

**Maharashtra Local Authority Members Disqualification Act,  
1986**

**20 of 1987**

**[20 July 1987]**

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**SCHEDULE 1 :- SCHEDULE**

**Maharashtra Local Authority Members Disqualification Act,  
1986**

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PREAMBLE

An Act to provide for disqualification of members of certain local authorities on ground of defection and for matters incidental and connected therewith.

WHEREAS, it is expedient to provide for disqualification of members of certain local authorities on the ground of defection and for matters incidental and connected therewith; It is hereby enacted in the Thirty-seventh Year of the Republic of India as follows :-

## NOTES

Background to anti-defection law legislation :- In the Parliamentary System, as prevalent in India, the election law has been developed through many stages. After overcoming elementary stages of fundamental rights of and norms to be followed by the candidate for election, powers, rights and duties of the Election Commission and dealing with the aspect of 'corrupt practices' in the election which may be electoral offences. The anti-defection legislation is the next stage attempting to streamline the system and bridging the gap to regulate multi-party election system in India.

Certain important changes were made in the Constitution to achieve this object. Initially, political defection was through coercive methods. And, thereafter, in a fluid political situation, defection was slowly turning into rule of the day! Also, learning to play the house-trading game, certain elements became masters of the political manoeuvring.

For preventing such unconstitutional measures, the Constitution was amended various times in recent past.

The question of disqualification under Arts. 102(1)(a) and 191(1)(a) and also under Tenth Schedule has many aspects. The object behind these constitutional provisions is that a person who is elected to the Legislature should be free to carry on his duties fearlessly without being subjected to any sort of Government pressure. Therefore, the candidate must not hold any office of profit under the Government. This was the purpose of the Constitution (33rd Amendment) Act, 1974, for amending Arts. 101 and 190.- Union of India v. Gopal, AIR 1978 SC 694.

Clause (1)(a) of Art. 102 was substituted by the Constitution (42nd Amendment) Act, 1976 but was notified and the original text restored by the Constitution (44th Amendment) Act, 1978.

By the Constitution (52nd Amendment) Act, 1985 original clause (2) has been made an Explanation to clause (1) of Art. 102. Substituted cl. (2) has been introduced to give effect to the provisions in the Tenth Schedule of the Constitution which is newly inserted. This is added for the purpose of combating the rampant practice of defection i.e., changing political parties by elected members.

Para 2 of 10th Schedule read with para 6 lay down extraordinary situation upon the happening of any of which a member of either House of Parliament will be disqualified for being a member of Parliament. The Amended Act came into force from 1.3.1985.- (Central Government Notification G. S. R.131 (E), Gazette of

India, Extra, Part I, s. 3, sub-section (1), dated 1.3.1985).

"Defection":- This term has assumed importance as it is closely linked up with the election process. The expression 'election' in Art. 324 is used in wider sense so as to include the entire process of election consisting of several stages and it embraces many steps some of which may have an important bearing on the result of the process. The general powers of superintendence, direction and control of the elections vested in the Commission under Art. 324(1). They are subject to any law made either under Art. 327 or under Art. 328 of the Constitution.

The Election Commissioner is empowered to recognise political parties, to decide disputes arising amongst them or between splinter groups within a political party.

Rules and guidelines are framed for the registration and recognition of political party. The Commissioner is empowered to issue the symbol order. But these provisions are not traceable in the Representation of People Act or in the Conduct of Election Rules. Therefore, Art. 324 of the Constitution operates in areas left unoccupied by legislation giving power to the Commission to make all such provisions.

Thus, the first time a political party finds a place and a recognition in the Constitution though the purpose is to prevent the defection of the individual members.

"The use of a symbol, be it a donkey or an elephant, does give rise to an unifying effect among the people with a common political and economic programme. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure."

"It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working part of its political system are so organised on party basis- in other words "on systematized differences of unresolved conflicts". The Tenth Schedule to the Constitution acknowledges the existence of political parties and sets out the circumstances when a Member of Parliament or of State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned."- Kanhiya Lal Omar v. T. K. Trivedi, AIR 1986 SC 111 : (1985) 4 SCC 628 : 1985 U. J. (SC) 969.

