Kedar Shashikant Deshpande Etc.Etc vs Bhor Municipal Council & Ors. Etc.Etc on 10 December, 2010

Equivalent citations: AIR 2011 SUPREME COURT 463, 2011 (2) AIR BOM R 479, 2011 (2) SCC 654, (2011) 1 ALLMR 934 (SC), (2010) 13 SCALE 289, (2011) 1 BOM CR 531

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Bench: Gyan Sudha Misra, J.M. Panchal

Reportable

THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.10452-10457 OF 2010
(Arising out of S.L.P. (Civil) Nos. 7477-7482 OF 2010

Kedar Shashikant Deshpande etc. etc. ... Appellants

Versus

Bhor Municipal Council & Ors. etc. etc.... Respondent

JUDGMENT

J.M. Panchal, J.

Leave granted in each petition.

2. These appeals are directed against common judgment dated February 4, 2010 rendered by the Division Bench of High Court of Judicature at Bombay in Writ Petition Nos. 964 of 2006 to 968 of 2006 and Writ Petition No. 971 of 2010 by which the order dated January 21, 2010 passed by the Additional Collector, Pune holding that the petitioner in each case is disqualified to be a Member of Bhor Municipal Council, Taluka Bhor, District Pune, is upheld.

3. The facts emerging from the record of the case are as under: -

The general elections for the Bhor Municipal Council, District Pune, which consists of 17 councillors, were held on June 22, 2008. The result of the election was declared on June 23, 2008 and the same was published in Maharashtra Government Gazette on June 27, 2008. The result of the election was as under :-

A) NCP - 8 Councillors

1) Yashawant Baburao Dal - Petitioner in SLP (C) No.7479/2010.

2) Manisha Rajkumar Kale

3) Rajshree Anil Sagle - Petitioner in SLP (C) No.

4) Vijaya Ananta Ulhalakar - Petitioner in SLP (C)

5) Kedar Shashikant Deshpande - Petitioner in

6) Jayshree Rajkumar Shinde - Petitioner in SLP

7) Ganesh Anant Pawar

8) Dattatraya Ramchandra Palakar - Petitioner in SLP (C) No.7482/2010.

B) Congress (I) - 8 Councillors

1) Kailas Shankar Dhawale

2) Suvarna Mohan Shinde

3) Sachin Ashok Harnaskar

4) Truptee Jagadeesh Kirve

5) Tanaji Sadu Taru

6) Gajanan Kisan Danawale

7) Sanjay Dattartraya Jagtap

8) Shankar Baban Pawar C) Independent - 1 Councillor

1) Vittal @ Lahu Ramchandra Shinde The said independent candidate joined NCP immediately on June 27, 2008.

4. Mr. Yashawant Baburao Dal was appointed as Pratod/Gatneta of NCP on June 27, 2008. The Pratod/Gatneta of NCP, Mr. Yashawant Baburao Dal with his signature submitted the information in Form I as per Rule 3(1)(a) of Maharashtra Local Authority Members Disqualification Rules, 1987 (`The Rules', for short) to District Collector stating the names and addresses of 9 councillors of NCP. All the 9 councillors of NCP also submitted the information in Form III as per Rule 4(1) of the Rules. The election of President and Vice President of Bhor Municipal Council took place on July 19, 2008. With a 9:8 majority, the NCP candidate Mr. Vittal Shinde was elected as President whereas Mr. Ganesh Pawar was elected as Vice President of the Bhor Municipal Council. On December 21, 2009, Mr. Yashawant Dal resigned from the post of Pratod/Gatneta of NCP. The same was accepted and Mr. Ganesh Pawar was appointed as Pratod. On December 22, 2009, following 6 NCP councillors left NCP and formed Bhor Shahar Vikas Swabhimani Sanghathana ("the Sanghathana" for short) :-

1) Yashawant Baburao Dal

2) Rajshree Anil Sagle

3) Vijaya Ananta Ulhalakar

4) Kedar Shashikant Deshpande

5) Jayshree Rajkumar Shinde

6) Dattatraya Ramchandra Palakar It may be mentioned that Mrs. Jayshree Rajkumar Shinde was appointed as a Party Pratod of the said Sanghathana. On December 23, 2009 the Pratod/Gatneta of Sanghathana, Mrs. Jayshree Shinde gave a letter to the District Collector informing the Collector that the Sanghathana was formed. The Pratod/Gatneta also submitted Form I as per Rule 3(1)(a) of the Rules. Each of the 6 councillors also submitted Form III as per Rule 4(1) of the Rules. An affidavit sworn by Mr. Yashawant Dal before Notary on December 21, 2009 was also submitted to the District Collector informing the Collector about the formation of the Sanghathana. On December 29, 2009, 6 councillors of the Sanghathana and 8 councillors of Congress (I) submitted requisition to the Collector for `No Confidence Motion' against President Mr. Vittal Shinde. On December 30, 2009 the Collector issued the agenda for the meeting to be held on January 6, 2010. The said meeting was held in which `No Confidence Motion' with 14:3 votes was passed for removal of President Mr. Vittal Shinde. The New Pratod, Mr. Ganesh Pawar of NCP, i.e., the respondent No. 4 herein and the President of NCP Pune District, i.e., the respondent No. 5 herein Mr. Suresh Ghule filed Disqualification Petition no.25/2009 against 6 councillors who had formed the Sanghathana, for a declaration that they had defected from NCP and had incurred disqualification under Section 3(1)(a) of Maharashtra Local Authority Members Disqualification Act, 1986 (`The Act', for Short). The contents of the petition were verified before Notary only and an affidavit in support of the petition as per the requirements under CPC was not filed. The

