

(2002) 12 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 3898 of 2002

Mirza Kadir Baig Rasul Baig

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 7

Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 3(1), 6

Citation : (2003) 4 BomCR 672

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

Bench : Single Bench

Advocate : V.J. Dixit, for the Appellant; V.M. Humbe, for respondent No. 4, S.P. Sonpawale, for respondent No. 2, N.L. Jadhav, A.G.P. for respondent Nos. 1 and 3, for the Respondent

Judgement

A.B. Naik, J.—By this writ petition the petitioner challenges the order passed by the Collector, Parbhani, in File No. 2000-MVN-1-P-CR-5, dated 10-9-2002. In order to appreciate the points involved in this petition, following undisputed facts are required to be noted and appreciated.

2. The petitioner-Mirza Kadir Beg s/o Rasul Beg was elected from zone No. 7-C of Jintoor City as a councillor of Municipal Council, Jintoor (hereinafter referred to as Council). It is also not disputed that the petitioner was one of the candidates who was sponsored by the Indian National Congress (I) Party (hereinafter referred to as "the party"), a recognized party at State and National level. The elections were declared under the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. In the said elections, apart from the party, other recognized parties such as Nationalist (Congress) Party, B.J.P. and Shivsena, etc. also sponsored their respective candidates. It is also not disputed that the Council consists of 21 members and on declaration of results of the said elections, which took place on 3-12-2001, 11 councillors sponsored by the party declared elected and ten from Nationalist Congress Party were declared elected. It is not disputed that candidates elected pursuant to the

said elections are subjected to and covered by Maharashtra Local Authority Members Disqualification Act, 1986 (hereinafter referred to as the Act for short) and Maharashtra Local Authority Members (Disqualification) Rules, (hereinafter referred to as the Rules).

4. On completion of elections, there arose a question to elect Vice President of the Council and also members of the Standing Committee. A meeting for that purpose was held on 17-12-2001. It has come on record and it is alleged that in the said meeting, the petitioner, in defiance of a whip issued by the party leader, voted against the candidate sponsored by the Congress (I) Party. It has come on record that after election as per the Rules the name of councillor sponsored by the party, as required under Rule 3(1)(a) was intimated and the said intimation was issued on 5-1-2002 under signature of one Shri Bhambale Vijay Manikrao. It has come on record that in the election of Vice President, the candidate sponsored by the party, Mr. Deshmukh Pratap Vinayak was defeated and it was case of the petitioner i.e. respondent No. 4 herein that present petitioner has voted against the party candidate in the said election. The said election was held on 17-12-2001. Defiance of whip by the petitioner gave rise for the respondent No. 4 to approach the Collector by making a reference as provided u/s 7 of the Act.

5. The procedure for filing a reference is contemplated under Rule 6 of the Rules. The respondent No. 4 filed a reference before the Collector, Prabhani, as the Collector, Prabhani is the designated & competent authority to decide a question of disqualification, as referred in section 7. The application, inter alia, state the following aspect :---

"9. That, a meeting of the General Body of Municipal Council, Jintoor, was convened on 17-12-2001 for the purpose of co-opting councillor. There were three candidates who have filed the nomination for getting themselves elected as the co-opted councillor in the said Municipal Council. By disobeying the order of the petitioner, the non-petitioner has not voted in favour of a candidate who is sponsored by political party. But the non-petitioner has voted and casted his vote in favour of Subhash Mohanlal Sharma, who is one of the sponsored candidate from Rashtrawadi Congress and thereby the non-petitioner has contravened, neglected and disobeyed the order of the petitioner, who is the leader of the House of the Indian National Congress and thereby he is disqualified to continue as a councillor under the Maharashtra Local Authority Members Disqualification Rules, 1987.

10. That, on 17-12-2001, the meeting of the councillors of Municipal Council, Jintoor, was convened for electing the Vice President and for that election, the Indian National Congress has sponsored the candidature of Pratap Vinayakrao Deshmukh and the petitioner as a Leader of the House, has issued the whip to all the councillors, who are elected as the members of the Indian National Congress. The another candidate was contesting the election for Vice President is Bordikar Gangadhar Wamanrao, who is a sponsored candidate from Rashtrawadi

Congress. When it was found that there is a likelihood about the integrity of the non-petitioner and therefore, petitioner directed all the councillors of Indian National Congress to come out of the house and not to vote anybody. In spite of this, the non-petitioner kept himself present in the house and voted in favour of a candidate sponsored by Rashtrawadi Congress and, therefore, Bordikar Gangadhar Wamanrao is elected as a Vice President. If the non-petitioner would have obeyed the order of the petitioner, then there is likelihood of getting elected the candidate of Indian National Congress i.e. Pratap Vinayakrao Deshmukh and therefore, the non-petitioner has acted against the directions issued by the petitioner and committed the breach and acted against the interest of the political party on the strength of which he is elected as a councillor.

