IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11434 OF 2016

1. Shri. Kumar Gorakhnath Shinde
   Aged about 30 years, Occ. Business
   R/at 254, Bony View Bungalow
   Mahabaleshwar, District — Satara.

2. Shri. Sandeep Vasant Salunke
   Aged about 40 years, Occ. Business
   R/at 445, Mari Peth, Mahabaleshwar
   District – Satara.

3. Sou. Sangita Dattatraya Wadkar
   Aged 38 years, Occ. Household
   R/at Shivprasad Bungalow,
   Opposite Hotel Anarkali
   Mahabaleshwar, District – Satara.

4. Sou. Sureskh Prashant Aakhade
   Aged 30 years, Occ. Household
   R/at 67, Ranjanwade,
   Mahabaleshwar, District – Satara.

5. Sou. Ujjwala Ratikant Toshniwaal
   Aged 58 years, Occ. Household
   R/at 59, Dr. Sabne Road
   Mahabaleshwar, District – Satara.

6. Leela Nandkumar Mankumare
   Aged 38 years, Occ. Household
   R/at 17, Shri. Gurudatta Housing
   Society, Mahabaleshwar,
   District – Satara.

7. Sou. Vimal Pandurang Parte
Aged 51 years, Occ. Household
R/at 289, Mari Peth, Hotel Ashoka Inn,
Mahabaleshwar, District – Satara. … Petitioners.

V/s.

1. The State of Maharashtra.

2. The Collector,
District- Satara, Satara.

3. Shri. Dattatraya Maruti Bavlekar
Aged 65 years, Occ. Business
And Agriculturist), R/at Hotel Sunny
International, Majjid Road,
Mahabaleshwar, District- Satara.

4. Mahabaleshwar Municipal Council,
Mahabaleshwar, Dist. Satara. … Respondents.

WITH
WRIT PETITION NO. 11557 OF 2016

Shri Prakash Ramchandra Patil
Aged about 52 years, Occ. Business.
R/at 74, Dr. Sabne Road,
Mahabaleshwar, District- Satara.

V/s.

1. The State of Maharashtra.

2. The Collector,
District- Satara, Satara.

3. Shri. Dattatraya Maruti Bavlekar
Aged 65 years, Occ. Business

And Agriculturist), R/at Hotel Sunny International, Majjid Road, Mahabaleshwar, District- Satara. … Respondents.

Mr. Ashutosh Kumbhakoni, Senior Advocate with Mr. Vishwajit Mohite, Mr. Siddharth Karpe, Mr. Akshay Shinde,Mr. Ketan Joshi and Ms. Sneha Bhange for the Petitioners in WP-11434/2016.

Mr. Vijay Patil with Mr. Vishwajit V. Mohite, Mr. Siddharth Karpe, Mr. Akshay Shinde, Mr. Ketan Joshi and Ms. Sneha Bhange for the Petitioner in WP-11557/2016.

Dr. Birendra Saraf, Advocate General with Mr. P. P. Kakade, Government Pleader, Mr. S.H. Kankal, AGP, Mr. R.S. Pawar, AGP, and Jay Sanklecha for Respondent Nos.1 and 2- State in both petitions.

Mr. Anil Anturkar, Senior Advocate with Mr. Sugandh Deshmukh,Mr. Harshvardhan Suryavanshi, Mr. Yatin Malvankar, Mr. Atharva Date, Mr. Sumit Sonare, Mr. Sharad Dhore i/b. Mr. Prathamesh Bhargude for Respondent No.3.

Mr. Dilip Bodake with Ms. Shraddha Pawar for Respondent No.4 in WP-11434/2016.

CORAM : NITIN JAMDAR, G.S. KULKARNI, BHARATI DANGRE, MANISH PITALE AND AMIT BORKAR, JJ.

Reserved On: 10 October 2023.

Pronounced On: 16 July 2024.

Judgment (Per Nitin Jamdar, J.) :-

The question this larger Bench is called upon to answer is whether a councillor who has contested the elections of a Municipal Council as an independent candidate and has formed/become part of an Aghadi registered pursuant to the second Proviso to Section 63(2B) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 is governed by Section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986 for all purposes for all meetings as a member of such Aghadi till the term of the Council, or such an Aghadi is for a restricted purpose such as only for subject committees. Reference is made by the single judge of this Court doubting the correctness of the decision of the Full Bench of this Court in the case of *Shah Faruq Shabir and Ors. vs. Govindrao Ramu Vasave and Ors.*[1], holding that the Aghadi registered under second Proviso to Section 63(2B) is for a restrictive purpose. Thus, the crux of the matter is whether the Aghadi under Section 63(2B) is intended for specific or all-encompassing purposes. The resolution of this dispute hinges on the interpretation of the above statutory provision.

2. The relevant statutory framework under consideration are the provisions from the Maharashtra Local Authority Members' Disqualification Act 1986 (*The Disqualification Act)*; the

1 (2016) 5 Mh.L.J. 436

Maharashtra Local Authority Members' Disqualification Rules 1987. (*The Disqualification Rules)*; the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (*Municipalities Act),* and Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated councillors) *Rules 2006-07.*

3. The Disqualification Act received the assent of the Governor on 28 July 1987. The object of the Act is to curb defections and disqualify members of certain local authorities on the grounds of defection and related matters. Section 2(a) of the Disqualification Act defines an Aghadi as a group of persons who have formed themselves into a party to set up candidates for election to a local authority. The Municipalities Act is structured to provide a uniform pattern of administration and powers for Municipalities. Section 63 of the Municipalities Act falls under Chapter 3, which deals with the election and removal of the President and Vice President and their governing functions. Each Subject Committee of the Council consists of such number of councillors as the Council may determine. The Collector calls a special meeting of the Council to determine the number of members for each of the Subject Committees. In nominating the councillors, the Collector considers the relative strength of recognised parties or registered parties. It will be appropriate to reproduce the second Proviso to Section 63(2B) of the Municipalities Act at this stage.

> *Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this sub-section, the recognised parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986, within a period of not more than one month from the date of notification of election results, form the Aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such Aghadi or front, as if it is a pre-poll Aghadi or front.*
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> (emphasis supplied)

Thus, to decide the relative strength of the recognised parties or registered parties or groups, these parties or groups, or an elected councillor not belonging to any such party or group, may form an Aghadi or Front within one month from the notification of the election results. Upon its registration, the provisions of the said Disqualification Act shall apply to the members of such an Aghadi or Front as if it were a pre-poll Aghadi or Front. The interpretation of the phase, a legal fiction, "as if it is a pre-poll Aghadi" is the subject of debate before us.

4. Interpretation of the above Proviso had come up for consideration of the Full Bench of this Court in the case of *Shah Faruq Shabir*. The Full Bench noted the statement and object behind the Disqualification Act and analysed the Tenth Schedule of the

Disqualification Act. Full Bench then examined the scope of Section 63 and reached the following conclusion :-

> ***55.*** *On conjoint reading of paragraphs No. 26 and 27 of the judgment in Jeevan Idnani's matter (supra), an irresistible conclusion has to be drawn that the formation of an aghadi under the provisions of second proviso to section 31-A(2) is only for the limited purpose of enabling such aghadis to secure better representation in the various categories of the Committees specified under section 31-A. The component parties or independent councillors, as the case may be, in the case of a given front / aghadi do not lose their political identity and merge into aghadi or front or bring into existence a new political party. There is no merger, as contemplated under section 5 of the Disqualification Act. It is, thus, clear that formation of such an aghadi or front is for the purposes of securing better representation in the various categories of the Committees specified therein and it cannot be equated with an aghadi or front under section 2(a) for the purposes of invocation of the provisions of the Disqualification Act.*

(The provisions of section 63(2B) are *pari materia* to section 31-A(2) of the Bombay Provincial Municipal Corporations Act.) Thus, the Full Bench, in essence, held that the formation of an Aghadi or Front under second Proviso is for the purposes of securing better representation in the various categories of the Committees specified therein and it cannot be equated with an Aghadi or front under section 2(a) for the purposes of invocation of the provisions of the Disqualification Act.

5. The present petitions relate to the elections of the Mahabaleshwar Municipal Council. The Petitioner in Writ Petition

No.11557 of 2016 - Mr. Prakash Ram Patil, contested the election of the Mahabaleshwar Municipal Council held in the year 2011. Mr. Gorakhnath Shinde and others filed Writ Petition No.11434 of 2016 challenging the order passed by the Collector, Satara, disqualifying the Petitioners from being members of the Mahabaleshwar Municipal Council. The Petitioners contested the election as independent candidates, and after the election, the Petitioners formed Mahabaleshwar Vikas Aghadi. After the formation of Aghadi, Mr. Sandip Vasant Salunkhe was appointed as the leader of the Aghadi. On 2 January 2012, an application was made to the Collector, Satara, for registration of the Aghadi and the Collector, Satara, on 5 January 2012, accorded a legal sanction to the Aghadi. The Petitioners' names and others were published as members of the Aghadi by a Notification dated 18 February 2012. An application came to be filed by Respondent No.3 on 5 January 2015 seeking disqualification of the Petitioners under the Act of 1986. It was stated that though the Petitioners contested the election as independent candidates, they were members of the Mahabaleshwar Vikas Aghadi, and while contesting the election of subject committees, they filed their applications stating themselves as independent instead of members of Vikas Aghadi. This would indicate that they had voluntarily given up membership of such Aghadi. The Collector, after giving an opportunity to the Petitioners, disqualified the Petitioners holding that the Petitioners have incurred disqualification under Section 3(1)(a) of the Disqulification

Act. The Petitioners challenged the order passed by the Collector, Satara, on 27 September 2016, allowing the application filed by the Respondents and disqualifying the Petitioners under Section 3(1)(a) of the Disqualification Act.

