

(2005) 06 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No's. 3962, 4007, 4039 and 4040 of 2005

Hariharrao Vishwanathrao Bhosikar

APPELLANT

Vs

Datta Anandrao Pawar and Others

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Constitution of India, 1950 — Article 226, 227

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 2, 3, 3(1), 4, 5

Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 2, 3, 3(5), 5, 6

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 57(1)

Citation : (2006) 1 ALLMR 702 : (2005) 4 MhLj 211

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : V.J. Dixit, B.L. Sagar-Killarikar and A.S. Golegaonkar, for the Appellant; Prakash B. Patil, V.H. Dighe, S.S. Autade, M.V. Deshpande, R.R. Mane and V.H. Dighe, AGPs, for the Respondent

Final Decision : Allowed

Judgement

A.B. Naik, J.—All the four writ petitions involve common question of law, though filed by different petitioners, can be disposed of by the this common judgment. All the petitions are filed under Articles 226 and 227 of the Constitution of India, 1950 (for short "the Constitution"). The petitioners have challenged the action of the Collector, Nanded, taking cognizance of the petitions filed under the Maharashtra Local Authority Members (Disqualification) Act, 1987 (for short "the Act"). For the convenience, I will note down the relevant facts in seriatim.

2. Writ Petition No. 3962/2005 is filed by one Harihar Vishwanath Bhosikar, a sitting Member of Zilla Parishad, Nanded. He was elected to Z. P. Nanded from Bahadurpura Zilla Parishad (Kandhar), Vibhag No. 8. He was sponsored by Nationalist Congress Party (for short "NCP") and, was elected as such. After the

elections, he continued to be a member of Zilla Parishad, Nanded. (for short "Z.P."). The respondents 1 and 2 (hereinafter referred to as "the complainants") filed a petition seeking disqualification of the petitioner as a Member of Z.P. That application was filed under the Act, on the ground that the petitioner has violated the direction/whip issued by the District President of NCP, to withdraw his nomination from the Maharashtra Assembly 175, Kandhar Constituency. It was contended that the petitioner, on 21st September, 2004, has filed two nomination papers to contest the assembly elections from that constituency. The two nomination forms which were submitted by him - one from NCP and another being an independent candidate. The complainant No. 2 -Shankar (Anna) Ganeshrao Dhondage has also filed his nomination paper from Kandhar Constituency from NCP party. It is contended that the Nanded District Committee of NCP has conveyed an emergency meeting under the Presidentship of complainant No. 1 i.e. Datta Anandrao Pawar, wherein it was resolved to direct the petitioner to withdraw his nomination from the assembly election. It is contended that in spite of the said direction (whip), he did not withdraw his candidature from the assembly election and contested the elections, thereby violating the whip/direction issued by Nanded District Committee of NCP and, as such, it is contended that for non-obeying the whip, he has incurred disqualification, as provided u/s 3(1)(b) of the Act. With these allegations, the Disqualification petition was filed before the Collector, Nanded, on 11th October, 2004.

3. The Disqualification petition u/s 3 of the Act, is to be presented/filed in the manner provided under Rule 6 of the Maharashtra Local Authority Members Disqualification Rules, 1987; (hereinafter referred to as "the Rules"). According to the complainants, they have presented the petition under the Rules. On presentation of the petition, the Collector, Nanded noticed the petitioner, vide notice dated 29th November, 2004 calling upon him to attend the hearing of the petition which was scheduled to be held on 7-12-2004 at 3.00 p.m. before the Collector, Nanded. The notice was accompanied by the copy of the petition. On receipt of the notice, the petitioner appeared and filed an application dated 7-12-2004 seeking an adjournment, on the ground that the complainants did not provide copies of the documents on which they have relied. It is stated that the notice was received on 4th December, 2004. On receipt of the application for adjournment, it appears that the proceedings were adjourned. The petitioner, on 16th February, 2005, submitted an application with a prayer that preliminary issue regarding tenability of the petition be framed before deciding the main petition. The application filed by the petitioner was objected to by the complainants by filing their reply dated 9th March, 2005. In their reply, they stated that the application for framing preliminary issue be rejected and the petitioner be directed to file written statement, instead of prolonging the matter on hearing of the preliminary issue. The Collector, Nanded, upon hearing the parties, opined that instead of giving any finding on the preliminary issue, the petition itself can be decided finally along with preliminary objection. Accordingly,

the Collector, Nanded, by his order dated 24th May, 2005, rejected the application filed by the petitioner. On rejection of the application by the Collector vide order dated 24th May, 2005 the petitioner approached this Court, by way of this petition.

4. This petition was circulated for motion hearing on 13th June, 2005 and on hearing the learned counsel for the petitioner and the learned Asst. Government Pleader, I passed the following order :

Heard Shri V. J. Dixit, learned Advocate for the petitioner. Notice before admission returnable on 20-6-2005.

To be kept in urgent category.

The petitioner shall serve the respondents by Hamdast in addition to the Court service notice.

Shri N. B. Khandare, learned AGP waives service for respondents 4 and 5.

Pending admission and final disposal of this petition, all further proceedings pending before the District Collector, Nanded being Disqualification Petition No. 2004/GB/Desj-1/ASSY/ELE-CR-13 stand stayed.

The respondents put to notice that on the next date of hearing, the petition will be heard finally at the motion hearing."

5. Pursuant to the notice issued by this Court Shri P. B. Patil, learned Advocate appeared for respondent Nos. 1 and 2. Shri V. H. Dighe, learned AGP has tendered the record and proceedings in connection with the Disqualification petition. In the petition, only question of interpretation of the rules and to find out whether the application is in strict compliance with the rules or not, has to be decided. As these are no disputed questions of fact involved in this petition, as such, it can be disposed of on the basis of the record. Therefore, it is not necessary for the respondents to file reply to the contentions that are raised in the petition. By perusing the original record, the contentions can be considered.

6. Writ Petition No. 4007/2005 filed by Shri Balaji Baliram Bande, Member of the Zilla Parishad, Nanded who was elected from Jamb Division constituency of Mukhed Taluqa. He contested the election as a candidate of Shiv Sena and got elected. On being elected, he continued to be the member of Z.P. Nanded, as such. The petition under the Act came to be filed on 10th December, 2004 by three complainants, one of them Shri Subhash Piraji Sabne is sitting MLA who is contesting the election from 174, Mukhed Legislative Assembly constituency. It is contended in the Disqualification petition filed under the Rules, that complainant No. 1 is Zilla Pramukh of Nanded District Shiv Sena, Branch Kandhar. The complainant Nos. 1 and 2 are the Shaka Pramukhs as per the dictate of the High Command of Shiv Sena. The complainant No. 3 contested the election of assembly and the petitioner has also contested the election of assembly as an independent candidate. The results of the elections were declared on 13th

