

**(2017) 06 KAR CK 0126**  
**In the Karnataka High Court**  
**Case No : 108244 of 2016**

SMT. HEMALATA SUGURESH NAGALOTI

APPELLANT

Vs

DEPUTY COMMISSIONER, BAGALKOT DISTRICT & ORS.

RESPONDENT

**Date of Decision :** 29-06-2017

**Acts Referred:**

[Karnataka Local Authorities \(Prohibition of Defection\) Act, 1987](#),  
[Section 2\(6\)](#), [Section 3](#) - Definitions -  
Disqualification on the ground of defection

**Citation :** (2017) 06 KAR CK 0126

**Hon'ble Judges :** K.N. Phaneendra

**Bench :** SINGLE BENCH

**Advocate :** MALLIKARJUNSWAMY B. HIEMATH, K. VIDYAVATI, NAGARAJ C. KOLLOORI

## Judgement

1. These Writ Petitions are filed seeking quashing of the disqualification order passed by the respondent No.1-Deputy Commissioner of Bagalkot District in No. Kra/KamVi/Election /CR-41/2016-17 dated 19.09.2016.

2. I have heard the learned counsel for the petitioners and as well as the learned Additional Government Advocate for R1 and the learned counsel appearing for the respondent No.2 and also the third respondent. The undisputed facts, which emanate from the records are that the petitioners are the elected councilors of the City Municipal Council, Ilkal, in Bagalkot District from Ward No.13 and 24 respectively from the Indian Congress Party on 18.03.2013. They have been working as such the members of their party and councilors of the City Municipal Council, Ilkal. It is also undisputed fact that, during the year 2016 precisely on 11.03.2016 there was an election in the Municipal Council, Ilkal, for to elect Adhyaksha and Upadhyaksha and in that particular election it is alleged that the Congress Party has issued a Whip (direction) to all its elected members of the said Town Municipal Council to vote for one Vaddi Tejamma Sudhama, who stood for the post of Adhyaksha (President). It is alleged that, violating the said Whip the petitioners herein have voted against the party and not voted for the said

Vaddi Tejamma Sudhama. It is alleged that thereby they have violated the Whip issued by the Congress Party and thereby they were disqualified from the post of councilors of the said Town Municipal Council, Ilkal.

3. Making such allegations the President, District Congress Committee, the respondent No.2 Sri M.B. Soudagar, has lodged a complaint before the Deputy Commissioner to disqualify the petitioners from the membership of the Town Municipal Council, Ilkal under Section 3 of The Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (hereinafter referred to as "Act" for short). The Deputy Commissioner after registering a case in No.Kra/KamVi/Election/CR-41/2016-17 has in detail hold an enquiry and ultimately passed the impugned orders disqualifying the petitioners from the post of Councilors of Ilkal Town Municipal Council. The said order of the Deputy Commissioner is called in question on various grounds before this Court. The main grounds urged before this Court by the learned counsel for the petitioners are that: (i) There was no authority to the President, District Congress Committee to serve any whip on the petitioners, as the said power vests with the Congress Party as such and therefore the Whip issued itself is invalid;

(ii) The Whip alleged to have been issued, has not been duly served on the petitioners;

(iii) The Karnataka Local Authorities (Prohibition of Defection) Act, 1987, is not at all applicable if there is any split in the party itself as per Sec. 3(A) of the Act.

4. Before advertng to the above said grounds urged before this Court it is just and necessary to have a brief note with regard to the enquiry conducted by the Deputy Commissioner before passing the impugned order. It is seen that after issuing notices to the petitioners herein on the complaint lodged by the second respondent-Mr. M.B. Soudagar, the Deputy Commissioner has provided opportunity to the parties to file their objections and thereafter recorded the evidence of nine witnesses produced by the complainant examined as P.Ws.1 to 9 and there were 21 documents which are marked at Ex.P.1 to P.21 and Ex.C.1 to C.2(a). On the side of the respondent, Smt. Hemalatha Suguresh Nagaloti (one of the petitioner herein) examined as D.W.1.

5. After hearing the detailed arguments the Deputy Commissioner has held that the Whip issued by the District Congress Committee through its President is valid and it is duly served on the petitioners and inspite of that they have voted against the candidate named in the Whip and thereby the petitioners have violated the Whip and thereby they are liable for disqualification u/S 3 of the Act. Now this Court has to examine in the light of the above said facts and circumstances, whether the order of the Deputy Commissioner is in accordance with law and sustainable either on law or on facts.

