
(2010) 10 BOM CK 0264

In the Bombay High Court

Case No : Writ Petition No's. 8936, 8988, 8937, 8985, 9350, 9003, 8998, 9013, 9006 and 9007 of 2010

Shantabai Surwade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Local Authority Members Disqualification Act, 1986 — Section 2, 3, 3(1), 5, 7
Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 3(1), 3(5), 4, 4(1), 5

Citation : (2011) 1 ALLMR 27 : (2011) 3 BomCR 277 : (2011) 1 MhLj 910

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : N.L. Jadhav, for the Appellant; N.B. Khandare, GP for State, P.M. Shah, instructed by., S.P. Shah and Girish Wani, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Borde, J.—In all these petitions the Petitioners who are the elected Councillors of the Municipal Council, Bhusawal are raising exception to the order passed by the Collector, Jalgaon holding them disqualified to continue as the Councillors of the Municipal Council, Bhusawal. The orders are passed by the Collector on consideration of petitions tendered by one Mr. Manoj Biyani/ Respondent herein under the provisions of Section 3 of the Maharashtra Local Authority Members' Disqualification Act of 1986 (hereinafter referred to as "Act of 1986") read with Rule 6 of the Maharashtra Local Authority Members' Disqualification Rules, 1987 (hereinafter referred to as "Rules of 1987").

2. Petitioners contend that in the general elections to the Municipal Council held in the month of October-November, 2006, the Petitioners were declared elected on 21-11-2006 as independent candidates. The Election Commissioner published election results in official gazette declaring the Petitioners to have been elected

as the Councillors. It is specific contention of the Petitioners that they are elected as independent candidate and the certificates issued by the Election Commission also declare that they have been elected to the Municipal Council as the independent candidates. There was a proposal for registration of Shahar Bachav Aghadi as municipal party in pursuance to the application presented by one Manoj Biyani/Respondent herein. However, according to the Petitioner s, said proposal was withdrawn by him on 22-11 -2006. It is denied by the Petitioners that there was a prepoll aghadi or that they are the members of any such Aghadi titled as "Shahar Bachav Aghadi". It is contended that said Aghadi has not been registered as a municipal party required under the provisions of the Act. After the general elections to the Bhusawal Municipal Council the elections to the President were held and one Madhuri Falak was elected as the President who continued to occupy the post for about 2¹/₂ years. Her term came to an end in the month of August 2009 and the process for election of the successor President for remaining term of 2¹/₂ years was initiated. It is contended that one Manoj Biyani claims himself to be the President of "Shahar Bachav Aghadi" which has membership of about 28 members, according to him, and he directed the members to vote in favour of his wife who was also a candidate at the elections of President. It is contended that in the meeting convened on 28-6-2009 the votes were recorded and during the process Smt. Sangita w/o Manoj Biyani secured 15 votes whereas her rival candidate belonging to Nationalist Congress Party Smt. Rekha Choudhari secured 30 votes and as such she was (Mrs. Rekha Choudhari) declared as elected. It is the contention of the Petitioners that Mr. Manoj Biyani/Respondent herein claiming himself to be the President of "Shahar Bachav Aghadi" and group leader of the municipal party, presented different applications to the Collector praying therein to hold the Petitioners herein disqualified to continue as the Councillors of the Municipal Council. The Petitioners in these petitions have seriously disputed formation of "Shahar Bachav Aghadi" which is a prepoll Aghadi or formation of the municipal party for Bhusawal Municipal Council. It is also seriously disputed that Respondent herein/ Manoj Biyani to be the President/Group Leader of the municipal party and his entitlement to issue whip requiring the Petitioners to cast vote in a particular manner. The Petitioners have also denied to have received any communication in respect of issuance of whip nor the Petitioners have been communicated in respect of setting of the candidature of Smt. Sangita Biyani for the post of the President. The Petitioners contend that as they were not members of "Shahar Bachav Aghadi", they cannot be held disqualified on account of disobeying whip allegedly issued by Respondent Mr. Manoj Biyani nor the petitions claiming action against them at the instance of Respondent herein is entertainable with the Collector. In addition to the aforesaid contentions the Petitioners in Writ Petition No. 9003/2010, 9007/2010 and 8998/2010 have also raised grievance in respect of non-observance of principles of natural justice while deciding the matter by the Collector. It is the contention of the concerned Petitioners that the Collector has not extended an opportunity of hearing to them and without hearing the oral arguments proceeded to decide the matter. Thus, according to them, order

passed by the Collector is liable to be set aside on the ground of non-observance of the principles of natural justice. The Petitioner in Writ Petition Nos. 9350/2010 has contended that he was not member of any prepoll Aghadi and he contested the election as an independent candidate. He was never the member of Aghadi and as such proceedings in respect of his disqualification cannot be initiated at the instance of Mr. Manoj Biyani/Respondent herein. It is also contended by Petitioner in Writ Petition No. 9006/2010 that he was absent in the meeting and that no procedure is followed in respect of condonation of absentism as required under the Rules and as such the concerned Councillor cannot be meted with penalty of disqualification.

