the disqualification application read with Rule 6(3) of the Rules of 1987, in my view, is not proper and in consonance with the Rules of 1987. Finding of the learned District Collector on this point needs to be quashed and set aside. However, admittedly, the application for amendment seeking permission for proper verification of the disqualification application is pending before the learned District Collector, Latur. Learned Counsel for the petitioners fairly admits that the defect in the verification is curable. That application can be considered and decided by the learned District Collector, Latur".

9. The judgment of the Hon"ble Apex Court in Dr. Mahachandra Prasad Singh, v. Chairman, Bihar Legislative Council and others,(supra) dated 27/10/2004 was not required to be considered by this Court in its any of the judgments above. It needs little elaborate mention here. In matter of Sayyad Tahir Hussain v. State of Maharashtra (supra) the learned Single Judge decided on 24/4/2007 and the Hon"ble D.B. has decided LPA against it on 24/8/2007. Hariharrao Vishwanathrao Bhosikar v. Datta Anandrao Pawar,(supra) has been decided by other learned Single Judge of this Court on 28/30 June 2005. Same learned Judge had earlier decided on 19/12/2002 Laxmikant Choudhari and Ors. v. State of Maharashtra (supra). Hon"ble Apex Court in Dr. Mahachandra Prasad Singh, v. Chairman,

Bihar Legislative Council and others,(supra) has observed:

12. Paragraph 8 gives the rule making powers and it provides that the Chairman or the Speaker of a House may make rules for giving effect to the provisions of the Tenth Schedule. Clause (d) of subpara (1) of this rule provides that the Rule may provide the procedure for deciding any question referred to in subpara (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question. In exercise of the power conferred by paragraph 8 of the Tenth Schedule, the Chairman, Bihar Legislative Council has made the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994 (hereinafter referred to as "the Rules"). Rule 3 of the Rules provides that the leader of each legislature party shall furnish to the Chairman a statement in writing containing the names of members of such political party. Sub-rules (1) and (6) of Rule 6 and Sub-rules (1) and (2) of Rule 7 read as under:

6. REFERENCES TO BE BY PETITIONS.

(1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

(2)

(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

7. PROCEDURE

(1) On receipt of a petition under Rule 6, the Chairman shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of Rule 6, the Chairman shall dismiss the petition and intimate the petitioner accordingly.

13. It may be noted that under Paragraph 8, the Chairman or the Speaker of a House is empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules being delegated legislation are subject to certain fundamental factors. Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the

authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (see Section 59 in chapter Delegated Legislation in Francis Bennion's Statutory Interpretation, 3rd Edn.). The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision. No rules can be framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, the rules should be interpreted consistent with the aforesaid principle.

14. Shri Mishra has submitted that as provided in Sub-rule (6) of Rule 6 of the Rules, the petition filed by Shri Salman Rageev had to be signed and verified in the manner laid down in the CPC (for short "CPC") for verification of pleadings and, therefore, in terms of Sub-rule (4) of Order VI Rule 15 CPC an affidavit in support of the petition had to be filed. Since the requisite affidavit had not been filed, the requirement of the Rule had not been complied with, and the petition was liable to be dismissed in view of Sub-rule (2) of Rule 7 of the Rules. The Chairman of the House had, therefore, no authority or jurisdiction to initiate any proceedings or to hold that the petitioner had become disqualified for being a member of the House. The question which requires consideration is whether the provisions of Rules 6 and 7 are so mandatory in nature that even a slight infraction of the Rules would render the entire proceedings initiated by the Chairman invalid, or without jurisdiction.

15. It may be noticed that the nature and degree of inquiry required to be conducted for various contingencies contemplated by paragraph 2 of Tenth Schedule may be different. So far as Clause (a) of paragraph 2 (1) is concerned, the inquiry would be a limited one, namely as to whether a member of the House belonging to any political party has voluntarily given up his membership of such political party. The inquiry required for the purpose of Clause (b) of paragraph 2(1) may, at times, be more elaborate. For attracting Clause (b) it is necessary that the member of the House (i) either votes or abstains from voting (ii) contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, (iii) without obtaining the prior permission of such political party, person or authority; and (iv) 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. Therefore, for the purpose of Clause (b), inquiry into several factual aspects has to be conducted. It may be noticed that Clause (b) does not say that the prior permission has to be in writing and, therefore, it can be oral as well. Similarly, the manner in which condonation has to be expressed has not been indicated. Therefore, for holding that a member of a House has incurred a disqualification under Clause (b) of paragraph 2(1) findings on several aspects will necessarily have to be recorded.

Similarly, for application of paragraph 4, inquiry has to be made whether the original political party merged with another political party, whether the member of the House has become member of such other political party or, as the case may be, of a new political party formed by such merger or whether he has not accepted the merger and opted to function as a separate group.

