
(2014) 07 BOM CK 0222
In the Bombay High Court
Case No : Writ Petition No. 17343 of 2014

Sulabha Vijay Lokhande

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Gujarat Town Planning and Urban Development Act, 1976 — Section 20, 20(2), 21, 22
Maharashtra Local Authority Members Disqualification Act, 1986 — Section 3, 3(1)(a),
3(1)(b), 5, 7
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 63, 63(2B)

Citation : (2014) 5 ABR 198 : (2014) 6 ALLMR 508 : (2014) 5 BomCR 843 :
(2014) 6 MhLj 725

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

Bench : Single Bench

Advocate : A.Y. Sakhare, Senior Advocate, Vijay Patil and Siddharth R. Karpe,
Advocate for the Appellant; M.S. Bane, AGP, A.V. Anturkar, Senior Advocate and
Kalyani Tulankar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2. The parties are before this Court in view of the unseating of the Petitioner as a Municipal Councillor under the Maharashtra Local Authority Members Disqualification Act, 1986. The challenge raised in the above Petition is to the order dated 19/06/2014 passed by the Collector, Satara by which order the issues which were framed by this Court in the earlier round of litigation being Writ Petition Nos. 1655 of 2014 and 2751 of 2014 were answered and Exhibit 26 filed by the Respondent No. 3 herein came to be allowed.

3. The facts giving rise to the filing of the above Petition can be stated thus

The elections to the Municipal Council Panchagani were held some time in

December 2011. In the said elections 17 Councillors, who had contested the elections as independent candidates, were elected, which including the Petitioner and the Respondent No. 3. Out of the said 17 Councillors, 9 Councillors which including the Petitioner and the Respondent No. 3 had decided to come together and form a post-poll aghadi known as Panchagani Vikas Aghadi, Panchagani, resulting into Panchagani Vikas Aghadi Municipal Party Panchagani (in short the "PVAMPP"). The said 9 Councillors had filled up Form III in terms of Rule 4 of the Maharashtra Local Authority Members Disqualification Rules, 1987, (the Disqualification Rules for short) and had elected the Respondent No. 3 as a party leader. The Respondent No. 3 in her capacity as the Cader has accordingly filed Form I. The said forms were accordingly submitted to the Collector, Satara who had registered the aghadi as Panchagani Vikas Municipal Aghadi Municipal Party, Panchagani (PVAMPP) on 29/12/2011, and same was thereafter published in the official gazette on 9/1/2012 as having been established u/s 63(2B) of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965 (the said Act for short).

4. The instant dispute has its origins in the elections which took place for the post of Vice-President on 22/5/2013. It appears that the Respondent No. 3 herein as a leader of PVAMPP had issued a whip that the Councillors who constituted the said PVAMPP have to vote for one Laxman Maruti Parte. The allegation against the Petitioner is that she avoided to accept the whip and had adopted various modalities for the same including switching off her mobile phone during the relevant period. It is further alleged against the Petitioner that in defiance of the whip, the Petitioner voted for the opposition candidate resulting in the defeat of the said Laxman Maruti Partse. After the said elections to the post of Vice-President were over, the Respondent No. 3 herein, who as indicated above is the leader of the PVAMPP filed an Application under the Act known as the Maharashtra Local Authority Members Disqualification Act, 1986 (for brevity sake referred to as "the Disqualification Act."). The said Application was numbered as Complaint No. 2 of 2013. By the said Application, the Respondent No. 3 had sought disqualification of the Petitioner u/s 3(1)(a) of the Disqualification Act on the ground that by her conduct, she has voluntarily given up her membership of the PVAMPP, and that by defiance of the Whip, she stands disqualified u/s 3(1)(b) of the Disqualification Act. In the said Complaint the allegations in support of the case under Sections 3(1)(a) and 3(1)(b) of the said Act were set out. The sum and substance of the allegations was that the Petitioner by her conduct of avoiding to receive whip and obstructing the members of the PVAMPP has voluntarily given up her membership of PVAMPP. It was further alleged that the Petitioner, by coming to the venue of voting in the car of the opposition candidate as also joining the victory procession after the results were declared, had defied the whip and therefore stood disqualified under Sections 3(1)(a) and 3(1)(b) of the said Act.

5. The Petitioner filed her Comments dated 26/8/2013 to the said Application. The said Comments are running into 19 paragraphs. In the said Comments the

Petitioner had averred that the preliminary inquiry was required to be held under the Disqualification Rules, It was further averred by the Petitioner that the aghadi has not been formed and that the Petitioner had not become the member of the said aghadi. It was alleged that the Respondent No. 3 had misused the documents and affidavit signed by the Petitioner to form the PVAMPP and get it registered.

In so far as the said Comments are concerned, it is required to be noted that the Petitioner in Paragraph Nos. 11, 12, 13, 16, 21 and 22 of the said Comments had taken an alternative plea and by taking such alternative plea had contended that the provisions of the Disqualification Act are not attracted.

6. The Respondent No. 3 herein filed an Application on 12/11/2013 before the Collector, Satara which was numbered as Exhibit 26. In the said Application it was contended by the Respondent No. 3 that in view of the statements which were in the nature of admissions made by the Petitioner in her Comments dated 26/8/2013, it be held that the Petitioner stands disqualified. It was further averred that considering the admissions of the Petitioner in her written Comments it was not necessary to frame charges against her and to prove the said charges, as the Petitioner in terms has admitted that she has voluntarily given up her membership of the said PVAMPP.

The said Application (Exhibit 26) was rejected by the Collector, Satara by his order dated 28/1/2014 as the Collector was of the view that the matter could be adjudicated after the charges are framed. The Collector thereafter by the order dated 4/2/2013 framed the Articles of Charges against the Petitioner.

