

# Pragneshkumar Jayantilal Soni vs Pankajkumar Mangaldas Patel on 16 October, 2019

**Equivalent citations: AIRONLINE 2019 GUJ 809**

**Author: V.P. Patel**

**Bench: S.R.Brahmbhatt, V.P. Patel**

C/SCA/11769/2019

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11769 of 2019  
With  
CIVIL APPLICATION (FOR STAY) NO. 2 of 2019  
In R/SPECIAL CIVIL APPLICATION NO. 11769 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 13054 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT  
and  
HONOURABLE MR.JUSTICE V.P. PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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PRAGNESHKUMAR JAYANTILAL SONI  
Versus  
PANKAJKUMAR MANGALDAS PATEL

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Appearance:

SCA 11769 / 2019

MR. B.B.NAIK, SENIOR ADVOCATE with MR EKANT G AHUJA(5323) for the Petitioner(s) No. 1,2,3,4,5,6,7,8

MR RH RUPARELIYA(6212) for the Petitioner(s) No. 1,2,3,4,5,6,7,8

MS. MANISHA LAVKUMAR, GP for the Respondent(s) No. 2-3  
MR. JAL SOLI UNWALA, SENIOR ADVOCATE with MR MOUSAM R  
YAGNIK(3689) for the Respondent(s) No. 1  
MR NIRAD D BUCH(4000) for the Respondent(s) No. 1  
Appearance:  
SCA 13054 / 2019  
MR. B.B.NAIK, SENIOR ADVOCATE with MR EKANT G AHUJA(5323) for  
the Petitioner(s) No. 1  
MR RH RUPARELIYA(6212) for the Petitioner(s) No. 1  
MS. MANISHA LAVKUMAR, GP for the Respondent(s) No. 1-2

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CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT  
and  
HONOURABLE MR.JUSTICE V.P. PATEL

Date : 16/10/2019

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE V.P. PATEL)

1. This Writ Petition is filed under Article 226 of the Constitution of India by the Petitioners, being aggrieved and dissatisfied with impugned order dated 4.7.2019 passed by Respondent No.2 - Designated Officer of the State of Gujarat in Vivad Petition No.8/2018, whereby the Petition filed by the Respondent No.1 under Rule 6 of the Gujarat Provision For Disqualification of Members of Local Authorities For Defection Rules 1987 (for short "the 1987 Rules") read with Section 3 of the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Act, 1986 (for short "the 1986 Act") has been allowed and the present Petitioners are declared as disqualified being the members of the Kapadvanj Nagar Palika.

2. Heard learned Senior Advocate Mr. B.B.Naik appearing with learned Advocate Mr. Exant G. Ahuja for the Petitioners and learned Senior Advocate Mr. Jal Soli Unwalla appearing with learned Advocate Mr. Mousam R. Yagnik and learned Advocate Mr. N.D.Buch for Respondent No.1 and learned Government Pleader Ms. Manisha Lavkumar Shah for Respondent Nos. 2 and 3.

3. The Petitioners hav eprayed for the reliefs in para 8 of the Petition which read as under:

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"(a) Your Lordships be pleased to admit this petition;

(b) Your Lordships be pleased to allow this petition by way of issuing a writ of mandamus or any other appropriate writ, order or direction and to quash and set aside the impugned order dated 4.7.2019 passed by the Respondent No.2 in Vivad Application No.8/2018 (bb) That your lordships be pleased to allow this petition and be pleased to issue a writ of mandamus or any appropriate writ or directions quashing and setting aside the proceedings of General Body of the Kapadwanj municipality held on 31.7.2019 as well as the election of respondent number 1 as President of Kapadwanj Municipality.

(c) To restrain the respondent no.3 District Collector of Kheda from initiating the proceeding of fresh election for the post of President of Kapadwanj Nagar Palika, during the pendency of admission, hearing and final disposal of the petition;

(d) During the pendency and final disposal of this petition, be pleased to stay the execution, implementation and operation of the impugned order dated 4.7.2019 passed by the respondent no.2 in Vivad Application No.8/2018;

(e) During the pendency and final disposal of this petition, the petitioner no.1 may not be restrained from officiating or functioning as President and Member of Kapadwanj Nagar Palika; and so also the petitioners no.2 to 8 as members of the Kapadwanj Nagar Palika;

(f) To pass any other appropriate and just order/s."

#### 4. Facts of the Case:

4.1 The Petitioners are the elected members of Kapadwanj Nagar Palika, on the symbol of the Bhartiya Janta Party (for short "BJP") for five years in the General Election held on 29.11.2015. The General election of the Kapadwanj Nagarpalika was held for seven wards and in all for 28 Councilors (4 Councilors for each ward).

C/SCA/11769/2019 JUDGMENT Out of that 15 candidates were affiliated with BJP, one candidate is affiliated with Indian National Congress Party and twelve independent candidates were elected. The notification dated 2.12.2015 was published in Extraordinary Gazette by Election Officer of Kapadwanj Nagarpalika under Rule 68 of the Gujarat Nagarpalika (Election) Rules 1994 to that effect. [Page 155 to 157] 4.2 A Notice dated 25.5.2018 under Rule 3 and 4 of the Gujarat Nagarpalika (President and Vice-President) Election Rules 1964 was issued by the District Municipal Election Officer & Collector, Kheda for holding an election on 7.6.2018 for the post of President and Vice President. [Page 159] 4.3 The Petitioner No.1 was declared elected as President of Kapadwanj Nagar Palika in the meeting dated 7.6.2018. In such meeting, out of 28 members, 25 members remained present. That a whip was issued to the electing members of the BJP for the said meeting but the whip / mandate was

not obeyed and the Petitioners have acted contrary to the said whip.

4.4 The Respondent No.1 preferred petition / application on 28.6.2018 under Section 6 of the 1986 Act read with Rule 6 of the 1987 Rules before the Designated Authority, Gujarat, wherein the Petitioners had appeared and filed their affidavit-in-reply dated 18.12.2018. The rejoinder thereof was filed by Respondent No.1 on 6.6.2019. The Petitioners thereafter have filed sur-rejoinder to the same on 24.6.2019.

