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**(2014) 05 BOM CK 0083**

**In the Bombay High Court**

**Case No : Writ Petition No. 5247 of 2012**

Shobha Dipak Behde

APPELLANT

Vs

Umakant Reva Fegade and Others

RESPONDENT

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**Date of Decision : 09-05-2014**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 6  
Maharashtra Local Authority Members Disqualification Act, 1986 — Section 2(a), 3(2), 5, 9  
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 62, 63, 63 (2B), 63(2B), 65(4)(c)

**Citation : (2014) 6 ABR 199 : (2014) 5 BomCR 580**

**Hon'ble Judges : S.P. Deshmukh, J**

**Bench : Single Bench**

**Advocate :** P.M. Shah, Senior Advocate, Mr. A.N. Sabnis and Mr. S.P. Shah, Advocate for the Appellant; D.B. Bhangre, AGP for State, Mr. V.J. Dixit, Senior Advocate for Respondents No. 1, 2, 3, 5, 6 to 8, 9, 10, Mr. A.B. Girase, Advocate for Respondents No. 1, 3, 6 to 8, 10, Mr. Y.B. Bokar, Advocate for Respondents No. 2, 5, 9 and Mr. D.S. Bagul, Advocate for Respondent No. 11, Advocate for the Respondent

**Final Decision : Dismissed**

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## Judgement

S.P. Deshmukh, J.—Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The matter was heard and Mr. Girase learned counsel appearing for respondents no. 1, 3, 6 to 8 and 10 submitted that he would furnish written notes of arguments along with authorities and a brief synopsis with index. The matter was initially reserved for judgment on 26-02-2014. On 04-04-2014, Mr. Girase sought time for aforesaid purpose. On 23-04-2014, parties were heard again for quite some time in the matter. Then as well, Mr. Girase sought time for the purpose referred to hereinbefore. The matter as such was reserved for judgment. Subsequently, Mr. Girase submitted written notes of arguments on

28-04-2014.

3. Petitioner questions propriety, legality and validity of order dated 30th April, 2012 passed in Disqualification Petition No. 26 of 2011 by the District Collector, Jalgaon and prays to quash and set aside said order under a writ of certiorari or any other appropriate writ, order or direction and consequently to allow said disqualification petition with a declaration that respondents No. 1 to 10 stand disqualified u/s 3(2) of Maharashtra Local Authorities Members' Disqualification Act, 1986 (herein after for the sake of brevity will be referred to as "MLAMD Act").

4. Results of elections to Municipal Council, Yawal were declared on 12-12-2011. Respondents No. 1 to 10 were elected as members to said Municipal Council, as independent candidates in status. Membership strength of various parties and candidates in said elections of Municipal Council, Yawal, was as follows:

5. Upon declaration of election results on 12-12-2011, on the very day, ten out of eleven independent councillors convened a meeting for formation of "Aghadi" referred to as "Yawal Shahar Vikas Aghadi" (hereinafter will be referred to as "the Aghadi" for brevity). It was resolved in said meeting to get the Aghadi registered. Respondent No. 1 was chosen as leader of the Aghadi. It was also resolved to frame rules to regulate functioning of the Aghadi and respondent No. 1 was authorized for registration of the Aghadi. Constitution of the Aghadi, signed by all the ten independent councillors was presented to the District Collector, Jalgaon. A letter was addressed to the collector by respondent No. 1 for registration of the Aghadi and the other independent councillors forming the Aghadi addressed letters to the collector requesting registration of their names as members of said Aghadi. A separate declaration was given by every independent councillor of the Aghadi in prescribed form No. 3 on 13-12-2011 referring to their affiliation to "Yawal Shahar Vikas Aghadi". The declaration had been submitted by respondent No. 1 as leader of the Aghadi in form No. 1 referring to names of said ten independent councillors.

6. The petitioner had filed disqualification petition on 22-12-2011 against respondents No. 1 to 10 with reference to section 3(2) of the MLAMD Act, contending it prohibits joining any political party or Aghadi subsequent to elections by such councillors.

7. The collector had issued notices to the respondents on 26-12-2011. The respondents appeared and had filed preliminary objections requesting dismissal of the disqualification petition pursuant to Rule 7(2) of the Maharashtra Local Authority Members Disqualification Rules, 1987. (Hereinafter, "the Rules")

8. In the disqualification petition it has been referred to that the petitioner had contested election of Municipal Council, Yawal and had been declared elected on 12-12-2011 as a councillor in Yawal Municipal Council of Khandesh Vikas Aghadi. It is contended that respondents No. 1 to 10 got elected as councillors in said Municipal Council as independent candidates and were never set up by any

aghadi or front referred to as Yawal Shahar Vikas Aghadi. Respondents No. 1 to 10 have filed affidavits declaring their affiliation to Yawal Shahar Vikas Aghadi and submitted applications accordingly to the District Collector, Jalgaon, for registration of the same under the provisions of MLAMD Act and Rules framed thereunder. Procedure for registration was followed as contemplated in MLAMD Rules, 1987. The applications had been submitted in prescribed form individually for treating them as members of said Yawal Shahar Vikas Aghadi. Reliance had been placed on the copies of certificates issued by Election Officer dated 12-12-2011 indicating that the respondents are elected as independent candidates. Respondents had submitted copy of Rules and Regulations of the Aghadi with the collector as well as a proceeding book. It was contended by the petitioner before the collector that section 3(2) of the MLAMD Act prohibits a person who is elected as independent councillor of a municipal council from joining any political party or Aghadi or front. Section 3(2) of MLAMD Act reads thus-

3(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.

