

Jitendra Himmat Biraris Vs Kiran Patil and The District Collector

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: April 15, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 15, Order 6 Rule 15(4)

Constitution of India, 1950 â€” Article 101(2), 122, 141, 191(2), 212

Maharashtra Local Authority Members Disqualification Act, 1986 â€” Section 10, 7

Maharashtra Local Authority Members Disqualification Rules, 1987 â€” Rule 3, 6, 6(2), 6(3), 6(4)

Representation of the People Act, 1951 â€” Section 117, 81, 82, 83, 86

Citation: (2010) 4 BomCR 723 : (2010) 112 BOMLR 1758

Hon'ble Judges: R.M. Borde, J

Bench: Single Bench

Advocate: V.J. Dixit holding for P.D. Bachate, for the Appellant; P.M. Shah holding for S.P. Shah and V.B. Ghatge, A.G.P., for the Respondent

Final Decision: Dismissed

Judgement

R.M. Borde, J.

Petitioners, in these petitions, are challenging the order passed by Collector, Dhule dated 27th May 2009, thereby turning

down objections raised in the References presented by Respondent No. 1 to the Collector u/s 7 of Maharashtra Local Authority Member's

Disqualification Act, 1986 (hereinafter referred to as "Disqualification Act").

2. Petitions presented by Respondent No. 1 herein u/s 7 of the Disqualification Act were referred to the Collector regarding disqualification of

petitioners. Petitioners are elected members of Zilla Parishad, Dhule. It is the allegation of respondent No. 1 that petitioners in disregard to the

whip issued by leader of Zilla Parishad party have cast vote at the elections of President and Vice President as against the candidate set up by the

party and as such they have incurred disqualification within meaning of Disqualification Act and as such are liable to be unseated. There was

preliminary objections raised as regards maintainability of References by the petitioners. The objections raised are set out as below:

(a) The References do not comply with the requirement of Rule 6 of Disqualification Rules;

(b) The References have not been verified in the manner prescribed by Order VI Rule 15 of the Code of Civil Procedure;

(c) The annexures annexed to the References are not signed by the applicant and are not verified in the manner laid down in the CPC for

verification of pleadings.

(d) The applicant does not sign statement of material facts on which applicant rely;

(e) The applicant has not filed affidavits in support of the References as required by Order VI Rule 15(4) of the Code of Civil Procedure;

(f) Applicant has not given names of persons from whom applicant gained information;

(g) Applicant is not authorised or recognised as leader of Zilla Parishad party and he has not been elected as a leader of Zilla Parishad party,

therefore, he is not empowered to issue whip and as such has no locus standi to file Reference.

(h) National Congress Party (NCP) is not registered as required by provisions of the Act as a Zilla Parishad Party.

3. According to petitioners herein, mandatory requirements in respect of presentation of References have not been complied with and as such,

References are liable to be rejected in view of provisions of Rule 7(2) of the Maharashtra Local Authority Member's Disqualification Rules, 1987

(hereinafter referred to as "Rules of 1987").

4. The objections raised by petitioners herein were controverted by the respondents contending that there is sufficient compliance of the procedure

as prescribed by Rules. It is also submitted that provisions of Rule 7 are directory in nature and non compliance thereof will not lead to a

consequence of automatic dismissal of References.

5. After considering rival contentions, Collector, Dhule, while passing impugned order, has held that most of the objections raised by petitioners

are without any substance. However, so far as verification of References and defect as regards putting signatures on annexures by respondents is

concerned, it is observed by the Collector that said defect is curable and is not fatal in view of certain judgments referred to in the order. The

Collector, Dhule, as such, turned down the objections raised by petitioners herein in view of the order passed on 27.05.2009. The petitioners, as

such, have approached this Court raising challenge to the order passed by Collector, Dhule, holding that References presented to the Collector are

maintainable.

6. I have heard arguments advanced by Shri V.J. Dixit, learned Senior Counsel holding for Shri P.D. Bachate, advocate for petitioners and Shri

P.M. Shah, learned Senior Counsel holding for Shri S.P. Shah, advocate for Respondent No. 1.