3. Contentions raised by the Petitioners in the petitions have been disputed by Respondent Manoj Biyani/applicant before the Collector. In the application presented before the Collector, it is contended by Mr. Manoj Biyani that Shahar Bachav Aghadi, Bhusawal is formed on 5-10-2006 i.e. prior to holding of elections of Municipal Council Bhusawal. It is contended that the Petitioners are the candidates set up by the Aghadi for contesting the elections and necessary Forms AB were issued in favour of the concerned candidates and the concerned candidates presented nomination papers as a member of Shahar Bachav Aghadi. It is contended that at the elections to the Municipal Council, 28 Councillors of Shahar Bachav Aghadi got elected whereas only 19 Councillors belonging to Nationalist Congress Party were elected. It is also contended that on 21-11-2006 a meeting of the elected Councillors was held for the purpose of formation of the municipal party and one independent candidate i.e. Khan Salim Taslim also joined the Aghadi. Mr. Manoj Biyani being the President of the Aghadi submitted Form I prescribed under Rule 3(1)(a) of the Rules of 1987 with the Collector on 21-11-2006. The concerned elected representatives also submitted declaration in Form III prescribed under Rule 4(1) of the Rules of 1987 with the District Collector. The Collector was thereafter pleased to register the information in Form IV prescribed under Rule 5(1) of the Rules of 1987. It is contended that in the year 2006 elections to the President were held and the candidate belonging to the Aghadi Smt. Madhuri Falak got elected and at relevant time whip was issued by Mr. Manoj Biyani which was honoured by the members and candidates belonging to the Aghadi were declared elected as President and Vice-President of the Municipal Council. After completion of the term of 21/2 years the candidature of Smt. Sangita Biyani was declared for the post of the President and the whip was duly issued in that regard to the Petitioners from time to time. The whip was not only sent to the concerned Councillors by registered post AD and also under the certificate of posting but the same was also published in newspaper on 18-5-2009, 22-5-2009, 15-6-2009 and 20-6-2009. In spite of issuance of the whip and having knowledge of the same, all the Petitioners before this Court dishonoured the directions and cast vote in favour of a candidate belonging to Nationalist Congress Party and as such have incurred disqualification within contemplation of provisions of Section 3(1)(b) of the Disqualification Act of 1986. It is specifically contended that the illegal act of disobedience of the whip has not

been condoned by applicant Mr. Biyani. Necessary documents supporting the contentions raised in the petition were presented before the Collector. The Collector after recording evidence of the parties came to the conclusion that the applicant has substantiated his case and all the Petitioners herein have incurred disqualification and are liable to be declared as disqualified to hold the elected office of Councillors of Municipal Council and the Collector was pleased to issue order accordingly. So far as the candidate who has abstained from voting i.e. Petitioner in Writ Petition No. 9006/2010 is concerned, his absentism has not been condoned by the party and as such he is also held liable to be held disqualified. The candidate who joined the Aghadi after the elections i.e. Petitioner in Writ Petition No. 9350/2010 has also incurred disqualification as he was also bound to follow the whip/directives of the Aghadi.

4. I have heard arguments advanced by Mr. N.L. Jadhav appearing for Petitioners in Writ Petition Nos. 8936/2010, 8988/2010, 8937/2010 and 8985/2010, Mr. R.N. Dhorde, learned Counsel for Petitioners in Writ Petition Nos. 9003/2010, 8998/2010, 9013/2010, 9006/2010 and 9007/2010, Mr. Kulkarni, learned Counsel for Petitioner in Writ Petition No. 9350/2010. I have also heard arguments advanced by Mr. P.M. Shah, learned Senior Counsel appealing for the Respondent Manoj Biyani. It is a common ground in all the petitions by the Petitioners that there was no pre-poll Aghadi and that Mr. Biyani was not the group leader or President of the Aghadi and was not entitled to issue whip. The another contention raised is that all the Petitioners are elected as independent candidates and cannot be considered as members of Aghadi and as such directives issued by the President of the so-called Aghadi are not binding on them. Another objection raised is in respect of registration of the Aghadi within contemplation of provisions of the Act or formation of the Municipal party in relation to the Councillors belonging to the Aghadi. It is also a common ground that the proposal tendered for registration of Aghadi was withdrawn by the President on the next date i.e. on 22-11-2006 and as such registration of Aghadi, if any, is also erroneous. The Petitioners have also claimed ignorance in respect of tendering of information by them with the Collector in the prescribed form and according to them, their signature were obtained on blank paper and those have been misutilised by the Respondent/Mr. Biyani. In three petitions, grievance is made in respect of non-observance of principles of natural justice and it is contended that the order passed by the Collector is liable to be quashed and set aside.

