
(2013) 08 BOM CK 0199

In the Bombay High Court

Case No : Letters Patent Appeal No. 105 of 2012 in Writ Petition No. 1993 of 2012

Gajanan

APPELLANT

Vs

Sharad Namdeo Pawar and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Contract Act, 1872 — Section 3, 4

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 3, 3(1)(a), 3(1)(b)

Citation : (2013) 6 ABR 52 : (2013) 5 ALLMR 733 : (2013) 6 BomCR 806 : (2013) 6 MhLj 505

Hon'ble Judges : Sunil P. Deshmukh, J;A.H. Joshi, J

Bench : Division Bench

Advocate : M.V. Deshpande in Both Appeal, for the Appellant; V.A. Shinde, AGP for State in Letters Patent Appeal No. 105 of 2012 in Writ Petition No. 1993 of 2012, AGP for Respondent No. 5 in Letters Patent Appeal No. 107 of 2012 in Writ Petition No. 1875 of 2012, Mr. R.N. Dhorde h/f. Mr. S.G. Rudrawar, Advocate for Respondent No. 1 in Both Appeal, Mr. G.O. Wattamwar, Advocate for Respondent No. 6 in Both Appeal, Mr. V.D. Hon, Advocate for Respondent No. 1 in Letters Patent Appeal No. 107 of 2012 in Writ Petition No. 1875 of 2012 and Mr. V.D. Gunale Advocate in Letters Patent Appeal No. 107 of 2012 in Writ Petition No. 1875 of 2012, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—Case No. CR 49/2011 u/s 3(1)(a) and (b) of the Maharashtra Local Authority Members" Disqualification Act, 1986; and under Rule 6 of the Maharashtra Local Authority Members" Disqualification Rules, 1987, (hereinafter referred to as, "the Disqualification Act and Disqualification Rules", respectively, for the sake of brevity) was filed by present appellant before the Collector, Nanded. The Collector, Nanded conducted the trial of said application, and after hearing the parties, the Collector decided said application by judgment and order

dated 18th February, 2013. Thereby he declared the councillors/the respondents therein as disqualified.

2. Said judgment was challenged in two separate writ petitions, namely, W.P. No. 1875 of 2012 and 1993 of 2012, by two different councillors in each petition.

Both the writ petitions were allowed by the learned Single Judge of this court by judgment and order dated 7th May, 2012.

3. The appellant herein was respondent No. 3 in both these writ petitions. The appellant herein has challenged the common judgment and order rendered in those writ petitions, in present appeals.

4. Heard both sides at length and perused the record annexed to the LPAs, the writ petitions and the R. & P.

5. The question involved in these appeals is as follows:-

Whether the Councillors-the respondents (writ petitioners) had incurred disqualification as claimed by present appellant and whether the judgment rendered by the learned Single Judge reversing the judgment and order of the Collector calls for any interference?

6. Facts of the case are summarized as under:-

[a] Contesting respondents are hereinafter, for brevity, referred to as, "writ petitioners"

[b] Appellant in the LPAs and the writ petitioners are councillors of the Municipal Council, Loha town, which is a Tahsil place in Nanded District.

[c] Six Councillors including appellant and writ petitioners were elected as councillors of the Municipal Council as candidates sponsored by the Indian National Congress party.

[d] The appellant claims that the communication and declaration as required u/s 3(1)(a) and (b) of the "Disqualification Act" and the declaration signed by each member under Rule 4 of the "Disqualification Rules", were submitted before Collector, by all six elected members belonging to Indian National Congress Party.

[e] By these declarations, all these councillors have declared that the appellant was the Gat Neta of the Municipal Party, of which they are members.

[f] The fact that the appellant was declared as GAT NETA is disputed by the writ petitioners in the written statement which was filed by them before the Collector.

[g] A whip was issued and served by the District President of Indian National Congress party as well as by the appellant as a Gat Neta of Municipal party. By said Whip, it was directed that the appellant shall be the candidate for election to the post of President of the Council and further directing the councillors of the Municipal party to vote in favour of the appellant.

[h] Said whips (communications) were sent by Registered Post on the addresses of the writ petitioners which are deemed to be served on them.

[i] Respondent No. 1 Kiran Narhari Wattamwar submitted his nomination for election to the post of President in violation and in disregard of Whip.

[j] All writ petitioners cast their votes against the appellant and in favour of respondent No. 1 Kiran Wattamwar, in violation of the whip.

