

(2021) 08 GUJ CK 0062
In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 735 Of 2021 In R/Special Civil Application No. 10615 Of 2021, Civil Application (For Stay) No. 1 Of 2021 In R/Special Civil Application No. 10615 Of 2021

Pritiben Umeshkumar Son

APPELLANT

Vs

Brindaben Nilanj Kumar Shukla

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Gujarat Provisions Of Disqualification Of Members Of Local Authorities For Defection Rules, 1987 — Rule 4(3)(b), 6, 7, 7(7), 8, 10A
Gujarat Provision For Disqualification Of Members Of Local Authorities For Defection Act, 1986 — Section 3

Citation : (2021) 08 GUJ CK 0062

Hon'ble Judges : Vikram Nath, CJ; Biren Vaishnav, J

Bench : Division Bench

Final Decision : Allowed/Dismissed

Judgement

Biren Vaishnav, J

1. This Letters Patent Appeal has been filed by the appellant who was the respondent no.1 in Special Civil Application No.10615 of 2021. The appeal

has been filed challenging the oral order dated 28. 07.2021 passed in Special Civil Application No.10615 of 2021 filed by the respondent no.1 -

Brindaben Nilanj Kumar Shukla. The order under challenge dated 28.07.2021 reads as under:

Heard Mr. B.M. Mangukiya, learned advocate appearing for the petitioner and Mr. C.B. Upadhyaya, learned advocate appearing for the respondent

no.1 on caveat.

Issue notice, returnable on 3.8.2021.

In the meantime, it will be open for the petitioner to make an application to the

learned Designated Authority for an adjournment. Let the same be considered.

2. For the sake of convenience the appellant Pritiben Umeshkumar Soni shall be hereinafter referred to as 'the applicant'. This is because she had filed

Dispute Application No.13 of 2020 before the Designated Authority praying that the respondent no.1 herein be disqualified under the provisions of

Section 3 of the provisions of Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter to be

referred to as 'the Defection Act' for short). The respondent no.1 herein was the original respondent whose disqualification was sought before the

Designated Authority.

3. Facts in brief are as under:

3.1 The general elections of the Lunawada Municipality took place in the year 2018. It was the case of the dispute applicant (appellant herein) in

Dispute Application No.13 of 2020 before the Designated Authority that the municipality consisted of 28 councilors. The Bharatiya Janata Party had

11 candidates elected whereas 14 candidates set up by the Indian National Congress got elected. Two independent candidates also got elected. The

respondent of the Dispute Application was the candidate of the NCP who got elected.

3.2 It was the case of the dispute applicant that the first meeting of the elected councilors was held on 27.02.2018. On 24.08.2020 a general meeting

of the municipality was convened for the elections of the president and the vice president on the basis of an agenda notice dated 14.08.2020. The

Bharatiya Janata Party issued a mandate to its members for electing the president of the municipality. It was the case of the applicant before the

Designated Authority that the Bharatiya Janata Party issued a mandate to elect her as the president of the Municipality. The respondent applicant

declared herself as a candidate for the post of the president of the municipality wherein she secured 19 votes and the candidate set up by the

Bharatiya Janata Party i.e. the dispute applicant secured only 9 votes. It was the case of the dispute applicant before the Designated Authority that

the respondent had violated the party mandate and voted against it by contesting elections though she was set up on the reserved symbol of the

Bharatiya Janata Party. She, against the mandate of the party, stood for the

elections as an NCP candidate and won the elections.

3.3 In the Dispute Application filed before the Designated Authority under Section 3 of the Anti Defection Act, it was the case of the dispute

applicant that the respondent had voluntarily joined the Bharatiya Janata Party on 27.08.2019. That, when the meeting of the Municipality was

convened on 24.08.2020, though the respondent joined the Bharatiya Janata Party, she against the mandate of the party stood for the post of the

President and won the election on the seat of the Nationalist Congress Party and committed a breach of the mandate. 3.4 The Dispute Application

No.13 of 2020 was filed by the appellant herein on 16.09.2020. The Designated Authority issued notice on 18.09.2020 asking the respondent-applicant

to remain present on 01.10.2020. On an application being made to engage an advocate, the hearing was adjourned to 15.10.2020. The date of hearing

was thereafter fixed on 17.10.2020 and 29.10.2020.