11. That, the non-petitioner again committed the breach and contravened the specific directions of the petitioner as leader of the house in a meeting dated 23-12-2001 for electing the members for Standing Committee of the said Municipal Council. In that meeting also, the non-petitioner has voted in favour of the candidates sponsored by Rashtriya Congress and he did not vote in favour of the councillors sponsored by Indian National Congress and therefore, the non-petitioner is acting and his acts of commissions amounts to contravention of the specific directions issued to him, and therefore, the non-petitioner is disqualified to continue as a councillor, who has been elected by and on behalf of the Indian National Congress.

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13. That it is the mandatory duty upon a councillor who has been politically elected with the help and assistance of a particular political party on a recognized symbol, then he shall be legal and shall not act in contravention with the order and the policy framed and adopted by the leader of the house. But here, the non-petitioner has disobeyed the direction of the petitioner who is the leader of the house and acting against the political views and therefore, he is disqualified from continuing as a councillor and therefore, the present petition is being filed under Rule 6 and this Hon'ble Court is competent to make an enquiry as per the procedure laid down under Rule 7 of the said Rules and the non-petitioner may be disqualified and to declare that the non-petitioner is subject to the disqualification as contemplated under Rule 8 of the said Rules.

On receipt of the reference, it appears that the Collector took cognizance of the dispute and issued notices/summons to the petitioner. Accordingly, the petitioner appeared before the Collector and filed his WS/Say on 20-2-20002. In reply, the petitioner denied all adverse allegations made against him. Apart from denying allegations made in the petition, the petitioner has made a specific statement in para No. 14 stating that disqualification petition is bad for non-compliance of Rule and the petition has to be dismissed as such. The para reads thus :---

"14. That, the contents of para No. 16 are legal, needs no reply. It is submitted that, there is no proper verification of pleadings, referring to paras, and the

documents, which are referred, in the petition, are also not submitted, with the petition."

6. After the pleadings of the respective parties, the learned Collector framed issues and instead of taking oral evidence he permitted the parties to file their affidavits and he decided the dispute on the basis of affidavits and oral submissions. The issues framed are :---

"1. Was a Municipal Party of I.N.C. constituted as on 16-12-2001?

2. Was the petitioner elected as the leader of the I.N.C. Municipal Party by the councillors of Indian National Congress?

3. Did the leader of the I.N.C. Municipal Party issued a whip on the 3 occasions mentioned above?

4. Did the respondent Mirza Kadeer Baig s/o Rasul Baig, r/o Jintoot violated the whip?"

7. On considering submissions of the parties, the learned Collector, held in favour of the petitioner herein, so far as allegations of non-obeying the whip at the time of elections to the Standing Committee, is concerned and so far as allegation with respect to election of Vice President, the learned Collector held that the petitioner has not obeyed the whip issued by the party leader and also acted in contravention of the directions issued by the party leader. Therefore, the learned Collector found that the petitioner incurred disqualification within the meaning of section 7 of the Act and accordingly, the reference came to be allowed. The learned Collector, passed the following order.

"(4) Only on one occasion i.e. the election of Vice President it is proved beyond all doubt that the respondent Mirza Kadeer Baig violated the whip.

The petition is allowed. The respondent Shri Mirza Kadeer Baig is disqualified from continuing as the councillor of Jintoot Municipal Council."

8. Feeling aggrieved by the said judgment and order of disqualification, thereby, disqualifying the petitioner from continuing as the councillor of the Council, the petitioner approached this Court by filing instant petition on 23-3-2002, invoking jurisdiction of this Court under Article 226 of the Constitution. The petitioner in this petition has prayed for following reliefs:

"(A) For a writ of certiorari, order or direction in the nature of certiorari and calling for the record and proceedings of the judgment and order, dated 10th September 2002 passed by District Collector, Parbhani, in File No. 2002-Mun-I-Appeal-CR-5, and after examined the legality, validity and propriety thereof, the judgment and order, dated 10th September, 2002 passed by District Collector, Parbhani disqualifying the petitioner as councillor of Jintoot Municipal Council, Jintoot, District Parbhani, be quashed and set aside and the disqualification petition filed by respondent No. 4 under Rule 6 of the Maharashtra Local Authority Members Disqualification Rules, 1987, be dismissed with costs."