6. The learned counsel for the petitioner strenuously contends before this Court that it is the Congress Party represented by its State President competent to issue any Whip or the said authority can be delegated to any of its subordinate

even to the District Congress Committee President in order to serve the Whip for a particular person or particular persons.

7. In this case the said order has not been passed by the party itself and the District Congress Committee President has not been proved to be authorized to issue the Whip and thereby the said Whip even alleged to have been served on the petitioners is invalid and without authority by the President, District Congress Committee. He further contended that there is no service of the said notice in accordance with law, there is no personal service of the said notice. Though the petitioners were very much available in the village the same appears to have been served by means of pasting the said notice on the doors of the house of the petitioners and it is also alleged that there was an attempt to serve the Whip in the presence of the Returning Officer who conducted the election, which was not valid and allowed by the Assistant Commissioner to serve the same. Therefore, there is no service of the said Whip on the petitioners.

8. Thirdly, he canvassed before this Court that even much earlier to the present scenario in the year 2014 itself there was a split in the Congress party so far it refers to the Town Municipal Council, Ilkal, Out of 15 elected Councilors, 5 Councilors had been rose against the said party and there was a proceeding in connection with the same before the Deputy Commissioner, Bagalkot in No. Ka.Sam: ELN/CR 70/ 2014-15 dated 22.12.2014. In the said proceedings, the petitioners and other three persons were sought to be disqualified under the said Act. However, vide orders 22.12.2014 the Deputy Commissioner has held that there was a split in the Congress Party and therefore the Defection Act is not applicable according to Sec. 3(A) of the Act. The said split once established the Defection Laws cannot be invoked against the petitioners. Therefore, it is argued that, the order passed by the learned Deputy Commissioner is invalid.

9. Countering the above said arguments the learned counsel for the respondent No.2 and also the learned Government Advocate have submitted that the President of Karnataka Pradesh Congress Committee (for short "KPCC") has in fact authorized the District Congress Committee (for short "DCC") President to issue whip to all the Congress Party Councilors to vote in favour of the candidate noted in the whip. The said order of the President of the KPCC has been communicated to the President of DCC by the General Secretary of the KPCC and in turn the District President has issued whip to the petitioners herein and other Congress Party Councilors in order to vote in favour of a particular person in the election dated 11.03.2016. Therefore, there is a valid whip issued to the petitioners and they have violated the same. Therefore, the Anti Defection Act is very much applicable. Further, it is contended with regard to these facts that, according to the constitution and rules of the Indian National Congress (for short "INC") as amended upto December 2010, the disciplinary rules, the President of DCC, the Executive head of the DCC can take action against the committee subordinate to it and members of the DCC and all its subordinate committee in respect of breach of discipline. Therefore, even the President of the DCC himself

has got independent power to issue the whip. Therefore, the said whip is valid which is duly served on the petitioners, who have violated the same.

10. It is further contended that, Sec. 3(A) of the Act is not applicable because there was no split established in the Congress Party as on the date of defection provision invoked and considered by the respondent No.2-the Deputy Commissioner. Therefore, the Deputy Commissioner has not committed any mistake in passing the impugned order. It is also contended that, the whip has been duly served as the petitioners by affixing the said notices on the conspicuous place of the house of the petitioners. Therefore, it is deemed service on them and even otherwise on the date of election also, it is explicitly clear that they have made attempt to serve another copy on the petitioners but they refused to receive the same. Therefore, there is deemed service of the whip. Therefore, for all these reasons the counsel pleads for dismissal of the petitions.

11. On the above said rival contentions the following points that would arise for consideration of this Court: 1) Whether the District Congress Committee President has been duly authorized to issue whip and the same has been served duly on the petitioners?

2) Whether the Sec. 3(A) of the Act is applicable and there was any split in the Congress Committee. Therefore, the disqualification order passed by the Deputy Commissioner is invalid?