3.5 The respondent - applicant before the Designated Authority filed a written statement before the Designated Authority to the application on

01.04.2021 refuting the contention that she had voluntarily given up the membership of her political party NCP and joined the Bharatiya Janata Party.

She contested the claim of the applicant (appellant herein) and stated that she had not filled in any form for joining the Bharatiya Janata Party and also

that no mandate was received by her. The hearing was adjourned to 07.04.2021. As a result of the large scale spread of COVID-19, the office of the

Designated Authority postponed the hearing from 07.04.2021 and fixed the next date on 19.05.2021. This date was notified by the Designated

Authority to the respondent applicant by an E-mail dated 12.05.2021. On 18.05.2021 an E-mail was sent provided that the Designated Authority was

requested to provide virtual hearing of the aforesaid matter in view of the COVID-19 situation. That request purportedly was not entertained and the

matter was adjourned to 20.05.2021. The hearing was concluded ex-parte and by an order dated 25.05.2021 the respondent of the Dispute Application

was declared as disqualified. The respondent of the Dispute Application therefore, filed Special Civil Application No.7986 of 2021 challenging the

order of the Designated Authority dated 25.05.2021 before this Court. An application for stay also was filed.

3.6 By an order dated 28.06.2021, the petition filed by the respondent applicant

was admitted, however, interim relief was refused.

3.7 The refusal of interim relief led to the respondent of the Dispute Application into filing Letters Patent Appeal No.555 of 2021 before this Court.

When the Letters Patent Appeal was listed on 02.07.2021 before this Court, on hearing the learned advocate Mr.Mangukiya for the appellant

(respondent dispute applicant) and Mr.Chitrajeet Upadhyaya appearing for the original dispute applicant, the Court disposed of the appeal holding that

there was violation of principles of natural justice, inasmuch as, no virtual hearing was provided by the Designated Authority. The order of the

Designated Authority dated 25.05.2021 was set aside with a direction that the Designated Authority should proceed to decide the matter afresh within

a period of four weeks. The counsel for both the parties agreed that a date be fixed before the Designated Authority after 10 days and accordingly the

matter was listed before the Designated Authority on 14.07.2021. The Letters Patent Appeal together with the Special Civil Application challenging

the order of the Designated Authority was accordingly disposed of.

3.8 On the date of hearing of the application before the Designated Authority, the respondent - dispute applicant on 14.07.2021 filed an application

seeking cross-examination of the dispute applicant (appellant herein). A reply was filed by the original applicant and the rejoinder thereto was also

filed by the respondent. By an order dated 23.07.2021, the respondent applicant's application for cross- examination was rejected by the Designated

Authority essentially holding that the Designated Authority is a quasi-judicial authority and since the proceedings are summary in nature and ought to

be disposed of within the stipulated time of two months, the application for cross-examination was only with a view to delay the proceedings and

hence, required to be rejected. The Designated Authority further observed that the original applicant of the Dispute Application had not produced any

witness for examination and therefore there was no question of seeking cross-examination. The authority further observed that the Division Bench of

this Court in Letters Patent Appeal No.555 of 2021 had directed that the application be decided within a stipulated time and therefore the application

was misconceived and was therefore rejected.

3.9 The respondent applicant therefore once again has approached this Court by filing Special Civil Application No.10615 of 2021 challenging the

order dated 23.07.2021 by which the application for cross- examination was rejected. It is on this petition at the hands of the respondent in the Dispute

Application, that the Court passed the oral order as quoted herein above dated 28.07.2021. 3.10 Aggrieved by the order of the Court issuing notice in

the petition, the original dispute applicant approached this Court by filing the present Letters Patent Appeal. By an order dated 06.08.2021 it was

directed that the papers of the Special Civil Application also be listed together. 3.11 Accordingly, we have proceeded to hear the Letters Patent

Appeal filed by the original dispute applicant together with the petition filed by the respondent in the Dispute Application whose application for cross-examination has been rejected.