7. The Petitioner herein filed an Application numbered as Exhibit 45 raising a preliminary issue as to whether PVAMPP had come into existence and was registered. The Collector, Satara had also rejected the said Application (Exhibit 45) filed by the Petitioner. The Petitioner had also filed an Application numbered as Exhibit 44 for being furnished with the documents mentioned in the said application. The Collector, Satara allowed the said Application (Exhibit 44) and directed the Respondent No. 3 to furnish the said documents. The Petitioner thereafter filed her Written Statement 17/2/2014 and denied the entire case of the Respondent No. 3 in the said Complaint No. 2 of 2013. It would be relevant to refer to the developments which had taken place thereafter which have a bearing on the issue raised in the above Petition. The Petitioner herein filed Writ Petition No. 2751 of 2014 challenging the order passed by the Collector, Satara, rejecting the Application (Exhibit 45) by the order dated 20/2/2014. The Respondent No. 3 herein in turn had filed Writ Petition No. 1655 of 2014 challenging the order passed by the Collector on Exhibit 26 rejecting the said Application (Exhibit 26). Both the Petitions had come up for admission before a learned Single Judge of this Court on 20/3/2014 on which day both the Petitions were disposed of by the learned Single Judge by consent of the parties by issuing directions which for the sake of ready reference are reproduced herein under

(i) Order passed by the Collector, Satara below applications at Ex. 26 and 45 in Disqualification Application No. 2 of 2013 are quashed and set aside.

(ii) Taking into consideration pleadings of the parties, following preliminary issues are framed:-

1 Whether Panchagani Vikas Aghadi Municipal Party, Panchagani is validly constituted/formed as per S. 63(2B) of the Municipal Act and is legally registered as such.

2. Whether Mrs. Sulbha Lokhande is a member of Panchgani Vikas Aghadi Municipal Party Panchagani.

3. What is the scope, function and nature of Aghadi constituted/formed after election u/s. 63(2B) proviso of the Act and whether it is limited to election of subject committees referred u/s. 63 as contended by Mrs. Sulbha Lokhande.

(iii) Collector, Satara is directed to decide aforesaid preliminary issues and application at Ex. 26 filed by the original applicant on or before 16th May, 2014 after giving opportunities to both sides. Parties are at liberty to lead evidence in support of their contentions.

(iv) It is made clear that all points and contentions of the respective parties including maintainability of the application at Ex. 26 are expressly kept open.

The learned Single Judge of this Court, as can be seen, had framed 3 preliminary issues by consent of the parties and had also directed the Collector, Satara to decide the said preliminary issues and the Application (Exhibit 26). It was made clear that the contentions of the parties including the maintainability of the Application (Exhibit 26) were kept open.

8. The parties in terms of the order passed by the learned Single Judge appeared before the Collector, Satara and filed a Purshis that they would not be leading any oral evidence in respect of the said preliminary issues. The parties also filed Written Arguments which were numbered as Exhibit 63 and Exhibit 64. The Collector, Satara considered the said preliminary issues as also the Application (Exhibit 26) and has recorded findings in respect of the said preliminary issues and also allowed the Application (Exhibit 26) by the impugned order dated 19/6/2014.

9. The gist of the reasoning of the Collector, as can be seen from the impugned order, can be summarized thus;

[1] that the documents on record i.e. Form I, Form III and Form IV as well as Government Notification dated 9/1/2012 prove that the PVAMPP had come into existence and was registered"

[2] The Collector, Satara observed that the Petitioner had filled and signed the said Form III which was part of the record of the Collector and that the PVAMPP was registered on 29/12/2011 by the Collector.

[3] The Collector, Satara has relied upon the judgment of a learned Single Judge of this Court in the matter of Sadashiv H. Patil Vs. Vithal D. Teke and Others, wherein it has been held that the registration of a municipal party is complete consequent upon the entries having been made in the register Form IV and also having been notified in the Government Gazette.

[4] The Collector held that the Petitioner having filled and signed Form-III and also having filed the affidavit in support thereof was therefore the member of the PVAMPP. The Collector held that the Petitioner had not made any grievance earlier about the alleged misuse of the Form III and affidavit filed by her by the Respondent No. 3 herein till filing of the Application before the Collector.

[5] The Collector held that the PVAMPP was registered as post-poll aghadi u/s 63(2B) of the said Act. However, in view of the legal fiction contained in the said provision it would be deemed to be a pre-poll aghadi, and therefore, the provisions of Section 3 of the Disqualification Act would be applicable to it in all its rigors and its application would not be restricted to only election to the Subject Committees.

[6] In so far as the Application (Exhibit 26) is concerned, the Collector held that in view of the statements of the Petitioner contained in Paragraph No. 11, 12, 13, 16, 21 and 22 of her Comments, the Petitioner has in terms admitted that she has voluntarily given up her membership of the PVAMPP and in view of the fact that the Issue Nos. 1 to 3 have been answered against the Petitioner, there is no necessity to follow the procedure u/s 7(6) of the Disqualification Act. The Collector, Satara, accordingly disqualified the Petitioner u/s 3(1)(a) of the said Act. As indicated above it is the said order dated 19/6/2014 which is impugned in the present Petition.

10. I have heard the learned Senior Counsel for the parties i.e. Shri A.Y. Sakhare, the learned Senior Counsel for the Petitioner and Shri A.V. Anturkar, the learned Senior Counsel for the Respondent No. 3.

11. Submissions of Shri A.Y. Sakhare, the learned senior counsel appearing on behalf of the Petitioner:-

The submissions of Shri A.Y. Sakhare, the learned Senior Counsel appearing on behalf of the Petitioner can be divided into two parts, one regarding Issue Nos. 1 to 3 which have been answered by the Collector, Satara, and the second part relating to the submissions as regards the Application (Exhibit 26).

A] That the Collector, Satara had erred in coming to a conclusion that the PVAMPP was formed by the 9 Councillors by merely relying upon the Government Notification dated 29/12/2011;

B] That the Collector, Satara failed to take into consideration the fact that the Form III filled by the Petitioner is as regards Panchagani Vikas Aghadi whereas the front that has been registered is Panchagani Vikas Aghadi Municipal Party Panchagani;

C] That the Collector, Satara, failed to appreciate that no material is placed on record as to how the Vikas Aghadi was converted to a Municipal Party.

D] That the Collector, Satara failed to take into consideration the case of the Petitioner that Form III and the affidavit of the Petitioner filled for the purpose of forming Panchagani Vikas Aghadi has been misused by the Respondent No. 3 for registering Panchagani Vikas Aghadi Municipal Party, Panchagani;

E] That assuming that the PVAMPP has been registered having regard to the fact that it has been formed u/s 63(2B), rigors of Disqualification Act would apply only in so far as the elections to the Subject Committees of the council are concerned and would not apply to the other business transacted by the House.