[k] The act of violation of a whip by the writ petitioners was not condoned by the original Political Party or the Municipal Party and hence, the writ petitioners had incurred disqualification.

[l] Appellant filed a petition before Collector, Nanded praying for a declaration that the writ petitioners had incurred disqualification and consequential reliefs.

[m] Before the Collector, written statement was filed by Shri Kiran Wattamwar and Smt. Shobha Bagde jointly. Similarly Shri Sharad Pawar, and Smt. Chandrakala Yelge, jointly filed their written statement.

[n] The writ petitioners have denied the facts pleaded in the dispute application namely:-

[I] Authorization and choice of the appellant as GAT NETA;

[II] Issuance of whip and fact of service of whip, and;

[III] Power of the District President of Indian National Congress in nominating the appellant as a candidate for the post of President.

[o] The writ petitioners also urged that the appellant was never selected/elected or appointed to be a candidate and also that disqualification whatsoever was not incurred by them, in the process of voting in favour of election of Kiran Wattamwar as President of the Municipal Council.

[p] Appellant's application was allowed by the Collector. Collector's judgment is set aside by the learned Single Judge. Therefore, appellant is before this court.

7. It is seen from the judgment of the collector that he had framed/formulated questions/issues which arose for his consideration, and has answered those questions/issues, as follows:-

8. The Collector delivered the judgment and order declaring the respondent nos. 1 to 4 therein (writ petitioners) to be disqualified to continue as councillors of Municipal Council, Loha for the remaining term of the present body of the Municipal Council, Loha.

The Councillors who were disqualified carried two writ petitions, namely, Writ Petition No. 1875 of 2012 and Writ Petition No. 1993 of 2012.

9. The writ petitions were heard by the learned Single Judge of this court. The writ petitions were allowed and Rule was made absolute, by setting aside the

judgment and order passed by the Collector and in the result, the disqualification petition stood dismissed.

10. In the process of hearing, we have perused the judgment impugned. The findings recorded by learned Single Judge are analyzed as follows:-

[a] The findings recorded by Collector on the points/issues number, 1, 2 and 6 are upheld.

[b] The findings of remaining issues are set aside.

11. It would be convenient to deal with the questions one after another.

POINT/ISSUE NO. 3, AS FRAMED BY THE COLLECTOR.:-

3. Is it proved that Mr. B.R. Kadam is the District President of Indian National Congress Party and that he had the authority to issue whip to the respondents ?

12. It is necessary to mention at the very outset that issue No. 3 has turned otiose in view that learned Single Judge has held that the party which has authority and decisive role for the purpose of the disqualification Act is the "Municipal party". Directions of the party, for the purpose of the said Act and Rules, is to be the direction of the "Municipal Party" and not the "Original Political Party".

13. Learned Single Judge has based said finding on "Suresh Madhavrao Bhange and others vs. Collector, Wardha and others" (1990) 3 BCR 199 and also in case of Sadashiv H. Patil Vs. Vithal D. Teke and Others, .

14. This being the position of law and of facts of the case, it would be unnecessary to dilate any further, to exert to scrutinize the finding recorded by the learned Single Judge on issue No. 3. A finding on said issue on either side, will not affect the consideration as regards merit of the appeals, hence, it would be apt to skip any further discussion on this point.

POINT/ISSUE NO. 4 AS FRAMED BY THE COLLECTOR:-

4. Is it proved that the petitioner had the authority to issue whip with respect to the meeting of Municipal Council, Loha, called on 17.6.2011 ?

15. The Collector has recorded a finding on issue No. 4 in favour of the appellant herein. The discussion in that regard is seen in the internal page Nos. 19, 20 and 21 of the copy of the judgment, (which is at page 181 to 184 in the Paper book of LPA No. 105 of 2012).

16. It would be useful to see the rational or reasons recorded by the learned Single Judge as regards the aspect of power of Group Leader/GAT NETA for issuing a whip on his own.

Relevant discussion can be seen from para. 21 to 26 of impugned judgment, which read thus:-

21. Turning to the facts of the instant case, there are no separate Rules/by-laws of the Loha Municipal Council filed with the Collector. What is presented on record is the Constitution of the Indian National Congress party. There is no reference to the authorization to issue whip in relation to transaction of business of the local bodies.

(Contents are not printed as those are not relevant).

In the absence of any authorisation given by the elected members or the authority borrowed from the rules, regulations or by laws of the original party or municipal party, which has been placed on record before the Collector, it cannot be concluded that either Shri B.R. Kadam, District President or Shri Suryawanshi had authorisation to issue whip. The observations in the judgment of the Supreme Court in the matter of Sadashiv H. Patil (cited supra), squarely apply to the facts of the instant case.