7. Although learned Senior Counsel appearing for Respondent No. 1 has controverted the contentions raised by petitioners in respect of

compliance of provisions of Rule 7 of the Rules and has contended that there is in fact no lacuna in presentation of References and the References

presented are in conformity with Rules, it is also contended that even though it is assumed that there is some defect as noted by the Collector in

paragraph 16 (e) of the judgment, the defect is curable and does not lead to consequence of automatic dismissal of References.

8. Without going into the factual aspects as to whether observations made in para 16(e) of the judgment are factually correct or not, it would be

proper to deal with broader question raised in the petitions, as to whether compliance of Rule 7(2) can be said to be mandatory and non

compliance thereof would lead to consequence of automatic dismissal of References.

9. Learned Senior Counsel appearing for petitioners contends that provisions contained in Rule 7 are mandatory in character and there cannot be

any relaxation in respect of compliance of procedural aspects of the matter in relation to presentation of References, as required under Rules 6 and

7 of the Rules. Relevant Rules are quoted below:

6. References to be by petitions (1) No reference of any question as to whether a Councillor in relation to a municipal party, Zilla Parishad party,

or member in relation to a Panchayat Samiti party has become subject to disqualification under the Act shall be made except by a petition in writing

to the Commissioner in the case of a Councillor of a Municipal Corporation and the Collector in the case of any other Councillor or member, by

any other Councillor or, as the case may be, member, in relation to such Councillor or, as the case may be, member.

(2) Before making any petition in respect of a Councillor in relation to a municipal party and a Zilla Parishad party or a member in relation to the

Panchayat Samiti party, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether

such Councillor or, as the case may be, member has become subject to disqualification under the Act,

(3) Every petition-

(a) shall be accompanied by copies of documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any

information furnished to him by any person, a statement containing the names and address of such person and the gist of such information as

furnished by each such person.

(4) Every petition and any annexure thereto shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure,

1908 (V of 1908) for the verification of pleadings.

7 Procedure (1) On receipt of a petition under Rule 6, the Commissioner, or, as the case may be, Collector shall consider whether the petition

complies with the requirements laid down in that rule.

(2) If the petition does not comply with the requirements of Rule 6, the Commissioner, or , as the case may be, Collector shall dismiss the petition

and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of Rule 6, the Commissioner, or, as the case may be, Collector shall forward copies of the

petition and of the annexures there to-

(a) to the Councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party in respect of

whom the petition has been made, and

(b) where such Councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party belongs to

any political party or aghadi or front and such petition has not been made by the leader thereof, also to such leader; and such Councillor, member

or leader shall, within seven days of the receipt of such copies, or within such further period as the Commissioner, or, as the case may be,

Collector may for sufficient reason allow, forward his comments in writing thereon to the Commissioner, or, as the case may be, Collector.

(4) After considering the comments, if any, in relation to the petition received under Sub-rule (3) within the period allowed (including the extended

period), the Commissioner, or, as the case may be, Collector shall proceed to determine the question after making a preliminary enquiry.

(5) The procedure which shall be followed by the Commissioner, or, as the case may be, Collector for the purpose of making a preliminary

enquiry to determine any question under Sub-rule (4) shall be as prescribed in Sub-rules (6) to (15).

(6) The Commissioner or, as the case may be, Collector shall draw up or cause to be drawn up-

(i) the substance of the imputations of disqualification into definite and distinct articles of charge;

(ii) a statement of the imputations of disqualification in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Councillor or the Member, and

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The Commissioner or, as the case may be, Collector shall deliver or cause to be delivered to the Councillor, or as the case may be, the

Member, a copy of articles of charge, the statement of the imputation of disqualification and a list of documents and of the witnesses by which each

article of charge is proposed to be sustained, and shall by a written notice, require the Councillor or, as the case may be, the A member to submit

to him within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person.

(8) On receipt of the written statement of defence, the Commissioner or, as the case may be, the Collector, may himself inquire into such of the

articles of charge as are not admitted, and where all the articles of charge have been admitted by the Councillor or Member in his written statement

of defence, the Commissioner or, as the case may be, the Collector, shall record his findings on each charge after taking such evidence as he may

think fit and shall act in the manner laid down in Rule 8 of these rules.

(9) If no written statement of defence is submitted by such Councillor or Member, the Commissioner or, as the case may be, the Collector shall

proceed to inquire as if the Councillor or Member has nothing to say.