F] That having regard to the fact that the Rules in question are mandatory meaning thereby that the procedure prescribed under the Rules would have to be followed in the matter of holding an inquiry into the charges which have to be framed against the Councillor, the Application (Exhibit 26) for unseating the Petitioner on the basis of her admissions allegedly given in her Comments was not maintainable.

G] That the Collector, Satara has mis-construed and mis-interpreted the averments made by the Petitioner in her Comments and has picked up stray sentences without considering the Comments as a whole. That the Petitioner in her Comments has taken a defence in the alternative which by no means can be construed as an admission by the Petitioner.

12. Submissions of Shri A.V. Anturkar, the learned senior counsel appearing on behalf of the respondent No. 3

i] That the Collector, Satara on the basis of the record has arrived at a finding of fact that the aghadi known as PVAMPP has been established and that the Petitioner is the member of the said aghadi. That the Petitioner has not been able to demonstrate how the said finding is perverse.

ii] That the submission of the learned Senior Counsel appearing for the Petitioner so as to draw a distinction between Panchagani Vikas Aghadi and the PVAMPP so as to question the establishment of the PVAMPP in the light of the fact that the Petitioner has undisputedly filled Form-III and also filed the supporting affidavit has no substance.

iii] That the Petitioner never questioned the establishment of the PVAMPP which was gazetted on 9/1/2012, till filing of the Petition before the Collector by the Respondent No. 3 and therefore the stand taken by the Petitioner is an afterthought.

iv] That in terms of the Judgment of the Apex Court in the matter of Sadashiv Patil (supra) any doubt or disputes relating to the formation of a particular municipal party and members thereof are ruled out once requisite particulars are furnished, filed, notified and entered in the register in Form IV.

v] In so far as the Application (Exhibit 26) is concerned, the course adopted by the Collector of unseating the Petitioner as a Municipal Councillor cannot be said to be in violation of the Rules having regard to Rule 7(8) of the said Rules where only such of the charges are to be framed which are not admitted by a person against whom the application for disqualification is filed.

vi] That in the instant case by consent of the parties this Court had framed three preliminary issues and directed the Collector to decide the same.

vii] That the reply of the Petitioner comprises the comments she had filed to the Petition has to be considered in the context of the findings recorded by the Collector in respect of the Issue Nos. 1 and 2 and if so considered the statements in the comments constitute an admission that the Petitioner has voluntarily given up her membership of PVAMPP;

viii] That on account of the legal fiction which is attached to the post-poll aghadi which is registered u/s 63(2B) of the said Act the rigors of the Disqualification Act would equally apply to the other business conducted by house and is not restricted only to the elections to the Subject Committees.

ix] That the legal fiction in Section 63(2B) would have to be given its full meaning and effect and for the said purpose reliance is placed on the judgment of the Apex Court in the matter of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,

x] That the Disqualification Rules in question are not mandatory and are directory and therefore the course of action followed by the Collector cannot be questioned on the ground that there is violation of the Rules as no full-fledged inquiry has been conducted by the Collector. In support of the said contention reliance is placed on the judgment of a learned Single Judge of this Court in the case of Sunil Supadu Mahajan Vs. Manoj Dayaram Choudhari and The Jalgaon City Municipal Corporation,

Consideration:-

13. The question that is posed is whether the Petitioner could have been unseated by the Collector by allowing the Application (Exhibit 26) filed by the Respondent No. 3 and not conducting a full-fledged inquiry as contemplated under the Rules. In order to answer the said question, a reference would have to be made to the relevant statutory provisions. Since admittedly the PVAMPP is a post poll alliance or aghadi and has been registered u/s 63(2B) of the said Act, the said provision would have to be referred to at the outset. The same is therefore reproduced herein under for the sake of ready reference:-

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

(1)-----

(2A)-----

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

Provided that, the relative strength of the 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 sub-section, the recognized parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1966 (Mah. XX of 1987), within a period of not more than one month from the date of notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a pre-poll aghadi or front.

In view of the fact that the Maharashtra Local Authority Members Disqualification Act 1986 and the Maharashtra Local Authority Members Disqualification Rules 1987 have a defining role to play, the relevant Sections and Rules are reproduced herein under:-

Section 3: Disqualification on ground of defection---

(1) Subject to the provisions of Section 5, a councillor or a member belonging to any political party or aghadi or front shall be disqualified for being a councillor or a member----

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

(b) if he votes or abstains from voting in any meeting of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to

which he belongs or by any person or authority authorized by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or aghadi or front, person or authority and such voting or abstention has not been condoned by such political party or aghadi or front, person or authority within fifteen days from the date of such voting or abstention.

Provided that, such voting or abstention without prior permission from such party or aghadi or front, at election of any office, authority or committee under any relevant municipal law or the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 shall not be condoned under this clause;

The relevant Disqualification Rules 1987

3. Information to be furnished by a leader of a Party---(1) The leader of each municipal party or a Zilla Parishad in relation to a councillor and the leader of Panchayat Samiti in relation to a member (other than a municipal party or a Zilla Parishad party or a Panchayat Samiti party consisting of only one member) shall, within thirty days from the date of commencement of these rules or, where such party is formed after such date, within thirty days from the date of its formation, or in either case, within such further period as the Commissioner, in the case of a councillor of the Municipal Corporation, or the Collector, in the case of any other Councillor or member may for sufficient reason allow, furnish the following information to the Commissioner, or, as the case may be, to the Collector, namely:-

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

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

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

(2) Where a municipal party or a Zilla Parishad party in relation to a councillor and 1[* * *] a Panchayat Samiti party in relation to a member, consists of only one member then such member shall furnish a copy of the rules and regulations mentioned in clause (b) of sub-rule (1) to the Commissioner or as the case may be. Collector, within thirty days from the date of commencement of these rules or, where he has become a councillor of the Municipal Corporation, Municipal Council, Zilla Parishad or as the case may be, a member of the Panchayat Samiti after such date, within thirty days from the date on which he has taken his seat in the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may

be, Panchayat Samiti, or in any case, within such further period as the Commissioner or, as the case may be. Collector may for sufficient reasons allow.