Upon such defection, the member would lose his seat according to

the decision of the Speaker or Chairman of the House to which he belonged.

There are exceptions to such disqualification when the split occurs in the original political party or merger, in case of Speaker or the Dy. Speaker of the House of People or Deputy Chairman of the Council of States or the Chairman or the Dy. Chairman of the Legislative Council of a State or the Speaker or Dy. Speaker of the Assembly when he voluntarily resigns upon electing to such office or when he ceases to hold office and rejoins the original political party which he belonged.

No appeal can lie in the Court in respect of disqualification of a member of House under Tenth Schedule. It has to be ratified by the State Legislature as required by the proviso to clause (2) of Art. 368. If not ratified, it would be open to judicial review under Arts. 226 and 136 of the Constitution.- Prakash Singh v. Union of India, AIR 1987 P. & H. 263 (F. B.).

Impact of the Fifty-second Amendment:- Generally, defection means betrayal of a party and voters by an elected member. By this amendment, defection by individual member is prevented to a certain extent. However, split in the party or merger of party or groups are recognised in a prescribed manner. But if two members of original party form a faction or group, consists of not less than one-third of the members of such Legislature party, resigns from original, party cannot be treated as defection. Similarly, merger is not treated as defection. For this, two-third of the members of the Legislature party should agree for merger. Even an independent member cannot join the party, otherwise he will be treated as defector. Nominated members are also covered by the Amendment and he will have to join the party in a stipulated period.

Henceforth, the members of the House will have to follow the flat of the political party which he belonged. Otherwise he will be disqualified. This provision assumes importance at the crucial time like vote of no -confidence or other politically important motions.

### **1. Short Title And Commencement :-**

(1) This Act may be called the Maharashtra Local Authority Members Disqualification Act, 1986.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

### **NOTES**

Objects and Reasons :- With a view to eradicating the evil of

political defection in the Parliament on the national level and in the State Legislatures on the State Level, the Parliament has amended the Constitution of India by the Constitution (Fifty-second Amendment) Act, 1985. At the level of district, taluka, city and town, different local authorities are charged with the administration of functions relating to Local Government. These local authorities are, in the main, elective. Many of our ablest statesmen and legislators have received their earliest training in the sphere of Local Government. The local authorities may become the pioneers in various field of political activity. This evil of political defections is also present in the local authorities which is the base of our democratic institutions. It is, therefore, expedient to prevent political defectors in certain local authorities also in the State.- (M. G. G., Pt. V, 1986, page 584.)

#### NOTIFICATION

No. ZPA. 1086/CR-875/04, dated 29.10.87 (M. G. G., Pt. IV-B, p. 1053).- In exercise of the powers conferred by sub-section (2) of section 1 of the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987) (hereinafter referred to as "the said Act"), the Government of Maharashtra hereby appoints the 1st day of November, 1987, to be the date on which the said Act shall come into force.

## **2. Definitions :-**

In this Act unless the context otherwise requires, -

- (a) "aghadi" or "front" means a group of persons who have formed themselves into party for the purpose of setting up candidates for election to a local authority;
- (b) "Collector" means the Collector of a district;
- (c) "Commissioner" means the Commissioner of a revenue division appointed under section 6 of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966);
- (d) "councillor" means a councillor of a Municipal Corporation, or a Municipal Council, or a Zilla Parishad;
- (e) "local authority" means, -
  - (i) a Municipal Corporation,
  - (ii) a Municipal Council,
  - (iii) a Zilla Parishad, or
  - (iv) a Parnchayat Samiti;
- (f) "member" means a member of a Panchayat Samiti;
- (g) "Municipal Corporation" means a Municipal Corporation

constituted under a relevant municipal law;

(h) "Municipal Council" means a Municipal Council constituted under the Maharashtra Municipalities Act, 1965 (Mah. XL of 1965);

