

(2011) 08 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition No. 4146 of 2011

Jitendra Himmat Biraris

APPELLANT

Vs

Kiran Gulabrao Patil and The District Collector

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15
Constitution of India, 1950 — Article 102(2), 191(2), 215
Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 6, 7

Citation : (2011) 08 BOM CK 0156

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : V.J. Dixit, i./b., P.D. Bachate, R.R. Mantri, V.D. Hon and R.B. Raghuwanshi, for the Appellant; P.M. Shah, i./b., Amol Sawant, Anturkar, R.N. Dhorde, S.S. Deshmukh for Respondent No. 1 and V.H. Dighe, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—All these petitions involve common question of law and are based on same factual matrix, as such are decided together.

2. The Petitioners are elected as councillors of Zilla Parishad, Dhule in the General Elections of 2008 having contested the said elections as belonging to Nationalist Congress Party (hereinafter called as "N.C.P." for the sake of brevity). The party position of elected councillors is as under:

1.

Indian National Congress

21

2.

Nationalist Congress Party

08

3.

ShivSena

14

4.

BhartiyaJanta Party

09

5.

Independent

03

Total

55

3. After the declaration of the result, the Returning Officer called special meeting for the election of the President and Vice President of Zilla Parishad Dhule to be held on 30th December, 2008 at 3.00 p.m. In the said special meeting one Sudhir Sudhakar Jadhav representing Shiv Sena party was elected as President and Bharat Nanabhau Ise representing Bhartiya Janta Party was elected as Vice President. The Petitioners cast vote to these persons for the post of President and Vice President.

4. The Respondent No. 1 filed petition under Rule 6 of the Maharashtra Local Authority Members' Disqualification Rules 1987 seeking disqualification of the Petitioners. According to the Respondent No. 1 he was elected as party leader of the Zilla Parishad. Whip was issued directing members of the N.C.P. to vote Budha Hiranman Pawar of Congress I for the post of President and Smt. Lalita Motiram Bahiran of N.C.P. for the post of Vice President. The Petitioners herein defied the said whip and cast their vote to Sudhir Sudhakar Jadhav and Bharat Nanabhau Ise for the post of President and Vice President respectively. As such, sought for the disqualification of the Petitioners.

5. The Collector, Dhule vide its judgment and order dated 07.06.2011 allowed the petitions filed by the Respondent No. 1 and held that the present Petitioners are disqualified as members of Zilla Parishad, Dhule. The Petitioners have assailed the said judgment and order in the present writ petitions.

6. S/Shri V.J. Dixit, learned Senior Counsel instructed by Shri P.D. Bachate, Shri R.R. Mantri, Shri V.D. Hon, Shri R.B. Raghuwanshi, learned Counsel for Petitioners canvassed their arguments on behalf of Petitioners. Whereas, S/Shri P. M. Shah, learned Senior Counsel instructed by Shri Amol Sawant, Shri Anturkar, Shri R.N. Dhorde and Shri S. S. Deshmukh, learned Counsel advanced

arguments on behalf of Respondent No. 1.

7. Shri V.J. Dixit, the learned senior counsel during the course of his erudite arguments strenuously canvased the following propositions:

i) The rules governing the proceedings under the disqualification rules have to be strictly adhered. If the rules are not followed then the proceedings before the Collector itself stand vitiated. The said proceeding has the effect of unseating a person from an elected office held by him pursuant to his victory at polls and it also affects the constituency represented by such councillor. For the said purpose the learned senior counsel relied on the judgment of the Apex Court in a case of *Sadashiv H. Patil v. Vithal D. Teke* reported in 2001 (1) Mh. L.J. 312.

ii) There is variance between the pleadings and proof. The Respondent No. 1 in his petition before the Collector had specifically averred that he was elected as a leader of the Zilla Parishad party of N.C.P. in the meeting held on 30th December, 2008, whereas there is no record to show that the Respondent No. 1 was elected as the leader of the Zilla Parishad Party on 30th December, 2008, nor there are any proceedings of 30th December, 2008 showing that he was elected as leader of the party on 30th December, 2008. The extract of the proceedings produced along with the petition is of the meeting allegedly dated 27.12.2008. As such, there is variance between pleading and proof. In such, circumstances the evidence contrary to the pleadings cannot be considered.

iii) The extract of the alleged meeting dated 27.12.2008 in which it is shown that the Respondent No. 1 has been elected as leader of the party and is authorized to issue the whip is suspicious. The said meeting is not proved. The original of it was not produced. There are over writings on the alleged resolutions.

iv) There is no legally acceptable evidence.

v) The charge which was framed did not whisper about the violation of the alleged whip dated 30th December, 2008. The charge itself was faulty. The Petitioners could not have been disqualified on the basis of such faulty charge. No whip was issued on 27.12.2008, even as per the case of the Respondent No. 1 to vote in favour of a particular candidate. On the basis of such a charge the Petitioners could not have been disqualified u/s 3 (1) (b) of the Maharashtra Local Authority Members' Disqualification Act (hereinafter called as the "Disqualification Act" for the sake of brevity).

vi) There is no service of the whip allegedly dated 30th December, 2008 on the Petitioners. Even the deposition of the Respondent No. 1 shows that the whip was not served on the Petitioners. In absence of the service of the whip the Petitioners cannot be disqualified.

vii) The Respondent No. 1 in his deposition more particularly in cross examination admits that he could not personally meet the Petitioners and in the meeting when he tried to read over the whip he was prevented. In such circumstances, it can be safely held that the whip was never served on the

Petitioners. Inter alia, the Petitioners could not have been disqualified on the said count. The observations of the Collector in this regard are perverse.

