

(2011) 07 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 4189 of 2011

Tukaram Ganpat Kale and Another

APPELLANT

Vs

Ankush Kondiba Jadhav and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 2, 2(1), 3, 3(1)

Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 2, 2(2), 2(4), 3, 4

Citation : (2012) 1 BomCR 415

Hon'ble Judges : Dharmadhikari S.C., J

Bench : Single Bench

Advocate : P.K. Dhakephalkar and S.S. Patwardhan, for the Appellant; A.Y. Sakhare S.P. Kadam for respondent Nos. 1 and 2 and S.D. Rayrikar, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari S.C., J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioners challenge an order dated 2nd June, 2011 of the Collector, Pune by which it has been declared that each of the petitioner stands disqualified as Member of Panchayat Samiti, Indapur u/s 3(1)(b) of the Maharashtra Local Authority (Members Disqualification) Act, 1986 (the Act for short) and the Maharashtra Local Authority (Members Disqualification) Rules, 1987 (for short Rules). Respondent No. 1 to this petition is also a Councillor of the Panchayat Samati. The Panchayat Samiti is constituted under the provisions of the Maharashtra Zilla Parishad and Panchayat Samiti's Act, 1961. It is the case of the petitioners that they are elected as Councilors of respondent No. 2 on 23rd February, 2007. Respondent No. 1 claims that meeting of the party took place on 12th March, 2007 at which he was elected as party leader and was authorised to prepare and issue whip. It is the case of first respondent that the

party was formed on 12th March, 2007. The election to the office of Chairman and Vice Chairman to respondent No. 2 Panchayat was declared on 19th November, 2009. The election was to be held on 27th November, 2009. Petitioner No. 1 filed his nomination for the post of Chairman. The respondent No. 1 was also desirous of contesting election and, therefore, he also filed his nomination. In the election held on 27th November, 2009, the petitioner No. 1 was elected as Chairman by majority of 8:6 votes. One Kantilal Borade was elected as Vice Chairman by similar margin of votes. It is the case of the first respondent that he had issued a whip under the authority derived by him and, therefore, petitioners were obliged to vote for him. Having not voted and abided by the whip issued by the party, the petitioners have incurred disqualification under the provisions of the Act. He, therefore, filed a petition being Reference Petition No. 52 of 2009 to disqualify the petitioners.

2. In terms of the statutory provisions, the Authority to whom such a petition can be made and who can decide it, is Collector of the district. Accordingly, the petition was filed before the Collector and it was urged that the petitioners and respondent No. 1 belong to same political party i.e. Indian National Congress. They are members of the Indian National Congress, Indapur Panchayat Samati Party (for short RS. Party).

3. As far as registration of the P.S. Party is concerned, it was contended that the requisite information as required by Rule 3 of the Rules was submitted to the Block Development Officer (BDO) on 14th March, 2007 and the BDO forwarded the same and the Deputy Collector, Pune received it on 15th March, 2007. Thus, the P.S. Party was registered with Collector.

4. When the petition was served, the petitioners filed their written statement opposing the reliefs prayed. The written statement proceeded to state that the provisions of the Act and the Rules are not applicable as the elections to the P.S. Were held on March, 2007. It was alleged that the P.S. Party did not come into existence and in any event is non-existent. It is stated that one Dhananjay Babras friend of petitioners had sought information under RTI vide letter dated 23rd November, 2009. After receipt of this letter information was sought from BDO whether any party is formed at P.S. Level. The BDO informed Dy. Collector as per his record no new party is formed. Thus, Mr. Babras was informed that as per the records the proposal u/s 3(1) of the Act is not received in the office. Thus, the PS Party was not in existence. If the party itself is non-existent, then, there is no question of the petitioners being disqualified. Reliance upon the information that was provided, that this stand was taken by the petitioners. It was submitted that the petitioners neither joined any political party nor elected any leader of their party in the absence of which whip cannot be issued for the purpose of the Act and Rules. Contending thus, the petitioners dealt with each and every paragraph of the petition and denied their contents parawise. In para 17 of the written statement this is what is alleged: -