4.5 That the Designated Authority has, vide order dated

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4.7.2019 (1.7.2019), allowed the petition / application of Respondent No.1 and disqualified the petitioners from holding their respective posts in the Kapadvanj Nagar Palika.

4.6 That on issuance of Notice by this Court on 10.7.2019, the Respondent No.3 issued Notice / Agenda on 26.7.2019 for holding the election for the post of President of Kapadvanj Municipality on 31.7.2019. The Petitioners came to know about the said notice on 27.7.2019 stating that the same was the fourth Saturday being holiday in the High Court and the next day was the Sunday. The Petitioners filed Writ Petition being Special Civil Application No. 13054 of 2019 on 29.7.2019 which was taken up for hearing on the same day and this Court pleased to issue Notice and allowed the election to be held subject to final outcome in the said Petition.

It is further clearly stated in the said order that the Respondent No.3 to inform the candidates about the said order passed by this court on 29.7.2019. That in a meeting held on 31.7.2019, the Respondent No.1 is elected as President.

## 5. Arguments of the Parties:

5.1 The learned Senior Counsel for the petitioners has argued that the Respondent No.1 / Original Applicant had preferred the Petition under Rule 6 of the 1987 Rules. That the Petitioner / Respondent No.1 has produced some documents before the designated officer. The copy of said documents are produced as Annexure in this petition.

5.2 That the learned Senior Counsel for the Petitioner argued that the impugned order of Respondent No.2 is bad in law and is C/SCA/11769/2019 JUDGMENT illegal and against the evidence on record. The same is contrary to the established principle of law.

5.3 That the impugned order is bias on the face of it as the Respondent No.2 - Authority is working under the Government of Gujarat - the present ruling party of the BJP who has suspended the Petitioners from the party. That the impugned order has been passed under the influence of the ruling party of the State Government and therefore the impugned order is not sustainable in the eye of law. Learned Advocate for the Petitioners has relied upon the judgment reported in 2009 (3) GLH 385 in case of Devabhai Parbatbhai Avadia & Ors. v. Competent Authority, Appointed by Anti Defection Act & Anr., which according to him, squarely covers the case of the Petitioners.

5.4 That the mandate issued by the District President - Devsinh Jaysinh Chauhan was not served to the Petitioners as the signature of the Petitioners are not obtained and therefore in no way the Petitioners could be put to the knowledge of the whip (mandate).

5.5 That the Chair-Person of the meeting ought to have verified the so called mandate (whip) issued by the District President. By not doing so, it has resulted into serious miscarriage of justice to the Petitioners. That no such mandate (whip) was read over at the time of meeting dated 7.6.2018. That it means it can be clearly inferred that no mandate (whip) was ever issued by the party in favour of Respondent No.1. The same is concocted and fabricated later on with a view to get the Petitioners disqualified.

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5.6 That the Petitioners have done every action under the

bonafide impression and belief as can be seen from the facts stated in the petition. That the Petitioners never intended to disobey or commit any breach of the party's order or mandate (whip). They cannot be held liable for any of their acts which are done genuinely and bonafidely.

5.7 That the Petitioner No.1, 2 and 7 were suspended from the party in the year 2017 and therefore even if there was any so called mandate (whip) issued by the District President of the party, it could have no applicability to the case of the Petitioner Nos. 1, 2 and 7. Learned Senior Counsel for the Petitioners further submitted that the Petitioners have not breached Rule 10 of the 1987 Rules. That there was no mandate (whip) issued for the meeting dated 19.6.2018 which was held under the President-ship of Petitioner No.1 to decide the course of action of appointing

different committees. It is believed that so called mandate (whip) dated 19.6.2018 was issued by the District President for the said meeting, the same cannot bind the Petitioners in light of the judgment of this Court reported in 2012 (2) GLR 981 in case of Bachubhai Rimbhai Makwana v. State of Gujarat Through M. 5.8 It is also argued that the Petitioners have not formed any separate group in the Nagar Palika nor they have given up membership of the BJP and the same has been stated on oath in the reply filed by the Petitioners. That the said fact is not considered by the designated officer. He also relied upon the judgment of the Amreli Nagar Palika dated 31.5.2019. That the private Respondent / Original Applicant has not moved the Respondent Authority with C/SCA/11769/2019 JUDGMENT clean hands and have tried to mislead the authorities.

5.9 That the Respondent Authority has accepted the say of the Respondent No.1 as gospel truth and has passed the order disqualifying the Petitioners. That it is the case of the Petitioners themselves that the Petitioners had not denied to sign after receiving such mandate (whip). That even otherwise no documents are produced in order to prove that other members were informed about the mandate (whip) and they had acknowledged the mandate (whip). That the Respondent No.2 - Authority has falsely drawn an inference that the Petitioners have left the party and have made a new group and have given up their primary membership of BJP.

That the Petitioners have neither joined any other party nor the Petitioners have made new party. That the Petitioners have also not tendered their resignation and that the Petitioners' suspension has been revoked by the District President - BJP on 28.2.2019. That the impugned order is liable to be quashed as being bad in law, illegal and without application of mind and contrary to the provisions of law. The learned Senior Counsel for the Petitioner therefore requested to allow this petition and dismiss the impugned order dated 4.7.2019 passed by the Respondent No.2 in Vivad Application No.8/2018.

6. Learned Senior Advocate for Respondent No.1 submitted that the Petitioner Nos. 1, 2 and 7 are infamous for acting contrary to the mandate (whip) and directions. That the Petitioner No.1 wanted to set up as a member for the post of President of the Municipality in 2015 and therefore the Petitioner Nos. 1, 2 and 7 have started acting contrary to the instructions of the parties to take revenge.

