

(1989) 10 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 1187 of 1988

Suresh Madhaorao Bhange and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 06-10-1989

Acts Referred:

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 3, 3(1)
Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 3(5), 4

Citation : (1990) 3 BomCR 199 : (1990) MhLj 848

Hon'ble Judges : M.S. Ratnaparkhi, J;A.A. Desai, J

Bench : Division Bench

Advocate : C.S. Kaptan, for the Appellant; A.B. Chaudhari, for respondent No. 3, S.P. Dharamadhikari and P.G. Pathak for Respondent 4 and 5, A.S. Bobde, Advocate-General for respondents 1 and 6, for the Respondent

Judgement

M.S. Ratnaparkhi, J.—The order passed by the Collector, Wardha on 9-5-1988 (Annexure-M) disqualifying the six petitioners from being Councillors of the Zilla Parishad, Wardha and the consequential order issued by the State Government on 17-5-1988 appointing the Chief Executive Officers Zilla Parishad, Wardha as Authorised Officer u/s 91B (b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act have been challenged in this writ petition.

2. There were elections to the Zilla Parishad at Wardha in 1979 of so and the petitioners Nos. 1 and 3 to 6 contested those elections on the official symbol of Congress-(I) and they were elected on that symbol. Other persons have also contested the elections and they were also elected. One Mr. Raut was elected as President of the Zilla Parishad. One Mr. Ingole (present respondent No. 4) was elected as a Vice President. One Mr. Gopal Tukaramji Zate (respondent No. 5) was elected a Chairman of the Works and Health Committee of the Zilla Parishad. They also belong to the congress-(I) party. Special meeting of the Zilla Parishad was sought to be convened on 18-12-1987 for consideration of the motion of no-confidence against the President and the Vice-President. The General Secretary of the Maharashtra Pradesh Congress Committee issued a letter dated 7-12-1987

not to vote in favour of the motion of no confidence. In spite of this directive from the party, the petitioners voted in favour of the motion of no-confidence. The motion was passed. Another meeting was sought to be convened on 28-12-1987, for considering the motion of no confidence against Gopal Tukaramji Zate. The Secretary of the Maharashtra Pradesh Committee Congress-(I) issued a directive to all the members of the Zilla Parishad not to vote in favour of that motion as a result of that mandate, the petitioner No. 1 to 6 voted in favour of that motion as a result of which the motion came to be passed.

3. Three petitions came to be filed against the present petitioners and others u/s 3 of the Maharashtra Local Authority Members Disqualification Act, 1986 (hereinafter referred to as the Disqualification Act) before the Collector, Wardha. It was alleged that the petitioners and others, voted contrary to the directives issued by the Maharashtra Pradesh Congress Committee (1) without obtaining any prior permission and therefore, they made themselves liable to the disqualification u/s 3(i) of the Disqualification Act. It was their case that all the petitioners and others were elected to the Zilla Parishad on the Congress (I) ticket and they formed the Zilla Parishad party after the elections. In spite of the fact that the appropriate authority issued the letter with a mandate not to vote in favour of the no-confidence motion, these petitioners and others acted contrary to the mandate, as a result of which the motion came to be passed and as such they have incurred the disqualification u/s 3(1)(b) of the Disqualification Act.

4. The petition was opposed on various grounds. It was alleged that the Zilla Parishad party was not at all in existence since 1982. It was already dissolved in 1982 and it was never reconstituted thereafter. It was, their contention that there was no leader of this party elected by the party itself and, therefore, no mandate could be given to the members. The letter written by the General Secretary of the Maharashtra Pradesh Congress-(I) Committee was a letter from the leader of the Zilla Parishad Party and, therefore, contravention of that letter could not disqualify the members including the petitioners. It was also their contention that the Secretary of the Maharashtra Pradesh Congress (I) Committee was incompetent to issue such letter because what is contemplated u/s 3(1)(b) of the Disqualification Act is the direction by the leader of the party or by a person or authority authorised either by the party or by the Aghadi or the Front. The letter issued by the President of the Zilla Parishad also was not in the nature of a mandate because he was not the leader of the party. It was also contended that the petitioners did not receive the directions issued by Shri Chandrakant Raut in time and, therefore, they cannot be said to have contravened the mandate issued by the authority.