9. It is contended that intention underlying prohibition is to avoid defection in political party or Aghadi or front. The respondents individually have got elected as independent councillors from their respective wards of the Municipal Council, and their such status is not amenable to change. Alteration or change in status is not only abhorred but is expressly prohibited under the provisions of MLAMD Act. By forming a post poll Aghadi by respondents No. 1 to 10 who have got themselves elected as independent candidates, they have contravened the provisions of MLAMD Act and the Rules framed thereunder. All the respondents No. 1 to 10 as such have incurred disqualification to be continued of councillors of Yawal Municipal Council.

10. According to the petitioner section 3(2) of MLAMD Act postulates that a person who is elected as independent councillor must retain that status throughout the tenure as a councillor. Formation of an Aghadi by respondents No. 1 to 10 being in violation of the provisions of MLAMD Act and the spirit underlying the same, disqualification has been incurred by the respondents. It has been contended that by their own act, the respondents have incurred ipso facto disqualification and as such have ceased to hold office of councillor in the Municipal Council. It was contended that as a matter of fact, under the circumstances, action ought to have been taken by the collector suo motu.

11. Respondents No. 1 to 10 have submitted their preliminary objections to the disqualification petition. It is submitted that said rules have been framed pursuant to section 9 of MLAMD Act and as such form part of the Act. As the Rules prescribe certain procedure for making provisions of MLAMD Act effective, non observance of the procedure should result into rejection of proceedings. Rule

7 of the MLAMD Rules makes compliance of the requirements of Rule 6 mandatory and its non compliance entails dismissal. Looking at the drastic penal consequences flowing from disqualification and its repercussion on the functioning of the local government, the provisions of the Act and the Rules have to be adhered to. As such while approaching an authority seeking disqualification of elected councillors, rigorous compliance of the provisions of the Act and Rules must be shown.

12. It is the contention of the respondents that the contents of the disqualification petition do not disclose personal satisfaction of the petitioner that there are reasonable grounds to believe that a question has arisen as to whether respondents have incurred disqualification by formation of post poll Aghadi. Only documents have been referred to. The petition cannot be entertained for, the petition is not signed by the petitioner and she had not verified the same on oath. Statements and verification in respect of personal knowledge as required on the face of it are incorrect as can be gathered from contents of the petition and the annexures. Affidavit is a mere mechanical repetition of the petition, it does not show that there is personal application of mind. No affidavit of pleading has been filed pursuant to sub rule (4) of Order VI of the CPC and the petition and the annexures are not properly verified as required under Rule 15 of the same.

13. On 30th April, 2012, the collector dismissed the disqualification petition, taking into account second proviso to section 63(2B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter for brevity referred to as "Municipal Councils Act") which has been inserted in the year 2006.

14. The collector, in his order has referred to that he has scrutinized the petition and affidavits and verified the documents filed along with the petition and got himself satisfied. He found that the election petition had been submitted properly and there is compliance of the requirements of the Rules, and the petition has been filed in accordance with rules.

15. The collector, on taking into account the contentions and pleadings of the parties, has considered that the respondents have been elected as independent councillors and said elected councillors without joining any party have on their own formed an Aghadi. The Aghadi is registered. Such an Aghadi can be formed by candidates under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. He has referred to the amendments of 2006 under Maharashtra Act No. 36 dated 13th December, 2006, particularly Maharashtra Act No. 40 with reference to amendment of section 63(2B) and has rejected the disqualification petition. As such the petitioner is before this Court.

16. Mr. P.M. Shah, learned senior advocate contends that as no affidavit in reply has been filed, rule of non traverse be taken recourse to. He refers to Director of Income Tax Vs. Bombay Bullion Association Dharam No Kanto Trust, and 2007

(5) SCALE 589 "M. Venkataraman Hebbar (D) by L.Rs. Vs. M. Rajgopal Hebbar & Others", to take recourse to doctrine of non-traverse.

17. He submits that each and every member of Aghadi has accepted formation of the Aghadi after declaration of results. He refers to certain contents of its Rules and Regulations which read thus-

18. He contends that constitution, rules and regulations of the Yawal Shahar Vikas Aghadi nowhere specify nor there is any indication that formation of Aghadi is with reference to second proviso to section 63(2B) of the Maharashtra Municipal Councils, Nagar Panchayats, Industrial Townships Act. He submits that as a matter of fact the rules and regulations and the constitution are, and respondents No. 1 to 10 have applied for registration of said Aghadi specifically with reference to the provisions of MLAMD Act and Rules framed thereunder.

19. It is contended by Mr. Shah that by formation of Aghadi after elections each and every member has lost status as an independent candidate as there is total fusion of independently elected councillors into a single unit with the formation of Yawal Shahar Vikas Aghadi, Yawal. Members of newly formed Aghadi had not been to the electorate for votes in their favour with a view to set up said Aghadi. The documents, which have been submitted and the Constitution and Rules and Regulations of the Aghadi unequivocally show that said Aghadi is pursuant to the provisions of MLAMD Act and Rules framed thereunder and is not at all formed for the purpose of second proviso to section 63(2B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act in order to secure proportionate representation in making nomination. It is contended that formation of Aghadi for the purpose of section 31A of the Maharashtra Municipal Corporations Act is irrelevant and inconsequential. It is submitted that under the amendments to legislative scheme, elections are out of the provisions of Section 65(4)(c) read with section 63(2B) of the Municipal Act, 1965. On the amendments of the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, under Act No. 36 of 2006, the constitution of committees by election has been substituted by nomination and as such the procedure of holding election is excluded. Municipal Elections mean election of President,/Vice President and section 65(4)(c) does not contemplate holding of elections for subject committees.