16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said Rule and Sub-rule (6) of the same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings. The heading of Rule 7 is

"PROCEDURE". Sub-rule

(1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and Sub-rule

(2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of a House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in

the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under Sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

17. The petition filed by Shri Salman Rageev was signed and verified in the following manner:

All the facts stated in this petition are true and correct to my knowledge and belief and no part of it is false. Sd/31 (Salman Rageev)/M.L.C./1062004

18. There cannot be any dispute that Sub-rules (1), (2) and (3) of Order VI Rule 15 CPC were complied with. Learned Counsel for the petitioner has, however, laid great emphasis of the fact that Shri Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of Sub-rule (4) of Order VI Rule 15 CPC which provides that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on account of nonfiling of an affidavit as required by Sub-rule (4) of Order VI Rule 15 CPC, the petition would not be rendered invalid nor the assumption of jurisdiction by the Chairman on its basis would be adversely effected or rendered bad in any manner. A similar contention was raised before a Bench presided by Venkatachaliah, C.J. in Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, , but was repelled. The relevant portion of para 18 of the reports is being reproduced below:

18. ...The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under subparagraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of subparagraph (2) of paragraph 6 as construed by this Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, . Moreover, the field of judicial review in respect of the orders passed by the Speaker under subparagraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan case is confined to breaches of the constitutional mandates, mala fides, noncompliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power

conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in subparagraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihoto Hollohan case.

Thus the provisions looked into by Hon''ble 3 Judge Bench of Apex Court here are same as in 1987 Act. 2000 judgment of Hon''ble Apex Court in Sadashiv H. Patil v. Vithal D. Teke (supra) is on 1987 Act itself & also by Hon''ble 3 Judges only, but then there the emphasis of the decision is on ingredients prescribed for disqualification and not on procedural formalities. Hence, though the later decision of Hon''ble Apex Court in Dr. Mahachandra Prasad Singh, v. Chairman, Bihar Legislative Council and others,(supra) does not consider this Sadashiv H. Patil v. Vithal D. Teke (supra), that does not make any material difference. The later judgment is directly on the point and it answers the very contentions which are being raised before me.

10. The Hon''ble Apex Court has given primacy to Constitutional provisions in Tenth Schedule of Constitution of India and read down the rules framed as directory only so that a disqualified councillors can not defeat the legislative intent by pointing out procedural technical violations. Tenth Schedule is under Article 101(2) and 191(2) of the Constitution which prescribe disqualification for being a member of either House, if such member is disqualified under that Schedule. In part IXA of the Constitution dealing with municipalities, Article 243V(1)(b) contains a similar provision and disqualifies a person for being chosen as or for being a member of a Municipality" if he is so disqualified by or under any law made by the Legislature of the 35 State". Though subparagraph (2) of paragraph 6 of Tenth Schedule stipulates that all proceedings about disqualification under subpara 1 are deemed to be the proceedings of Parliament or Legislature of a State within Article 122 or Article 212, that by itself is not a material factor for interpretation of the Tenth Schedule. The absence of a provision in Tenth Schedule permitting a disqualified Member to continue because of some procedural lapses in bringing necessary facts to the knowledge of competent authority and a delegate adding it by exercising rule making power so as to defeat the substantive provision of disqualification itself is the determinative element in judgment of Hon''ble Apex Court in Dr. Mahachandra Prasad Singh, v. Chairman, Bihar Legislative Council and Ors.,(supra). Discussion by Hon''ble Apex Court in paras 13 & 16 in said judgment clearly show that rule making authority can not dilute or interfere with the intention of law framers. When Tenth Schedule did not lay down any mandatory procedural norms fatal to proceedings for disqualification, such provisions could not have been added by the subordinate legislation. This ratio also holds good here and when no section in 1987 Act prescribe any procedural requirement , the delegate State government could not have added it through Rule 7(2) with an intention to

defeat the mandate in Article 243V or 1987 Act. Such subordinate rule can not be construed to help an otherwise disqualified councilor to continue as such in defiance of legislative mandate. The rules therefore will have to be read as only directory. Under 1987 Act & Rules, Collector or the Commissioner, as the case may be, have to find out first only prima facie whether requirements of Rule 6 are fulfilled but then the procedural formalities can not & do not pose any hurdle in the adjudication of the question of disqualification. The reference can not be dismissed at thresh hold on that account. The proceedings can not be withdrawn and must be answered on merits. The disqualification for defection is created in the interest of democracy and object / principles behind it need to be preserved and protected by advancing the legislative intent. Unfortunately, earlier this Court had no occasion to consider this legal position and hence, reliance on those judgments of this Court here by the Petitioners before me is misconceived.