C/SCA/11769/2019 JUDGMENT That during the election of the member of the legislative assembly Mr. Kanubhai Dabhi was selected by the party as candidate in 2017. That despite the selection of Mr. Kanubhai Dabhi as a candidate of the party from the aforesaid seat, these three Petitioner Nos. 1, 2 and 7 were acting to the detriment of the interest of the party and were campaigning against the said candidate and in favour of the independent candidate. Therefore these three Petitioners came to be suspended on 10.12.2017 by the District President of BJP. It is further argued that the Petitioners have remained silent about the letter addressed to the Chief Election Officer, the District President, the District Collector and another clearly intimating that the Petitioners herein have formed a distinct group from their party and that they have decided to vote in favour of their own candidates.

It is argued that it is not true that the petitioners have not formed any separate group and have not given up membership of the BJP. That during the meeting held on 7.6.2018, all the eight petitioners have taken conscious decision not to follow the directions that may be falling from higher ups to set up their independent candidate contrary to the instructions from the party chief.

6.1 That the proceedings of election have been recorded by more than one cameramen in mobile phone and / or video cameras. That the entire proceedings running into almost one hour has not been recorded in the CD completely. It is further argued that the Petitioner No.1 has been a highly influenced member of the body and has been a rebellious character as could be seen from the affidavit in reply. That the allegations made by the Petitioners here in the petition are as vague as it could be and the same cannot be C/SCA/11769/2019 JUDGMENT accepted. That the designated authority has passed the impugned order keeping in mind the provisions of law, evidence on record and the pleadings of the parties and therefore it cannot be said that the order suffers from non-application of mind.

6.2 That the allegations made against the designated authority are wrong. That the mandate was issued and it is the duty of the member of the panchayat or Nagarpalika to receive the same. The Petitioners have not taken care to get the copy of the mandate issued by the President of the party. Therefore, the Petitioners cannot take plea as regards to the service of notice of mandate. That the Petitioners have not examined any one before the designated authority to substantiate their stand. That the Petitioners have formed separate group and the said fact is proved by way of documentary evidence. That sufficient material is placed before the designated authority to disqualify the Petitioners. The conduct of the Petitioners i.e. to disobey the directions or the mandate (whip) issued by the party leader is established from the proceedings of the meeting dated 7.6.2018 and 19.6.2018. Learned Advocate for the Respondent therefore requested to dismiss the petition with heavy costs.

7. Learned Government Pleader has argued that the designated authority has acted in a bona fide manner and according to law. The designated authority has given full opportunity of hearing to the parties. That the designated authority has passed reasoned order. That the designated authority has passed the order accordingly to law and considered the evidence on record. Therefore, the impugned order is not assailable and requested the C/SCA/11769/2019 JUDGMENT court to dismiss the petition with heavy cost.

Scope of Judicial Review in Writ Petition:

8. The Hon'ble Supreme Court has fixed the parameters for exercising of power by the High Courts under Article 226 and 227 of the Constitution of India in case of Surya Dev Rai v. Ram Chander Rai, reported in (2003) 6 SCC 675. After considering the various aspects of the issue, the Hon'ble Supreme Court has culled out the following principles in paragraph 38 of the judgment:

"Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, I.e., when a subordinate court is found to have acted (I) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

C/SCA/11769/2019 JUDGMENT (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (I) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, I.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one, view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such C/SCA/11769/2019 JUDGMENT refusal



itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

9. We have considered the arguments advanced by the parties, perused the documents produced on record and gone through the relevant provision of law and Rules. The Respondent No.1 / Original Applicant has filed application under Rule 6 of the 1987 Rules before the designated officers, herein Respondent No.2, which was registered as Vivad Application No.8/2018. The Respondent No.1 has raised mainly two contentions i.e.;

(i) that the Petitioners have breached the mandate (whip) issued by the party while the meeting held on 7.6.2018 for the election of the President and Vice-President of the Kapadwanj Nagar Palika.

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(ii) that the Petitioners have also breached the mandate (whip) of

the party in the meeting held on 19.6.2018 for the special meeting wherein different committees were required to be formed.

Breach of Mandate in the meeting dated 7.6.2018:

10. The main contention was raised by the Respondent No.1 against the Petitioners in Vivad Application that the election was held for the 28 members of the Kapadwang Nagarpalika on 29.11.2015. The notification dated 2.12.2015 to that effect was published by the Election Officer and the Prant Officer, Kapadwanj [Page 155]. The first tenure of the President and Vice-President i.e. for a period of 2 ½ year was completed. The District Municipal Election Officer had issued Agenda dated 25.5.2018 [Page 159] for the election of the President and Vice-President for the second term. The meeting was to be held on 7.6.2018 for the election of the President and Vice-President of the

Kapadwanj Nagar Palika.

10.1 It is stated in the application that the State President Shri Jitubhai Vaghani had authorized on 6.6.2018 the District President Mr. Devsinh Jaysinh Chauhan to issue mandate (whip) to all the elected members of the BJP. The copy of authorization letter is produced at page no. 161 in the record.

10.2 In pursuance of the authorization letter, the District President Mr. Devsinh Jaysinh Chauhan has issued the mandate (whip) [Page 163] on 7.6.2018. It is further say of the Respondent No.1 that the same whip was served before the meeting to all the elected members of the BJP in person and their signs were obtained to that C/SCA/11769/2019 JUDGMENT effect. The whip was received by the petitioners but they have refused to sign for acceptance of the whip. That the issuance of whip was within the knowledge of the petitioners and all other elected members of the BJP. The said direction, letter dated 7.6.2018 about the whip are produced at page 164 to 172 in the record.

10.3 It is further stated that during the meeting on 7.6.2018, initially the Petitioner Nos. 1 and 7 have set up themselves as a President against the mandate (whip) issued by the party. The Petitioner No.7 has withdrawn his candidature as President during the meeting.

10.4 It is further stated that the Petitioners have voted against the whip / mandate and the Petitioner No.9 was remained absent and not voted as per the mandate. It is further stated that the Petitioners have breached Rule 10 of the 1987 Rules.