(3) In the event of any increase in the strength of a municipal party or a Zilla Parishad party in relation to a councillor and the Panchayat Samiti party in relation to a member, consisting of only one member, the provisions of sub-rule (1) shall apply in relation to such party as if such party had been formed on the first date on which its strength increased.

(4) Whenever any change takes place in the information furnished by the leader of a municipal party or a Zilla Parishad party, in relation to a Councillor and by the leader of a Panchayat Samiti party, in relation to a member under sub-rule (1) or by a member under sub-rule(2), he shall as soon as may be thereafter and in any case not later than thirty days from the date on which such change has taken place or within such further period as the Commissioner, or, as the case may be. Collector may for sufficient reasons allow, furnish in writing the information with respect to such change to the Commissioner or, as the case may be Collector.

(5) Where a councillor in relation to a municipal party or a Zilla Parishad party and a member in relation to a Panchayat Samiti party votes or abstains from voting in any of the meetings of the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior permission of such party, person or authority, the leader of such municipal party or Zilla Parishad party or as the case may be, Panchayat Samiti party, or where such Councillor or member is the leader or, as the case may be, the sole member of such municipal party, Zilla Parishad party or Panchayat Samiti party, such councillor or, as the case may be, member, shall as soon as may be thereafter and in any case within thirty days from the date of such voting or abstention, inform the Commissioner or, as the case may be, the Collector in Form II whether such voting or abstention has or has not been condoned by such party, person or authority.

4. Information etc. to be furnished by Councillor or member----[(1) (a) Every Councillor in relation to a municipal party or Zilla Parishad party and a member in relation to a Panchayat Samiti party who is holding office as such on the commencement of the Act in the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti shall furnish to the Collector within thirty days from the date of commencement of these rules or within such further period as the Commissioner or, as the case may be, the Collector may for sufficient reason allow a statement of particulars and declaration in Form III.

(b) Every Councillor in relation to a municipal party or a Zilla Parishad party and a member in relation to a Panchayat Samiti party after the commencement of the Act who is elected to the Municipal Corporation, Municipal Council, Zilla Parishad

or, as the case may be, Panchayat Samiti before taking his seat, shall be furnished to the Commissioner, or, as the case may be, the Collector within thirty days from the date of the declaration of the election results or within such further period as the Commissioner or, as the case may be the Collector may for sufficient reasons allow a statement of particulars and declaration in Form III.

Explanation:-(1) For the purpose of this sub-rule "Councillor in relation to a Municipal Party or a Zilla Parishad party and "member in relation to a Panchayat Samiti party means a Councillor or member belonging to such political party or aghadi or front, which has set up his candidature for the election of Municipal Corporation, Municipal Council, Zilla Parishad or as the case may be, the Panchayat Samiti.

Explanation-(2) For the purpose of this sub-rule, the Commissioner or as the case may be, the Collector, after the expiry of the date prescribed for the statement of the particulars and the declaration in Form III may decide as and when need arises about the affiliation of the political party or aghadi or front of the councillor, or as the case may be the Member on the basis of the election symbol allotted to him at the time of his election."]

Explanation-(3)---For the purpose of this sub-rule, if a Councillor is elected as a nominee of a particular political party or aghadi or front in Zilla Parishad, he will automatically be considered as a nominee of the same political party or aghadi or front in Panchayat Samiti; as each Councillor who is elected on Zilla Parishad is a member of Panchayat Samiti.

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

Explanation--For the purposes of this sub-rule, "election certificate" means the certificate of election issued under the Bombay Municipal Corporation Act (Bom III of 1988), the Bombay Provincial Municipal Corporation Act, 1949 (Bom. LIX of 1949), the Maharashtra Municipalities Act, 1965 (Mah. XL of 1965), the City of Nagpur Corporation Act, 1948 (C.P. and Berar II of 1950), The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962) and the rules made thereunder.

(3) A summary of the information furnished by the councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party, under this rule shall be published in the Maharashtra Government Gazette and if any discrepancy therein is pointed out to the satisfaction of the

Commissioner, or, as the case may be, Collector necessary corrigendum shall be published in the said Gazette.

5. Register of information as to councillors or members---(1) The Commissioner in the case of a councillor of a Municipal Corporation and the Collector, in the case of any other councillor or member, shall maintain in Form IV, a register based on the information furnished under rules [3] and [4] in relation to the councillor of a municipal party, Zilla Parishad party, or as the case may be, member of a Panchayat Samiti party.

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

6. References to be by petitions---(1) No reference of any question as to whether a councillor in relation to a municipal party, Zilla Parishad party, or member in relation to a Panchayat Samiti party has become subject to disqualification under the Act shall be made except by a petition in writing to the Commissioner in the case of a councillor of a Municipal Corporation and the Collector in the case of any other councillor or member, by any other councillor or, as the case may be, member, in relation to such councillor or, as the case may be, member.

(2) Before making any petition in respect of a councillor in relation to a municipal party and a Zilla Parishad party or a member in relation to the Panchayat Samiti Party, (r)[the petitioner shall satisfy himself] that there are reasonable grounds for believing that a question has arisen as to whether such councillor or, as the case may be, member has become subject to disqualification under the Act,-

(3) Every petition----

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and address of such person and the gist of such information as furnished by each such person.

(4) Every petition and any annexure thereto shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908) for the verification of pleadings.

7. Procedure----(1) On receipt of a petition under rule 6, the Commissioner or, as the case may be Collector shall consider whether the petition complies with the requirements laid down in that rule.

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

(3) If the petition complies with the requirements of rule 6, the Commissioner or, as the case may be. Collector shall forward copies of the petition and of the annexures thereto-

(a) to the councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party, in respect of whom the petition has been made, and

(b) where such councillor in relation to a municipal party and a Zilla Parishad party or member in relation to a Panchayat Samiti party belongs to any political party or aghadi or front and such petition has not been made by the leader thereof, also to such leader: and such councillor, member or leader shall, within seven days of the receipt of such copies, or within such further period as the Commissioner or, as the case may be. Collector may for sufficient reason allow, forward his comments in writing thereon to the Commissioner or, as the case may be Collector.