20. It is submitted that MLAMD Act is known as Anti defection Act or Disqualification Act. It is structured on the line of Schedule X of the Constitution, and the principle generalia specialibus non derogant is applicable in present case. Municipal law is a law relating to administration of the municipal council. He submits that section 63 falls in Chapter III, which deals with duties and functions and administration of council. While dealing with limited issue of making nominations on the subjects committee, provision under consideration has been inserted and which is not in the form of any substantive provision and anatomically has been placed as a second proviso. As such purposive meaning should be given having regard to object and purpose sought to be achieved i.e.

proportionate representation in the process of nominations and nothing more. He submits that a provision of law is to be interpreted in the way which would not render the provision or statute redundant, taking into account the doctrine of redundancy. He contends that the text and contents of second proviso to section 63(2B) and the interpretation as has been sought to be placed on the same reduces provisions of section 3(2) about disqualification to a dead letter and the principal rule of interpretation of statutes about harmonious construction has been ignored. He submits that the purpose of proviso to accept something out of the enactment or to qualify something enacted by proviso to section cannot be read to import into enacting something for which the Act is not enacted. As such proviso would not be able travel beyond the provision to which it is a proviso. He submits that if interpretation as is appearing in the impugned order is accepted, the entire Disqualification Act would be rendered meaningless and has the effect of it being redundant.

21. Learned senior advocate refers to the statement of objects and reasons to MLAMD Act, which read as under-

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. Thus, even 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.

22. He submits that a limited purpose for formation of post poll Aghadi is to secure better representation in various categories of committees specified u/s 63. By non-obstante clause and the text "for the purpose of"..... "under this Act"..... show limited purpose of the operation of the provision. Sections 62 and 63 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act deal with constitution of committees and cannot be read to mean to destroy the substantive legislation i.e. the Disqualification Act. The proviso cannot operate as a provision repealing a special enactment dealing with a special subject i.e. MLAMD Act. Formation of Aghadi cannot be deemed to be a merger of component parties or individual members as the one as contemplated u/s 5 of the Disqualification Act.

23. He proposes to rely on the statement appended to the ordinance amending provisions of Bombay Provincial Municipal Corporations Act for the purpose is to nominate members of the committees in proportion to the strength of political

parties or group in the Corporation. He lays emphasis on that the purpose is to have proper representation which would not have otherwise been possible on account of less number of members. Dominant purpose underlying the amendment to section 63(2B) is to enable the political parties/groups to have proportionate representation on the committees. As such, the proviso will have to be read in that light and formation of post poll aghadi, if it has to arrest the disqualification being incurred pursuant to the provisions of MLAMD Act, has to be with reference to the same.

24. He refers to Vasant Nivrutti Gite and Another Vs. The Municipal Corporation of City of Nashik and Others, . Paragraph No. 5 of said judgment reads as under-

5. The first issue that will have to be decided is the interpretation of sub-section (2) of section 31A of the Ordinance with the provisos. A reading of sub-section makes it clear that for nominating Councillors on the committee, the Corporation shall take into account relative strength of the recognized parties or registered parties or groups and nominate members as may be in proportion to the strength of such parties or groups in the Corporation after consulting the leader of the house, the leader of the opposition and the Leader of each such party or group. In other words, the representation on the standing committee is in the nature of proportional representation, proportionate to the number of seats held in the Corporation. The relative strength which has to be considered is of the recognized parties or registered parties or groups. The groups of Aghadis for the purpose of this subsection are as set out in proviso (2). It is open to the recognized 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, recognized or registered political parties can also come together. They can also come together within independent 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 committee. There can be different permutations and combinations. It is therefore open to the various parties as well as independents to come together.

The statement appended to the Ordinance reads as under:

3. To ensure that all the recognized 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 or groups in the Corporation.

The first Proviso to section 31 A (2) of the Ordinance sets out that nothing

contained in this sub-section be construed as preventing the Corporation from nominating on the Committee any member not belonging to any such party or group. In other words if the recognized, registered political party or Aghadi if it cannot be represented on account of less number of members, their members can also be nominated on the Committee.

25. Mr. Shah further relies on a judgment reported in *Ajay Maken Vs. Adesh Kumar Gupta and Another*, for the purpose of interpretation of the provisions particularly with reference to paragraph No. 14 therein which reads thus-

14. It is pointed out by this Court in *RBI V. Peerless General Finance and Investment Co. Ltd.*,

33. Interpretation must depend on the text and the context.... 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.

Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J, such an approach would be "to see the skin and miss the soul". Whereas, "The judicial key to construction is the composite perception of the deha and the dehi of the provision.

26. He, therefore, passionately submits to consider that formation of Aghadi being post poll not with reference to section 63(2B) of the Municipal Councils Act, disqualification is incurred by the respondents under MLAMD Act, a special statute, which would have precedence over second proviso to section 63(2B).

27. He also relies on *Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti and Others*, and with reference to paragraph No. 9 and contends that if language of the enacting part of the statute does not contain the provisions which are said to occur in it, one cannot derive these provisions by implication from a proviso. Normally, a proviso does not travel beyond the provision to which it is a proviso. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

28. He further relies on a judgment reported in *Afjal Imam Vs. State of Bihar and Others*, to approach for an interpretation as has been held by the Supreme Court in said judgment particularly with reference to paragraph No. 51 thereof, which reads thus:-

The correct approach towards interpretation

51. What should be then the approach towards interpreting the provisions in such a situation? Guidance can be had from three passages quoted herein below:

(a) In *RBI V. Peerless General Finance and Investment Co., Ltd.*, O. Chinnappa Reddy, J. has observed as follows:

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 is 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 words 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. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in *Srinivasa* and we find no reason to depart from the court's construction.

