

**(2016) 06 BOM CK 0034**

**In the Bombay High Court**

**Case No : Writ Petition No. 4323 of 2011**

Shah Faruq Shabir

APPELLANT

Vs

Govindrao Ramu Vasave

RESPONDENT

**Date of Decision : 29-06-2016**

**Acts Referred:**

**Citation :** (2016) 4 AIRBomR 786 : (2016) 5 ALLMR 786 : (2016) 5 BCR 1 : (2017) 1 ESC 229 : (2017) 1 LLN 325 : (2016) 5 MhLJ 436

**Hon'ble Judges :** R.M. Borde, Sunil P. Deshmukh and Ravindra V. Ghuge, JJ.

**Bench :** Full Bench

**Advocate :** Shri P.M. Shah, Senior Counsel i/by Mr. S.P. Shah, Advocate, for the Appellant; Shri Mukul Kulkarni, Advocate, Shri Umakant P. Giri, Advocate, Mr. A.B. Girase, Government Pleader, for the Respondent

**Final Decision :** Disposed Off

## Judgement

R.M. Borde, J.&mdash;The learned Single Judge, while dealing with the writ petition, by an order dated 23.01.2012, was pleased to formulate following two issues for consideration of the larger Bench:

I. Whether the term aghadi or front as defined U/Sec. 2(a) of the Disqualification Act of 1986 would mean the party or aghadi on whose candidature the councillor is elected or would also include the aghadi of two or more municipal parties coming into existence after the elections are held?

II. Whether the term original political party or aghadi appearing in Section 5 would mean the party at its National level or would mean a municipal party?

2. We have heard arguments advanced by Shri P.M. Shah, learned Senior Counsel i/by Mr. S.P.Shah, advocate for petitioners, Shri Mukul Kulkarni, learned advocate for Respondent No.1, Shri Umakant P. Giri, learned advocate for Respondent No.2 and Mr. A.B. Girase, learned Government Pleader for Respondent No.3.

3. The facts in nutshell, giving rise to the reference, are as under:

Petitioners are the elected councillors of Municipal Council, Navapur. General elections to the Municipal Council took place to elect total 19 councillors and candidature of petitioners was set up by Nationalist Congress Party (NCP). The post election aghadi came to be formed consisting of 09 councillors belonging to Nationalist Congress Party (NCP), 02 councillors set up by Bhartiya Janata Party (BJP) and 01 councillor set up by Shivsena, on 1st December, 2007. Respondent No.1 - Govindrao Ramu Vasave was chosen as a leader of the aghadi. An application came to be presented to the Collector for registration of aghadi on 02.12.2007. Respondent No.1 informed the Collector that he is elected as leader of NCP municipal party as also of aghadi. Respondent No.1 came to be elected as President of the Municipal Council for the term of two and half year on 24.12.2007 with the support of councillors of aghadi.

4. On 18.06.2010, an application came to be presented by petitioners along with Shri Nilesh Prajapat and Smt. Lalita Gavit to the Collector seeking approval to a separate group. A whip was issued by Respondent No.1 on 18.06.2010 and also by the President of the Nandurbar District Nationalist Congress Party on 21.06.2010, calling upon members of the aghadi and members set up by NCP to cast vote in favour of Respondent No.1 during the election to the post of President which was scheduled to be held on 23.06.2010. Petitioners violated the whip and a candidate viz. Mr. Damu Vana Bihade, belonging to Indian National Congress (Congress I), was elected as the President and petitioner no.1 came to be elected as Vice President. Petitioners were sought to be disqualified in view of provisions of Section 3(1)(a) and 3(1)(b) of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as the "Disqualification Act"). The Collector allowed the disqualification petition and held petitioners disqualified under Section 3(1)(a) and 3(1)(b) of the Disqualification Act. The said judgment is assailed in the writ petition.

5. During the course of hearing, it has been urged by petitioners that there is no concept of postpoll aghadi after elections, under the Disqualification Act. Section 2(a) defines "aghadi" or "front" to mean a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority.

6. It has been contended that there is no scope in law to recognise any postpoll aghadi on consideration of definition of "aghadi" along with definition of "municipal party", "original political party" and explanation to Section 3(1) of the Disqualification Act. It has been contended that the three parties coming together after election can, at the most, be said to have formed coalition and same does not have legal existence and as such, there is no leader of such coalition who is empowered to issue whip/direction. Respondent No.1, who claims to have elected as leader of the aghadi, has no legal existence.

7. It has been further pointed out that the merger, as contemplated under

Section 5(1) of the Disqualification Act, is merger of original political parties and not merely merger at municipal level. It is contended that merger of municipal parties, without there being any merger at National level or original political parties, is unknown to the Disqualification Act. Reliance is placed on the judgment in the matter of Kedar Shashikant Deshpande & others v. Bhore Municipal Council and others, reported in (2011) 2 SCC 654 and the judgment of learned Single Judge in the matter of Sunil Supadu Mahajan v. Manoj Dayaram Choudhari & another, reported in 2011 (4) Mh.L.J. 630. Reliance is also placed on the judgment in the matter of Jagjit Singh v. State of Haryana and others, reported in (2006) 11 SCC 1 and Rajendra Singh Rana and others v. Swami Prasad Maurya and others, reported in (2007) 4 SCC 270.

8. Respondents contended before the learned Single Judge that the formation of "aghadi" is an undisputed fact. The Division Bench of this Court, in the case of Parshuram Prabhakar Uparkar v. Tukaram Bhagwan Barde and others, reported in 2006 (5) Mh.L.J. 598, has held that the expression "original party" will necessarily mean "Zilla Parishad party" in the House of Zilla Parishad, or Municipal Party in the "Municipal Council", as the case may be.

9. Reliance is also placed on the judgment of the Division Bench of this Court, in the matter of Pandurang Dagadu Parte v. Ramchandra Baburao Hirve & others, reported in 1997 (2) Mh.L.J. 759, to contend that , "aghadi" or front, as is defined in Section 2(a) of the Disqualification Act, includes not only "aghadi" or front, which is formed prior to the elections, but also includes the group of persons which has been formed after the elections are over. Placing reliance on the judgment in the matter of Umesh Shrikant Shetye v. Collector, Ratnagiri and others, reported in 2009 (6) Mh.L.J. 209, it has been contended that even successive mergers are also permissible. The learned Single Judge, noticing conflict of views, felt it necessary that the matter requires to be dealt with more advantageously by the larger Bench.

Statement of Objects and Reasons:

10. The Maharashtra Local Authority Members' Disqualification Act, 1986, is modelled on Tenth Schedule of the Constitution of India with certain modifications since the law governs the aspect of disqualification concerning local authorities. The statement of objects and reasons recorded in the Bill, are set out as below:

"With a view to eradicating the evil of political defection in the Parliament on the National level and in the State Legislatures on the State Level, the Parliament has amended the Constitution of India by the Constitution (Fifty second Amendment) Act, 1985. At the level of district, Taluka, city and town, different local authorities are charged with the administration of functions relating to Local Government. These local authorities are, in the main elective. The field of Local Government constitutes a training ground for the State and National Government. Many of our ablest statesmen and legislators have received their

earliest training to the sphere of Local Government. The local authorities may become the pioneers in various fields of political activity. This evil of political defections is also present in the local authorities which is the base of our democratic institutions. It is, therefore, expedient to prevent political defections in certain local authorities also in the State."

11. Highlighting the importance of report of the Commissions, the Enquiry Committees and the objects and reasons preceding the introduction of the Bill as an external aid to construction of statute, in the matter of *Mahadeo Nathuji Patil v. Surjabai Khushalchand Lakkad & others*, reported in 1994 (2) Mh.L.J. 1145, the Full Bench of this Court, in paragraph 29 of the judgment, has observed thus:

"29 It is now wellsettled that the report of the Commissions, the Enquiry Committees and the objects and reasons preceding the introduction of the Bill can also be referred to for finding out the setting in which the Statute is enacted i.e. for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the Statute and the evil which the Statute was sought to remedy. As regards the use of Statement of Objects and Reasons as an external aid to construction, the rule is also settled by catena of Judgments of the Supreme Court in that regard. See for instance:

*State of West Bengal v. Suhodh Gopal Bose*, AIR 1954 SC 92, *Utkal Contractors and Refinery Private Ltd. v. State of Orissa*, AIR 1987 SC 2310, *Taong Shang v. Commander S.D. Baijal*, AIR 1988 SC 603 pages 607 and 608."

12. The object of introducing (Fifty-second) amendment bill for inclusion of 10th Schedule in the Constitution is primarily to curb political defection which has been a matter of national concern.

13. The essence of defection is disloyalty, abandonment of duty or principle. The defector is disloyal not only to the party on whose ticket he or she has been elected but also commits a breach of faith with the electorate whose votes were secured on the basis of his or her electoral affiliation and promises. Concerned over the malaise of political defections in national life, the Lok Sabha has adopted a nonofficial resolution on 8th December, 1967 urging appointment of a high level committee. In pursuance thereof, the committee of constitutional experts and representatives of political parties was set up in March, 1968, under the Chairmanship of the then Home Minister Shri Y.B. Chavan, to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor, in all its aspects and to make recommendations in that regard. The report of the Committee was laid on the table of Lok Sabha on 28th February, 1969. It would not be necessary to consider the chequered history of legislation. However, after the General Elections in the year 1984, the Constitution, (Fifty-second Amendment) Bill was presented in Lok Sabha on 24th January, 1985. The Statement of Objects and Reasons appended to the Bill stated thus:

1. The evil of political defections has been a matter of national concern. If it is

not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for outlawing defections and fulfilling the above assurance.

2. The Bill seeks to amend the Constitution provide that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature, who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seats shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included in the Bill to enable a person who has been elected as a presiding officer of a House to sever his connection with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects."