5. In order to understand the controversy involved in the petition, it is necessary to refer to certain provisions of the Act those are:

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;

2(i) "Municipal Council" means Municipal Council constituted under the Maharashtra Municipalities Act 1965;

(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 Councillors 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.

2(j) "original political party", in relation to a Councillor or a member, means the political party to which he belongs for the purposes of Sub-section (1) of Section 3;

3. Disqualification on ground of defection:

1. Subject to the provisions of (Section 5), a councillor or a member belong 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 a candidate for election as such councillor or member;

b) a nominated[councilor]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) [* * *]

2. An elected Councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front shall be disqualified for being a Councillor, or as the case may be, a

member if he joins any political party or aghadi or front after such election.

3.[* * *]

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 has a member of a political party or aghadi or front immediately before such commencement, be deemed, for the purposes of Sub-section(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 as a candidate set up by any political party or aghadi or front for the purpose of Sub-section (2),

Rule 3: Information to be furnished by a leader of Party:

I The leader of each municipal party or a Zilla Parishad party in relation to a councillor and the leader of Panchayat Samiti party in relation to a member (other than a municipal party or a Zilla Parishad party or a Panchayat Samiti party consisting of only one member) shall, within thirty days from the date of commencement of these rules or where such party is formed after such date, within thirty days from the date of its formation, or in either case, within such further period as the Commissioner, in the case of a Councillor of a Municipal Corporation, or the Collector, in the case of any other Councillor or member may for sufficient reason allow, furnish the following information to the Commissioner, or, as the case may be, to the Collector, namely:

a) a statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form 1, and the names and designations of the members of such party who have been authorised by it for communicating with the Commissioner or, as the case may be, Collector for the purposes of these rules;

b) a copy of the rules and regulations (whether known as such or a constitution or by any other name), of the municipal party, Zilla Parishad party or the Panchayat Samiti party concerned, as the case may be; and

c) where such party has any separate set of rules and regulations (whether known as such or as constitution or/by any other name), also a copy of such rules and regulations.

6. Where a Councillor in relation to municipal party or a Zilla Parishad party and member in relation to a Panchayat Samiti party votes or abstains from voting in any of the meetings of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by such party or by any person or authority authorised by it in this behalf,

without obtaining in either case, the prior permission of such party, person or authority, the leader of such municipal party or a Zilla Parishad party or as the case may be, Panchayat Samiti party, or where such councillor or member is the leader or, as the case may be, the sole member of such municipal party. Zilla Parishad party or Panchayat Samiti party, such councillor or, as the case may be, member, shall as soon as may be thereafter and in any case within thirty days from the date of such voting or abstention, inform the Commissioner or, as the case may be, Collector in Form II whether such voting or abstention has or has not been condoned by such party, person or authority. Explanation A Councillor in relation to a municipal party and a Zilla Parishad party and a member in relation to a Panchayat Samiti party, may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

4. Information, etc, to be furnished by Councillor or member:

1. Every Councillor in relation to municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party, after the election in the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti, before he has taken his seat before the date of commencement of these rules, shall furnish to the Commissioner or, as the case may be, Collector within thirty days from such date or within such further period as the Commissioner or, as the case may be Collector may for sufficient reason allow, a statement of particulars and declaration in Form III.

2. Every Councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party who takes his seat in the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, in Panchayat Samiti, after the commencement of these rules shall, before taking his seat in the Municipal Corporation, Municipal Council, Zilla Parishad or" as the case may be, Panchayat Samiti, deposit with the Commissioner or, as the case may be, Collector his election certificate or, as the case may be, a certified copy of the notification nominate him as a member and also furnish to him a statement of particulars and declaration in Form III.