6. The learned Single Judge (R.M.Savant, J) considered the challenge to the orders disqualifying the candidates under Section 3(1)(a) of the Disqualification Act. One of the arguments was based on the decision of the Full Bench of this Court in *Shah Faruq Shabir* was that the Petitioners could not have been disqualified under Section 3(1)(a) of the Disqualification Act. According to the Petitioners, the Post-Poll Aghadi under Section 63(2B) of the Municipalities Act does not attract the provisions of the Disqualification Act. According to the Petitioners, this Post-poll Aghadi was only to secure better representation in the various committees and cannot be equated to Aghadi under Section 2(a) of the Disqualification Act for invocation of provisions of the Disqualification Act. The Respondents urged before the learned Single Judge that the decision of the Full Bench in *Shah Faruq Shabir* was *per incurium*, having rendered without noticing the binding decisions of the Hon'ble Supreme Court governing the interpretation of a legal fiction.

7. The learned Single Judge opined that the Post-Poll Aghadi may be formed for better representation in the various categories of committees specified under Section 3(a) still, the legal

fiction created, considering the object of the Disqualification Act, cannot be restricted only to the second Proviso to Section 63(2B). The learned Single Judge opined that the Full Bench in *Shah Faruq Shabir* did not consider this legal position governing the legal fiction when the Full Bench held that the Post-Poll Aghadi cannot be equated with Pre-Poll Aghadi for disqualification restricting it only for representation in subject committee. The learned Single Judge opined that the interpretation of the Full Bench is contrary to the purpose and the object of the Disqualification Act, and the decisiion of the Supreme Court. The learned Single Judge was of the considered opinion that the matter is required to be reconsidered by the Larger Bench as the issue was also of importance.

8. Accordingly, the learned Single Judge, by order dated 23 January 2017, directed the Registry to place the matters before the learned Chief Justice referring to Rule 7 of the Appellate Side Rules for consideration of the constitution of a Larger Bench to consider the implications of the legal fiction as comprised in the second Proviso to Section 63(2B) of the Municipalities Act. By an administrative order of the learned Chief Justice, a bench of three learned Judges was constituted. This Full Bench *(G.S. Kulkarni, Madhav Jamdar and Jitendra Jain, JJ.),* by order dated 6 July 2023, opined that the proceedings are required to be heard by a bench of five learned Judges, as the co-ordinate Bench of three judges cannot decide the correctness of the law laid down by the Full Bench.

Accordingly, Reference is placed before this Larger Bench of five Judges.

9. We have heard Mr. Ashutosh Kumbhakoni, Senior Advocate and Mr. Vijay Patil, learned Advocate for the Petitioners, Mr. Anil Anturkar, Senior Advocate and Mr. Dilip Bodake, learned Advocate for Respondents and Dr. Birendra Saraf, Advocate General, with Mr. P.P. Kakade, Government Pleader for the State. The learned Advocate General supported the rgument of the Respondents that Aghadi under the concerned provision is not for a restricted purpose.

10. The learned Counsel have pointed out that the litigation has lost its practical relevance for the Petitioners and Respondents; however, recognising the importance of the legal issue at hand, they have addressed the Court on the question of law involved.

11. We prefix the discussions with three explanations: First, the concerned statutes use the terms Aghadi and Front. The learned Counsel submit it is the same concept in a different language. We have chosen to use the term Aghadi in this judgment. Second, in the context of the Disqualification Act and the Municipalities Act, various scenarios can arise, such as mergers, splits, and the election of candidates as party members and as independent candidates. The issue under consideration involves independent candidates who have joined or formed part of an Aghadi under the second Proviso to

Section 63(2B). The specific question to address is regarding an independent councillor who becomes part of an Aghadi under the second Proviso to Section 63(2B). Therefore, as argued by the Counsel for the parties, our findings on law are restricted to the cases of councillors elected as independent candidates who joined/ formed an Aghadi under Section 63(2B) of the Municipalities Act. Third, though the Statue does not mention the phrase 'Post Poll Aghadi', we have used this phrase in this judgement for the sake of convenience.

12. The learned Counsel for the Petitioners, in brief, contend as follows. The second Proviso to Section 63(2B) of the Municipalities Act is legislation by reference, not by incorporation, as it refers to the provisions of the Disqualification Act. The Proviso is clear and is used to determine the relative strength of recognised parties under that sub-section. The interpretation of the formation of a Post-Poll Aghadi should be based on the literal rule of interpretation, and in the absence of ambiguity, there is no need for expression beyond the statute. The Disqualification Act specifically outlines the formation of a Post-Poll Aghadi without requiring any debate. Extending the Second Proviso beyond its permitted scope would result in an amendment to the Disqualification Act. The provision itself outlines the purpose and object of the Act, which is to decide relative strength and recognise parties and registered parties and groups. The main provision and the Proviso must be read

in harmony, and the Proviso cannot add something to the main provision that is not contemplated in the main petition itself. Similar provisions exist under Section 31(A) of the Maharashtra Municipal Corporation Act and Section 50(s) of the Mumbai Municipal Corporation Act, as in Section 63(2B) of the Municipalities Act. It is important to note that the phrase "House" exists in the Maharashtra Municipal Corporation Act and the Mumbai Municipal Corporation Act but is absent in the Municipalities Act. This indicates legislative intent to restrict the Post-Poll Aghadi under the Municipalities Act only to the sub-section. The Aghadi defined under Section 2(a) of the Disqualification Act is limited to a group of individuals coming together and does not include a Post-Poll Aghadi or Front. The purpose of a Pre-Poll Aghadi under the Disqualification Act is clear. An independent councillor who has been set up as a candidate and is liable to be disqualified if they join a party Aghadi or front after the election, as per Section 2(3) of the Disqualification Act. However, the formation of an Aghadi in terms of the provision in issue cannot be considered for any purpose and/or operation of the Act, except for the purpose of "constitution of subject committees" in terms of Section 63 of the Act, for "deciding the relative strength of the recognised or registered parties or groups or Aghadi." When the legislature uses a deeming provision to create a legal fiction, it is always used to achieve a purpose. Once the purpose of the fiction is ascertained, the Court must give full effect to the statutory fiction, and the fiction is to be carried to its logical end so that the purpose

for which it is created is fully achieved. The logical end is restricted to the purpose for which it is created. The view taken by the Full Bench in *Shah Faruq Shabir* is thus correct and does not need reconsideration.

13. The learned Counsel for the Respondents and the learned Advocate General argue that an independent councillor would have been disqualified under the Disqualification Act before introducing the second Proviso to Section 63(2B). The Disqualification Act outlines the conditions under which a person is barred from holding public office. Once an Aghadi is registered in the register maintained under the Maharashtra Local Authority Members' Disqualification Rules, 1987, it comes into being. Therefore, such an Aghadi cannot be restricted merely to better representation in the subject committees. The legislative history of the second Proviso to Section 63(2B) and the debates during the introduction of the bill indicate that it was not intended to limit the scope of an Aghadi formed under this Proviso. Restricting the Aghadi solely for a limited purpose would encourage horse trading, as the Aghadi formed for better representation in the subject committees would be disbanded afterwards. Settled principles of statutory interpretation dictate that a statute must be interpreted with the mischief it seeks to curb in mind, making the legislative history crucial. Therefore, the second Proviso to Section 63(2B) must be interpreted using the mischief rule rather than a literal

interpretation. The view taken by the Full Bench in *Shah Faruq Shabir* needs to be reconsidered, as it may lead to indicipline.

14. Thus, the arguments revolve around which principle of statutory interpretation needs to be adopted. On this issue, guidance is provided in the decision of the Bench of seven learned Judges of the Hon'ble Supreme Court in the case of *Abhiram Singh v/s. C.D. Commachen (dead) by Legal Representatives*[2]. The Constitution Bench considered the question of interpretation of election statutes. The Petitioners have relied upon the observations in paragraphs 36, 40 and 50 of the said decision, however, the majority view is that the judicial interpretation should be based on constitutional goals. The relevant observation of the report are as under:-

> *" 36. The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The interpreter has, therefore, to consider not only the text of the law but the context in which the law was enacted and the social context in which the law should be interpreted. This was articulated rather felicitously by Lord Bingham of Cornhill in R. (Quintavalle) v. Secy. of State for Health [R. (Quintavalle) v. Secy. of State for Health, 2003 UKHL 13 : (2003) 2 AC 687 : (2003) 2 WLR 692 (HL)] when it was said : (AC p. 695 C-H, paras 8-9)*

2 (2017) 2 SCC 629

"8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now. The meaning of "cruel and unusual punishments" has not changed over the years since 1689, but many punishments which were not then thought to fall within that category would now be held to do so. The courts have frequently had to grapple with the question whether a modern invention or activity falls within old statutory language : see

> *Bennion, Statutory Interpretation, 4th Edn. (2002) Part XVIII, Section 288. A revealing example is found in Grant v. Southwestern and County Properties Ltd. [Grant v. Southwestern and County Properties Ltd., 1975 Ch 185 : (1974) 3 WLR 221] , where Walton, J. had to decide whether a tape recording fell within the expression "document" in the Rules of the Supreme Court. Pointing out (at p. 190) that the furnishing of information had been treated as one of the main functions of a document, the Judge concluded that the tape recording was a document."*
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> *39. We see no reason to take a different view. Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses. Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good."*
>
> *(emphasis supplied)*

In paragraph 40 while construing the provision of Representation of Peoples Act, the Constitution Bench emphasised on public interest in interpreting the provisions observing thus :-

> *"40. The Representation of the People Act, 1951 is a statute that enables us to cherish and strengthen our democratic ideals. To interpret it in a manner that assists candidates to an election rather than the elector or the*

> *electorate in a vast democracy like ours would really be going against public interest. As it was famously said by Churchill:"At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper…" if the electoral law needs to be understood, interpreted and implemented in a manner that benefits the "little man" then it must be so. For the Representation of the People Act, 1951 this would be the essence of purposive interpretation."*

While dealing with the aspect of the social conduct legislation, it was observed thus :-