> Disqualification Petition was listed for the first time on January 4, 2010 when by way of oral argument the appellants raised preliminary objection regarding non-compliance with Rule 6(3) and Rule 6(4) of the Rules and prayed to dismiss the said petition in limine. Again the Disqualification Petition was listed before the Additional Collector, Pune on January 8, 2010 when both Mr. Ganesh Pawar and Mr. Suresh Ghule were absent and therefore the matter was adjourned to January 12, 2010. However, on the same day after the departure of Mrs. Jayshree Shinde and Advocate for the appellants Mr. D.S. Patil, the advocate for the respondents gave an application at about 1.35 P.M. seeking permission to verify the documents filed along with the Petition i.e. (Exh.A to Exh.I). The Additional Collector, Pune granted the permission as prayed for. The appellants claim that before granting the permission to the respondents to verify the documents filed along with the petition, no notice was given to the appellants and without hearing the appellants, the respondents were permitted to verify the documents which was illegal. On January 11, 2010, Notice for framing of charge i.e. substance of imputation of disqualification with articles of charges was issued by the Additional Collector and hearing was fixed on January 22, 2010. The appellants filed an application on January 12, 2010 raising preliminary objection stating that there was non-compliance of Rule 6(4) and 6(3) of the Rules and prayed to dismiss the disqualification petition. The grievance of the appellants is that the said application was never decided till the disposal of the main petition.

The respondents filed an affidavit in reply in the said Disqualification Petition on January 19, 2010. The Additional Collector Pune passed final order dated January 21, 2010 in Disqualification Petition No.25 of 2009 and disqualified the appellants, retrospectively with effect from January 23, 2010 as councillors of the Sanghathana.

5. Feeling aggrieved Writ Petition Nos. 964 of 2006 to 968 of 2006 and 971 of 2010 were filed by the appellants before the High Court challenging the aforesaid order. The High Court by the impugned judgment dated February 4, 2010 has dismissed those petitions giving rise to the present appeals.

6. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeals and different affidavits filed by the parties.

7. The first contention raised by Mr. Arvind V. Savant, learned senior advocate for the appellants is that the disqualification petition filed by the respondents Nos. 4 and 5 herein before the Collector was not verified in accordance with Rule 6(4) and 6(3) of the Rules and, therefore, the same should have been dismissed in limine. According to the learned counsel for the appellants the Additional Collector had permitted the respondent Nos.4 and 5 to verify the petition on January 8, 2010 behind the back of the appellants and thereby committed illegality which vitiates the impugned judgment. On the other hand Mr. Shekhar Naphade, learned senior counsel for the respondents argued that failure to verify the documents annexed to the disqualification petition at the time of filing of the petition or failure to file a supporting affidavit in terms of Rule 6(4) of the Rules cannot be regarded as having vitiating effect on the disqualification petition and no illegality was committed by the

Additional Collector when permission to verify the documents was granted by him on January 8, 2010.

Rule 6(4) of the Rules which deals with verification of disqualification petition and annexures thereto, reads as under:-

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

Whereas Rule 6(3) of the Rules is as follows: -

> "(3) Every Petition -
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> (a) shall contain a concise statement of the material facts on which the petitioner relies; and
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> (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."
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> A bare reading of the above quoted provisions makes it abundantly clear that these provisions are directory in nature and defect in verification of the petition is curable. The requirement of Rule 6(3) and 6(4) of the Rules is that the petition shall contain a concise statement of material facts on which the petitioner relies and it shall be accompanied by copies of the documentary evidence if any on which the petitioner relies. If the petitioner relies on any information furnished to him by any person, the statement containing names and addresses of such person and existence of such information as furnished by such person as well as any annexure thereto signed by the petitioner and verified in the manner laid down in the Code of Civil procedure for verification of the pleadings is to be incorporated. Further, the defect in verification does not affect the jurisdiction of the Collector to entertain and decide a disqualification petition.

8. In H.D. Revanna vs. G. Puttaswamy Gowda and others AIR (1999) SC 768, the question considered by this Court was whether defect in verification of the Election Petition or in the affidavit accompanying Election Petition filed under the provisions of Representation of the People Act 1951 was fatal. After noticing the provisions of Section 81, 82, 83, 86 and 117 of the Representation of People Act 1951 this Court has held that defect in verification of the Election Petition or in the affidavit accompanying Election Petition is curable and not fatal.