5. Register of information as to Councillors or members:

1. The Commissioner in the case of a councillor of a Municipal Corporation and the Collector, in the case of any other Councillor or member, shall maintain in Form IV, a register based on the information furnished under Rules 4 and 5 in relation to the councillor of a municipal party, Zilla Parishad party or, as the case may be, member of a Panchayat Samiti party.

2 The information in relation to each councillor in respect of a municipal party, a Zilla Parishad party and in relation to each member in respect of a Panchayat Samiti party shall be recorded on a separate page in the register.

7. In order to hold the Councillor disqualified within meaning of provisions of the Act of 1986 what is required to be established is that there is formation of Aghadi

or front within contemplation of Section 2(a) of the Act and that there is municipal party within contemplation of Section 2(i) of the Act and that the Councillor belonging to a political party or aghadi or front votes or abstains from voting contrary to the directions issued by political party or aghadi or front to which he belongs. Issuance of directions by political party or aghadi presupposes a person vested with authority to issue such directions on behalf of a political party, aghadi or front. The rules framed under the Act lay down a procedure in respect of registration of the Aghadi giving all the information in respect of constitution or rules of such Aghadi with the Collector, furnishing for information by each of the Councillors in prescribed form with the Collector and furnishing of information by the group leader or President/Chairman of the Aghadi or front with the Collector in prescribed form along with the constitution or rules of the Aghadi. The relevant provisions are quoted in the preceding part of the judgment.

8. Contentions raised by the Petitioners that there was no prepoll Aghadi nor there was any meeting held for formation of such Aghadi or that the Petitioners were never participants of such Aghadi has been seriously controverted by the Respondent. A voluminous record is available to disprove the contentions raised by the Petitioners in respect of non-formation of Aghadi and the objection raised by them in respect of Respondent Mr. Manoj Biyani not being the group leader or President of the Aghadi. Although the Petitioners have been declared elected as the independent candidate and the certificate issued by State Election Commission makes a reference in that behalf, it is not sufficient to disprove the factum of formation of Aghadi and the Petitioner being the member of such Aghadi. In spite of the communication placed on record in respect of withdrawal of proposal for formation of Aghadi by Mr. Manoj Biyani by tender letter dt. 22-11-2006, there is ample evidence placed on record in respect of existence of Aghadi and the acts committed by the Petitioners herein in their capacity as the members of the said Aghadi. It does appear that there was a prepoll decision in respect of formation of Aghadi and in pursuance to such decision the Aghadi has set up candidates at the elections. Nomination papers tendered by the individual Petitioners make a reference to the fact that they have been set up as the candidates belonging to Shahar Bachav Aghadi. There is specific mention/declaration signed by the Petitioners annexed to the nomination paper wherein it has been recorded that each individual candidate is set up by the Shahar Bachav Aghadi. Nomination papers are also accompanied with A B form whereby the candidature of the individual Petitioners as a member of the Aghadi with a view to contest the elections to the Municipal Council has been approved by the Aghadi. One Sunil Neve, Secretary of the Aghadi has signed AB form and the name of the President of the Aghadi is mentioned as Manoj Biyani. All the candidates of the Aghadi tendered a joint application to the Returning Officer requesting for allotment of common symbol in their favour. The application was tendered on 28-10-2006. The State Election Commission also accorded approval to Shahar Bachav Aghadi, Bhusawal as a political party for the purpose of elections to the Municipal Council. Communication in that behalf has been issued