(10) The Commissioner or, as the case may be, Collector shall require the complainant as well as the Councillor or Member who wishes to be

heard either in person or through his Advocate to appear before him on such day and at such time as may be fixed by him.

(11) The Councillor or, as the case may be, the Member, shall appear in person before the Commissioner or, as the case may be, the Collector,

on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations

of disqualification, as the Commissioner or, as the case may be, the Collector, may, by a notice in writing, specify in this behalf, or within such

further time not exceeding ten days, as the Commissioner or, as the case may be, the Collector may allow.

(12) The Commissioner or, as the case may be, the Collector, shall, if the Councillor or, as the case may be, the Member, fails to appear within the

specified time or refuses or admits to plead, produce the evidence by which he proposes to disprove article of charge, adjourn the case to a later

date not exceeding thirty days, after recording an order that the Councillor or, as the case may be, the Member, may for the purposes of preparing

his defiance -

(i) inspect within five days of the order or within such further time not exceeding five days as the Commissioner or, as the case may be, the

Collector, may allow, the documents specified in the list referred to in Sub-rule (6) of this rule;

(ii) submit a list of witnesses to be examined on his behalf.

(13) Where the Councillor or, as the case may be, the Member applies orally or in writing for the supply of copies of the statements of witnesses

mentioned in the list referred to in Sub-rule (6) of this rule, the Commissioner or, as the case may be, the Collector shall furnish him with such

copies as early as possible, and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the

disciplinary authority.

(14) The enquiry shall be commenced on the date fixed in that behalf by the Commissioner or, as the case may be, the Collector, and shall be

continued thereafter on such date or dates as may be fixed from time to time by him.

(15) On the date fixed for the inquiry, the oral and documentary evidence shall be produced by or on behalf of the petitioner. The witnesses shall

be examined by or on behalf of the petitioner and may be cross-examined by the Councillor or Member, against whom there are charges of

disqualification.

10. Rule 7(2) prescribes that if the petition does not comply with Rule 6, the Commissioner, or as the case may, the Collector shall dismiss the

petition.

11. Learned Senior Counsel appearing for petitioners has invited my attention to the Division Bench judgment of this Court in the matter of Sayyad

Tahir Hussain Mainuddin and Anr. v. State of Maharashtra and Ors. reported in 2007 (6) ALL M R 14 and contended that as held by the

Division Bench of this Court, provisions of Rule 7 of the Rules are mandatory and non compliance thereof shall entail in dismissal of the Reference.

This Court, while considering provisions of Rules of 1987, has taken into account judgments arising out of provisions of Representation of the

People Act. While considering the difference in scheme between two Acts, this Court has observed in paragraph 8 of the judgment, thus:

...If we are to consider the two schemes together i.e. Sections 81 - 83 on one side and read with Section 86 of Representation of People Act, and

Rules 6 & 7 on the other side, there is one more striking difference. On reference to Section 86(1) of Representation of People Act, 1951, it is

evident that non compliances stand classified into two groups. Noncompliance of Sections 81 & 82 and 117 invite the High Court to dismiss an

election petition, but for non compliance of Section 83, the High Court, while considering election petition, is not required to dismiss the same.

Thus, Representation of People Act classifies the defects in the election petition into two groups i.e. curable and not curable. On reference to

language of Sub-rule (2) of Rule 7, it is evident that none of the defects in the reference petition or in other words non compliances of Rule 6 are

pardonable. Any and every non compliance of Rule 6 meets with only one fate i.e. dismissal of the reference petition either by the Commissioner or

the Collector, as the case may be.

This Court has further observed in paragraph 12 of the judgment, thus:

...On reference to Sub-rule (2) of Rule 7, it is evident that there is no option to the Collector or the Commissioner. As and when any petition is

found not complying with the requirement of Rule 6, the competent authority is required to dismiss the petition and inform the petitioner

accordingly. The strictness of the provision is understandable. The legislature probably desires that a representative of the people elected by his

constituency should not be lightly dislodged by a legal battle.

Since Rule 3(b) requires copies of the documentary evidence to be accompanied with the petition, we believe the statute gives the documentary

evidence a status of annexure or of being integral part of the petition and, therefore, compliance of Sub-rule (4) of Rule 6 regarding those

documents (true copies of documentary evidence to be relied upon) is a must and failure entails the consequences as prescribed by Rule 7(2) of

Disqualification Rules, 1987.