9. In Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore (1964) 3 SCR 573, a Constitution Bench of this Court has held in unmistakable terms that a defect in the verification of an Election

Petition as required by Section 83(1)(c) of the Representation of the People Act, 1951 is not fatal to the maintainability of the petition and that a defect in the affidavit was not a sufficient ground for dismissal of the petition. Another Constitution bench of this Court, has held in Ch. Subbarao vs. Member, Election Tribunal, Hyderabad (1964) 6 SCR 213, that even with regard to Section 81(3) of the Representation of the People Act 1951, substantial compliance with the requirement thereof is sufficient and only in cases of total or complete non-compliance with the provisions of Section 81(3), it could be said that the Election Petition was not one presented in accordance with the provisions of that part of the Act. The said principle of substantial compliance was followed by this Court in K.M. Mani vs. P.J. Antony (1979) 2 SCC 221.

10. In F.A. Sapa vs. Singora (1991) 3 SCC 375, this Court held that a defect in the verification of the petition as well as a defect in the affidavit can be cured and it is not fatal to the maintainability of the petition. The failure to verify the annexures to the petition at the time of filing of the petition in terms of Rule 6(4) and 6(3) of the Rules would not vitiate the proceedings nor would render the petition invalid nor would affect the jurisdiction of the Collector to entertain and decide the Disqualification Petition.

11. In the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and Others (2004) 8 SCC 747, while interpreting the provisions of Schedule X of the Constitution, in a petition involving the issue of disqualification of a Member of Legislative Council belonging to the Indian National Congress under the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994, this Court has considered the question whether infraction of those Rules would render the entire proceedings initiated by the Chairman invalid or without jurisdiction. After examining the scheme of the Rules, this Court has held that the Rules being in the domain of the procedure are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. It is, further, held by this Court that being subordinate legislation, the rules cannot make any provision which may have the effect of curtailing the content and scope of substantive provisions of the Act. It is also held in the said decision that the provisions of Rules 6 and 7 of the Rules of 1994 are only directory in nature and on non-filing of an affidavit as required under sub-rule 4 and order VI, Rule 15 CPC, the disqualification petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis would be adversely affected or rendered bad in any manner. It may be mentioned that the Maharashtra Local Authority Members (Disqualification Rules) 1987 are pari-materia with the Bihar Legislative Council (Disqualification on the Ground of defection) Rules 1994 and, therefore, the principles laid down in the abovequoted decision would be applicable with all force to the interpretation to be placed on the Rules of 1987. In the above quoted decision this Court has gone to the extent of saying that there is no lis between the person moving the petition and the member of the House who is alleged to have incurred disqualification. According to this Court it is not an adversarial kind of litigation and, therefore, even if the petitioner withdraws the petition it will not make a difference as the duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provisions. This Court has held that the provisions of Xth Schedule of the Constitution read with Articles 102(2) and 191(2) operate on their own and the only purpose of the petition is to bring the relevant information about disqualification to the notice of the Chairman. In the present case also Section 7 lays down that the Collector has to decide the question of disqualification on a reference

made to him. The reference will have to be regarded as one of the modes of bringing the relevant information to the notice of the Collector. Sections 3(1)(a) and 3(1)(b) operate on their own force and moment the conditions prescribed therein are satisfied, a corporator stands disqualified. The reference to be made to the competent authority is only for the purpose of bringing to the notice of the competent authority the relevant information about the disqualification. Section 7 of the Act does not contemplate a lis between the two private parties in a disqualification petition. It may be filed for a limited purpose of bringing relevant information to the notice of the Collector who is duty bound to decide the petition in accordance with law.

12. However, in this case the verification was carried subsequently with the permission of the Additional Collector and as regards the supporting affidavit it has been pointed out in para (1) of the counter affidavit of respondent Nos. 4 and 5 filed in the Special Leave Petition that the petition was supported by an affidavit which is not controverted by the appellants. The claim of the appellants that before granting permission to the respondents to verify the annexures, the appellants should have been heard and, therefore, verification of the annexures done on January 8, 2010 should be regarded as no verification in the eyes of law cannot be accepted. Verification of the disqualification petition and/or annexures accompanying the petition is a matter between the persons who filed disqualification petition and the competent authority before whom the Election Petition was listed for hearing. Having regard to the scheme envisaged by the Rules, this Court is of the opinion that it was not necessary for the competent authority to hear the appellants in the disqualification petition before granting permission to the respondent Nos. 4 and 5 to verify the disqualification petition and/or annexures accompanying the petition. Section 99 of the CPC or in any view of the matter, the principle analogous thereto protects the validity of the proceedings from such irregularities. The said Section inter-alia provides that no decree shall be reversed or substantially varied, nor shall any case be remanded inter-alia on account of any error, defect or irregularity in any proceeding not affecting the merits of the case. The so-called irregularity regarding verification of the petition and annexures thereto would never affect the merits of the case. It would be a wrong exercise of discretionary powers to dismiss a petition for disqualification on the sole ground of defect in verification. Normally when such defects are noticed the applicant should be called upon to remove such lacuna.

13. Further, the appellants have failed to point out that failure on the part of the respondents to verify the annexures at the time of filing of the petition and permission granted by the Additional Collector to the respondents to verify annexures has caused any kind of prejudice to them. On the facts and in the circumstances of the case this Court is of the opinion that non-compliance with Rule 6(4) and 6(3) of the Rules at the initial stage by the respondents did not vitiate the disqualification petition nor affected the jurisdiction of the Additional Collector to decide the same and, therefore, the first contention raised on behalf of the appellants is rejected.