14. The Statement of Objects and Reasons clearly leads one to conclude that defection is antithetical to democracy. It betrays the fundamental promise of loyalty to a party and to its philosophy. The elected councillor is supposed to implement the ideologies and the philosophy of the political party by which his candidature was set up. The remedy proposed under the Constitution (Fifty-second Amendment) Act is to disqualify the member of either House of the Parliament or the State Legislature who has been elected as a candidate set up by a political party, on the ground of defection. The Hon"ble Supreme Court, in the matter of Kihoto Hollohan v. Zachillhu and others, reported in 1992 Supp (2) SCC 651, in paragraph no.13 of the judgment, has observed thus:

"13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that

political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election."

It would also be appropriate to refer to paragraphs no. 42, 43 and 44 of the judgment, which read thus:

42. Democracy is a basic feature of the Constitution. Whether any particular brand or system of Government by itself, has this attribute of a basic feature, as long as the essential characteristics that entitle a system of Government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular, prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficacy and adequacy of the machinery for resolution of electoral disputes. From that it does not necessarily follow that the rights and immunities under sub-article (2) or Article 105 of the Constitution, are elevated into fundamental rights and that the Tenth Schedule would have to be struck down for its inconsistency with Article 105(2) as urged by Shri Sharma.

43. Parliamentary democracy envisages that matters involving implementation of policies of the Government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines.

44. But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed, its very survival. Intraparty debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things. Griffith and Ryle on Parliament Functions, Practise and Procedure

(1989 edn., p. 119) say :

"Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialised knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side smacks of conspiracy."

Clause (b) of subpara (1) of Paragraph 2 of the Tenth Schedule gives effect to this principle and sentiment by imposing a disqualification on a Member who votes or abstains from voting contrary to "any directions" issued by the political party. The provision, however, recognises two exceptions: one when the Member obtains from the political party prior permission to vote or abstain from voting and the other when the Member has voted without obtaining such permission but his action has been condoned by the political party. This provision itself accommodates the possibility that there may be occasions when a Member may vote or abstain from voting contrary to the direction of the party to which he belongs. This, in itself again, may provide a clue to the proper understanding and construction of the expression "any direction" in clause (b) of Paragraph 2(1) whether really all directions or whips from the party entail the statutory consequences or whether having regard to the extraordinary nature and sweep of the power and the very serious consequences that flow including the extreme penalty of disqualification the expression should be given a meaning confining its operation to the contexts indicated by the objects and purposes of the Tenth Schedule. We shall deal with this aspect separately.

15. Considering the object behind incorporation of Tenth Schedule in the Constitution of India and the object and reasons enacting Disqualification Act governing local authorities in the State, as well as observations of the Hon''ble Supreme Court, referred to above, in the matter of Kihoto Hollohan (supra), the provisions of Disqualification Act, need to be interpreted.

Disqualification Act:

16. It would be appropriate to refer to certain provisions of the Disqualification Act.

Section 2. In this Act, unless the context otherwise requires,

(a) "aghadi" or "front" means a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority;

(e) "local authority" means

(i) a Municipal Corporation

(ii) a Municipal Council,

(iii) a Zilla Parishad, or

(iv) a Panchayat Samiti :

(i) "municipal party", in relation to the councillor belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means

(i) in the case of a councillor of a Municipal Corporation, the group consisting of all councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation ;

(ii) in the case of a councillor of a Municipal Council, the group consisting of all the councillors of the Municipal Council for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(j) "original political party", in relation to a councillor or a member, means the political party to which he belongs for the purposes of subsection (1) of section 3;

(l) "Panchayat Samiti party", in relation to a member belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Panchayat Samiti for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(p) "Zilla Parishad party", in relation to a councillor of a Zilla Parishad belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Zilla Parishad for the time being belonging to that political party or aghadi or front in accordance with the said Explanation.

Section 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 authorised 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 purposes of this section

(a) a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or aghadi or front, if any, by which he was set up as 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) \*\*\*\* \* (deleted)

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

(3) \*\*\*\* \* (deleted)

(4) Notwithstanding anything contained in the foregoing provisions of this section a person who on the commencement of this Act, is a councillor, or as the case may be, a member (whether elected or nominated as such councillor or member) shall

(a) where he was a member of a political party or aghadi or front immediately before such commencement, be deemed, for the purposes of subsection (1), to have been elected as a councillor, or as the case may be, a member as a candidate set up by such political party or aghadi or front;

(b) in any other case, be deemed to be an elected councillor, or as the case may be, member who has been elected as such otherwise than a candidate set up by any political party or aghadi or front for the purpose of subsection (2).

Section 4. \*\*\*\* \* (deleted)

Section 5. (1) A councillor or a member shall not be disqualified under subsection (1) of section 3 where his original political party or aghadi or front merges with another political party or aghadi or front and he claims that he and any other member of his original political party or aghadi or front

(a) have become members of such other political party, or aghadi or front or as

the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or aghadi or front or group, as the case may be, shall be deemed to be the political party or aghadi or front to which he belongs for the purpose of subsection (1) of section 3 and to be original political party or aghadi or front for the purpose of this subsection.

(2) For the purposes of subsection (1), the merger of the original political party or aghadi or front of a councillor, or as the case may be, a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of municipal party, Zilla Parishad party, or as the case may be, Panchayat Samiti party, concerned, have agreed to such merger.

Section 6. ? . ? . ? . ?.. ?..

Section 7. ? . ? . ? . ?.. ?..

Section 8. ? . ? . ? . ?.. ?..

Section 9. ? . ? . ? . ?.. ?...

Section 10. (1) The provisions of this Act and the rules shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(2) Subject to the provisions of subsection (1), the provisions of this Act shall be in addition to and shall not, save as expressly provided herein-before, be in derogation of the provisions of any law relating to Municipal Corporation, Municipal Council or other local authority concerned.

(3) Notwithstanding anything contained in the foregoing provisions of this section nothing in this Act shall apply when a Government servant is nominated as a Councillor of a Municipal Council for a Municipal Area specified in Part II or Part III of Schedule I to the Maharashtra Municipalities Act, 1965, or to any person who holds the office as a member of a Panchayat Samiti by virtue of his being a Government servant and appointed as Administrator of a cooperative society.

17. The provisions of the Disqualification Act, as stated earlier, are in essence derived from Tenth Schedule of the Constitution of India and needs comparison. Collation would show:

Sr. No.

Tenth Schedule to the Constitution

Disqualification Act, 1986

1

(Paragraph) 1(b) : Legislature Party

Section 2(i) : Municipal Party; Section 2 (l) : Panchayat Samiti Party; Section 2 (p) : Zilla Parishad Party.

2

(Paragraph) 1(c) : Original political party

Section 2(j) : original political party.

3

(Paragraph) 2 : Disqualification on ground of defection.

Section 3 : Disqualification on ground of defection.

4

(Paragraph) 4 : Disqualification on ground of defection not to apply in case of merger.

Section 5 : Disqualification on ground of defection not to apply in case of merger.

18. The Disqualification Act is modelled on the Tenth Schedule of the Constitution of India. The object underlying the Tenth Schedule is to curb the evil or mischief of political defections motivated by the lure of office or other considerations. The remedy proposed is to disqualify the member of either House of the Parliament or State Legislature, who has been elected as well as nominated member of Parliament or a State Legislature set up by a political party on the ground of defection.

19. The Disqualification Act is enacted with the same object. The object is to curb political immorality. Keeping in mind the object underlying the provisions of the Disqualification Act, the issues raised in the matter concerning interpretation of the term "aghadi" or "front" needs to be answered.

20. Section 2(a) of the Disqualification Act defines "aghadi" or "front" to mean a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority. The plain reading of the above provision leads to an inference that formation of "aghadi" or "front" is contemplated for the purposes of setting up a candidate for election to local authority which necessarily shall have to come into existence prior to reaching the stage of setting up candidates for election to local authority. "Municipal party" is defined in Section 2(i) or "Panchayat Samiti Party" within meaning of Section 2(l) or "Zilla Parishad party" within meaning of Section 2(p) in relation to a Councillor of Municipal Council or Member of Panchayat Samiti or Zilla Parishad, belonging to any political party, aghadi or front in accordance with explanation to Section 3, means the group consisting of all the members of Municipal Council or Municipal Corporation or Panchayat Samiti or Zilla Parishad for the time being belonging to that political party or aghadi or front. The explanation to Section 3, referred to in the concerned provision quoted above, reads thus:

Explanation - For the purposes of this section

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

21. The explanation (a) to Section 3, referred to in the definition of municipal party, Panchayat Samiti party or Zilla Parishad party, contained in Section 2 (i), 2(l) and 2(p) respectively, specifically refers to group consisting of all the councillors or members of the Municipal Corporation, Municipal Council, Panchayat Samiti or Zilla Parishad, as the case may be, for the time being belonging to that political party, aghadi or front, by which he or she was set up as a candidate for election as such councillor or member. The explanation (a) to Section 3(1), which is referred to in the definition clause of the municipal party, Panchayat Samiti party and Zilla Parishad party is a pointer to that, the person elected as a councillor, or member, as the case may be, shall mean a member belonging to a political party or aghadi or front, if any, by which he was set up as a candidate for election as such councillor or member. The plain meaning of the provisions, referred to above, leads us to an irresistible conclusion that the aghadi or front, referred to under the provisions of Disqualification Act, more particularly Section 2(a) shall be a prepoll aghadi and there is little scope to draw a different conclusion, within the meaning of provisions of Disqualification Act, that such aghadi or front is accommodative of a group of persons forming themselves into a party after holding of elections.