11.The Petitioners have filed affidavit-in-reply on behalf of the Petitioners before the designated officer wherein it is stated in paragraphs 4, 5 and 6 as under:

"4. The answering deponent denies that any whip was issued to them or any instruction was issued to them by the Party to vote in favour of Pankajbhai Mangaldas Patel for the post of President and Abdul Kadar Karigar as Vice President.

5. The averments made in paragraph 4 are totally false. The whip alleged to have been issued by the party has not been read out in the meeting by the Presiding Officer nor was any such letter given by the District President to the Presiding Officer for the said purpose. The minutes drawn C/SCA/11769/2019 JUDGMENT by the Presiding Officer of the meeting held on 7.6.2018 though states that a whip was issued by the District President but the same was not read out in the meeting. In real fact the Presiding Officer has not followed the procedure as laid down in Rule 10 of the Defection Rules.

The respondents have not formed any separate group, as alleged, not have given up the membership of Bhartiya Janta Party.

6. With reference to paragraph nos. 5 of the petition, we stated and submit that no whip whatsoever was issued to the respondents either before the meeting had

commenced or at the beginning of the meeting and therefore the respondents considering the interest of the party have cast the votes accordingly. I deny the averments and contentions made in the same as being not true and correct.

We say and submit that the respondents one day prior to the date of the meeting went to the office of the party and met the District President and inquiry was made about any whip was issued with regard to casting votes in favour of the President and Vice President. In response to which it was informed by the District President that no instructions have been issued. And if at all any decision with regard to the same shall be taken, it was conveyed that it will be informed to the respondents. But till such time the election was over, no whip whatsoever was issued by the authorized person."

11.1 Learned Senior Counsel for the Petitioners has relied upon the judgment reported in 2009 (3) GLH 385 in case of Devabhai Parbatbhai Avadia & Ors. v. Competent Authority, Appointed by Anti Defection Act & Anr. wherein this court has held in paragraph 12, 15 and 17(A) as under:

"12. Under subrule(7) of Rule 7 thus the Designated Officer has to follow the procedure which is consistent with the principles of natural justice and to ensure that the C/SCA/11769/2019 JUDGMENT finding that a member has become subject to disqualification is not reached without affording a reasonable opportunity to such councilor or member to represent his case and to be heard in person. It cannot be disputed that if evidence of any person either on oath or rendered through a statement on affidavit is to be relied upon to render a member disqualified, such person must be permitted to be cross examined by the concerned member. Any departure from this basic requirement would certainly be in violation of principles of natural justice. Therefore, the view of the Designated Officer that Rule 7(7) does not envisage cross examination of the applicant cannot be approved. However, when we are dealing with the proceedings for disqualification under the Defection Rules, whether the applicant upon whose petition the disqualification proceedings have been initiated should be permitted to be cross examined and whether the member concerned should be permitted to lead his oral evidence, must depend on facts of each case and no rigid or uniform formula which would apply in every case can be laid down.

15. The question of granting permission for cross examining the applicant therefore, shall have to be judged depending on facts of the case and if such permission is denied, the decision of the Designated Officer shall have to be judged on the touchstone whether "the person aggrieved was given a fair deal by the authority or not". In the present case, the appellants had approached this Court at a stage when the Designated Officer had not passed the final order on the application seeking disqualification. During the pendency of the proceedings as already noted such final order has been passed.

17(a) 17. Before concluding, we would like to clarify few aspects : a) We make it clear that even in a disqualification proceeding, if the evidence of any witness rendered either on oath or on affidavit, is sought to be relied upon by the Designated Officer to pass any order adverse to a member, such member would have the right to seek cross examination of such a witness."

C/SCA/11769/2019 JUDGMENT 11.2 By Citing this judgment, the learned Senior Counsel for the Petitioner has stated that reasonable opportunity is required to be given to the delinquent for cross-examination of the witnesses. This court has held in the cited judgment that; if the party seek cross-examination of any witness of the other side, the said opportunity as regards to the cross-examination of the witness is required to be provided. There is no disagreement with the ratio laid down by this court in the above judgment. The same is not applicable to the present case because on perusing the affidavit in reply filed before the designated authority by the present petitioners as well as the impugned judgment, there is no averment as regards to the demand of cross-examination of any witness. Considering the averments of the petition also, it does not disclose any contention that the petitioners have asked for cross- examination of any witnesses and designated officer has refused the same. Considering the factual aspects of the present case, the judgment cited by the learned Senior Advocate for the petitioner is not helpful to him.

11.3 asdfLearned Senior Advocate for the petitioner has also relied upon the judgment delivered by this court; one of us (Coram:

S.R.Brahmbhatt,J), reported in 2012 (2) GLR 981 in case of Bachubhai Rimbhai Makwana v. State of Gujarat Through M. The relevant paragraphs are reproduced as under:

"13. The Local Authorities Defection Act, thus provide for restricting and preventing any unscrupulous elected members' undemocratic attempts and action aimed at destabilizing the process of governance. It provides for drastic effect upon the elected members accused of C/SCA/11769/2019 JUDGMENT defecting, hence the provisions are required to be construed strictly. A question arises as to whether the provisions of Local Authorities Defection Act envisage and enable political parties to issue 'direction' on every subject and for every meetings of the body, be it Panchayat or Municipality, wherein decisions are to be taken by majority voting? The answer is emphatic "NO". As, if it is held to be so, than elected individual member, will lose his basic natural and unfettered individual right to act as per the dictates of his conscience. This would render and reduced him to be merely a robot or puppet in hands of few leaders of political party whose integrity and intentions cannot be vouchsafed permanently. Therefore I am of the considered view that the provisions of the Local Authorities Defection Act does not empower the Political Parties to issue binding 'directions' to it's members to vote in particular manner or in favour all the moves even if they are not meetings of Panchayat or Municipalities but only meetings of it's subcommittee wherein the process of voting is not likely to affect power equations at all.