(i) "municipal party", in relation to the councillor belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means,-

(i) in the case of a councillor of a Municipal Corporation, the group consisting of all councillors of the Municipal Corporation for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(ii) in the case of a councillor of a Municipal Council, the group consisting of all the councillors of the Municipal Council for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(j) "original political party", in relation to a councillor or a member, means the political party to which he belongs for the purposes of sub-section (1) of section 3;

(k) "Panchayat Samiti" means a Panchayat Samiti constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;

(l) "Panchayat Samiti party", in relation to a member belonging to any political party or aghadi or front in accordance with the Explanation to section 3, means the group consisting of all the members of the Panchayat Samiti for the time being belonging to that political party or aghadi or front in accordance with the said Explanation;

(m) "relevant municipal law",-

(i) in relation to the Municipal Corporation of Greater Bombay, means the Bombay Municipal Corporation Act;

(ii) in relation to the Corporation of the City of Nagpur, means the City of Nagpur Corporation Act, 1948;

(iii) in relation to the Municipal Corporation of any other City, means the Bombay Provincial Municipal Corporations Act, 1949;

(n) "Schedule" means the Schedule appended to this Act;

(o) "Zilla Parishad" means a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;

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

### **3. Disqualification On Ground Of Defection :-**

(1) Subject to the provisions of 1[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; or

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

(b) a nominated 2[councillor] shall -

(i) where he is a member of any political party or aghadi or front on the date of his nomination, or as the case maybe, 3[\* \* \*] 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 4[\* \* \*];

5[(c) \* \* \*].

(2) An elected councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front shall be disqualified for being a councillor, or as the case may be, a member if he joins any political party or aghadi or front after such election.

6[(3) \* \* \*].

(4) Notwithstanding anything contained in the foregoing provisions of this section a person who on the commencement of this Act, is a councillor, or as the case may be, a member (whether elected or nominated 7[\* \* \*] as such councillor or member) shall -

(a) where he was a member of a political party or aghadi or front immediately before such commencement, be deemed, for the purposes of sub-section (1), to have been elected as a councillor, or as the case may be, a member as a candidate set up by such political party or aghadi or front;

(b) in any other case, be deemed to be an elected councillor, or as the case may be, member who has been elected as such otherwise than as a candidate set up by any political party or aghadi or front for the purpose of sub-section (2), 8[\* \* \*].

#### NOTES

Grounds of defection :- Grounds of defection for a councillor of a member belonging to any political party or aghadi (United Front) for disqualification (i) Voluntarily resigning his membership, (ii) Votes or abstains from voting in any meeting or a Municipal Council, Municipal Corporation, Z.P. or Panchayat Samiti contrary to the directive issued by the political party, aghadi or front which he belonged.

All members, nominated, elected or associate members are covered by this provision.

Disqualification :- "Disqualified" means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.- [S. 7(6) The Representation of the Peoples Act.]

Disqualification of Councillor belonging to a particular political party on his contesting election as "independent candidate".- The very purpose of the anti-defection law is to ensure that the voters of the constituency which the elected member represents, shall not be duped by him. They cannot be taken for a ride due to change of the affiliation by such member to another political party or due to giving up of his membership of the original political party. The High Court further held that considering from this angle, it will have to be said that the petitioner failed to keep his association and loyalty with the voters who had elected him from the Zilla Parishad constituency on account of his conduct contesting the Legislative Assembly election as an independent candidate. The High Court upheld the findings of the Collectors.- *Udaysingh s/o Sardarsingh Rajput v. State of Mah. & Ors.*, 2007 (3) Mah. L.J. 17 : 2007 (2) All



M.R. 36.

Responsibility of a Committee or member etc. :- He will have to give detail of information in Form III to the Commissioner or Collector.

Also, before taking his seat in the respective House, he will have to deposit his election certificates or certified copy of notification to the Commissioner or Collector.-See rule 4.

Responsibility of the Commissioner or Collector :- He will have to maintain a register in Form IV with detailed information furnished by the leaders and the members of the political party.