5. Another objection raised was that the Collector was incompetent to take any action under the Act as there was no compliance of the rules or rules 4 of the Rules framed under the Act. It was further contended that though initially the petitioners 1 and 3 to 6 were elected on Congress-(I) ticket, this party came to be dissolved in 1982 and liberty was given each member to vote according to his

conscience. There was no Zilla Parishad Party in existence in 1987 and, therefore, the Disqualification Act had no application. The direction issued by the President of the Zilla Parishad could not be called as a valid direction u/s 3(1)(b) of the Act because he was never elected as a leader of the party. It was lastly contended that the annexures of the petition have not been signed by the petitioners as per rule 6(4) and, therefore, the petition deserves to be rejected forthwith.

6. In all there were three petitions filed before the Collector. All these petitions came to be heard by the Collector and a common order disposing of all these three petitions came to be passed. The learned Collector came to the conclusion that though the Zilla Parishad Party may not be in existence on the relevant date, still the original party, which had set up these people as candidates, was in existence and as such, the direction issued by the authorised person on behalf of the party should be a good mandate and as these persons have acted contrary so that mandate, they have exposed themselves to the penalty flowing from section 3(1)(b) of the Disqualification Act. The collector came to the conclusion that the rules framed under the Act were contrary to the provisions of the Act itself and, therefore, these rules cannot be looked into. The Collector agreed with the contention that the President of the Zilla Parishad cannot ipso facto be treated as a leader if the Zilla Parishad Party and, therefore, the directions issued by him do not take the form of a mandate, the contravention whereof exposes the members to the penalty. The learned Collector further held that though there is no compliance with the rules, since the rules are contrary to the provisions of the principal Act, they cannot be considered. According to the Collector, the question as to who was the leader of the Zilla Parishad Party was merely academic. The learned Collector found that the suppression of the Zilla Parishad Party in 1982 has no bearing on the operation of the Disqualification Act. On these findings, he held that the direction issued by the secretary of the Maharashtra Pradesh Congress-(I) Committee was a valid direction and the contravention thereof exposed the petitioners to the penalty of disqualification envisaged u/s 3 of the Disqualification Act. The Collector also found that all the petitioners except the petitioner No. 2, have admitted that they belong to the Congress-(I) party and that they contested the elections on that party symbol. Similarly the petitioners No. 2 admitted that he was a member of the Congress-(I) and he continues to be the member of the party. In view of this admission they were bound by the mandate issued by the General Secretary of the M.P.C.C. (I) and their voting, contrary to the directions, exposed them to the penalty. On these findings the learned Collector held that the petitioners have exposed themselves to the disqualification flowing from section 3(1) and accordingly he passed the order adjudicating them as disqualified from the membership of the Zilla Parishad. In consequence of this order, the Maharashtra Government appointed the Chief Officer of the Zilla Parishad, Wardha as Authorised Officer u/s 91-B(b) of the Maharashtra Zilla Parishad and Panchayat Samitis Act. It is these two orders which have been challenged in this writ petition.

7. Mr. Kaptan, the learned Advocate for the petitioners, has put up before us the facts regarding which there is hardly any dispute. It is not disputed that the elections to the Zilla Parishad, Wardha were held in 1979 and all the petitioners, except petitioner No. 2 contested the election on the Congress-(I) ticket and were elected. The petitioner No. 2 was initially a Congress-man, but as he did not get official ticket from the party, he contested on the symbol of "Clock" and he got himself elected thereon. It is not disputed that all these persons own their allegiance to the Congress-(I) party. There is hardly any dispute regarding the fact that Zilla Parishad Congress Party was dissolved on 15-8-1982. The position, which prevails, is that the Zilla Parishad party stood dissolved on 15-8-1982. It was never reconstituted thereafter. The dissolution was never withdrawn. At least there is no material to show that the party was reconstituted thereafter. This position prevailed till the end of December, 1987. On the back ground of this admitted position, it will be proper to proceed with the controversy.