22. A reference also can be conveniently made to observations of the Division Bench of this Court in the matter of Suresh Madhaorao Bhange and Others Vs. Collector and Others, . In paragraph 14 of the judgment, the Division Bench has observed thus:

14....The original party is a genus whereas the Zilla Parishad Party, Municipal Party, Panchayat Samiti Party are the species and the sphere of these species is restricted to that particular geographical area over which the jurisdiction of these different party is extended. Original political party may be the genus; but what section 3(1)(a) and (b) of the Disqualification Act contemplates is not the genus but the species, which may ultimately have their allegiance to the genus. It is these species who have to issue directions to the members of Councillors. It is these species who have to condone the contravention, if at all they want and it is from these species that the member or Councillor has to obtain prior permission before acting contrary to the directions. The scheme of the Act as contained in section 3 is very clear. These elections are after all local and it is after all the local units which contest these elections and not the apex body. The function of the apex body, if at all, is only to give directions to the units and nothing more. The members so selected are responsible directly to the units. The controlling and advisory powers vest in the units and that is why the permission of "such political party" is necessary before acting contrary to the directions of such political party.

23. So far as instant matter is concerned, the District unit of the party is not contemplated to issue directions. It is also to be borne in mind that neither the District President of the party nor the leader of the Municipal Council have authorisation to issue directives, at least such authorisation has not been placed on record either before the Collector or before this Court.

24. Shri Shah, learned Senior Counsel appearing for Respondent No. 3, has invited my attention to the judgment delivered by learned Single Judge of this Court in the matter of Sheshrao Trimbakrao Patil & others Vs. Pandit s/o

Trimbakrao Shrirangrao Bhise & others, (W.P. No. 2905/2011, decided on 18.07.2011), which has been confirmed in L.P.A. No. 245/2011, by the Division Bench of this Court. It is pointed out that in the aforesaid matter, one Shri Ghorpade, who was the observer of the political party, had issued the whip. It is contended that the directive, issued by the observer of the political party, was found sufficient to hold the elected members disqualified. It is also contended that the judgment in the matter of Sadashiv H. Patil (cited supra) has been taken into consideration by the learned Single Judge and it has been concluded that the observer appointed by the political party had authorisation to issue whip. It has been emphasized that the judgment delivered by the learned Single Judge has been upheld by the Division Bench and L.P.A. No. 245/2011 has been dismissed. It is to be taken note of that in the facts and circumstances of that case, it was found by the learned Single Judge of this Court that the observer appointed by the party has valid authorisation to issue whip and he has exercised the authority lawfully. The judgment delivered by the learned Single Judge, which has been confirmed by the Division Bench in L.P.A. No. 245/2011, is based on the facts of that particular case.

25. Placing reliance on the observations of learned Single Judge in the matter of Amruta Babaji Mozar Vs. Kondabai, deceased by her heirs Babai Laxman Mandhare etc. and another, , it is contended that since the learned Single Judge has considered the decision of the Supreme Court and has put its own gloss thereon, that gloss is binding on all the Courts in the State. The judgment of the Supreme Court is not capable of putting different interpretations and the learned Single Judge has not interpreted the judgment of the Apex Court differently. The only reasonable interpretation of the judgment of the Supreme Court is to be accepted.

26. In the instant matter, however, by application of principle laid down by the Supreme Court in the matter of Sadashiv H. Patil (cited supra), it needs to be concluded that neither Shri B.R. Kadam, District President of Congress (I) party nor Shri Suryawanshi, leader of the municipal party, are successful in pointing out authorisation in their favour to issue whip/directives. In the absence of specific authorisation in favour of the persons issuing directives, such directives cannot be held to be binding on the members.

[quoted from para. nos. 21 to 26 of impugned judgment and order passed by learned single Judge)

17. After seeing the foundation of the findings, now we proceed to analyze and discuss relevant facts and the law.

18. The case proceeds in an admitted background that the municipal party of Indian National Congress, in Loha Municipal Council does not have any written Constitution or Rules. At least, those were not tendered on record before the Collector.

19. It is alleged as well it is reflected from the judgment of Collector that

Constitution of Indian National Congress Party was tendered for perusal of the collector, however, it is not seen on record and proceedings of the case before Collector.

During hearing of these LPAs copy of said constitution was tendered before this court, and is a part of compilation at Page No. 190 of paper book of LPA No. 107 of 2012.