9. This Court heard the petition at the motion hearing on 30-9-2002 and issued notice before admission returnable on 4-10-2002. After notice, the petition was again heard at the motion hearing on 4-10-2002 and this Court issued Rule Nisi, returnable within three weeks and also granted interim relief in terms of prayer Clause "B". After service of rule, the petition is placed for final hearing.

10. Mr. V.J. Dixit, learned Advocate appearing for the petitioner, contended that the Collector has committed error in allowing the petition, which does not confer and fulfil statutory requirements. Petition itself should have been dismissed at the threshold as it is apparent that verification of the petition is not in consonance with Order 6, Rule 15. He contended that petition lacks compliance of all the statutory requirements, such as, concise statement of facts, the source of information gathered by the petitioner, verification on each document on which the petitioner reliefs, etc. The petition does not disclose that any document was made integral part of the petition. Therefore, he submitted that documents relied upon the respondent No. 4, having been not verified in accordance with law, the Collector committed an error on relying on them while allowing the petition. He further contended that the petition, filed under Rule 6 lacks all particulars and also lacks statutory requirements. He contended that when the petition does not comply with the mandatory and statutory requirements, it should have been dismissed at the threshold. The Collector, while deciding the petition has not at all referred to or taken care to find out whether the petition complies with the statutory requirements and whether such a petition can be entertained. He also contended that the petition so filed was not a "Reference"/"Petition" in the eye of law and the learned Collector has entertained the petition which, in fact, was not a legal petition and therefore, subsequent disqualification of the petitioner, is illegal.

11. Mr. Vilas Humbe, Advocate for respondent No. 4 original petitioner, who filed petition before the Collector, contended that points regarding maintainability of the petition and non-compliance of the statutory provisions were not raised before the learned Collector and it will not be permissible for this Court now to allow the petitioner to raise the point of maintainability of the disqualification petition, before this Court. He further submitted that on perusal of contents of the application and the reply filed by the petitioner, as also, evidence so produced, the learned Collector has rightly come to a conclusion that there was a whip issued by the party leader and that whip has been flouted by the petitioner, by voting against the party candidate and therefore, the petitioner incurred disqualification. He, therefore, submitted that on the facts and circumstances of this case, view taken by the learned Collector is reasonable and proper and same should be upheld.

12. Mr. N.L. Jadhav, learned A.G.P., has produced entire R & P of the petition filed under Rule 6 of the said Rules and supported the order.

13. Though Mr. V.L. Dixit, Advocate for the petitioner, has reiterated all the challenges regarding legality of issuance of whip by the so called party leader

which were raised before the Collector, however, main question raised by him pertains to maintainability of the petition for want of compliance of mandatory, statutory provisions. If petition succeeds on this point, it is not necessary for me to ponder over other contention raised by the Advocate regarding the issuance of whip/directions, etc.

14. It is not disputed that section 7 of the Act, gives jurisdiction to a Collector to conduct an enquiry and give a decision in a disqualification petition. Section 7 reads thus:

"7. If any question arises as to whether:---

(a) a councillor of Municipal Corporation; or

(b) a councillor of a Municipal Council; or

(c) a councillor of a Zilla Parishad; or

(d) a member of a Panchayat Samiti, has become subject to disqualification under this Act, the question shall be referred:---

(i) in the case of a councillor of a Municipal Corporation, to the Commissioner, and

(ii) in the case of any other councillor or member to the Collector; and the decision of the Commissioner, or as the case may be, Collector, shall be final."

15. The question of disqualification has to be referred to a Collector. The State has framed Rules, in exercise of the powers conferred on it by virtue of section 9 of the Act. It will be appropriate to refer in detail the Rules governing filing of a reference petition & procedure that is required to be followed by the Collector in deciding the disqualification petition.

"6. Reference to be by petitions:---

(1) No reference of any question as to whether a councillor in relation to a municipal party and a 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 a Panchayat Samiti party the petition 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 addresses of such persons 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 of the annexure 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 or member in relation to a Panchayat Samiti party belongs to any political party or a ghadi or front and such petition has not been made by the leader thereof, also to such leader; as 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 be sufficient reason allow, forwarded 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 a preliminary enquiry to determine any question under sub-rule (4) shall be as prescribed in sub-rules (6) to (15).

(6) The Commissioner or, as the case may be, 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) 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 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 be 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 inquire 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 date 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

proposes 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 purpose of preparing his defence:--

(i) inspect within five days of the order or within which 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."