> *"44. Another facet of purposive interpretation of a statute is that of social context adjudication. This has been the subject-matter of consideration and encouragement by the Constitution Bench of this Court in Union of India v. Raghubir Singh [Union of India v. Raghubir Singh, (1989) 2 SCC 754] . In that decision, this Court noted with approval the view propounded by Justice Holmes, Julius Stone and Dean Roscoe Pound to the effect that law must not remain static but move ahead with the times keeping in mind the social context. It was said : (SCC pp. 766-67, para 10)*
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> *"10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that 'the life of the law has not been logic it has been experience', [Oliver Wendell Holmes, The Common Law, p. 5] and again when he declared in*

another study [Oliver Wendell Holmes, Common Carriers and the Common Law, (1943) 9 Curr LT 387 at p. 388] that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined." [Julius Stone, Legal Systems & Lawyers Reasoning, pp. 58-59]

(emphasis supplied)

A little later in the decision it was said : (SCC pp. 767-68, para 13)

"13. Not infrequently, in the nature of things there is a gravity-heavy inclination to follow the groove set by precedential law. Yet a sensitive judicial conscience often persuades the mind to search for a different set of norms more responsive to the changed social context. The dilemma before the Judge poses the task of finding a new equilibrium prompted not seldom by the desire to reconcile opposing mobilities. The competing goals, according to Dean Roscoe Pound, invest the Judge with the responsibility 'of proving to mankind that the law was something fixed and settled, whose authority was beyond question, while at the same time enabling it to make constant readjustments and occasional radical changes under the pressure of infinite and variable human desires'. [Roscoe Pound, An Introduction to the Philosophy of Law, p. 19] The reconciliation suggested by Lord Reid in The Judge as Law Maker [1972 The Journal of Public Teachers of Law 22 at pp. 25-26] lies in keeping both objectives in view, 'that the law shall be

certain, and that it shall be just and shall move with the times'."

(emphasis supplied)

45. Similarly, in Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay [Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay, (1974) 2 SCC 402] H.R. Khanna, J. rather pragmatically put it that : (SCC p. 426, para 22)

"22. … As in life so in law, things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time it has to be recognised that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself."

(emphasis supplied)

46. Finally, in Badshah v. Urmila Badshah Godse [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51] this Court reaffirmed the need to shape law as per the changing needs of the times and circumstances. It was observed : (SCC p. 197, para 16)

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In

most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law."

(emphasis supplied)

47. There is no doubt in our mind that keeping in view the social context in which clause (3) of Section 123 of the Act was enacted and today's social and technological context, it is absolutely necessary to give a purposive interpretation to the provision rather than a literal or strict interpretation as suggested by the learned counsel for the appellants, which, as he suggested, should be limited only to the candidate's religion or that of his rival candidates. To the extent that this Court has limited the scope of Section 123(3) of the Act in Jagdev Singh Sidhanti [Jagdev Singh Sidhanti v. Pratap Singh Daulta, (1964) 6 SCR 750 : AIR 1965 SC 183] , Kanti Prasad Jayshanker Yagnik [Kanti Prasad Jayshanker Yagnik v. Purshottamdas Ranchhoddas Patel, (1969) 1 SCC 455] and Ramesh Yeshwant Prabhoo [Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, (1996) 1 SCC 130 : (1995) 7 Scale 1] to an appeal based on the religion of the candidate or the rival candidate(s), we are not in agreement with the view expressed in these decisions. We have nothing to say with regard to an appeal concerning the conservation of language dealt with in Jagdev Singh Sidhanti [Jagdev Singh Sidhanti v. Pratap Singh Daulta, (1964) 6 SCR 750 : AIR 1965 SC 183] . That issue does not arise for our consideration."

> *50. On a consideration of the entire material placed before us by the learned counsel, we record our conclusions as follows:*
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> *50.1. The provisions of clause (3) of Section 123 of the Representation of the People Act, 1951 are required to be read and appreciated in the context of simultaneous and contemporaneous amendments inserting clause (3-A) in Section 123 of the Act and inserting Section 153-A in the Penal Code, 1860.*
>
> *50.2. So read together, and for maintaining the purity of the electoral process and not vitiating it, clause (3) of Section 123 of the Representation of the People Act, 1951 must be given a broad and purposive interpretation thereby bringing within the sweep of a corrupt practice any appeal made to an elector by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the grounds of the religion, race, caste, community or language of (I) any candidate, or (ii) his agent, or (ii) any other person making the appeal with the consent of the candidate, or (iv) the elector.*
>
> *50.3. It is a matter of evidence for determining whether an appeal has at all been made to an elector and whether the appeal if made is in violation of the provisions of clause (3) of Section 123 of the Representation of the People Act, 1951."*
>
> *(emphasis supplied)*

The Constitution Bench held that giving a purposive interpretation to the provisions of the Representation of the People Act is necessary rather than a literal or strict interpretation. The Act must be

interpreted broadly and purposively to fulfil its statutory purpose. The Constitution Bench held that when two interpretations of a statute are possible, the court must adopt the one that promotes the object of the legislation. The Constitution Bench emphasised that while penal statutes must generally be strictly construed, this rule of interpretation does not apply when the action falls within the mischief the legislation aims to prevent. In such cases, the court has to ensure that the legislative purpose is not frustrated. Furthermore, the Constitution Bench held that in well-drafted legislation, literal construction is not the only an option if the statute does not fully reflect its intended benefit for the people. In such instances, the legislation must be interpreted purposefully and in line with its intended legal effect to achieve its objectives effectively. The election statutes are not to be interpreted solely with the interest of the candidate in mind but in the interest of the polity in mind. The dicta of the Constitution Bench directs us to examine the Proviso accordingly.

15. As stated earlier, the debate before us is whether the fiction, a declaration, that a Post-poll Aghadi under the second Proviso to Section 63(2B) to be treated as a Pre-poll Aghadi, is limited or it should be given full play. On the issue of the extent of legal fiction, the Petitioners rely upon the following decisions of this Court and the Hon'ble Supreme Court in the cases of *Ittianam and Ors. Vs. Cherichi @ Padmini*[3], *Paramjeet Singh Patheja vs. ICDS*

3 2010(8) SCC 612

Ltd.[4], *Nandkishore Ganesh Joshi vs. Commissioner, Municipal Corporation, KDMC and Ors.*[5], *Umadevi Rajkumar Jeure and Ors. vs. District Collector, Solapur and Ors.*[6], *New Okhala Industrial Development Authority (NOIDA) vs. Yunus and Ors.*[7] and *State of Maharashtra vs. Laljit Shah*[8]. According to the Petitioners, the legal fiction in second Proviso only to decide relative strength and no further. According to the Petitioners, the logical end is only the relative strength. Based on the decision in the case of *Paramjeet Singh Patheja vs. ICDS Ltd.*[9], the Petitioners contend that when the words "as if" are employed, it shows the distinction between two things and such words are used for a limited purpose. The Respondents rely upon the following decisions of the Hon'ble Supreme Court in the cases of *Ittianam vs. Cherichi @ Padmini*[10], *Builders' Association of India vs. Union of India*[11] *and Bhavnagar University vs. Palitana Supar Mills Pvt. Ltd.*[12]. It is not necessary to burden the record with passages on how the legal fiction is to be construed. The principles of governing legal fiction are settled. It will suffice to reproduce the off-quoted passage from the judgement of Lord Asquith *in East End Dwellings Co. Ld. v. Finsbury Borough Council*[13] *as follows:*

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4 2006(13) SCC 322,
5 2004(11) SCC 417
6 2022(1) Mah.L.J. 562
7 2022(9) SCC 516
8 2000(2) SCC 699
9 (2006) 13 SCC 322
10 (2010) 8 SCC 612
11 (1989) 2 SCC 645
12 (2003) 2 SCC 111
13 (1952) AC 109, 132

> *"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*
>
> *(emphasis supplied)*

In the case of *Ittianam and Ors. vs. Cherichi @ Padmini*[14], the Hon'ble Supreme Court observed that once the legislative purpose is ascertained, the Court must give full effect to the statutory fiction and the fiction be carried to its logical end. The legal fiction has to be extended to achieve the intended purpose but not beyond the policy. The first step is to determine the legislative intent for which the fiction is created. Once understood, the legal fiction must be taken to its logical end. Therefore the enquiry would be of the purpose and object of the enactment creating the fiction.

16. To interpret a statute, both external and internal aids can be utilised. The court can refer to the statement of objects and reasons and the debates in the house during the introduction of the Bill as aid in interpreting a provision. The Full Bench of this court, in the case of *Mahadeo Nathuji Patil v. Surjabai Khushalchand Lakkad*,[15] observed that it is well-settled that the reports of

14 (2010) 8 SCC 612
15 1994 (2) Mh.L.J. (F.B.) 1145

commissions, inquiry committees, and the objects and reasons preceding the introduction of the Bill can be referred to for understanding the context in which the statute was enacted. This includes understanding the background, the antecedent state of affairs, the surrounding circumstances, and the issue the statute was intended to address. Thus, the objects and reasons of the Bill can be referred to for understanding the background, the surrounding circumstances in relation to the statute, and the mischief the statute sought to remedy.

17. First to consider the statement of objects and reasons. The Disqualification Act is modelled on the Tenth Schedule of the Constitution of India with certain modifications. The statement of objects and reasons of the disqualification act and the Tenth Schedule are reproduced in the decision of the Full Bench *Shah Faruq Shabir* as under

10 …The statement of objects and reasons recorded in the Bill, are set out as below:

> *"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. The field of Local Government constitutes a training ground for the State and National Government. Many of our ablest statesmen and legislators have received their earliest training to the sphere of Local Government. The local authorities may become the pioneers in various fields 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 defections in certain local authorities also in the State."

13. … However, after the General Elections in the year 1984, the Constitution, (Fifty-second Amendment) Bill was presented in Lok Sabha on 24th January, 1985. The Statement of Objects and Reasons appended to the Bill stated thus:

1. *The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for outlawing defections and fulfilling the above assurance.*
2. *The Bill seeks to amend the Constitution provide that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature, who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he Voluntarily relinquishes his membership of such political party or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seats shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included in the Bill to enable a person who has been elected as a presiding*

officer of a House to sever his connection with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects."