8. What was strenuously urged before us by the learned Advocate for the petitioners was that the Zilla Parishad party was never in existence prior to 8-12-87 and 28-12-1987 when the motion of no-confidence came to be passed against the President, the Vice-President, and the Chairman of the Works and Health Committee. It was urged that as there was no party in existence, there could not be any leader. As there was no leader, there could not be any directions issued and in view of this, there could not be any breach of the directions. This was the main attack of the petitioners against the order passed by the learned Collector, Mr. Dharmadhikari, the learned Advocate for the petitioners 4 and 5, on the other hand, strenuously urged before us that though the Zilla Parishad Party may not be in existence on the relevant date, the Congress-(I) party, to whom all the petitioners owe their allegiance, was very much in existence and it was the authority authorised by the M.P.C.C. (I) party, who has issued the directions asking the members not to vote in favour of the motion. Mr. Adik was the General Secretary of the Congress-(I) party and he had all the authority to issue the directions to the members of the Zilla Parishad, the M.P.C.C.(I) being the Apex body. The mandate given by Mr. Adik not to vote in favour of the motion of no confidence was contravened by the petitioners and, therefore, they have exposed themselves to the disqualification incurred u/s 3(1)(b) of the Disqualification Act. This was in short the rival arguments.

9. For appreciating the real nature of the controversy, it will be necessary to reproduce some relevant provisions of the Disqualification Act. The purpose of the Act is to provide for disqualification of members of certain local authorities on ground of defection and making provision for matters incidental and connected with defection. The Act envisages to define "Municipal Party", "Panchayat Samiti Party" and "Zilla Parishad Party". The term "Original Political Party" has also been defined. According to section 2(a) "Aghadi" or "Front" means group of persons who have formed themselves into party for the purpose of setting up candidates for elections to local authority. Section 2(j) which defines "Original Political Party" reads as follows:

"2(j) : "Original Political Party" in relation to a councillor or a member means the political to which he belongs for the purposes of sub-section (1) of section 3."

"Zilla Parishad Party" has been defined in section 2(p), which reads as follows :

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

Explanation to section 3 of the Disqualification Act reads as follows:

"Explanation---For the purposes of this section (a) a person elected as Councillor or as the case may be, a member shall be deemed to belong to the political party or Aghadi or front, if any, by which he was set up as a candidate for election as such Councillor or member."

10. On the scrutiny of all these definitions, we have to find out what "Zilla Parishad Party" means. Though the term "Original Political Party" has been defined in section 2(j), no reference of that term can be found in any of the subsequent provisions of the Disqualification Act. The "Zilla Parishad Party" has been defined in relation to a Councillor of a Zilla Parishad in accordance with the Explanation to sub-section (1) of section 3. It means a group consisting of all the members of the Zilla Parishad for the time being belonging to that political Party in accordance with the said Explanation. The reading of the definition shows that the "Zilla Parishad Party" means a group consisting of all the members of the Zilla Parishad for the time being belonging to the Political party. The definition proceeds on the assumption that there is a group consisting of the members of the Zilla Parishad for the time being belonging to that political party. It thus contemplates the factual existence of the group belonging to that political party. Explanation to section 3 creates a fiction inasmuch as it lays down that a person elected as a councillor, or as the case may be, a member, shall be deemed to belong to the political party or aghadi or Front, if any, by which he was set up as a candidate for election as such Councillor or member. Thus reading section 2(p) along with the Explanation (a) to section 3 leads to the inevitable conclusion that a factual existence of a group consisting of all the members of the Zilla Parishad for the time being belonging to that political party is envisaged and once this factual existence is there, the fiction helps in recognising the character of that group. Thus what the definition contemplates is the factual existence of the group. Thus what the definition contemplates is the factual existence of the group belonging to the political party on the day when the disqualification flowing from section 3 occurs.

11. It is not disputed that all the petitioners (except the petitioner No. 2) along with others, contested the elections to the Zilla Parishad on Congress (I) ticket. Their symbol was Palm. They got elected on that ticket and they became the members of the Zilla Parishad. Even after the elections the position that was

prevailing was that the petitioners were elected on the Congress(I) ticket and they formed a group belonging to that political party. This continued till 1982. What happened on that day is clear from Annx A. The position which prevailed after 15-8-1982 was that the Zilla Parishad Congress Party was dissolved. No Zilla Parishad Party was in existence and everybody was given the liberty to vote according to his conscience when the occasion arose. This position prevailed even in December 1987. There is nothing on record to show that the Congress Party in the Zilla Parishad was ever reconstituted/reformed thereafter. What is apparent from the facts obtaining on record is that the Zilla Parishad Congress Party was dissolved, Only the group remain and that group was to vote according to the individual conscience from time to time. It may be that they might have come together for the elections to President or Vice President, but they come together not as a "Congress Party" but as a group which had no label either of the party or of the Aghadi or of the Front. They were working purely in the individual capacity.