(b) In *Union of India V. Filip Tiago De Gama of Vedem Vasco De Gama*, K. Jagannath Shetty, J. observed as follows:

16. The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of the enactment in question. That does mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes has wisely and properly warned (*Towne V. Eisner*, US at P.425) Learned Hand, J. was equally emphatic when he said; "Statutes should be construed not as theorems of Euclid, but with some imagination of the purposes which lie behind them."

(c) In "*Anwar Hasan Khan V. Mohd. Shafi*", R.P. Sethi J. quoted the above paragraph in *Filip Tiago De Gama* with approval prior whereeto he observed as follows:

8. It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and

adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a dead letter is not harmonious construction.

29. He submits that accordingly, if on true construction a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the legislature to amend and alter the law. But when on construction of a statute, two views are possible, one which results in an anomaly and the other not, it is the duty of the Court to adopt the latter. As such, he submits that with the basic purpose as that is underlying constitutional amendment which finds place in the Disqualification Act of the members of Parliament and legislative assemblies, the MLAMD Act has been enacted by the State. An anomalous situation would arise where such an enactment incurring disqualification is sought to be given a go by. In the case of formation of Aghadi without reference to dominant purpose of section 63(2B) it be held that the respondents are disqualified by adopting the approach which will further the purpose of constitutional intention and the legislative intent on the lines of MLAMD Act, since purpose underlying the Municipal Councils Act is administration under the local self government.

30. Learned senior advocate, appearing for the petitioner relies on a judgment reported in 1997 (2) Mh.L.J. 759 "Pandurang Dagadu Parte V/s Ramchandra Baburao Hirve & Others". Respondents No. 1 to 9 in that case who were elected as Members of Mahabaleshwar Dewasthan Municipal Council, were proceeded against with reference to Section 3(2) of MLAMD Act. In said case, respondents No. 1 to 10 were not associated with any political party or Aghadi/front and were elected as independent candidates. Soon after the elections, respondents No. 1 to 9 formed themselves into an Aghadi/front referring itself to as "Mahabaleshwar Giristhan Nagar Parishad Shahar Vikas Aghadi." In said case as well, decision was taken to register Aghadi as per the provisions of MLAMD Act and a procedure for registration, pursuant to same had been followed. Petitioner in that case had taken objection and applied to the collector to disqualify respondents No. 1 to 9 as councillors as they had joined Aghadi post poll and had incurred disqualification. Division Bench in that case had considered statements of objects and the reasons for bringing about Constitution's amendment (fifty second) and reproduced prefatory note-Statements of Objects and Reasons. The amendment was sought to arrest evil of political defection as a matter of national concern, which undermines the very foundation of democracy. The amendment was incorporated in the Tenth Schedule of the Constitution of India and has been brought into effect from 1st March, 1985. Based on aforesaid amendment, the State of Maharashtra had promulgated the Act which incorporates similar provisions to this in the Constitution (Fifty Second Amendment), with minor modifications. It has been considered that it prevents independent members

from losing their character as such, and prohibits them from joining political party, aghadi or front. The Court had further considered that constitution of Aghadi by respondents No. 1 to 9 and their joining the same, abandoning their character of independent councillors, would squarely fall within the mischief of section 3(2) of MLAMD Act and considered that this interpretation is the only interpretation which would further the aims and object of the enactment. Taking into account aforesaid, dismissal by the Collector of the petition filed by the petitioner of disqualification petition against respondents No. 1 to 9 had been set aside and it was declared that the petition succeeds holding that respondents No. 1 to 9 had incurred disqualification u/s. 3(2) of MLAMD Act. The matter was carried to the Apex court. The Supreme Court dismissed the challenge to High Court's decision.

31. The case of Pandurang Dagadu Parte Vs. Ramchandra Baburao Hirve and Others, relied on is in respect of formation of aghadi before amendments to the Maharashtra Municipal Councils Act in 2006. These decisions have been rendered as per then subsisting provisions whereunder the application of MLAMD Act had not been arrested in respect of aghadis formed after elections. After 2006, however, application of MLAMD Act to aghadis being formed within one month after election is made inapplicable in respect of said period.

32. Mr. Shah refers to judgment reported in Jeevan Chandrabhan Idnani and Another Vs. Divisional Commissioner, Konkan Bhavan and Others, and tries to distinguish present case from the same. That was a case under the Bombay Provincial Municipal Corporation Act with reference to second proviso to Section 31A(2). Section 31-A (2) of said Act reads as under-

Section 31A of the Maharashtra Municipal Corporations Act, 1949. Appointment by nomination committees to be, by proportional representation.

(2) In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognized 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 Corporation, after consulting the Leader of the House, the Leader of Opposition and the leader of each such party or group;

Provided that, the relative strength of the recognized 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 recognized 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 recognized parties or registered parties or groups or aghadi or front. The seats shall be allotted to the recognized 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 recognized 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 recognized parties or registered parties or groups under this Act, the recognized parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, 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, 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 registered pre-poll aghadi or front.

If any question arises as regards the number of Councillors to be nominated on behalf of such party or groups, the decision of the Corporation shall be final.