22. The term "original political party", as defined in Section 2(j) of the Act in relation to a councillor or member means the political party to which he belongs, for the purposes of Section 3(1). Subsection (1) of Section 3 relates to disqualification on the ground of defection. Section 3(1)(a) prescribes that a councillor or member shall incur disqualification if he voluntarily gives up membership of such political party or aghadi or front. The term referred to in subsection (1)(a) of Section 3 is "political party or aghadi or front" and not the original political party. So also, subsection (1) (b) of Section 3 also refers to "political party" and not "original political party". It has to be analysed as to whether reference to political party in subsections (1)(a) and (b) of Section 3 is referable to original political party, aghadi or front within the meaning of Section 2(a).

23. A reference is made to the judgment of the Apex Court in the case of Kedar Shashikant Deshpande & others v. Bhor Municipal Council & others, reported in (2011) 2 SCC 654, to contend that the original political party is distinct from municipal party and merger has to be of the original political party. The merger of municipal party, without there being any merger at the National level of the original political party is unknown to the Disqualification Act.

24. The facts giving rise to the decision in Kedar Deshpande's case (supra) can be set out as under:

25. The general elections for Bhore Municipal Council, District Pune, which consists of 17 councillors were held on 22.06.2008. At the election, 8 councillors of NCP party, 8 councillors of Indian National Congress party and one independent candidate were declared elected. The independent candidate joined NCP immediately on declaration of results. One Mr. Yashawant Baburao Dal was appointed as Gatneta (group leader) of NCP. He presented information in form I under the provisions of the Maharashtra Local Authority Members' Disqualification Rules, 1987 (hereinafter referred to as "Disqualification Rules"). The candidate belonging to NCP party, one Mr. Shinde was elected as President with 9 : 8 majority, whereas, Mr. Ganesh Pawar was elected as Vice President of the Municipal Council. On 21.12.2009, Mr. Yashawant Dal resigned from the post of Pratod/Gatneta (group leader) of NCP. On 22.12.2009, six councillors left NCP and formed Bhore Shahar Vikas Swabhimani Sanghatana (for short, "Sanghatana") and nominated Mrs. Jayashree Shinde as Party Pratod of the said Sanghatana. A separate group was formed and information was submitted in Form I as per Rule 3(1)(a) of the Disqualification Rules. On 29.12.2009, six councillors of Sanghatana and 8 councillors of Indian National Congress submitted a requisition to the Collector for moving no confidence motion against the President. The new Pratod Mr. Ganesh Pawar of NCP and one another councillor filed Disqualification Petition against six councillors who had formed "Sanghatana", for a declaration that they have separated themselves from NCP and incurred disqualification under Section 3(1)(a) of the Disqualification Act. The Additional Collector, Pune, passed a final order on 21.01.2010 and disqualified six councillors/appellants before the Supreme Court. The said order was confirmed by the Division Bench of this Court. The judgment of the Division Bench of this Court was a matter of challenge before the Supreme Court. It was argued that the appellants before the Supreme Court, who had formed a separate group and who originally belong to NCP political party and formed a separate group, have merged with another political party namely Congress (I). It is observed by the Hon'ble Supreme Court in paragraph 35 of the judgment that, the plea of merger has not been specifically raised apart from the fact that there is no mention of split in NCP or appellants joining Congress (I) party. The provision relating to split in the Disqualification Act has been deleted and is no longer available as defence in the matter of disqualification. The original political party of the appellants was NCP and it has not been contended that the original political party has merged with another political party at any point of time. In paragraph no.65 of the judgment, the conclusion is recorded, which reads thus:

"65 As noticed earlier the case of Respondents 4 and 5 was that by voluntarily giving up membership of NCP the appellants had incurred disqualification as Councillors under Section 3(1)(a) of the Act. Section 5 is an exception to Section 3 which deals with merger of an original political party or aghadi or front with any political party or aghadi or front and provides that in case of such merger Councillor or a member should not be disqualified under subsection (1) of Section 3 of the Act. It was never the case of Respondents 4 and 5 that the

appellants had formed a party and that party had merged into Congress (I) Party and had therefore, incurred disqualification. Section 5 speaks of merger of original political party. It is not the case of Respondents 4 and 5 that original political party of the appellants, namely, NCP had merged with any other political party. Therefore, there was nothing to be decided as preliminary issue for the purpose of ascertaining whether the disqualification petition filed by Respondents 4 and 5 was maintainable."

26. Placing reliance on the judgment of the Division Bench of this Court in the matter of Pandurang Dagadu Parte v. Ramchandra Baburao Hirve & others, reported in 1997 (2) Mh.L.J. 759, which judgment of the High Court has been confirmed by the Supreme Court in the matter of Dattatraya Maruti Bawalekar and others v. Pandurang Dagadu Parte and others, reported in (1998) SCC 431, it is canvassed that the term "aghadi" defined in Section 2(a) would bring within its fold even the post poll aghadi or formation of a front. The facts giving rise the controversy in the aforesaid matter can be summarised as below:

27. Petitioner Pandurang Parte before the High Court and Respondents 1 to 9 were elected as independent councillors of Mahabaleshwar Municipal Council. They came together and formed aghadi/front with the name Mahabaleshwar Giristhan Nagar Parishad Shahar Vikas Aghadi. On formation of aghadi, necessary information was furnished to the Collector, which was published in the official Gazette. The elections to the post of President were held on 31.12.1996. The aghadi sponsored Respondent No.4, before the High Court, as its candidate. The leader of the aghadi issued a whip to its councillors to vote in favour of the aghadi candidate. In the meeting held on 31.12.1996, Respondent No.4 was declared elected as President for the year 1997/98 having secured 9 votes as against 8 votes secured by the defeated candidate. Petitioner Pandurang presented an application to the Collector seeking disqualification of Respondents No.1 to 9 before the High Court as the councillors on the ground that after being elected as independent councillors they joined aghadi and thereby incurred disqualification. The question, that arose, in the matter is, as to whether Respondents No.1 to 9 before the High Court, who were elected as independent councillors have incurred disqualification by joining aghadi within the meaning of Section 3(2) of the Disqualification Act. While dealing with the issue, the High Court took a view that the independent councillors, after getting elected, if join any political party, aghadi or front after such election, incurred disqualification. The parallel has been drawn in respect of a councillor or member who has been elected as member of the political party, aghadi or front if gives up membership of such political party, aghadi or front and joins any other political party, aghadi or front incurs disqualification. In similar fashion, if a councillor elected as an independent joins any political party, aghadi or front also incurs disqualification within the meaning of Section 3(2) of the Disqualification Act. In paragraphs no.20, 25 and 30 of the judgment, the Division Bench of this Court has observed thus:

"20 Reliance is also placed on the case of Lt.Col. Prithi Pal Singh Bedi v. Union of India and others, AIR 1982 SC 1413, wherein it is observed by the Supreme Court, as under:

"The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in the provision. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to observe and the authority by which the rule is framed.

25 The term "Aghadi" or "front", we have seen, has been defined in Section 2(a). Aghadi or front means a group of persons who have formed themselves into party for the purpose of setting up candidates for election to a local authority. Section 3 provides for disqualification on ground of defection. The same makes it clear that "Aghadi" or "front" has been given the same status as that of a political party. Just as a councillor or member belonging to a political party incurs a disqualification by voluntarily giving up his membership to such political party, similarly a councilor or a member belonging to an Aghadi or front incurs a similar disqualification if he gives up his membership of such Aghadi or front. Provisions of subsection (2) of Section 3 are crucial. The same provides that a Councillor or a member who has been elected as an independent candidate shall be disqualified for being a councillor or a member if he joins any political party or Aghadi or front after such election. Hence, just as a Councillor or a member, who has been elected as a member of a political party, aghadi or front incurs a disqualification if he gives up his membership of such political party, aghadi or front, similarly an independent Councillor or member incurs a similar disqualification in case he ceases to be an independent Councillor or member and joins a political party, Aghadi or front.

30 The object and reasons for enacting the Constitution (Fifty-second Amendment) Act, 1985 and The Maharashtra Local Authority Members' Disqualification Act, 1986 are clear. The same seeks to prevent defection. The same further prevents independent members from losing their character as such and prohibits them from joining a political party, aghadi or front. If one has regard to the object that is sought to be achieved by the above enactments, the Constitution of an Aghadi by Respondent Nos. 1 to 9 and their joining the same after abandoning their character of independent Councillors, in which capacity they were elected, would tantamount to their joining the Aghadi and would

squarely fall within the mischief of section 3(2) of the Act. For the very same reasons, we are inclined to hold that the term "Aghadi" or "front" would not only include Aghadi or fronts which had been formed prior to the holding of elections but would also include Aghadi or front which has been formed after the holding of elections. This interpretation is the only interpretation which will further the aim and object of the enactment and will prevent the mischief sought to be avoided."

28. The High Court, while dealing with the question relating to disqualification of independent councillor by application of provisions of Section 3(2) of the Disqualification Act, took a view and rightly so, that an independent candidate is required to maintain his political status as an independent candidate and if he joins any political party, aghadi or front, such action would attract penal provisions of Section 3(2) of the Disqualification Act. While dealing with the issue, in paragraph no.30 of the judgment, the Division Bench has observed that the term "Aghadi" or "front" would also include postpoll aghadi or front. The view adopted by the Division Bench shall have to be appreciated in the context of facts appearing before the Court.

29. The matter was taken further to the Supreme Court by the Respondents and the Hon"ble Supreme Court has confirmed the view taken by the Division Bench in respect of interpretation put to Section 3(2) of the Disqualification Act. The Supreme Court has observed that:

" ?... A Councillor or a member who has been elected otherwise than as a candidate set up by a political party or aghadi or front, such a candidate or such Councillor or member shall be disqualified for being a Councillor if he joins any political party or aghadi or front after such election. The section specifically provides that an independent candidate not set up by a political party or front incurs disqualification on his joining any political party after such election."