October, 2004 and complainant No. 3 came to be elected. In the Disqualification petition, it was contended that the petitioner is indulging in illegal acts by adopting malpractices and misdeeds against the Shiv Sena. In the assembly election, he contested the election against official candidate though it was directed by the High Command not to contest the election of assembly against the party nominee. It is contended that the petitioner as candidate of Shiv Sena party contested the election of Z.P. from Jamb Z.P. constituency as a party nominee candidate and, accordingly, he was elected. It was contended that the petitioner has filed his nomination against the party candidate at the assembly election though he was directed not to contest the election. It was contended that the complainant has received necessary authorization from the High Command on 23rd September, 2004 and, according to the said authorization, the complainant No. 2 being Taluqa Pramukh of Shiv Sena, issued a whip on 23rd September, 2004, which was served on the petitioner at his residence on 24th September, 2004. It is contended that in spite of the said whip and direction being given to the petitioner to withdraw his nomination from the election of the Legislative Assembly from Mukhed constituency, he did not obey the dictate and honour the whip and contested the election. It was further contended that the whip issued by the party was personally communicated by the complainant to the petitioner by visiting his house on 24th September, 2004. It is contended that the petitioner submitted his nomination in spite of specific direction given not to contest the election. Further direction was issued to the petitioner by the complainant Nos. 1 and 2 to withdraw his nomination, but, in total defiance of the dictate of the party, he acted against the interest and, therefore, he incurred disqualification as Member of the Z.P. As such, it was contended that the petitioner be disqualified under the provisions of Section 3(1)(a) and (b) of the Act.

7. On presentation of the original petition on 10-12-2004, the Collector, Nanded issued notice on 15-12-2004, calling upon the petitioner to remain present for hearing on 18th December, 2004 at 10.30 p.m. in his office. Along with the notice, copy of Disqualification petition was forwarded. The notice issued was served on the petitioner by the Tahsildar on 16th December, 2004. However, the notice dated 15th December, 2004 could not be served on the petitioner as the petitioner was not found on the address. Accordingly, the Talathi, Mukhed submitted a report to Tahsildar. Thereafter, a fresh notice was issued vide notice dated 18th December, 2004 which was served on the petitioner on 23rd December, 2004. The petitioner received the copy of the petition, whereas he made an endorsement to that effect on the Office copy of the notice dated 18th December, 2004. Pursuant to the notice the petitioner appeared before the Collector, Nanded on 24-1-2005 and the matter came to be adjourned to a subsequent date. On 16-2-2005, the petitioner filed an application to frame preliminary issue regarding maintainability of the petition and to dismiss the same as it is not in compliance with the mandate of the statute. The petitioner filed an application raising a contention that the petition is not in conformity with

the provisions of the Rules. It is also stated that the petition is filed by the persons who have no locus standi to file such petition as none of them is sitting member of the Z.P. Nanded. On filing this application, the complainant, on 9th March, 2005 filed an application seeking leave of the Collector to add the leader of Z. P. Shiv Sena party as complainant No. 4. These two applications one filed by the complainant seeking leave to add the leader of Shiv Sena Z.P. party as a party complainant and another application filed by the petitioner to consider the preliminary issue. The Collector, instead of deciding the applications filed by the petitioner at the threshold, observed that the applications shall be considered along with the main Disqualification petition. Similarly, the Collector taking recourse to Order I; Rule 10 of the CPC (for short "CPC") allowed the substitution of Zilla Parishad party leader. Accordingly the order came to be passed by the Collector on May 24, 2005.

8. Feeling aggrieved by the order passed by the Collector, the petitioner approached this Court by way of this petition. The writ petition was taken up for motion hearing on 14th June, 2005 and similar order, as passed in W. P. 3962/2005, came to be passed by me, quoted supra.

9. Pursuant to the notice issued by this Court, the parties were served and respondent No. 3 appeared through his Counsel. So far as respondent Nos. 2 and 4 are concerned, though they are served, none appeared for them. Shri Dighe, learned AGP has produced the original record and the proceedings of the Disqualification petition.

10. Coming to two other petitions filed by Shri Sangram Vithal Haigale and Ms. Anuradha Dattatraya Dhanave. The petitioners are sitting members of Z.P. Nanded contested the election of Z.P. as a candidate of Bharatiya Janata Party (for short "BJP") from Bodhari Division. The elections to the Z.P. were held sometime in the years 2002. On being elected as the candidate of BJP, he continued to be Members of Z.P. Nanded, Shri Haigale also is a sitting member of Z.P. Nanded, who contested the election as a candidate of BJP from Lohgaon Division Z.P. Nanded and since the date of election as member of Z.P., he continued to be the member of the said Z.P. The complainants have filed Disqualification petition against both these petitioner's under the provisions of the Act, raising identical contentions. It is contended that the petitioners being members of BJP, in defiance of the direction/whip issued by the BJP party, have contested the election for Maharashtra Legislative Assembly from Kinwat and Biloli Taluqas, respectively. It is contended that the direction/whip was issued by the party directing the petitioners not to contest the election of Legislative Assembly and to withdraw the nomination which is filed by them as an independent candidate as in both the constituencies the BJP has sponsored the official nominees. It is contended that in defiance of the party direction/whip, they did not withdraw the nomination and contested the elections. Therefore, it was contended that by their action of contesting the election they have incurred disqualification within the meaning of Section 3(1)(a) and (b) of the Act. On

these allegations, the petitions under the Act, came to be filed on 17th December, 2004 and 5th February, 2005 respectively.

11. After receipt of the reference/petitions the Collector on 14-2-2005 issued notices to the parties concerned directing them to appear before him on 13-1-2005 and 21-1-2005 respectively. On receipt of the notice which accompanied the petition only. The petitioners appeared and submitted an application on 16th February, 2005, raising an objection about maintainability of the petition by contending that the petitions which were filed does not comply the mandatory requirement of Rules. It is stated that the copy of the petition was only served and annexures thereof, were not accompanied by the notice or with the petitions. They have requested the Collector to frame preliminary issue as to tenability of the petitions. That an application for framing an preliminary issue and the decision thereof was filed; whereas an application to add as complainant No. 4 the party leader is also filed. The Collector heard the parties on these applications; but instead of deciding the issue of tenability, he deferred the said decision and ordered that the question of tenability will be decided at the time of final hearing of the petitions. However, he allowed the application filed by the complainant to add the party leader as complainant No. 4, by taking recourse to Order I ; Rule 10 of the Civil Procedure Code. The order came to be passed by the Collector on 24th May, 2005. These orders are the subject-matters of these petitions.

12. These petitions were heard for motion hearing on 15th June, 2005 by me and I directed notice of admission returnable on 23-6-2005 and further put the parties on notice that these petitions will be heard and disposed of finally at the time of motion hearing itself. As per the direction given by this Court, the petitioners served the notices of W.Ps. on the respondents; accordingly, affidavit of service is filed in the court in both these petitions. Having gone through the affidavit of service, I am satisfied that the complainants are duly served but, as on today, they have not put up their appearances. Shri Dighe, learned AGP appearing for respondent No. 6-Collector has produced the record and proceedings of the Disqualification petitions. As all the petitions are ready for hearing and as I already directed that the petitions will be heard finally, at the motion hearing, I decided to hear the counsel appearing for the parties at length.