by the State Election Commissioner on 19-12-2006. Thus, an inference can safely be drawn that there is registered municipal party in accordance with the provisions of the Act of 1986. After declaration of the results, a group of 29 Councillors, one Mr. Salim Khan joining the group at latter stage, lodged the constitution of the Aghadi with the Collector as required under Rules of 1987. The constitution lodged with the Collector is signed by all the elected members of the Aghadi including the Petitioners herein. In the constitution lodged with the Collector, it has been specifically mentioned that Mr. Manoj Biyani would be the President of the Aghadi and would be entitled to issue party directives/whip with a view to streamline the voting pattern by each of the individual members of the Aghadi. It is also made clear in the constitution itself that the whip issued by the President i.e Mr. Manoj Biyani would be binding on all the members of the Aghadi and further the President has also been authorised to conduct and lodge proceeding under the provisions of the Act of 1986 and the Rules of 1987 in the matters of initiating action for disqualification of the elected representatives belonging to the Aghadi for violating party directives. The constitution of the Aghadi was lodged with the Collector immediately after holding of elections, original of which is signed by each of the members. Apart from this aspect there is sworn affidavit by each of the members of the Aghadi including all the Petitioners wherein it has been admitted that they are the members of Shahar Bachav Aghadi and they would abide by the directives by the President and in the event of violation of any of the directives they would be liable to be proceeded under the Act of 1986 and Rules of 1987. The sworn affidavits are dt. 30-10-2006. Each individual member of the Aghadi including the Petitioners herein tendered declaration in Form IV under Rule 5(1) of the Rules of 1987 declaring themselves as the members of the Shahar Bachav Aghadi. The affidavits were lodged with the Collector on 21-11-2006 by each of the members of the Aghadi including all the Petitioners herein. The Group leader/President of the Aghadi also tendered information with the Collector under the prescribed form which has been entered into register maintained by the Collector wherein names of each individual Petitioners find place as the member of the Shahar Bachav Aghadi. It is contended that the proposal for registration of the Aghadi tendered by the President was withdrawn by him on 22-11-2006 and copy of the application tendered to the Collector is placed on record of the petition by the Petitioners with a view to contend that no such Aghadi has been registered with the Collector. learned Counsel for the Respondent has invited my attention to the letter issued by Collector on 10-1-2007 acknowledging receipt of the proposal in respect of formation of Shahar Bachav Aghadi. Letter issued by the Collector makes reference to the application dt. 22-11-2006 as well as subsequent applications dt. 2-12-2006 and 16-12-2006. It is contended by Respondents that letter was issued to the Collector inadvertently withdrawing the proposal tendered on 21-11-2006, however, the same was withdrawn on a subsequent date i.e. on 2-12-2006. The Collector has acted in pursuance to the letter of withdrawal by the President and registered the Aghadi. Apart from these aspects, each of the individual member signed the declaration as well as affidavit and

tendered such declaration/affidavit with the Collector. After formation of Aghadi necessary information has been recorded in the public record and such record and declaration signed by each of the individual candidate in respect of formation of Aghadi has not been challenged by any of the candidates since the year 2006 onwards. Apart from this there is ample record to indicate that each of the individual member has acted as an elected Councillor belonging to the Aghadi and has from time to time followed the directives of the Aghadi except in the instant case. It is also pointed out that one Mr. Ashok Maidsasani presented Writ Petition in the High Court of Bombay being Writ Petition No. 2938/2006 wherein the writ Petitioner in Writ Petition No. 9003/2010 was the party. In the reply tendered to the petition he has specifically admitted that he was duly elected Councillor of the Bhusawal Municipal Council belonging to Shahar Vikas Aghadi. It is admitted by him that he contested the election as member of said Aghadi which fact is even mentioned in the nomination paper. On the face of the affidavit tendered in the Writ Petition, it is not open for the concerned Petitioner to deny the contentions in respect of formation of Aghadi or he being the member of the Aghadi. Similarly, in Municipal Application Petition No. 10/2006 presented by one Dharmesh Nagarani against the Petitioner in Writ Petition No. 9003/2010 he has in terms admitted that he is the Councillor elected to the Municipal Council as a candidate set up by Shahar Vikas Aghadi. Similar is the case in respect of the other Petitioners. It has also come on record that in the year 2006 while electing the President of the Municipal Council during the first 21/2 years tenure, Respondent Manoj Biyani issued directive/whip to vote for the candidate set up by the Aghadi and each of the Petitioners obeyed the directives and cast vote accordingly. In view of voluminous record in respect of formation of the prepoll Aghadi and Respondent Manoj Biyani being the President of the Aghadi, there is no force in the objection raised by the Petitioners in that behalf.

9. Another objection raised is in respect of authority to issue whip and receipt of whip/directive by each of the Petitioners. As stated above, Shahar Bachav Aghadi is duly registered with the Collector and there is evidence placed on record in that regard. The constitution of the Aghadi which is lodged with the Collector makes a specific reference that Mr. Manoj Biyani would be the President of the Aghadi and would be authorised to issue whip. The constitution lodged with the Collector is signed by each of the Councillors and as such they cannot claim any ignorance in respect of contents thereof. Thus, it cannot be disputed that Mr. Manoj Biyani is the President/Group Leader of the Aghadi and has authority to issue whip. It is contended by the Respondents that the whip was sent to each of the Petitioners and all other members of the Aghadi by registered post as well as under the certificate of posting. The communication is sent on the registered address furnished by each of the members with the Collector while presenting declaration in the prescribed form as contemplated by Rules of 1987. Thus, it is contended that there is presumption in respect of receipt once it is shown that the communication is transmitted on the registered address. Letters sent by registered post in case of some of the Councillors have not been claimed by them