14. The next contention raised by the learned counsel for the appellants that the Additional Collector had no jurisdiction to entertain and decide the disqualification petition filed by the respondents because he is not the Collector within the meaning of Section 2(b) of the Act has no substance. As rightly pointed out by the learned counsel for the respondents, this argument was never raised before the Additional Collector who decided the disqualification petition nor this point was raised

before the High Court. In Remington Rand of India Ltd. vs. Thiru R. Jambulingam (1975) 3 SCC 254, this Court, did not allow the plea of lack of jurisdiction to be taken for the first time in an appeal, after the appellant having submitted to the jurisdiction of the Authority in earlier proceedings. The question whether Additional Collector had jurisdiction to entertain and decide the disqualification petition filed by the respondents is essentially a question of fact. It is pertinent to note that Section 13(3) of the Maharashtra Land Revenue Code, 1966 contemplates statutory delegation in favour of the Additional Collector. Whether there was statutory delegation in favour of the Additional Collector in terms of Section 13(3) of the Maharashtra Land Revenue Code, is a question of fact. Therefore, the appellants cannot be permitted to argue for the first time before this Court the point that Additional Collector had no jurisdiction to entertain the disqualification petition filed by the respondents. Even otherwise, the record clinchingly shows that the appellants had submitted to the jurisdiction of the Additional Collector and participated in the proceedings before the Additional Collector without any reservation. Therefore, having lost before the Additional Collector, they cannot turn round and challenge the jurisdiction of the Additional Collector for the first time in the appeals filed under Article 136 of the Constitution. It is well settled that if a person has submitted to the jurisdiction of the Authority, he cannot challenge the proceedings, on the ground of lack of jurisdiction of said authority in further appellate proceedings. Had this plea, been raised before the Additional Collector, the respondents would have got the opportunity to place on record notification issued under the provisions of Maharashtra Land Revenue Code, 1966 to establish that the Additional Collector was delegated the powers of the Collector and was competent to decide Disqualification Petition. During the course of hearing, the learned counsel for the State Government has produced before this Court a copy of the Notification No.PWR4983/75289(103)-L-2 dated 24.3.1967 issued under sub-section (3) of Section 13 of the Maharashtra Land Revenue Code, 1966 for perusal of the Court. Before adverting to the same, it would be relevant to notice Section 13(3) of the Act which reads as follows:-

> "13(3). The Additional Commissioner and the Assistant Commissioner, and the Additional Collector and the Additional Tahsildar shall each exercise within his jurisdiction or part thereof such powers and discharge such duties and functions of the Commissioner, the Collector or, as the case may be, the Tehsildar under the provisions of this Code or under any law for the time being in force, as the State Government may, by notification in the Official Gazette, direct in this behalf."

The notification mentioned above reads as under: -

> "No.PWR.4983/75289 (103)-L-2: -
>
> In exercise of the powers conferred by sub- section (3) of Section 13 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966) and in supersession of all previous notifications in this behalf, the Government of Maharashtra hereby directs that the Additional Collectors of all the districts shall exercise within their respective jurisdiction all the powers and discharge all the duties and functions of the Collector under the provisions of the said Code and under any law for the time being in force.

UNF 1467(i)-R, dated 14.8.1967, M.G.G., pt.IV-B, dated 24.3.1967, page 2048."

The meaningful reading of the above quoted notification makes it clear that the Additional Collectors are delegated powers of Collectors under the Maharashtra Land Revenue Code, 1966 as well as under

> any law for the time being in force. There is no manner of doubt that the Maharashtra Local Authority Members' Disqualification Act, 1986 is a law for the time being in force. Therefore, in this case the Additional Collector, Pune was competent to entertain, hear and decide the disqualification petition filed by the respondents. Thus, it is not correct to say that the Additional Collector had no jurisdiction to entertain the disqualification petition filed by the respondents because he is not Collector within the meaning of Section 2(b) of the Act.

15. Even otherwise, the issue of disqualification cannot and should not remain undecided due to any reason whatsoever as it involves issues of public importance and not merely private rights and, therefore, this Court can itself, adjudicate upon and decide the same. In Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & ors. (2007) 4 SCC 270, where the issue of disqualification of MLAs arose before this Court, the Court observed that normally the Court might not proceed to take a decision for the first time when the authority concerned has failed to do so, but if a decision by the Court is warranted, for the protection of the constitutional scheme and constitutional values the Court can take a decision. In the said case 13 members of B.S.P. who had voluntarily given up their Membership of their original political party were sought to be disqualified under para 2 of Xth Schedule to the Constitution. The claim on behalf of the MLAs sought to be disqualified and others who had gone out from B.S.P. with them, was that the disqualification was subject to the provisions of para 3, 4 and 5 of the Xth Schedule and since there was a split, disqualification was not attracted. This Court proceeded to examine the question whether the 13 members were disqualified or not because if the 13 members were found to be disqualified, their further continuance in the Assembly even for a day would be illegal and unconstitutional.