13. S/Shri Dixit, Killarikar and Golegaonkar, learned counsel have raised common contention that all the petitions filed under the Act should have been dismissed by the Collector at the threshold as the said petitions do not comply the mandatory provisions contained in Rules 6 and 7. They contend that the petitioners were served only with the copy of the petitions filed under Rule 7 and without the copies of the annexures on which the complainants relied. They submitted that the Collector is under an obligation before noticing the parties to follow the mandate of the statute and to find out whether the petitions so filed are in conformity with the Rules. They submitted that the statute mandates that if the petitions do not conform the requirement of the Rules, the Collector has to

reject the petitions at the threshold. They submitted that on receipt of the notice which accompanied the copy of the petition only, they appeared and filed the applications complaining that the notice which is served on the petitioner was accompanied by the bare petition only, sans annexures thereof and, when it was brought to the notice of the Collector, the Collector should have dismissed the petitions even without waiting for an application with a request to frame preliminary point/issue and to decide the same as such. They contended that the Collector has failed to exercise his jurisdiction by not considering and not dismissing the applications at the threshold. The Collector was under statutory obligation to dismiss all the petitions at the threshold; he has no jurisdiction to postpone the hearing of the matter; he committed serious error which goes to the root of the case. Thus, he committed manifest error observing that the applications about the maintainability of the petitions shall be considered along with the main petition. They therefore submitted that the Collector by ordering maintainability of the petitions will be considered at the conclusion of the trial, amounts to material irregularity committed by the Collector and thus it is an error appearing on the face of the record. It was next submitted that even though they were not served with the copy of the annexures, from the record which is produced before this Court, the counsel contended that none of the annexures were verified as required by the Rules. Therefore, they submitted that the petitions which were filed, do not comply with the statutory and mandatory requirement, as envisaged by the Act and the Rules, the Collector even should not have taken cognizance and he should have rejected the applications summarily, without noticing the petitioners. They submitted that the Collector by non-considering their applications as regards maintainability of the petitions, committed an error.

14. The learned Advocates, further, submitted that even assuming that the Disqualification petitions can be considered on merit but they submitted that the allegations and the facts attributed to the conduct of the petitioners which according to the complainants amounts to disqualification has nothing to do with the functioning of the petitioners as a Member of Z.P. The allegations of disqualification are in respect of an election under the Representation of the People Act, wherein it was contended by the complainant that the petitioners being Members of Z.P. who were elected from a particular political party i.e. NCP SS and BJP, they cannot contest the elections of the assembly as independent candidates, opposing the official candidates of that party. Therefore, they contended that the base of filing the Disqualification petitions is, thus, slippery and as such, cannot withstand the rigour of law. They submitted that all the petitioners have contested the election of local body and any act or omission on the part of petitioners about their conduct though it may sound against the interest of the political party, that cannot be a ground to disqualify the petitioners as Members of Z.P. It was further submitted by the learned counsel that all the complainants have no locus to file Disqualification petitions as none of the complainants is sitting Member of the Z.P. Therefore, they submitted that

taking cognizance of such petitions by the Collector is without any authority of law and filing of such petitions by the complainants, thus, amounts to abuse of the process of law. They submitted that on the face of it all the petitions should have been dismissed by the Collector at the threshold, without issuing any notice. They submitted that the issuance of notice by the Collector calling upon the petitioners to appear in the matter, thus, is an act without application of mind to the facts and the law. The learned counsel submitted that the Collector has failed to exercise his jurisdiction vested in him by law in not rejecting the petitions at the threshold.

15. The learned Advocates, submitted that the Disqualification petition has to be filed by the member/s of the local body and no other individual or the person having no connection with the local body can file such petition, seeking disqualification of sitting member of Z.P. They further submitted that the Act and the Rules being a Code in itself, the filing of petitions, scrutiny and decision thereof, has to be made within the four corners of the Act and the Rules. The learned counsel submitted that the Collector has entertained the petitions as if he has an jurisdiction to treat the petitions as Public Interest Litigation. They therefore, submitted that all the petitions are filed with mala fide or political intention and for extraneous motivations, without there being any real basis or cause to file such petitions. They submitted that all the petitions filed by the complainants are required to be rejected by the Collector at the threshold. They submitted that the so called whip cannot be called to be a whip or direction issued by the respective parties. What is stated by the complainants in the complaint that the petitioners who were elected from their respective parties have contested the election of the Legislative assembly as independent candidate opposing the candidature of official candidates of their respective parties and, thus, they have acted contrary to the whip issued by the parties. Therefore, they submitted that the contentions about issuance of whip by the parties as alleged cannot be accepted to be valid one. It is contended by the counsel that if the whip is to be issued, the same has to be issued by the Leader of Z.P. party. They contended that "Z.P. party" has been defined under the Act; "Local Authority" is also defined under the Act and, therefore, the action of issuance of alleged whip by the so called District President of the Party cannot be called as a whip issued by the Z.P. party. Therefore, they submitted that there was no cause whatsoever to file such a petition and to seek disqualification of elected representative of the people who have expressed their confidence by electing them to the Local Authority. They submitted that the term-"Member" is also defined under the Act and, therefore, filing of petition must be by the Member of the Local Authority and that must be in relation to the Z.P. party as defined under the Act. They submitted that on bare perusal of the Disqualification petition it will reveal that the petitions are filed so casually without adhering to the mandatory requirement of law and the Collector has in casual manner treated the said applications and issued notices to the petitioners to answer such absurd allegations raised in the petitions.

16. They contended that the provisions of the Act and Rules are mandatory and they have to follow it in the strict sense. They submitted that, therefore, the legislature has cast an onerous duty upon the Collector first to find out whether the petitions filed are in strict compliance with the Act and the Rules. If petitions are lacking or is not in conformity with the Rules, the statute mandates the Collector to dismiss the petition at the threshold without even issuing notice to the parties as in case it is accepted that the concerned has incurred disqualification, it will amount to drastic steps in disqualifying the member. Therefore, they submitted that alleged whip is not by the leader of the Z.P. party. They submitted that leader of Z.P. party has also defined under the Rules. They submitted that the Disqualification petitions have been filed by unconcerned persons in a casual manner. The Collector, therefore, committed serious error in entertaining the petitions and noticing the petitioners to appear before him and to answer the allegations. The last contention of the learned counsel is that the Collector while permitting the complaints to add the leader of the parties as a complainant is patently erroneous order, passed by the Collector in total defiance of the rigour of the statute. They submitted that there is no scope for the Collector to take help of the Order I Rule 10 CPC and permit the complainant to add the leader of the party as complainant. They contended that by issuing such a direction, the Collector has assumed the jurisdiction which is not vested in him by the statute. They contend that the Act is a special legislation enacted by the Maharashtra Legislature keeping in tune with the amendment made by the Parliament and introduced under Schedule X to the Constitution. They submitted that neither the Act nor the Rules makes any provision for application of CPC for the trial of the Disqualification petitions. They submitted that the Disqualification petition is to be filed as required under the Rules and that has to be dealt with as per the Rules itself. There is no scope for the Collector to borrow the provisions of the CPC and permit the complainant to add the party. They submitted even there is no provision for amending the petition and to permit the complainant to fill up the lacunae in the original petition. They submitted that the entire action of the Collector is, thus, illegal and not in conformity with the provisions of the law. They contended that the Collector has passed the order in colourable exercise of power.