4. We have heard Mr.B.M.Mangukiya learned advocate for the original petitioner in Special Civil Application No.10615 of 2020. He has made the following submissions:

(i) As soon as the Division Bench of this Court by its' order dated 02.07.2021 fixed 14.07.2021 as the date for appearing before the Designated

Authority for hearing of the matter, on that very date, he filed an application seeking cross-examination of the original applicant (appellant herein).

(ii) Mr.Mangukiya would invite our attention to the application for cross-examination of the applicant and submit that the case of the original dispute

applicant before the Designated Authority was that the respondent no.1 herein had occurred disqualification because though she had voluntarily joined

the membership of Bharatiya Janata Party on 27.08.2019, she had committed a breach of the mandate and instead of casting the vote in favour of the

original dispute applicant, she cast her vote in breach of the mandate in her favour.

(iii) Mr. Mangukiya would submit that several documents have been placed on record by the original dispute applicant submitting that the respondent in

the Dispute Application (the petitioner herein) had joined the Bharatiya Janta Party ('BJP' for short). No original document was produced but a photo

copy of the form was produced and was relied upon to submit that the respondent before the Designated Authority (the petitioner herein) had

voluntarily given up the membership of her own political party - NCP.

(iv) Mr. Mangukiya would also draw our attention to the affidavit filed in the LPA and submit that it was the case of the respondent before the

Designated Authority that the form dated 27.08.2019 was a forged document and it was morphed. He would further submit that since it was a specific

case of the respondent before the Designated Authority that the document dated 27.08.2019 was a forged document and now that even thereafter

there was an opinion of the handwriting expert clearly stating that the disputed document did not bear the signature of the respondent (the petitioner

herein) when the original dispute applicant had stated on oath and produced the form, she ought to have been permitted to cross- examine.

(v) Mr. Mangukiya would assail the order of the Designated Authority which observed that the application was made solely with a view to delay the

proceedings. He would submit that immediately on the order having been passed in the Letters Patent Appeal by which the Designated Authority was

directed to hear the matter afresh on 14.07.2021, on that very date, he made an application for cross- examination. There was no reason for the

respondent before the Designated Authority to delay the proceedings inasmuch as after the filing of the written statement on 01.04.2021, due to the

Corona pandemic no hearing took place before the Designated Authority and when it did take place on 19.05.2021 and 20.05.2021, the application was

decided ex-parte by the order of 25.05.2021 which was now set aside in the earlier round of litigation.

(vi) The finding of the Designated Authority that the proceedings before the Designated Authority are quasi judicial and summary in nature and

therefore there is no need for cross examination particularly when no witness was produced is also assailed by Mr. Mangukiya, by relying on a

decision of this Court in the case of D.P. Avadia vs. Competent Authority reported in 2009 (4) GLR 2974. He would rely on the decision of the

Division Bench to submit that it is not that in a disqualification proceeding no cross examination can at all be allowed.

(vii) He would submit that the Designated Authority by relying on the decision of this court in the case of Bhavnaben Pravinbhai Chauhan vs. in SCA

No. 12625 of 2015 passed by this Court dated 10.08.2015 in not following the decision of the Division Bench had showed lack of judicial discipline in

interpreting a binding decision of the Division Bench. For this purpose, he has also relied on a decision of this Court in Mansukh alias Ravji Gorasaiya

LPA No. 717 of 2020 decided on 19.04.2021.

(viii) In support of his submission that even before a quasi judicial authority it is appropriate to permit cross examination he relied on a decision in the

case of Dipak Chandrakant Mulchandani vs. Union of India reported in 2020 JX (Gujarat) 291 and also in the case of Andaman Timber Industries vs.

Commissioner of Central Excise reported in (2016) 15 SCC 785.