(4) After considering the comments, if any, in relation to the petition received under sub-rule (3) within the period allowed (including the extended period), the Commissioner or, as the case may be Collector shall proceed to determine the question after making a preliminary enquiry.

"[(5) The procedure which shall be followed by the Commissioner or, as the case may be, Collector for the purpose of making a preliminary enquiry to determine any question under sub-rule (4) shall be as prescribed in sub-rules (6) to (15).

(6) The Commissioner or, as the case may be, Collector shall draw up or cause to be drawn up,-

(i) the substance of the imputations of disqualification into definite and distinct articles of charge;

(ii) a statement of the imputations of disqualifications in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the councillor or the member, and

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The petition shall be dealt with by the Commissioner, or as the case may be, Collector, as expeditiously as possible and endeavour shall be made by him to dispose of the petition within 90 days from the date of receipt of the petition:

Provided that, where any petition could not be disposed of within the said period of 90 days, the Commissioner, or as the case may be, the Collector, shall record his reasons, in writing, for not disposing of the petition within the said period.]

(8) On receipt of the written statement of defence, the Commissioner or, as the case may be, the Collector, may himself inquire into such of the articles of charge

as are not admitted, and where all the articles of charge have been admitted by the councillor or member in his written statement of defence, the Commissioner or, as the case may be, the Collector, shall record his findings on each charge after taking such evidence as he may think fit and shall act in the manner laid down in rule 8 of these rules.

(9) If no written statement of defence is submitted by such councillor or member, the Commissioner or, as the case may be, the Collector shall proceed to Inquire as if the councillor or member has nothing to say.

(10) The Commissioner or, as the case may be. Collector shall require the complainant as well as the councillor or member who wishes to be heard either in person or through his Advocate to appear before him on such day and at such time as may be fixed by him.

(11) The councillor or, as the case may be, the member, shall appear in person before the Commissioner or, as the case may be, the Collector, on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of disqualification, as the Commissioner or, as the case may be, the Collector, may, by a notice in writing, specify in his behalf or within such further time not exceeding ten days, as the Commissioner or, as the case may be, the Collector, may allow.

(12) The Commissioner or, as the case may be, the Collector, shall, if the councillor or, as the case may be, the member, falls to appear within the specified time or refuses or admits to plead, produce the evidence by which he proposes to disprove article of charge, adjourn the case to a later date not exceeding thirty days, after recording an order that the councillor or, as the case may be, the member, may for the purposes of preparing his defence,-

(I) inspect within five days of the order or within such further time not exceeding five days as the Commissioner or, as the case may be, the Collector, may allow, the documents specified in the list referred to In sub-rule (6) of this rule;

(II) submit a list of witnesses to be examined on his behalf.

(13) Where the councillor or, as the case may be, the member applies orally or In writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (6) of this rule, the Commissioner or, as the case may be, the Collector, shall furnish him with such copies as early as possible, and in any case not later than three days before the commencement of the examination of the wittiness"s on behalf of the disciplinary authority.

(14) The enquiry shall be commenced on the date fixed in that behalf by the Commissioner or, as the case may be, the Collector, and shall be continued thereafter on such date or dates as may be fixed from time to time by him.

(15) On the date fixed for the inquiry, the oral and documentary evidence shall be produced by or on behalf of the petitioner. The witnesses shall be examined

by or on behalf of the petitioner and may be cross-examined by the councillor or member, against whom there are charges of disqualification.]

In so far as Rule 6 is concerned, the same provides for filing of a petition on the basis of which a reference for disqualification could be made to the Collector or the Commissioner as the case may be. In so far as Rule 7 is concerned, the same prescribes the procedure to be adopted by the Collector or the Commissioner after receipt of the reference. In so far as Rules 6 and 7 are concerned, the learned Senior Counsel for the respective parties i.e. the learned Senior Counsel for the Petitioner sought to make submission as regards their mandatory character whereas the learned Senior Counsel for the Respondent No. 3 would contend that the said Rules are not mandatory. Both the learned Senior Counsel have sought to rely upon the judgments of the learned Single Judges of this Court, a reference to which would be made a little later.

14. In the instant case, the application before the Collector for disqualification of the Petitioner has been filed by the Respondent No. 3. The Petitioner in reply as mandated by the Rules filed her Comments to the said petition. The Respondent No. 3 thereafter filed the Application (Exhibit 26) that the petition be allowed on account of the admissions of the Petitioner which are contained in the Comments filed by the Petitioner. The Petitioner in turn filed the Application (Exhibit 45) raising the preliminary issue as to whether in fact PVAMPP was validly constituted and is legally registered. The matter had reached this Court by way of two Petitions filed by the Petitioner and the Respondent No. 3 respectively being Writ Petition No. 2751 of 2014 and Writ Petition No. 1655 of 2014. A learned Single Judge of this Court had by consent of the parties framed three preliminary issues and directed that the Application (Exhibit 26) to be decided by keeping the contentions of the parties open as regards its maintainability. Though the said three issues have been adverted to in the earlier part of this order at the cost of repetition the same are reproduced herein under once again:-

1. Whether Panchagani Vikas Aghadi Municipal Party, Panchagani is validly constituted/formed as per S. 63(2B) of the Municipal Act and is legally registered as such.
2. Whether Mrs. Sulbha Lokhande is a member of Panchgani Vikas Aghadi Municipal Party Panchagani.
3. What is the scope, function and nature of Aghadi constituted/formed after election u/s. 63(2B) proviso of the Act and whether it is limited to election of subject committees referred u/s. 63 as contended by Mrs. Sulbha Lokhande.