17. Per contra, Shri P. B. Patil, learned counsel for the respondents 1 and in W. P. No. 3962/2005 had contended that the Collector has not rejected the applications of the petitioners and directed that the applications will be considered at the time of final disposal of the main petitions. Therefore, he submitted that there is no adverse order against the petitioners so as to give them cause to approach this Court by filing the present petitions. He submitted that it was not necessary for the complainants to verify the annexures as the copies annexed with the petitions were certified copies. He submitted that if the annexures are not verified as required by the rules, the petitions cannot be dismissed on that count. He submitted that the Collector may permit the party to comply with the deficiencies noted i.e. verification of those documents at later

stage. To the inquiry made by this Court Shri Patil was not in a position to make any positive statement whether the Disqualification petition was filed along with the annexures and that compilation was served on the petitioners. He, therefore, submitted that this Court may issue direction to the Collector to decide the question of maintainability before deciding the main petition.

18. Shri Murar Deshpande, learned Advocate for respondent No. 3 in W. P. 4007/2005 has adopted the submissions of Shri Patil and submitted that no prejudice will be caused to the petitioners if the Collector is directed to dispose of the applications filed by the petitioners for deciding the maintainability of the petitions as a preliminary issue/point.

19. Shri Dighe, learned AGP, has fairly submitted on the basis of record that on the annexure which find place in the file, there is no verification as required by the Rules. He submitted that the file which is handed over to him does not disclose that the annexures were filed along with copy of petition. He also submitted that he cannot make any positive statement that the notices were served on the petitioners and the petition was not accompanied by the annexures. He submitted that the copy of the notice which is part of the record does not indicate or there is any reflection that the petitioners were served with the annexures also; with this contention, he submitted that he has no objection for passing appropriate order by this Court.

20. From the contentions of the respective counsel advanced before me, the following points arise for my consideration :

(i) Whether all the Disqualification petitions strictly comply with the provisions of Rules 6 and 7 of the Rules?

(ii) Whether the Collector, Nanded was justified in deferring to decide the preliminary issue of maintainability of the petitions?

(iii) Whether the complainants have any locus to file such petitions to seek disqualification of the petitioners,

(iv) Whether the so called direction/whip are issued by the Competent person or office-bearers of the respective parties?

(v) Whether disqualification can be sought on the ground of the acts and the omissions of the sitting members attributed not connected with his conduct in the House, and that act and omissions whether necessarily has any effect on the functioning of the Member of the ZP?

(vi) Whether the Collector has jurisdiction to order implementation of party to the dispute?

21. Before answering the abovesaid points, it will be appropriate to note down what are the allegations made by the complainants in their respective Disqualification petitions (for short "DPs"). Writ Petition No. 3962/2005 pertains to DP being No. 2004/JB/Desk. I/CoLL/CR-13. The complainants contend that

they and the petitioner belongs to NCP and the petitioner is the Member of the Executive Body at the State level of NCP. The complainant No. 1 claims that he is the President of the District NCP Unit. It is contended in the complaint that the petitioner was elected as Member of Z. P., Nanded in an election held in the month of February, 2003 from Bahadarpura, Kandhar, Vibhag No. 8. In the year 2004, the elections of the Maharashtra Assembly were declared. In the said election, the petitioner submitted two nominations forms so as to contest assembly elections from 175 Kandhar constituency. He submitted that one nomination form showed himself as the candidate sponsored by NCP and another one as an independent candidate. The complainant No. 2 has submitted his nomination to contest the assembly elections from NCP. It is stated that after scrutiny the complainant No. 1 asked the petitioner to withdraw his nomination; however, he declined to obey such direction. The below quoted paras of the complaint, which are relevant, read thus :

"9. That, owing to above hostile-smelt attitude of the respondent No. 1 in regard two withdrawal of nomination form as an independent candidate, the Nanded District Committee called its an urgent meeting on 23-9-2004 itself in the evening under the President-ship of petitioner No. 1 and in that meeting unanimously it has been resolved to issue written party whip duly signed by District President against respondent No. 1 directing him to withdraw his nomination form well within time and failing to which the action in regard to disqualification would be taken. Copy of such resolution is enclosed herewith for kind perusal of Hon"ble Court.

10. That, as per resolution above the petitioner No. 1 in the capacity of President of Nanded District Nationalist congress Party had issued the WHIP dated 23-9-2004 against respondent No. 1 directing him to withdraw his candidature by withdrawing nomination form from 175-Kandhar Constituency as the part has finalized the petitioner No. 2 as its contesting candidate and work for petitioner No. 1 in the election etc. The copy of such "WHIP" is enclosed herewith for kind perusal of Hon"ble Court.

11. That, on 24-9-2003 in between 2.00 p.m. and 3.20 p.m. petitioner No. 1 along with respectable Panchas went to the residential address of respondent No. 1 which was given by him in the nomination form at village Pan-Bhosi at G. P. House No. 252 to serve the above "WHIP" dated 23-9-2004 but as nobody was at the house after reading over the contents of whip to Panchas, it was pasted on conspicuous and visible place of house in presence of two panchas and in this regard the Panchanama was conducted which was duly signed by the two Panchas and the petitioner No. 1. The copy of such Panchanama is enclosed herewith for kind perusal of the Hon"ble Court.

22. According to the complainants, the petitioner has violated the whip issued by the President Local Unit and, therefore, it was contended that having violated the whip he is disqualified from remaining Member of Z. P. as petitioner expressly and warranted deserted the discipline of the party and incurred disqualification.

In the complaint so filed, it was not stated by the complainants about their status as a party leader nor there is a contention in the application that they are sitting members of Zilla Parishad. On this backdrop the complaint came to be filed. The original record which was produced before this Court establishes that the DP which is filed, was not filed in terms of the Act and the Rules. It reveals that the Collector has not personally verified the petition but a note was prepared by someone from the Office of the Collector, Nanded and submitted it to the Collector. On submission of that note at the instance of someone from the O/o Collector, Nanded, Collector directed issue of notices to the concerned. The notice so issued (the copy of which is on record signed by someone on behalf of the Collector), was sent to Tahsildar, Kandhar for effecting service on the party. Along with the notice, only copy of the complaint was sent. The contents of the notice date 14-2-2005 reads as under:

"To

...

SUB : DECLARING AS DISQUALIFIED IN ACCORDANCE WITH THE PROVISIONS OF THE MAHARASHTRA LOCAL AUTHORITY MEMBERS DISQUALIFICATION ACT, 1987 :

...

Shri Digamber Bapuji Pawar (Patil) and Ors. v. Smt. Anuradha Datta Dhanve and Ors. :

The case filed under the provisions of the Act in regard to the above referred subject by Shri Digamber Bapuji Pawar (Patil) R/o Nanded, Tq. and Dist. Nanded shall come up for hearing on 21-2-2005 at 11.30 a.m. before the Collector, Nanded. Copy of the plaint is being sent herewith. Hence, you are directed to put forth your say in respect of the said case on the above-stated date in person or through your Advocate. Encl : Copy of plaint.

Sd/ for Collector Nanded

As per approval of the Collector."