17. Contents of para 4 are not true and correct and denied. It is false to state

that Collector on 13/3/2007 issued letter to BDO and had directed to make all necessary compliance under the said Act It is submitted that as per provisions of law the Collector has no authority to delegate his powers and therefore, alleged letter issued by the Collector is illegal and without any authority. It is denied that on 14/3/2010 the petitioner submitted the form Nos. 1, 3 and election certificate. As per information received from the BDO the petitioner had only issued one undated letter to him and except said letter nothing was submitted by the petitioner with the BDO. It is denied that BDO submitted the said documents to the Collector on the same day, which was received by the Deputy Collector on 15/ 3/2007. It is denied that necessary copies of acknowledgement with necessary documents are produced on record. The petitioner has not filed any document on record which shows that he had submitted the said alleged documents to the BDO and BDO further submitted those alleged documents to the Collector or Dy. Collector. The respondent states that due to non filing of those documents the present petition is incomplete and liable to be dismissed. It is denied that the respondents were aware that they got elected on the symbol and the banner of the Indian National Congress and thereafter they became the members of the Indian National Congress Indapur Panchayat Samiti Party and that the petitioner was elected as party leader of the said party. It is denied that the respondents further acted upon also.

5. Further, in para 19 of the written statement, there is denial of any meeting held on 20th November, 2009 allegedly for nominating name of the candidate for the post of Chairman and Vice Chairman. Proceedings of the meetings are denied. Further, issuance of whip is also denied. It is stated that original petitioner is neither leader of any political party nor is he authorised by any political party for which he has issued whip and, therefore, in any event, therefore, the whip and direction cannot be said to be legal and valid in law. For all these reasons, it was prayed that the petition be dismissed. The written statement was filed on 13th July, 2010 and, thereafter, there is an additional written statement on behalf of the petitioner No. 1 dated 13th July, 2010. The written statement filed on behalf of respondent Nos. 2 and 3 raising more or less identical pleas is filed on 19th March, 2010. Even, they proceeded to file an additional written statement to deal with amended petition that is filed on 13th July, 2010. Prior thereto, an attempt was made to question the jurisdiction of the Collector, Pune to hear the reference petition. There was an application made requesting that a preliminary issue be framed about maintainability of the petition and the jurisdiction of respondent No. 3. That application was rejected on 23rd March, 2010 and the Collector decided to continue the enquiry. A petition was filed in this Court being Writ Petition No. 2007 of 2010 but the challenge was confined to the point of maintainability of the reference petition for non compliance with Rule 6 of the said Rules and particularly sub-rule (4) thereof. By an order delivered on 8th April, 2010, this Court dismissed the petition, holding that the rule pressed cannot be held to be mandatory.

6. The matter was carried to Supreme Court and it was clarified that it would be

open for the petitioners to raise the challenge at the time of consideration of the reference petition.

7. Thereafter, there was one more order dated 24th August 2010 made on an application for re-examination of the witnesses. That application was dismissed by this order. A petition being W.P. No. 7110 of 2010 challenging this order was filed in this Court and on 22nd October, 2010, the petition was dismissed with a clarification that in the event final order is adverse to the petitioners, then, while challenging it they can raise contention that the order dated 24th August 2010 is illegal. Thereafter, reference needs to be made to the compliance made with Rule 7(6) in relation to framing of charges and statement of imputation. That compliance was also made. In the meanwhile, an application for amendment was made and that application seeking amendments to the reference petition was allowed on 22nd June, 2010.

8. Subsequent to orders of this Court referred to above, the matter proceeded and witnesses were examined so also number of documents filed. Subsequently, written arguments were submitted by respondent No. 1. Prior thereto, the Collector heard the Advocates for contesting parties at length. Finally, by the impugned order it was concluded that on Issue Nos. 1 to 4, the respondent No. 1 has proved that INC Indapur P.S. Was formed and that the petitioners before me were members thereof. It was also held that it is proved that Indapur P.S. Party appointed the first respondent as a leader and was authorised to issue whip. Thus, holding that all ingredients of the provisions relating to disqualification being satisfied, the disqualification petition was allowed and the order disqualifying the petitioners before me came to be passed on 2nd June, 2011. It is this order which is impugned in the present petition.