30. Referring to its earlier judgment in the matter of Kihoto Hollohan v. Zachillhu (supra), the Hon"ble Supreme Court has observed that:

".... While dealing with the effect of the provisions of the Tenth Schedule to the Constitution noticed that the same yardstick has to be applied to a person who is elected as an independent candidate and wishes to join a political party after the election as is done with reference to a person who has been elected on a political plank. Therefore, no distinction could be made between a person belonging to a political party and a person who is elected as an independent and such distinction has not been made by the Act in question."

In paragraph no.8 of the judgment in the matter of Dattatraya Maruti Bawalekar (supra), the Supreme Court has observed thus:

"8 If what we have stated is the correct legal position then the counter-affidavit filed by Bawalekar who is Leader of the Aghadi in question which we have extracted extensively earlier will indicate that the appellants were forming an

aghadi as a new party and the same has to be registered under the provisions of the Act. When they form a new party the position is clear that a person elected as an independent would cease to be an independent and becomes a member of a political party or a front. His status as an independent will come to an end on becoming a member of a front or a group, he loses such status and is subject to the whip of the party to which we have referred to earlier. If elected councillors could become members of such aghadi it is made clear that the aghadi would be bound by the provisions of the Act in question and is also authorised to issue a whip. These facts would make it clear that the appellants who could act independently prior to the election or immediately on the election became subject to the discipline of the party or front on becoming members thereof. Such party (sic) whether would amount to formation of party or became (sic) members of such party is immaterial. We do not wish to be guided by or controlled by any etymological terminology but the substance of the matter. Therefore, in our view the High Court was justified in holding that the appellants have incurred disqualification."

31. It is, thus, clear on consideration of judgment of the Hon"ble Supreme Court that a candidate elected otherwise than as a candidate set up by a political party, if he subjects himself to the discipline of a political party, aghadi or front, his status as an independent candidate will come to an end, which is prohibited under the provisions of the Disqualification Act. The Hon"ble Supreme Court has refused to express any opinion in respect of etymological terminology, but has looked into substance of the matter.

32. If facts giving rise to the instant matter are considered, it must be noticed that the elected councillors belonging to three different political parties i.e. 9 councillors belonging to NCP party, 2 councilors belonging to BJP and 1 Councillor belonging to Shivsena came together and formed postpoll aghadi/alliance with a view to set up candidates for election to the posts of President and Vice President. In terms of definition of Section 2(a), each of the individual member, who is set up as candidate by a political party, maintains his allegiance to the said political party. It is not a case that the candidates were set up for election to a local authority by the aghadi or front, which, in the instant case, is a postpoll formation of coalition. What Section 2(a) contemplates is formation of aghadi or front for setting up candidates for election to local authority. The term "municipal party" or "Panchayat Samiti party" or "Zilla Parishad party", as the case may be, refers to a group consisting of all councillors or members, as the case may be, for the time being belonging to that political party or aghadi or front in accordance with the explanation. The explanation referred to in Section 2(i), 2(l) and 2(p) is explanation to Section 3 of the Act. Section 3 relates to disqualification on the ground of defection and subsection (1)(a) of Section 3 records a ground of voluntarily giving up membership of such political party or aghadi or front, as a ground for disqualification. The explanation to Section 3 provides that a person elected as a councillor, or as the case may be, a member shall be deemed to belong to the political party or aghadi or front, if any, by

which he was set up as a candidate for election as such councillor or member. The reference to the "elected councillor" or "member" in explanation (a) to Section 3(1) of the Disqualification Act, is to a member belonging to political party, aghadi or front by which he was set up as a candidate for election. The councillor or a member belonging to a municipal party or panchayat samiti party or Zilla Parishad party shall be deemed to be belonging to political party, aghadi or front, which has set up his or her candidature for such election. The definition of "aghadi" or "front" recorded in Section 2(a) shall, therefore, necessarily be read in the context of Section 2(i), 2(l) and 2(p) as well as in reference to explanation (a) to Section 3(1), which refers to "aghadi" or "front".

33. It must be noticed that the Disqualification Act, more particularly Section 3 prescribes penal consequences for the acts or the grounds concerning indiscipline specified in the said Section and as such, are in the nature of penal provisions. The provisions, which prescribe a penalty, shall have to be strictly construed to logical interpretation of the provisions of the Act. There is little scope to hold that the term "aghadi" or "front", specified in Section 2(a) would include a postpoll "aghadi" or "front". As has been recorded above, a distinction will have to be drawn in respect of political adjustments drawn by political parties coming together for smooth functioning of the local authority or for carrying out business of the local authority and the act of indiscipline of abandonment of the party or aghadi or front which has set up a candidate at election. As has been held in the matter of Pandurang Parte (supra) or Dattatraya Bawalekar (supra), that even an independent candidate is bound to maintain his independent status and if he subjects himself to a discipline of a party or aghadi or front, the said act comes within the mischief of Section 3(2) and penal consequences follow.

34. In the case of Jagjit Singh v. State of Haryana and others reported in (2006) 11 SCC 1, petitioner questioned the order of disqualification passed by the Speaker of the Legislative Assembly. Petitioner contested election as a candidate of Nationalist Congress Party and was the only elected member of the party in the Assembly. According to petitioner, due to organisational difficulties and differences with the central leadership of NCP, the workers and leaders of NCP at Haryana decided to cause split by passing unanimous resolution. On split, a new political party namely "Democratic Dal of Haryana" was formed. Petitioner tendered an application to the Speaker informing the factum of split and formation of new party. Respondent no. 3 presented a complaint to the Speaker seeking disqualification of the petitioner on the ground that he had voluntarily defected from NCP and joined Democratic Dal of Haryana. The Speaker allowed the disqualification application. While dealing with the issue of split, the Supreme Court observed that in terms of paragraph no.3 of the Schedule X, two conditions must be complied with : (a) a split in the original political party giving rise to a faction; and (b) faction is represented by a group of MLAs in the House which consists of not less than one third of the members of such legislature party. The Supreme Court ruled that the requirement is not the split of local or State wing of the original political party, or State Legislature party, but is of the split of the

original political party as defined in paragraph 1(c) of Schedule X read with the Explanation (a) to paragraph 2(1) to the effect that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. The Supreme Court has observed in paragraph no. 72 of the judgment that in terms of explanation as given in paragraph 2(1) and from bare reading thereof, it is clear that the elected member belongs to the political party by which he is set up as a candidate for election as such Member. From the plain language of these provisions, it cannot be held that for the purposes of the split, it is the State Legislature party in which split is to be seen. If a Member is set up by a national party, it would be no answer to say that events at national level have no concern to decide whether there is a split or not. In case a member is put up by a national political party, it is split in that party which is relevant consideration and not a split of that political party at the State level.

35. It would be apt to refer to the judgment of Rajendra Singh Rana and others v. Swami Prasad Maurya and others reported in (2007) 4 Supreme Court Cases 270. Reiterating the principles laid down in the matter of Jagjit Singh and Ravi Naik, the Supreme Court observed that, it is not enough in case of a split to state that there is split in the original party, in addition to showing that one third of the members of Legislative party have also joined together and further, it shall be necessary to prove it at least prima facie. Those who have left the party will have prima facie to show by relevant material that there has been split in the original party. In paragraph no. 38 of the judgment it is observed thus :

"Acceptance of the argument that the legislators are wearing two hats, one as members of the original political party and the other as members of the legislature and it would be sufficient to show that one-third of the legislators have formed a separate group to infer a split or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or meaningless. We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown.

36. Scheme of section 5 of the Disqualification Act which relates to merger is analogous to scheme of section 4 of said Act (since deleted). Analysis in regard to section 4 applies to section 5. As has been recorded earlier the principles laid down in the judgment relating to the pari materia provisions of Schedule X can be equally made applicable for providing interpretation on/of the provisions of the Disqualification Act. In case of split, the development takes place entirely

outside the House. It is independent of action by the members of the Municipal party concerned. The merger of a political party outside the House becomes dependent on the agreement of not less than two third majority in its municipal party. Section 5 of the Act carves out an exception to penal consequences provided under section 3 where the original political party or aghadi or front which the member or councilor represents, merges with another political party or aghadi or front and such member or councilor claims that he and any other member of his political party or aghadi or front or as the case may be, of a new political party formed by such merger have not accepted the merger and opted to function as separate group and from the time of such merger, such other political party or new political party or aghadi or front or group as the case may be shall be deemed to be political party or aghadi or front to which he belongs for the purpose of section 3(1). The principles laid down by the Supreme Court in the matter of Jagjit Singh as well as Rajendra Singh Rana concerning split essentially apply in case of merger also. As has been laid down, there cannot be a split only at the level of Legislative Assembly or the Parliament or the local party but it is to be at least prima facie demonstrated that there is split in the original political party. In similar fashion, the merger cannot be only at the level of Municipal Party, Panchayat Samiti Party or Zilla Parishad Party, however, it is to be demonstrated that there is merger in relation to the original political party or aghadi or front and a new political party has been formed by such merger or that the members have not accepted the merger and opted to function as a separate group. Section 5(2) makes it clear that for the purpose of subsection 1, the merger of original political party or aghadi or front of a councilor or as the case may be, a member, shall be deemed to have taken place if and only if not less than two third of the members of the Municipal Party or Zilla Parishad Party or as the case may be, Panchayat Samiti Party, concerned have agreed to such merger. On bare reading of section 5(2) it is clear that merger of original political party or aghadi or front is within contemplation and further agreement of not less than two third of the members of the Municipal Party, Zilla Parishad Party or as the case may be, Panchayat Samiti party, is essential. The term "original political party" shall have to be construed as defined in section 2(j) of the Disqualification Act to mean the political party which has proposed candidature of such member or the councillor. Section 2(j) which defines "original political party" makes reference to section 3(1). Original political party, with reference to section 3(1), is the political party which has set up candidature of the councillor or the member, as the case may be. Such interpretation emerges on consideration of explanation (a) to section 3(1). Explanation to section 3(1) which lays down that a person elected as a councilor or as the case may be a member shall be deemed to belong to the political party or aghadi or front, if any, by which he was set up as a candidate for election as such councilor or member.