16. Thus examining the present controversy in the light of the afore said, would show that the meeting of "Talala Samajic Nyay Samiti" cannot be said to be the meeting of Talala Taluka Panchayat. The voting in that meeting for electing Nayayik Samiti's president cannot be equated with the meeting of Talala Taluka Panchayat or election of Laslala Taluka Panchayat's President. Therefore I am of the considered opinion

that the petitioner was not under any obligation to obey the direction issued by the District President of Junagadh District Unit of Bhartiya Janta Party on 20.12.2010 for electing Respondent No. 2 as president of the Nayakik Samiti or for casting vote in his favour for electiong Respondent No., 2 as President of Nayayik Samiti. The meeting of talala Taluka Nyayik Samiti cannot be said to be a meeting of Talala Taluka Panchayat. For disobedience of such directions the petitioner cannot be said to have incurred any disqualifications as provided in the Local Authorities Defection Act."

11.4 In the above judgment, it is held that the meeting of the C/SCA/11769/2019 JUDGMENT Samajik Naya Samiti cannot be said to be a meeting of Taluka Panchayat and therefore the provisions as regards to the mandate is not applicable to meeting of such Samajik Naya Samiti. This judgment is not applicable to the present case because the allegation as regards the breach of mandate for the meeting of the Kapadvanj Nagar Palika but not for any sub-committee of the Nagarpalika (Municipality).

11.5 Learned Senior Counsel has relied upon the judgment dated 24.8.2018 passed by this court in Misc. Civil Application No.1/2018 in Special Civil Application No. 16135 of 2016 in case of Babubhai Virjibhai Padhar v. A.J.Shah Designated Officer. This judgment is also not applicable to the present case because the Chairperson of the committee under the cited judgment has recorded the verification of mandate in the minutes of the meeting. Whereas in the present case no such verification of mandate is noted in the minutes of the meeting dated 7.6.2018. The present petitioners had formed a separate group and they have voted against the mandate. As far as the meeting dated 19.6.2018, the other members have pointed out about the mandate issued by the authority but the Chairperson (i.e. the petitioner no.1) has refused to discuss the same.

12.Considering the record produced before this court, the following facts are emerged:

(a) The Agenda was issued on 25.5.2018 by the District Municipal Officer and Collector for the meeting dated 7.6.2018 for the election of President and Vice-President of the Kapadwanj Nagar Palika. [Pae No. 159] C/SCA/11769/2019 JUDGMENT

(b) State President has written a authorization letter dated 6.6.2018 addressing to District President - Devsinh Jaysinh Chauhan [page no. 161] wherein the mandate was given to the members to elect Pankajbhai Mangaldas Patel as President and Mr. Abdul Kadar Karigar as Vice-President.

(c) That the District President - Devsinh Jaysinh Chauhan has issued mandate (whip) dated 7.6.2018 directing to vote Mr. Pankajbhai Mangaldas Patel for President and Mr. Abdul Kadar Karigar for Vice-President and Mr. Chintubhai Rajubhai Patel as Executive Chairman of the Kapadwanj Nagarpalika. [Page 163].

(d) On perusing the mandate dated 7.6.2018 in form of letter issued by the District President - Devsinh Jaysinh Chauhan, it is stated that the Councillor has to remain compulsory present in the meeting to be held on 7.6.2018 (Thursday). It is also directed to vote as per the mandate for President and Vice-President and comply the mandate compulsorily. It is also emphasized that if any breach is committed, the disciplinary action would be taken for disqualification from the membership of Councillor [Page 164 to 172]

(e) It is pertinent to mention that the direction dated 7.6.2018 [page no. 164 to 172] does not disclose the name of the persons in favour of whom voting is required to be done. On such letter or a mandate, no signature of the Petitioners except Petitioner No.2.

(f) The record shows the undated letter on page no. 181

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addressed to the Chief Officer / Prant Officer, Kapadwanj Nagarpalika stating that the below mentioned BJP Counselors are elected on the symbol of the party. Out of them 3 members were suspended by the BJP. The rest of the 5 are continued as members of the BJP. It is further stated that we eight members / councillor have made a separate group from party (BJP) for the election to be held on 7.6.2018. The copy of this letter is forwarded to; (i) President - BJP, Kapadwanj Organization - City Part; (ii) President, District B.J.P. Kheda and; (iii) Collector, Kheda

(g) In this undated letter at page no. 181, reference of meeting dated 7.6.2018 is mentioned, and therefore, it can be presumed that the said letter is written on or before 7.6.2018. There is no denial of the Petitioners that it does not bear their signatures and said letter is concocted. The action on the part of petitioners as regards to the formation of separate group is fortified from the minutes of the meeting held on 19.6.2018.

13.It is beneficial to refer hereunder some of the pronouncements wherein nature, scope and interpretation of applicable provisions of the 1986 Act and the 1987 Rules are discussed.

13.1 Learned Government Pleader for the Respondent Nos. 2 and 3 has relied upon the judgment reported in 2012 (5) GLR 4503 in case of Katara Bhaveshbhai Babubhai v. Designated Authority Under The Gujarat Provision For Disqual and ors. This court has observed about Rule 10 of Rules 1987 and Section 3 of the Act 1986 in the following paragraphs:

C/SCA/11769/2019 JUDGMENT "5.5 The need to construe a mandate strictly, considering the consequences that ensue for flouting, finds supports from observations of the Supreme Court in *Sadashiv H. Patil vs. Vithal D. Teke* [(2000) 8 SCC 82].

" A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councilor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act."

7.3 It would be now apposite to refer to and quote paragraphs 36 and 37 in *Devabhai Parbatbhai Avadia* (supra) extensively relied on for the purpose of interpreting Rule 10 of the Rules and to assail the impugned judgment, as a suffix to and in the context of what is discussed and held above, "36. .... The first part of the Rules requires that the alleged defaulter shall ascertain as to whether any mandate has been issued by such political party, and if issued he shall obtain a copy thereof. To put it differently the onus which was uptill now incorrectly understood to be on the petitioner, and to a certain extent on the designated authority, is shifted on the alleged defaulter. The said burden is primary in nature and unless and until it is discharged a rebuttable presumption arises that such a political party has issued a mandate and the alleged defaulter has acted contrary to such a direction in light of the information available on record as furnished by the leader of the party in the local body.