16. Mr. V.J. Dixit, learned Advocate, relied on the above said Rules. He pointed out that the Collector, under misconception, has not performed his duties, as cast upon him by the rules. He submitted that Rule 7 deals with the procedure. According to Rule 7, on receipt of a petition under Rule 6, the Collector has to consider, whether the petition complies with the requirement laid down in Rule 6. According to Rule 6, such a petition shall contain a concise statement of material facts on which the petitioner relies. It is also provided that the petition shall be accompanied by copies of documents on which the petitioner relies. Sub-rule (4) of Rule 6 requires that every petition and the annexure thereto shall be signed by the petitioner and verified in the manner laid down in Civil P.C. for verification of the pleadings.

From the record that is produced by the learned A.G.P., and also from the documents accompanied with the disqualification petition, I find that there is no verification, as required under sub-rule (4) of Rule 6 of the said Rules. Petition was lodged before the Collector on 8-1-2002 and its verification runs as under :

"I, Vijay s/o Manikrao Bhambale, Age : 32 years, Occ. Agri, r/o Jintoor, District Parbhani, hereby verify that the contents of this petition are true and correct to the best of my knowledge and belief. Hence, verified on this date at

Date: 8-1-2002

Petitioner

Sd/- (Vijay s/o Manikrao Bhambale, r/o Jintoor)

Presented by sd/- (B.S. Sharma and A.G. Vyas) Advocates, Parbhani."

It is to be noted from the verification itself it is clear that a concise statement of material facts, which is relied by the petitioner, was not produced and there is no statement in the verification as to which paragraphs are within personal knowledge or from which source he gathered the information, which information is required to be disclosed in the verification itself. On seeing the verification, it is clear that the petition does not comply the requirement of verification, as contemplated under Rule 6(4) of the said Rules.

17. Along with the petition, the petitioner respondent No. 4 herein has produced as many as thirteen documents. All the documents are signed by one Sanjay Manikrao Bhambale, President of Jintoor Taluka Congress (I) Party, but none of the documents, relied upon by the petitioner before the learned Collector, are signed or verified in the manner as provided by Order VI, Rule 15 of C.P.C., by the petitioner.

18. The above lapses are glaring on the face of record. In fact, the petitioner, in his reply filed to the petition in para No. 14 has specifically raised point that the petition is not verified in accordance with the requirement of sub-rule (4) of Rule 6 of the said Rules and to my surprise, the Collector has not framed any issue though specific point was raised regarding the statutory compliance and maintainability of the petition.

It is to be noted here that disqualifying an elected candidate results in serious consequences and it is expected from the authorities to deal with the aspect of disqualification with all seriousness, more particularly, when the Rules which cast an obligation on the Collector to scrutinize the petition and find out whether the petition filed is in compliance of statutory requirements. It is clear from Rule 7, that on receipt of a petition, under Rule 6, a Collector is obliged to consider whether the petition complies with the requirements laid down in Rule 6. Sub-rule (2) of Rule 7 provides that if the petition does not comply with the requirement of the Rule 6, a Collector shall dismiss the petition and intimate the petitioner accordingly.

The requirement and the procedure that is to be followed by the Collector, being mandatory in character, the Collector cannot straight away proceed to issue summons/notices to the respondent, unless he considers all aspects of statutory requirements. On the face of record, it reveals that the petition and the annexure are not at all duly verified and therefore, the petition does not comply with the requirements laid down under Rule 6. So far as this aspect of duties of the Collector are concerned, the Collector has not applied her mind and consider whether factually the petition complies with the requirement laid down in the Rule 6, the fact of satisfaction and compliance of requirement by the Collector

does not reflect on record. Consideration and/or satisfaction must be recorded by the Collector before proceeding further and it must be reflected on record.

It is to be noted that sub-rule (3) of Rule 7 mandates that if the Collector finds that a petition complies with the requirement of Rule 6, then only he has to forward copies of the petition and annexure thereto. Therefore, in my view, it was obligatory on the part of the Collector to consider it first, before issuing summons whether the petition as filed under Rule 6 is in compliance with the Act and Rules and to note his satisfaction, and then to proceed to issue summons. The Collector on receipt of the petition, cannot straight way issue summons and call the party to reply it. The requirement as provided under the Rule is mandatory, unless the Collector complies this mandatory duty, the Collector cannot proceed to decide the petition as the Collector has failed in her duty the entire order thus stands vitiated. If the petition is in compliance of the Rules then only she can forward copies of the petition to the councillor, against whom the said petition is filed and call upon him to file his written statement.