5. As against the above, Mr. C.B. Upadhyaya who appeared with Mr. Naman K Bramhatt for the appellant - dispute applicant would submit that the

Dispute Application was filed on 16.09.2020. Notices were issued and the first date of hearing was 01.10.2020. The matter was thereafter adjourned

and a written statement was filed by the respondent before the Designated Authority on 01.04.2021. The case of the applicant before the Designated

Authority was that once the respondent before the Designated Authority had voluntarily given up her membership of the NCP and joined the BJP and

having voted against the mandate of BJP she had incurred automatic disqualification. In support of her stand before the designated authority, the

dispute applicant had produced the original online form dated 27.08.2019 in support of her case that the original respondent of the Dispute Application

had become a voluntary member of the BJP.

6. Mr. Upadhyaya would further submit that there was no fault in the order of the Designated Authority by denying the benefit of cross examination

when the decision could be taken on affidavits filed by the respective contesting applicant and the respondent.

7. Mr. Upadhyaya would further submit that the application given for cross examination was clearly an after thought and only with a view to frustrate

and delay the proceedings before the designated authority. Right from the time the written statement was filed and even till the Division Bench of this

Court disposed of the appeal on 2. 07.2021 wherein the counsel for the respondent - dispute applicant had categorically agreed to cooperate with the

hearings filing of an application for cross examination on the first date of hearing was clearly with a view to derail the entire proceedings in non

compliance of the directions and spirit in which the order was passed by the Division Bench in the LPA. He would rely on the provisions of the

Gujarat Provisions of Disqualification of Members of Local Authorities For Defection Rules, 1987 particularly Rule 7 thereof which prescribes the

procedure for deciding the application. He would submit that there is no provision

for the applicant being cross examined.

8. Having heard Mr. Mangukiya, learned advocate for the original petitioner - respondent in the LPA - respondent in the Dispute Application and Mr.

Upadhyaya, learned advocate for the appellant - respondent in the petition - the original dispute applicant, we need to consider (a) whether the

Designated Authority could have rejected the application of the original petitioner before us for cross examination of the dispute applicant on the twin

grounds namely that there was no provision for cross examination of witnesses as the proceedings were summary in nature and (b) whether the

conduct of the original petitioners - respondent before the Designated Authority in filing an application for cross examination was with a view to delay

the proceedings before it.

9. Since both the questions are interconnected, we decide these questions conjointly. From the narrative of facts mentioned herein above, it will be

clear that the essence of the dispute between the parties i.e. the original applicant before the Designated Authority - appellant herein and the

respondent - original petitioner is that the appellant invoked the provisions of Section 3 of the Disqualification Act against the original petitioner on the

ground that she had voluntarily given up her membership of the National Congress Party and signed a form and joined the Bharatiya Janta Party on

27.08.2019.

10. The case of the dispute applicant before the Designated Authority was that the original petitioner having voluntarily given up her membership of the

NCP and joined the Bharatiya Janta Party, then having contested the election of the president by violating the mandate and contesting on the seat of

the NCP incurred disqualification. In support of her application, the appellant - original dispute applicant had furnished a form dated 27.08.2019

showing that the same was signed by the original petitioner/respondent in the Dispute Application. That statement was made on oath in the original

application filed before the Designated Authority.

11. The application was filed on 16.09.2020 to which the original petitioner - respondent in the Dispute Application filed the reply to the Dispute

Application. Perusal of the written statement filed by the original petitioner / respondent in the Dispute Application would indicate that the existence of

the membership form signed by the original petitioner was denied in the written

statement. The written statement filed by the original petitioner is on record. Perusal thereof would indicate that it is the case in the written statement by the original petitioner that she specifically and categorically denied having filled in any such membership form and having paid the membership fees. In the written statement the original petitioner / respondent in the Dispute Application also stated that she does not admit that after having joined the Bharatiya Janta Party she participated in the number of programs held by the Bharatiya Janta Party.

12. It was in this context of conflict in pleadings that she made a request for cross-examination of the appellant original dispute applicant on 14.07.2021.