23. W. P. No. 4007/2005 pertains to DP No. 2005-GB-Desk/II-ZPPs-ELE-CR-14. The relevant contentions of the complaint read thus :

"2. That, the petitioner No. 1 is the Zilla Pramukh of Nanded District Shiv Sena Kandhar. The designation of petitioner Nos. 1 and 2 is constituted as per the High Command of Shiv Sena political party as per their constitution and the petitioner No. 3 is the member of Legislative Assembly constituency of Mukhed and who have been authorized party candidate in the last General election held on 13th October, 2004 in Assembly Constituency No. 174 as a Shiv Sena party candidate in which the respondent No. 1 contested election against the petitioner No. 3 as an independent candidate.

4. That, petitioners further say and submits that, Shiv Sena party as per their decision declared their candidates in Nanded District including the constituency of Mukhed for their authorized candidates for submitting their nominations.

5. That, petitioner No. 3 have been declared as authorized candidate of Mukhed constituency on behalf of the Shiv Sena party, accordingly, he has submitted his nomination on behalf of Shiv Sena party along with required B-form for symbol of the party.

9. That, petitioners further say and submits that on valid information of filing of nomination by respondent No. 1 against the party candidate being the District Head of Shiv Sena party has authorized after receipt of information on 22nd September, 2004 from petitioner No. 2 authorized petitioner No. 1 to serve the party whip and directions on respondent No. 1 through petitioner No. 2 by authorization letter dated 23rd September, 2004, accordingly on the basis of authorization petitioner No. 2 being Taluka head and Pramukh of Shiv Sena served whip dated 23rd September, 2004 on respondent No. 1 on 24-9-2004 at his residence.

14. That, petitioners further say and submits that, the respondent filed- his nomination against the policy of party direction, not only this he has not withdraw the nomination after service of party whip on him, thereby he has voluntarily given up from petitioner's party and acted against the whip, therefore, he incurred disqualification, not only this, the acts and deeds of respondent No. 1 expressly and voluntarily disregard the discipline of the party and he also incurred disqualification to remain as Zilla Parishad Member (Councillor) with respondent No. 2.

24. The DP was lodged in the office of the Collector and note was prepared by the O/o the Collector on 14th December, 2004. On 15th December, 2004, the Collector directed the Tahsildar Mukhed to serve the notice of the complaint to the concerned. The copy of the notice is identically worded (as quoted supra). There is no endorsement below the notice that the notice is accompanied by the complaint and its annexures. However, the notice which was initially signed was not served on the petitioner and ultimately it was served on 23rd December, 2004 and the petitioner accepted it, by making following endorsement :

^^fooknkph Nk;kafdr izr o uksVhl feykyh**

The endorsement of the petitioner is indicative of the fact what was served on him was only the copy of the DP, without its annexures.

25. W. P. No. 4039/2005 arising out of the proceedings No. 2005/GB/Desk. II-ZP PS/ELE/CR-60. The complainants have made following averments in their DP.

"1. That, the petitioners and respondent No. 1 belongs to Bharatiya Janata Party, a "political party and names of the petitioners and respondent No. 1 recorded in the membership role maintained by the District President i.e. petitioner No. 1.

7. That, the petitioners party have learnt about illegal, acts of respondent No. 1 for doing misdeeds against policies of his political party and its authorized candidates and lastly resulted into filing of nomination by respondent No. 1 against the party candidate, petitioner No. 2 from Biloli MLA constituency as independent candidate against the party authorized candidate.

8. That, therefore, on confirm information filing of nomination by respondent No. 1 against the party candidate the petitioner No. 1 being the District President of their party authorized petitioner No. 3 to serve the party whip and direction on respondent No. 1 through petitioner No. 3 by his letter dated 23-9-2004, accordingly, on the basis of authorization petitioner No. 3 being Taluka President of their party served party whip dated 23-9-2004 on respondent No. 1 on 24-9-2004.

9. That, as per the party whip and directions the respondent No. 1 directed to withdraw the nomination filed by him as independent candidate against the authorized party candidate for their political party despite of whip and direction he has declined to obey the same.

10. That, further petitioners submit that on 24-9-2004 petitioner No. 3 after receipt of authorization letter from his party has visited the house of respondent at about 10.30 a.m. and requested him to receive the party whip, however he has denied to accept the party whip, therefore petitioner No. 3 has no any alternative to call panchas in front of house of respondent No. 1, he has affixed the party whip on door of house of respondent No. 1 and petitioner No. 3 prepared a panchnama at about 10.30 a.m. to 11.50 a.m. in presence of panchas and by this way the party direction and whip have been served on the respondent No. 1.

14. That, petitioner No. 1 and 3 being party head of District and Taluka and petitioner No. 2 being authorized candidate from Bharatiya Janata Party are eligible and entitled to refer this reference before Hon"ble Court for relief claimed against the respondent No. 1.

26. On receipt of the DP a note was prepared for direction to issue notice to the concerned. The communication was sent to Tahsildar, Biloli to serve the notice of the petition on the respondent. The notice indicates that only copy of the petition was sent.

27. W. P. No. 4040/2005 arises out of petition No. 2005/GB/L II/ZPPS ELE/CR-15. The following contentions have been raised to seek disqualification :

"1. That, the petitioners and respondent No. 1 belongs to Bharatiya Janata Party a political party and names of them recorded in the membership roll maintained by the District Party President i.e. petitioner No. 1.

2. That, the petitioner No. 1 is the District Party President of Bharatiya Janata Party, Nanded and petitioner NO. 3 is Taluka President of Kinwat Taluka and petitioner No. 2 was the authorized candidate of Bharatiya Janata Party for

Kinwat in MLA constituency No. 168 held in October, 2004, the respondent No. 1 though belongs to Bharatiya Janata Party filed his nomination as a independent candidate from the same constituency though he belongs to elected member of Zilla Parishad, Bodhadi constituency from the Bharatiya Janata Party.

3. That, the State Election Commission through their notification on 24th August, 2004 declared the programme of election of MLA of Maharashtra Assembly and its process started from 15th September, 2004 to 25th October, 2004 including the date of nomination, scrutiny, withdrawal and polling etc.

4. That, as per the decision of party high command published their party candidate list including the Assembly constituency of Kinwat and also instructed to their candidates to file nominations, so the petitioner No. 2 has been authorized candidate of petitioner party from Kinwat MLA post, accordingly, he has filed nomination along with required "B" form for symbol of his political party.

8. That, therefore, on confirm information filing of nomination the respondent No. 1 against the party candidate the petitioner No. 1 being the District President of their party authorized petitioner No. 3 to serve the party whip and directions on respondent No. 1 through petitioner No. 3 by his letter dated 23-9-2004 and accordingly on the basis of authorization petitioner No. 3 being Taluka President of their party served party whip dated 23-9-2004 on respondent No. 1 on 24-9-2004.

9. That, as per the party whip and direction the respondent No. 1 directed to withdraw the nomination filed by him as independent candidate against the authorized party candidate for their political party despite of whip and directions he has declined to obey the same.

11. That, the respondent No. 1 ought to withdraw his nomination as independent candidate from Kinwat constituency as per the party whip but he has intentionally disobey the party whip and contested the election against the authorized party candidate i.e. petitioner No. 2 against his political party and indulge in illegal activities against the party and thus he has incurred automatic disqualification per claim clause."