viii) When the findings of the Collector are perverse, then this Court in its writ jurisdiction can entertain the petitions.

ix) The arguments of the Respondent No. 1 that the Petitioners are also liable to be disqualified u/s 3(1)(a) of the Disqualification Act is not countenanced by law. The Collector had passed a judgment and order, wherein in the operative portion it was held that the Petitioners are disqualified u/s 3 (1) (a). Thereafter behind the back of the Petitioners under the garb of exercising powers u/s 152 of correcting judgment has reviewed and deleted the clause disqualifying the Petitioners u/s 3(1)(a) and instead inserted the clause disqualifying the Petitioners u/s 3(1)(b) of the Disqualification Act. The Respondent has accepted this position and now they are estopped from claiming that the Petitioners also stand disqualified u/s 3(1)(a).

x) For concluding that a candidate is disqualified u/s 3(1) (a) no detailed inquiry is necessary. But for arriving at a conclusion or disqualifying a councillor u/s 3(1) (b) a detailed inquiry is necessitated even as per the judgment of the Apex Court relied by the Respondent in a case of Kedar Shashikant Deshpande Vs. Bhore Municipal Council and Others etc. etc., and in a case of Dr. Mahachandra Prasad Singh v. Chairman Bihar Legislative Council reported in AIR 2004 SCW 6278. The enquiry in the present case, is vitiated on account of the non observance of the rules and the provisions of the Disqualification Act

8. Shri Mantri, the learned Counsel adopted the arguments of the learned Senior Counsel Shri V.J. Dixit and further submitted that:

i) The party contemplated under the Disqualification Act is the Zilla Parishad party and not the apex political party. As such, the directions and the person who is authorized to issue the whip should be the one authorized by the Zilla Parishad party. For the said purpose the learned Counsel relies on the judgment of the Division Bench of this Court in a case of Suresh Madhavrao Bhange and Ors. v. The Collector Wardha reported in 1990 Mh. L.J. 848.

ii) When the findings are perverse, this Court can certainly interfere with the findings of the Collector. The judicial review to the extent of decision making process is permissible. The words "issued" u/s 3(1)(b) will have to be interpreted as served. The Petitioners should know the contents of the whip and unless and until the contents are known they cannot be bound by the whip. The learned Counsel relies on the judgment of the Division Bench of this Court in a case of Shri Tolaram Govinda v. State of Maharashtra reported in 2004 (3) All M. R. 167, wherein the words from the date of order were interpreted as the date of communication of the order.

iii) There is no record to show that the meeting was held on 30th December, 2008. In such circumstances, it will have to be held that no business was

transacted on 30th December, 2008 and as such, no whip was issued.

iv) The charge framed is faulty. After the judgment was delivered the operative part was reviewed without hearing the Petitioners which is illegal. For all the above reasons the learned Counsel in the alternate submits the matter should be remanded back.

9. Shri Hon, the learned Counsel also adopted the arguments of Shri V.J. Dixit, the learned senior counsel and further submitted that strict proof is required when disqualifying the councillor. The rules will have to be strictly applied. The learned Counsel relies on the judgment of the Apex Court in a case of Tarlochan Dev Sharma Vs. State of Punjab and Others, .

10. Shri P. M. Shah, the learned senior counsel for the Respondent No. 1 with all his persuasive skill and eloquence submits that:

a) The Disqualification Act and Rules are based on the provisions of the Xth Schedule of the Constitution. The rules are directory in nature and are meant to achieve the object of the Act. The Rules governing the procedure cannot travel wider than the object of the legislature in enacting the statute. The proceedings under the disqualification act are not in the nature of adversarial litigation. The purpose and the object of the Rules is to facilitate the authority to hold the inquiry and not to frustrate or obstruct the same by technicalities. For the said purpose the learned senior counsel relies on the judgment of the Apex Court in a case of Kedar Shashikant Deshpande Vs. Bhore Municipal Council and Others etc. etc., and in a case of Dr. Mahachandra Prasad Singh v. Chairman Bihar Legislative Council reported in AIR 2004 S.C.W. 6278.

b) The facts and circumstances speaks for themselves. The Petitioners did not vote to the candidate of their own party, but have cast vote in favour of rival candidate. This fact itself is sufficient to conclude that the Petitioners have violated the whip.

c) Soni Bharat Pavra has signed on the proceedings book of the meeting dated 27.12.2008 in which the Respondent No. 1 was elected as the leader of the opposition. Said Soni Bharat Pavra has not stepped into witness box to deny her signature. As such, adverse inference deserves to be drawn. The learned Counsel relies on the judgment of the Apex Court in a case of Vidhyadhar Vs. Manikrao and Another, .

d) Even the witness of the Petitioners Dr. Hemant Deshmukh in his deposition has categorically admitted the meeting and the proceedings dated 27.12.2008 and the fact that in the said meeting the Respondent No. 1 was elected as the leader of the N.C.P. and he had authority to issue the whip.

e) The whip is served on the Petitioners at the time of the meeting. This has been specifically stated by the Respondent No. 1 in his examination in chief. There is no suggestion in the cross examination in this regard.

f) The notice was also sent by R.P.A.D. regarding the meeting dated 27.12.2008 in which the Respondent No. 1 was elected as leader of the party. The natural course of conduct requires to be considered and appreciated. The natural course and conduct would be that the Petitioners would be in touch with the party.

g) Even no charge is required to be framed as it is not adversarial litigation. Only the job of the Respondent No. 1 is to bring to the notice of the authority the facts and circumstances and the authority has to take decision on the basis of the same. Strict rules of pleadings are not to be subscribed. The totality of the facts and circumstances has to be taken into consideration by the authority while coming to the conclusion about the disqualification.