12. As we have already seen, the Zilla Parishad Party has a separate local existence as envisaged u/s 2(p) of the Disqualification Act. It is only the local party which is recognised under this Act. The original Party may be Congress-(I). It may be the apex body. But what sub-section (p) of section 2 envisages is not the apex party, but a specific Zilla Parishad Party.

13. The learned Advocate General reiterated that the party which is relevant for the purposes of the Disqualification Act is the "Zilla Parishad Party" and no other party. He tried to extract support for his argument from section 3(1) of the Disqualification Act. In order to appreciate the arguments, it will be necessary to reproduce the relevant portion of section 3(1). It reads as follows:

"3(1) : Subject to the provisions of sections 4 and 5, a Councillor or a member belonging to any political party or Aghadi or front shall be disqualified for being a Councillor or a member---

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

(b) if he votes or abstains from voting in any meeting of a Municipal Corporation, Municipal Council, Zilla Parishad, or as the case may be Panchayat Samiti, contrary to any direction issued by the political party or aghadi or front to which he belongs or by any person or authority authorised by any of them in this behalf, without obtaining, in either case, the prior permission of such political party or Aghadi or front, person or authority and such voting or abstention has not been condoned by such political party of Aghadi or front, person or authority within 15 days from the date of such voting or abstention.

Provided that, such voting or abstention without prior permission from such party of Aghadi or front at any election of any office, authority or Committee under any relevant Municipal Law of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause."

14. We are not concerned with clause (a) above for the present. We are, however, much concerned with clause (b), as a consequence of which the disqualification follows. This sub-section contemplates a direction to be issued by the political party or by any person of authority authorised by such party. If a member or the Councillor votes or abstains from voting contrary to such direction, then he exposes himself to the disqualification flowing from that section. However before voting or abstaining to vote, if he obtains the permission of such political party, then such Act can be condoned. The term "such political party" assumes considerable importance. What is contemplated by a political party to their members. If the member or a Councillor votes or abstains from voting contrary to such directions, then the disqualification follows. The section also provides that such voting or abstention to vote may be condoned if a member or a Councillor gets a prior permission of such political party for voting or abstaining from voting contrary to such directions. We have now to consider the meaning of "such political party" and for ascertaining this meaning we have again to go to the definition of "Zilla Parishad Party" in section 2(p) and "Original Political Party" in section 2(j) and also explanation (a) to section 3 of the Disqualification Act. The original party is a genus whereas the Zilla Parishad Party, Municipal Party, Panchayat Samiti Party are the species and the sphere of these species is restricted to that particular geographical area over which the jurisdiction of these different party is extended. Original political party may be the genus: but what section 3(1)(a) and (b) of the Disqualification Act contemplates is not the genus but the species, which may ultimately have their allegiance to the genus. It is these species who have to issue directions to the members of Councillors. It is these species who have to condone the contravention, if at all they went and it is from these species that the member or Councillor has to obtain prior permission before acting contrary to the directions. The scheme of the Act as contained in section 3 is very clear. These elections are after all local and it is after all the local units which context these elections and not the apex body. The function of the apex body, if at all, is only to give directions to the units and nothing more. The members so selected are responsible directly to the units. The controlling and advisory powers vest in the units and that is why the permission of "such political party" is necessary before acting contrary to the directions of such political party.

15. The learned Advocate General in support of this argument took us through the rules which have been framed by the Government of Maharashtra under the Disqualification Act. Rule 3(1) contemplates a leader of a Zilla Parishad or a Municipal Party or a Panchayat party. This leader is expected to submit the list in writing containing the names of the members of such party together with relevant Particulars. The leader is also expected to produce a copy of the rules and regulations of the Municipal Party or the Zilla Parishad Party or the Panchayat Samiti Party. The rules also envisage the position as to what has to be done if anew member is admitted to the party subsequently. Rule 4 contemplates that every Councillor of the Zilla Parishad, after election and before taking his

seat, has to furnish to the Commissioner or Collector, a statement of the particulars and declaration in Form-III. He has also to furnish a certified copy of the Notification nominating him as a member in Form-III. Sub-rule (3) of the rule 4 lays down that the substances or summary of this information has to be furnished. Sub-rule (5) of rule 3 assumes a considerable importance on this back ground and it reads as follows:

"(5) Where a councillor in relation to Municipal Party or a Zilla Parishad Party and member in relation to 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 directions issued by such party or by any person or authority authorised by it in this behalf, without obtaining in either case, the prior permission of such party, person or authority, the leader of such Municipal Councillor or a Zilla Parishad Party or as the case may be Panchayat Samiti Party, or where such Councillor or member is the leader or as the case may be, the sole member of such Municipal Party. Zilla Parishad Party or Panchayat Samiti Party, such Councillor or as the case may be, member, shall as soon as soon may be thereafter and in any case within 30 days from the date of such voting or abstention inform the Commissioner or as the case may be, Collector in Form-II whether such voting or abstention has or has no been condoned by such party, person or authority."

16. These rules taken together very positively lay down that the party means a Zilla Parishad Party. I has to elect its leader. The leader has to perform some duties inasmuch as he has to submit a list of all the members to the Collector. Rule 4 lays down that every member so elected shall furnish the necessary information to the Collector in the prescribed form. Sub-rule (5) of the rule 3 lays down that if any member of the Zilla Parishad votes contrary to any direction issued by such party, or authority authorised by it in this behalf without obtaining the permission, the leader of such party has to inform the Collector within 30 days from the date of such voting. The rules have no doubt in the mind that the party contemplated is the Zilla Parishad Party and the leader contemplated is the Zilla Parishad Party and the leader contemplated is the leader of such party, and not of the apex party.

17. The learned Collector, however, has taken a view that the rules framed are inconsistent with the provisions of the Disqualification Act itself and at one stage, he went to the length of even ignoring these rules as they were inconsistent with the Disqualification Act. As a matter of fact, the vires of the rules was never challenged before the Collector. Even the vires of the rules has not been challenged in this petition. Mr. Dharmadhikari, the learned Advocate for the respondents 4 and 5 strenuously urged before us that he had no occasion to challenge the vires. We are not much impressed by these arguments. In fact, when the Collector proceeded to hold the rules as inconsistent with the Act, he could have challenged the vires of the rules in this petition or by a separate petition. But he was not done so. The vires of the rules, not having been

challenged, we cannot now permit the challenge to these rules in this Court. This is after all a delegated legislation permitted under the statute and there would be a presumption of its validity. These rules are framed with the purpose of smooth implementation of the main statute. They have to be read harmoniously with the statute. We do not find any dis-harmony or inconsistency in the rules and the statute. As we have already pointed out, rule 2(p) defines a "Zilla Parishad Party" and it is inherent in rule 3(1)(b) itself that it is the Zilla Parishad Party which has to give directions to the members. The rules are by way of clarification, but they do not artificially limit the Act. They lay down what the leader of the Zilla Parishad Party is expected to do after the election. He has to give some information to the Collector. He has to submit the names of the members of his party in the Zilla Parishad. The Collector is then required to publish the summary of the information so received in the Gazette. We do not find any inconsistency between the Statute and the rules framed thereunder. The rule of harmonious construction would thus unmistakably show that it is the Zilla Parishad Party and not the apex party, which is referred to in sub-section (b) of section 3(1) of the Disqualification Act. We would, therefore, agree with the learned Advocate General that the party contemplated in rule 3(1)(b) is the Zilla Parishad Party and not the apex body, however strong it may be.

18. Thus what transpires from the discussion above is that it is the Zilla Parishad Party which has to give directions. It is incumbent upon the members or Councillors to follow those directions. Voting or abstention to vote contrary to these directions exposes the members to disqualification following from sub-rule (5) or rule 3(1). The apex party is nowhere in the picture. This is the legal position which we get from the definition in section 2 and the positive provisions of section 3.

19. With this legal as well as factual background, let us now go to the present case. It is clear from Annexure-A that on 15-8-1982 the official Zilla Parishad Congress (I) Party came to be dissolved and each member was given freedom to vote according to his conscience. This is a position which prevailed after 15-8-1982.

20. Nothing has been brought before us to show whether this party was revived or reconstituted thereafter. The dissolution which was directed from 15-8-1982 must be presumed to have continued and the inescapable conclusion that follows is that no party recognised as Zilla Parishad Congress (I) Party was officially in existence at Wardha thereafter. The members who continued to be the members of the Zilla Parishad were the members in their individual capacity and not members of the Zilla Parishad Congress(I) Party as no such party was in existence.