12. Point No.1: It is just and necessary to look into the factual aspects as to how the District Congress Committee President claims to have acquired the right to issue the whip to the petitioners herein. It is the case according to the second respondent that as per the document Ex.P.2 marked before the Deputy Commissioner during the course of evidence which is a letter addressed to the second respondent by the General Secretary by name Sri N.S. Bosaraju, MLC of the KPCC wherein it is stated that the General Secretary has issued the said letter mentioning that on the orders of the President of the KPCC he has issued the said letter to the President of DCC for issuance of the whip to the Congress Party Councillors in the said election dated 11.03.2016. Further, the said Sri Soudagar-R2 has been examined before the Deputy Commissioner who has specifically stated about the issuance of the said letter. Now the Court has to examine who is the competent authority to issue whip according to law. It is worth to note here Sec. 3(1) of the Act, which reads as under: 3. Disqualification on the ground of defection.- (1) Subject to the 1[provisions of sections 3A, 3B and 4]1, a councillor or a member, belonging to any political party, shall be disqualified for being such councillor or member,-

(a) if he has voluntarily given up his membership of such political party ; or

(b) if he votes or abstains from voting in, or intentionally remains absent from any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat, contrary to any direction Issued by the political party to which he belongs or by any person or authority authorised by it

in this behalf without obtaining the prior permission of such party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence;

Rest of the provision is not necessary.

(Emphasis supplied)

13. As per Sec. 3(1)(b) of the Act it says that if a Councilor from the party member votes or abstains from voting or intentionally remained absent from any meeting of a Municipal Corporation, Municipal Council, Town Panchayat which are contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf without obtaining prior permission of such party, person or authority. Therefore, according to this provision the whip or the direction must be issued either by a political party to which he belongs or by any person or authority authorized by the political party in this behalf. Therefore, on meticulous reading of the above said provision it shows that either the political party itself has to issue a direction by way of whip or it can also authorize any person or authority to issue such whip to the members of the party.

14. Sec. 2(VI) of the Act also relevant to be noted here which defines the political party, which reads as under: (vi) "political party" in relation to a councilor or member means a political party recognised by the Election Commission of India as a National party or a State party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968, and to which he belongs for the purpose of sub-section (1) of section 3.

15. Therefore, the political party means a National Party or a State Party in the State of Karnataka under the Election Symbols, etc. Therefore, for all practical purposes the KPCC, Indian National Congress is the party and the President of the State Congress Party is the head of the said party so far as the Karnataka State is concerned with election symbol. Therefore, it goes without saying that the whip should be issued either by the President of the KPCC himself or he can authorize anybody to issue such whip in accordance with law. The proof of such issuance of authority to some other person by the State President has to be established without any doubt. In this background it is worth to note here a decision of this Court reported in 2016 (1) Kar. L.J. 403 between Smt. Anitha H. Basavaraj and Others. Vs. Karnataka State Election Commission, Bengaluru and another. Almost similar facts and law are involved and considered, wherein this Court has held as under: "Karnataka Local Authorities (Prohibition of Defection) Act, 1987, Section 3(1)(a) and 3(1)(b)- Disqualification on ground of defection- Elections to Chitradurga Zilla Panchayat-Allegation of flouting of whip issued by President of DCC-Issue of authorisation to issue whip- Held, though framed as first issue, the Commissioner, before disqualifying petitioners, failed to enquire about authorisation issued by President, KPCC, in favour of President, DCC- In

the absence of such authorisation-Entire case falls apart- Most crucial document is conspicuously missing from evidence- Therefore, it cannot be held that President of DCC was duly authorised to issue whip - impugned order of Commissioner - Not justified, set aside."

16. It is worth to note here the relevant factual aspects of the case apart from the above said principle laid down by this Court, at paragraph no. 7 of portion of said decision, reads as under. "7. Mr. Prakash T. Hebbar, the learned counsel for the petitioners, has vehemently contended that the requirement of law is that proper delegation of power has to be made from the President of K.P.C.C. to the President of D.C.C. However, in the present case, there is not an iota of evidence to show that there is delegation of power from the President of K.P.C.C. to the President of D.C.C. The only document which has been produced before the learned Commissioner was a whip issued by the General Secretary, by letter dated 10-7-2014, which merely state that "in terms of the order of the President of K.P.C.C., Mr. M.S. Sethuram, the President of D.C.C. is authorised to issue whip to the elected members from the Congress Party to vote in favour of the Congress party candidates". Such an authorisation issued by the General Secretary to the President of D.C.C could not form the basis for issuance of the whip by the President of D.C.C. For, the order issued by the President is conspicuously missing in the present case."