Hence the parties were ad-idem that the said three issues were required to be addressed by the Collector as preliminary issues. The parties were also ad-idem that the Application (Exhibit 26) was also required to be decided. This would have to be considered in the context of Sub-rule 8 of Rule 7 where the Collector frames charges in respect of the allegations which are not admitted. However as indicated above, in the instant case, the parties had agreed to the adjudication of

the said three issues as preliminary issues. The Collector had accordingly proceeded to decide the said three issues. In so agreeing to the framing of the preliminary issues the parties can be said to have accepted the fact that the decision rendered thereon would impact the decision that would be rendered in the Complaint. It is required to be noted that the Petitioner herein did not choose to lead oral evidence though it was her case that the decision which was taken to establish the aghadi comprising of 9 independent councillors, had not fructified and though it was also her case that Form III and the affidavit made by her in support of the said Form III were mis-used by the Respondent No. 3. In so far as the first issue is concerned, viz. establishment of the PVAMPP, the Collector having regard to Form III being filled in by the 9 independent councillors, Form I having filled in by the Respondent No. 3 who was elected as a leader, which was submitted to the Collector, and taking into consideration the entry made in Form IV which is a register wherein entry is made as regards PVAMPP and also taking into consideration the fact that the same has also been gazetted, held that the PVAMPP has been established and registered on 29/12/2011 and thereafter published in the official gazette on 1/9/2012. The Collector in arriving at the said conclusion did not countenance the submissions made on behalf of the Petitioner against the establishment and registration of the PVAMPP which submissions can only be said to be by way of pinpricking and not on any substantial grounds.

In respect of the said Issue No. 1 it would be apposite to refer to the judgment of the Apex Court in Sadashiv Patil's case (supra) wherein consequences of registration and the registration being gazetted are spelt out. Paragraph No. 7 of the said report is material is reproduced herein under:-

In the appeals before us we are required to deal with an Aghadi or front relating to Municipal Council. We would therefore analyse the provisions of the Act from the angle of Municipal Council leaving aside Municipal Corporation, Zilla Parishad or Panchayat Samiti. In the scheme of the Act, it is clear that the formation of an Aghadi or front by a group of persons must precede the election to a local authority. The politico-legal doctrine of disqualification by defection has been percolated to the elections of local authorities in Maharashtra by enacting the Act. The Act proposes to encourage the elections being fought by group of persons bringing themselves together so as to have a common purpose and by contesting election on a common symbol propagating the principles and purpose which that group proposes to administer the local authority if returned to power by the electorate. Such group of persons having a common ideology though not necessarily belonging to a political party of State or National level may form themselves into a party, the immediate purpose whereof is to set up candidates for election to the local authority. The collective name assigned to such group of persons is an Aghadi or front. On the elections being accomplished, a Municipal Council comes into existence which includes elected Councillors belonging to any political party, Aghadi or front. Once a candidate set up by a political party, Aghadi or front is declared elected he shall be fictionally deemed to be belonging to the political party or Aghadi or front by which he was set up as a candidate at

the elections. He has no option in the matter. The elected Councillors of a particular political party, Aghadi or front constitute a Municipal Party identified with any political party or Aghadi or front by which the candidature of such Councillors was sponsored. The Municipal Party gets a statutory recognition. Rule 3 contemplates a leader of such Municipal Party being elected or appointed who shall furnish within 30 days from the date of its formation a statement in writing in Form I being filed with the Collector wherein the names of members of such party (which means a municipal party) shall be mentioned. The statement shall also mention the names and designation of the members of such party authorised to communicate with the Collector. A copy of the rules and regulations (whether known as such or a constitution or by any other name) of the Municipal Party and of the parent party, Aghadi or front are to be filed with the Collector. There is a system of cross-check provided by the Rules. Not only a statement by the leader of Municipal Party is to be filed under Rule 3(1)(a), every Councillor in relation to Municipal Party shall, before he has taken his seat, furnish a statement of particulars and declaration in Form III. The information so furnished shall be published in the Maharashtra Government Gazette and subject to rectification of such discrepancy as may be pointed out and necessary corrigendum if necessary being published in the Gazette, the information shall be maintained in the records of the Collector in a register in Form IV under Rule 5. In this manner the evidence of formation of a Municipal Party comes into existence and any doubts or disputes relating to formation of a particular Municipal Party, and the members thereof along with the requisite particulars furnished, filed, notified and entered in the register are ruled out.

(emphasis supplied)

15. In so far as Issue No. 2 is concerned, the Collector held that having regard to Form III filled in by the Petitioner and her affidavit in support thereof where she has categorically stated that she is the member of the aghadi with 8 other councillors answered the said issue accordingly and held that the Petitioner was a member of the said aghadi.

In so far as the Issue No. 3 is concerned, in view of the legal fiction which is attached to Section 63(2B) of the said Act by which the post-poll aghadi like PVAMPP is deemed to be a pre-poll aghadi, the Collector held that the rigors of the Disqualification Act would apply even in respect of other matters of the House and not restricted to the nomination to the Subject Committees. In so far as the first 2 issues are concerned, the findings of fact which have been arrived at by the Collector can be said to be on the basis of the material on record and the Petitioner in my view has not been able to dent the said findings in any manner.

16. As indicated above, the instant case is a case where the 3 preliminary issues were framed by the consent of the parties. In that sense the order passed by a learned Single Judge of this Court framing the said 3 issues can be said to have intervened in the disqualification proceedings as otherwise the Collector had

earlier rejected the Application (Exhibit 26) and was proceeding in terms of the procedure prescribed by Rule 7 of the Disqualification Rules. It is further required to be noted that in terms of Sub-rule (8) of Rule 7 of the Disqualification Act, the Collector is required to frame only those charges which are not admitted by the person whose disqualification is sought. The course of action adopted by the Collector of considering the Application (Exhibit 26) in the light of findings which he had recorded on Issue Nos. 1 and 2 cannot therefore be said to be a course of action which is in derogation or in violation of the Rules, as the Rules themselves contemplate that only those charges which are required to be framed which are not admitted by a person whose disqualification is sought. In my view, therefore, the course of action adopted by the Collector by allowing the Application (Exhibit 26) cannot be said to be a course of action which can be said to be alien to the Rules.

17. In so far as the establishment of the PVAMPP is concerned, a feeble attempt was made on behalf of the Petitioner by the learned Senior Counsel Shri Sakhare to question the registration of the PVAMPP on the ground that the Petitioner had filled up Form III whereby the Panchagani Vikas Aghadi was to be registered where as what has been registered is Panchagani Vikas Aghadi Municipal Party Panchagani (PVAMPP). In my view, the said submission can be said to be bordering on semantics rather than having any substance. It is required to be noted that on 29/12/2011 the said PVAMPP has been registered and thereafter the same has been published in the official gazette on 9/1/2012. The Petitioner never did once question the registration of the post poll aghadi as PVAMPP till filing of the petition for disqualification by the Respondent No. 3. This in a way belies the case of the Petitioner that the Respondent No. 3 had misused Form III and her affidavit. In fact under Rule 4(3) of the Disqualification Rules if there is any discrepancy in the gazette, an application for correction can be made. Significantly no such application was ever made by the Petitioner. The Collector was thereafter right in holding that the plea which is now tried to be set up by the Petitioner is an afterthought and is just taken with a view to escape from the clutches of the Disqualification Act.