13. The question whether the application made for cross-examination on 14.07.2021 was with a view to derail the proceedings or delay, can be answered on the perusal of the observations of the Division Bench in Letters Patent Appeal No.555 of 2021 filed by the original petitioner / respondent before the dispute Designated Authority. After recording the facts as narrated herein above, the Division Bench of this Court observed as under:

6. Having examined the order passed by the Designated Officer on 25.05.2021 which fairly records that a request has been made through E- mail by the counsel for the petitioner-appellant, requesting for virtual hearing, but on account of lack of infrastructure, the virtual hearing was not possible and thereafter having proceeded to decide the matter, we feel that the petitioner-appellant has been injured to some extent by not having been provided adequate opportunity of hearing as such principles of natural justice and fair play have been violated.

7. Mr.Upadhyay learned counsel for the respondent no.1 also does not dispute the fact that E-mail was sent and at the time of hearing by the Designated Officer, counsel for the petitioner- appellant was not heard.

8. Since the matter involves the rights of an elected member, strict principles of natural justice and procedure ought to be followed. Therefore, on this short point alone, we feel that the order of the Designated Officer deserves to be set aside leaving it open to the Designated Officer to decide the matter afresh after affording due opportunity of hearing to the counsel for the petitioner - appellant. Shri Mangukiya learned counsel for the petitioner

- appellant has assured that now the counsel for the petitioner - appellant would conduct the matter in physical proceedings and would not seek any further adjournment or cause any undue delay in the hearing of the proceedings.

9. In view of the above, we dispose of this appeal and allow the Special Civil Application and set aside the order of the Designated Officer dated

25.05.2021. We further direct the Designated Officer to proceed to decide the matter afresh within a period of four weeks. Both the counsels for the

parties i.e. the petitioner - appellant and respondent agreed that a date may be fixed before the Designated Officer after 10 days on which date

counsels for both the parties would appear before the Designated Officer. We accordingly direct that the matter be listed on 14.07.2021 before the

Designated Officer and he shall make an endeavor to decide the matter afresh within a period of two weeks thereafter.

10. Letters Patent Appeal along with Civil Application and the Special Civil Application are disposed of.

14. What is therefore evident is that after a written statement was filed on 01.04.2021, the first effective hearing only was scheduled on 19.05.2021 by

virtual mode. The proceedings were adjourned to 20.05.2021 and thereafter the impugned order of 25.05.2021 was passed which the Division Bench

of this Court set aside on the ground of being violative of principles of natural justice. Thereafter the Division Bench fixed the matters on 14.07.2021.

15. It was on the very date i.e. on the first date of hearing on 14.07.2021 that the respondent before the Designated Authority filed an application

seeking cross-examination of the original dispute applicant/appellant herein. The Designated Authority for the reasons which we have set out herein

above, rejected the application.

16. Reading the procedure rules of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, especially Rule 7

thereof, is merely sets out the procedure. Sub-rule (7) of Rule 7 would read that the procedure which shall be followed by the Designated Authority

for determining any question and the procedure for preliminary inquiry under Sub-Rule (4) shall be consistent with the rules of natural justice. Rule 7

of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules reads as under:

7 Procedure.- (1) On receipt of a petition under rule 6 the Chief Secretary to the

State Government or the designated officer shall consider whether the petition complies with the requirement of rule.

(2) If the petition does not comply with the requirements of rule 6, the Chief Secretary or as the case may be, the designated officer shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Chief Secretary or, as the case may be, The designated officer shall cause copies of the petition and of the annexures thereto to be forwarded.-

(a) to the councilor or member in relation to whom the petition has been made; and

(b) Where such councillor or member belongs to any municipal party or a panchayat party and or such petition has not been made by the leader

thereof also to such leader, and such or councillor member or leader shall, within seven days of the receipt of such copies, or within such further

period as the designated officer may for sufficient cause allow, forward his comments in writing thereon the Chief Secretary or the designated officer

may for sufficient cause allow, forward his comments in writing thereon the Chief Secretary or the designated officer.

(4) After considering the comments, if any, in relation to the petition received under sub- rule(3) within the period allowed (whether originally or on

extention under the sub-rule) the Chief Secretary or designated officer may either proceed to determine the question or, if he is satisfied, having

regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to such officer as he deems fit for

making a preliminary inquiry and submitting a report to him. (5) The Chief Secretary or the designated officer shall, as soon as may be after referring

a petition to the officer under sub-rule(4), intimate the petitioner accordingly and cause as announcement to be made with respect to such reference in

a meeting of the municipal corporation, panchayat or municipality or if such meeting is not likely to be held soon, cause the information as to the

reference to be published in the manner specified in clause (b) of sub-rule(3) of rule 4.