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37. The second part of the Rules cannot be pressed into service by an alleged defaulter to discharge the onus which is statutorily cast on the alleged defaulter by the first part of the said Rule. The second part merely requires the chairperson of the meeting to verify whether a mandate has been issued by a political party and circulated to its members by the political party. The said part of Rule 10 of the Rules does not cast any burden on the chairperson to circulate the mandate of a political party to the members of the political party after obtaining a copy of such mandate from the political party. In fact the second part of the Rule is only to ensure that the chairperson knows the correct position so that in a given case if a councilor/member makes a statement before the said authority that no such mandate has been issued the chairperson may make the position clear. A reading of the second part of the Rule cannot mean that the chairperson, who is not otherwise in any manner connected with any political party, is required to act for and on behalf of a particular political party, considering that in a local body there may be two or more political parties being represented by different groups of councilors/members. The chairperson cannot be asked to collect mandate from all political parties and have copies thereof distributed to the respective members of all such political parties."

13.2 It is held in case of Bachubhai Rimbhai Makwana v. State of Gujarat Through M. (supra);

"12. The aforesaid provision of Section 3 on its plain and simple reading nowhere suggests that the elected member is restrained from voting as per his conscience in the meetings of sub-committees of Panchayat or Municipalities. The main object and reason for promulgating the statutes like the Local Authorities Defection Act is obviously to prevent unscrupulous party-members, having used party's support, symbol and popularity in getting themselves elected as such, from indulging into horse-trading and destabilizing governing party for extraneous reasons, which may have far reaching effect upon the process of governing. Therefore in order to discourage and dissuade such unscrupulous C/SCA/11769/2019 JUDGMENT elements from indulging in such dubious and undemocratic practices, dealing very serious blow to the very fabric of democratic governance, the statutory provisions like Local Authorities Defection Act have been enacted."

13.3 Learned Counsel for Respondent No.1 has relied upon the judgment reported in 2018 (3) GLH 306 in case of Thakrshibhai Shavshibhai Rathod v. A.J.Shah Designated Officer. In this judgment, the interpretation as regards to Rule 10 of 1987 Rules and Section 3 of the Act 1986 is discussed in paragraph 9 of the judgment. We have considered the observation and the ratio laid down by this court.

13.4 The learned GP has also relied upon the judgment reported in 2010 (1) GLH 401 in case of Lalsingh G. Rathva & Ors. v. Competent Authority - Sports Youth and Cultural Activities & Ors. wherein it is held that any condonation of action of voting or abstention contrary to the mandate of the party to which belongs to after a period of 15 days will not come to the rescue of such councilor or the member. This judgment is not applicable to this case because there is no contention of the petitioners that their action is condoned by the authorities.

14.It is beneficial to refer to Rule 10 of the 1987 Rules which reads as under:

"Rule 10: A Councillor of Municipal Corporation or the Municipality or a member of the Panchayat who is elected on the symbol of political party shall while attending any meeting of Municipal Corporation or the Municipality or a Panchayat ensure whether any mandate is issued by such political party and if any mandate is issued by such political party, he shall obtain such mandate from such political party, or by any person or authority authorized by it. The Chair-person of any meeting of Municipal Corporation or the Municipality or a panchayat shall verify that such a mandate has been issued by the political party, and circulated to the councilor of Municipal Corporation or the Member of Municipality or a member of the Panchayat."

14.1 Rule 10 of the 1987 Rules cast a liability on two persons i.e. one; the Member / Councillor of the Panchayat / Municipality who is elected on the symbol of the political party and the second; the Chairperson of any meeting of the panchayat / municipality.



14.2 The duty cast upon the member of the municipality who is elected on the symbol of the political party is to ensure as to whether any mandate is issued by his political party, and if any mandate is issued by his political party, he shall obtain such mandate from the political party or by any person or authority authorized by it.

14.3 As per Rule 10 of the 1987 Rules, the duty is also cast upon the Chairperson of any meeting of the Municipality to verify that the mandate has been issued by the political party and circulated to the Councillor of the Municipality.

14.4 To ensure is something more than that of the knowledge or belief acquaintance, cognition. To ensure means to ascertain, to secure something which is required to be done. It is further enjoins by the rule on the councillor that he will obtain such mandate from the political party. The word obtain is something more than to receive or take and it is like acquire or realise. The language of the Rule said to be mandatory and not directory for action on part of C/SCA/11769/2019 JUDGMENT the councillor.

14.5 This is an another check to ensure the compliance of earlier part of the Rule 10. The Chairperson has to verify that the mandate of the party has been issued or not. He may verify by any mode i.e. from the concerned party, correspondence received in office, asking to the members / councillor who are attending the meeting, etc. Further, he has to circulate the mandate to the councillors of the Municipality. The prudent and efficient Chairperson certainly take note of compliance of his obligation under the rule while recording of minutes of the meeting.

14.6 The legislature has furthermore taken care that if mandate is issued it should not be frustrated or discomfit the object of the Act 1986. The object of the Act is to provide for disqualification of the members of certain local authorities on the ground of defection and for matters connected therewith. As per Section 8(1) the State Government has made rules carrying out the purpose of the Act.

15. We have considered the documents produced on record and having heard the arguments of the learned Advocates for the parties, applicable legal provisions, we are of the view that the direction / mandate dated 7.6.2018 was issued by the District President who is authorized by the State President of the party. For the reasons best known to the petitioners, they have not ensure as well as obtain copy of such mandate and make up their mind to form the separate group on or before 7.6.2018 i.e. before the meeting was held. In pursuance of formation of separate group they have thought fit to send the undated letter to the Chief Officer, President of District C/SCA/11769/2019 JUDGMENT Political Party, and Collector, otherwise there is no need to send such letters to above authorities. Not only that but also Petitioner No.1 has been elected as President by the voting of other petitioners in favour of Petitioner No.1 and against the mandate issued by the District President. This can be said a clear defection in view of Section 3 of the Act 1986 read with the Rules 1987.