9. Mr. Dhakephalkar, learned Senior Counsel appearing for petitioners submitted that the impugned order is contrary to law. It is vitiated by serious errors apparent on the face of the record. He submits that there is ample material to show that the P.S. Party was never formed as the legal requirements for such formation were not complied with. The first respondent was not elected a leader as urged of this P.S. Party. The Collector has rendered findings in favour of the first respondent and against the petitioners by collecting evidence behind the back of the petitioners. He has relied upon some file notings. He has relied upon the contents of the file in the Collector's office only. He summoned the files and saw the relevant entries and documents all by himself and without giving any opportunity to the petitioners before him. Relying upon the same, he held that the issues can be answered in the affirmative. Such a course is clearly impermissible in law and violates the very tenets of justice and fairplay.

10. Mr. Dhakephalkar submits that the impugned order is perverse as well. The Collector has recorded that he has verified the original election certificates which were submitted by BDO, Panchayat Samati, Indapur to Collector Pune by letter dated 14th March, 2007, which letter was received in the office of Collector on 15th March, 2007. These certificates were submitted to BDO by first respondent

with other documents like Form Nos. I and III. He holds that these documents were submitted by the BDO to Collector vide Collector's letter dated 13th March, 2007 issued to all BDOs. Of Panchayat Samitis in Pune District. However, according to Mr. Dhakephalkar, this finding of fact is contrary to the evidence of BDO. The BDO in his deposition says that he is familiar with the signature of the then BDO Mr. Wankhede and Exh. 52/1 does not bear the signature of Mr. Wankhede. Mr. Dhakephalkar submits that BDO in his submission says that there is no document in the file which would evidence despatch of letter dated 14th March, 2007. In these circumstances, how could the Collector conclude that the letter was received in his office is not clarified at all. Hence, this finding of fact is based on certain presumptions and some exercise undertaken by the Collector without adherence to law.

11. On Issue No. 2, Mr. Dhakephalkar's grievance is that the Collector has observed that the information was given to the Collector by party through BDO on 14th March, 2007 and it was received by Collector's office on 15th March, 2007 and all the original papers are available with the Collector's office. Yet, he records that the list is not published in Maharashtra Government Gazette by Collector's office. Therefore, non performance of a ministerial act by the Collector's office is not a fault of elected members, is his conclusion but Mr. Dhakephalkar criticises it by contending that if records remain in the office of the Collector and there is no compliance with the publication in the Official Gazette, then, the formation of party is not proved. If it is not proved, then, the petitioners cannot be disqualified. Mr. Dhakephalkar has invited my attention in this regard to certain documents which are annexed from Annexure K to the petition and, according to him, these documents would show vital blanks or in any event, absence of relevant particulars. Therefore, on this sketchy and incomplete material, according to Mr. Dhakephalkar, the finding of fact cannot be recorded. For all these reasons, the petition must succeed because there is complete non compliance with principles of natural justice and the requirement of the said rules.

12. On the other hand, Mr. Sakhare, learned Senior Counsel appearing for respondent Nos. 1 and 2 would submit that this petition is one more attempt to defeat the order passed and the conclusion recorded against the petitioners. This is nothing but one more attempt to delay the inevitable. According to Mr. Sakhare, the facts are plain and simple and admitted. Once the admitted facts have been relied upon to hold that the petitioners stand disqualified, then, there is no reason to interfere. There is absolutely no perversity committed nor is there any issue of error of law on the face of record, requiring interference in writ jurisdiction. For all these reasons, the petition deserves to be dismissed.