h) There is no plea that other than Kiran Gulabrao i. e. the Respondent No. 1 some other person was the leader of the party.

i) Even though the authority has not disqualified the Petitioners u/s 3(1)(a), this Court can also look into the said facts and on the basis of the facts on record can come to the conclusion about they having incurred disqualification u/s 3 (1) (a) on account of voluntarily giving up the party.

j) The pleadings in the written statement filed by the Petitioners" shows their intention that they had given up the membership of the party. Their pleadings in para 20 of the written statement as to a split in the party itself is a ground for disqualification. The Petitioners, after they are elected did not attend any of the party meeting and even they were informed about their acts against the interest of the party. Further they even voted for the candidate of the rival party. These facts clearly go to show that they have voluntarily given up the party thereby attracting disqualification u/s 3 (1) (a) of the Disqualification Act.

k) The Respondent No. 1 was authorized to issue the whip and the meeting on 30th December, 2008 was called in the office of the party for the purpose of intimating about the names of the candidates to whom vote would be cast for the post of President and Vice President and the Respondent No. 1 was authorized to issue directions/whip in that regard. So no question of writing any proceedings of 30th December, 2008 arises.

l) The charges framed are in the nature of issues. The parties know the case, even examination in chief was led. Even in letters patent appeal the charges framed were challenged which was dismissed. The Division Bench of this Court in letters patent appeal gave opportunity to the Petitioners to lead additional evidence and to file additional written statement. The Petitioners were given the copy of the charge, the statement of imputations of the charge which gave the complete details, as such, now the Petitioner cannot make a grievance about the non observance of the procedure.

11. Shri Anturkar, the learned Counsel for the Respondent No. 1 contended that,

a) It is also the duty of the Petitioners to find out what is the whip. Considering the political scenario the legislature in its wisdom has used the word direction/

whip "issued" and not "served". The word "issued" cannot be interpreted as "served". A purposive interpretation will have to be given to the word "issued". The mischief sought to be suppressed will have to be considered. A dishonest politician would try to avoid the service of the whip. If he goes in hiding, it will not be possible to serve the whip on him. As such, the legislature considering all the facets has used the words directions "issued" and not "served". The word "issued" in Blacks Law Dictionary would mean "to send", the "order to be sent" or "to entrust for service". When there are two interpretations, one which advances the remedy and suppresses the mischief should be preferred. The learned Counsel relies on the judgment of the Apex Court in a case of Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, .

b) To incur disqualification u/s 3 (1) (a), there is no necessity to join any other political party. The plurality of the positive acts is sufficient to incur disqualification. In the present case, the Petitioners by their acts and conducts have shown that they have voluntarily given up the membership of the party. The Petitioners came with a case of splitting that would amount to defection. They did not attend any party meeting. They have also admitted that they have voted in favour of a candidate of a rival party. All these acts of commissions would show that they have voluntarily given up the party.

c) The annexures are the integral part of the pleadings and the annexures filed along with the complaint referred to the meeting dated 27.12.2008 and the fact that the Respondent No. 1 is chosen as leader, as such the submissions in para 8 that the Respondent No. 1 was elected as leader of the party on 30.12.2008 is not vital, as all the circumstances show that the Respondent No. 1 was elected as leader of the party on 27.12.2008. In para 7, it was specifically stated that the District President of the Nationalist Congress Party had given intimation to the Collector, Dhule on 29.12.2008 that the Respondent No. 1 has been chosen as the leader of the party.

12. Shri R. N. Dhorde, the learned Counsel submits that,

a) The Petitioners did not give notice of the registration in the form required to be given as belonging to the party. They have not done any act showing that they belong to N.C.P. which shows that they have voluntarily given up the party.

b) The Petitioners did not enter into the witness box, adverse inference should be drawn against them. It is the duty of the Petitioners to attend the meeting of the party. Even a public notice was given. In normal course the Petitioners ought to have known the meeting to be held. The knowledge would be presumed, but still they did not participate in the meeting, nor they took permission to abstain from the meeting. On the contrary, one of the Petitioners who entered into the witness box admitted that Petitioners did not cast their vote to the party candidate, but cast their vote to the candidate of the rival party. The questions Nos. 7, 8 and 27 which are put to Dr. Deshmukh also shows that the whip was sent and they had the knowledge.

13. Before adverting to the rival contentions, it would be appropriate to reproduce the relevant provisions.

The Maharashtra Local Authority Members' Disqualification Act, 1986

1.

3. (1) Subject to the provisions of [Section 5] a councillor or a member belonging to any political party or 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 a 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 Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause:

Explanation-- For the purpose 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 candidate for election as such councillor or member:

(b) a nominated [councillor] shall

(i) where he is a member of any political party or aghadi or front on the date of his nomination * * * * 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 party or aghadi or front before the expiry of six months from the date on which he is nominated * * * * ;

(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.

14. The Apex Court while upholding and dealing with the provisions of the paragraph 2 of the Xth Schedule of the Constitution regarding the disqualification of the Members of the House in a case of *Kihoto Hollohan v. Zachillhu and Ors.* reported in (1992) 2 S.C.C. 651 has observed that the provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing 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 Schedule of the Constitution is to curb the evil of political defection motivated by lure of office or other similar considerations 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 the 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 authorities 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 Parliament or of State Legislature is sought to be disqualified. The Act is introduced to curb the political immorality.

16. The factual matrix that the Petitioners have been elected as members of the Zilla Parishad, Dhule as candidates of N.C.P. is not disputed. The controversy between the parties revolves around the factum:

(i) that the Respondent No. 1 is elected as leader of the Zilla Parishad party of the N.C.P. in the meeting dated 27.12.2008,

(ii) issuance of whip on 30th December, 2008 by the Respondent No. 1 directing the members of the N.C.P. Zilla Parishad Party to vote in favour of Budha Hiranman Pawar a member of Congress - I party for the post of President and Smt. Lalita Motiram Bhiram of the N.C.P. party for the post of Vice President and

(iii) the issuance/service of the said whip on the Petitioners.