12. Learned Senior Counsel appearing for petitioners has also placed reliance on the judgment in the matter of Hariharrao Vishwanathrao

Bhosikar Vs. Datta Anandrao Pawar and Others, . It is held by learned Single Judge of this Court, on consideration of provisions of Rules, that

there is no power vested with the Collector to accept the petition which does not comply with requirements of Rules. Learned Single Judge has

heavily relied upon the judgment of Apex Court in the matter of Sadashiv H. Patil v. Vithal D. Teke reported in 2001 (1) Mh.L.J. 312.

13. Reliance is also placed on the judgment delivered by learned Single Judge of this Court in the matter of Rohidas Shankar Gadekar v. State of

Maharashtra and Ors. in Writ Petition No. 5448 of 2009 decided on 18th March, 2004; as well as in the matter of Mirza Kadir Baig Rasul Baig

v. District Collector, Parbhani and Ors. in Writ Petition No. 3898 of 2002 decided on 19th December 2002.

14. Learned Senior Counsel appearing for Respondent No. 1 has invited my attention to the judgment of Apex Court in the matter of Dr.

Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Ors. reported in 2004 AIR SCW 6278 which has been relied upon by the

learned Single Judge of this Court while dealing with an issue in the matter of Chandrakant Pise, Smt. Kamal Sadashiv Gaidhane, Smt. Laxmi Sujit

Bagade and Rameshwar Rushiya Vs. The Collector, The Municipal Council, Arvind Lodhi and Ujjwalkumar Wasudeorao Bagde, . A similar view

is adopted by learned Single Judge of this Court while dealing with the matter in the case of Manoj Bansilal Biyani v. Sameer Krishnadhan Karr

and Anr. reported in 2009 (5) Bom CR 753.

15. Learned Single Judge, while dealing with Chandrakant Pise, Smt. Kamal Sadashiv Gaidhane, Smt. Laxmi Sujit Bagade and Rameshwar

Rushiya Vs. The Collector, The Municipal Council, Arvind Lodhi and Ujjwalkumar Wasudeorao Bagde, matter, has considered all the judgments

referred to above and placing reliance on the judgment in the matter of Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and

Ors. reported in 2004 AIR SCW 6278 delivered by Three Judge Bench of the Apex Court, has recorded a conclusion that provisions of Rule

7(2) of the Rules of 1987 are directory in nature and non compliance of the procedural aspects relating to presentation of Reference will not lead

to consequence of automatic dismissal of petitions. The Apex Court was dealing with the matter in respect of disqualification of a Member of

Legislative Council. The objection raised before the Apex Court was that the Reference made to the Speaker of Assembly does not comply with

the provisions of Rules 6 & 7 of Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994 framed by the Speaker

under Tenth Schedule of the Constitution. It was contended before the Apex Court that, as the petition presented to the Speaker does not comply

with provisions of Rule 6 and that Rule 7 of the Rules provide for dismissal of the petition, which does not comply with requirement of Rule 6, the

Chairman of Legislative Council ought to dismiss the Reference. In paragraph 16 of the judgment, the Apex Court has observed thus:

16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth

Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said Rule and Sub-rule (6)

of the same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of

pleadings. The heading of Rule 7 is "PROCEDURE". Sub-rule (1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall

consider whether the petition complies with the requirement of the said Rule and Sub-rule (2) says that if the petition does not comply with the

requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by

paragraph 8 of Tenth Schedule. The purposes and object of the Rules is to facilitate the job of the Chairman in discharging his duties and

responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to

disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to

frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision

which may have the effect of curtailing the content and scope of the substantive provision, namely the Tenth Schedule. There is no provision in the

Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is

made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of a House has

become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any

person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the

necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be

brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have

incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it

will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth

Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC

for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to

give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fiftysecond Amendment) Act by which Tenth Schedule

was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get

away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under

Sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation,

they would be rendered ultra vires.