as such the packets containing the registered letter were received back. In case of one Khan Salim /Petitioner before this Court in Writ Petition No. 9350/2010, he refused to accept the communication dt. 20-5-2009 whereas intimation in respect of communication was posted to him on 15-6-2009. In case of Petitioner in Writ Petition No. 8998/2010, communication dt. 20-5-2009 was accepted by one of the family members Smt. Ashabi Qureshi. In case of Petitioner in Writ Petition No. 8937/2010, communication dt. 20-5-2010 was received by her husband and communication dt. 15-6-2009 in respect of whip was received by herself. In case of Petitioner in Writ Petition No. 8985/2010, the communication dt. 20-5-2009 is received by one Lalit Mehethe on his behalf. It is not necessary to go into the factual details in case of each of the Petitioners. The fact remains that either some of the Petitioners refused to accept the intimation or in spite of gaining information did not claim the packets containing the whip. The Collector has drawn inference that the whip is duly communicated to each of the Councillors. Apart from the postal communication of the directives, Respondent Manoj Biyani has caused the whip published in the local newspaper on number of occasions. There was publication in Daily Lokmat in respect of the directives of the Aghadi to cast vote in favour of Smt. Sangita Biyani on 22-5-2009. In Daily Lokmat similar notification came to be published on 18-6-2009. In similar manner, directives issued by Respondent herein as a President of the Aghadi has been published in Daily Sakal on 20-6-2009. Thus, there is publication of the whip in local newspaper atleast on three different occasions. It is also stated by the Respondent that prior to commencement of the meeting the directives of the party were communicated to each of the Petitioners personally. Thus, there is ample evidence in respect of the party directives/whip being made known to each of the individual Councillor. Thus, requirement in respect of service of whip has been complied with. The Collector on the basis of the material placed before him has recorded finding based on appreciation of evidence that there is proper communication of whip issued by the Respondent and I do not find any infirmity therein. Finding recorded by the Collector in that behalf appears to be reasonable and proper and does not call for any interference in exercise of extra ordinary jurisdiction.

10. There is no dispute that the Petitioners herein have cast vote in favour of Mrs. Choudhari, a candidate set up by Nationalist Congress party. Thus, the requirement of law that each of the individual Councillor casting vote contrary to the directives of the party has been established. Thus, there does not appear to be any error in the finding recorded by the Collector based on appreciation of evidence.

11. learned Counsel for the Respondent has extensively made reference to the evidence of three witnesses recorded by the Collector. It appears that out of 10 Petitioners before him, three Petitioners stepped into witness box and other Petitioners did not bother to step into the witness box. Mr. Shah, learned Senior Counsel appearing for the Respondent has brought to my notice certain admissions in the evidence of the Petitioners. In view of the reasons recorded

above, I do not propose to advert to the oral evidence of the Petitioners as I have already recorded finding that the decision rendered by the Collector and conclusion drawn by him based on appreciation of evidence placed on record does not appear to be improbable warranting interference in exercise of extra ordinary jurisdiction by this Court.

12. Mr. Dhorde, learned Counsel for the Petitioners in Writ Petition Nos. 3003/2010, 8998/2010 and 9007/2010 has made grievance in respect of non-observance of principles of natural justice. It is contended that the application before the Collector was posted for tendering written arguments on 29-6-2010. However, thereafter there is an endorsement in the roznama filed in Writ Petition No. 9003/2010 that on 13-8-2010 the Collector heard arguments of the counsel for the Petitioner. There is an endorsement that the Respondent or his counsel were absent and the matter was straight way prescribed for rendering decision. It is contended that the District Collector was transferred and he left the charge on 1-7-2010. The incumbent of the office did not issue notice of hearing to the concerned writ Petitioner/Respondent before the Collector and proceeded to hear the arguments of the applicant before him in the absence of the writ Petitioner. It is contended that no opportunity of hearing was extended by the Collector who rendered decision in the matter and he straightway proceeded to pass the order on 23-9-2010. Mr. Shah, learned Senior Counsel appearing for the Respondent has brought to my notice that the written notes of arguments were submitted by Mr. Wani, learned Counsel appearing for the concerned writ Petitioner before the Collector on 29-6-2010. He has also brought to my notice communication issued by Collector to Mr. Wani, learned Counsel for the writ Petitioners in all the three petitions, dt. 10-8-2010 intimating him the date of hearing prescribed in the matter. There was an intimation posted to concerned counsel appearing in the matter in other petitions which were also dealt with by the Collector simultaneously. Respective counsel appearing in other petitions Mr. Jangale and Mr. Gamot caused their appearance and argued the matter before the Collector. However, learned Counsel for the Petitioners in these three petitions chose to remain absent. The Collector heard the arguments of the concerned parties in other matters and proceeded to render decision. It cannot be said that the Collector has proceeded to decide the matter without observing the principles of natural justice. The fact, however, remains that the written argument submitted by each of the writ Petitioners were already on record and on consideration of the same, the Collector has proceeded to decide the matter. It is contended by learned Counsel for the Respondent that while applying the principles of natural justice it must be taken into account that they are not immutable but flexible and have to be viewed in the facts and circumstances of the case and cannot be put in strait jacket formula. It is contended that there is no prejudice shown to have been caused. Apart from the fact that in spite of intimation given to the counsel representing the concerned Petitioners, no oral arguments were advanced. However, the fact remains that the written arguments were already presented to the Collector and those were placed on record. Similar objections raised in the