20. The case proceeds on the foundation that, "Party" for the purposes of the Disqualification Act, means "Municipal Party".

21. From perusal of Section 3(1)(b) of the said Act, what is contemplated is, issuance of a whip by "Political party or Aghadi or Front, or by any person or authority, authorized by any one amongst them in this behalf."

22. The Disqualification Rules, 1987, describe in its clause 2(b-1)(i), "Leader in relation to a municipal party". Said definition reads as follows:-

Rule 2(b-1)(i):-"Leader in relation to a municipal party" means a Councillor chosen by each political party, or aghadi or front in the Municipal Corporation or as the case may be in the Municipal Council as its leader and includes any other Councillors of such party or aghadi or front authorised by it to act in absence of the leader as, or discharge the functions of the leader of such party or aghadi or front for the purposes of these rules

23. Rule 4 further prescribes the requirement and mode of furnishing information to the Collector by Councillors who are forming a Municipal Party.

24. It is seen that the Collector has recorded a finding which is confirmed by learned Single Judge that all 6 councillors of the Indian National Congress Party's Municipal Party had furnished the information about their Municipal Party and also had confirmed that the appellant was the said Municipal Party's GAT NETA.

25. Thus, in these appeals, selection of the appellant as a party leader, in relation to Municipal Party of Indian National Congress Party is a fact duly proved and is not seriously contested.

What is contested is that he was not chosen as a candidate for the post of President.

26. It has not come on record that a demand was made by even one amongst the members of Municipal Party of Indian National Congress Party that a candidate for President's post be elected than imposed.

27. In absence of Rules or Constitution, of the municipal party, ordinarily, doctrine of Democratic Working, as to democratic governance will imply that if the Municipal Party desires to elect a candidate from amongst themselves, the members shall have to request or call upon the GAT NETA elected by them, whose authorization has gone on record before the Collector under Rule 4, to

conduct and/or to hold a meeting to elect a candidate for the post of President and/or Vice President or any other authority of the Municipal Council.

28. Be it that, upon any such requisition, a meeting is held, it would imply, that any decision of the Municipal Party arrived at after observance of democratic procedure, would be binding on the GAT NETA.

29. In the event, any such procedure is not adopted and no one has requisitioned a meeting to choose or elect a candidate for any elective post in the council, in such eventuality, the authority and power of the GAT NETA of the Municipal Party, to act suo motu shall be and his authority and power to represent the Municipal Party will have to be deemed to be exercisable.

30. This Court shall have to be alive and mindful to a fact situation that in most reported cases, the set of rules or constitution of the Municipal party had not come on record. This appears to have occurred due to the ambiguity left in the Disqualification Act as well as the Rules. Any set of model rules or a mechanism as to the manner in which the situation which arises in absence of rules be dealt with is neither seen nor is brought to our notice.

31. The question which essentially arises is as to the manner in which the absence of rules of the Municipal Party be remedied. By exercise of prudence, we are carried to believe that in such an eventuality basic democratic procedure will have to be resorted to. In absence of such a recourse the laudable legislative Act i.e. Disqualification Act will have to go in suspension and the members of Municipal Party would be led to a situation, which is known in common parlance as a "mobocracy" akin to anarchy. Such situation would present a contrast with the ideology which is the foundation of Disqualification Act. This court has to be alive to the background that a disciplined, well organized and party based political governance at the local self government bodies is the object behind the Disqualification Act and said aim and object needs to be advanced.

32. As much the law, the rule of good governance, as well, abhors the vacuum. Therefore, a democratic mechanism which will advance the object of legislation shall have to be devised, and/or acted upon, and Disqualification Act shall not either remain suspended or go into exile, hibernation or dormancy.

33. To ensure that democratic process shall continue to govern the situation, and any dictate is not given by Municipal Party as a body, the leader shall act.

34. In any case the GAT NETA is an individual nominated by members/councillors unanimously and his guidance and dictate shall operate as a collective will. It will have to be assumed that ordinarily GAT NETA shall not turn autocratic since any violation or dereliction of a whip is equipped with a safety valve - a democratic device of condonation by the Municipal Party.

35. In the event, the democracy i.e. majority is against the point of view of leader of Municipal party, a safety valve already provided for by the Rules, namely, the person/councillor who has disregarded and violated a whip can

always make an application to the Municipal Party, who may grant condonation to the dereliction/violation. By provision of this device, the democratic procedure and the right to enforce democratic will is guaranteed by the Disqualification Act.