11. In *Manoj Bansilal Biyani v. Sameer Krishnadhan Karr* (2009) Bom. C.R. 753 : 2009(9) LJS 63, after noticing the earlier views and the judgment of Hon'ble Apex Court in *Dr. Mahachandra Prasad Singh, v. Chairman, Bihar Legislative Council and others*, (supra), this Court (Learned Single Judge) held:

17. Having given anxious consideration to the submissions of Mr. Dhorde, I find it difficult to countenance his argument. First, the mere use of expression "shall" in Rule 6(4) will not make it mandatory. For, unless there is penal consequence provided for, mere such expression does not ordinarily make the Rule mandatory. There is no question of taking any diametrically opposite view from the view of the Division Bench of this Court. What I think is that considering the dictum of the Apex Court in "*Dr. Mahachandra Prasad Singh*" (supra), the view taken by the Division Bench stands eclipsed. I am bound by the precedent handed down by the Apex Court in view of Article 141 of the Constitution. Mr. Dhorde submits that the judgment of the Division Bench and that of the Apex Court in "*Sadashiv H. Patil*" (supra) are the direct authorities on the concerned provisions of the MLAMD Act and, therefore, they should be followed. So far as "*Sadashiv H. Patil*" (supra) is concerned, there was no issue involved regarding the nature of Rules 6, 7 and 8 of the MLAMD Rules directly and substantially involved in the said matter. I mean to say whether Rule 6(4) is directory or mandatory was not the issue directly involved and contested. As against this, the judgment of the Apex Court in "*Dr. Mahachandra Prasad Singh*" (supra) deals with *pari materia* provisions though the Rules were the inhouse Rules framed by the Chairman of the Bihar Legislative Council. That hardly makes any difference. One cannot be oblivious of the provision of the Rule 7(5) of the MLAMD Rules, Sub-rule (5) reads as follows:

(5) The procedure which shall be followed by the Commissioner, or, as the case may be, Collector, for determining any question and for the purpose of making a preliminary inquiry under Sub-rule (4) shall be the same as the procedure followed by the respective Committees of Privileges of both the Houses of the State Legislature." In other words, the inhouse Procedure as provided under the

Rules framed by the Legislative Assembly or by the Chairman of the House or the Speaker, as the case may be, are required to be adhered to during the enquiry since they are the *pari materia* provisions.

18. Mr. Dhorde would further submit that the use of nonobstinate clause in Section 10 of the MLAMD Act shows that overriding effect has been given to the provisions of the MLAMD Rules. He seeks to rely on *Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another*, . There is no duality of the opinion that the Rules will have overriding effect regardless of inconsistencies therewith contained in any other law for the time being in force. The question of overriding effect of the Rules is, however, not involved in the present matter. They are not required to be compared with any other Rules as such so as to locate whether in view of inconsistency, Rule 6(4) has to be given overriding effect. The purposive interpretation of the Rules would make it amply clear that Rule 6(4) is of directory nature. It need not be reiterated that there are certain curable defects and some of the defects are incurable. The defective verification of the petition could be cured. It is simply a procedural defect. The lis in such a matter is between the competent authority viz. Collector or Commissioner, as the case may be, and the member against whom charge of disqualification is made through the Reference Petition. Therefore, the Collector or Commissioner may permit rectification of the curable defects. In this view of the matter, the Reference Petition should not have been dismissed by the Collector. This is more so when another amended petition alongwith affidavit and attested documents was also presented much before the impugned order has been rendered.

19. For the foregoing reasons, I have no hesitation in holding that the impugned order is quite unsustainable. Hence, the petition is allowed. The impugned order is quashed. The Reference Petition stands restored and the petitioner be allowed to rectify the procedural deficiencies viz. verification of the petition, filing of the affidavit and attested documents as sought. The Rule is made absolute accordingly. No costs.

Though in the face of Rule 7(2) it can not be accepted that there are no penal consequence provided for because of discussion undertaken earlier herein by me and conclusions drawn there, I do not find it necessary to delve more in the matter as the findings are the same. It is therefore apparent that defective verification by itself can not ipso facto result in to dismissal of reference application filed before the Collector.

12. The original records produced by AGP show the endorsement of verification by the Collector himself on Exh. 1 i.e. reference application. Advocate Dhattrak had only relied upon office note placed before the Collector to show absence of such verification. After noticing remarks of Collector on Exh. 1, he urged that those remarks are without any date. In impugned order, Collector has mentioned that he verified the reference application on 6/7/2009. Notices are issued to other side by him on 8/7/2009. In view of this position, mere contention that

endorsement by Collector does not carry any date is without any worth. About the documents filed with reference application before the Collector, the stand of Advocate Chandurkar is that those documents pertain to the Petitioners , are within their knowledge and they have not denied existence thereof. It is further urged that those documents are signed in original by the Applicant before the Collector. It is also pleaded that the reference application can not be dismissed for any defect therein. The documents are not annexed with their reference application by the present Respondents 3 & 4. From rejoinder filed in High Court, I find that there is dispute in relation to some documents between parties. The signature put upon the documents is obviously with a view to attest its authenticity. Hence, in the light of above discussion, the reference application of Respondents 3 & 4 could not & can not be dismissed as those provisions are only directory. Hence, no objection to the impugned order can be taken in this respect. Petitioners have not even urged that the documents filed are the annextures of the reference application. But then if Respondents 3 & 4 wish to place any verification in relation to those documents, the Respondent 1 Collector is directed to permit them to file it on record before further consideration of reference application by him.

13. I do not find any merit in the Writ Petition as filed. Same is accordingly dismissed. Rule discharged, without any order as to costs.