16. The Apex Court has made reference to the decision rendered in the case of Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others,

and quoted the observations with approval, those are:

18. ...The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power

conferred on him under subparagraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore,

procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of

subparagraph (2) of paragraph 6 as construed by this Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, . Moreover, the field of judicial

review in respect of the orders passed by the Speaker under subparagraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan case

is confined to breaches of the constitutional mandates, mala fides, noncompliance with Rules of Natural Justice and perversity. We are unable to

uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we

would be elevating the rules to the status of provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed

by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and

cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the

Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in

subparagraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihoto Hollohan case.

17. The Learned Single Judge of this Court in Chandrakant Pise's matter 2010 (1) Mh.L.J. 281 has taken review of all the prior decisions referred

to above and relying upon the judgment of the Apex Court in the case of M.P. Singh 2004 AIR SCW 6278 has drawn a conclusion that Rule 7(2)

of the Rules is directory in nature.

18. Shri Dixit, learned Senior Counsel appearing for petitioners, contends that ratio laid down in M.P.Singh's case, cannot be made applicable, as

said matter pertains to interpretation of provisions of Tenth Schedule of the Constitution and while dealing with the Rules framed by Speaker of

Legislative Council, in exercise of powers conferred under the Constitution, the Apex Court, in the facts of that case, has held that Rule 7 of the

Rules is directory in nature. He further contends that provisions of Tenth Schedule of the Constitution and Rules framed by Speaker cannot be

equated with Rules framed by Legislature which has application to the instant matter.

19. This argument was taken into account of by learned Single Judge while dealing with the matter and it has been observed that the ratio holds

good and when no provision in 1986 Act prescribed any procedural requirement, the delegate State Government could not have added in it Rule

7(2) with an intention to defeat the mandate of Article 243V or 1987 Act. Such subordinate rule cannot be construed to help an otherwise

disqualified Councillor to continue as such in defiance of legislative mandate. The rules therefore will have to be read as only directory. Under 1986

Act and Rules, Collector or the Commissioner, as the case may be, have to find out first only prima facie whether requirements of Rule 6 are

fulfilled but then the procedural formalities cannot and do not pose any hurdle in the adjudication of the question of disqualification. The reference

cannot be dismissed at threshold on that account. The Learned Single Judge, in para 10 of the judgment, observed thus:

10. The Hon"ble Apex Court has given primacy to Constitutional provisions in Tenth Schedule of Constitution of India and read down the rules

framed as directory only so that a disqualified Councillors cannot defeat the legislative intent by pointing out procedural technical violations. Tenth

Schedule is under Articles 101(2) and 191(2) of the Constitution which prescribe disqualification for being a member of either House, if such

member is disqualified under that Schedule. In part IXA of the Constitution dealing with municipalities, Article 243V(1)(b) contains a similar

provision and disqualifies a person for being chosen as or for being a member of a Municipality "if he is so disqualified by or under any law made

by the Legislature of the State". Though subparagraph (2) of paragraph 6 of Tenth Schedule stipulates that all proceedings about disqualification

under Sub-para (1) are deemed to be the proceedings of Parliament or Legislature of a State within Article 122 or Article 212, that by itself is not

a material factor for interpretation of the Tenth Schedule. The absence of a provision in Tenth Schedule permitting a disqualified Member to

continue because of some procedural lapses in bringing necessary facts to the knowledge of competent authority and a delegate adding it by

exercising rule making power so as to defeat the substantive provision of disqualification itself is the determinative element in judgment of Hon"ble

Apex Court in Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Ors. (supra). Discussion by Hon"ble Apex Court in

paras 13 and 16 in said judgment clearly show that rule making authority cannot dilute or interfere with the intention of law framers. When Tenth

Schedule did not lay down any mandatory procedural norms fatal to proceedings for disqualification, such provisions could not have been added

by the subordinate legislation. This ratio also holds good here and when no section in 1987 Act prescribe any procedural requirement, the delegate

State Government could not have added it through Rule 7(2) with an intention to defeat the mandate in Article 243V or 1987 Act. Such

subordinate rule cannot be construed to help an otherwise disqualified Councillor to continue as such in defiance of legislative mandate. The rules

therefore will have to be read as only directory. Under 1987 Act and Rules, Collector or the Commissioner, as the case may be, have to find out

first only prima facie whether requirements of Rule 6 are fulfilled but then the procedural formalities cannot and do not pose any hurdle in the

adjudication of the question of disqualification. The reference cannot be dismissed at threshold on that account.