Responsibility of Leader of Political Party :- He will have to furnish the information in respect of his political party, membership in the House, names of individual members, designations, constitution or rules of the party to the Commissioner or Collector as the case may be.- (See rule 3(1)(a) and Form I).

Anti-Defection Legislation at State Level:- Political defection in the Parliament and in the State Legislatures have been dealt with by the Constitution (Fifty-second Amendment) Act, 1985. At district, taluka, city and town level, such defection is rampant in the local bodies and panchayat institutions.

The Maharashtra Local Authority Members Disqualification Act, 1986, is enacted with the above view. It has come into force on Nov. 1, 1981.

In the grounds of disqualification, the candidate belonged to political party, aghadi or front is covered.

In case of reference to disqualification in respect of defection in the Parliament or in State Legislature, it has to be referred to the Speaker or Chairman. But when similar situation arises in Local Authority, reference has to be made to the Divisional Commissioner or to the Collector as the case may be.

Consequences of Disqualification :- The member if proved to have defected is disqualified and he will lose his seat by the decision of the Divisional Commissioner or the Collector.

1. These word and figure were substituted for the words and figures "sections 4 and 5" by Mah. L of 2006, section 2(a)(1), (w.e.f. 19.10.2006).

2. This word was substituted for the words "or co-opted councillor or member" by Mah. L of 2006, section 2(a)(2)(A)(i).

3. The words "or co-opted as such councillor, or as the case may be, member" were deleted, *ibid.*, section 2(a)(2)(A)(ii).

4. The words "or co-opted as such councillor, or as the case may be, member" were deleted, *ibid.*, section 2(a)(2)(A)(iii).

5. Clause (c) was deleted, *ibid.*, section 2(a)(2)(B).
6. Sub-section (3) was deleted by Mah. L of 2006, section 2(b).
7. The words "or co-opted" were deleted, *ibid.*, section 2(c)(1).
8. The words "or as the case may be, be deemed to be a nominated or co-opted councillor, or as the case may be, a member for the purposes of sub-section (3)" were deleted, *ibid.*, section 2(c)(2).

### **3A. Disqualification For Appointment On Remunerative Political Post :-**

1[A councillor or, as the case may be, a member belonging to any political party, aghadi or front who is disqualified for being a councillor or, as the case may be, a member under section 3 shall also be disqualified to hold any remunerative political post of duration of the period commencing from the date of his disqualification till the date on which the term of his office as such councillor or, as the case may be, a member expires or till the date which he contests an elections to a local authority and is declared elected, whichever is earlier.

Explanation :- For the purpose of this section, the expression "remunerable political post" means any office,-

- (i) under the State Government where the salary or remuneration for such office is paid out of the public revenue of the State Government or Consolidated Fund of the State; or
- (ii) under a body, whether incorporation or not, which is wholly or partially owned by the State Government and the salary or remuneration for such office is paid by such body; or
- (iii) under a local authority, where the salary or remuneration for such office is paid by the local authority or to such local authority's fund, except where such salary or remuneration paid is compensatory in nature.]

1. Section 3-A was inserted by Mah. L of 2006, section 3, (w.e.f. 19.10.2006).

### **4. Disqualification On Ground Of Defection Not To Apply In Case Of Split :-**

1[ \* \* \*].

#### **NOTES**

Disqualification by split.- In this case 28 out of a group of 30 Shiv Sena Members in Zilla Parishad forming a separate group and accorded recognition by Collector as a separate party. It was

contended that to save disqualification, split members should be more than one-third of split group at National level. It was held by the Division Bench of the Bombay High Court that it will be absurd that split referred in Act at National level and not that of the group at Zilla Parishad level. Groups are formed at State level and even if a split of a party takes place at National level it may not disqualify members of a group at State/Zilla Parishad level as per local law. Words "as a result of split in his original political party" will have to be given a workable meaning. It was further held by the High Court that these members have decided to support Nationalist Congress party in Zilla Parishad, so they had been disqualified as per the report in newspaper as tenable because disqualification cannot take place on the basis of newspaper reports. Such report may be a piece of evidence but not substantive evidence.- Parshuram Prabhakar Uparkar & Anr. v. Tukaram Bhagwan Barde & Ors., 2007 (1) Bom. C.R. 501 (D.B.).