33. In said case elections to the Corporation were held in February, 2007 and one independent councillor and another lone councillor belonging to Republican Party of India (G) joined hands with the councillors of Lok Bharati Party and formed a front/Aghadi immediately after the elections, availing the facility provided under the second proviso to section 31A(2) of the Bombay Provincial Municipal Corporations Act. However, respondents No. 6 to 13 in that case before the Supreme Court had quit Aghadi to form "Swatantar Aghadi" and had accordingly addressed a letter dated 23-02-2011 to the Divisional Commissioner to cause suitable changes in the records maintained under the Disqualification Act and Rules made thereunder. The Divisional Commissioner accepted the request. Challenging aforesaid, two councillors belonging to Lok Bharati Party had approached the Bombay High Court.

34. High Court had rejected aforesaid writ petition after examination of various provisions. It has considered appointment of four categories of committees specified u/s 31-A (1) of the Bombay Provincial Municipal Corporations Act which takes place at least more than once during tenure of the Corporator and therefore relative strength of recognized parties or registered parties or groups at the time of appointment whenever made would be relevant. The Supreme Court in that case had considered as under-

30. In substance, the High Court held that the interpretation of Section 31-A depends upon the tenor and scheme of the subordinate legislation. Such a principle of statutory construction is not normally resorted to save in the case of interpretation of an old enactment where the language is ambiguous. We are conscious of the fact that there is some difference of opinion on this principle but for the purpose of the present case we do not think it necessary to examine the proposition in detail as in our opinion the language of Section 31-A is too explicit to require any other external aid for the interpretation of the same. Subordinate legislation made by the executive in exercise of the powers delegated by the

legislature, at best, may reflect the understanding of the executive of the scope of the powers delegated. But there is no inherent guarantee that such an understanding is consistent with the true meaning and purport of the parent enactment.

31. Such variations of the relative strength of aghadis would have various legal consequences provided under the Disqualification Act. Depending upon the fact situation in a given case, the variation might result in the consequence of rendering some of the Councillors disqualified for continuing as Councillors. Section 31-A of the Municipal Corporation Act only enables the formation of an aghadi or front within a month from the date of the notification of the results of the election to the Municipal Corporation. To permit recognition of variations in the relative strength of the political parties beyond above mentioned period of one month would be plainly in violation of the language of the second proviso to Section 31-A.

35. Mr. Shah, trying to distinguish, submits that said ruling had been in a different context altogether and has been with respect to section 31-A of the Bombay Provincial Municipal Corporations Act and not with reference to Section 63(2B) and second proviso of Municipal Councils Act. Section 63(2B) will have to be considered on an independent platform which is having different background. He contends that intention of the legislature as has been considered by the Supreme Court in aforesaid citation would not be relevant consideration for amendment. Second proviso to section 63(2B) has a different significance and the ruling would not have any application in the present case. He submits that the amendment being carried out to the Municipal Councils Act is on a different background and with different intention.

36. A decision reported in Sri Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others, , has been relied on referring to paragraph No. 34 therein, which is reproduced herein below-

34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore, in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member

voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (sic it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.

And he submits that if it is found that the members are disqualified, their continuance even for a day would be illegal and unconstitutional and their holding office would also be illegal. He submits that the very object of enacting MLAMD Act would be frustrated if such a post poll aghadi is allowed to be formed without reference to its formation being pursuant to the second proviso to section 63 (2B) for consideration of relative strength of political parties or aghadi.

37. He further relies on paragraphs No. 43, 44 and 45 of said judgment and contends that no purpose would be served in the present case in remitting the matter to the authority concerned for, the facts are very clear and the Court must take a decision on the question of disqualification immediately. He further submits that similar is the case in present matter and more than two years have elapsed and as such expeditious decision by the Court is warranted for protection of constitutional scheme and Act.

38. A case reported in Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others, has been referred to on political propriety and morality. He, with reference to paragraphs No. 6 and 7 of said judgment submits that Tenth Schedule does not confer any discretion on the authority and its domain is only in ascertaining the relevant facts. Once the facts are gathered or placed to show that a member has done any such act which comes within the purview of sub-paragraph (1), (2) or (3) of paragraph 2 of the Tenth Schedule, the disqualification will be incurred and the authority will have to make a decision to that effect. He further submits that as in that case, in the present case as well it has clearly emerged that the respondents have contested elections as independent candidates and that they had formed Aghadi after elections, which is indisputable position. In such a case, they stand disqualified under the provisions of MLAMD act and there is no need to remit the matter to the collector for decision on the disqualification petition afresh.

39. He relies on Kedar Shashikant Deshpande Vs. Bhor Municipal Council and Others etc. etc., . This is the case wherein, according to him it is held that the

Court is not to investigate or enquire into any facts at all, but has to consider legal effect of the proved facts and legal effect of proved and admitted facts is that since the position is of respondents" being a post poll Aghadi they incurred disqualification pursuant to section 63(2B) of the MLAMD Act and as such it be decided by this Court without remitting the matter.

40. He further relies on Narsingrao Gurunath Patil and Others Vs. Arun Gujarathi, Speaker and Others, . This case has been relied for the purpose that in the present case, the position being indisputable, principles of natural justice and non observance thereof, if any, would hardly be of any effect and for the same it may not be sent back. He emphasizes that Court has to consider that natural justice is not unruly horse and no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against the form features and the fundamentals of such essential propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Referring to paragraphs No. 32 and 33 of said judgment he emphasizes that when on a question of fact there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement. Therefore, he contends that the matter may not be sent back and be decided by this Court.