(emphasis supplied)

Therefore, the object of both the Disqualification Act and the Tenth Schedule is to eradicate the evil of political defection in the Parliament on the National level and in the State Legislatures on the State Level and discourage and prevent elected representatives from changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects. This object must be kept in mind when the concerned provision is to be interpreted.

18. In the case of *K.P. Verghese v/s. The Income Tax Officer, Ernakulam*[16] . The Hon'ble Supreme Court had an occasion to consider whether the speech made by the mover of the Bill could be considered for ascertaining mischief sought to be curbed by the legislature, the Hon'ble Supreme Court held thus:-

"8. …. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case [(1584) 3 Co Rep 7a] was decided that

16 (1981)4 SCC 173

"... for the sure and true interpretation of all statutes in general ... four things are to be discerned and considered: (1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and (4) The true reason of the remedy, and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy."

In Re Mayfair Property Company [(1898) 2 Ch 28] Lindley, M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported Heydon case [(1584) 3 Co Rep 7a] ". The rule was re-affirmed by Earl of Halsbury in Eastman Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks [1898 AC 571] in the words:

"My Lords, it appears to me that to construe the statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."

This Rule being a rule of construction has been repeatedly applied in India in interpreting statutory provisions. It would therefore be legitimate in interpreting sub-section (2) to consider what was the mischief and defect for which Section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) or in other words, what was the object and purpose of enacting that sub-section. Now in this connection the speech made by the Finance Minister while moving the amendment introducing sub-

section (2) is extremely relevant, as it throws considerable light on the object and purpose of the enactment of sub-section (2). The Finance Minister explained the reason for introducing sub-section (2) in the words:

"Today, particularly every transaction of the sale of property is for a much lower figure than what is actually received. The deed of registration mentions a particular amount; the actual money that passes is considerably more. It is to deal with these classes of sales that this amendment has been drafted.... It does not aim at perfectly bona fide transactions ... but essentially relates to the day-to-day occurrences that are happening before our eyes in regard to the transfer of property. I think, this is one of the key sections that should help us to defeat the free play of unaccounted money and cheating of the Government."

Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in Loka Shikshana Trust v. CIT [(1976) 1 SCC 254 : 1976 SCC (Tax) 14 : 101 ITR 234 : 1976 LR 1] , the other in Indian Chamber of Commerce v. Commissioner of

Income Tax [(1976) 1 SCC 324 : 1976 SCC (Tax) 41 : 101 ITR 796 : 1976 Tax LR 210] and the third in Additional Commissioner of Income Tax v. Surat Art Silk Cloth Manufacturers' Association [(1980) 2 SCC 31 : 1980 SCC (Tax) 170 : 121 ITR 1] where the speech made by the Finance Minister while introducing the exclusionary clause in Section 2, clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause. The speech made by the Finance Minister while moving the amendment introducing sub-section (2) clearly states what were the circumstances in which sub-section (2) came to be passed, what was the mischief for which Section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) and why the enactment of sub-section (2) was found necessary. It is apparent from the speech of the Finance Minister that sub-section (2) was enacted for the purpose of reaching those cases where there was under-statement of consideration in respect of the transfer or to put it differently, the actual consideration received for the transfer was "considerably more" than that declared or shown by the assessee, but which were not covered by sub-section (1) because the transferee was not directly or indirectly connected with the assessee. The object and purpose of sub-section (2), as explicated from the speech of the Finance Minister, was not to strike at honest and bona fide transactions where the consideration for the transfer was correctly disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by understatement of the consideration. This was real object and purpose of the enactment of sub-section (2) and the interpretation of this sub-section must fall in line with the advancement of that object and purpose.

> *We must therefore accept as the underlying assumption of sub-section (2) that there is understatement of consideration in respect of the transfer and sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received."*
>
> *(emphasis supplied)*

This view was followed in the case of *Union of India v/s. M/s. Martin Lottery Agencies Ltd.*[17]. Therefore, speech made by the mover of the Bill explaining the reason for the introduction of the Bill can be noted to ascertain the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted.

19. The learned Advocate General has placed the legislative history of Section 5 of the second Proviso to Section 63(2B) including the original bill and the discussion in the Maharashtra Legislative Assembly and Maharashtra Legislative Council on the subject matter.

20. In the year 2006, LA Bill No. CIV of 2006 was introduced in the State legislature to amend the provisions of the Municipalities Act. Section 5 of the Bill proposed amendment to Section 63 by substituting sub-Section 2, 2(B), (3), (3A) and (3B) with Section 63. Section 5 of the Bill read thus :

17 2009 (12) SCC 209

> *" Section 5 of the Bill stated as under:*
>
> *"5. In section 63 of the principal Act -*
>
> *(i) In sub-section (2), for clause (b), the following clause shall be substituted, namely: -*
>
> *"(b) nominating Councilors on the Subjects Committees in accordance with the provisions of sub- section (2B):*
>
> *(ii) For sub-sections (2B), (3), (3A) and (3B), the following sub-sections shall be substituted, namely: -*
>
> *"(2B) In nominating the Councilors, the Collector shall take into account the relative strength of recognized parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting the leader of each such party or group:*
>
> *Provided that, nothing contained in this sub-section shall be construed as preventing the Collector from nominating on the Committee, any member not belonging to any such party or group."*

The Statement of Object and Reasons to the Bill also needs to be noted. It reads thus:-

> *" The statement of objects and reasons appended to the Bill set out the rationale for such amendment. The relevant portion of the statement of objects and reasons is set out as under:*
>
> *"3. To ensure that all the recognized political parties and groups in the Council are adequately represented in the Committees constituted under the Maharashtra Municipal Councils, Nagpur Panchayats and Industrial Townships Act, 1965 the Government considers it expedient to amend the said Act to provide for the nomination of members of the Committees in proportion to the strength of political parties or groups in the Council".*

The Original Bill did not contain the second Proviso to Section 63(2B). The second Proviso came to be added when the Bill for was taken for consideration

21. On 12 December 2022, the Bill was introduced in the Maharashtra Legislative Assembly. During the discussion, one Hon'ble member introduced an amendment to the Bill for inserting a second Proviso to Section 63(2B). The rationale provided by a member for introducing the Proviso would be of interest to note and will not be entirely irrelevant for further consideration. While introducing the amendment (the concerned Proviso), it was pointed out that: "councillors who have been elected under the aegis of various Alliances and whose current status is that of an independent councillor, in such cases, Post-poll Alliance needs to be covered and an amendment to this effect needs to be passed. After the Post-poll Alliance, if any councillor splits from such an alliance, he will be disqualified; therefore, the Post-poll Alliance should also be covered in this Bill. Once it is registered, it shall be eligible to all rights that are enjoyed by the President Alliance and eventually, the Members' Disqualification Act shall also get applicable to them. If the amendment is included, it may address the issue of Independent councillors. It may also help curb the practice of Horse-trading. Moreover, it may also prevent the formation of successive Alliances". The record shows that the House accepted this suggestion, and the

amendment was allowed, and the scond Proviso was included, even though it was not part of the original Bill.

22. The Bill was accordingly passed on 12 December 2006 in the Legislative Assembly. While introducing the Bill before the Legislative Council on 13 December 2006, the Hon'ble Minister stated as under :-

> *"Chairman Madam… . Many have expressed their views from the perspective of independents. They can form a group among themselves. Independents can also register that group. The rules applicable for an alliance shall also be applicable to them. They shall also have Whip or Group Leader. Post Election Alliance would be made. The Group Leader of that alliance would also have power to issue a Whip and if the Whip is violated then anti-defection law will be applicable in that. Whether there is one or two independent, the post-poll alliance will decide which party they will go with. Thus, the incidents of constant defection and political instability which are arising out of the prevailing situation will not arise henceforth. Many honourable members mentioned about maintaining of political stability. All these things are created with a view to maintain political stability. It has been desired that such an amendment in the Municipal Corporation be made with a view to increase the party's importance. I welcome this suggestion. A bill to enact similar provision in respect of Municipal Corporation will be introduced in the forthcoming session."*
>
> *(emphasis supplied)*

The members thereafter approved the Bill of the Legislative Council, and after that, the Maharashtra Municipal Councils (Third Amendment) of the Act of 2006 was enacted. Thus, the speeches of the moves of the Bill in the discussions of the Houses would show the object of the Amendment (Second Proviso) was to provide an opportunity for independent councillors to form an group Aghadi among themselves and register that Aghadi. The rules applicable to an Aghadi shall also apply to them. They shall also have a Whip or Group Leader. The Leader of that alliance Aghadi would have the power to issue a Whip. If the Whip is violated, the anti-defection law will apply. Thus the second Proviso was introduced to give opportunities to independent candidates but at the same time with restrictions to prevent horse-trading.

23. With this legislative history, which indicates the object of the concerned provision, we now analyse the statutory scheme in detail.

24. The object of the Disqualification Act is to curb defections by disqualifying the members of certain local authorities on the grounds of matters incidental or connected therewith. On the concept of Aghadi, the Joint Committee on the Maharashtra Local Authority Members' Disqualification Bill made a report wherein it is noticed as follows :

> *" The Committee, however, felt that elections to local authorities are not always fought on political or party*

lines but individuals or groups come together on some common programme and form a front of Aghadi for the purpose of contesting election. The Committee therefore thought it necessary to define 'Aghadi' or 'front' so that they could also be considered as a party for purpose of this Act. Clause 2 has been amended for this purpose."

Thereupon , Section 2(a) of the Disqualification Act defines Aghadi as under:-

"2. 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;"

Thus, 'Aghadi' means a group of persons who have formed themselves into parties to set up candidates for election to a local authority. Under Section 2(d), the Councillor is defined as a Councillor of Municipal Corporation, Municipal Council and a Zilla Parishad. A Local Authority under the Disqualification Act means the Municipal Corporation, Municipal Council, Zilla Parishad or the Panchayat Samiti. Section 3 provides for disqualification on the grounds of defection. This is a core of the Disqualification Act. Section 3 reads thus:-

"3. Disqualification on ground of defection.