1. Section 4 was deleted by Mah. L of 2006, section 4.

### **5. Disqualification On Ground Of Defection Not To Apply In Case Of Merger :-**

(1) A councillor or a member shall not be disqualified under sub-section (1) of section 3 where his original political party or aghadi or front merges with another political party or aghadi or front and he claims that he and any other members of his original political party or aghadi or front-

(a) have become members of such other political party, or aghadi or front or as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or aghadi or front or group, as the case may be, shall be deemed to be the political party or aghadi or front to which he belongs for the purposes of sub-section (1) of section 3 and to be original political party or aghadi or front for the purpose of this sub-section.

(2) For the purposes of sub-section (1), the merger of the original political party or aghadi or front of a councillor, or as the case may be, a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of municipal party, Zilla Parishad party, or as the case may be, Panchayat Samiti party, concerned, have agreed case may be, Panchayat Samiti party,

concerned, have agreed to such merger.

**6. Councillor Or Member To Vacate Office Or Not To Hold Office After [\* \* \*] Merger :-**

Councillor or member to vacate office or not to hold office after 1[\* \* \*] merger

A councillor, or as the case may be, member claiming 2[merger referred to in section 5] shall-

(a) if holding any office other than such councillor or member under any relevant municipal law, or as the case may be, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall be deemed to vacate such office on the date of such 3[\* \* \*] merger and shall, on and from that date, cease to hold such office;

4[(b) \* \* \*.]

**NOTES**

Statement of Objects and Reasons.- The Government of Maharashtra has, on the lines of the Constitution (Forty-second Amendment) Act, 1985, enacted the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987), with a view to prevent political defection in the local authorities in the State and the same is in force in the State.

As provided by section 6 of the Act a councillor, or as the case may be, member claiming the split or merger, referred to in section 4 or 5, as the case may be, shall,-

(a) if holding any office other than such councillor or member under any relevant municipal law, or as the case may be, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 shall be deemed to vacate such office on the date of such split or merger and shall, on and from that date, cease to hold such office;

(b) not be eligible to hold any office other than such councillor or member under any relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 for a period of eleven months from the date of such split or merger.

The restriction contained in clause (b) of section 6 of the Act prohibiting the councillor, or as the case may be, the member, claiming the split or merger, not to hold any office other than the office of the councillor or member for a period of eleven months from the date of such split or merger is not obtaining in the Constitution (Forty-second Amendment) Act, 1985, on the basis of which, the said Act has been enacted. The Government, therefore, considered that it was not necessary to have such restriction in the

State enactment also, and had accordingly decided to delete clause (b) of section 6 of the said Act.- [Mah. Act 8 of 1997.]

1. The words "split or" were deleted by Mah. L of 2006, section 5(c).
2. These words were substituted for the words "such split or merger as referred to in section 4 or 5 as the case may be", *ibid.*, section 5(a).
3. The words "split or" were deleted, *ibid.*, section 5(b).
4. Clause (b) was deleted by Mah. 8 of 1997, section 2, (w.e.f. 29.4.1996).

## **7. Decision On Question As To Disqualification On Ground Of Defection :-**

If any question arises as to whether, -

- (a) a councillor of a Municipal Corporation;
- (b) a councillor of a Municipal Council; or
- (c) a councillor of a Zilla Parishad; or
- (d) a member of a Panchayat Samiti,

has become subject to disqualification under this Act, the question shall be referred -

- (i) in the case of a councillor of a Municipal Corporation, to the Commissioner, and
  - (ii) in the case of any other councillor or member, to the Collector;
- and the decision of the Commissioner, or as the case may be, Collector shall be final.