The Respondent No. 1 examined himself and relied on the documents produced by him. The Petitioners examined one Dr. Hemant Deshmukh and Sau. Rajani Baburao Gharate i. e. one of the Petitioners.

17. The present Respondent No. 1 who is the original complainant has placed on record the notices issued by post intimating them about the meeting to be held on 27.12.2008. The said notices have returned back on the ground that the

persons have gone out of station for uncertain period. In the said meeting dated 27.12.2008 one of the Petitioners Soni Bharat Pawra was present. The present Petitioners have examined Dr. Hemant Deshmukh as their witness. Said Dr. Hemant Deshmukh in his cross examination has given categorical admissions stating that the meeting has been held on 27.12.2008 and the present Respondent No. 1 is elected as the leader of the Zilla Parishad party of N.C.P. He has further admitted that in the said meeting the present Respondent No. 1 was authorized to issue the whip in regard to the election of the President and Vice President of the Zilla Parishad. He further stated that the proceedings of the said meeting are in his hand writing. He further admitted that Soni Bharat Pawra was present in the said meeting and has signed on the said proceeding. Said Soni Bharat Pawra has not stepped into witness box to deny her signature on the said proceeding book of meeting dated 27.12.2008.

When the witness of the Petitioners himself has admitted about the meeting dated 27.12.2008 being held, the presence of Soni Bharat Pawra the one of the Petitioners in the said meeting, that the Respondent No. 1 was elected as leader of the party, then in such circumstances, no further proof would be required to show that the meeting dated 27.12.2008 was held. The Respondent No. 1 was elected as leader of the Zilla Parishad N.C.P. party and he was authorized to issue the directions/whip. In fact, the Petitioners committed a blunder by examining Dr. Hemant Deshmukh as their witness. The original proceeding book of the meeting dated 27.12.2008 is produced on record. The contents of the same are not only proved by the Respondent No. 1, but in fact, are proved by the Petitioners' witness Dr. Hemant Deshmukh. The contentions regarding the whitener being put and thereafter name being written of Soni Bharat Pawra would not carry any substance in view of the clear admissions of the witness of the Petitioners and further said Soni Pawra has not stepped into witness box to deny her signature. No doubt, in the complaint more particularly in para 9, the Respondent No. 1 had averred that on 30.12.2008 in the office of N.C.P. the Respondent No. 1 was chosen as leader of Zilla Parishad party. In the examination in chief, it was clarified by the Respondent No. 1 that same is a typing mistake and in fact, the said date is 27.12.2008. This can further be gathered from para 7 of the complaint, wherein, it is averred that the intimation of choosing the Respondent No. 1 as leader of Zilla Parishad party was duly given by the District President of N.C.P. to the Collector Dhule by communication dated 29.12.2008. The said document is also on record and said fact is also admitted by the witness of the Petitioners Dr. Hemant Deshmukh, who is District President of the N.C.P. The said Soni Bharat Pawra has also not stepped into witness box to deny that she has not signed the said proceedings. An adverse inference deserves to be drawn against her. In view of all these facts, I have no hesitation to hold that the meeting dated 27.12.2008 was held. It was attended by four members of the Zilla Parishad N.C.P. party including one of the Petitioners' Soni Bharat Pawra and that in the said meeting the present Respondent No. 1 was elected as leader of N.C.P. party and was authorized to issue directions/whip.

18. The next issue would be about the issuance of whip by Respondent No. 1 as a leader of N.C.P. Zilla Parishad Party directing the members of the N.C.P. party to vote in favour of a candidate of the Congress I party for the post of President and candidate of N.C.P. for the post of Vice President. The text of the said whip is produced on record which is in vernacular language and states that for the post of President the members of the N.C.P. should vote for Budha Pawar and for the post of Vice President to Smt. Lalita Bhiram. The same is said to have been issued on 30th December, 2008 by the Respondent No. 1. Even two public notices were issued in a local news paper "Apala Maharashtra", wherein, one public notice calling for all the members of N.C.P. to remain present at 9.00 O'clock at its office to finalize the names of the persons who would contest for the post of President and Vice President and the second public notice saying that all the members of the N.C.P. should remain present at 3.00 O'clock on 30th December, 2008 at the main office of Dhule Zilla Parishad and to vote for the President and Vice President as per the directions of the Dhule N.C.P. party. The said public notice was issued by the Respondent No. 1 as leader of the N. C. P party. So also one of the public notice i. e. calling for all the members to remain present at N.C.P. office on 30.12.2008 at 9.00 a.m. was also issued by Dr. Hemant Deshmukh. The Respondent No. 1 has categorically stated about these facts in his evidence. The stand of Petitioners is that on 20th December, 2008 all the Petitioners had gone on pilgrimage and returned on 30.12.2008. In such circumstances, they cannot claim to have any knowledge of the meeting dated 27.12.2008 and 30.12.2008, nor are in a position to contend the fact about the meeting of 27.12.2008 and 30.12.2008. The Respondent No. 1 was authorized to issue the whip. He was to decide in whose favour vote is to be cast for post of President and Vice president. The text of the whip is also produced on record. As such, it is clear that the Respondent No. 1 had issued the said whip and he was authorized to issue the said whip.

19. The only controversy that would remain is regarding the service of the said whip. Perusal of Section 3 (1)(b), it is manifest that the legislature has used the term, "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 directions "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".