37. At this juncture, it would be convenient to refer to the provisions relating to "split" and "merger". The provision concerning "split" in Section 4 of the Disqualification Act has been deleted by Maharashtra Act No.50 of 2006. Section

5 of the Disqualification Act carves out "merger" of the original political party, aghadi or front with another political party, aghadi or front, as an exception to Section 3 prescribing penal consequences of disqualification on the ground of defection. Section 4 defined the term "split" prior to its deletion and Section 4 of the Disqualification Act, 1986, read thus:

Section 4.(1) Where a councillor, or as the case may be, a member makes a claim that he and any other member of the municipal party, Zilla Parishad party, or as the case may be, the Panchayat Samiti party, constitute the group representing a faction which has arisen as a result of a split in his original political party or aghadi or front and where the total strength of the councillors or, as the case may be, members

(A) does not exceed twenty and such group consists of one-half, or

(B) exceeds twenty and such group consists of one-third,

of the councillors of such municipal party, Zilla Parishad party, or as the case may be, the members of such Panchayat Samiti party

(a) he shall not be disqualified under subsection (1) of section 3 on the ground

(i) that he has voluntarily given up membership of his original political party or aghadi or front or;

(ii) that he has voted or abstained from voting in the meeting of such Municipal Corporation, Municipal Council, Zilla Parishad or as the case may be, Panchayat Samiti, contrary to any direction issued by such party or aghadi or front or by any person or authority authorised by any of them in that behalf without obtaining the prior permission of such party, aghadi, front, person or authority and such voting or abstention has not been condoned by such party, aghadi, front, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party or aghadi or front to which, he belongs for the purposes of subsection (1) of section 3 and to be his original political party or aghadi or front for the purposes of this section.

(2) Notwithstanding anything contained in subsection (1), a councillor or, as the case may be, member shall be precluded from making such a claim as referred to in subsection (1) for more than once during his term of office under the relevant municipal law or, as the case may be, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

38. Relying on the judgment in the matter of Parshuram (supra), it is contended by Respondents that the reference to "original political party" in Section 4 (prior to its deletion) "shall necessarily mean, "municipal party" "panchayat samiti party" or "zilla parishad party", as the case may be". In the matter of Parshuram (supra), it is laid down that, a split in the original political party cannot be

stretched to mean split in the political party at any other level. However, the expression "original political party" would necessarily mean "Zilla Parishad party" in the House of Zilla Parishad, or its Council, as the case may be. The Division Bench, in paragraph nos. 9 and 13 of the judgment, has observed thus:

"9. The connotation of expression "a group" representing a faction which has arisen as a result of a split in his "original party" cannot be interpreted to refer vertical split of the original party on national level. We are of the opinion that such an interpretation of sub-clause (1) is likely to lead to anomalous position. It will be absurd to expect vertical split of the party on national level for the purpose of giving recognition to a faction which has segregated itself from the original political party at a Zilla Parishad of a District. We cannot ignore intention of the legislature while drafting sub-clause (1) of section 4 of the Disqualification Act. The State Legislature cannot determine question of disqualification having impact on national level, which will amount to enactment pertaining to extra territorial jurisdiction and may result into anomaly. For example, in one State such a faction may not incur disqualification in spite of split in the original party at national level as per the local law prevailing in that State yet disqualification may be incurred by similarly placed members of group in another State like Maharashtra. The expression "as a result of split in his original political party" will have to be interpreted in such a way that the sub-clause (1) is made workable. In our considered opinion, this expression in its proper connotation will have to mean as a split in the original political party at the Zilla Parishad level and it cannot be stretched to mean split in the political party at any other level. The expression "original party" will necessarily mean "Zilla Parishad party" in the House of Zilla Parishad, or its Council, as the case may be. We are inclined, therefore, to reject contention of the learned Counsel for petitioners in this context.

13. Relying upon certain observations in case of *Mayawati v. Markandeya Chand and others* (1998) 7 SCC 517, it is vehemently argued that for recognition to the group of respondent Nos. 1 to 28 as a separate faction, it is necessary to satisfy the following requirements:

- (I) A split in the original political party giving rise to a faction.,
- (II) The faction is represented by a group of the elected Zilla Parishad members in the House.,
- (III) Such group consists of not less than one third of the members of the legislature party to which they belong.

The Apex Court has observed:

"For the purpose of that para, (para 3 of the Tenth Schedule), all the three conditions must be fulfilled. It is not sufficient if more than 3rd members of a legislature party form a separate group and give to themselves a different name without there being a split in the original political party. Thus the factum of split

in the original party and the number of members in the "group" exceeding 1/3rd of the members of the legislature party are the conditions to be proved."

As stated hereinbefore the connotation "original party" means "Zilla Parishad Party" under the Local Laws. In the present case, there is a split in the original political party, namely, Shivsena party in Zilla Parishad which gave rise to separation of a group and hence faction of the respondent Nos. 1 to 28 came into existence. This faction is represented in the House of Zilla Parishad and respondent No.14 their leader. They formed more than 1/3rd of the total number of election members in the Zilla Parishad. We do not find that the authority in the case of Mayawati (supra)

is of any assistance to the case in hand. On the other hand, it has been observed:

"When the Tenth Schedule has expressly constituted the Speaker or the Chairman as the case may be to decide the question of disqualification and attach finality thereto, it is not for this Court to consider the facts and decide the said question by substituting itself in the place of the Speaker. If the order of the Speaker is set aside on any of the grounds mentioned in the Hollohan by exercising the power of limited judicial review, the consequential course to be adopted is to leave the matter to the Speaker to decide afresh in accordance with law."

39. Although the Division Bench has referred to a judgment in the matter of Mayawati v. Markandeya Chand & others, reported in (1998) 7 SCC 517, it is observed that the said judgment is of little assistance to the case in hand. The Division Bench appears to have mis-appreciated the decision of the Supreme Court in the case of Mayawati (supra). The facts giving rise to the decision of the Supreme Court, in the matter of Mayawati (supra), can be stated in nutshell, thus:

40. Elections were held to the Uttar Pradesh Vidhan Sabha (Legislative Assembly) in the year 1996 resulting in hung Assembly, as no political party secured absolute majority. The appellant, with the support of MLAs belonging to Bhartiya Janata Party, became the Chief Minister of the State. However, she demitted the office on 29.09.1997. On the next day, leader of BJP Legislative party became the Chief Minister on the assumption that Bahujan Samaj Party (BSP) would support him. But, contrary to the said assumption, BSP withdrew the support to Kalyan Singh Government on 17.10.1997. Mr. Kalyan Singh was, therefore, directed by the Hon"ble Governor to prove that he enjoys support of the majority MLAs in the Assembly. The appellant Ms. Mayawati issued a whip to all the MLAs of her party on 20.10.1997, directing them to remain present in the session of the U.P. Legislative Assembly on 21.10.1997 and to vote against the motion of confidence moved by the BJP Government. It further transpires that on 21.10.1997, twelve BSP MLAs crossed the floor of the House in the Legislative Assembly of the State and voted in favour of the motion of confidence. Soon thereafter all those twelve MLAs were made Ministers in the State Cabinet

headed by Chief Minister Mr. Kalyan Singh. The appellant, who is the leader of the BSP Legislature Party, filed a petition before the Speaker that the twelve MLAs had incurred disqualification for membership of the Assembly. The Speaker of the Assembly exonerated the twelve MLAs from the tentacles of disqualification envisaged in the Tenth Schedule to the Constitution of India. A defence was raised by the twelve MLAs in respect of split in the BSP party on 21.10.1997 that they, along with some other MLAs, formed a group representing faction consisting of 1/3rd of the members of the legislature party. The Hon'ble Supreme Court, at the conclusion of the hearing, ruled that the finding of the Speaker that a split arose in the BSP, is vitiated by perversity. The corollary of it is that the twelve respondents (MLAs), who had defected their party (BSP) on the said date, cannot escape consequences of Paragraph 6(1) of the Tenth Schedule of the Constitution. While dealing with the argument that the expression "political party" in sub-para (b) of para (2) means, "political party in the House" i.e. Legislature party, runs counter to the definition contained in Para 1(c) of the Tenth Schedule. The Hon'ble Supreme Court has observed that, "original political party" in relation to a member of a House, means the political party to which he belongs for the purpose of sub-para (1) of para 2 i.e. the political party, which has set up his candidature at the elections. The observations of the Supreme Court, in paragraphs no.70 to 72 are relevant for consideration. Those read as under:

70. The argument of the appellant is that the expression "political party" in sub-para (b) means "political party in the House", in other words, the "legislature party". This argument runs counter to the definition contained in Para 1(c). According to that definition, "original political party" in relation to a member of a House, means the political party to which he belongs for the purposes of sub-para (1) of Para 2. The expression "original political party" is used in Para 3 only. Para 2 does not at all use the expression "original political party" in Para 2(1). The definition clause in Para 1(c) does not make any distinction between sub-para (a) and sub-para (b) of Para 2. But the appellant's counsel wants to make such a distinction. According to him "political party" in sub-para (a) would refer to "original political party" but the same expression in sub-para (b) would refer only to the "legislature party". The term "legislature party" having been defined in Para 1(b) could well have been used in Para 2(1)(b) instead of the term "political party" if the intention of Parliament was to refer only to the legislature party.