(6) Where the Chief Secretary or designated officer makes a reference under sub-rule (4) to the officer he shall proceed to determine the question as

soon as may be after receipt of the report from the officer.

(7) The Procedure which shall be followed by the Chief Secretary or designated officer for determining any question and the procedure preliminary

inquiry under sub-rule (4) shall be consistent with the rules of natural justice and neither the Chief Secretary or designated officer shall come to any

findings that a councillor or member has become subject to disqualification under the Act without affording a reasonable opportunity to such councillor

or member to represent his case and to be heard in person.

17. A Division Bench of this Court in the case of D.P.Avadia (supra) had an occasion to consider the question as to whether under Sub-Rule (7) of

Rule 7, procedure in consistence with the principles of natural justice has to be followed. The Division Bench of this Court in the aforesaid judgment

has held as under:

11. Having thus heard learned advocates for the parties, we find that Rule 7 of the Defection Rules provides for procedure to be followed by the

Designated Officer while dealing with subject of disqualification of members of Panchayat, Municipality, etc. Sub-rule(7) thereof reads as follows :

(7) The procedure which shall be followed by the Chief Secretary or designated officer for determining any question and the procedure which shall

be followed by the officer for the purpose of making a preliminary inquiry under sub-rule(4) shall be consistent with the rules of natural justice and

neither the chief Secretary or designated officer shall come to any findings that a councillor or member has become subject to disqualification under

the Act without affording a reasonable opportunity to such councillor or member to represent his case and to be heard in person.

12. Under sub-rule(7) of Rule 7 thus the Designated Officer has to follow the procedure which is consistent with the principles of natural justice and

to ensure that the finding that a member has become subject to disqualification is not reached without affording a reasonable opportunity to such

councilor or member to represent his case and to be heard in person. It cannot be disputed that if evidence of any person either on oath or rendered

through a statement on affidavit is to be relied upon to render a member disqualified, such person must be permitted to be cross examined by the

concerned member. Any departure from this basic requirement would certainly be in violation of principles of natural justice. Therefore, the view of

the Designated Officer that Rule 7(7) does not envisage cross examination of the

applicant cannot be approved. However, when we are dealing with the proceedings for disqualification under the Defection Rules, whether the applicant upon whose petition the disqualification proceedings have been initiated should be permitted to be cross examined and whether the member concerned should be permitted to lead his oral evidence, must depend on facts of each case and no rigid or uniform formula which would apply in every case can be laid down.

13. It may be noted that in Rule 8 of the Defection Rules, it is provided inter-alia that : ""A petition rising the question as to whether a councillor or member has become subject to disqualification under the Act shall be determined as expeditiously as possible and an endeavor to determine the question within two months from the date on which the petition is made under Rule 6."" The proceedings under the Defection Rules therefore, need to be completed as expeditiously as possible.

14. In case of Jagjit Singh v. State of Haryana and others (supra) the Apex Court made following observations :

13.The question whether reasonable opportunity has been provided or not cannot be put in a strait-jacket and would depend on the fact-situation of each case.

14.At the outset, we may mention that while considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the proceedings, under the Tenth Schedule, are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the judge holds the independent high office of a

Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited may be

the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated. The

yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. Further, if the view taken by the

Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can

draw an inference from the conduct of a member, of course, depending upon the facts of the case and totality of the circumstances.