(1) Subject to the provisions of [section 5], a councillor or a member belong 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 candidate for election as such Councillor or member;
(b) a nominated [councillor] shall
(i) where he is a member of any political party or Aghadi or front on the date of his nomination, be deemed to belong to such political party or Aghadi or front,

(ii) in any other case, be deemed to belong to the political party or Aghadi or front of which he becomes, or as the case may be, first becomes a member of such party or Aghadi or front before the expiry of six months from the date on which he is nominated.

(2) An elected councillor, or as the case may be, the 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.

*(3) [****]*

(4) Notwitstanding 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 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),

(5) The period of disqualification under this section, shall be counted from the date of order of the officer referred to in section 7."

(emphasis supplied)

Thus, a councillor or member can be disqualified if they voluntarily resign from their political party, Aghadi, or front. Disqualification also occurs if they vote or abstain from voting against the directions of their party or front without prior permission, and this act is not condoned within fifteen days. Voting or abstention without prior permission at the election of any office, authority, or committee under relevant municipal law or the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, cannot be condoned. A councillor or member is deemed to belong to the political party or front that set them up as a candidate. Nominated councillors are deemed to belong to the political party they were a member of on the date of their nomination or within six months of their nomination. An elected councillor or member who was not set up by any political party or front will be disqualified if they join any political party or front after their election. Those who were councillors or members at the commencement of this Act and were part of a political party or front are deemed to have been elected as candidates set up by such political party or front. Others are deemed elected councillors or members elected otherwise than as candidates set up by any political party or front. The disqualification period starts from the date of the order of the officer referred to in Section 7.

25. Section 5 Disqualification Act provides for disqualification on the ground that defection will not apply in case of a merger. Section 6 provides for a councillor or member to vacate the office or not to hold office after the merger. Section 7 provides a

decision on the question as to the disqualification on the grounds of defection. Section 8 bars the jurisdiction of the Civil Courts with respect to the subject matter under the Act, and Section 9 empowers the State Government to frame the Rules to carry out the object of the Act. Section 10 states that the provisions of the Disqualification Act and the Rules will have effect notwithstanding anything inconsistent contained in any other law for the time being in force. Section 10(2) provides that the provisions of the Act are subject to Section 10(1) and that what is expressly provided in the Disqualification Act cannot be derogated by any law relating to the Municipal Corporation, Municipal Council and Local Authority. This framework of the Disqualification Act ensures that councillors and members remain loyal to their political affiliations and follow party directives, maintaining party discipline and cohesion in the elected bodies. As will be elaborated later, the phrase "in any meeting" in Section 3(1)(a) is of significance.

26. Rule 4 of the Maharashtra Local Authority Members Disqualification Rules 1987 (Disqualification Rules) also provides for information to be furnished as a councillor for a member, which reads thus:-

> *"4. Information etc., to be furnished by Councillor or member. –*
> *[(1)(a) Every Councillor in relation to a municipal party or a Zilla Parishad party and a member in relation to a Panchayat Samiti party who is holding office as such on the commencement of the Act in the Municipal*

Corporation, Municipal Council, Zilla Parishad or as the case may be, in Panchayat Samiti shall furnish to the Commissioner or, as the case may be, to the Collector within thirty days from the date of commencement of these rules or within such further period as the Commissioner or, as the case may be, the Collector may for sufficient reason allow, a statement of particulars and declaration in Form III.

(b) Every Councillor in relation to a municipal party or a Zilla Parishad party and a member in relation to a Panchayat Samiti party after the commencement of the Act who is elected to the Municipal Corporation, Municipal Council, Zilla Parishad or as the case may be, the Panchayat Samiti before taking his seat, shall be furnished to the Commissioner, or, as the case may be, the Collector within thirty days from the date of the declaration of the election results or within such further period as the Commissioner or, as the case may be, the Collector may for sufficient reason allow a statement of particulars and declaration in Form III.

Explanation (1). - For the purpose of this sub-rule 'councillor' in relation to a Municipal party or a Zilla Parishad party and 'member' in relation to a Panchayat Samiti party means a councillor or member belonging to such political party or Aghadi or front, which has set up his candidature for the election of Municipal Corporation, Municipal Council, Zilla Parishad or as the case may be, the Panchayat Samiti.

Explanation (2). - For the purpose of this sub-rule, the Commissioner or as the case may be the Collector, after the expiry of the date prescribed for the statement of the particulars and the declaration in Form III may decide as and when need arises about the affiliation of the political party or Aghadi or front of the Councillor, or as the case

may be the member on the basis of the election symbol allotted to him at the time of his election.]

[Explanation (3). - For the purpose of his sub-rule, if a councillor is elected as a nominee of a particular political party or Aghadi or front in Zilla Parishad, he will automatically be considered as a nominee of the same political party or Aghadi or front in Panchayat Samiti; as each Councillor who is elected on Zilla Parishad is a member of Panchayat Samiti.]

(2) Every Councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party who takes his seat in the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, in Panchayat Samiti, after the commencement of these rules shall, before taking his seat in the Municipal Corporation, Municipal Council, Zilla Parishad or, as the case may be, Panchayat Samiti, deposit with the Commissioner or, as the case may be, Collector his election certificate or, as the case may be, a certified copy of the notification nominating him as a member and also furnish to him a statement of particulars and declaration in Form III.

Explanation. - For the purposes of this sub rule, "election certificate" means the certificate of election issued under the Bombay Municipal Corporation Act (Bombay Ill of 1888), the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949), the Maharashtra Municipalities Act, 1965 (Maharashtra XL of 1965), the City of Nagpur Corporation Act, 1948 (C.P. and Berar II of 1950), the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Maharashtra V of 1962) and the rules made thereunder.

> *(3) A summary of the information furnished by the Councillor in relation to a municipal party and a Zilla Parishad party and member in relation to a Panchayat Samiti party, under this Rule shall be published in the Maharashtra Government Gazette and if any discrepancy therein is pointed out to the satisfaction of the Commissioner or, as the case may be, Collector, necessary corrigendum shall be published in the said Gazette."*

This Rule mandates that every Councillor must submit a form within 30 days of taking a seat, including a statement of particulars and a declaration in format 3. The Collector is required to maintain a register in the specified format based on the information furnished by the elected Councillor under Rule 3.

27. The Municipalities Act is a statute that provides for the uniform pattern of constitution, administration, and powers of the Municipalities in the State of Maharashtra. It was brought into force in the year 1965. Section 2(7) defines the Councillor as a person duly elected as a member of the Council elected by the President and including a nominated councillor. The Scheme of Municipalities Act is primarily structured around providing a uniform pattern of administration and power of Municipalities. Chapter 1 deals with preliminary such as definitions. Chapter 2 deals with municipal councils, municipal areas, and their classifications, provides compensation for councils for persons contesting the elections, disputes with respect to elections, and the conduct of the councillors.

Section 44 provides for the disqualification of councillors during the term of office. Chapter 3 provides for dues and functions of Councillors and the Municipal Executives. Chapter 5 makes provisions regarding officers and servants. Chapter 6 deals with the Director of Municipal Administration and Collector. The other Chapters deal with the conduct of business conditions, etc.

28. Chapter 3 of the Municipalities Act provides for the functions, election and removal of the President and Vice President. Sub-chapter 4 of the Chapter 3 of the Municipalities Act deals with Committees. Section 62 deals with appointing standing and subject committees for the A and B class councils. Section 63 deals with the constitution of subject committees of A and B class Councils. Section 64 is regarding standing committees of A and B class Councils, and subject committees of C class Councils deal with under Section 65. Section 66 deals with the constitution of standing committees for C-class Councils, and Section 66(a) provides for the constitution of ward committees. Under Section 62, there is a Standing Committee and 4(six) subject committees for every 'A' and 'B' Class Council. These are the Public Works Committee, Education, Sports and Cultural Affairs, Sanitation, Medical and Public Health Committee, Water Supply and Drainage Committee, Planning and Development Committee and Women and Child Welfare Committee. If any such Council has acquired or established Transport Undertaking, then a Transport Committee.

29. Section 63, with which we are concerned, reads thus:-

"63. (1) Each Subjects Committee of the Council appointed under the last preceding section shall consist of such number of councillors as the Council may determine, so however that the number of members of a Subjects Committee shall not be less than one-fourth or more than one-third of the total number of councillors :

Provided that, in so determining the number of members of any Subjects Committee, a fraction shall be ignored :

[Provided further that, on the Women and Child Welfare Committee, not less than seventy-five per cent. of the members shall be from amongst women councillors :

Provided also that, the Chairperson and the Deputy Chiarperson on the Women and Child Welfare Committee shall be from amongst the women Councillor members thereof.

Explanation.—For the purpose of computing the number of members at seventy-five per cent., fraction, if any, shall be rounded off to one.]

(2) [The Collector shall, within seven days of the election of the President under section 51,] call a special meeting of the Council for the purpose of,—
*(a) determining the number of the members of each of the 3*Subject Committees referred to in the last preceding section, and the Subjects Committee of which the Vice-President shall be the ex-officio Chairman, and*
[(b) nominating councillors on the Subjects Committees in accordance with the provisions of sub-section (2B) :]

Provided that, the President shall not be eligible for being a member of any of the Subjects Committees 5[but he shall have the right to speak in, and otherwise to take part in the proceedings of, any Subjects Committee, except that he shall not be entitled to vote thereat.]

[(2A) [(i)] The meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting have the same powers as the President of a Council, when presiding over a meeting of the Council has, but shall not have the right to vote.

[(ii) Notwithstanding anything contained in this Act, for regulating the procedure at meetings (including the quorum thereat), the Collector or such officer may, for reasons which in his opinion are sufficient, refuse to adjourn the meeting convened as per the provisions of sub-section (2), after it was once cancelled or adjourned for want of quorum.]