other petition touching merit of controversy were also considered by Collector. Arguments advanced in the identical matters were considered by the Collector and the decision is rendered. Reliance is placed on the judgment in the matter of Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, . The argument advanced in the matter in respect of non-observance of the principles of natural justice has been considered by the Apex Court. It would be appropriate to refer to the following paragraphs of the judgment:

19. Shri Sen has next contended that there has been violation of principles of natural justice inasmuch as in disregard of the provisions of Rule 7(3)(b) of the Disqualification Rules which provides for the comments being forwarded by the member concerned to the Speaker within a period of seven days of the receipt of the copy of the petition and annexure thereto; the Appellants were given only two days" time to file their reply to the petition. Shri Sen has urged that there has been violation of the principles of natural justice also for the reason that in the impugned order the speaker has referred to certain extraneous materials and circumstances, namely, the copies of the newspapers that were produced by Dr. Jhalmi at the time of hearing and the talks which the Speaker had with the Governor. Another grievance raised by Shri Sen was that the Appellants were denied the opportunity to adduce their evidence before the Speaker passed in the impugned order.

20. Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean "fair play in action". (See: Maneka Gandhi v. Union of India, Bhagwati, J.) As laid down by this Court: "They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" (Union of India v. Tulsiram Patel). An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible", and they are not cast in a rigid mould and they cannot be put in a legal straitjacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

21 The approach of the English Courts has been thus summed up by Prof. Wade:

The judges, anxious as always to preserve some freedom of man oeuvre ,emphasise that "it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter. "The so-called rules of natural justice are not engraved on tablets of stone". Their application resting as it does upon

statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. "In the application of the concept of fair play there must be real flexibility". There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice.

(H.W.R. Wade: Administrative Law, 6th Edn., p. 530) Similarly Clive Lewis has stated:

The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the Courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief.

The Courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing."

(Clive Lewis: Judicial Remedies in Public Law (1992) p. 290)

In the words of Lord Wilberforce:

"A breach of procedure, whether called a failure of natural justice, or an essential administrative, cannot give him remedy in the Courts, unless behind it there is something of substance which has been lost by the failure. The Court does not act in vain." (Malloch v. Aberdeen Corpn. All ER 1294)

22. The approach of the Courts in India is no different. In A.M. Allison v. B.L. Sen, it has been laid down that while exercising the jurisdiction under Article 226 of the Constitution the High Court has power to refuse the writs if it was satisfied that there has been no failure of justice.

23. The grievance of the Appellants regarding violation of the principles of natural justice has to be considered in this light.

Thus, in the facts and circumstances of the case, the argument advanced by learned Counsel for the Petitioners in aforesaid three writ petitions in respect of non-observance of principles of natural justice and the order having been vitiated on that count is not acceptable.

13. Reliance is also placed on a judgment in the matter of Sadashiv H. Patil Vs. Vithal D. Teke and Others, . It is contended that the finding as to disqualification has a serious consequence of unseating the elected representative and therefore rigorous compliance of the provisions of the Act and Rules is expected. Paragraph No. 14 of the judgment is relevant for consideration.

14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in

accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference u/s 7 of the Act.

In the instant matter the Collector has considered all the relevant aspects of the matter and has recorded his finding based on the material placed on record before him. All the requirements for holding the Petitioners disqualified have been satisfied and as such I do not feel it expedient to cause any interference in the findings recorded by the Collector.