16. The question whether the appellants have incurred disqualification within the meaning of provisions of the Act of 1986 read with the Rules of 1987 has been argued at length before this Court. Remitting the matter to the competent authority at this stage would result into avoidable delay. The relevant material to enable this Court to decide the issue mentioned above is already placed before this Court by the parties. Therefore, the question mentioned above is considered by this Court in detail. Under the circumstances, the plea that Additional Collector, Pune had no jurisdiction to decide disqualification petition filed by the respondents need not detain in this Court any further.

17. The argument that the appellants would not be liable to be disqualified in view of sub-Section(1) of Section 5 because their political party or their Front viz., the Sanghathana had merged with another political party namely Congress (I), is thoroughly misconceived and liable to be rejected. It may be mentioned that the plea of merger has not been specifically taken anywhere in the pleadings by the appellants, though, in the pleadings there is a reference to Section 5 of the Act. The appellants

have failed to furnish relevant details, such as, when their Front or a Aghadi merged with the Congress (I) and whether the district President of Congress (I) and/or other official of Congress (I) had agreed to the merger of the front of the appellants with Congress (I) etc. The pleadings of the appellants before the Additional Collector and the High Court, in fact suggest a split of the appellants from their original political party i.e. NCP. The appellants had throughout contended that they had voluntarily separated from NCP and formed a separate Group/Aghadi/Front. There is no mention of split in the NCP or appellants joining the Congress (I) party. It may be mentioned that the clause relating to split is deleted from the provisions of the Act of 1986 and is no longer available as defence in the matter of disqualification.

18. Even otherwise also, the plea of appellants that their front had merged with Congress (I) has no factual basis. There is nothing on the record to indicate that Congress (I) party had permitted the front of the appellants to merge with the said party nor there is evidence showing that the appellants were permitted to join Congress (I) party. Section 5 of the Act contemplates the merger of the original political party or Aghadi or Front with another political party or Aghadi or Front and by virtue of such merger if a Member of the original political party becomes a Member of the such other political party then he can avail the protection under Section 5 of the Act from disqualification under Section 3 of the Act. In this case the original party of the appellants was NCP. It is not the case of the appellants that their original party NCP had merged with other political party viz., Congress (I) at any point of time. In this case what is admitted by the appellants is that they had separated from their original political party viz., NCP and had formed a separate group known as Bhor Shahar Vikas Swabhimani Sanghathana party. Therefore, this Court is of the firm opinion that provisions of Section 5 are not attracted to the facts of the present case and, plea based on merger cannot be accepted. Mr. Shekhar Naphade, learned senior advocate for the respondent Nos. 4 and 5 submitted that the petitioners had incurred disqualification under Section 3(1)(a) of the Act as they had voluntarily given up membership of NCP. In response to this argument, it was contended by Mr. Arvind V. Savant, learned senior counsel for the appellants that this point was never urged either before the Additional Collector or before the High Court and, therefore, the same should not be permitted to be agitated for the first in the SLP nor the same should be considered by the Court in the appeals filed by disqualified appellants. On consideration of rival submissions, this Court finds that what is sought to be contended by the respondents is legal effect of the proved facts on the record of the case. The point which is sought to be argued by the learned counsel for the respondent Nos. 4 and 5 is a pure question of law and the Court has to merely look to the admitted facts of the case. To ascertain whether the appellants have incurred disqualification in terms of Section 3(1)(a) of the Act it is necessary for the Court to notice the said provisions. Section 3(1)(a) reads as under :

> "3. (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 has voluntarily given up his membership of such political party or aghadi or front;"

The fact that the 6 appellants had contested election as councillors of Bhor Municipal Council, District Pune as candidates of NCP is not in dispute. It is also not in dispute that Mr. Yashawant Baburao Dal who was appointed as Pratod/Gatneta of NCP had submitted the information in Form I as per Rule 3(1)(a) of the Rules to the District Collector stating the names and addresses of 9 councillors of NCP, wherein names of the present six appellants were also included. It is not in dispute that the six appellants had submitted the information in Form III as per Rule 4(1) of the Rules mentioning that each of them was elected as councillor and was affiliated to political party namely NCP. It is the specific case of the appellants that after election of President and Vice President of Bhor Municipal Council on July 19, 2008, the appellants had left NCP and formed Bhor Shahar Vikas Swabhimani Sanghathana on December 22, 2009. It is also their case that Mrs. Jayshree Rajkumar Shinde who has filed SLP arising out of Writ Petition No.966/10 was appointed Pratod of the Sanghathana. On December 23, 2009 she had given a letter to the District Collector to that effect she had also submitted Form I as per Rule 3(1)(a) of the Rules, whereas, all the 6 appellants had submitted Form III as per Rule 4(1) of the Rules. Thus, it is admitted by the appellants themselves that they had left NCP party. What is the effect of the admitted fact has to be taken into consideration by this Court. As mentioned above Section 3(1)(a) without any qualification or rider provides that a councillor or a member belonging to any political party or aghadi or front shall be disqualified, if he has voluntarily given up his membership of such political party or aghadi or front. The provisions are absolute in terms and are mandatory. The mandate given by the legislature cannot be ignored by the Court while hearing appeals arising out of the petitions filed before the High Court under Articles 226 and 227 of the Constitution. The learned counsel for the appellants could not argue before this Court that the appellants had not incurred disqualification in terms of Section 3(1)(a) of the Act. The only contention which was raised was that the plea was advanced for the first time by the learned Counsel for the respondents before the Supreme Court and, therefore, the same should not be taken into consideration. As observed earlier, this Court is of the opinion that the Court has not to investigate or inquire into any facts at all but has to consider the legal effect of the proved facts. The legal effect of proved and admitted facts is that the appellants had incurred disqualification in terms of Section 3(1)(a) of the Act and, therefore, they are not entitled to any of the reliefs in the present appeals.