17. In view of the above said legal aspect and factual aspect discussed by this Court, it is clear that issuance of whip by the party has to be established without any doubt to the Court. Here, in this case also the whip was issued by the General Secretary Bosaraju as per Ex.P.2. to the President of the DCC M.B. Soudagar dated 05.03.2016 which merely state that: "In terms of the order of the President of the KPCC, the President of DCC is authorized to issue whip to the elected members from the Congress Party to vote in favour of the Congress Party candidates."

18. The particular specific order actually passed by the President, KPCC on behalf of the party has not been produced nor the said Bosaraju has been examined before the Deputy Commissioner in this case to establish the manner in which the said order was issued by the political party, i.e., by the KPCC President whether it is in writing or oral is not also explicit in Ex.P.2. Therefore, the factual aspects and legal aspect considered by this Court in the above noted case optly applicable to the present case also.

19. When a whip issued by the political party or the President, DCC, is seriously attacked by the petitioners in the course of cross-examination of the said Sri Soudagar, examined as P.W.2 and it is specifically denied that such authorisation has not been issued by the President. In order to prove the oral authorisation either the General Secretary of the Congress Committee who issued Ex.P.2. should have been examined to establish the nature of the order or direction issued by the President, KPCC. The order of the President, KPCC authorized the President, DCC, to issue whip itself, is not produced before the Court nor the

contents of the said letter has been established by examining the said General Secretary to the party. Therefore, it cannot be in any stretch of imagination be said that the President, DCC has got an authority to serve the whip on the petitioner and he has been duly authorized by the party President.

20. It is pertinent to note here a decision of the apex Court reported in AIR 2000 SC 3044 (Sadashiv H. Patil V. Vitthal D. Teke and Others), wherein the apex Court at paragraph no.13 has observed that: "13. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected Councillor being subjected to disqualification and its repercussion on the functioning of the local body as 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 under Section 7 of the Act."

21. Therefore, it is crystal clear from the above said decision that the consequence of disqualification will have a serious impact on the future of a politician and it will have an evil effect throughout his life and throughout his political career apart from the difficulties to the people of such constituencies. Therefore, a strong proof is required with regard to the issuance of the whip and violation of the same. Therefore, as held by the Supreme Court, a rigorous compliance with regard to the provision of law has to be done.

22. Particularly when an oral whip is pleaded, it should be proved beyond doubt, otherwise it will remain as a hearsay evidence. Actually the person who is competent to issue whip may issue such a whip either in writing or by oral orders where there is mandate of law that the whip has to be issued in writing but the rigor of proof of oral whip is much more higher than the one the rigor attached to the whip issued in writing. If a whip is issued in writing, the production of the said document by the competent authority itself may suffice the requirement. But, if the whip is issued orally, that should be proved as if any other fact to be proved before the Court. The whip or a direction is a relevant fact which has to be established to the satisfaction of the judicious mind.

23. Though the Evidence Act is not strictly applicable to the proceedings before the Deputy Commissioner, nevertheless the principles of natural justice demand that a hearsay evidence cannot be easily admissible before the Court or any authority. According to law, hearsay evidence is no evidence before the Court. Of course, hearsay evidence can also be established if it is arisen out of the same transaction, if a person who actually heard the fact or a fact in issue or a relevant fact, the said person has to be examined or the person who actually heard or seen the person who issued such direction. The person, who has not actually

heard or the person who has actually issued the said oral order is not examined, then it cannot be said, such a direction or the whip has been duly proved which is acceptable under any law for the time being in force.

24. It is also relevant to note here when the right or career of a person is at stake, preferably such orders issuing direction must be in writing. If such directions are orally issued, they have to be very strictly and meticulously proved in accordance with law. Though this Court has no jurisdiction to suggest anything to a political party, but in my opinion, it is worth to mention here that if a direction or a whip is issued, if it is issued in writing, it would avoid all complications and multiplicity of proceedings. Therefore, I am of the opinion, in this particular case when the person who actually issued the whip, i.e., the President, KPCC, nor the person who actually received such oral direction, i.e., the Secretary of KPCC, have not been examined. Therefore, such an order remained as a heresay order and not a well proven order in accordance with law. Therefore, such a whip could not have been relied upon by the Deputy Commissioner.