14. learned Counsel for the Respondent has invited my attention to a Division Bench judgment in the matter of Narsingrao Gurunath Patil and Others Vs. Arun Gujarathi, Speaker and Others, . It is contended that the legislative intent of bringing the enactment is to be given effect and the interpretation of the provision has to be put with a view to achieve the objective of legislature and to eliminate the mischief. The anti-defection law has been brought into effect with a view to defeat the unprincipled defection which is branded as political and social evil. Observations of the Division Bench recorded in paragraph Nos. 51 and 51A of the judgment are apt to be quoted:

51. The avowed object of the Tenth Schedule is to discourage unprincipled defection which is political and social evil. The interpreting the Tenth Schedule, we should bear in mind the principles in Haydon's case as applied in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, : (at page 674):

"(22) It is a sound rule of construction of a statute firmly established in England as far back as 1584 when (Heydon's)37, case 1584(3) Co. Reb. 7a(V) was decided that:

"...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st: What was the common law before the making of the Act. 2nd: What was the mischief and defect for which the common law did not provide.

3rd: What remedy the Parliament hath resolved and appointed to cure the disease of the common wealth, and

4th: The true reason of the remedy; and then the office of all the Judges is always to make such construction a shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and "pro privato commodo" and to add force and life to the cure and

remedy, according to the true intent of the makers of the Act, "pro bono publico".

51 A. It is clear that the evil which was sought to be remedied by the Parliament was the one resulting from widespread practice of unprincipled floor crossing by the legislators. This evil was sought to be remedied by inserting the Tenth schedule in the Constitution. The anti-defection law must be so interpreted as to eliminate the mischief rather than to promote it. If interpretation of para 2(1)(a) of the Tenth Schedule as suggested by the Petitioners Counsel is accepted it would virtually defeat the very object of the Tenth Schedule.

15. So far as Writ Petition No. 9350/2010 is concerned, it is contended by learned Counsel for the Petitioner that the Petitioner was not a candidate set up by the Aghadi and contested the election as an independent candidate. However, there is ample evidence placed on record to demonstrate that there was formation of Aghadi within meaning of Section 2(a) of the Act of 1986, the Aghadi was registered with the Collector, there was municipal party in relation to the Councillor belonging to the Aghadi which has been recognised by the Election Commission, the Aghadi having been registered, declaration has been lodged in prescribed proforma as contemplated by Rules of 1987 by the leader of the Aghadi, as per constitution of the Aghadi Respondent Manoj Biyani is the leader of the Aghadi and that he has issued the whip and further that the whip has not been observed by the Petitioner. The constitution presented with the Collector at the time of registration of the Aghadi bears the signatures of all the Councillors/ Petitioners herein including the Petitioner in Writ Petition No. 9350/2010. Not only that the concerned councillor has tendered declaration in form IV as contemplated by Rules of 1987 informing the Collector that he has joined the Aghadi. He has also tendered affidavit with the Collector in that regard. The list of the Councillors tendered by the leader of the Aghadi includes the name of the Petitioner so also the entry in respect of the Petitioner being the member of the Aghadi is recorded in the register maintained in the office of the Collector. Thus, there can be no dispute that the Petitioner was the member of the Aghadi and the directives issued by the leader are binding on him. The order passed by the Collector disqualifying the Petitioner in Writ Petition No. 9350/2010 does not appear to be erroneous. There is no reason to cause interference in the order passed by the Collector.

16. One of the Councillors/Petitioner in Writ Petition No. 9006/2010 was not present at the meeting. It is thus contended that his abstention cannot be a ground for disqualification and specially when, according to the Petitioner, the procedure laid down in Rule 3(5) of the Rules of 1987 has not been followed. It is to be noted that the abstention is a ground incorporated in Section 3 of the Act for declaring the councillor disqualified. There is evidence to the effect that the concerned Petitioner is a member of Aghadi and in spite of service of whip he has abstained from recording his vote. Abstention of the Petitioner has not been condoned by the leader of the Aghadi and as such there is no reason to cause

any interference in the order passed by the Collector holding him disqualified to continue as the councillor of the Municipal Council.

17. For the reason recorded above, I am of the view that no interference is required to be caused in the order passed by the Collector in each of the petitions. All the petitions are devoid of merit and therefore stand dismissed. Rule discharged. In the facts and circumstances of the case, there shall be no order as to costs.

18. Pending civil application, if any, does not survive and stands disposed of.

19. Learned Counsel appearing for the Petitioners request for grant of stay of operation of the order passed by the Collector. However, considering the facts and circumstances of the case, I am of the opinion that the order passed by the Collector need not be stayed. The request made in that behalf stands refused.