18. On behalf of the parties, submissions were also sought to be advanced as regards the nature of the Rules i.e. whether they are directory or mandatory. On behalf of the Petitioner it was sought to be contended that the Rules are mandatory in nature and therefore the Collector was mandated to follow the procedure prescribed by Rule 7 in the matter of adjudicating the petition filed by the Respondent No. 3 by trying the charges which had already been framed. The learned Senior Counsel for the Petitioner sought to place reliance on the judgment of a learned Single Judge of this Court in the matter of Mirza Kadir Baig Rasul Baig Vs. District Collector and Others, wherein the learned Single Judge has made an observation in Paragraph No. 18 that the Rules, being mandatory in nature strict compliance is always required and insisted. The relevant excerpt of the said Paragraph 18 is reproduced herein under for the sake of convenience:-

I have perused entire record and I am satisfied that the Collector has utterly failed in his duties to:--

- (1) consider whether the petition satisfies the requirement of Rules,
- (2) frame charges & statement of allegations and same were not forwarded to the councillor concerned,
- (3) consider whether annexures (documents) are verified as per sub-rule (4) of Rule 6, and
- (4) not drawing up:---
 - (i) statement of imputation of disqualification,
 - (ii) list of documents,
 - (iii) list of witnesses by which charge of articles proposed to be sub-stained, and
 - (iv) not recording oral evidence and relying on affidavits.

Therefore, in my view, the petition so filed u/s 7 does not comply any of the requirement of Rule 6 and as such the same should have been dismissed at the threshold. The Collector has not complied with the statutory duty cast upon her by statute. The Collector has also failed in her duties in drawing up a statement of charges, imputations of disqualification, etc. as referred to above and in a very cursory manner, she proceeded to disqualify the petitioner. Entire procedure followed by the Collector is contrary to Rule 7 of the Rules.

It is to be noted that disqualification of an elected councillor is a drastic step, for which, in my opinion, requires strict compliance of the procedure required under law. The Rules, being mandatory in nature and strict compliance is always required and insisted. As there is non-compliance of statutory requirement, the petition so filed was required to be dismissed by the Collector at the threshold. In my judgment, the disqualification petition is not a petition in eye of law and therefore, order passed by the Collector cannot stand to any reason because the Collector has not embarked upon any enquiry & applied her mind to the statutory requirements, to find out whether the petition strictly complies the statutory, mandatory compliance, which are supposed to be followed by the Collector, under the said Rules. Therefore, in my judgment, there is an error apparent on the face of record in passing order of disqualifying the petitioner.

In the said case the learned Single Judge found fault with the Collector on the ground that the Collector failed to consider that the petition as filed satisfies the requirements of the Rules, that the procedure thereafter was not followed in the matter of framing of charges and statement of allegations and the Collector has not satisfied himself as to whether annexures are verified as per sub-rule (4) of Rule 6. The learned Single Judge therefore held that the petition as filed in the said case did not satisfy or comply with the requirements of Rule 6 and the same should have been dismissed at the threshold. The learned Single Judge observed

that the Collector had not complied with the statutory duty cast upon her by the statute.

19. Per contra on behalf of the Respondent No. 3 it was sought to be contended by the learned Senior Counsel Shri Anturkar that the Rules are not mandatory and that the Petition is required to be filed only with a view to bring to the notice of the authority of the disqualification incurred by any member of the Municipal Council. In support of the said contention reliance was placed on the judgment of a learned Single Judge of this Court in the case of Sunil Mahajan (supra). The learned Single Judge in Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others, in the matter of Dr. Mahachandra Prasad Singh v/s. Chairman, Bihar Legislative Council and others wherein the Apex Court has held that the Rules of the Bihar Legislature Council Members (Disqualification on Ground of Defection) Rules, 1994 are directory in nature as otherwise on a strict interpretation, they would be rendered ultra-vires. The relevant excerpt of the judgment of the Apex Court can be conveniently reproduced herein under:-

The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added

would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

In the said Sunil Mahajan's case (supra) the issue before the learned Single Judge was whether failure of the Divisional Commissioner to take necessary steps under sub-rule 5 of rule 7 onwards would prove fatal to the findings recorded by him. The issue was answered in the negative by the learned Single Judge relying upon the judgment of the Apex Court in Dr. Mahachandra Prasad Singh's case (supra). The learned Single Judge observed that the Disqualification Rules which were the same as in the instant case and the Rules of the Bihar Legislature Council Members (Disqualification on Ground of Defection) Rules, 1994 were *pari materia*. Meaning thereby that the said Rules are directory as held by the Apex Court in respect of the Rules of Bihar Legislature Council Members (Disqualification on Ground of Defection) Rules, 1994.

20. In my view, it is not necessary in the instant case to enter into a debate as to whether the said Disqualification Rules are mandatory or directory. As indicated above, in the instant case, three preliminary issues were framed by the consent of the parties by this Court in the earlier round. The said issues were answered against the Petitioner by the Collector by recording findings of fact. In the light of the said findings of fact the statements which are appearing in the Comments filed by the Petitioner were considered by the Collector and especially the statements in Paragraphs 11, 12, 13, 16, 21 and 22 of the said Comments. The sum and substance of the said statements of the Petitioner is that the PVAMPP was never established and the Petitioner was never the part of the said PVAMPP, having regard to the said statements that the Collector reached a conclusion that the Petitioner had voluntarily given up her membership of the PVAMPP and thereby incurred disqualification u/s 3(1)(a) of the said Act. In my view, since the findings of fact recorded by the Collector on Issue Nos. 1 and 2 have not been dented in any manner by the Petitioner, the obvious sequitur to the same would be that no useful purpose would be served by trying the said issues once again under Rule 7 and the sub-rules thereof and the same would only result in delaying the inevitable. As observed herein above, the course of action adopted by the Collector cannot be said to be a course of action which can be said to be unknown to the Rules.