25. Now coming to the other leg of the argument of the learned counsel with reference to the rules that is styled as "Constitution of rules of the Indian National Congress" as amended upto December 2010. At page no. 28 of the document produced before the Court, it refers to disciplinary rules. Sub Rule 1 of the disciplinary rules says, who are all the authorities who can take disciplinary action under Article XIX (f) (iv). The said provision reads as follows:

1. Authorities who can take disciplinary action under Article XIX (f)(iv):

Subject to the following restrictions, the Working Committee Executives of the PCC, TCCs, and Executives of the DCCs can take action against a Congress Committee who commits breach of discipline:

(a) The Working Committee can take action against any Congress Committee and any individual Congressman, but not against the All India Congress Committee.

(b) The Executive of a PCC can take action only against Committees subordinate to it and individuals other than members of the AICC and members of Parliament in whose case it can only make recommendations to the Working Committee for disciplinary action.

(c) The Executive of a DCC can take action only against Committees subordinate to it and members of the DCC and of its subordinate Committees provided that the DCC can not take such action against a person who is a delegate or a member of a Legislature. In such cases it can only make recommendations to the competent authority for taking disciplinary action.

26. If the above said provision is read meticulously by plain interpretation and understanding of the same, gives a meaning that whenever a breach of discipline is occurred, by any member of the Congress Party Sub-ordinate to it, then only

the District Congress Committee Executive can take action against the committee subordinate to it and members of the District Congress Committee and of its subordinate committee as per the said rule 1(c). Therefore, it goes without saying that till the breach of any discipline is occurred the President, DCC gets no jurisdiction to initiate any proceedings. Issuance of whip or a direction is an incident always happens prior to breach of such discipline. Nowhere the above said provision discloses that though he is a disciplinary authority he has got any independent right to issue any whip as contemplated u/S 3(1)(b) already noted above. When specific provision is there u/S 3(1)(b) which only authorizes a party or any person or authority authorized by the party to issue direction or a whip, by interpreting this rule, at no stretch of imagination it can be said that the President, DCC has got any independent right to issue any whip to the members of the Congress Party particularly to petitioners herein. Therefore, the said arguments of the learned counsel, in my opinion, hold no water in this regard.

27. In view of the above said facts and circumstances and the legal aspect, particularly in view of the decision taken by this Court in Anitha's case (supra) and considering the facts and law involved in this case, I do not find any legal infirmity in accepting the said view taken up by this Court. Therefore, in my opinion, in this case also the whip issued by the President, DCC, is not with a proper and correct authority. Therefore, the Deputy Commissioner is not justified in accepting the said competency of the President, DCC to issue whip and on that ground disqualifying the petitioners, when the issuance of the whip itself is bad in law and is not justified.

28. Even otherwise, the factual aspects of this case disclose that there was no personal service of the whip on the petitioners, though P.W.2 and P.W.6 by leading evidence made an attempt to establish before the Deputy Commissioner to show that the whip has been duly served but the fact remains that personal actual service of the whip is not shown to have been made on the petitioners. Even accepting that a notice has been affixed on the conspicuous place of the house of the petitioners, unless it is established that the said whip or notice was well within the knowledge of the petitioners, it cannot be held that the same has been duly served. Even otherwise, at the time of meeting, to elect the President and the Vice President of Ilkal Municipal Council, there was an attempt to serve the notice in the presence of the Assistant Commissioner who is the competent authority to conduct the election. It is there in the evidence that the Assistant Commissioner that, he did not allow to serve the said whip on the petitioners at that time.

29. Under the above said circumstances, I am of the opinion, the notices also cannot be said to have been duly served personally to the petitioners. Even assuming that the said service of notice is a deemed service and the contents of the notice is deemed to be within the knowledge of the petitioners but when the whip itself it not issued by the authorized person then the service in any manner will not come to the help of the respondent No.2. Therefore, in my opinion, the

disqualification order passed by the Deputy Commissioner is bad in law.