Breach of mandate in the meeting held on 19.6.2018:

16. After the meeting dated 7.6.2018, the party had issued show cause notice dated 8.6.2018 as to why disciplinary action be not initiated and to proceed for cancellation of the membership as a Councillor of Kapadwanj Nagarpalika. Copy of the said notices are produced at page nos. 183 to 191 in the record.

17. The Petitioner No.1 being the President of the Kapadwanj Nagarpalika has issued notice dated 14.6.2018 for meeting to be held on 19.6.2018 for ten agenda items including the formation of different committees.

18. As per paragraph 7 of the original application of the Respondent No.1, it is stated that the meeting was held on 19.6.2018. That the District President BJP had issued the mandate (whip) on 19.6.2018 to all councillor of his party [Page 195 to 204 - copy of the petitioners]. The said mandate (whip) was handed over to the Chief Officer of the Kapadwanj Nagarpalika on 19.6.2018 with a request to serve the member of the BJP party. It is stated that the present Petitioner No.1 was the Chairman of the meeting being an elected President of the Kapadwanj Nagarpalika. That at the instance of Respondent No.1, the whip was about to read before the meeting C/SCA/11769/2019 JUDGMENT was started. But the Petitioners have stated that no discussion is necessary as BJP has suspended them and they have formed a separate group. In pursuance of the said statement made by the Petitioners, the discussion was not carried out by the Chairperson of the meeting. That the Petitioners have formed separate group and they have abandoned the membership of the party under Section 3(1) (a) of the 1986 Act. It is also stated in the application under Section 3 by the Respondent No.1 that the Petitioners have breached the mandate / whip issued by the competent authority / party during the meeting held on 7.6.2018 and 19.6.2018. That the petitioners have been elected on the symbol of the party but they have not complied the mandate of the party and therefore they are liable to be disqualified from the membership of the municipality.

19. The Petitioners have stated in paragraph 7 and 8 of the affidavit in reply submitted before the designated officer which reads as under:

"7. With reference to paragraph 7 of the petition, it is denied that any whip was issued as mentioned during the course of Annual General Meeting of the Nagar Palika held on 19.6.2018. The facts therein are falsely contended and the same are not admitted and denied. The allegation that the respondents have formed a group and have volunteered to split from the party is totally false and denied as such.

8. With reference to paragraph 8 of the petition, it is stated that the respondents have not indulged into any such act, which would call for their disqualification as per sections 3 and 4 of the Act."

20. From the record it reveals that;

(a) At the relevant point of time, the Petitioner No.1 being a President of Kapadwanj Nagarpalika has issued notice dated 14.6.2018 (page no. 193) to all the members of the Nagar Palika to C/SCA/11769/2019 JUDGMENT remain present in the special general meeting which is to be held

on 19.6.2018. This notice contained 10 Agenda Items. Out of them Agenda Item No.5 is for the formation of different committees.

(b) The District President - Devsinh Jaysinh Chauhan has written a letter dated 19.6.2018 (page no. 195-196) to the Chief Officer and to the President - Kapadwanj Nagarpalika requesting the mandate given by him be served upon the Counsellor of the BJP and read during the meeting and take note of such mandate in the proceeding.

(c) The District President - Devsinh Jaysinh Chauhan has issued direction (whip) dated 19.6.2018 to all the members of the BJP including the Petitioners (page No. 197 to 205). It is stated that the general meeting dated 19.6.2018 of Kapadwanj Nagarpalika is called for, which includes the Agenda No.5 for formation of different committees. As per the direction of the State President, he is authorized to issue the mandate that you (Petitioners) are the Counselor of the Kapadwanj Nagarpalika who are elected on the symbol of the BJP and directed to give vote in favour of the persons mentioned hereunder;

Sr.	Name	Committee
1.	Shri Pankajbhai Mangaldas Patel	Managing
2.	Smt. Tinkuben Manubhai Patel	Town Planning
3.	Shri Kadarbhai Ahmedbhai Karigar	Fire Station
4.	Shri Dakshesh Bharatbhai Kansara	M.P.High School
5.	Shri Chintubhai Rajendrabhai Patel	Construction

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It is further directed to give vote to the above named persons for formation of the different committees. It is further cautioned that if they remain absent or choose not to give vote or to remain neutral or if they vote against the direction / whip, it will amount to breach of the whip and the proceedings will be initiated under the Act 1986.

(d) The minutes of the meeting dated 19.6.2018 is produced at page number 207 to 228. On perusing the same, it is mentioned that the mandate issued by the District President - Devsinh Jaysinh Chauhan was read over under Rule 10 of the Rules 1987. Thereafter newly elected President (Petitioner No.1) has explained that they were suspended from the party and they had formed separate group and therefore there is no need of any discussion about the mandate. That the District President - Devsinh Jaysinh Chauhan repeatedly interfere in the work of Kapadwanj Nagarpalika. It appears that no support is given for the formation of the committee as suggested in the mandate

issued by the District President.

(e) Thereafter the committees were formed. Considering the name of the Executive Committee, Construction Committee, Secondary School committee, Primary School Committee, Town Planning Committee, it appears that all the Petitioners have voted against the mandate issued by the District President of the party.

21. Considering the Agenda of the notice dated 14.6.2018, letter written by the District President BJP to the Chief Officer and the C/SCA/11769/2019 JUDGMENT President of the Kapadwanj Nagarpalika, mandate issued to the members of the BJP including the petitioners, minutes of the meeting dated 19.6.2018, it is clearly established that the Petitioners have voted in defiance of mandate / whip issued by the District President dated 19.6.2018.

22. It is the say of the Petitioners that they were suspended and therefore they are not liable to obey the whip issued by the BJP.