13. Mr. Sakhare submits that the criticism by Mr. Dhakephalkar of the course adopted by the Collector, is uncalled for and fully unjustified. The Collector has not done anything behind the back of the petitioners as alleged. On the basis of the oral and documentary evidence placed before him and since xerox copies

were admitted and marked as exhibits, he verified their genuineness and correctness of the contents therein from the originals which were available in his office. This process of verification has caused no prejudice because there is overwhelming evidence other than the said documents to show that, that P.S. Party was formed. The petitioners were very much part of it. They were present at the meeting when the party was formed. They were present when the first respondent was declared elected as leader thereof and they were very much aware of the authority given to the first respondent to issue a whip or direction. In such circumstances, now to urge that the P.S. Party was never formed or that this fact is not proved is nothing but a belated attempt to disqualification and continuing in office. Mr. Sakhare submits that mere non compliance with the rules is no ground to interfere in writ jurisdiction and particularly when no prejudice is established or proved. If the rules are complied with substantially, then, violation of procedural rules does not warrant interference in writ jurisdiction. For all these reasons this petition deserves to be dismissed. 14-A. Both sides have relied upon certain decisions to which reference would be made during the course of this judgement. For properly appreciating rival contentions, firstly, a reference will have to be made to the Act and the Rules. The Maharashtra Local Authority (Members Disqualification) Act, 1986 is to provide for disqualification of members of certain authorities on ground of defection and for matters incidental and connected therewith. The definitions are to be found in section 2 and Clause (1) thereof defines the term P. S. Party in relation to a member 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 Panchayat Samiti for the time being belonging to that political party or Aghadi or front in accordance with the said explanation. The term original political party is defined in section 2(j). The disqualification is on the ground of defection and in this case under Clause (b) of sub-section (1) of section 3. For the purpose of the explanation below this sub-section that the definitions have been referred to by me.

14. A perusal of section 3 would indicate that it provides for disqualification on two counts. The argument is that for the purpose of sub-clause (b) of sub-section (1) to be attracted, it must be proved that there is an act committed of voting or abstaining from voting contrary to any direction issued by a political party or Aghadi or front to which he belongs, without obtaining prior permission of the political party, aghadi or front. The argument is that if there is a political party in relation to P.S., then, that must be as contemplated by the definition and it is not enough that the person belongs to the original political party. The rules provide for information to be furnished by a leader of a party and Rule 3 of the Rules reads as under; -

3. Information to be furnished by a leader of a party -

(1) The leader of each municipal party or a Zilla Parishad party in relation to a councillor and the leader of Panchayat Samiti Party in relation to a member

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

(a) a statement in writing containing the names of members of such party together with other relevant particulars regarding such members as prescribed in Form 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 regulations (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 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 reason 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 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.

Explanation: A Councillor in relation to a municipal party and a zilla parishad party and a member in relation to a panchayat samiti party, may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

15. Therefore, the information of formation of the party has to be provided in terms of this Rule. The rules contemplate that the changes that may take place also have to be informed and sub-rule (5) provides for consequences and violation of any direction by the leader of the party. My attention is also invited to Rule 4 which provides for information etc. to be furnished by Councillor or member. Sub-rule (1)(b) thereof provides for furnishing of particulars in the requisite form and sub-rule (2) of Rule (4) prescribes for furnishing of election certificate. Thus, in terms of sub-rule, Clauses (a) and (b) speak of providing the particulars and declarations and sub-rule 2 provides for certificate. Sub-rule 3 states that summary of the information furnished by the Councillor in relation to a Municipal party and a zilla parishad party and member in relation to the P.S. Parry, 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 to the Collector necessary corrigendum shall be published in the Gazette. Rule 5 provides for register of information and Rule 6 states that refers for disqualification has to be by way of petition and Rule 7 sets out the procedure by which the disqualification petition shall be dealt with.

16. It is the case of the petitioner in the reference petition and respondents before me that he and the present petitioners who are original respondent Nos. 1 to 3 belong to INC Indapur Panchayat Samiti. It was their case that this party was formed after the requisite procedure under the Rules was complied with. In para 2 of the petition it has been pointed out that the Candidates were