The legislature in its wisdom has nowhere used the term directions "served", but has restricted it to the term "issued". The only question is whether the said terminology directions issued shall have to be interpreted to mean served and that the word "issued" and "served" can be said to be inter-changeable terms. As per the Black's Dictionary the term "issued" means "sent", to put into circulation, order to be sent, to entrust for service. The Apex Court in a case of Chintamani Gajanan Welkar referred supra by interpreting the word notice issued u/s 2(f) of the Maharashtra Act of 1975 held that, the word issued does not mean service of notice on the land holder. The said Section 2(f)(iii) of the

Maharashtra Act of 1975 reads as under:

Section 2(f): "Private forest means any forest which is not the property to Government and includes -

(i)

(ii)

(iii) any land in respect of which notice has been "issued" under sub-Section 3 of Section 35 of the Forest Act but excluding an area not exceeding 2 hectares in extent as the collector may specify in this behalf;

Interpreting the said provisions, the Apex Court held that the said term notice issued is not synonymous to the term service and the issuance of notice itself was sufficient. There is no need for any service of such notice.

20. There is presumption that the words are used in the Statute correctly and exactly and not loosely and inexactly. Legislations when not expressed in technical terms is addressed to common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has right to rely on ordinary words addressed. In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which every one conversant with the word and the subject matter of statute and to whom the legislation is addressed will give if the terms were put to him.

21. It is also an accepted theory that the words and expressions used in a statute should ordinarily be understood in a sense in which they best harmonies with the object of the statute and which effectuates the object of the legislature. Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppresses the mischief as the legislature envisaged. The Courts are required to adopt an object oriented approach keeping in mind the principle that the legislative futility is to be ruled out so long as interpretative possibility permits.

22. In the present case, the object of the enactment as discussed in earlier paras is to provide for disqualification of members of certain authorities on ground of defection and for matters incidental and connected therewith. The object is to ensure that the voters of the constituency that the elected members represent should not be duped by him. They cannot be taken for a ride by the change of the affiliation by such a member to another political party. In the light of the said object the word "directions issued" as appearing in Section 3(1)(b) of the Disqualification Act will have to be interpreted. When the meeting is called, it is expected that all the members shall attend the same. When the meeting is called by the leader of the party, it is reciprocal duty of the members of the party to attend the same and in the said gathering if some directions are given or issued, it is expected and presumed that the same would be known to all the members. So specific service of the said directions is not contemplated by Section 3(1)(b).

A dishonest member to avoid the actual service would go into hiding or would see to it that the whip is not actually served upon him. As in the present case, stand is taken by the Petitioners in evidence of Rajani Gharate one of the Petitioners that all these Petitioners on 20.12.2008 had gone for pilgrimage and were out of city and returned only on 30.12.2008. If the word directions issued is to be interpreted as served, then that would frustrate the very purpose of the enactment and the provisions. Keeping this in view, the legislation in its wisdom has used the terminology directions issued and not served. Otherwise, there was no impediment for the legislature to use the expression directions "served" instead of directions "issued".

23. The Respondent No. 1 on oath has stated that the Petitioners were avoiding to receive the said whip. He also tried to read over the whip in the meeting, but was prevented and so he intimated personally. Even, if, it is assumed that the Petitioners were not actually served with the whip, but the fact that the Respondent No. 1 tried to read over the whip in the meeting is not denied, nor any suggestion was given to the Respondent No. 1 in the cross examination that he had not tried to read over the whip. On the contrary, suggestion was that at the time when the business of election in the meeting was been transacted, whether the Petitioners knew that to serve the whip is not permissible and for that action can be taken against him. There is no denial to this fact that the Respondent No. 1 tried to read over the directions issued by him. As such, the said act satisfies the term "direction issued" and it will have to be held that the whip was issued. None of the Petitioners except Petitioner Sau. Rajani Baburao Gharate has stepped into witness box to deny the same. Even assuming that the Respondent No. 1 does not prove the fact averred by him that even vide mobile message he has served the whip, still these acts discussed above are sufficient to show that the whip was issued. It was sought to be made known to the Petitioners and that would satisfy the test of the expression "directions issued".

24. Even one of the Petitioners who stepped into witness box Sau. Rajani Gharate has admitted that they did not vote to the candidate proposed by their own N.C.P. party and have voted for candidate of the rival party. Even the proceedings produced in respect of the said meeting for election of President and Vice President shows that all the Petitioners did not vote to the candidate of their own party, but have voted to the candidate of rival party and against the directions of the N.C.P. Zilla Parishad party issued by the Respondent No. 1. In view of the same, the Petitioners would be guilty of violation of the whip/directions issued and would entail disqualification u/s 3 (1) (b) of the Disqualification Act.

25. The charge framed and the imputations of the statement is reproduced as under:

As the Petitioner has filed disqualification petitions under the provisions of Maharashtra Local Authority Member Disqualification Act 1986, I put upon you the charge that,

Why you should not be disqualified as you have not followed the whips of the Nationalist Congress Party and you have become subject to disqualification under the Act, and you have also not followed the directions dated 27.12.2008 issued by a leader of Nationalist Congress Party on whose ticket, you are elected as a member of Zilla Parishad, Dhule.

20. Statement of Imputation of charge is as follows: As per the petitions filed by the Petitioner Kiran Gulabrao Patil, there is cause to the drawn up substance of imputation of disqualification in support of aforesaid articles of charges as follows:

As per the petitions, the substance is the General Election 2008

Zilla Parishad were held on 30th November, 2008.

As per the partywise elected candidates, the position was

Congres I

21

Nationalist Congress Party

08

ShivSena

14

BJP

09

Independents

03

TOTAL

55

The Petitioner contested and elected from Nimdale Constituency was set up by the Nationalist Congress Party and election symbol of the Party was "Clock".