21. Mr. Dharmadhikari, the learned advocate for the respondents Nos. 4 and 5 strenuously urged before us that though the party may not be factually in existence, still the fictional existence of the party has to be presumed in view of the Explanation attached to section 3. His argument in short was that though the

political party may not exist in fact, the existence thereof is presumed by fiction. We find ourselves unable to accept this argument of Mr. Dharmadhikari. "Zilla Parishad Party", according to the definition means a group consisting of all the members of the Zilla Parishad for the time being belonging to that political party or aghadi or the front in accordance with the said Explanation (to section 3). The term "for the time being belonging to that political party" envisages a factual existence of the party. It is interesting to note that the definition of the Zilla Parishad Party is in relation to a Councillor or a member. The Explanation merely states that such members shall be deemed to belong to the political party, which set up these persons for elections as Councillors or members. It may be that these members may be having their allegiance to the apex party, but they do not necessarily become the members of the Zilla Parishad Party, if it is not in existence. According to us, the Zilla Parishad Party must necessarily be in existence as a fact before section 3 is culled upon to operate. The scheme of the Act has also to be borne in mind. The scheme envisages the disqualification of the members of the Zilla Parishad Party and not of the apex party. For all practical purposes, it is the Zilla Parishad Party which is the controlling authority vis-a-vis these members or Councillors. A mandate has to flow from the Zilla Parishad Party and not from the apex party; and it is this mandate that the members or Councillors are under obligation to follow. The fiction created by Explanation (a) to section 3 merely means that if the members are elected on Congress-(I) tickets, they will be deemed to belong to Congress-(I) party. It does not traverse beyond that. The fiction does not bring into existence a party which is not at all in existence. It is from this point of view that we find ourselves unable to accept the arguments of Mr. Dharmadhikari.

21. Thus according to us, the Zilla Parishad Party was not in existence in 1987. It is the party relevant for our purposes. What happened thereafter is undisputed. A meeting of the Zilla Parishad was convened on 8-12-1987 and the subject before the meeting was to consider a motion of no-confidence against the President, Vice President of the Zilla Parishad. Prior to the Commencement of this meeting, the Secretary of the Maharashtra Pradesh Congress Committee (I), one Mr. Govindrao Adik, had issued the directions to the members. The relevant directions have been reproduced in the order passed by the Collector. The directions were that the members should act in such a way that the motion of no-confidence could be defeated. The members were further warned that in case they did not follow these directions, they would expose themselves to the liability according to law.

22. It is an admitted position that in spite of these directions, the petitioners did vote in favour of the motion and as a result the motion was carried out. The learned Collector held the view that though the Zilla Parishad Party was not in existence, that point was irrelevant for his purpose. According to him, the petitioners were elected on the Congress-(I) tickets to the Zilla Parishad Party. The authority issuing the direction was the General Secretary, of the M.P.C.C.(I) and he was an authorised person to issue these directions. On these premises

the learned Collector held that the petitioners voted contrary to the directions issued by an authority authorised by the M.P.C.C. (I) and, therefore, they exposed themselves to the penalty of disqualification. In coming to this conclusion the Collector has fallen into the errors more than one. Firstly, he came to the wrong conclusion that the dissolution of the party in 1982 was irrelevant for the present purposes. According to him, though the Zilla Parishad Party was dissolved, the Congress(I) party, who set up the petitioners as candidates for election was very much in existence and it was the mandate from the Congress-(I) Party which was broken. We find ourselves unable to agree with this observation. Assuming for the time being that the MPCC-(I) was the apex body as far as disciplinary action was concerned, still it could not assume the local position of "Zilla Parishad Party" as defined in section 2. It may take the disciplinary action against their members, but it had no authority to take a penal action of disqualification as contemplated u/s 3 of the Disqualification Act. It is only the Zilla Parishad Party, which could issue the directions. It is only such directions that the members were obliged to follow and it is only the voting or abstention to vote contrary to such direction, that the disqualification followed. The relations inter se between the members and the apex party of the original political party may be ethical or moral. But for attracting the legal disqualification, what was necessary was the mandate from the Zilla Parishad Party and that party alone. The General Secretary of the MPCC(I) may be an authority or may be authorised by MPCC(I), but the authority contemplated u/s 3(1)(b) of the Disqualification Act is the authority authorised by the Zilla Parishad Party and non-else. The breach of the mandate issued by the General Secretary M.P.C.C-(I) does not entail a disqualification Act. The Collector was definitely wrong in identifying the M.P.C.C-(I) with the Zilla Parishad Party or in enlarging the sphere of jurisdiction of M.P.C.C-(I). The sphere of the Zilla Parishad is very much limited. The M.P.C.C-(I) may have the supervisory authority, but it was not competent enough to issue a mandate, the breach whereof could attract the mischief of section 3(1)(b) of the Disqualification Act.