### **NOTES**

**Decision : Reference :-** In the case of a Councillor (Nagarsewak) of a Municipal Corporation, it must be referred to the Commissioner of Division (Divisional Commissioner) Revenue Department. His decision will be final. In the case of Municipal Councillor, Zilla Parishad Councillor and Panchayat Samiti member, reference must be made to the Collector. His decision will be final. The Civil Court will not have any jurisdiction in this matter.

**Disqualification : Whip of the leader of the party necessary.-** In this case the petitioners Municipal Councillors of Municipal Council, Chandrapur had contested election for the post of President and Vice-President respectively were defeated at the election meeting convened by the Collector and chaired by the Collectors nominee. The petitioners assailed election on the ground that they had contested election as nominees of Shiv Sena-BJP alliance. Shiv Sena had issued whip directing its Councillors to vote for the

petitioners. Respondent Nos. 4, 5 and 6 had been elected to the Municipal Council as candidates belonging to Shiv Sena. They, however, defied the whip and also are disqualified to continue as Municipal Councillors in terms of Maharashtra Local Authority Members Disqualification Act, 1986. It was held by the Double Bench of the High Court that to incur disqualification it has to be shown that whip was issued by authorised authority of party and directions to act in a particular manner was indicated in that disqualification is not an authority. Collector has to hold an inquiry under sec. 7 to decide it under rule 8. Since this procedure has not been followed, there is no question of Court to declare that respondents are not disqualified.- Deepali Shankarlal Jaiswal & Anr. v. State of Maharashtra & Ors., 2008 (2) Bom. C.R. 331.

Representation of people elected by his constituency should not be lightly lodged by a legal battle.- This disqualification reference fails due to non-compliance of rule 6(4) into Disqualification Rules. Compliance of rule 6(4) regarding those documents (true copies of documentary evidence to be relied upon) is must and failure entails the consequence as prescribed by rules 7(2) of the Disqualification Rules, 1987. In this instant case the dispute is between elected Councillors of Udgir. Municipal Council because of alleged disqualification incurred by some of the Councillor in view of the provisions of Maharashtra Local Authority Members Disqualification Act, 1986. The Double Bench of the High Court (Aurangabad Bench) held that there are striking differences in the schemes under Representation of People Act and Disqualification Rules, 1987. The ratio, conclusions for analogy in the decisions rendered while deciding election petition under Representation of People Act may not be applicable to the matters pertaining to Disqualification Rules, 1987. The Disqualification Rules, 1987 requires the copies of documentary evidence to be accompaniment of the disqualification petition thereby conferring upon those a status of annexure of the petition or integral part of the petition. The High Court quashed and set aside the order passed by the learned Single Judge as also order passed by the Collector.- Sayyad Tahir Hussain Mainuddin & Anr. v. State of Mah. & Ors., 2007 (6) Bom. C.R. 214 : 2007 (6) All M.R. 14 : 2007 (6) Mah. L.J. 633.

Collector or Commissioner while deeding with reference under sec. 7 should not only see that there is strict compliance with provisions of Act or Rules but there is enough material to hold that the Councillor or member has vested or abstained from voting in a meeting of the Municipal Corporation contrary to the direction

issued by the political party.- Sandeep P. Kamble & Ors. v. Bhaskar A. Negle & Ors., 2007 (3) All M.R. 146.

## **8. Bar Of Jurisdiction Of Civil Courts, Etc. :-**

Notwithstanding anything contained in any relevant municipal law, or the Maharashtra Municipalities Act, 1965, or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, no Civil Court and no other authority or officer shall have any jurisdiction to deal with or decide any question as to disqualification of a councillor or a member on the ground of defection or as to any matter connected therewith, which the Commissioner or the Collector is empowered to deal with and decide under section 7; and no injunction shall be granted by any Civil Court or any authority or officer in respect of any action taken or to be taken by the Commissioner or Collector in pursuance of any power conferred on him by or under this Act.