71. There is another feature in Para 3(b) which negatives the appellant's argument. According to Para 3(b), from the time of the split in the original political party such as the one referred to in the first part of the para, the faction referred to therein shall be deemed to be the political party to which the member concerned belongs for the purposes of sub-para (1) of Para 2 and to be his original political party for the purposes of Para 3. The entire sub-para (1) of Para 2 is referred to therein meaning thereby both clauses (a) and (b) of sub-para (1) and no distinction is made between the two clauses. Hence for the purposes of

clause (a) as well as clause (b), the faction referred to in the first part of Para 3 shall be deemed to be the "political party" mentioned in the sub-para and the same faction shall be deemed to be the original "political party" mentioned in Para 3. It is thus clear that "political party" in clause (b) of sub-para (1) of para 2 is none other than "original political party" mentioned in Para 3.

72. The argument that the context in Para 2(1)(b) requires to equate "political party" with "legislature party" even though the definition clause reads differently is not acceptable. A reading of sub-para (b) and the explanation in Para 2(1) places the matter beyond doubt that the "political party" in sub-para (b) refers to the "original political party" only and not to the legislature party. According to the explanation, for the purpose of the entire sub-para, an elected member of the House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. Certainly, the legislature party could not have set up the member concerned as a candidate for election.

41. In view of the decision of the Apex Court, in the matter of Mayawati (supra), the view taken by the Division Bench in the matter of Parshuram (supra) cannot be accepted as proposition of law, providing interpretation of the term "municipal party", "panchayat samiti" party or "zilla parishad" party, as the case may be.

42. The Division Bench judgment in the matter of Umesh Shrikant Shetye v. Collector, Ratnagiri and others, reported in 2009 (6) Mh.L.J. 209, has been relied upon, to contend that the party, aghadi or front, after the merger becomes the original political party and once it becomes the original political party, then subject to section 5, the member would not stand disqualified under section 3(1) and that the Legislature itself had intended in certain circumstances when a member of a Municipal Party, Zilla Parishad party or Panchayat Samiti Party could not change political horses twice. There is, however, a specific exclusion in section 5. If the merger is in terms of section 5, then the new political party or remainder of the political party, aghadi or front becomes the original political party and the provisions of disqualification under the Act will not apply to such merger. Therefore, there can be a second merger subject to the provisions of Section 5(2) of the Disqualification Act.

43. The judgment of the Division Bench has to be tested on the touchstone of the principles laid down by the Supreme Court in the matter of Jagjit Singh v. State of Haryana and others, reported in (2006) 11 SCC 1 and in the matter of Rajendra Singh Rana and others v. Swami Prasad Maurya and others, reported in (2007) 4 SCC 270. Although aforesaid judgments relate to split, the principle, referable to split, equally applies to merger. Tested on the touchstone the principle laid down by the Supreme Court in the above referred two judgments, reliance placed on the judgment of Umesh (supra), to contend that original political party, referred to in Section 5 is the municipal party or panchayat samiti party or zilla parishad party, is not acceptable.

44. In the matter of Kedar Shashikant Deshpande & others v. Bhor Municipal

Council and others, reported in (2011) 2 SCC 654, also, the Hon"ble Supreme Court, in paragraph 65 of the judgment, has observed thus:

"Section 5 speaks of merger of original political party and the natural corollary thereof is that merger of municipal party or panchayat samiti or zilla parishad party is not within contemplation of Section 5 of the Disqualification Act."

Section 63(2B) of the Municipalities Act:

45. It is argued on behalf of respondents, by referring to Section 63 (2B) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (hereinafter referred to as "the Municipalities Act"), that formation of postpoll aghadi is permissible and if such aghadi is formed within the period stipulated under the second proviso to Section 63(2B) i.e. within the period of one month from the date of notification of the election results and on its registration, provisions of the said Act i.e. Disqualification Act shall apply to the members of such aghadi or front as if it is a prepoll aghadi or front. Section 63(2B) of the Municipalities Act, reads thus:

Section 63. Constitution of Subjects Committees of "A" and "B" Class Councils

[(2B) In nominating the Councilors, the Collector shall take into account the relative strength of recognised parties or registered parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Council after consulting the leader of each such party or group:

[Provided that, the relative strength of the recognised parties or registered parties or groups or aghadi or front shall be calculated by first dividing the total number of Councillors by the total strength of members of the Committee. The number of Councillors of the recognised parties or registered parties or groups or aghadi or front shall be further divided by the quotient of this division. The figures so arrived at shall be the relative strength of the respective recognised parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognised parties or registered parties or groups or aghadi or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognised parties or registered parties or groups or aghadi or front in the descending order of the fraction number in the respective relative strength starting from the highest fraction number in the relative strength, till all the seats are allotted:].

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups, under this subsection, the recognised parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, notwithstanding anything contained, in the Maharashtra Local Authority Members" Disqualification Act, 1966 (Mah. XX of 1987), within a period of not more than one month from the date of

notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a prepoll aghadi or front.

46. The provisions of Section 63(2B) are pari materia to Section 31A(2) of the Bombay Provincial Municipal Corporations Act. Section 63 of the Municipalities Act is included in Chapter III which relates to duties and functions of the Council and the Municipal Executive. Part (4) of Chapter III refers to "Committees" which includes Sections 62 to 73. Section 63 relates to constitution of Subjects Committees of "A" and "B" Class Councils. Whereas, subsection (2B) of Section 63 prescribes procedure for nominating councillors. It is laid down that in nominating councillors, the Collector shall take into account the relative strength of recognised parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Council after consulting the leader of each such party or group. The methodology of calculating relative strength of the parties is provided in first proviso, whereas, second proviso provides relaxation to the recognised parties or registered parties or groups, or elected councillor not belonging to any such party or group may, notwithstanding anything contained in the Disqualification Act, to form aghadi or front within one month from the date of notification of election results and, on its registration as aghadi or front, the provisions of the Disqualification Act shall apply to the members of such aghadi or front, as if it is a prepoll aghadi or front.

47. It has been argued, placing reliance on the second proviso to subsection (2B) of Section 63 that in spite of definition recorded in Section 2(a) of the Disqualification Act, contemplating prepoll aghadi or front, there is liberty available to the elected members set up by the recognised parties or registered parties or groups not belonging to any such party or group to come together and form aghadi or front within one month from the date of declaration of results. It is further argued that the registration of such group or aghadi is also permissible and on such registration, provisions of Disqualification Act are made applicable as if the aghadi or front is prepoll aghadi or front. It is also contended that the non obstante clause contained in the second proviso shall have to be read in such manner that the provisions contained in the second proviso shall prevail over the provisions of the Disqualification Act.

48. Subsection (2B) of Section 63 relates to nomination of councillors on the Committees and the Collector is required to take into account the relative strength of recognised parties or registered parties or groups and nominate the members. It can, thus, be safely stated that the purpose of the proviso which provides for formation of aghadi or front within one month after the date of declaration of result of elections is to secure proper representation on the Sub Committees. The object of making provision for formation of aghadi or front of the recognised parties or registered parties or groups is only for securing proper representation to the Committees.

49. An identical provision finds place in Section 31A of the Bombay Provincial

Municipal Corporation Act, 1949, which has fallen for interpretation in the matter of Vasant Nivrutti Gite & another v. Municipal Corporation of City of Nashik, 2007 (4) ) Mh.LJ 871. The statement appended to the Ordinance, which provided for identical provision, is reproduced in para 5 of the judgment, which reads thus:

"3. To ensure that all the recognised parties and groups in the Corporation are adequately represented in the Committees constituted under the Corporations Acts, the Government considers it expedient to amend these Acts to provide for the nomination of members of the Committees in proportion to the strength of the political parties of groups in the Corporation."

It is recorded by the Division Bench in para 5 of the judgment thus,

"..... It is open to the recognised parties or registered parties or independent councillors, not belonging to any such party or group, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986 within a period of one month from the date of notification of election results to form an aghadi or front and on its registration, the provision of the said Act shall apply to the members of such aghadi or front, as if it is a registered pre poll aghadi or front. In other words, recognised or registered political parties can also come together. They can also come together with independents or independents themselves can come together and form aghadi or group as set out therein in which event such Aghadi or group depending upon their relative strength would also be entitled to nominate councillors on the committees. There can be different permutations and combinations. It is therefore, open to the various parties as well as independents to come together.

Opening words of the second proviso to Section 63 (2B) read as under:

"for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this subsection ..."

50. Thus, the scope and ambit of second proviso is limited to the extent of and only for the purpose of nomination of councillors on the Committees. These words in the second proviso leave no room for doubt that it is only for the limited purpose of enabling such aghadi to secure proper representation on various categories of committees specified in Section 63. The formation of aghadi or group in terms of Section 63(2B) is totally irrelevant and inconsequential for the purposes of election of President under Section 51 as also election of Vice President under Section 51A. Schematically, section 63 is placed in Chapter III which comprises the provisions of Sections 49 to 73. These provisions deal with duties and functions of the Council and Municipal Executive. Whereas, Part (4) of Chapter III is titled as "Committees". This Part (4) is consisting of Sections 62 to 73. Section 62 enumerates Statutory Committees i.e. Standing Committees and other six Subjects Committees specified therein. The proviso to Section 63(2B) would not be able to travel beyond the scope of substantive portion of Section 63 itself.

51. As has been stated above, the aghadi or front in terms of second proviso to Section 63 (2B) is confined only to formation of Subjects Committees and has no relevance in the context of election to the office of President and Vice President, since special meeting is required to be convened for constitution of Subjects Committees only after the elections to the office of President and Vice President. The aghadi or front specified under Section 2(a) of the Disqualification Act provides that "aghadi" or "front" means a group of persons who have formed themselves into a party for the purpose of setting up candidates for election to a local authority i.e. a prepoll aghadi and not postpoll aghadi. The elections to the Council are outside the provisions of Section 63(2B) and elections to the Subjects Committees are required to be held after elections to the post of President and Vice President. The formation of such aghadi, as specified within meaning of second proviso to Section 63(2B) has no relevance to the general elections or the elections to the office of President and Vice President and is, thus, confined to the elections of Subjects Committees. The section itself deals with elections to the Subject Committees and considering language of the proviso, it is difficult to accept that postpoll aghadi, as permitted under Section 63 (2B) travels beyond the scope of the section and has no relevance in respect of any other elections.