28. On receipt of the petition, a note was prepared by the O/o Collector on 7th February, 2005 with permission from Collector to issue notice to other side. On 14th February, 2005 the communication was sent from the Collector Office, Nanded to Tahsildar to serve the notice of the petition. The notice dated 14-2-2005 indicates that only copy of the petition was accompanied with the notice.

29. With these facts which are borne by record, mentioned by Collector in connection with DP, it will be appropriate for me to refer to relevant statutory provisions :

Disqualification Act was passed by the Maharashtra Legislature which was published after having received the assent of the Governor of Maharashtra in the

Maharashtra Government Gazette on 29th July, 1987. The Act was enacted to prohibit political defection the Parliament by amending the Constitution. By Constitution fifty-second Amendment Act introduced Schedule X providing disqualification of the members of the House on the ground of defection. In tune with the constitutional amendment, the present Act came to be passed with the following object:

"With a view to eradicating the evil of political defection in the Parliament on the national level and in the State Legislatures on the State Level, the Parliament has amended the Constitution of India by the Constitution (fifty second Amendment) Act, 1985. At the level of district, Taluqa city and town, different local authorities are charged with the administration of functions relating to Local Government. These local authorities are, in the main, elective. The field of local Government constitutes a training found for the State and National Government. Many of our ablest statesmen and legislators have received their earliest training in the sphere of Local Government. The local authorities may become the pioneer in various fields of political activity. This evil of political defections is also present in the local authorities which is the base of our democratic institutions. It is, therefore, expedient to prevent political defections in certain local authorities also in the State."

Provisions of the Act :

30. Section 2 Sub-clause (d) defines "Councillor" means councillor of Municipal Corporation of Municipal Council or Zilla Parishad. The term "Local Authority" is defined in Clause (e) means (i) Municipal Corporation (ii) Municipal Council (iii) Zilla Parishad, or (iv) Panchayat Samiti. Section 2(f) defines "Member" means member of Panchayat Samiti; Clause (j) defines "original political party" so as to mean, "original political party" in relation to a councillor or a Member, means the political party to which he belongs, for the purpose of Sub-section (1) of Section 3. The term "Zilla Parishad Party" is also defined in Clause (p) which reads thus :

"Zilla Parishad Party in relation to a councillor of a Z.P. belonging to any political party or Aghadi or front in accordance with the Explanation to Section 3, means the group consisting of all the members of Zilla Parishad for the time being belonging to that political party or Aghadi or front in accordance with the said Explanation.

Section 3 is important for my purpose and has to be quoted in extenso which reads thus :

"3. Disqualification on ground of defection : (1) subject to the provisions of Sections 4 and 5, a councillor or a member belonging to any political or party Aghadi or front shall be disqualified for being a councillor or a member -

(a) if he has voluntarily given up his membership of such political party or Aghadi or front; or

(b) if he votes or abstains from voting in any meeting of the Municipal

Corporation, Municipal Council, Zilla Parishad or as the case may be, Panchayat Samiti contrary to any direction issued by the political party or Aghadi or front to which he belongs or by any person or authority authorized by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or Aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or Aghadi or front, person or authority within fifteen days from the date of such voting or abstention :

Provided that, such voting or abstention without prior permission from such party or Aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 shall not be condoned under these clause :

Explanation : for the purposes of this section -

(a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or Aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member;

(b) a nominated or co-opted councillor or member shall

(1) where he is a member of any political party or Aghadi or front on the date of his nomination, or as the case may be, co-option as such councillor, or as the case may be, member be deemed to belong to such political party or Aghadi or front.

(ii) in any other case, be deemed to belong to the political party or Aghadi or front of which he becomes, or as the case may be, first becomes a member of such part of Aghadi or front before the expiry of six months from the date on which he is nominated or co-opted as such councillor, or as the case may be, member :

(c) a nominated member in relation to a Panchayat Samiti, includes an associate member, referred to in clause (c) of Sub-section (1) of Section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

(2) An elected councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or Aghadi or front shall be disqualified for being a councillor, or as the case may be, a member if he joins any political party or Aghadi or front after such election.

(3) A nominated or co-opted councillor, as the case may be, member shall be disqualified for being a councillor, or as the case may be, a member, if he joins any political party or Aghadi or front after the expiry of six months from the date on which he is nominated or co-opted as such councillor, or as the case may be, member."

Section 7 deals with decision of disqualification on the ground of defection. According to said section if any question arises as to whether a councillor of Z.P. or Member of Panchayat Samiti has become subject to disqualification under this

Act, the question shall be referred to the Collector and the decision of the Collector shall be final. Section 9 empowers the State Government to frame the rules for carrying out the purpose of this Act. In pursuance of the power given to the State Government u/s 9, the State Government has framed the Rules called "Maharashtra Local Authority Members' Disqualification Rules, 1997 (for short 'the rules').

31. Relevant provisions of the Rules are required to be noted. Rule 2 deals with definitions.

"Rule 2 (b-1) (iii) defines the term 'Leader in relation to a Zilla Parishad party' means a councillor chosen by each political party or Aghadi or front in Zilla Parishad as its leader and includes any other councillor of such party or Aghadi or front authorized by it to act in the 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."

Rule 3 requires that a leader of the party has to furnish information in the prescribed form to the authority in connection with the party. As per Rule 5 the Collector has to maintain a register of the councillors of the members in Form No. 4 of the Rules. Then comes the important Rules 6 and 7 which read thus :

"6. References to be by petitions. - (1) No reference of any person as to whether a councillor in relation to a municipal party, Zilla Parishad party, or member in relation to a Panchayat Samiti party has become subject to disqualification under the Act shall be made except by a petition in writing to the Commissioner in the case of a councillor of a Municipal Corporation and the Collector in the case of any other councillor or member, by any other councillor, or, as the case may be, member, in relation to such Councillor or, as the case may be, member

(2) Before making any petition in respect of a councillor in relation to a municipal party and a Zilla Parishad party or a member in relation to the Panchayat Samiti Party (the petitioner shall satisfy himself) that there are reasonable grounds for believing that a question has arisen as to whether such councillor or, as the case may be, member has become subject to disqualification under the Act.

(3) Every petition -

(a) Shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and address of such person and the gist of such information as furnished by each such person.

(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.

(3) If the petition complies with the requirements of Rule 6, the Commissioner, or, as the case may be, Collector shall forward copies of the petition and the annexures thereto -

(a) to the councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party in respect of whom the petition has been made, and

(b) where such councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party belongs to any political party or Aghadi or front and such petition has not been made by the leader thereof, also to such leader; and such councillor, member or leader shall, within seven days of the receipt of such copies, or within such further period as the Commissioner, or, as the case may be, Collector may for sufficient reason allow, forward his comments in writing thereon to the Commissioner, or, as the case may be, Collector.

(4) After considering the comments, if any, in relation to the petition received under Sub-rule (3) within the period allowed including the extended period), the Commissioner, or, as the case may be, Collector shall proceed to determine the question after making a preliminary enquiry.

(5) The procedure which shall be followed by the Commissioner or, as the case may be, Collector for the purpose of making preliminary enquiry to determine any person question under Sub-rule (4) shall be as prescribed in Sub-rules 6 to 15.