22.1 Learned Senior Counsel for Respondent No.1 has relied upon the judgment reported of this Court in Special Civil Application No. 34 of 2018 in case of Arvindbhai Revabhai Prajapati & 1 v. State of Gujarat. This court has held as under:

"6.5 In addition thereto, it is further settled position of law that election statutes are to be construed strictly as observed by the Hon'ble Apex Court in case of Sunil Kumar Kori and Others Vs. Gopal Das Kabra and Others, reported in (2016) 10 SCC 467 and therefore, keeping this proposition in mind, when the provisions contained under the Act of 1986 to be looked into. The object of such stringent provisions is to curb such kind of indiscipline by the members of the political parties and therefore, here, in the instant case, if despite the petitioner s being members, outrageously have violated the whip issued by the competent authority within the party, such act of indiscipline has been properly dealt with, in considered opinion of this Court, by the respondent No. 1 and therefore, order on the contrary has maintained the very object of the provisions of the Defection Act, 1986 and as such, it cannot be said to be erroneous in law. In addition thereto, the suspension is to be not equated with removal in any case.

Undisputedly, here it is not a case of removal at all. The object of suspension is merely to keep a person away from C/SCA/11769/2019 JUDGMENT the field of influence temporarily, for the time being and therefore, this suspension of petitioners cannot be treated as removal. Even the dictionary meaning of suspension would not preclude this Court from concluding that suspension cannot be given a meaning of removal.

6.6 Further, the terminology of word "Suspend" is described by Oxford English Dictionary which indicates the word, I) halt temporary; ii) debar temporary from a post, duties etc. as a punishment; iii) defer or delay an action, even or judgment etc. So this suspension meanings indicate a temporary postponement of an office. As

against this, removal has got the effect of cessation permanently.

6.7 This meaning has further been described in the Advanced Law Lexicon which indicates that "Suspend"

means to delay; to debar from any privilege, office or emolument from some time. The word "Suspend" has got the definite meaning in legal parlance and means temporary inactive or inoperative, held in abeyance, temporarily bar I.e. temporary stop or stay as contested with extinguished.

6.8 The state of being temporarily kept from doing or depriving of some time and therefore, the aforesaid meaning which has been ascribed cannot be compared with removal which has got the complete cessation from the office. It is true that in case of elected representatives, this word "Suspension" cannot be equated with like a suspension of a government service. At the same time, this suspension is as a temporary measure, it clearly appears that a member does not cease to be a member from a party.

6.10 Now, this disciplinary action is possible to be taken against a member of the party in case of breach of discipline and in this very chapter, the breach of discipline has also been defined in which, clause (c) of the said breach of discipline indicates that violating any rule or disobeying any order passed by a competent authority of the party is a part of indiscipline. Therefore, if a close look at this chapter, it would make it clear that this suspension can never be C/SCA/11769/2019 JUDGMENT treated as a removal or cessation from the party."

23. There is no separate definition of suspension of councillor or member under the Act, 1986 or Rules, 1987. There is no special status contemplated for suspended councillor or member of the municipality under the Act, 1986 or Rules, 1987. The suspension from the membership of the political party ordered against the member of the party may or may not be a councillor or member of the municipality / panchayat. Power to suspend from membership of the political party is within the domain or jurisdiction of the political party while power to suspend or to restrain from work as a councillor or member of the municipality / panchayat is not within the ambit of area of operation of the political party.

23.1 There are provisions for suspension of member / councillor of the panchayat or municipality (i.e. Section 59, 73, 87 of the Gujarat Panchayat Act) to be exercised by the executive orders for the reasons of criminal proceeding in respect of an offence involving moral turpitude or detention in a prison, etc. The member / councillor may be suspended [i.e. Rule 39 of the Panchayat (Procedure) Rules 1997] by the presiding officer for the disregards the authority of Presiding Officer or guilty of obstructive or offensive conduct at any meeting. The suspension of the councillor / member of the municipal / panchayat on above reasons by the exclusive orders is different from that of suspension of the member from the political party.

23.2 Suspension of a member from the political party is not comparable with service jurisprudence. If government servant is C/SCA/11769/2019 JUDGMENT suspended from his service he cannot act

as government servant, against this if suspension order is issued by a political party against its member who is councillor / member of the municipality / panchayat it does not cease to act as councillor / member of the municipal / panchayat.

23.3 Considering the nature of suspension from the membership of the political party by the office bearer of the party or any authority of the party is on different capacity / aspects we held that the petitioners are not exempted from complying the mandate of the political party though they are suspended by their party.

24.It is pertinent to refer hereunder Section 3 of the Act 1986, which reads thus:

"Disqualification on ground of defection. - (1) Subject to the provisions of sections 4 and 5, a councillor or a member belonging to any political party shall be disqualified for being a councillor or a member, -

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

(b) if he votes or abstains from voting in any meeting of a municipal corporation, panchayat or as the case may be, municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority within fifteen days from the date of such voting or abstention."

25.In view of the above discussion, we are of the opinion that the petitioners have voted / abstained from voting in the meeting of the Kapadvanj Nagarpalika held on 7.6.2018 and 19.6.2018 contrary to C/SCA/11769/2019 JUDGMENT the direction / mandate issued by the political party to which they belong to, without obtaining the prior permission of political party. The Designated Officer has acted according to law and come to the right conclusion that the petitioners have breached the mandate and rightly disqualified them on the ground of defection from the post of councillor of the Kapadvanj Nagarpalika. Hence, the writ petition is required to be dismissed and accordingly stands dismissed. Notice is discharged. No order as to costs.

26.In view of the order passed in the main Special Civil Application No. 11769 of 2019, the prayer made in Civil Application No.2/2019 in Special Civil Application No. 11769 of 2019 as well as the prayer made in Special Civil Application No. 13054 of 2019 does not survive. The Civil Application No.2/2019 as well as Special Civil Application No. 13054/2019 stands disposed of accordingly.

(S.R.BRAHMBHATT, J) (V. P. PATEL,J) J.N. W.