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26. Considering that rules of natural justice are flexible, let us now examine the facts of the present case where the petitioners filed their replies to the complaint and were asked by the Speaker to watch the video recording and point out doctoring thereof, if any. The question is that having failed to do so, can they be heard on the facts of the present case, to say that non-grant of opportunity to cross-examine Ashwani Kumar and to adduce evidence has resulted in violation of rules of natural justice on having simply denied that they have not joined the Indian National Congress? Had they availed of the opportunity and pointed out how the recording was not correct and it was doctored and then not permitted to lead evidence, the argument that there has been violation of principles of natural justice may have carried considerable weight. The petitioners cannot be permitted to sit on the fence, take vague pleas, make general denials in the proceedings before the Tribunal of the nature under consideration. Under these circumstances, mere denial of opportunity to cross-examine or adduce evidence may not automatically lead to violation of principles of natural justice. The principles of natural justice cannot be placed in such a rigid mould. The court, on facts of a case despite denial of opportunity to lead evidence, may come to the conclusion that reasonable opportunity has been afforded to the person aggrieved. The principles of natural justice are flexible and have to be examined in each case.

27. The question to be asked in the ultimate analysis would be whether the person aggrieved was given a fair deal by the authority or not? Could a reasonable person, under the circumstances in which Tribunal was placed, pass such an order? Answer to these questions would determine the fate of the case.

15. The question of granting permission for cross examining the applicant therefore, shall have to be judged depending on facts of the case and if such permission is denied, the decision of the Designated Officer shall have to be judged on the touchstone whether the person aggrieved was given a fair deal by the authority or not. In the present case, the appellants had approached this Court at a stage when the Designated Officer had not passed the final order on the application seeking disqualification. During the pendency of the proceedings as already noted such final order has been passed.

16. In that view of the matter and in view of the observations made here-in-above, we do not find that the order of the Designated Officer as well as judgement of the Learned Single Judge need to be interfered with. Whether rejection of the application of the appellants dated 29.1.2009 seeking cross examination of respondent No.2 herein and not deciding the application dated 17.3.2009 seeking permission to lead evidence, has caused any prejudice to the appellants, can be examined only by testing the validity of the ultimate disqualification order if challenged.

17. Before concluding, we would like to clarify few aspects :

a) We make it clear that even in a disqualification proceeding, if the evidence of any witness rendered either on oath or on affidavit, is sought to be

relied upon by the Designated Officer to pass any order adverse to a member, such member would have the right to seek cross examination of such a witness.

b) In Civil Application No. 3968/2009 one of the prayers is to set aside disqualification order dated 2.4.2009. No amendment in the Letters Patent

Appeal to this effect has been sought or granted. Learned advocates for the parties have also not advanced any arguments. In this order, we have not

examined the legality of the same and leave it to the appellants to seek their remedy in accordance with law.

c) Validity of Rule 10A of the Defection Rules is not in challenge in the present appeal.

d) Learned Single Judge in his impugned judgement in paragraph-25 made following observation :

25. It is also required to be observed here that the petitioners are branded as defectors. They were elected on the ticket of a particular political party.

They have changed their side subsequently. Morally and even legally to some extent, if the allegations against them are proved, they are not entitled to

continue as members of Morbi Nagar Palika. The rule of morality requires that they should have resigned and sought the fresh mandate of the people.

In any case, the persons who are not coming before the Court with clean hands or with sound moral background will have no right to claim equity or

to invoke equitable jurisdiction of this Court.

We are of the opinion that that at an interlocutory stage, when disqualification proceedings were still pending before the Designated Officer, such

observations ought not to have been made which would adversely affect the rights of the parties. These observations are therefore, set aside.

18. Perusal of the impugned order of the Designated Authority would indicate that the Designated Authority has considered the Division Bench

decision in the case of D.P.Avadia (supra) and also a CAV subsequent decision in the case of Bhavanaben (supra) rendered by a Single Judge of this

Court on 10.08.2015. While referring to the decision of the Division Bench in case of D.P.Avadia (supra), a learned Single Judge of this Court quoting

the relevant paragraphs of the decision in the case of D.P.Avadia (supra) in para 10 observed as under:

10. At this stage, the Court would like to observe that considering the scheme of the Act, if disqualification proceedings are allowed to be

procrastinated on account of interlocutory application, such proceedings would be like an unruly horse inasmuch as there will be no control of the

Designated Authority on the proceedings. If at this intermittent stage, such applications are entertained and further allowed to be agitated upon, it will

delay the disqualification proceedings and such delay would work against the very object and purpose of the Act. When there is specific provision in

the Rule, especially Rule 8, to determine the question on the subject of disqualification under the Act within two months from the date on which the

petition is made under Rule 6 of the Rules, it could be said that the legislature intended to avoid all delays which are sought to be caused by such

applications. Thus, the Court finds that the Designated Authority committed no error in not entertaining the applications made by the petitioners

seeking cross-examination of the persons in relation to whom statements of facts are made in the petitions filed by respondent No.2 on the ground that

entertaining of such applications would cause delay in disposal of the disqualification proceedings. The Court finds no substance in the petition. Hence,

all the petitions are rejected.