19. It was further argued by the learned counsel for the respondent Nos. 4 and 5 that the appellants had also incurred disqualification under Section 3(1)(b) of the Act as they had failed to obey the whip issued to them by NCP and had voted contrary to the direction issued by NCP. Elaborating the said argument it was pointed out by the learned counsel for the respondent Nos. 4 and 5 that on December 23, 2009 a whip was issued to the appellants requiring them not to vote in favour of any resolution or motion for removal of the President or the Vice President of the Bhor Municipal Council or to sign any requisition for calling of the meeting for removal of the President or the Vice President. The record establishes though the said whip was duly served on the appellants, they had refused to acknowledge the same and therefore whip was published in the newspaper dated December 20, 2009. The learned counsel further pointed out that despite the whip, the appellants had not only signed the requisition for calling the meeting for removal of the President and/or the Vice President but also voted in favour of no confidence motion. According to the learned counsel for the respondent Nos. 4 and 5 the fact that the appellants had supported the move to bring about no confidence motion and voted in favour of the said motion is evident from their own letter dated

December 29, 2009 addressed by Mrs. Jayshree Rajkumar Shinde who was appointed as Pratod/Gatneta of the Sanghathana to the Collector. It was contended that pursuant to the requisition, the Collector had convened a meeting on December 30, 2009 for considering the motion of no confidence against the President who was a member of NCP is not in dispute and, therefore, for disobeying whip issued by the authorized person of the party the appellants should be regarded to have incurred disqualification also under the provisions of Section of 3(1)(b) of the Act. In reply, it was contended by the learned counsel for the appellants that this point was not argued before the Additional Collector or High Court and, therefore, should not be permitted to be urged for the first time in appeals filed by the appellants nor to be considered by this Court.

20. On consideration of the rival submissions advanced at the Bar by the learned counsel for the parties, this Court finds that this plea raised by the learned Counsel for respondents does not involve at all determination of any question of fact. Here also the Court will have to consider the legal effect of admitted and proved facts. The record of the case indicates that after election results were published in Maharashtra Government Gazette of June 27, 2008, one independent councillor that is Mr. Vittal @ Lahu Ramchandra Shinde had joined NCP immediately that is on the same day itself. Thus, the strength of NCP councillors in Bhor Municipal Council, District Pune, was of 9 councillors. The record unerringly establishes that on June 27, 2008 Mr. Yashawant Baburao Dal who has filed SLP No. 7479 of 2010, was appointed as Pratod/Gatneta of NCP. The record would further show that on December 21, 2009 Mr. Yashawant Baburao Dal had resigned from the post of Pratod/Gatneta of NCP and the resignation was accepted on December 22, 2009. In place of Mr. Y.B.Dal, NCP Councillor Mr. Ganesh Anant Pawar was appointed as Pratod. Thereafter, the six appellants who had left NCP had formed the Sanghathana and Mrs. Jayshree Rajkumar Shinde was appointed as Pratod of the said Sanghathana. It is the case of the appellants themselves that six councillors of the Sanghathana and eight councillors of Congress (I) had submitted a requisition dated December 29, 2009 for moving no confidence motion against the President Mr. Vittal Shinde. The evidence on record shows that before the six councillors of the Sanghathana along with eight councillors of Congress (I) had submitted requisition for no confidence motion against the President on December 29, 2009, a whip was issued to the appellants and other members of the NCP on December 23, 2009 by Mr. Ganesh Anant Pawar who was Pratod of NCP, requiring the appellants and others not to vote in favour of any resolution or motion for removal of the President and Vice President of the Bhor Municipal Council and not to sign any requisition for calling meeting for the removal of the President and the Vice President. The assertion made by the respondent Nos. 4 & 5 is that the whip was sought to be served on the appellants but they had refused to give acknowledgement and therefore the said whip was published in the newspaper dated December 8, 2009. There is no manner of doubt that the Pratod of NCP had sensed that a move was afoot to bring no confidence motion against the President and Vice President of Bhor Municipal Council by the appellants who were belonging to NCP, and therefore, it had become necessary for him to issue whip to the councillors of NCP to restrain the appellants and others from joining the move for removal of President or Vice President of the Council. The whip which was published in the newspaper dated December 28, 2009 forms part of the record. There is no manner of doubt that by the said whip it was directed to the councillors of NCP not to sign any requisition for bringing a motion of no confidence and also not to support any such no confidence motion. Despite the whip, the appellants had not only signed the requisition requesting the Collector to call a meeting for

consideration of no confidence motion against the President but had also in fact voted in favour of the said motion. This is evident from the contents of letter dated December 29, 2009 addressed by Mrs. Jayshree Rajkumar Shinde who was Pratod of the Sanghathana to the Collector. Section 3(1)(b) of the Act reads as under :