41. So is the case of Writ Petition No. 8576 of 2010, Balaji Ganeshrao Bacchewar vs. Laxman Ganeshrao Tahkharwar decided by division bench of this court on 14-01-2011 as also Jagjit Singh Vs. State of Haryana and Others, , as well as Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, , are on similar lines, and he contends that it is essential to bear in mind the object of enacting the defection law also, namely to curb the menace of defection. The principles of natural justice cannot be placed in a straitjacket. These are flexible rules. Their applicability is determined on the facts of each case.

42. He relies on Sunil Supadu Mahajan Vs. Manoj Dayaram Choudhari and The Jalgaon City Municipal Corporation, particularly paragraph 35, therein which is a case relating to a Shiv Sena candidate joining after elections to Municipal Council to Nationalist Congress Party. This is not a case wherein formation of a post poll aghadi/front was involved as in the case in hand and as such, would hardly be helpful in the present case.

43. He further relies on Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, to contend that a procedural irregularity may not be able to undo the dominant purpose sought to be brought about under the statute.

44. He also relies on 2010 (6) Mh.L.J. 208 "Jitendra Himmat Biraris & Others V/s Kiran Gulabrao Patil and Others" to consider that this Court has held that provisions of Rule 7(2) are directory in nature and non compliance of section 7

cannot lead to automatic dismissal of the reference in order to emphasise that even if it is considered that there is some irregularity in procedure while deciding, it would not be necessary to send the same back for said purpose, for those are only as directory as has been held by the learned Single Judge of this Court in that case. He refers to that writ petition for alleged breach of non compliance of procedural aspects/irregularities, the order impugned had been challenged, however that challenge would not be sustained.

45. Mr. V.J. Dixit, learned senior advocate for the respondents-independent Councillors submits that the petition is wholly misconceived, for in any case, it is the contention of the petitioner herself with reference to ground 13 of the petition that the judgment is vitiated for non observance of principles of natural justice and the matter at the most can be said to be only heard on preliminary objections and instead of deciding the preliminary objection, the Collector has decided the disqualification petition itself. In such a case taking into account best case for the petitioner at the most the efficacy of the petition would be only to the extent of remitting the matter to the Collector again and the disqualification petition filed by the petitioner cannot be considered at all in the present petition. In any event, even if the Collector himself overrules the objections taken by the respondents, in such a case, the respondents are entitled to and are at liberty to contest on merits by filing substantive pleadings on merits of the case. He contends that the authorities relied on and the law as contended and submitted on behalf of the petitioner would not hold the field in the present case, for subsequent to said decisions/authorities, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act has been amended creating an access for formation of post poll Aghadi if formed within a period of one month from election results, which in this case is indisputable to be within prescribed period. The aghadi has acquired and is adorned with the character and status of a pre-poll Aghadi as under the provisions of MLAMD Act. In such a case, the very basis on which the petition as has been filed alleging that formation of Aghadi is post poll and as such is in breach of provisions of section 3(2) of the MLAMD Act is ill founded, is fragile and a friable ground.

46. It is contended by him that it is not the requirement of any of the provisions either under the MLAMD Act or for that matter under the proviso to section 63(2B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act that formation of aghadi shall be with reference to the same.

47. It is contended that the law does not obligate such a registration with the purpose as contended by the petitioner. The primary requirement is to have the aghadi registered within a period of one month irrespective of its purpose which was required to be considered while appointments are being made by nomination. By fiction of law, disqualification which otherwise would have been incurred, but for the second proviso to section 63(2B), if the conditions referred to under the proviso are satisfied, is precluded. In the present case, indisputably the formation has been within a period of one month. He, therefore, submits that

taking into account the decision referred to hereinabove and the observations therein in paragraph 14 it being held that the proviso would override the MLAMD Act may be under the Bombay Provincial Municipal Corporation Act, the amendment to Municipal Councils Act being same and similar and as such these observations would equally hold filed and apply to the present case.

48. Mr. Dixit submits, it is not the case of the petitioner that the Aghadi has been formed after the period stipulated/prescribed and referred to under the second proviso to section 63(2B) of the Maharashtra Municipal, Nagar Panchayats and Industrial Townships Act. As such even on merits, the petitioner has no case whatsoever. He submits that there is little substance in the submissions of Mr. Shah that taking into account the admitted position as is emerging should postulate that the facts represent that disqualification order of respondents is imminent. He submits that it cannot be said that the respondents have joined any political party, post poll. Taking into account aforesaid, it is submitted that the petition is devoid of any substance and deserves to be dismissed.

49. Mr. Dixit, learned senior advocate relies on paragraph No. 14 and 18 of the decision reported in 2012 (0) BCI 575 to contend that registration of Aghadi need not be for a specific purpose as has been submitted by the other side. That was the case wherein Division Bench had been dealing with the Aghadi/alliance had been recognized or registered for the purpose of MLAMD Act where Aghadi registered under proviso to section 31A of the Act was kept out of consideration. It was the case in the context of recognizing as leader of opposition and the observations have been made in the context of that.

50. The MLAMD Act is aimed at restricting, regulating, controlling and prohibiting defections and has its genesis in the growing tendency of people's representatives to defect after having been elected as a candidate set up by a party or aghadi or front. The act, however, makes exception to disqualification on the ground of defection in certain cases viz. merger of political party, aghadi or front with another political party, aghadi or front. The Act defines an 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 Act also provides for making rules for carrying out the purposes of the Act, inter alia, for maintenance of registers or other records as to the political parties, aghadis or fronts. Pursuant to said provisions, the Maharashtra Local Authority Members' Disqualification Rules, 1987 have been framed providing, inter alia, for furnishing information of a leader of a party, information of a councillor or a member, maintenance of registers and procedure to be followed in case of petitions for disqualification.