[(2B) In nominating the councillors, the Collector shall take into account the relative strength of recognised parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting the leader of each such party or group :

[Provided that, the relative strength of the recognised parties or registered parties or groups or Aghadi or front shall be calculated by first dividing the total number of councillors by the total strength of members of the Committee. The number of councillors of the recognised parties or registered parties or groups or Aghadi or front shall be further divided by the quotient

of this division. The figures so arrived at shall be the relative strength of the respective recognised parties or registered parties or groups or Aghadi or front. The seats shall be allotted to the recognised parties or registered parties or groups or Aghadi or front by first considering the whole number of their respective relative strength so ascertained. After allotting the seats in this manner, if one or more seats remain to be allotted, the same shall be allotted one each to the recognised parties or registered parties or groups or Aghadi or front in the descending order of the fraction number in the respective relative strength starting from the highest fraction number in the relative strength, till all the seats are allotted :]

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this sub-section, the recognised parties or registered parties or groups, or elected Councillor not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members' Disqualification Act, 1986, within a period of not more than one month from the date of notification of election results, form the Aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such Aghadi or front, as if it is a pre-poll Aghadi or front.

(2C) If any question arises as regards the number of councillors to be nominated on behalf of such party or group, the decision of the Collector shall be final.]

(4) The Chairman of every Subjects Committee (other than the Subjects Committee of which the Vice-President is to be the ex-officio Chairman) shall be elected by the members of that Committee at the meeting convened under sub-section (2) :

Provided that, no Councillor shall be eligible to be the Chairman of more than one Subjects Committee."

(emphasis supplied)

The underlined portion, the second Proviso, is the subject matter of debate.

30. The subject committees of A and B class Councils consist of a public works committee, an education, sports, and cultural affairs committee, sanitation and medical public health committee, water supply and drainage committee, planning and development committee, women and child welfare committee, and transport committee, as the case may be. Subject committees will consist of councillors as the Council may determine, which shall not exceed the prescribed limit. When nominating councillors, the Collector has to consider the relative strength of recognised parties, registered parties, or groups in the Council. The Collector nominates members proportionally to the strength of these parties or groups, after consulting with their leaders.The relative strength of these parties or groups is calculated by dividing the total number of councillors by the total number of committee members. The number of councillors from each recognised party, registered party, or group is then divided by the result of this division. This gives the relative strength of each party or group. Seats are allocated to the parties or groups based on the whole numbers of their relative strength. If there are remaining seats, they are allocated one by one to the parties or groups with the

highest fractions of relative strength, in descending order, until all seats are filled. Additionally, to determine the relative strength of the parties or groups recognised or registered parties or elected councillors not affiliated with any party or group, they can form an Aghadi or front within one month of the election results. Once registered, the provisions of the Disqualification Act will apply to members of this Aghadi or front as if it formed before the election.

31. The Scrutiny of the legislative scheme will show that the interpretation by the Respondents is valid. Section 2 of the Disqualification Act defines an Aghadi or front. This definition indicates that an Aghadi or front is not merely a combination of a political party or individuals but a group formed with a specific intent. According to the Disqualification Act, an Aghadi formed to set up candidates for local authority elections must be established prior to the election. The Disqualification Act does not permit the formation of a Post-poll Aghadi. Additionally, the specific purpose of a Pre-poll Aghadi is to set up candidates for the election. Section 3 of the Disqualification Act applies to elected and nominated candidates. The Disqualification Act is attracted regarding the conduct of any meeting of the Municipal Council contrary to the directions issued by the Aghadi. Section 3(2) applies to an independent Councilor. Once he joins an Aghadi and acts contrary to the Whip issued by the Aghadi, he is liable to be disqualified under Section 3. Under Section 51(2) of the Municipalities Act, within twenty-five days from which the councillor's name is published, the Collector has to

call a special meeting of the councillors for the election of the president. Under Section 63(2B), for the election of the Councillor, the Collector has to call a special meeting of the Councillor to determine the number of members on each subject committee and the nomination of councillors of the subject committee. Therefore, under the scheme of the Municipalities Act, the committees are to be formed in general around 32 days and in this period to enable the independent Councillor to form an Post-poll Aghadi. The second Proviso to Section 63(2B) was subsequently added. This facilitates the formation of Post-poll Aghadis, even though such a concept was prohibited under the Disqualification Act. This Proviso came with a rider that it would be an Aghadi for all purposes once it is formed.

32. In the case of *Dattatraya Maruti Bawalekar v/s. Pandurang Dagadu Parte*[18] the question of applicability of Section 3(2) of the Disqualification Act to an independent candidate on being elected as a councillor and subsequently joining an Aghadi was considered before the Hon'ble Supreme Court. In this case, Dattatray Bawalekar and others contested the election for the Municipal Council as independent candidates and were elected. Subsequently, they formed an Aghadi when the election for the Office of the President was proposed. The Aghadi nominated one of the appellants as a candidate, and a Whip was issued to vote for the Aghadi candidate. The High Court held that the appellants had incurred a disqualification and had ceased to be councillors. This

18 (1998) 5 SCC 431

decision was challenged in the Hon'ble Supreme Court. The Hon'ble Supreme Court held as under:-

> *"7. According to Section 3(2) to which we have adverted to earlier with reference to a Councillor or a member who has been elected otherwise than as a candidate set up by a political party or Aghadi or front, such a candidate or such Councillor or member shall be disqualified for being a Councillor if he joins any political party or Aghadi or front after such election. The section specifically provides that an independent candidate not set up by a political party or front incurs disqualification on his joining any political party after such election. This Court in Kihoto Hollohan v. Zachillhu [1992 Supp (2) SCC 651] (SCC at p. 688) while dealing with the effect of the provisions of the Tenth Schedule to the Constitution noticed that the same yardstick has to be applied to a person who is elected as an independent candidate and wishes to join a political party after the election as is done with reference to a person who has been elected on a political plank. Therefore, no distinction could be made between a person belonging to a political party and a person who is elected as an independent and such distinction has not been made by the Act in question. On the other hand, it is made clear a councillor or a member has been elected not set up by a political party or front joins such political party subsequently would incur disqualification."*
>
> *"8. If what we have stated is the correct legal position then the counter-affidavit filed by Bawalekar who is Leader of the Aghadi in question which we have extracted extensively earlier will indicate that the appellants were forming an Aghadi as a new party and the same has to be registered under the provisions of the Act. When they form a new party the position is clear that a person elected as an independent would cease to*

> *be an independent and becomes a member of a political party or a front. His status as an independent will come to an end on becoming a member of a front or a group, he loses such status and is subject to the Whip of the party to which we have referred to earlier. If elected councillors could become members of such Aghadi it is made clear that the Aghadi would be bound by the provisions of the Act in question and is also authorised to issue a Whip. These facts would make it clear that the appellants who could act independently prior to the election or immediately on the election became subject to the discipline of the party or front on becoming members thereof. Such party (sic) whether would amount to formation of party or became (sic) members of such party is immaterial. We do not wish to be guided by or controlled by any etymological terminology but the substance of the matter. Therefore, in our view the High Court was justified in holding that the appellants have incurred disqualification."*
>
> *(emphasis suppled)*

The Hon'ble Supreme Court has laid down that once an independent candidate joins an Aghadi, he becomes part of it for all purposes and is subject to the party Whip. This is the fundamental discipline that must be followed once an independent candidate joins an Aghadi after being elected, he is no longer independent and must adhere to the directives/Whip of the Aghadi.

33. The analysis of the second Proviso to Section 63(2B) would show that the first part of the second Proviso permits the formation of the Post-poll Aghadi and explains the reason for the same. This initial part of the Proviso provides the justification for

allowing the formation of a Post-poll Aghadi despite it not being explicitly permitted under the Disqualification Act. The second Proviso then expressly states that once this Aghadi is registered, the provisions of the Disqualification Act will apply to it as if it were a Pre-poll Aghadi. Reading the second Proviso in the context of the Disqualification Act and the Tenth Schedule, it becomes clear that the Post-poll Aghadi is allowed within a stipulated time after the election for independent candidates, and once the Aghadi is formed, upon registration, it will be treated in the same manner as a Pre-poll Aghadi. The first part of the second Proviso merely explains why forming an Aghadi is permitted. Once the Aghadi is established, it assumes all the characteristics of a Pre-poll Aghadi, including the obligation of its members to follow the Whip. There is a significant difference between creating a legal fiction for a specific reason to facilitate a course of action and suggesting that the legal fiction exists solely to achieve that purpose. This distinction is crucial, and the provision containing the legal fiction at hand needs to be interpreted keeping in mind the law laid down by the Constitution Bench in the case of *Abhiram Singh.*

34. The legislative history of the second Proviso to Section 63(2B) would show that the legislature aimed to give representation to independent councillors by allowing them to be part of a Post-poll Aghadi and treating it as if it were a Pre-poll Aghadi. To achieve this, the relative strength of political parties and groups has to be determined when nominating councillors to the subject committee.

It is not compulsory for independent councillors to form an Aghadi. It is their choice. However, choosing to join and register an Aghadi under the second Proviso to Section 63(2B) comes with significant consequences. Once this Aghadi is legally created, it is an Aghadi for all purposes, similar to a Pre-poll Aghadi. This Proviso offers independent candidates the option to join a subject committee even after the elections. However, this option must be exercised with due consideration, as an Aghadi, once formed under the Proviso, will retain all the attributes of a Pre-poll Aghadi for the duration of its term. This ensures that independent councillors, upon forming an Aghadi, commit to the same responsibilities and discipline that govern Pre-poll Aghadis, thereby maintaining the integrity and consistency of the functioning of the elected body.

35. Thus, the purpose of the second Proviso to Section 63(2B) is to facilitate the formation of an Aghadi and provide for the consequences of this formation. Once an Aghadi is registered under the second Proviso to Section 63(2B), it is recognised as an Aghadi for all purposes, just like a Pre-poll Aghadi. The second Proviso to Section 63(2B) allows the creation of an Aghadi for the relative strength of political parties and groups. However, this does not mean that the Aghadi is created solely to determine relative strength and nothing more. The formation of an Aghadi under this Proviso ensures that independent councillors have a structured and recognised way to participate in the political process post-election. Once formed, this Aghadi must be treated with respect and subject

to the same rules as a Pre-poll Aghadi, including adherence to the Disqualification Act. This continuity will preserve the integrity and intent of the legislative framework, ensuring that all councillors, whether part of a Pre-poll or Post-poll Aghadi, are subject to the same standards and responsibilities.