52. The Disqualification Act is enacted with an object for providing disqualification of members on the ground of defection and its structure is based on the Tenth Schedule of the Constitution. The principle *generalalia specialibus non derogant* is applicable in the present case. The municipal law is a general law relating to administration of Municipalities, including Maharashtra Municipalities Act, whereas, Disqualification Act, is a special law dealing with the subject of disqualification of members of the local authorities on the grounds specified therein. There are certain distinguishing features which can be serialised as below:

#### Distinguishing Features

The component original political parties or formation of aghadi or front, as permitted under the second proviso to Section 63(2B), the status of members or councillors belonging to original parties or independent councillors is not lost and their original status do not merge with aghadi or front nor such aghadi or front bring into existence a new political party within meaning of Section 2(a) of the Disqualification Act.

Such aghadi within contemplation of second proviso to Section 63(2B) does not amount to merger of component parties or individual members within meaning of Section 5 of the Disqualification Act.

The purpose of the second proviso to Section 63(2B) is not to nullify or to dilute the rigour and/or vigour of the substantive legislation i.e. the Disqualification Act, 1986. It is not intended to reduce the provisions of Section 3 of Disqualification Act to a Dead Letter.

53. At this juncture, a reference can be made to the judgment in the matter of

Jeevan Chandrabhan Idnani and another v. Divisional Commissioner, Konkan Bhawan & others, reported in (2012) 2 SCC 794. Placing reliance on the judgment, it is contended by Respondents that once an aghadi is registered, by a legal fiction created under the proviso, such an aghadi is treated as if a prepoll aghadi and the provisions of the Disqualification Act apply to the members of such postpoll aghadi. The Supreme Court was concerned with the interpretation of second proviso to Section 31A( 2) of the Bombay Provincial Municipal Corporations Act, 1949, which is parimateria to the second proviso to Section 63(2B) of the Municipalities Act. The petitioner, before the Supreme Court, raised challenge to the decision of the High Court dismissing a writ petition presented by the petitioner questioning action of registration of postpoll aghadi or front taking recourse to Section 31A of the Corporations Act. Respondents No.6 to 13, before the Supreme Court, who earlier joined hands with other councillors of Lok Bharti Party and formed an aghadi immediately after election availing facility under the provisions of second proviso to Section 31A of the Municipal Corporations Act, decided to quit the aghadi and formed a "Swatantar Aghadi" and addressed a letter on 23.02.2011 to the Divisional Commissioner requesting for recording the change. Two of the councillors objected to the communication accepting request made by Respondents No.6 to 13 by the Divisional Commissioner by presenting writ petition to the High Court, which came to be dismissed. While dealing with the challenge, the Supreme Court considered provisions of the Disqualification Act vis-a-vis the provision contained in Section 31A( 2) of the Municipal Corporations Act. It is observed in paragraphs no.26 and 27 of the judgment, thus:

"26 The second proviso to subsection (2) of Section 31A enables the formation of an aghadi or front within a period of one month from the date of notification of the election results. Such an aghadi or front can be formed by various possible combinations of Councillors belonging to either two or more registered parties or recognised parties or independent Councillors. The proviso categorically stipulates that such a formation of an "aghadi" or "front" is possible notwithstanding anything contained in the Disqualification Act. Because as "aghadi" or "front" as defined under the Disqualification Act, clearly, can only be the combination of a group of persons forming themselves into a party prior to the election for setting up candidates at an election to a local authority but not a combination of political parties or political parties and individuals." 27 Therefore, the second proviso to Section 31A( 2) of the Municipal Corporations Act which is a later expression of the will of the sovereign, in contrast to the stipulation as contained under Sections 2(a) and 3(2) of the Disqualification Act, would enable the formation of postelectoral aghadis or fronts. However, such a formation is only meant for a limited purpose of enabling such aghadis to secure better representation in the various categories of the Committees specified under Section 31A. The component parties or individual independent Councillors, as the case may be, in the case of a given front/aghadi do not lose their political identity and merge into the aghadi/front or bring into existence a new political

party. There is no merger such as the one contemplated under Section 5 of the Disqualification Act. It is further apparent from the language of the second proviso that on the formation of such an aghadi or front, the same is required to be registered. The procedure for such registration is contained in the Maharashtra Local Authority Members' Disqualification Rules, 1987."

54. In paragraph no.28 of the judgment, although the Supreme Court has observed that once such an aghadi is registered under Section 31A (2) by a legal fiction created under the proviso, such an aghadi is treated as if it were a prepoll aghadi or front and the provisions of Disqualification Act apply to the members of such postpoll aghadi. However, the Supreme Court has refused to examine legal consequences of such a declaration.

55. On conjoint reading of paragraphs no.26 and 27 of the judgment in Jeevan Idnani's matter (supra), an irresistible conclusion has to be drawn that the formation of an aghadi under the provisions of second proviso to Section 31A( 2) is only for the limited purpose of enabling such aghadis to secure better representation in the various categories of the Committees specified under Section 31A. The component parties or independent councillors, as the case may be, in the case of a given front/aghadi do not lose their political identity and merge into aghadi or front or bring into existence a new political party. There is no merger, as contemplated under Section 5 of the Disqualification Act. It is, thus, clear that formation of such an aghadi or front is for the purposes of securing better representation in the various categories of the Committees specified therein and it cannot be equated with an aghadi or front under Section 2(a) for the purposes of invocation of the provisions of the Disqualification Act.

56. Reference needs to be made to subsections (1) and (2) of Section 10 of the Disqualification Act, which provide thus:

10(1) The provisions of this Act and the rules shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(2) Subject to the provisions of subsection (1), the provisions of this Act shall be in addition to and shall not, save as expressly provided herein-before, be in derogation of the provisions of any law relating to Municipal Corporation, Municipal Council or other local authority concerned.

57. It is strenuously contended by the Respondents that second proviso to Section 63 (2B) of the Municipalities Act will have a precedence since it specifically prescribes that the provision shall have an effect notwithstanding contained in the Disqualification Act, 1986 (Mah. XX of 1987).

Interpretation of Statute:

58. It shall be noted that there is no inconsistency or repugnancy in the provisions of Disqualification Act as against provisions of second proviso to Section 63(2B) of the Municipalities Act. Both the provisos operate in different

field. Even otherwise, Disqualification Act is a special enactment governing the field of Disqualification of elected representatives of the local authority. Whereas, the Municipalities Act is a general law providing for the constitution, administration and powers of Municipalities. It also shall be taken note of that apart from provisions of the Disqualification Act, the Municipal Act itself provides for Disqualification under Section 63(1), 44 and 45. Thus, provisions of the Disqualification Act are in addition and not in derogation of Municipalities Act. Disqualification Act is structured on the lines of Tenth Schedule of the Constitution by 52nd Amendment, 1985 and occupies a limited field concerning defection of the elected representatives and provides for remedial measures and penalties. The immunity under second proviso is an immunity for limited purpose providing for stability to the aghadi/front or else it would have resulted in creating instability on account of defection. It shall also have to be considered that when the field is occupied by a special legislation enacted by a competent legislature and the same legislature subsequently enacts another law which is of a general nature, the general legislation cannot be taken to have displaced the special law which is in operation unless there is a specific provision made in the subsequent general law to that effect. In such a situation, the special law which occupies the field does not get displaced merely by implication. The legislature, being the same, would be aware while enacting the subsequent general legislation, that it has already enacted a special law and it is that law which occupies the field, therefore, if its intention is to displace that special law, it would specifically say so. In this respect, reference can be made to a judgment in the case of Narendra Kantilal Shah v. Joint Registrar Cooperative Societies (Appeal) Bombay and others, reported in 2004 (1) Mh.L.J. 704. In paragraph no.31 of the judgment, it is observed thus:

"31 Now, so far as the provisions of section 84 of the 2002 Act are concerned, it is clear from what has been observed above that when the 1993 Act was enacted as also in 1999 when that Act became operative in the region with which we are concerned, though 1984 Multi State Cooperative Societies Act was in force, section 74 of that Act which provided remedy was inoperative having been stayed by this Court, therefore the provisions of the 1993 Act will occupy the field and therefore when the 2002 Act was enacted by the Parliament. The 2002 Act being essentially a general statute as compared to the 1993 Act, unless the 2002 Act makes a special exception, the provisions of section 84 of the 2002 Act will not operate to oust the 1993 Act from the field which is occupied by it. It may be, incidentally, mentioned here that so far subsection (1) of section 84 of the 2002 Act is concerned, it is identical to subsection (1) of section 74 of the 1984 Act. Had section 74 of the 1984 Act been in force in 1999, it is 1993 Act which would have operated being a special law. In our opinion, therefore, the enactment of section 84 in the 2002 Act will not make any material difference. When the field is occupied by a special legislation enacted by a competent legislature and the same legislature subsequently enacts another law which is of general nature, the general legislation cannot be taken to have displaced the

special law which is in operation unless there is a specific provision made in the subsequent general law to that effect. In such a situation, the special law which occupies the field does not get displaced merely by implication. The legislature being the same would be aware, while enacting the subsequent general legislation that it has already enacted a special law and it is that law which occupies the field, therefore, if it is its intention to displace that special law it would specifically say so. In these circumstances, therefore, in our opinion, in the absence of any specific provision in the 2002 Act, excluding the operation of the 1993 Act which was in operation, in relation to Bank registered under the 2002 Act, it is the 1993 Act and not the 2002 Act which would operate."