51. Central and basic thrust of Mr. Shah's argument is, an Aghadi as has been formed by the respondents has to have its purpose for deciding relative strength pursuant to second proviso to sub section (2B) of section 63 of the Municipal Act to avoid disqualification, for, otherwise such an Aghadi, ipso facto, incurs disqualification u/s 3(2) of the MLAMD Act. He refers to Section 63 and specially

to second proviso to sub-section (2B) of section 63 which reads:

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

(1).....

2(A) The meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presided over such meeting, have the same powers as the President of a Council, when presiding over a meeting of the Council has, but shall not have the right to vote.

2(B) In nominating the Councillors, the Collector shall take into account the relative strength of recognized 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, nothing contained in this sub-section shall be construed as preventing the Collector from nominating on the Committee, any member not belonging to any such party or group:

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this sub-section, 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, 1986, 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 pre-poll aghadi or front.

52. In the case of Jeevan Chandrabhan Idnani and Another Vs. Divisional Commissioner, Konkan Bhavan and Others, the Supreme Court has considered that once an aghadi is registered, by a legal fiction created under the proviso, such an aghadi is treated as if it were a pre-poll aghadi or front.

53. The Supreme Court, with reference to proviso to section 31-A(2) of the Maharashtra Municipal Corporation Act has considered that a later expression of the will of the sovereign in contrast to the stipulation as contained u/s 2(a) and 3(2) of the MLAMD Act, would enable the formation of post electoral aghadis or fronts. The provision disqualifying the councillor or members of such aghadi as per stipulations contained in sections 2(a) and 3(2) of the MLAMD Act would not be operative.

54. Looking at that Section 63(2B) has been inserted with an object to have proper representation for the councillors in the committees constituted under the Municipal Councils Act, it appears to have been considered expedient to amend the provisions for nomination of councillors on the committees in proportion to

the strength of political parties or groups in the councils. For achieving the same, it appears, a post-poll aghadi formed within one month from the date of notification of election results on registration is accorded status of pre-poll aghadi. The same cannot be obfuscated and deviated from for want of indication of purpose or object of formation of aghadi as is contended. The other contention of Mr. Shah is with regard to interpretation of statutes that on true construction of provisions, an anomaly results, the same would not arise in the present matter for, the legislature has granted protection to formation of aghadi within one month from the date of notification of election results on its registration.

55. The object of sub-section (2B) of Section 63 of the Municipal Councils Act being proper representation of registered parties, groups, in proportion of their strength and with a view to fulfill the same, the amendments have been carried out to section 63 for nomination to committees. For the purpose of having proper representations of constituent councillors it appears that an opportunity has been created and given to the councillors, parties, groups, aghadis or fronts in the absence of which, said object would have been hindered and difficult to be achieved.

56. The second proviso to sub-section (2B) of section 63 of Maharashtra Municipal Councils Act provides a room for formation of aghadi within a period of one month from the date of notification of election results and accords it status of a pre-poll aghadi on registration. For the purpose of deciding relative strength of the registered political parties, aghadi or front, such an aghadi is to be taken into consideration. The purpose is to consider an aghadi formed within a month from the date of notification of election results for deciding relative strength of the political parties, aghadi. Non-obstante clause under the second proviso suggests that the purpose is to arrest disqualification on formation of aghadi which gets status as accorded to it under the MLAMD Act if formed within a period of one month from the date of declaration of elections. The object of aghadi would not be restricted and limited only for calculation of relative strength of a political party.

57. Looking at that the provisions of the Municipal Councils Act creates access for formation of an aghadi within a month from the date of notification of the election results, the provisions of the MLAMD Act would apply to members of such aghadi or front as if it is a pre-poll aghadi or front whereunder the members of such aghadi or front would be considered to be a member of such aghadi before the date of notification of election results. Once it is deemed to be a pre-poll aghadi, section 3(2) of the MLAMD Act would not operate and would have no application.

58. While the proviso refers to registration under the provisions of the MLAMD Act of an aghadi formed within a period of one month from the date of notification of election results it does not require a specific reference of the purpose to be object for which aghadi had been formed.

59. The MLAMD Act and Rules do not require that registration of aghadi shall be with reference to purpose of decision of strength of registered political party, aghadi or front. It further will have to be considered that for that matter the second proviso to section 63(2B) of the Municipal Councils Act, does not obligate a reference to the purpose of formation of aghadi for deciding relative strength. None of the enactments or rules provide for disqualification of the councillors for absence of reference to aghadi being formed for the purpose of relative strength. While aghadi is being formed after the date of notification of election results and room and access being given to such formation, the proviso attaches a status to such aghadi on par with pre-poll aghadi. It has to be considered for the purpose of deciding relative strength, its formation will have to be construed accordingly as if it is a pre-poll aghadi. Rules in respect of registration of aghadi do not require, obligate or enjoin a duty to refer to that formation of aghadi is with reference to proviso to section 63 (2B) of the Act. Law does not obligate that the purpose of formation of aghadi has to be express and explicit and made known.

60. Section 63 (2B) and second proviso being later expression of the will of sovereign with employment of non obstante clause in the proviso precluding application of provisions of the MLAMD Act would prevent/arrest and stall the disqualification being incurred under the MLAMD Act for that limited period. On formation of aghadi and registration, the proviso gives protection from disqualification under the MLAMD Act.

61. In the absence of requirement and/or for that matter obligation that the aghadi shall have registration with reference to the purpose of deciding relative strength u/s 63 (2B) second proviso, it would not be that for want of reference to the same, members of aghadi shall incur disqualification even if it's formation is within a period of one month from the date of notification of election results and is registered as required.