That the candidates you as Respondents were also set up by the Nationalist Congress Party.

? You were also given by the Party symbol of the N.C.P. as "Clock" and you elected as councillors of Zilla Parishad Dhule.

? And for election nomination form of you, was accompanied by Form A & B ? The names of elected candidates came to be on Gazette vide Govt. Gazette dated 8th December, 2008.

? That as there was alliance of Congress I and the Nationalist Congress party in the State as well as in Zilla Parishad Dhule.

? From the elected list of candidates, Congress I + NCP second together were 29. Thus, there was clear majority of this alliance i. e. out of 55; there elected, you had joined hands with Shiv Sena and BJP political alliance.

? The Petitioner was chosen as leader of Zilla Parishad party and that was informed to you by communication dated 29th December 2008.

? That for finalizing the names of the candidates of the President and Vice President of the elected councilor of the NCP was called on 30.12.2008 at 9.00 a.m. in the office of the Rashtrawadi Bhavan, Station Road, Dhule. The said meeting was called jointly by the present Petitioner as a leader in relation to Zilla Parishad Party and also by the District President.

? I further found the statement of imputation of disqualification that in the meeting held on 30.12.2008, in the office of NCP on Station Road, Dhule, the Petitioner was chosen as a leader of Zilla Parishad Party, NCP and the constitution of the party also came to be adopted. In the said meeting, the Petitioner was authorized to issue a party whip.

? I further found the statement of imputation of disqualification that an intimation of this meeting was given to all the returned councilors of the NCP by a registered post, the notice sent to you on 10.12.2008 and the envelop which is sent to you; yet it is not returned. Even a public notice was given in the local daily news paper "Apla Maharashtra" dated 29.12.2008.

? I further found the statement of imputation of disqualification that in the meeting held on 30th December, 2008 at 9.00 a.m. in the office, pursuant to the aforesaid public notice, it was decided that for the post of President of the Zilla Parishad, the returned councilors of NCP should vote in favour of Budha Hiranman Pawar. Whereas, it was resolved that the party should set up the candidature of Smt. Lalitabai Motiram Bahiram as a candidate for the Vice Presidentship. She belongs to NCP.

? I further found the statement of imputation of disqualification that you declined to accept notice and your willful failure to attend the aforesaid meeting is also your positive index of defiance to the directions issued by the party. Failure to attend the meeting also exhibits the intention on your part to defy the direction issued by the party officials. You also declined to accept the written intimation of party whip dated 30th December 2008.

? I further found the statement of imputation of disqualification that the Petitioner personally informed you about the party whip and directed to cast vote as per the whips issued by the party published in Local Daily News Paper "Apla Maharashtra" on 29.12.2008 as well as the whip was also sent by a Mobile Message from the Mobile bearing No. 9422193995 on your Mobile No. 9423192783. The present Petitioner also communicated the whips by Telegram which were sent on 27.12.2008 and 29.12.2008.

? I further found the statement of imputation of disqualification that you did not

cast vote to the candidates set up by the INC and NCP combine for the post of President and Vice President respectively i. e. Budha Hiranman Pawar and Smt. Lalitabai Motiram Bahiram. The voting was by show of hands. You cast your vote in favour of Sudhir Sudhakar Jadhav for the post of President and Bharat Nanabhau Ishi for the post of Vice President. Shri Sudhir Sudhakar Jadhav contested the general election as a candidate set up by the Shiv Sena political Party; Bharat Nanabhau Ishi contested the general election on the ticket of BJP. The proposer of Sudhir Sudhakar Jadhav to the post of President is one Arvind Vikram Jadhav, the same councilor, who objected the intimation by the Petitioner to the defected councilor about the party whip. In this election, Jadhav Sudhir Sudhakar polled 29 votes out of 55, whereas, Pawar Budha Hiranman polled 26 votes out of 55 councilors. Hence, the candidate of Shiv Sena Political Party namely Jadhav Sudhir Sudhakar came to be declared elected on the post of President and the candidate set up by the INC- NCP combine lost the election. The same pattern of voting was found for the post of Vice President as well. You did cast your vote by show of hand in favour of Jadhav Sudhir Sudhakar(Presidential election) and in favour of Ishi Bharat Nanabhau (Vice President). You are guilty of defecting to another political party. The voting by you was in defiance of the party whip. It was an intentional act on the part of the Respondents. Right from the date on which you were declared elected, you had clearly exhibited your intention to defect the political party.

? I further found the statement of imputation of disqualification that you came to Zilla Parishad on 30.12.2008 in a Luxury bus, bearing No. MH-18/N-285 of Jaibalaji Travels. All the councilors of the Shivsena and BJP also came to Zilla Parishad in the said Luxury bus and along with them; you came to Zilla Parishad office.

? I further found the statement of imputation of disqualification that the Petitioner is satisfied that there exists a strong and convincing ground for believing that you incurred disqualification under the provisions of Maharashtra Local Authorities Members Disqualification Act of 1986. The Petitioner states that, all Respondents have defected and they have also cast their votes in favour the candidates set up by the Shivsena BJP political Parties. All facts, as stated above, are mutatis mutandis similar to these councilors as well.

In support of aforesaid charges and statement of imputation of disqualification, the Petitioner has relied upon the following list of documents and list of witnesses by whom why aforesaid charges should not be made against you.

21) List of Documents and witnesses is as follows:

List of documents and list of witnesses

Exhibit

1.

True copy of Nomination Form.

A

2.

Copy of Gazette published by Govt. of Mah.

B

3.

Copy of whip.

C

4.

Copy of Resolution.

D

5.

Copy of whip.

E

6.

Copy of news paper cutting.