36. In the event, the Municipal Party honours the whip and disregards the violation, still the democracy functions and the principle of ethically strong cohesive group mechanism and/or a Political Party based system in local self government and law of anti-defection shall operate for advancement of the objective of the Disqualification Act.

37. Thus, the absence of a "rule book" to govern the situation of the conduct of business of a Municipal Party would get remedied.

38. The concept of "authorization" contemplated and/or referred to in Section 3(1) shall apply to a person other than GAT NETA designated as Party leader if said provision is read so as to advance its objective. Such an authorization could be under the Rules, if those are framed and furnished by the Municipal Party. If there be no rules, it would depend on facts. By reading a need of authorization even in favour of a designated leader, the GAT NETA, would mean transplanting the words and concepts which do not find place either in the letter of law or spirit thereof.

This aspect needs to be tested in the light of the law as laid down in Sadashiv Patil's case (supra).

39. We have the benefit of reading the judgment in the case of "Sadashiv Patil"(supra) by both sides and hence more than once.

40. It is seen that the dictum of law contained in the judgment of Sadashiv Patil is in para. 8, 9 and 15 thereof.

41. The dictum contained in para. 8, 9 and 15 will have to be read jointly. For appreciating the dictum laid down therein, we consider it necessary to quote the exact relevant text thereof which reads as under:-

8...

...

...

A copy of the rules and regulations (whether known as such or a constitution or by any other means) of the Municipal party and of the parent party, aghadi or front are to be filed, with the collector. There is a system of crosscheck provided by the rules. Not only a statement by the leader of municipal party is to be filed under rule 3(1)(a), every councillor in relation to municipal party shall, before he has taken his seat, furnish a statement of particulars and declaration in form (iii). The information so furnished shall be published in the Maharashtra Government Gazette and subject to rectification of such discrepancy as may be pointed out and necessary corrigendum if necessary being published in the Gazette, the

information shall be maintained in records of the collector in a register in Form IV under rule 5. In this manner, the evidence of formation of a Municipal party comes into existence and any doubts or disputes relating to formation of a particular Municipal party, and the members thereof, alongwith the requisite particulars furnished, filed, notified and entered in the register are ruled out.

9. The disqualification with which we are concerned is contemplated by Clause (b) of sub-section (1) of Section 3 of the Act. Voting or abstaining from voting in any meeting of the Municipal Council may entail disqualification, if: (1) such voting or abstention is contrary to any direction issued by (a) the political party or aghadi or front to which he belongs, or (b) by any person, or authority authorized by the political party or aghadi or front in this behalf; (2) such voting or abstention is not accompanied by a prior permission of such political party or aghadi or front or person or authority having been obtained previously or condoned subsequently within 15 days from the date of such voting or abstention. Condoning is not permissible if such voting or abstention is not preceded by prior permission and is relatable to election of any office, authority or committee under the relevant Municipal law. Thus, the power to issue a direction popularly called a whip, in order to attract penalty of disqualification has to be issued either by the political party or by aghadi or front to which the councillor belongs. The political party or aghadi or front may act collectively or may act through any person or authority. In the latter case, the person or authority must be authorized by the political party or aghadi or front in this behalf i.e. for issuing any direction (whip). If the political party, aghadi or front has any rules or regulations whether known as such or a constitution or called by any other name then the authorisation of the person or authority can be determined by looking into such document which would be available on record of the Collector having been filed as accompanying the statement in Form J, under Rule 3(1), else the factum of such authorisation in this behalf having been given to the person or authority issuing the direction or whip shall have to be proved to the satisfaction of the Collector, dealing with a reference u/s read with Rules 6, 7 and 8.

15. In Civil Appeal Nos. 6266-68 of 1998, 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 do not also 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, however strongly worded, may render its members 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 councillor 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."

[Sub-paragraphing is done and emphasis is given by us, for convenience of reading. The text is quoted from the dictum in para. 15 from the judgment of the Apex Court in Sadashi Patil's case, supra.]

42. In Sadashiv Patil's case rules and regulations were on record. The question of fact as to whether, authorization to issue whip was really in existence, was involved. Their Lordships held that the contents of the whip did not contain any recital spelling out the existence of any such authorisation and held that it also went to show that there was no such authorisation given.

43. Thus, the dictum in paragraph Nos. 8, 9 and 15 of judgment in Sadashiv Patil's case is on the point as to need of proof of fact that a whip was issued and the persons so issuing authorization inherently or by virtue of fact of authorization, possessed the authority to issue such whip.