62. In respect of contention that the MLAMD Act is a special enactment regarding disqualification or defection and is structured on the line of schedule X of the Constitution with reference to the principle of *generalia specialibus non derogant*, it will have to be considered that the legislature had enacted MLAMD Act referred to as the Special Act by the petitioner dealing with disqualifications, the presumption would not be that subsequent enactment, in the present case section 63(2B) along with provisos, is intended to interfere with the Special Act and even if it is considered inconsistent, it is capable of reasonable and sensible application without extending it further. As far as legislative competence is concerned, in its wisdom, the legislature of the State has considered, made its mind clear to preclude application of the provisions of the MLAMD Act in the case formation of aghadi being within one month from the date of notification of election results and it gives concession to formation of such aghadi and accords sanction as a pre-poll aghadi on registration. As such, said principle would seldom have application in the present set of circumstances.

63. As far as present matter is concerned, even if it is assumed that the intention

underlying the second proviso to subsection (2B) of section 63 is inconsistent or incompatible with the intention underlying the MLAMD Act, it is well settled that the provisions of statute apparently inconsistent with any provision in order to avoid repugnancy are to be construed so as to give effect to all the provisions. It has to be taken into account that if the legislature makes a special enactment in order to deal with a particular case and later makes a general act which includes the subject of the special act and is in conflict with the special act and if the legislature has in its mind the special act, the special act for the purpose as amended under the general act has to give way.

64. In the present case, the proviso saves the disqualification being incurred by councillors on formation of aghadi within a period of one month from date of notification of election results and accords a sanction to the same as a pre-poll aghadi on its registration pursuant to MLAMD Act and Rules. The object underlying the same is to bring about proper representation of parties, groups, aghadis which would not have been possible or would have been difficult in cases of some constituents of the council and thus a facility and opportunity of formation of aghadi is provided. It as such would be an exception.

65. In the present case, section 3(2) is on statute book since 1986 whereas amendments to section 63 in the form of sub-section (2B) and proviso have been brought in around 2006. In the present case, it is very clear that the legislature has taken into account the provisions of the MLAMD Act while carrying out amendment to section 63 and that it is a later will of the sovereign and as such the MLAMD Act should give way to the amendment to section 63 for the limited period referred to therein, that being the later will of the sovereign. For the reasons referred to above, it cannot be said that the second proviso tantamounts to repealing the special enactment.

66. It may be taken into account that by a legal fiction, an aghadi within a period of month subsequent to the notification of election results on registration has been accorded and adorned with status of pre-poll aghadi, an aghadi as has been referred to under the MLAMD Act.

67. Formation of post-poll aghadi within one month of notification of election results and its registration denotes that it is for the purpose of and would be required to be considered to be pursuant to second proviso to sub-section (2B) of section 63 of the Municipal Councils Act without necessity of explicit expression.

68. It is not that registration of an aghadi or its formation being taken cognizance of is possible in other way than under the MLAMD Rules, 1987. Even otherwise, the Supreme Court has considered that later expression of the will of the sovereign in contrast with the stipulation as contained under sections 2(a) and 3(2) of the Disqualification Act would enable formation of electoral aghadis or fronts. In the case before the Supreme Court, it was the registration of the aghadi which was being contested and the disqualification under the circumstances therein was being alleged to be tried separately. The Supreme

Court has already considered that the proviso categorically stipulates that such a formation of aghadi or front is possible notwithstanding anything contained in the Disqualification Act.

69. In the present case, the position is evident that the aghadi had been formed by the respondents within the prescribed period as provided under second proviso to section 63 (2B) of the Municipal Councils Act. It has been registered under the MLAMD Act. Once it is established that there is a registration of aghadi within one month and it is registered pursuant to the relevant enactment, the same would be considered a pre-poll aghadi for the purpose of calculation of relative strength of political parties, aghadis etc. as envisaged u/s 63(2B) of the Act.

70. There is no challenge to the registration of the aghadi and that on registration, it is required to be treated as pre-poll aghadi and as such, once it is being considered as pre-poll aghadi, section 3(2) of the MLAMD Act referred to hereinabove would not apply in the present case. It is not petitioner's case that the respondents have not registered themselves as aghadi and/or aghadi is not formed within a period of one month and as such, the grounds seeking their disqualification are untenable.

71. Since submissions have been advanced in respect of aforesaid extensively, the same are considered accordingly. If we consider the disqualification petition as has been submitted and for that matter the contents of the writ petition, it reveals that nowhere the disqualification is contended to be incurred for want of indication of purpose of formation of aghadi with reference to second proviso to sub-section (2B) of section 63 of the Municipal Councils Act.

72. Having regard to aforesaid and particularly to that the petitioner herself appears to have digressed from grounds viz. grounds no. 6 and 13 in the petition, requesting this court to take a decision in the matter of disqualification petition, specifically with reference to the authorities relied on, on her behalf, I do not think that the impugned orders passed by the Collector, Jalgaon can be faulted with.

73. Thus, taking into account that the legislature in its wisdom has deemed it appropriate to allow formation of aghadi subsequent to municipal election within a period of one month therefrom, on its registration under relevant Act, the aghadi so formed assumes, acquires and is adorned with status of pre-poll aghadi as is contemplated/envisaged under the Act. The proviso to sub-section (2B) of section 63 of the Act does not obligate such an aghadi to be registered with reference to its formation being only for the purpose of section 63.

74. As such, no interference is required under this petition in the order passed by the collector. Writ Petition stands dismissed with no order as to costs. Rule stands discharged.