36. Under the Disqualification Act, the formation of a Post-poll Aghadi is not permitted. However, the second Proviso to Section 63(2B) makes an exception. The validity of this Proviso is not under consideration before us. When the second Proviso permits a post-poll Aghadi, the implications shift post-election and allow for the formation of an Aghadi even after the polls. Once formed, this Post-poll Aghad assumes all the attributes of a Pre-poll Aghadi. This is the legal fiction Section 63(2B) has created in conjunction with the Disqualification Act. Once an Aghadi is formed, it is treated as a Pre-poll Aghadi under both governing statutes and retains its full set of attributes without restriction. Therefore, the argument that the Aghadi should be restricted only to the subject committee will effectively amend the provisions of the Disqualification Act and the Rules. Once Aghadi is formed and registered, the independent candidate will lose his status and become part of the Aghadi. As expanded later limiting the Aghadi only to the subject committee with Section 63(2B) would be contrary to the purpose and intent of the Disqualification Act, which aims to prevent 'horse trading'. Therefore, the Respondents correctly argue that the purposive Rule

of interpretation should be applied to ensure the Proviso's intent and purpose are upheld.

37. If the Petitioners' contention is accepted, an Aghadi will only be for numbers, and once representation is sought in the subject committees, the Aghadi will become meaningless. The Aghadis are formed under Section 63(2B) so as to conduct business in the Council. The ultimate object should be how efficiently the functioning of the Council is achieved. The committees are formed for the Municipal Council to perform efficiently and discharge public duties. It is, therefore, in the larger public interest that the Council functions with efficacy. When Aghadi is formed to conduct the business, it should be practicable and disciplined. The debates in both Houses while introducing the Bill would indicate that though an opportunity is given to the independent councillors for representation in the committees, it was not contemplated that there would be some other type of Aghadi, but an Aghadi akin to a Pre-poll Aghadi with all its attributes and to curb further 'horse-trading'. Also, the second Proviso to Section 63(2B) cannot be read only in relation to the rights and liabilities of the councillors but also in the context of the object of the Municipalities Act, which is better administration of a local authority to serve the people more effectively.

38. If the interpretation that the second Proviso of Section 63(2B) is restricted only within the said section is accepted, it would

give rise to various malpractices. In the case of *Dilip s/o. Keshavrao Ingole v/s. Janardhan Biju Gonnade and* Ors.[19], the Division Bench of this court observed that the Standing Committee is subordinate to the Council. There is no dispute that the Standing Committee is constituted by the General Body for discharging certain functions. The General Body is not divested of its powers to supervise the working of the Standing Committee. The General Body can always approve or disapprove the decision of the Standing Committee. If it is held that an independent candidate who has chosen to form an Aghadi for the subject committee will only be part of the Aghadi for matters related to the subject committee, it will defeat the purpose and object of the legislation. For instance, a case where in a subject committee consisting of members from An Aghadi issues Whip regarding voting on a subject of public importance. If the resolution is passed in conformity with the Whip, it will proceed to the Standing and General Committees. It is possible that some members who are part of the Subject Committee are also members of the Standing Committee. When the same issue comes before the standing committee, these members might vote contrary to their stand and the Whip on the premise that the Post-poll Aghadi under the second Proviso to Section 63(2B) is limited to the Subject Committee and does not extend beyond it. A similar situation could arise when the resolution is placed before the General Body. This will lead to contradictory stands by the councillors. This could lead to inconsistent voting patterns and undermine the integrity of the

19 (1991) Mh.L,J, 986

decision-making process, enabling the counsellors to exploit the loophole for personal or political gain. This will lead to a lack of discipline and a breach of morality, violating the object behind the Tenth Schedule and the Disqualification Act. The second Proviso to Section 63(2B), therefore, has to mean that once an Aghadi comes into being under the second Proviso to Section 63(2B) and upon its registration, the Aghadi will remain for all purpose of the Act, and the members will be bound by the Whip issued by the leader of the Aghadi.

39. One of the Petitioners' contentions is that the provision involved is regarding the disqualification of a councillor, being a penal provision and must be strictly construed, and the fiction cannot travel beyond Section 63(2B). The Full Bench in *Shah Faruq Shabir* observed thus:

> *"71. The law concerning disqualification is a law imposing disentitlements. The law of election is a special branch of statutory law and secondly the entitlement to contest as well the matters of dis-entitlement in that regard are all specified matters originating in the statute. They cannot have any other source except the statute. The general principles of equity or other common law doctrines would not be relevant nor operative nor applicable in such a field expressly defined by the statute. Not only the intendment but also its effects will have to be found in the given law and not outside. This equally applies to the definition, procedure jurisdiction and penalty attached to the stated act or omissions. The rule of strict construction is the basic canon that governs all matters of law concerning disqualification or disentitlement of those who seek the election as candidates and those who are chosen and*

are continuing to hold the elective offices, after being so chosen."

In this context the decision of the Hon'ble Supreme Court in the case of *CIT, Delhi vs. S. Teja Singh*[20] needs to be noticed where the Hon'ble Supreme Court negatived the argument that a legal fiction which attaches a penalty always have to be always strictly construed. The Hon'ble Supreme Court observed thus :

> *"6. It is in the light of this distinction that the effect of the legal fiction enacted in Section 18-A(9)(b) that when a person fails to send an estimate of tax on his income under Section 18-A(3) he shall be deemed to have failed to furnish return of his income, will have to be judged. The respondent contends that its effect is only to place the estimate to be sent under Section 18-A(3) on the same footing as the return under Section 22 for purposes of Section 28, and that that does not abrogate the other conditions laid down in that section on which alone action could be taken thereunder and penalty imposed, and one of those conditions is the issue of notice under Section 22(1) or Section 22(2). But it must be noted that Section 18-A(9)(b) does not merely say that an estimate under Section 18-A(3) shall be deemed to be a return. It enacts that the failure to send an estimate in accordance with Section 18-A(3) is to be deemed to be a failure to make a return. Now, there can be no failure to make a return, unless notice had been issued under Section 22(1) or Section 22(2) and there has been a default in complying with that notice. Therefore, the fiction that the failure to send an estimate is to be deemed to be a failure to send a return necessarily involves the fiction that notice had been issued under Section 22, and that had not been*

20 (1958) SCC OnLine SC 30

complied with. It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The following off-quoted observations of Lord Asquith in East End Dwellings Co. Ld. v. Finsbury Borough Council [(1952) AC 109, 132] may appropriately be referred to: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The fiction under Section 18A(9)(b) therefore that failure to send an estimate under Section 18A(3) is to be deemed to be a failure to send a return must mean that all those facts on which alone there could be a failure to send the return must be deemed to exist, and it must accordingly be taken that by reason of this fiction, the notices required to be given under Section 22 must be deemed to have been given, and in that view, Section 28 would apply on its own terms.

7. Some argument was addressed to us based on the use of the definite article "the qualifying the word return" in Section 18-A(9)(b). It was said that that expression meant the return which is to be furnished under Section 22, and that that requires that there must have been a notice issued Section 22(1) or Section 22(2), before action could be taken under Section 28. In the view expressed above that the fiction enacted in Section 18-A(9)(b) involves the fiction that notices had been issued

under Section 22(1) or Section 22(2), this contention does not call for further consideration.

8. It was finally argued that a fiscal statute and especially one imposing a penalty, should be strictly construed and that if the words of the enactment be not sufficiently explicit to reach the subject, the Revenue must fail, and the following observations in Vestey's (Lord) Executors v. Inland Revenue Commissioners [(1949) 1 All ER 1108, 1120] were relied on in support of this position:

> *"Parliament in its attempts to keep pace with the ingenuity devoted to tax avoidance may fall short of its purpose. That is a misfortune for the taxpayers who do not try to avoid their share of the burden, and it is disappointing to the Inland Revenue. But the court will not stretch the terms of taxing Acts in order to improve on the efforts of Parliament and to stop gaps which are left open by the statutes. Tax avoidance is an evil, but it would be the beginning of much greater evils if the courts were to over stretch the language of the statute in order to subject to taxation people of whom they disapproved."*

These observations would be in point if the language of the enactment left us in any doubt as to what the legislature meant. But can that be said of Section 18-A(9)(b)? Its object avowedly is to assimilate the position of a person who has failed to send the estimate under Section 18-A(3) to that of a person who has failed to furnish the return under Section 22, and that object is sought to be achieved by enacting the fiction which is contained in Section 18A(9)(b). And if, on the principles laid down in East End Dwellings Co. Ld. v. Finsbury Borough Council [(1952) AC 109, 132] , the true effect of that fiction is that it imports that notice had been issued under Section 22, then the conditions prescribed in Section 28 of the Act are satisfied and penalty could be imposed under that section for failure

to comply with Section 18-A(3), on the clear language of that enactment itself without straining or over stretching it.

9. We must now refer to an aspect of the question, which strongly reinforces the conclusion stated above. On the construction contended for by the respondent, Section 18-A(9)(b) would become wholly nugatory, as Sections 22(1) and 22(2) can have no application to advance estimates to be furnished under Section 18-A(3), and if we accede to this contention, we must hold that though the legislature enacted Section 18-A(9)(b) with the very object of bringing the failure to send estimates under Section 18-A(3) within the operation of Section 28, it signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "ut res magis valeat quam pereat". Vide Curtis v. Stovin [(1889) 22 QBD 513] and in particular, the following observations of Fry, L.J. at p. 519:

> *"The only alternative construction offered to us would lead to this result, that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect."*

Vide also Craies on Statute Law, p. 90 and Maxwell on The Interpretation of Statutes, Tenth Edition, pages 236-237. "A statute is designed", observed Lord Dunedin in Whitney v. Commissioners of Inland Revenue [(1925) 10 TC 88, 110] , "to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".