## **9. Rules :-**

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the maintenance of registers or other records as to the political parties, aghadi or fronts, if any, to which different councillors, or as the case may be, members belong;

(b) the report which the leader of a municipal party or a Zilla Parishad party, in relation to a councillor and the leader of a Panchayat Samiti party in relation to a member shall furnish with regard to any condonation of the nature referred to in clause (b) of subsection (1) of section 3 in respect of such councillor, or as the case may be, member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party or aghadi or front shall furnish with regard to admission to such political party or aghadi or front of any councillors or members and the officer of the Municipal Corporation, Municipal Council, Zilla Parishad, or as the case may be, Panchayat Samiti to whom such reports shall be furnished ;

(d) the procedure for deciding any question referred to in section 7 including the procedure of any inquiry which will be made for the purpose of deciding such question; and

(e) any other matter which is required to be or may be prescribed.

(3) In making rules under this section, the State Government may provide that on any breach thereof, the offender shall on conviction be punished with fine which may extend to one thousand rupees and in the case of continuing breach with fine which may extend to fifty rupees for every day during which the breach continues after conviction for the first breach.

(4) Every rule made by the State Government under this Act, shall be laid, as soon as may be after it is made, before each House of State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, then on publication of such decision in the Official Gazette, the rule shall have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### **10. Act To Have Overriding Effect, But Shall Be In Addition To Existing Local Authority Laws :-**

(1) The provisions of this Act and the rules shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(2) Subject to the provisions of sub-section (1), the provisions of this Act shall be in addition to and shall not, save as expressly provided hereinbefore, be in derogation of the provisions of any law relating to Municipal Corporation, Municipal Council or other local authority concerned.

(3) Notwithstanding anything contained in the foregoing provisions of this section nothing in this Act shall apply when a Government servant is nominated as a councillor of a Municipal Council for a municipal area specified in Part II or Part III of Schedule I to the Maharashtra Municipalities Act, 1965, or to any person who holds the office as a member of a Panchayat Samiti by virtue of his being a Government servant and appointed as Administrator of a co-operative society.

#### **11. Amendment Of Certain Enactments :-**

The enactments specified in the second column of the Schedule are



hereby amended in the manner and to the extent specified in the third column thereof.

# **SCHEDULE 1**

## **SCHEDULE**

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SCHEDULE		
(See section 11)		
<b>Sr. No. (1)</b>	<b>Short title and Number of enactment (2)</b>	<b>Amendments (3)</b>
1.	The Bombay Municipal Corporation Act (Bom. III of 1888).	In section 16, after sub-section (1), the following sub-section shall be inserted, namely :- "(A) A person who at any time during the term of his office is disqualified under the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987), for being a councillor shall cease to hold office as such councillor."
2.	The Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949).	In section 10, after sub-section (1), the following sub-section shall be inserted, namely :- "(1 A) A person shall be disqualified for being a councillor, if such person has, at any time during the term of his office, become disqualified under the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987) for being a councillor."
3.	The City of Nagpur Corporation Act, 1948 (C. P. and Berar II of 1950).	In section 19 -  (1) after the words "been elected" the word "or nominated" shall be inserted;  (2)after clause (a), the following clause shall be inserted, namely  "(a-i) has been disqualified under the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987) for being a councillor, or".
4.	The Maharashtra Municipalities Act, 1965 (Mah. XL of 1965).	In section 16 -  (a) after sub-section (1), the following sub-section shall be inserted, namely :- "(1A) A person who at any time during the term of his office is disqualified under the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987) for being a councillor shall

		cease to hold office as such councillor.";
		(2) in sub-section (2), after the word, brackets and figure "subsection (1)" the words, brackets, figure and letter "or in subsection (1A)" shall be inserted.
5.	The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962).	<p>In section 16, after sub-section (1), the following sub-section shall be inserted, namely :-</p> <p>"(1A) A person who at any time during the term of his office is disqualified under the Maharashtra Local Authority Members Disqualification Act, 1986 (Mah. XX of 1987) for being a councillor shall cease to hold office as such councillor."</p>