44. It is evident that In Sadashiv Patil's case (supra), the question that had fallen for consideration before the Supreme Court was, on facts of the case, as to whether the person who had issued the whip was possessed of or vested with the power or authority to issue whip.

45. Thus, the dictum in Sadashiv Patil's case has to be read as under:-

[a] The question had not arisen before the Honourable Supreme Court, as to the manner in which, the situation, namely, whether at all a whip could be issued in absence of rules by the leader of the Municipal Party (Gat Neta) and there is no dictum in that regard.

[b] There is no dictum of Honourable Supreme Court to the effect that:-

? Gat Neta is not competent to issue a whip and that if admittedly, or if proved on facts, the Gat Neta has issued a whip, that such issuance was not competent.

? The Disqualification Act will cease to operate because where-ever no rules are laid before Collector;

? Any restraint was created by way of judicial dictum or by virtue of any doctrine or philosophical rule that the procedure should not be followed in case rules are

not there.

[c] The Disqualification Act or Rules do not lay down a model set of rules nor prohibit that constitution of the original Political party shall be followed or shall not be followed by Municipal party.

46. In view of the foregoing discussion, this court arrives at conclusions as regards the aspect authorization, which are summarized as below:-

[a] If rules exist, which govern the working of a municipal party, Aghadi or front, providing for the manner in which whip can be issued, such rules may have to be followed;

[b] When no such rules exist, and procedure has to be governed by democratic way.

[c] It may be open to the leader of the Municipal party to convene a meeting suo motu or, if members demand it, and adopt the decision by majority, which he should communicate as a whip, unless the resolution authorizes any other person than GAT NETA - leader of the Municipal Party.

[d] In absence of a meeting and/or resolution, whenever there is no such demand for meeting and the resolution, the GAT NETA-leader of the municipal party would be competent to issue a whip on his own.

[e] Violation of such whip would always be subject to condonation, as provided for by the Disqualification Act and the Rules.

[f] The power of condonation would advance and honour the democratic principles which recognizes democracy and right of expression and difference within group or party, within the frame of law.

47. In view of conclusions recorded by this court, on facts of the present case, this court finds that there was no meeting or requisition for meeting by the councillors of Municipal Party of the Indian National Congress Party. Therefore, upon getting authorization from original political party, the GAT NETA may nominate a candidate and can issue a whip thereon, which will be binding subject to power of Municipal Party to condone it.

48. Therefore, the absence of a set of rules, which would not admit any ambiguity, in order that the scheme of Disqualification Act and Rules is not defeated, it will have to be held that whenever there are no rules to the contrary and when a dictate of the democracy is not given by the Municipal Party, the GAT NETA shall be entitled to himself issue a whip or delegate authority to do so.

49. In case he delegates, such delegation shall have to be proved in the event of a challenge before the Court, as held by Honourable Supreme Court in case of Sadashiv Patil (supra).

50. We, therefore, hold that nothing is seen contrary to the scheme of election/nomination/authorization of GAT NETA, which would preclude him from issuing a

whip even in absence of express authorization.

51. In the result, we do not subscribe the view and finding recorded by learned Single Judge in the impugned judgment and order that the party leader does not have authority. In view of the foregoing discussion of law as laid down in Sadashiv Patil's case (supra), does not whet us to the view taken by learned Single Judge in the impugned order. Even independently of Sadashiv Patil's case, any provision of law contained in the Disqualification Act or Rules or any doctrinal foundation does not find any support to said view.

52. Therefore, the question of authorization is liable to be answered in favour of the appellant. Since there was no resolution to the contrary, the appellant was entitled to issue whip of his choice, which he says was based on original Political Party's dictate communicated to him. It will have to be held that issuance of whip by him, is legal and is issued with due i.e. inherent authorization.

POINT/ISSUE NO. 5 AS FRAMED BY COLLECTOR:-

5] Is it proved that the whip issued by the petitioner as a Group leader of the Indian National Congress Party was served on the respondents ?

53. As regards issue No. 5, i.e. Whether the whip issued by the group leader and/or party leader was served, learned single Judge has dealt with this aspect in the impugned judgment, in para nos. 27 to 31. It is seen that reliance was placed by the advocate for the appellant on a reported judgment in the case of Jitendra Himmat Biraris Vs. Kiran Patil and The District Collector, .

The learned Single Judge of this court, took a view while deciding Jitendra's case supra, that bare issuance of whip stands on par with service thereof and independent and formal service is not required. The substance of the dictum is that, rules contemplates issuance of a whip.