> "3. (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 -
>
> (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 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 Parishads and Panchayat Samitis Act, 1961 shall not be condoned under this clause;
>
> Explanation - For the purposes of this section -
>
> (a) 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 candidate for election as such councillor or member;
>
> (b) a nominated councillor shall
>
> (i) where he is a member of any political party or aghadi or front on the date of his nomination be deemed to belong to such political party or aghadi or front,
>
> (ii) in any other case, be deemed to belong to the political party or aghadi or front of which he becomes, or as the case may be, first becomes a member of such party or aghadi or front before the expiry of six months from the date on which he is nominated;
>
> (c) a nominated member, in relation to a Panchayat Samiti, includes an associate member, referred to in clause (c) of sub-

section (1) of section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1991."

An analysis of the above noted provisions makes it more than clear that a councillor or a member belonging to any political party or aghadi or front shall be disqualified for being a councillor or a member 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.

21. According to the explanation (a), for the purposes of Section 3 of the Act 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 candidate for election as such councillor or member. The fact that each of the six appellants was set up as a candidate for election as councillor of Bhor Municipal Council by NCP is not in dispute. Therefore, for the purposes of Section 3 of the Act, the appellants will have to be regarded as belonging to the political party namely NCP. The fact that the appellants had disobeyed the whip issued is not in disputed by them before this Court. Therefore, on the facts and in the circumstances of the case it will have to be held that appellants had also incurred disqualification in terms of Section 3(1)(b) of the Act.

22. The contention raised by the learned counsel for the appellants is that the failure on the part of the Collector, District Pune, to comply with the provisions of Rule 4(3) of the Disqualification Rules 1987 namely failure to publish the summary of information furnished by the Councillor in the Maharashtra Government Gazette as also the failure to comply with Rule 5(1) of the said Rules i.e. failure to maintain in Form IV, a register based on the information furnished under Rule (3) and (4) in relation to he Councillor, are fatal and, therefore, the appeals should be accepted.

23. In answer to this argument it was pointed out by the learned counsel for the respondent Nos. 4 and 5 that this plea was not raised by the appellants before the High Court and, therefore, should not be permitted to be raised in the instant appeals and alternatively it was argued that the Rules in question do not lay down that a political affiliation of the councillor comes into being only upon submission of Form-I, Form-III and/or publication of information n the Official Gazette. What was maintained by the learned Counsel for the respondent Nos. 4 and 5 was that the submission of Form-I, Form-III and/or publication of information in the Official Gazette etc. is/are only for the purpose/s of record and to furnish an evidence about the political affiliation of the councillor. The failure to file Form-I, Form-III and/or publication of information in the Official Gazette does not mean that the appellants did not belong to NCP. It was pointed out by the learned counsel for the respondent Nos.4 & 5 that Form-I, Form-III and/or publication in the Official Gazette merely have an evidentiary value and that apart there can be other evidence indicating the political affiliation of a councillor. According to the learned counsel for the respondent Nos. 4 and 5, the party on whose ticket the councillor has contested and won the election is the original political party to which he belongs and the evidence of the same can be through sources other than the aforesaid Form-I, Form-III and/or publication in the Official Gazette and, therefore, the submission made on behalf of the appellants has no substance and should not be accepted by the Court.

24. On scrutiny of the record, it becomes evident that a statement containing the names and addresses of councillors of NCP as prescribed in Form-I was not published in the Official Gazette. It is true that as per Rule 4 every councillor has to furnish to the Collector a statement of particulars

and declaration in Form-III, which inter-alia, contains the information relating to the political party to which the councillor belongs. As per rule 4(3) summary of information furnished by the councillor to the Collector has to be published in the Official Gazette. Further, on a critical study of the provisions of rule 3 read with rule 4(3) of the Rules, it is evident that neither rule 3 nor rule 4 nor any other rule of the Rules mentions that a political affiliation of the councillor would come into existence only upon submission of either Form-I, Form-III and/or publication of information in the Official Gazette. It is rightly contended by the learned counsel for the respondent Nos.4 & 5 that these forms and publication in the Official Gazette have merely an evidentiary value which would prima facie establish that a councillor belongs to a particular political affiliation and nothing more. The alleged non-availability of the evidence relating to the political affiliation of the appellants in the Form-I, Form- III and/or publication in the Official Gazette would not mean that the appellants did not belong to NCP. Form-I, Form-III and/or publication of information in the Official Gazette merely has an evidentiary value. Though in a given case apart from the same, there can be other evidence indicating the political affiliation of the councillor. Explanation to Section 3 of the Act clearly indicates that the councillor belongs to that political party upon whose ticket the councillor has contested the election and won the election.

25. Therefore, the contention that based on the alleged breach of Rule (3) and Rule (4) of the Rules of 1987 has no substance and cannot be accepted.