Thus there is no absolute rule that all provisions which entail consequences akin to penal one must necessary be construed strictly as it would depend on the scheme and object of the Act. What is under consideration before us is the second Proviso to Section 63(2B). Apart from the above position of law, the second Proviso to Section 63(2B) is a provision framed to give representation to the independent candidates with certain limitations. It is not a provision that provides solely for disqualification. It is a provision that permits the creation and registration of a Post-poll Aghadi for the benefit of the independent councillors, and it declares that if they form part of an Aghadi, it will be an Aghadi under Section 2(a) of the Disqualification Act. The second Proviso grants a privilege to form a Post-poll Aghadi even though it is not permitted under the Disqualification Act. Section 3 of the Disqualification Act provides for consequences for the councillor who is part of an Aghadi in voting or abstaining from any meeting of the Municipal Council contrary to the Whip. Once it is held that such Aghadi has all the attributes of a pre-poll Aghadi, Section 3 of the Disqualification Act is applicable.

40. The Petitioners' interpretation of the Proviso fails to consider the broader implications and legislative intent behind the Act. The language of the second Proviso to Section 63(2B) itself does not support the Petitioners' interpretation. Section 3(1)(b) of the Disqualification Act, read with this Proviso, would show that it applies to all Aghadis, including Post-poll Aghadi, under the Proviso.

This section is clear in its reference to a Councillor voting or abstaining from voting in "Any meeting" of the Municipal Council. The language of this provision is unambiguous. If the attributes of Aghadi cannot be restricted to the meetings only of the subject committee as the Section 3(1)(b) of the Disqualification Act applies to any meeting of the Council. Therefore, when an Aghadi is formed under the second Proviso to Section 63(2B) it will be operative for any meeting of the Municipal Council as per Section 3(1)(b). Restricting it only to the subject committee will amount to amending Section 3(1)(b) of the Disqualification Act, which is not permissible.

41. The petitioners also argued that the phrase 'House' exists in the Maharashtra Municipal Corporation Act and Mumbai Municipal Corporation Act but is absent in the Municipalities Act, and this indicates legislative intent to restrict the Post-Poll Aghadi under the Municipalities Act only to the sub-section. There is no merit in this argument. The legislative intent across the statutes can be different. The learned Advocate General pointed out that the Disqualification Act applies to all local authorities, including Zilla Parishad and Panchayat Samities. The concept of Post-poll Aghadi does not apply to the Zilla Parishad or Panchayat Samities. Perhaps that is the reason why the legislature sought to amend the Act consisting Municipal Councils and not the Disqualification Act. It is also contended that the second Proviso to Section 63(2B) is

legislation by reference where the provisions of the Disqualification Act which made applicable to the formation of Post poll Aghadi. The choice of methodology to achieve a particular purpose has to be normally left to the legislature to decide.

42. Having reach this conclusion, we revert to the decision of the Full bench in *Shah Faruq Shabir,* whose correctness is in question. The Full Bench has referred to the decision of the Hon'ble Supreme Court in the case of *Jeevan Chandrabhan Idnani v/s. Divisional Commissioner, Konkan Bhavan*[21] wherein the Supreme Court observed thus :-

> *"26. The second Proviso to sub-section (2) of Section 31-A enables the formation of an Aghadi or front within a period of one month from the date of notification of the election results. Such an Aghadi or front can be formed by various possible combinations of councillors belonging to either two or more registered parties or recognised parties or independent councillors. The Proviso categorically stipulates that such a formation of an "Aghadi" or "front" is possible notwithstanding anything contained in the Disqualification Act. Because an "Aghadi" or "front", as defined under the Disqualification Act, clearly, can only be the combination of a group of persons forming themselves into a party prior to the election for setting up candidates at an election to a local authority but not a combination of political parties or political parties and individuals.*

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The Full Bench reproduced paragraph 26 of the report in *Jeevan Idnani* and highlighted the portion that formation of Aghadi is for a limited purpose and thereafter noted that the Hon'ble Supreme Court has refused to examine the legal consequences. Therefore, it is unclear whether the Full Bench in *Shah Faruq Shabir* relied on the decision in *Jeevan Idnani* or not. The fact that the Full Bench has highlighted the portion may indicate that the Full Bench has taken the observations of the Hon'ble Supreme Court into consideration, but as the Full Bench itself notes that *Jeevan Ignani* had left the question open and there was no binding dicta though the Full Bench in *Shah Faruq Shabir* has from paragraphs 58 to 72 has referred to the principles that the law consisting disqualification is a law imposing disqualification. The issue in the case of *Jeevan Idnani,* decided by the Hon'ble Supreme Court, was restricted only to the time within which Aghadi could be formed in terms of provisions of Section 31A(2) of the Corporation Act. This is clear from the judgement where Hon'ble Supreme Court outlined the issue involved thus:-

> *The limited question before us is whether the 1st respondent was legally right in registering an Aghadi or front formed after the lapse of one month from the date of the notification of the election results.*

The provision under consideration in the case of *Jeevan Idnani* was, therefore, different than the provision in issue. In the case of *Jeevan Idnani,* though the Hon'ble Supreme Court has referred to the legal

fiction treating the Aghadi created under the Proviso as a Pre-poll Aghadi, did not examine the legal consequences of the declaration as there was a complaint already lodged against the concerned parties therein. The Full Bench, then on the application of the rules of interpretation has observed thus :

> *72. It is essential while applying the principles of strict construction and strict compliance, to ascertain character of a given statute. Generally speaking, Statutes are classified in fourfold manner. Firstly, the statutes are remedial, secondly they are declaratory, thirdly they are procedural and lastly they are penal or disentitling. One has to find out the character of the statute as to whether it is penal or not, so as to attract principle of strict construction. Firstly, it requires an inquiry as to whether the statute provides the imposition of penalty or enacts penal consequences such as fine, forfeiture of rights, interests in property, office or status or any such liability or disability. Secondly, whether such statute contains the express terms of sanctions by enacting prohibitions providing for penal effects attached to the given set of circumstances, prohibitions depending upon circumstances in specific form. Thirdly, even if the express terms may not be there, the rules of construction permit importing such sanction in favour of the commands or prohibitions contained in the statute which might have the background or context of a given system of accepted law such as common law or other enacted laws or even customary law having social sanction.*

The Full Bench, with respect, focused on literal interpretation and has not entered into the full spectrum on the issues that were presented including the law regarding a legal fiction be taken to its logical end to achieve the object of the statute. Consequently, the menace of 'horse-trading', which the legislature has tried to control,

will not be controlled. The Full bench has also not taken into consideration the observation of the Constitution Bench in *Abhiram Singh.* Therefore, with respect to the Full Bench, the test it applied for interpreting the concerned statute was not appropriate. Instead of a literal and strict interpretation, a purposeful interpretation to advance the object of the enactment, which serves to introduce stability in the polity, should have been adopted in respect of the concerned proviso. According to us, this fundamental error has permeated through the decision of the Full Bench in the case of *Shah Faruq Shabir*. Therefore, the learned Single Judge was right in doubting the law laid down by the Full Bench in *Shah Faruq Shabir* and making a reference to the Larger Bench.

43. It has to be kept in mind that elections are a fundamental aspect of democratic governance. As noted in several judicial decisions, the issue of floor-crossing and defection within the Indian political system has become a serious concern. The second Proviso to Section 63(2B) should be interpreted to promote stability in the functioning of democratic institutions rather than contribute to further instability. The interpretation must align with the need to ensure a more stable and consistent political environment, which is crucial for effective governance and the overall health of the democratic process.

44. The second Proviso to Section 63(2B) has to seen from two perspectives. First, that it is incorporated in the legislation aimed

at improving the administration of local authorities, thereby providing better facilities for the residents. Subject committees are formed for the administration of the Municipal Council. The bodies, such as the subject committee, standing committee, and general body, have been established to better manage the Councils. Therefore, the functioning of these committees in a disciplined and proper manner is in the broader public interest. The second perspective is the conduct of the elected representatives. The Disqualification Act prohibits the formation of any post-poll Aghadi. However, the second Proviso to Section 63(2B) creates an exception, allowing the formation of a post-poll Aghadi for independent candidates, thereby offering better representation in the committees. Once the Aghadi is registered, it is treated as if it were formed before the poll, and this status must be fully recognised for the entire Act, not just Section 63(2B) concerning subject committees.

45. The creation of Aghadi and their participation in the administration of the Municipal Council is a significant step that should be taken with seriousness and cannot be manipulated at will. Therefore, once an Aghadi is formed under the second Proviso to Section 63(2B) and declared a pre-poll Aghadi, it functions for the entire Act (for all meeting) beyond the subject committees. While considering the extent of legal fiction employed in the second Proviso to Section 63(2B), the law established by the Constitution Bench in the case of *Abhiram Singh* must be considered, and the statute must be interpreted accordingly. Section 63(2B) cannot be

viewed solely from the councillor's perspective but in the larger interest of better administration of the Municipal Council and the integrity of the election process. Any interpretation that undermines these purposes must be avoided. Therefore, it will have to be held that Aghadi registered pursuant to the second Proviso to Section 63(2B) of the Municipalities is governed by Section 3 of the Disqualification Act, and the Aghadi is not restricted to the subject committees alone but for all the meeting of the Council.

46. In conclusion, we answer the Reference as under:-

The Councillor who is elected as an independent candidate in the election of the Municipal Council and has become part of the Aghadi registered pursuant to the second Proviso to Section 63(2B) of the Maharashtra Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Municipalities Act) is governed by Section 3 of the Maharashtra Local Authority Members' Disqualification Act, 1986 and such Aghadi will be treated as a pre-poll Aghadi as defined under Section 2(a) of the Disqualification Act for all purposes of the entire Municipalities Act and all its meetings and not in a restrictive manner for the purpose the subject committees alone. The view taken by the Full Bench in the case of *Shah Faruq Shabir,* to the contrary, stands overruled.

47. The Petitions be placed before the learned Single Judge to pass appropriate orders.

48. We record our appreciation for the assistance rendered by all the learned Counsel for the parties.

(NITIN JAMDAR, J.)

(G.S. KULKARNI, J.)

(BHARATI DANGRE, J.)

(MANISH PITALE, J.)

(AMIT BORKAR, J.)