(6) The Commissioner or, as the case may be, the Collector shall draw up or cause to be drawn up -

(i) the substance of the imputations of disqualification into definite and distinct articles of charge ;

(ii) a statement of the imputations of disqualification in support of each article of charge, which shall contain -

(a) statement of all relevant facts including any admission or confession made by the Councillor or the member, and

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The Commissioner or, as the case may be, Collector shall deliver or cause to

be delivered to the councillor, or as the case may be, the Member, a copy of articles of charge, the statement of the imputation of disqualification and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice, require the Councillor or, as the case may be, the Member to submit to him within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person.

(8) On receipt of the written statement of defence, the Commissioner or, as the case may be, the Collector, may himself inquire into such of the articles of charge as are not admitted, and where all the articles of charge have been admitted by the Councillor or Member in his written statement of defence, the Commissioner or, as the case may be, the Collector shall record his findings on each charge after taking such evidence as he may think fit and shall act in the manner laid down in Rule 8 of these rules.

(9) If no written statement of defence is submitted by such Councillor or Member, the Commissioner or, as the case may be, the Collector shall proceed to enquire as if the Councillor or Member has nothing to say.

(10) The Commissioner or, as the case may be, Collector shall require the complainant as well as the Councillor or Member who wishes to be heard either in person or through his Advocate to appear before him on such day and at such time as may be fixed by him.

(11) The Councillor or, as the case may be, the member shall appear in person before the Commissioner or, as the case may be, the Collector, on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of disqualification, as the Commissioner or, as the case may be, the Collector, may by a notice in writing specify in this behalf or within such further time not exceeding ten days, as the Commissioner or, as the case may be, the Collector may allow.

(12) The Commissioner or, as the case may be, the Collector, shall if the Councillor or, as the case may be, the Member, fails to appear within the specified time or refuses or admits to plead, produce the evidence by which he proposed to disprove article of charge, adjourn the case to a later date not exceeding thirty days, after recording an order that the Councillor or, as the case may be, the Member, may for the purposes of preparing his defence -

(i) inspect within five days of the order or within such further time not exceeding five days as the Commissioner or, as the case may be, the Collector, may allow, the documents specified in the list referred to in Sub-rule (6) of this rule.

(ii) submit a list of witnesses to be examined on his behalf.

(13) Where the Councillor or, as the case may be, the Member applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in Sub-rule (6) of this rule, the Commissioner or, as the case may

be, the Collector, shall furnish him with such copies as early as possible and, in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(14) The enquiry shall be commenced on the date fixed in that behalf by the Commissioner or, as the case may be, the Collector, and shall be continued thereafter on such date or dates as may be fixed from time to time by him.

(15) On the date fixed for the inquiry, the oral and documentary evidence shall be produced by or on behalf of the petitioner. The witnesses shall be examined by or on behalf of the petitioner and may be cross-examined by the Councillor or Member, against whom there are charges of disqualification."

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 2001(1) M.L.J. 312 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 Councillor 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. 6266-6268/98 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 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."

33. Having considered the above-said 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 annexures thereof. Then Sub-rule (4) of Rule 6 requires that every petition and annexures 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) annexures 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, in my judgment, passing of the impugned order of deciding the issue of maintainability of the petition at the later stage cannot be upheld by applying any standard. In my judgment, when the petition/s is/are not filed in accordance with the law, the petition should have been dismissed at the threshold itself. In my judgment, therefore, the Collector, instead of dismissing the petitions as prayed, has ventured to pass an order on an application which is filed by the petitioners that preliminary issue regarding maintainability be decided at the final hearing. It is noticed by me from the record the D.P. were filed in casual manner without adhering to Rules, rather they are filed in defiance of the Rules. Rigour of Rule 7 has to be followed which refers to the procedure that is to be followed and for providing such rigorous procedure is apparent that the elected representatives should not be summoned to answer the frivolous petitions, filed at the instance of "meddlesome interlopers" or "busybodies" or "wayfarers". If one reads Sub-rule (4) of Rule 7 it was bound need duty of the Collector to determine the question of maintainability on making preliminary enquiry. Thus, in my judgment, taking cognizance of the petitions by the collector and that too on the notes presented to him either by his subordinates or by someone else discloses non-application of mind and dereliction of duty. In my judgment, therefore, the Collector Nanded has exercised his jurisdiction which is not vested in him in ordering notices to be issued to the respondents therein. Therefore, the result is that the DPs filed under the Act and the Rules require to be dismissed or rejected as not maintainable. In my judgment, all the petitions do not conform and comply the provisions of Rule 6 read with Rule 7 and hence the Collector committed serious error appearing on the face of the record in

entertaining the petitions. All the DPs has to be dismissed, therefore, the Point No. 1 framed by me (supra) is answered in favour of the petitioners.

35. In fact, these petitions could have been disposed of as I answered the Point No. 1 in favour of the petitioners, but as the learned counsel made elaborate submissions on the other points, it will be necessary to decide those points. Point No. 2 :

36. The petitioners have submitted an application to dismiss the DPs at the threshold as they do not comply the mandate of the statute. When such an application is filed, in my judgment, looking to the provisions of Rules 6 and 7, which envisage the procedure to deal with the DP and it authorizes the Collector to dismiss the petition at that stage only for non-compliance of Rules. This step in procedure is introduced in the rule with the intention that the elected representatives may not be subject to frivolous litigation as it has always political background and at many times, the petitions are filed superfluously and to curb such petition, the provision is made in the statute. As such, in my judgment, the Collector in all the DPs should have framed a preliminary issue and decided at that stage only. Hence the Point No. 2 is answered accordingly.

37. So far as Point No. 3 is concerned, I have to find out whether the complainants have any locus standi to file such complaints i.e. DPs. I have noticed in all the DPs filed before the Collector, the petitioners nowhere stated as to their position or status in ZP. All those petitioners claimed themselves to be the head of their respective District Unit. It is to be noted that in the entire DPs filed under Rule 6, there is no averment whatsoever as to whether the Z.P. party is registered, as required by the Rules. Rule 3 requires that the leader of Z.P. party is required to furnish information within 30 days to the Collector as provided in Form I and II of the Rules, from the date of election. The DPs filed are silent about this aspect, of furnishing information by the leader of Z.P. party. If rule 3 is minutely read, it indicates that each and every change in the House has to be communicated. It is to be noted that the rule enjoins upon the leader of the party to issue direction or whip. Sub-rule (5) of Rule 3 is the pointer on this aspect. Sub-rule (5) says that where a councillor in relation to a Municipal party or a Zilla Parishad party and a member in relation to a Panchayat Samiti party votes or abstains from voting in any of the meetings of the Municipal Corporation, Municipal Council, Zilla Parishad, or as the case may be, Panchayat Samiti contrary to any direction issued by the political party or Aghadi or front to which he belong or by any other person or authority authorized by it in this behalf without obtaining any either case prior permission of such party a person or authority the leader of Z.P. Party shall as soon as may be thereafter and in any case within 30 days from the date of such voting or abstention inform the Collector in Form No. II whether such voting or abstention has or has not been condoned by such party, person or authority. Therefore, reading Rule 5, it is clear that any violation of directions either for vacating or abstaining or defying the whip must be in relation to functioning in the House and that too by leader of the