sponsored by INC which is a national party and, thereafter, the Maharashtra Pradesh Congress Committee President authorised one Dr. Y. Dube to communicate the names of the candidates of the P.S. Elections to the Collector. Thus present petitioner contested the elections on the symbol of INC which is "Palm" (hand). They were aware of the same. They got elected and subsequently, a meeting took place on 13th March, 2007 to establish and form INC Indapur P.S. Party. The party was established and formed along with Rules and Regulations and by Resolution No. 4, passed at the meeting which took place on this date. First respondent was elected leader of the party giving him all rights including rights to issue whip (Resolution No. 6). The said meeting was attended by the petitioner as well as eight other members of the party, including the present petitioner. In para 4 of the reference petition, what has been stated is that the Collector by his letter No. 466 of 2007 dated 13th-March, 2007, directed the BDO to make necessary compliance under the said Rules. Accordingly, on 14th March, 2007, respondent No. 1 submitted form No. I as per the said Rules and the election certificate and Form No. III. It is his specific case that BDO acknowledged the receipt of Form No. I and III and the said certificate on 14th March, 2007. His further case is that BDO further submitted the same to the Collector on the same date i.e. 14th March, 2007 which was received by Deputy Collector on 15th March, 2007. To support this statement, first respondent relied upon copies of necessary acknowledgement with documents. Thus, the respondent Nos. 1 to 3 were aware that they got elected on the symbol and panel of INC and, thereafter, they became member of INC Indapur P.S. Party. There are further events on 14th March, 2007 which are narrated in paras 5 and 6.

17. In such circumstances, on the basis of bare denials in the written statement, issues were framed and issue Nos. 1 and 4 deal with this very aspect. When the evidence was led and the present BDO was examined as witness, naturally on the basis of available record, he deposed that he will not be in a position to state as to who received the forms. However, while answering Issue No. 2, the Collector has referred to the deposition of respondent No. 1 Ankush Kondiba Jadhav. He stated in terms of the contents of the petition filed that on 13th March, 2007, a meeting was held of the Indapur Taluka Congress Committee (I). Advocate Mr. Manohar Choudhary is President of Taluka Congress (I) Committee. In that meeting, it was decided to set up and establish Bharatiya Rashtriya Indapur P.S. Party, the Constitution and Rules so also the elect a Leader thereof and the power to issue whip. He has filed a copy of the notice of this meeting together with list of documents. He also stated that he has a certified true copy which he has filed with the supplemental list of documents. He states that the letter notifying such meeting is duly signed by the Advocate Mr. Choudhary and he identified his signature. He also identified the signature of himself and the present petitioners. He further deposes that in this meeting which was held on 13th March, 2007, Resolution No. 3 is relating to the establishment of the Panchayat Samiti Party, its constitution and rules. In this meeting, Resolution No.

4 is to the effect that the first respondent is elected the panchayat samity party leader and that he has been given all powers. Resolution No. 6 empowers him to issue a whip. He specifically states that in that meeting, he and other eight members of the party were present. He specifically states that the petitioners to this petition were also present. He has filed photocopies of the minutes of this meeting and the said document is at serial No. 18. He deposes about its contents and identifies the signatures on these minutes. He also identified signatures of the petitioners to the present petition. He states that in the petition there is a typographical error inasmuch as the date of the meeting is not 12th March, 2007 but 13th March, 2007. In this meeting itself a reference was made to a letter No. 466/07 and, therefore, it was decided to fill up the relevant forms after proper scrutiny and verification and, thereafter, to forward them to Collector's office. In para 5 of his deposition he has deposed about the contents of the decisions and resolutions and he has identified the signatures of the petitioners and has stated that all that is recorded in the minutes is true and correct. He then states that all the information in relevant form Nos. I and in was duly forwarded by him on 14th March, 2007. He has produced the certified copy of the letter forwarding its details to the office of the Collector of the District. He has stated that photocopy is of the original that has been received in the office of the BDO. He states that he has also filed acknowledgement which has been received from the office of the BDO. He further states that in the office record of the BDO, against the date 14th March, 2007, there is a record of this information having been received and duly communicated to the Collector of the District. He has also filed true copies of the record in the BDO's office. He has identified the signature of the then BDO and he states that he knows the same and he is familiar with the same. He states that by letter dated 14th March, 2007, the BDO forwarded these documents to the Collector for further action. There is an acknowledgement of the office of the Collector dated 15th March, 2007 of having received this letter. A perusal of the entire evidence of this witness would indicate that he has deposed about each and every form and contents thereof and the information provided so also the communication which was addressed to the Collector.