30. Last but not the least another ground taken up by the petitioners is that according to Sec. 3 (A) of the Act disqualification on the ground of defection is not applicable in the case of a split in the party itself. In this regard he has relied upon the order passed by the Deputy Commissioner in ELN/CR 70/2014-15 dated 22.12.2014 which is produced at Annexure-A. The said order discloses that the second respondent herein has filed a petition before the Deputy Commissioner for disqualification of the petitioners and also other three persons by name Prashant Chandrakant Gotur, Smt. Khurshiabegum Mahiboob Gadwal and Smt. Lakshmibai Basavaraj Kumbar on the ground that the said persons have opposed eight decisions taken by the Ilakal Town Municipal Council vide meeting dated 07.11.2014. The Deputy Commissioner while passing the orders relied upon Sec. 3(A) of the Act and held that out of 15 elected members from the Congress Party five members have opposed the said decision taken by the Town Municipal Council which amounts to 1/3 of the total members elected from the Congress Party. Therefore, there is a split in the party and as such in view of Sec. 3(a) of the Act, they cannot be disqualified.

31. The above said decision was challenged before this Court by the President, DCC. Basing the above said decision of the Deputy Commissioner the learned counsel for the petitioners submits that once there is a split established, the same principle ought to have been applied to the petitioners also while passing the impugned orders by the Deputy Commissioner. The above said contention has to be tested by analyzing Sec. 3-A of the Act, which reads as follows: 3-A. Disqualification on the ground of defection not to apply in case of split.- Where a councillor or a member makes a claim that he and any other members of his political party constitute the group representing a faction which has arisen as a result of a split in his political party and such group consists of not less than one-third of the members of such political party,-

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

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

(ii) that he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in any case, the prior permission of such political party, person or authority and such voting or abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence ; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of section 3 and to be his political party for the purpose of this section.

(Emphasis supplied)

32. On meaningful understanding and reading of the above said provision, i.e., Sec. 3(a)(ii) of the Act, it clearly discloses that, if a person vote or abstains from voting in or intentionally remained absent from meeting contrary to the direction issued by the political party, he shall not be disqualified under sub-Section-1 of Sec. 3, if the political party has split up and the said group representing fraction which has arisen as a result of split and the said group consists of not less than 1/3rd of the members of such political party. The first order was passed by the Deputy Commissioner as relied upon was passed in the year 2014. On the other hand, the impugned order passed by the Deputy Commissioner is in the year 2016, i.e., after lapse of 2 years. What transpired between these two years is not forthcoming from the records. Further, the records pertaining to the election dated 11.03.2010 in which the petitioners alleged to have voted against the whip issued in the said election proceedings shows that the other three persons who are parties in the earlier proceedings of the Deputy Commissioner have voted according to the whip and it appears they joined back the Congress Party. Therefore, a plain reading of the above said materials on record shows that as on the date of Defection Act was invoked against these petitioners there was no split in the party to the extent of 1/3rd of the members of the political party in the Town Municipal Council, Ilakal.

33. It is not that about two years back prior to the passing of the impugned order there was a split and the same split has been continued cannot be inferred by the Court without there being any evidence on record. The petitioners have also not produced any material to show that as on the date of invocation of the Act against them, there was a split in the party to the extent of 1/3rd of the members of such political party in the town municipal council, i.e., at least 5 members have split up from the political party out of 15. In the absence of such material before the Court, it is not safe to act upon the said statement of the learned counsel and to draw any inference that there was a continuance of the split in the party even as on the date of passing of the impugned order by the Deputy Commissioner. Therefore, the said argument of the learned counsel does not hold any water.

34. Though the learned counsel for the respondents has strenuously contended before this Court relying upon Ex.P.21 which is a paper notification which shows that the petitioners have joined Bharatiya Janata Party (for short " BJP") leaving Congress Party. Except production of the said document before the Deputy Commissioner which is marked at Ex.P.21 nothing has been elicited in the evidence of P.W.2 that the petitioners have joined BJP leaving the Congress Party. A paper notification bereft of any evidence on record and concrete material to show that the petitioners have in fact left the Congress Party and joined BJP, the Court cannot draw any inference that they have left the Congress Party and therefore they have incurred disqualification.

35. Under the above said facts and circumstances and discussion made, I am of

the opinion, the order of the Deputy Commissioner is not sustainable in law and on facts and the Deputy Commissioner is unjustified in passing the order of disqualification without meticulously considering the above said aspects. Hence, the order passed by the Deputy Commissioner is liable to be quashed.

36. Writ Petitions are allowed. The order passed by the respondent No.1-Deputy Commissioner, Bagalkot District, Bagalkot in No. Kra/KamVi/Election / CR-41/2016-17 dated 19.09.2016 vide Annexure-F disqualifying the petitioners is hereby quashed.