59. A reference can also be made to the judgment of the Apex Court in the matter of Union of India and others v. Dileep Kumar Singh, reported in (2015) 4 Supreme Court Cases 421. In paragraph no.16 of the judgment, the Apex Court has observed thus:

"16 It is well settled that the provisions of a statute must be read harmoniously together. However, if this is not possible then it is settled law that where there is a conflict between two sections, and you cannot reconcile the two, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. This statement of the law is to be found in Institute of Patent Agents v. Lockwood, AC at p. 360. Lord Herschell, L.C., stated this, as follows:

"... Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other."

60. Firstly, there is no conflict between the provisions of the Disqualification Act and the Municipalities Act. Even otherwise, since the field relating to Disqualification concerning disqualification of members of the local authorities is occupied by the special legislation, the general law i.e. the Municipalities Act shall give way to the special law. It also must be stated that provisions of the Disqualification Act are in addition to and not in derogation to the provisions of other law i.e. Municipalities Act.

61. A statute must be interpreted having regard to the purport and object of the Act. The doctrine of purposive construction must be resorted to. It would not be permissible for the Court to construe the provisions in such a manner which would destroy the very purpose for which the same was enacted. The principles in regard to the approach of the Court in interpreting the provisions of a statute with the change in the societal condition must also be borne in mind. The rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled.

62. It would be appropriate to refer to the observations of the Supreme Court in

the matter of Yakub Abdul Razak Memon v. State of Maharashtra, reported in (2013) 13 SCC 1. The Apex Court, in paragraphs no.1518 and 1520, has observed thus:

"1518. The principle that the latter Act would prevail the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

1520. It is a settled legal proposition that while passing a special Act, the legislature devotes its entire consideration to a peculiar subject. Therefore, when a general Act is subsequently passed, it is logical to presume that the legislature has not repealed or modified the former special Act unless an inference may be drawn from the language of the special Act itself."

63. While interpreting second proviso to Section 63(2B) of the Municipalities Act, the principle that, the normal function of a proviso is generally, to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment, has to be borne in mind. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its express terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope.

64. In the instant matter, Section 63 of the Municipalities Act deals with the constitution of Subject Committees, so also the second proviso to Section 63(2B) opens with the words, "provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups, under this subsection" itself limits scope of the proviso. By application of principle of liberal interpretation, it would not be permissible to expand ambit and scope of the proviso. The proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

65. Referring to a judgment in the matter of Commissioner of Income Tax, Mysore, Travancore, Cochin and Coorg, Bangalore, v. Indo Mercantile Bank Limited, reported in 1959 AIR (SC) 713 : 1959 DGLS (Soft.) 23, where it is pointed out that the proper function of a proviso is that it qualifies the generality of the main enactment, by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the

main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as proviso. Therefore it is to be construed harmoniously with the main enactment. Similar proposition has been laid down by Lord Macmillan in *Madras & Southern Mahratta Railway Co. v. Bezwada Municipality*.

66. It would be apt to refer to the observations of the Supreme Court in para 22 of the judgment in the matter of *Rohitash Kumar & others v. Om Prakash Sharma & others*, reported in AIR 2013 (SC) 30 : 2012 DGLS (Soft) 546, which reads as under:

"22 The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim "A Verbis Legis Non Est Recedendum" means "From the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which has been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result. (Vide *Nalinakhya Bysack v. Shyam Sunder Haldar & Os.*, AIR 1953 SC 148; *Sri Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459; *M. Pentiah & Ors. v. Muddala Veeramallappa & Ors.*, AIR 1961 SC 1107; *The Balasinor Nagrik Cooperative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors.*, AIR 1987 SC 849; and *Dadi Jagannadham v. jammulu Ramulu & Ors.*, (2001) 7 SCC 71)"

67. In the matter of *Commissioner of Income Tax, Calcutta v. National Taj Traders*, reported in AIR 1980 (SC) 485 : 1979 DGLS (Soft.) 494, the Hon"ble Supreme Court in para 10 of the judgment, observed thus:

"10 Two principles of construction - one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. In regard to the former the following statement of law appears in *Maxwell on Interpretation of Statutes* (12th Ed.) at page 33:

"Omissions not to be inferred " It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Morsay said; It is a strong thing to

read into an Act of parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do. We are not entitled, said Lord Loreburn L.C., to read words in an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional."

In regard to the latter principle the following statement of law appears in Maxwell at page 47:

"A statute is to be read as a whole " It was resolved in the case of Lincoln colleges case (1595) 3 Co Rep. 58B, at page 59b that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself. Every clause of a statute is to be construed with reference to the context and other clauses of the act, so as, as far as possible, to make a consistent enactment of the whole statute. (Per Lord Davey in Canada Sugar Refining Co. Ltd. v. R. 1898 AC 735 (Canada)."

In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts L.J. In *Artemiou v. Procopiou* (1966) 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, (per Lord Reid in *Luke v. I.R.C.*, 1963 AC 557 where at p. 577 he also observed : "this is not a new problem, though our standard of drafting is such that it rarely emerges". In the light of these principles we will have to construe sub-section (2) (b) with reference to the context and other clauses of Section 33B."

68. The Constitution Bench, in the matter of *Dwarka Prasad v. Dwarka Das Saraf*, reported in (1976) 1 SCC 128, while analysing functions of proviso, has observed in paragraph 18 of the judgment, thus:

"18. We may mention in fairness to Counsel that the following, among other decisions, were cited at the bar bearing on the uses of provisos in statutes: *Commissioner of Income tax v. Indo Mercantile Bank Ltd.*; *M/s Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax*; *Thompson v. Dibdin*; *Rex v. Dibdin*; and

Tahsildar Singh v. State of U.P. The law is trite. A proviso must be limited to the subject matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context" (1912 A.C. 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the "enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso in such manner that they mutually throw light on each other and result in a harmonious construction.

"The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, and proviso, taken and construed together is to prevail." (Maxwell on Interpretation of Statutes 10 Edn. P. 162)

69. The main functions of the proviso can be described as follows:

(I) To create an exception in respect of certain matters which would otherwise fall within the section;

(II) To qualify or restrict the operation of the main part of the section;

(III) To exclude some possible misinterpretation of the section;

A proviso, therefore, should never be used to extend scope of the section.

70. As has been observed by the Supreme Court in the matter of RBI v. Peerless General Finance and Investment Co. Ltd., reported in (1987) 1 SCC 424, the textual interpretation that matches the contextual is known to be best interpretation. It is observed in paragraph 33 of the judgment, thus:

"33 Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses

provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ?.."

71. The law concerning disqualification is a law imposing dis-entitlements. The law of election is a special branch of statutory law and secondly the entitlement to contest as well the matters of dis-entitlement in that regard are all specified matters originating in the statute. They cannot have any other source except the statute. The general principles of equity or other common law doctrines would not be relevant nor operative nor applicable in such a field expressly defined by the statute. Not only the intendment but also its effects will have to be found in the given law and not outside. This equally applies to the definition, procedure jurisdiction and penalty attached to the stated act or omissions. The rule of strict construction is the basic canon that governs all matters of law concerning disqualification or dis-entitlement of those who seek the election as candidates and those who are chosen and are continuing to hold the elective offices, after being so chosen.

72. It is essential while applying the principles of strict construction and strict compliance, to ascertain character of a given statute. Generally speaking, Statutes are classified in fourfold manner. Firstly, the statutes are remedial, secondly they are declaratory, thirdly they are procedural and lastly they are penal or dis-entitling. One has to find out the character of the statute as to whether it is penal or not, so as to attract principle of strict construction. Firstly, it requires an inquiry as to whether the statute provides the imposition of penalty or enacts penal consequences such as fine, forfeiture of rights, interests in property, office or status or any such liability or disability. Secondly, whether such statute contains the express terms of sanctions by enacting prohibitions providing for penal effects attached to the given set of circumstances, prohibitions depending upon circumstances in specific form. Thirdly, even if the express terms may not be there, the rules of construction permit importing such sanction in favour of the commands or prohibitions contained in the statute which might have the background or context of a given system of accepted law such as common law or other enacted laws or even customary law having social sanction.

Conclusion:

73. Considering the principles as recorded above, the Disqualification Act of 1986 shall have to be characterised as penal statute and the provisions of the enactment shall have to be strictly construed.

74. Section 2(a) defines the term "aghadi" or "front" means a group of persons who have formed themselves into a party for the purposes of setting up a candidate for election to a local authority. Reading the provision as it is and on

consideration of the reasons set out in this judgment, it has to be inferred that the aghadi or front contemplated under Section 2(a) of the Disqualification Act of 1986 is necessarily a prepoll aghadi or front.

75. In the result,

(I) The answer to the first Issue, Whether the term aghadi or front as defined U/ Sec. 2(a) of the Disqualification Act of 1986, would mean the party or aghadi on whose candidature the councillor is elected or would also include the aghadi of two or more municipal parties coming into existence after the elections are held, shall have to be recorded as the party or aghadi on whose candidature the councillor is elected, As a necessary consequence, the aghadi or front, within contemplation to Section 2(a) of the Disqualification Act of 1986, is a prepoll aghadi or front.

(II) Similarly, in view of the judgment of the Supreme Court in the matter of Mayawati v. Markandeya Chand & others, reported in (1998) 7 SCC 517 (supra), as well as in view of the reasons set out in this judgment, it has to be concluded that the term "original political party" or "aghadi", appearing in Section 5, would mean the party at its National level and would not mean "municipal party". The Issue No. (II), referred for consideration is answered accordingly.

76. It has been brought to our notice by learned Counsel appearing for both the parties that the elective term of the office of Municipal Council has already come to an end and grievance set out in this petition is merely rendered of academic interest.

In this view of the matter, instead of remitting the matter back to the learned Single Judge for disposal, we deem it appropriate to dispose of the writ petition.

77. Writ Petition is accordingly disposed of. No order as to costs. Pending Civil Applications, if any, stand disposed of.