54. The learned Single Judge while passing impugned judgment dealt with the case of Jitendra Biraris, as follows:

27.....It is contended, placing reliance on the judgment in the matter of Jitendra Himmat Biraris Vs. Kiran Patil and The District Collector, , that the term directions "issued" cannot be equated with the term directions "served". As laid down by the learned Single Judge of this Court, the object of enactment is to provide for disqualification of members of certain authorities on the ground of defection and for matters incidental and connected therewith. The voters cannot be taken for a ride by change of affiliation by such a member to another political party. In the light of the said object the word "direction issued" as appearing in S. 3(1)(b) of the Disqualification Act, will have to be interpreted. It is further observed that if the word "directions issued" is to be interpreted as "served" then that would frustrate the very purpose of the enactment and the provisions. It is contended by the learned Senior Counsel appearing for Respondent No. 3, that in the facts and circumstances of the case, it would suffice the purpose if it is pointed out that the directions were issued and it need not be demonstrated that the

directions were served.

28. Looking to the facts of the instant case, as has been recorded earlier, neither the District President of Congress (I) party nor the leader of municipal party, are successful in demonstrating that they have authorisation to issue directives. The directives issued must be brought to the notice of the members by some convenient mode. In the instant matter, there does not appear to be anything on record to indicate that the directives issued by the person authorised to issue such directives, has been brought to the notice of the petitioners.

[quoted from para. 27 and 28 of the impugned judgment]

55. All that has to be inferred at this stage is that, in the impugned judgment, learned Single Judge did not agree with the dictum as found in the judgment of Jitendra Biraris (*supra*).

56. In order to examine and test the point of view expressed in the impugned judgment, we had a look at the judgment in Jitendra's case (*supra*) with care, caution and curiosity.

57. It is seen that in the case of Jitendra Biraris (*supra*), the Court referred to the dictum of the Honourable Supreme Court, in the case of Kihoto Hollohan Vs. Zachillhu and Others, . It would be useful to refer to para. 14 and 15, of the judgment in the case of Jitendra Biraris, *ad-verbatim*, which reads as follows:-

14. The Apex Court, while upholding and dealing with the provisions of the paragraph of the Xth schedule of the Constitution regarding the disqualification of the members of the house in a case of Kihoto Hollohan Vs. Zachillhu and Others, , has observed that the provisions are salutary and intended to strengthen the fabric of Indian Parliamentary democracy by carving unprincipled and unethical political defections. The anti-defection law seeks to recognize the practical need to place the proprieties of political and personal conduct above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. The court should defer to this legislative wisdom and perception.

The object underlying the provisions in the Xth Scheduled of the Constitution is to curb the evil of political defection motivated by lure of office or other similar consideration which endanger the function of our democracy. The remedy proposed is to disqualify the member of either house of parliament or to the State Legislature who is found to have defected from continuing as a member of the house. (The grounds of disqualification are specific in para. 2 of the Xth Schedule.)

15. The disqualification Act is enacted with same object. The object to be achieved by enacting Maharashtra Local Authority Members' Disqualification Act can be viewed from its long title which states it is an Act to provide for disqualification of members of certain authority on ground of defection and for matters incidental and connected therewith. The said Act is modelled on the Xth

Schedule of the Constitution wherein the member of the either house of the Parliament or of State Legislature is sought to be disqualified. The Act is introduced to curb the political immorality.

[quoted from judgment in the matter of Jitendra Himmat Biraris Vs. Kiran Patil and The District Collector, .]

58. We have noticed that by applying the same philosophy, as relied upon and discussed in Kihoto Hollohan's case (supra), the Disqualification Act of 1986, is enacted. Law relating to disqualification in parliamentary and assembly legislative houses, has to be read with any further dilution even to local self government bodies. On the other hand, objective of strengthening the party based solidarity is considered to be laudable.

59. This court has to be alive to the fact that now the local self government bodies are the third tier in the constitutional governance of the court by giving to these local self Govt. bodies a place in the Constitution of India.

60. Members of the party are, therefore, expected to be in touch and ought to be craving for knowledge as regards the direction or dictate of the Party. The dilemma relating to service of whip by post or other communication exonerates them from the arena of service on all those who are otherwise bound to be guided by the doctrine of political morality and ethics of democracy and have to keep craving and searching for the dictate of the Municipal Party, unless they demand the election and their choice is honoured by majority.