18. Now, in the cross-examination of this witness/first respondent, there is nothing that would falsify his version in the examination-in-chief. In the cross examination, there were several suggestions given but he has stated that the documents were forwarded to the BDO. There may be certain blanks in some of the documents but having perused his cross-examination, I do find that the P.S. Party was formed, rules and regulations finalised, the leader chosen and the powers to issue whip conferred, is undisputed. It is in such circumstances and when this witness has stood by his version and in the cross-examination by the petitioner's Advocate has categorically stated that on 13th March, 2007 a meeting was held at which petitioners before this Court were present, then, it will not be possible for me to accept the contentions of Mr. Dhakephalkar that the political party viz., Panchayat Samiti Party was never formed and registered. He laid great emphasis on the deposition of the BDO but even the BDOs deposition

must be seen as a whole and not in parts. So perused and considered, it is apparent that the BDO who has been examined as witness states that there is a photocopy of the letter dated 13th March, 2007 in the file and record of the BDO. He states that it is true that whatever documents have been forwarded in March, 2007 to the office of the Collector, their copies are in the files of the office of the BDO. He has stated that the information forwarded by the first respondent was in turn forwarded to the office of the Collector on 14th March, 2007. However, which documents were sent and by whom, that reference may not be available in the office records of the BDO. Beyond this, his deposition does not show that there were no documents received in the office of the BDO and that they were never forwarded to the office of the Collector.

19. Mr. Dhakephalkar criticises the Collector for referring to the original record in his office behind the back of the petitioners and without giving any opportunity to them. From a reading of the order of the Collector, impugned in this petition, it is apparent that the Collector has referred to the deposition of all witnesses, including the BDO Mr. Wankhede and merely to satisfy himself that the original record is available in his office or not and since reference is made to the copies thereof, summoned the original files and perused them. The Collector has not taken some documents which were never relied upon by parties or utilised some private information and personal knowledge of himself as Collector to record a finding against the petitioners. The tenor of the criticism is that the Collector, with the assistance of the record of his office held against the petitioners but that is not the factual position. With a view to satisfy himself that the copies of the documents forwarded by the first respondent to the BDO were in turn forwarded and the photocopies evidence the same, that he called for the originals from his own office and perused them. In the peculiar facts of this case, I do not see how any prejudice is caused to the petitioner by this exercise. More so, when I have pointed out in the foregoing paras that the version of the first respondent supporting the contents of the Reference petition has not been falsified in any manner. Further, the pleadings in the petition and the reply thereto in the written statement would indicate that the petitioners did not raise a categorical defence that the meeting was never held or that no decision was taken to register a party or that the first respondent was never chosen a leader or that there was never any power given to him to issue a whip. In the absence of clear case but only by evasive denials, they could not have raised doubt or suspicion on the version of the first respondent. That version has been corroborated by his own deposition and the records, copies of which were duly filed and exhibited. With the originals of these copies being available in the Collector's office that the Collector thought it fit to doubly assure himself. He called for the originals and then compared and verified them. Without anything more, this exercise undertaken by the Collector prejudices none. Thus, the criticism of Mr. Dhakephalkar is, therefore, wholly unjustified.

20. Thus, the findings of fact that are recorded insofar as Issue Nos. 1 and 2 is concerned are fully supported by the deposition of the witnesses and the

documents, originals of which, were also available in the records. The conclusion of the Collector based on all this is that the P.S. Party was indeed formed, the information thereof was duly forwarded and perusal of para 19 of the written statement of one of the petitioners shows the admission of membership of this party. Thus, there is a local political party in panchayat Samiti. The contradiction in the version of one of the petitioners has been noted. The version was to the extreme and namely that one of the petitioners stated that he contested as an independent. However, when confronted with the material regarding election symbol, this petitioner had no answer. Therefore, the conclusion that the P.S. Party was functioning from 13th March, 2007 to 27th November, 2009 cannot be said to be perverse or vitiated by any errors apparent on the face of the record. Once the aforementioned issues are answered in the affirmative and Mr. Dhakephalkar canvassing no arguments on the correctness of the findings recorded on the rest of the issues, then, a conclusion is inevitable that the first respondent has proved the case as set out in his petition. He has been rightly believed by the Collector. The deposition of first respondent together with other materials are referred to while recording finding on issue Nos. 3 and 4. In such circumstances, it is not possible for me to accept the contentions of Mr. Dhakephalkar that findings are vitiated by errors of law apparent on the face of the record.