19. Therefore, we need to consider whether the respondent dispute applicant - original petitioner is required to be provided an opportunity of cross-examination.

20. From the facts on hand what is evident is that the case of the appellant seeking disqualification of the original petitioner/respondent before the

Designated Authority hinges on the form of voluntarily securing membership of

the Bharatiya Janata Party dated 27.08.2019 signed by the original petitioner. The dispute applicant has so stated in her memo of the application before the Designated Authority on oath that the respondent dispute applicant before the Designated Authority has signed such form and sent it. Such a statement has been denied by the original petitioner - dispute respondent no.1 before the Designated Authority in her written statement. CAV JUDGMENT DATED: 27/08/2021

21. Moreover, in the application for cross examination and in the affidavits filed before us, it is the stand of the original petitioner - respondent before the Designated Authority that the form is a forged / morphed document and she has never signed the form. Now even there is the opinion of the handwriting expert that the original respondent before the Designated Authority suggesting that the disputed document does not bear the hand writing of the respondent before the Designated Authority / the original petitioner herein.

22. It was in this background that the application for cross examination of the original dispute applicant was made by the original petitioner herein. She only wants to confront the dispute applicant and cross examine her on the veracity of the document. The application was made by the respondent before the Designated Authority on the very first day of hearing on remand before the Designated Authority.

23. Reading the decision of the Division Bench in the case of D.P Avadia (supra) particularly para 17 thereof, which we may reiterate especially para

17(a) is as under:

17. Before concluding, we would like to clarify few aspects:

a) We make it clear that even in a disqualification proceeding, if the evidence of any witness rendered either on oath or on affidavit, is sought to be relied upon by the Designated Officer to pass any order adverse to a member, such member would have the right to seek cross examination of such a witness.

24. The observations clearly say that the Division Bench made it clear that even in a disqualification proceeding, if any witness rendering evidence either on oath or an affidavit is sought to be relied upon by the Designated Officer to pass any order adverse to a member, such member would have a right to seek cross examination of such a witness. In our opinion, therefore, the fact that the finding of the Designated Authority in the order impugned

before us in the petition dated 23.07.2021 which, records that being a quasi judicial authority and when no witness was produced by the applicant and

therefore no cross examination was required is contrary to the law laid down by the Division Bench of this Court in the case of B Waida (supra).

25. We, therefore, quash and set aside the order dated 23.07.2021 passed by the Designated Authority in Dispute Application No. 13 of 2020 by

which the application of the original petitioner for cross examination of witnesses was rejected. The application for cross examination shall stand

restored to the file of the Designated Authority. On 06.09.2021 that is the date fixed for hearing before the Designated Authority in Dispute

Application No. 13 of 2020, the appellant /dispute applicant shall offer herself for cross examination as she is the sole witness which the original

petitioner seeks to examine. On that date i.e. on 06.09.2021, the original petitioner shall cross examine the original dispute applicant and complete such

examination / cross-examination on that very day. The Designated Authority shall thereafter on the basis of the evidence that is recorded shall

proceed to decide the main Dispute Application No. 13 of 2020 in accordance with law on such other date that may be fixed as per the convenience

of the Designated Authority. However, we make it clear that the Designated Authority shall make an endeavor to decide the matter afresh within a

period of two weeks thereafter.

26. Having quashed the order dated 23.07.2021, passed by the Designated Authority, Special Civil Application No. 10615 of 2021 stands allowed.

Letters Patent Appeal No. 735 of 2021 is accordingly dismissed. No orders on the civil application.