In so far as the effect of the deeming fiction created by the proviso to Section 63(2B) of the said Act is concerned, both the learned Senior Counsel for the parties drew my attention to the judgment of the Apex Court in the matter of Jeevan Chandrabhan Idnani and Another Vs. Divisional Commissioner, Konkan Bhavan and Others, The said case also involved the proceedings under the Disqualification Act and one of the issues was whether an aghadi or front formed

after the period of one month as provided in Section 63(2B) can be said to be valid. The learned Senior Counsel for the parties pointed out that the issue as regards the legal consequences flowing out of the deeming fiction was not examined by the Apex Court in the said case as a complaint was already lodged against the concerned Respondents in the said case under the Disqualification Act. The relevant Paragraph of the said judgment is Paragraph No. 26 which for the sake of ready reference is produced herein under:-

26. Once such 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. The proviso further declares that once such registration is made, the provisions of the Disqualification Act apply to the Members of such post poll Aghadi. We do not propose to examine the legal consequences of such a declaration as it appears from the record that a complaint has already been lodged against the respondents 6 to 13 herein under the provisions of the Disqualification Act. The limited question before us is whether the 1st respondent was legally right in registering an Aghadi or front formed after the lapse of one month from the date of the notification of the election results.

21. Now coming to the contention of the learned Senior Counsel for the Petitioner that the purpose of registering post poll aghadi u/s 63(2B) of the said Act is only for the purpose of nomination to the Subject Committees, and therefore, the rigors of the Disqualification Act would not apply to other business conducted by the House, which in the instant case is the election to the post of Vice-President. In my view, it is not possible to accept the said contention. Though Section 63(2B) provides for a post poll aghadi and can be said to be therefore an exception to the application of the Disqualification Act, in the matter of councillors coming together after the election, however, by legal fiction created under the proviso to the said Section, the said post poll aghadi is deemed to be a pre-poll aghadi as posited in the said proviso and the provisions of the Disqualification Act would apply to the members of such aghadi or front as if it were a pre-poll aghadi or front. If that be so, the functioning of the said post poll aghadi cannot be restricted only to the quantification of the seats for nomination to the Subject Committees, but would also apply to other business conducted by the House. It is well settled that a legal fiction has to be given its full effect and meaning, and cannot be applied in a restricted manner. A useful reference can be made to the judgment of the Apex Court in the case of Bhavnagar University (Supra). The said case concerned the deeming fiction contained in Section 20(2) of the Gujarat Town Planning and Urban Development Act, 1976 which deeming fiction has the effect of the land being released from reservation if no action is taken by the authorities within six months of the notice being issued by the land owner calling upon the authorities to acquire the land. The issue was whether Section 21 under which a revised development plan could be prepared would result in revival of the reservation which had lapsed u/s 20(2). The Apex Court held that merely because Section 21 provides for a revised development plan and merely because draft revised development plan is made, the same would not

amount to revival of the designation which had lapsed in view of Section 20(2) of the Act. The relevant Paragraphs of the said report are Paragraphs 33, 34 and 38 which are reproduced herein under for the sake of ready reference:-

33. The purpose and object of creating a legal fiction in the statute is well-known. When a legal fiction is created, it must be given its full effect. In *East End Dwelling Co. Ltd. v. Finsbury Borough Council*, [(1951) 2 All. E.R. 587], Lord Asquith, J. stated the law in the following terms:-

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

The said principle has been reiterated by this Court in *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh* and another, See also *Indian Oil Corporation Ltd. Vs. The Chief Inspector of Factories and Others*, *M/s. Voltas Ltd. Bombay Vs. Union of India and others*, *Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others*, and *G. Viswanathan Vs. The Hon"ble Speaker, Tamil Nadu Legislative Assembly, Madras* and another,

34. The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.

35. Section 21 does not envisage that despite the fact that in terms of sub-section (2) of Section 20, the designation of land shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or take away the right acquired by a land-owner u/s 22 of getting the land defreezed. In the event the submission of the learned Solicitor General is accepted the same would completely render the provisions of Section 20(2) otiose and redundant.

In my view, the post-poll aghadis or fronts can be said to be for the purpose of enabling such aghadis to secure better representation in the various categories of the committees specified u/s 31-A, in view of the legal fiction created, the rigors of the Disqualification Act cannot be said to be restricted only to the nomination to the Subject Committees. The Collector was therefore right in

holding that the rigors of the Disqualification Act would also apply to a aghadi established u/s 63(2B) in respect of the other business conducted by the house.

22. The learned Senior Counsel Shri Sakhare appearing on behalf of the Petitioner sought to find fault with the impugned order passed by the Collector by contending that though the Application (Exhibit 26) was being considered for passing an order on account of the admissions made by the Petitioner, the Collector had allowed the said Application (Exhibit 26) in terms of prayer clause (b) of the said Complaint No. 2 of 2013. This according to the learned Senior Counsel for the Petitioner could not have been done. In so far as the said submission of the learned Senior Counsel is concerned, it is required to be noted that in the Application (Exhibit 26) it has been mentioned by the Respondent No. 3 i.e. the Applicant in Complaint No. 2 of 2013 that the averments made in the Petition should be considered as part and parcel of the said Application (Exhibit 26). It is further required to be noted that the Respondent No. 3 by the Application (Exhibit 26) was seeking an order to be passed by the Collector in view of the admissions made by the Petitioner which had the effect of the Petitioner voluntarily giving up her membership of the PVAMPP. The relief by way of prayer clause (b) was therefore referable to Section 3(1)(a) of the Disqualification Act. The Collector therefore has allowed the said Application (Exhibit 26) in terms of prayer clause (b) of the Complaint No. 2 of 2013. In my view, no fault can be found with the order passed by the Collector in allowing the said Application (Exhibit 26) in terms of the prayer clause (b) of the Complaint No. 2 of 2013.

23. For the reasons afore-stated this Court does not find any illegality or infirmity in the impugned order passed by the Collector, Satara. Hence no case for exercise of writ jurisdiction is made out. The above Writ Petition is accordingly dismissed. Rule discharged with no order as to costs.