23. Another meeting was convened on 28-12-1987 and the motion of no confidence against Shri Zate (respondent No. 5) was to be discussed in this meeting, This Mr. Zate was the Chairman of the Social Welfare Committee Prior to the commencement of the meeting a direction was issued by the General Secretary of the MPCC (I). The direction required the petitioners to withdraw the motion of no---confidence against Mr. Zate. Further directions were that if at all this motion could not be withdrawn due to some technical reasons, then the action should be taken to see that the motion is not passed. This was the mandate issued by the General Secretary of the MPCC-(I) to the members of the Zilla Parishad. The same reasoning, which we have adopted in the proceeding paragraph, will apply to this mandate also. Without repeating the reasoning again, it would be enough to point out that the mandate or the directions are to be initiated within the Zilla Parishad Party and not outside and it is only from this point of view that the rules assume considerable importance. We would again

refer to sub-rule (5) of the rule 3 which contemplates the directions issued by such party or by any person or authority authorised by it in this behalf. The term "such party" has definitely a reference to the Municipal Party or Zilla Parishad Party or Panchayat Samiti Party. The mandate or the direction has thus, to flow from the Zilla Parishad Party. This rule also creates an obligation on the leader of the Zilla Parishad party to report the matter to the collector within 30 days. Thus what is plain from the Act and the Rules (if read in harmony with each other) is that it is the leader of the Zilla Parishad Party who has to issue directions, that the directions should come from within the party and not from outside the party and it is the duty of the members or the councillors to act according to the directions. It is the voting or abstention to vote in contravention of such directions that the disqualification flows. In the present case, the directions issued by the General Secretary of the MPCC-(I) not having come from within the Zilla Parishad Party, Mr. Govindrao Adik was not the authority authorised to issue such directions. The breach of such direction or voting or abstention to vote contrary to such directions, does not entail the disqualification. The learned Collector has taken the erroneous view of the whole situation ignoring the requirements of the rule.

24. What is apparent from the scheme of the Act is that the Zilla Parishad Party must be in existence. It must have a leader or the authority authorised on his behalf. The direction or mandate to the members must come from within the party. The leader or the authority is the spokesman as far as this mandate is concerned. It is the voting or abstention to vote contrary to such direction or mandate, which entail a disqualification u/s 3(1)(b) of the Disqualification Act.

25. In our opinion, therefore, the voting or abstention to vote contrary to the directions issued by the Secretary of the MPCC (I) does not fall within the mischief of section 3(1)(b) of the Disqualification Act. The learned Collector was not at all justified in holding that the petitioners have incurred the disqualification flowing from section 3(1)(b) of the Disqualification Act.

26. As we are taking the view that the order passed by the Collector is vitiated on this very point, we do not think it necessary to go into other contentions raised by the petitioners.

27. What happened in this case is that after no-confidence motion was passed against the President, Vice President or Chairman of the subject Committee, these offices were declared simultaneously vacant and the State Government took the steps u/s 91-B of the Maharashtra Zilla Parishad, Standing Committee and the Subject Committee and other Committees and to exercise all duties of President, Vice president and Chairman of the Subject Committees and other Committees. This act of the State Government has also been challenged. In our opinion, if the first challenge succeeds, the second challenges has to succeed automatically.

28. Thus the order passed by the Collector disqualifying the petitioners u/s 3(1)

(b) of the Disqualification Act cannot be sustained with the result that the petition has to be allowed. The order passed by the Collector, Wardha on 9-5-1988 holding that the petitioners have incurred disqualification under the provisions of the Disqualification Act is hereby quashed and set aside. Similarly the order passed by the State Government on 17-6-1988 appointing the Chief Executive Officer, Zilla Parishad Wardha, u/s 91(b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act also is quashed. Rule is made absolute in terms above. In the circumstances of the case, there shall be no order as to costs.