21. The other contention of Mr. Dhakephalkar also is of no assistance to him inasmuch as, he relies upon language of Rules 3 and 4 and submits that if a summary of the information furnished by the Councillor in relation to a municipal party and Z.P. Party and member in relation to P.S. Party is received, under Rule 4 the same shall be furnished in Maharashtra Government Gazette and non publication thereof is fatal. Now, Rule 3 provides for information to be furnished by leader of a party. The leader of each party, locally formed, has to within 30 days from the date of commencement of the Rules or from the formation of party or within such further period as the Collector or Commissioner may determine, furnish the information which is about the names of members of such party together with relevant particulars regarding such members as prescribed in form I, including the names and designations of members of such a party who have been authorised for communicating with the Collector and a copy of the rules and regulations of local political party and whether such a party has any separate set of rules and regulations known as constitution by any other name, copy of such rules and regulations. Rule 3 read as a whole does not envisage that on receipt of the information, the same has to be published. What is required to be published is information etc. furnished by Councillor or member. That statement is a statement of members and declarations in Form HI. It is that information which is to be provided in Form HI, and publication of a summary of which is envisaged by Rule 4(3). How non compliance with this sub-rule would assist the petitioners in this case has not been clarified by Mr. Dhakephalkar at all. This is an information which is to be provided in a distinct form and that form is Form III. The information that is provided by a leader of a party in relation to

formation of party is in Rule III. It is not the argument that such an information is required to be published in the Official Gazette or that the information is to be published otherwise. If that is not the requirement of Rule 3 then, the requirement prescribed by some other Rule and in relation to some other information cannot be read into Rule 3. In such circumstances, the argument of Mr. Dhakephalkar on this aspect must also fail.

22. Lastly, a faint attempt was made to urge that the petition for disqualification itself was not maintainable because procedural requirements prescribed by Rules 6 and 7 are not complied with.

23. Now it has been held by the Supreme Court in (Kedar S. Deshpande Vs. Bhore Municipal Council)¹, reported in 2011(1) Bom.C.R. (S.C.)531: 2010 DGLS (soft) 2396 : AIR 2011 Bom. 479, that provisions of Rules 6(3) and (4) are directory in nature and defect in verification of the petition is curable. The so called irregularity regarding verification of petition and annexures would never affect merits of the case. As far as the requirement of Rule 7 is concerned, it is not the argument that there is any non compliance therewith. The Collector in this case has complied with the same, inasmuch as, he has duly drawn up the substance of the imputations of disqualification into definite and distinct articles of charge. The argument is that the charge and issues that are framed do not tally or there is a mismatch, cannot be accepted because a careful perusal of Schedule A in this case would show that the wording of the same and that of the issues framed in English while passing the final order is identical. There is no prejudice caused because the charges framed and the statement of imputations have been duly received. Further, there is compliance with the other requirements of Rule 7. In these circumstances, it is not possible to agree with Mr. Dhakephalkar that there is any infraction of Rules 6 and 7.

24. Finding that each of the contentions which have been canvassed before me are devoid of any substance, there is no alternative but to dismiss this petition. It is accordingly dismissed. Rule is discharged. No costs. At this stage, Mr. Patwardhan, learned Counsel appearing for the petitioners, prays for continuation of the interim order dated 17th June, 2011, which request is opposed by Mr. Kadam, learned Counsel appearing for the respondent Nos. 1 and 2. Having found that the petitioners have incurred disqualification and they are disqualified rightly by the Collector, the vacancies caused by their disqualification have to be filled up in accordance with law. In such circumstances, the request is refused.