61. The definition of communication as understood in common parlance that the communication must reach the person to whom it is addressed, as can be seen from the definition of said term in the Indian Contract Act, as well as, in the dictionary, will have no application.

62. It would appropriate to refer to the meaning and definition:-

Meaning as per Concise Oxford English Dictionary:-

Communication:-

1. The action of communicating a letter or message containing information.
2. (Communications) the means of sending or receiving information, such as telephone lines or computers.
3. (Communications) the means of traveling or of transporting goods, such as roads or railways.

Definition of term "Communication" as per Indian Contract Act:-

Section 3 of Indian Contract Act:-

Communication, acceptance and revocation of proposals: The communication of proposals, the acceptance of proposals, and the revocation of the proposals and

acceptance, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance, or revocation or which has the effect of communicating it.

Section 4 of the Indian Contract is quoted for ready reference:-

? Communication when complete:-

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

? The communication of acceptance is complete:-

[a] as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

[b] as against the acceptor, when it comes to the knowledge of the proposer.

? The communication of a revocation is complete, as against the person who makes it:-

When it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it

? As against the person to whom it is made:-

when it comes to his knowledge.

63. Considering the tight schedule of elections prescribed in rules, if the procedure of sending a whip by different method and waiting for its physical service and securing an acknowledgment is to be expected as a scheme of legislation, the insolent or defecting member do not need to acquire any expertise in avoiding service of whip.

64. Avoiding service of any notice, summons and even warrants is a matter of expertise of unscrupulous elements in the society. Mockery of party discipline, homogeneity and integrity cannot be allowed to be risked at the sweet will of unscrupulous members of houses who would be keen on defection.

65. A defecting member will take the constituency for a ride, is a matter of fact as a pre-told democratic eventuality. Voters are entitled to note the character of a person, whom they have elected and the party in whose favour they have exercised their franchise. Therefore, this aspect cannot be a ground for diluting the principle that issuance of a whip has to be deemed to be service thereof.

66. From the point of view quoted herein above and for those reasons, we subscribe to and approve of the view expressed in case of Jitendra Biraris (supra) and we hold that the bare issuance of a whip is adequate and has to be deemed to be known to every constituent of Municipal Party.

67. Such a principle is the essence of a party based democracy and insistence of service will render the law of defection defeat able at the hands of unscrupulous

people. What happens to service of any notice of any type is known to everyone in the present scenario.

68. We, therefore, record our finding on the issue nos. 4 and 5, in favour of the appellant herein, who is disputant before the collector.

69. Facts averred, show that a serious effort was made to serve the whip by registered post and the District President of the Indian National Congress was involved in the process of issuance of whip.

70. Considering the unscrupulous denials raised in the written statement, it was important to note that fact of issue of whip was not only point of denial by the respondent no. 1 Kiran Wattamwar, his extent of denial express such extreme magnitude that barring the election, he was authorized by the Indian National Congress. He has denied almost everything. However, misguided by the legal brains such denial be, undoubtedly, he has signed a written statement with such contentious denial and it would certainly reflect on his personality, as to whether, his other denials are really worth trusting.

71. Apart from respondent No. 1, other witnesses did not step in the witness box. Case against them has gone un-refuted, though traverse by way of written statement is on record. Such traverse are undoubtedly be traverse of pleadings and there is no rebuttal of the evidence brought by the appellant/disputant.

72. Case of the respondent, who did traverse but who did not do the rebuttal of evidence on oath, really does not stand on different pedestal than facts proved by one party and gone un-rebutted. All of them are selling in a sinking boat, which must sink.

73. The irregularities in the said process of maintenance of record by original Political Party, noted by the learned Single Judge, would be really or extremely be insignificant, since the service of whip was not of essence, and rather declaration of whip was the crux of the matter. The fact of declaration was duly proved. It was a case of oath against oath and fact of issue of which was not open for interference in the writ jurisdiction under Articles 226 and 227 when it was not shown to be perverse. Result is that, the appeals succeed. Hence, we pass the following order:-

[a] L.P.A. Nos. 105 of 2012 and 107 of 2012 are allowed.

[b] The judgment and order passed by the learned Single Judge, dated 7th May, 2012, in W.P. Nos. 1875 of 2012 and 1993 of 2012 is quashed and set aside.

[c] As a result thereof, the judgment rendered by the Collector stands revived.

[d] Considering the fact that the respondent Nos. 1 to 4 have been acting as councillors in their respective posts, this judgment and order shall operate after a period of 30 days from today.

[e] Appeals shall succeed with costs.