It is to be noted that originally framed Rules are extensively amended in the year 1991, providing a detailed and comprehensive procedure for dealing with reference so filed and the Rules so framed are mandatory in character which are required to be followed by every presiding authority deciding the disqualification petition under the Act strictly. The scheme of Rules 6 & 7 clearly shows various steps to be taken before issuing summons to the concerned person. From the above quoted Rule it is obvious that the Presiding Authority cannot straight way issue summons; before issuance of summons the presiding authority has to follow the said procedure scrupulously. It is to be noted that after following the procedure and after the report of the leader as provided under Rule 7(4) the Presiding Authority has to call upon the concerned to file reply and after reply by concerned councillor, sub-rule (6) of Rule 7 requires a Collector to draw up or cause to be drawn up the substances of the imputations of disqualification into definite and distinct articles of charges. This Rule further states that a Collector shall draw substance of 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 a Councillor and a list of documents by which and a list of witnesses by whom article of charges are proposed to be sustained. Thereafter, the Collector shall deliver a copy of articles of charge, statement of imputation of disqualification, list of documents and the witnesses by which each charge of articles is proposed to be substantiated and then shall by a written notice require the councillor to submit within such time as may be specified in the notice his WS of defence and to state whether he desires to be heard in person.

I have perused entire record and I am satisfied that the Collector has utterly failed in his duties to:---

(1) consider whether the petition satisfies the requirement of Rules,

(2) frame charges & statement of allegations and same were not forwarded to the councillor concerned,

(3) consider whether annexures (documents) are verified as per sub-rule (4) of Rule 6, and

(4) not drawing up:---

(i) statement of imputation of disqualification,

(ii) list of documents,

(iii) list of witnesses by which charge of articles proposed to be sustained, and

(iv) not recording oral evidence and relying on affidavits.

Therefore, in my view, the petition so filed u/s 7 does not comply any of the requirement of Rule 6 and as such the same should have been dismissed at the threshold. The Collector has not complied with the statutory duty cast upon her by statute. The Collector has also failed in her duties in drawing up a statement of charges, imputations of disqualification, etc. as referred to above and in a very cursory manner, she proceeded to disqualify the petitioner. Entire procedure followed by the Collector is contrary to Rule 7 of the Rules.

It is to be noted that disqualification of an elected councillor is a drastic step, for which, in my opinion, requires strict compliance of the procedure required under law. The Rules, being mandatory in nature and strict compliance is always required and insisted. As there is non-compliance of statutory requirement, the petition so filed was required to be dismissed by the Collector at the threshold. In my judgment, the disqualification petition is not a petition in eye of law and therefore, order passed by the Collector cannot stand to any reason because the Collector has not embarked upon any enquiry & applied her mind to the statutory requirements, to find out whether the petition strictly complies the statutory, mandatory compliance, which are supposed to be followed by the Collector, under the said Rules. Therefore, in my judgment, there is an error apparent on the face of record in passing order of disqualifying the petitioner.

19. Mr. V.J. Dixit, learned Advocate has placed reliance on judgment of the Apex Court in case of Sadashiv Patil v. Vithal Take, 2000(Supp.) Bom.C.R.829 : 2001(1) Mh.L.J. 312. The Apex Court was considered provisions, which I am considering now, i.e. provisions of Act and the Rules. The Apex Court has held that the authority deciding the reference has to follow provisions of the said Act and the Rules strictly, as the consequence of disqualification are very serious. The Apex Court has held that there should be rigorous compliance of the provisions of the Act and the Rules, which must be indicated or demonstrated, in the order itself, while dealing with the reference u/s 7. The Apex Court in para No. 13 has observed 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 all the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place which dealing with a reference u/s 7 of the Act."

20. Applying the above ratio to the facts of this case, I am of the view that the Collector has dealt with the disqualification petition in a very causal manner and disqualified the petitioner on a petition which is not a petition in the eye of law. Considering the above ratio, I am of the opinion that there is no statutory compliance of the mandatory statutory requirements of the Act and the Rules, and therefore, disqualification petition is liable to be rejected.

21. In the result, for the reasons stated hereinabove, Rule is made absolute in terms of prayer Clause "A". The judgment and order dated 10-9-2002 passed by the learned Collector, Parbhani, (Exhibit "F") is quashed & set aside. Let there be a writ of certiorari issued to that effect. Misc. Application bearing No. 2202-MUN-I-Appeal-CR-5 stands dismissed. The petitioner is reinstated as a Councillor of Jintoor Municipal Council, Jintoor, District Parbhani, forthwith.

22. The learned A.G.P., communicate this order to the Collector, Parbhani. The Chief Officer, M.C., Jintoor, District Parbhani. Original record be returned to him.