26. The argument that there was total non application of mind on the part of the Additional Collector in passing the impugned order of disqualification on January 29, 2009 purporting to exercise powers under Section 3(1)(c) of the Act of 1986 and, therefore, the appeals should be accepted also has no merits. From the record of the case, it is apparent that the case of the respondent Nos. 4 & 5 was that the appellants had incurred disqualification under Section 3(1)(a) when they left NCP. It was never their case that the appellants had incurred disqualification under Section 3(1)(c) of the Act. But Collector by mistake has mentioned Section 3(1)(c) in his order dated January 21, 2010 of which undue advantage is sought to be taken. In catena of decisions, this Court has held that merely quoting wrong provisions of the statute while exercising power would not invalidate the order passed by the authority if it is shown that such order could be passed under other provisions of the statute. What is important to notice is that Section 3 (1)

(c) of the Act of 1986 inter-alia provides that a "nominated member in relation to a Panchayat Samiti includes an associate member, referred to in Clause (c) of sub-Section (1) of Section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act 1951. It is not the case of the appellants that they are either associate members or nominated members in relation to Bhor Municipal Council. Thus reference made by the Collector to Section 3(1) (c) will have to be regarded as mistake on his part because of difference in Vernacular and English version of the Act of 1986. On the facts and in the circumstances of the case this Court is of the firm view that the appellants had incurred disqualification under Section 3(1)(a) of the Act as pleaded by the respondent Nos.4 & 5 and not under Section 3(1)(c) of the Act as mentioned by the Collector.

27. What is noticed by this Court is that the Act of 1986 is basically in vernacular language, wherein the Sections are described as 3 (ka), (kha) & (ga) but in English it is mentioned as 3(1) (a) (b) and

(c). The appeals cannot be accepted on the ground that a wrong provision of law is mentioned inadvertently by the Collector in his order.

28. The contention that it is well settled that the Court should not interfere with the election of the democratically elected candidate and, therefore, the appeals should be accepted is difficult to accept. It is true that it is laid down in a series of reported decisions of this Court that the Court normally should not lightly interfere with the election of a democratically elected candidate. However, here in this case the Court finds that the appellants had incurred disqualification under the Act. The question of disqualification of the appellants was raised by respondent Nos. 4 & 5 and, therefore, not only the Competent Authority under the Act was required to decide the said question, but this Court also has to determine the question whether disqualification is incurred by the appellants. If the Court comes to the conclusion that the appellants had incurred disqualification in terms of the provisions of the Act then the Court has no alternative but to interfere with the election of the appellants even though they have been democratically elected candidates. However, merely because they are democratically elected candidates, it would be wrong to contend that they can never be disqualified. If such an interpretation as suggested by the learned Counsel for the appellants is accepted, it will defeat the object of the Act, which cannot be countenanced.

29. The contention that the respondent Nos. 4 & 5 have acted malafide in co-opting two councillors on June 8, 2010 and in constituting 5 new committees on July 22, 2010, has also no substance. It may be mentioned that there was no stay against co-option of the councillors nor there was stay relating to the constitution of new committees and therefore action of the respondents of co- opting of two committees and constituting 5 new committees cannot be regarded as malafide.

30. Further the co-option of the 2 councillors on June 8, 2010 and the constitution of 5 new committees on July 22, 2010 would not make any impact if the Court were to rule in favour of the appellants that they had not incurred disqualification under the Act. Therefore, the appellants are not entitled to any relief on ground that respondent Nos. 4 & 5 had acted malafide in resorting to co-option of two councillors on June 8, 2010 and constitution of 5 new committees on July 22, 2010.

31. The plea that Additional Collector, Pune failed to exercise jurisdiction vested in him by not deciding the preliminary issue as to maintainability of the disqualification petition on the erroneous assumption that the High Court had directed him to dispose of the disqualification petition within two weeks and, therefore, the order of the Additional Collector should be set aside has no substance.

32. From the record it is evident that one of the preliminary points raised by the appellants before the Collector was that Section 5(2) of the Act deals with merger and in this case merger had taken place and, therefore, the disqualification petition was not maintainable. As noticed earlier the case of the respondent Nos. 4 & 5 was that by voluntarily giving up membership of NCP the appellants had incurred disqualification as councillors under Section 3(1) (a) of the Act. Section 5 is an exception to Section 3 which deals with merger of an original political party or aghadi or front with any political party or aghadi or front and provides that in case of such merger councillor or a member should not be disqualified under sub-Section (1) of Section 3 of the Act. It was never the

case of the respondent Nos. 4 & 5 that the appellants had formed a party and that party had merged into Congress (I) party and had therefore, incurred disqualification. Section 5 speaks of merger of original political party. It is not the case of respondent Nos. 4 & 5 that original political party of the appellants namely NCP had merged with any other political party. Therefore, there was nothing to be decided as preliminary issue for the purpose of ascertaining whether the disqualification petition filed by the respondent Nos. 4 & 5 was maintainable. The Additional Collector did not commit any error in not deciding so called preliminary issue relating to maintainability of the petition and therefore, the appellants are not entitled to any benefit on the ground that there was failure of exercise of jurisdiction by Additional Collector.

33. The net result of the above discussion is that this Court does not find any substance in the appeals and, therefore, the appeals which lack merits deserve dismissal.

34. For the foregoing reasons the appeals fail and are dismissed. There is no order as to costs.

.....J. (J.M. PANCHAL) .....J. NEW DELHI (GYAN SUDHA MISRA) DECEMBER 10, 2010.