F

7.

Copy of Mobile message.

G

8.

Copy of Receipt.

H

9.

Copy of postal receipt.

I

10.

Xerox copy of news paper PunyaNagari

J

Witnesses on behalf of Petitioner

Petitioner Kiran Gulabrao Patil himself.

Witnesses on behalf of Respondent

1. Rajni Bhaburao Gharate (Respondent in Petition No. 4/09)

2. Dr. Hemant Deshmukh.

Under these circumstances, I also directed that the Respondents may submit their written statements of defence in addition to earlier written statements of defence, if any, by 13.1.2011 positively, and also to state whether they desire to be heard in person on those additional points. All these should be done by above date only.

Much emphasis was laid on the ground that the charge is not properly framed. There was no charge seeking the disqualification of the Petitioners for violation of the whip dated 30th December, 2008, and as such, the Petitioners cannot be disqualified on the basis of such a charge. Perusal of the said charge it is manifest that the charge was framed on the ground that the disqualification is sought of the Petitioners as they have not followed the whip and also the directions dated 27.12.2008. The charge was also supported by statement of imputations of charge. Statement of imputation of charge clearly lays down that in a meeting held on 30th December, 2008, it was decided that for post of President of Zilla Parishad, the councilors of N.C.P. should vote for Budha Hiranman Pawar and it was resolved that party should set up candidature of Smt. Lalitabai Bahiram as candidate for Vice President. She belongs to N.C.P. It further also contains that the Petitioners declined to accept the written intimation of party whip dated 30th December, 2008.

It is also on record that the charge and the statement of imputation of charge was served on all the Petitioners. Even examination in chief was led, as such, the parties knew the case they are to meet out. Even against the framing of charge at belated stage, the Petitioners had approached to this Court by way of Writ Petitions. The same was dismissed against which letters patent appeal was filed. This Court in letters patent appeal while disposing the same gave opportunity to the Petitioners to file additional written statement and additional evidence if any. As such, now, the grievance cannot be made about the fact that the charges were framed at a belated stage.

26. It was also contended on behalf of the Petitioners that, the rules laid down under the Maharashtra Local Authorities Disqualification Rules have to be strictly followed as is held by the Apex Court in Sadashiv Patil's case. Earlier also the Petitioners had raised preliminary objection about the maintainability of the complaint for non compliance of the Rules. The matter went up to the Apex Court. The Apex Court dismissed the SLP filed by the present Petitioners. The Apex Court in these very matters while rejecting the special leave petitions and relying on its judgment in a case of Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council referred supra observed as under:

ORDER

These petitions are directed against the judgment of the Division Bench of the Bombay High Court, Aurangabad Bench whereby the Letters Patent Appeals filed by the Petitioners questioning the correctness of the order passed by the learned Single Judge negating their challenge to the orders of Collector, Dhule and Collector, Jalna, who rejected the objections filed by the Petitioners to the maintainability of the petitions filed by the private Respondents under the Maharashtra Local Authority Members Disqualification Act, 1986 (for short, "the Act") read with the Maharashtra Local Authority Members Disqualification Rules, 1987 (for short, "the Rules") were dismissed. We have heard Shri Jayant Bhushan, the learned senior counsel appearing for the Petitioners and Shri P. M. Shah, learned senior counsel appearing for the contesting Respondents at considerable length and perused the record. We have also gone through the judgments relied upon by learned Counsel for the parties. In our view, the impugned judgment as also the order passed by the learned Single Judge refusing to entertain the Petitioners' challenge to the orders passed by Collector, Dhule and Collector, Jalna are based on correct interpretation of the relevant statutory provisions and the same does not call for interference by this Court. The question whether Rules 6 and 7 of the Rules are mandatory or directory is no longer res-integra. In *Kedar Shashikant Deshpande etc. etc. v. Bhore Municipal Council and others etc. etc.* (2010) 13 SCALE 289, the two Judge Bench analysed the provisions of the Act and the Rules, referred to various precedents including the judgment in *Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others*, and observed:

In the case of *Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others*, , while interpreting the provisions of Schedule X of the Constitution, in a petition involving the issue of disqualification of a Member of Legislative Council belonging to the Indian National Congress under the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994, this Court has considered the question whether infraction of those Rules would render the entire proceedings initiated by the Chairman invalid or without jurisdiction. After examining the scheme of the Rules, this Court has held that the Rules being in the domain of the procedure are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. It is, further, held by this Court that being subordinate legislation, the rules cannot make any provision which may have the effect of curtailing the content and scope of substantive provisions of the Act. It is also held in the said decision that the provisions of Rules 6 and 7 of the Rules of 1994 are only directory in nature and on non-filing of an affidavit as required under sub-rule 4 and order VI, Rule 15 CPC, the disqualification petition would not be rendered invalid nor would the assumption of jurisdiction by invalid nor would the assumption of jurisdiction by the Chairman on its basis would be adversely affected or rendered bad in any manner. It may be mentioned that the Maharashtra Local Authority Members (Disqualification Rules) 1987 are pari-materia with the Bihar Legislative Council (Disqualification on the Ground of

defection) Rules 1994 and, therefore, the principles laid down in the above quoted decision would be applicable with all force to the interpretation to be placed on the Rules of 1987. In the above quoted decision this Court has gone to the extent of saying that there is no lis between the person moving the petition and the member of the House who is alleged to have incurred disqualification. According to this Court it is not an adversarial kind of litigation and, therefore, even if the Petitioner withdraws the petition it will not make a difference as the duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provisions. This Court has held that the provisions of Xth Schedule of the Constitution read with Article 102(2) and 191(2) operate on their own and the only purpose of the petition is to bring the relevant information about disqualification to the notice of the Chairman. In the present case also Section 7 lays down that the Collector has to decide the question of disqualification on a reference made to him.