party in the House. In the present petitions what is attributed to the petitioners the cause of disqualification, is that in assembly election, they have submitted their nominations and in spite of the directions being issued that they have not withdrawn the nominations and, therefore, they have incurred disqualification. In my judgment, such an act cannot be considered to be disqualification within the parameters of the Act and the Rules. It is not the case of S/Shri Patil and Deshpande, learned counsel for respondents in concerned petitions that after petitioners have submitted their nominations in spite of the direction, and thereafter the political party to whom they belong has taken action against them for indiscipline by party or they are removed from the party for the reason that they acted against the interest of the parties; it is not a case even remotely suggested in the DPs. It is to be noted, in such cases, if a person is removed from the party and still he continues to be a Member of the House, by that fact itself, will not be called as defection or leaving the party; it is also not the case that the petitioners have joined any other political party or Zilla Parishad party in the Zilla Parishad. But, in the present case, what is alleged is that the direction issued by the District Heads of respective parties has been violated. Therefore, the question is who is competent to issue whip or direction. For this purpose I have again to refer to the judgment of the Sadashiv Patil (supra); where the Apex Court was required to consider this aspect of the matter by interpreting Section 3(1)(b) of the Act. The Apex Court observed :

"14. In Civil Appeals Nos. 6266-6268/98 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 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."

The Apex Court further observed that:

"All that Section 3(1)(b) of the Maharashtra Local Authority Members Disqualification Act contemplates is that there must be any person or authority authorized in this behalf by the political party or Aghadi or front to which the councillor belongs. Section 3(1)(b) does not provide for when and how such authorization shall be given nor the Act or the Rules provide that the person or authority authorized to issue direction (whip) must be a councillor or member of such municipal party."

38. Therefore, what is alleged in the DPs filed before the Collector is that there was direction given to the petitioners to withdraw their nominations by the District Head of the Party Unit. In my judgment, this direction issued was not a direction or whip as contemplated under Sub-rule (5) of Rule 3 of the Rules; and as interpreted by the Apex Court in Sadashiv Patil's case (supra). Even assuming such direction was issued, but it was not in connection with the functioning of the present petitioners as members of the Z.P. and this act and omission in the House i.e. Z.P. As such, in my judgment, issuance of such whip or direction was initially without any authority and not by the leader of the party, as defined under the Act. It is nowhere stated by the complainants that they were elected as Leader of the party i.e. "Zilla Parishad Party" as defined under the Act. Therefore, in my judgment, the cause given by the complainants to seek disqualification of the present petitioners to withdraw the nomination cannot be called a "whip" or "direction" as contemplated under the Act; and even if it is held that such a whip was there but was issued from unconcerned person and that cannot be called as whip for any reason as the complainants who have lodged the petitions before the Collector were not competent to issue such a whip. Therefore, in my judgment, the Point No. 4 is answered in the negative.

39. The last question is in relation to filing of the petition by unconcerned persons. First of all, the persons who have filed the complaints were not members of Z.P. nor the act alleged against the present petitioners can be called as disqualification under the Act, because, there was no question of voting or abstaining from voting in attending the meeting or voting against the direction of the meeting of the Z.P. But what is alleged by them is their cause of not withdrawing the nomination forms. I have gone through the provisions of the Z.P. Act and noted that there was no restriction imposed by the Legislature on a sitting Member of Z.P. to contest the election of either Parliament or Assembly. In a given case, even a sitting member of Z.P. can contest the election of either Parliament or Assembly independently, unless there is a total bar imposed by the statute, but, in the present case, the present petitioners have submitted their nominations to the assembly elections, but, according to the complainants that they were asked by the respective local head of the party Unit to withdraw their nominations. In given circumstances, such action by the petitioners at the most can be called as indiscipline in the party and for that purpose that political party/ or Aghadi has to take appropriate action at the party level, but not claim disqualification on that ground. It was open for that party to which the petitioners belong to expel them from that party as their action may be against

the interests of their own party or its ideology. In the absence of any such allegation in the DPs., in my judgment, any person who is not a Member of the Z.P. cannot initiate the proceedings of disqualification to disqualify the elected candidates. It is to be noted that election of a candidate i.e. authorities can be challenged by filing Election Petition under the Act, such as, Representative of the People Act, Maharashtra Municipalities Act, Zilla Parishad Act. For challenging such election, no restriction is imposed. Even a voter in the given case can challenge the election. But so far as seeking disqualification of sitting member or councillor of Z.P., the action has to be taken under the Act and the Rules and that too, by those who are members of Zilla Parishad. In the present case, undisputedly all the complainants who have filed their DPs were not members of the Z.P. either elected or nominated but they claim themselves to be the Heads of the District Units of respective parties. In my judgment, therefore, such persons are not authorized or competent to file DPs under the Act. Therefore, in my judgment, on this ground also, the petitions should have been dismissed by the Collector as I have noticed that the Collector has noticed the present petitioners to answer the allegations even without looking at contents of the DPs. Therefore, in my judgment, such DPs cannot be allowed to go for trial and that will be nothing but abuse of process of law. All the Writ Petitions are filed against an order rejecting the applications filed by the present petitioners to decide the preliminary issues of maintainability but the Collector for no valid reasons, has rejected the prayers of the petitioners and opined that the preliminary objection/issue will be considered at the time of final disposal. In my judgment, such action is impermissible under the Act. On going through the files which are produced before me, it shows that the Collector has not performed his statutory duties with due diligence. I hope and trust that this Court may not get any other occasion in future to comment adversely and reprimand the Collector/s who are entrusted the onerous duty to judge and to disqualify an elected candidate. Therefore, in my judgment, even though the petitions are filed against the orders on an application filed by the petitioners requesting the Collector to decide maintainability of the DPs as preliminary issue. As I had answered Point No. 1 favour of the petitioners, all DPs are required to be dismissed as such, as those are not in conformity with Rule 6 of the Rules. Accordingly, all DPs filed against the present petitioners stand rejected as these are not in conformity with Rule 6 of the Rules. Point Nos. 3 and 4 answered accordingly. Having gone through minutely to the provision of Rules 6 and 7, in my judgment, the Collector has no authority or jurisdiction to give direction to the complainants to add the parties to the DPs. this action of the Collector is per se illegal, unauthentic and arbitrary sounds absurdity. Hence that action also has to be declared illegal. This point also answered accordingly.

40. All petitions are allowed.

(A) DP No. 2004/JB/Desh-1/Coll/CR/3 (Datta Ananda Pawar and another (Exh."A") is accordingly dismissed.

(B) DP. No. 14/2001 (Exh."A") (Prakash and another) is accordingly dismissed.

(C) DP No. 16/2004 (Exh."A") (Digamber and others) is accordingly dismissed.

(D) DP No. 15/2005 (Exh."A") (Digamber Pawar and others) is accordingly dismissed.

However I direct the respondents/original complainants in the DPs, to pay cost to the petitioners in Writ Petitions and the costs are quantified as Rs. 25007- (Rupees two thousand five hundred) each. All petitions are allowed.

41. Before parting, I may observe that identical question fell for my consideration in Writ Petition No. 3898/2002 decided on 19-12-2002 in Laxmikant Tukaram Chaudhari and Others Vs. State of Maharashtra and Others, and I held that Rules 6, 7 being mandatory, strict compliance is required.