20. In the judgment delivered by learned Single Judge of this Court, in Manoj Biyani's case 2009 (5) Bombay Cases Reporter 753 has also

adopted a similar view. It would be appropriate to quote observations made by the learned Single Judge while dealing with the issue:

15. Similarly, it may be gathered from the provisions of the MLAMD Act that there is no provision in the Act to the effect that until a petition which

is signed and duly verified in the manner laid down in the CPC for verification of pleadings is made to the Collector/Commissioner, he will not get

jurisdiction to render decision about disqualification under the Act. The procedural cobwebs are not meant to frustrate the object for which the

enactment has been made. The procedure is in the aid of the authority and in order to facilitate smooth working of the quasijudicial nature. Mr.

Dhorde would submit that in view of Section 10 of the MLAMD Act, the Rules will have overriding effect and, therefore, compliance thereof is

mandatory. He invited my attention to the expression "shall" as used in Rule 6(4) of the MLAMD Rules. He would submit that the intention of the

Legislature is to make the Rules mandatory. He also invited my attention to Shridhar Vs. Nagar Palika, Jaunpur and Others, and submitted that if

at all the view of the Division Bench is unacceptable, this Court should not travel beyond the same in view so as to maintain the judicial discipline.

16. In F.A. Sapa etc. v. Singora and Ors. etc. AIR 1991 S.C. 157 the Apex Court held that mere defect in verification of the Election Petition

cannot be fatal to its maintainability. The Apex Court in Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, held that

defect in verification in the Election Petition can be removed in accordance with the principles of the Civil Procedure Code. It was held as a

curable defect.

17. Having given anxious consideration to the submissions of Mr. Dhorde, I find it difficult to countenance his argument. First, the mere use of

expression "shall" in Rule 6(4) will not make it mandatory. For, unless there is penal consequence provided for, mere such expression does not

ordinarily make the Rule mandatory. There is no question of taking any diametrically opposite view from the view of the Division Bench of this

Court. What I think is that considering the dictum of the Apex Court in Dr. Mahachandra Prasad Singh (supra), the view taken by the Division

Bench stands eclipsed. I am bound by the precedent handed down by the Apex Court in view of Article 141 of the Constitution. Mr. Dhorde

submits that the judgment of the Division Bench and that of the Apex Court in Sadashiv H. Patil (supra) are the direct authorities on the concerned

provisions of the MLAMD Act and, therefore, they should be followed. So far as Sadashiv H. Patil (supra) is concerned, there was no issue

involved regarding the nature of Rules 6, 7 and 8 of the MLAMD Rules directly and substantially involved in the said matter. I mean to say

whether Rule 6(4) is directory or mandatory was not the issue directly involved and contested. As against this, the judgment of the Apex Court in

Dr. Mahachandra Prasad Singh (supra) deals with pari materia provisions though the Rules were the in house Rules framed by the Chairman of the

Bihar Legislative Council. That hardly makes any difference. One cannot be oblivious of the provision of the Rule 7(5) of the MLAMD Rules,

Sub-rule (5) reads as follows:

(5) The procedure which shall be followed by the Commissioner, or, as the case may be, Collector, for determining any question and for the

purpose of making a preliminary inquiry under Sub-rule (4) shall be the same as the procedure followed by the respective Committees of Privileges

of both the Houses of the State Legislature.

In other words, the in house Procedure as provided under the Rules framed by the Legislative Assembly or by the Chairman of the House or the

Speaker, as the case may be, are required to be adhered to during the enquiry since they are the pari materia provisions.

21. I am in respectful agreement with the pronouncements made by learned Single Judge in the matters of Chandrakant Pise and Manoj Biyani,

referred to above, which, in turn, refers to judgment of the Apex Court in Dr. Mahachandra Prasad Singh's case.

22. For the reasons recorded above, therefore, petitions do not call for any interference and same are liable to be dismissed.

23. Writ Petitions stand dismissed. Rule discharged. There shall be no order as to costs. Interim relief stands vacated. Pending Civil Applications

do not survive and stand disposed of accordingly.

At this stage, learned Counsel appearing for petitioners requests for continuation of interim relief for a period of six weeks. Considering the facts

and circumstances of this case, I am not inclined to consider request made by petitioners favourably. Request stands rejected.