The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1)(a) and 3(1)(b) operate on their own force and moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law.

In view of the proposition of law laid down in the aforesaid judgment, it must be held that the learned Single Judge and the Division Bench of the High Court did not commit any error by deciding the writ petitions and the Letters Patent Appeals on the premise that Rules 6 and 7 of the Rules are director and non-compliance thereof is not fatal to the maintainability of the petitions filed by the private Respondents. The judgments of this Court in *Sadashiv H. Patil Vs. Vithal D. Teke and Others*, , *M. Karunanidhi Vs. Dr. H.V. Hande and Others*, and *Balchandra L. Jarkiholi and Ors. v. B. S. Yeddyurappa and Ors.* in Civil Appeal Nos. 4444 - 4476 of 2011 on which reliance has been placed by Shri Jayant Bhushan do not have bearing on the interpretation of Rules 6 and 7 of the 1987 Rules. We are further of the view that the Collectors of the two district had rightly ruled that the petitions filed by the private Respondents for disqualification of the Petitioners were duly verified and absence of signatures on the exhibits was not such a defect which could justify outright dismissal thereof. The special leave petitions are accordingly dismissed.

Interim order passed by this Court stand automatically vacated. Collector, Dhule and Collector, Jalna are directed to dispose of the pending petitions within two weeks from the date of communication of this order. The Registry is directed to communicate this order to Collector, Dhule (Maharashtra and Collector, Jalna

(Maharashtra) by fax.

27. When the Apex Court in the present proceedings itself has held that the Rules are directory in nature, then there is no scope for me to dilate on whether the rules are mandatory and have to be strictly applied as held in Sadashiv Patil case referred supra or as directory as held in a case of Dr. Mahachandra Prasad Singh and in a case of Kedar Deshpande referred supra. I am bound by the observations of the Apex Court made while disposing of the special leave petitions filed by the present Petitioners at initial stage, when they had raised preliminary objection to the maintainability of the petitions itself.

28. The arguments advanced on behalf of the Respondent No. 1 that the Petitioners also stand disqualified by virtue of Section 3(1) (a) on the count of voluntarily giving up the party is concerned, the same cannot be countenanced by law. The concept of voluntarily giving up the party will have to be distinguished from the acts against the interest or dictates of the party. If the meetings are not attended, the party directions/whips are not followed that may not tantamount to the act of voluntarily giving up the party. The same has to be by positive act of the member. There cannot be giving up of membership by implication. The inconsistent conduct may amount to indiscipline, but may not amount to automatically cessation of membership of a party or voluntarily giving up the party. Apart from the fact that the Petitioners did not attend the meeting and did not vote to the member of their own party as per the directions issued. No other positive act is brought forward showing that they had voluntarily given up the party. Even the pleading of split in the party was not with a view to giving up the party, but was a stand taken by them to show that the Respondent No. 1 was not elected as leader by all the members of the party. The contention of the Respondent No. 1 that the Petitioners had voluntarily given up the party has to be negated. Nor any charge to that effect was framed.

29. The Petitioners have emphasised on the fact that when judgment was delivered on 07.06.2011, the judgment contained the operative part of the order that the Petitioners stand disqualified u/s 3 (1) (a) of the Disqualification Act, but subsequently behind the back of the Petitioners, the operative part was changed and same was corrected to 3(1)(b) and further two clauses were added. The learned A. G. P. submitted that the same was done on 07.06.2011 by the Collector exercising powers u/s section 152 and moreover, in the body of the judgment more particularly in para 36 it was observed by the Collector that the Respondents i. e. the present Petitioners deliberately defied the whips and also incurred further consequences as per the provisions of Section 3(1)(b) of the Act, 1986. The same would not affect the merits of the matter. The Petitioners cannot be said to have incurred disqualification u/s 3(2) of the said Act. The Section 3(2) of the Disqualification Act is not at all attracted in the present case.

30. Regarding civil applications filed seeking directions against the Respondent No. 2 to give the agenda of the special general meeting dated 30th June, 2011, the same was already allowed by this Court. The Petitioners vide the said civil

applications had also sought an action against the Respondent No. 2 under Article 215 of the Constitution of India for creating back dated record thereby making correction in the impugned order dated 07.06.2011. So far as the correction in the order dated 07.06.2011 is concerned, the Respondent No. 2 has submitted that one of the Petitioners Jitendra Himmatrao Biraris had submitted an application on 08.06.2011 on behalf of all applicants for getting certified copies of the disqualification order. Pursuant to the said application the office of the Respondent No. 2 had issued the certified copies of the common judgment and order dated 07.06.2011 and the certified copy of intimation/order dated 07.06.2011 on 10.06.2011 and the said Jitendra Biraris has given acknowledgement on the original receipt book. The said amendment in the operative part is made on the very same day the judgment was pronounced. There are rival contention in this regard.

31. This Court would not embark upon the said investigation in the present writ petitions. The Petitioners are at liberty to take up appropriate proceedings if so advised. The Petitioners have acted contrary to the directions issued by the Respondent No. 1, as such, are disqualified u/s 3(1)(b) of the Disqualification Act. The provision of Section 3(2) and 3(1)(a) are not attracted in the present case.

32. In the result the writ petitions are dismissed, however, with no order as to costs. The Record and Proceedings be sent back forthwith.

33. At this stage, Shri Bachate, the learned Counsel for Petitioners, requests for continuation of interim relief that was granted on 15.06.2011. Taking into account, the fact that the said interim relief granted on 15.06.2011 is in force till today. The said interim relief granted on 15.06.2011 is extended for a period of four weeks from today.