IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9003 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

==========

PARBATBHAI MANSHIBHAI VANARIYAMUNICIPAL COUNCILOR AND DY. - Petitioner(s)

Versus

P.V.TRIVEDI OR HIS SUCCESSOR IN OFFICE & 2 - Respondent(s)

==========

Appearance :

MR TUSHAR MEHTA for Petitioner(s) : 1,
MR DILIP B RANA for Respondent(s) : 1,
None for Respondent(s) : 2,
MS DS PANDIT, LD.ASST.GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 28/03/2008

CAV JUDGMENT

1. By way of filing present petition, the petitioner has challenged the order dated 25th January 2007 passed by the respondent no.1 in the capacity of a designated authority under Section 6 of the Gujarat Provision for

Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as 'the Act') and has prayed for issuance of appropriate writ, order or direction, invoking jurisdiction vested in the Court under Article 226 of the Constitution of India. By way of the order impugned in the petition, the respondent no.1 under Section 8 of the Act has declared that the petitioner is disqualified from continuing as a Municipal Councellor of Jamkhambhalia Municipality, District Jamnagar.

2. The say of the petitioner is that he is the duly elected member of Jamkhambhalia Municipality (hereinafter referred to as 'the Municipality') and he is the Councillor of the Municipality after elections conducted in the year 2005. The strength of the members of the General Body of the Municipality is of 27 Municipal Councillors; and the grievance of the petitioner is that on an application made by the respondent no.2 who is one of the elected candidates sponsored by the Bhartiya Janta Party (hereinafter referred to as 'the

BJP') to the respondent no.1, the petitioner has been wrongly declared as disqualified under the Act. The finding recorded by the respondent no.1 is based on incorrect appreciation of facts available on record and the same is arrived at in violation of the mandatory provisions of the Act. The legality and propriety of the order is challenged on various grounds and it is prayed that this Court may quash and set aside the impugned order passed by the respondent no.1 and may declare the petitioner as a member of the BJP; and may also issue appropriate other directions to the respondents; meaning thereby, restoring the status of the petitioner as Municipal Councillor.

3. It is necessary to state the facts of the present case placed by the petitioner in nutshell so as to appreciate the oral submissions made by Shri Tushar Mehta, learned counsel appearing for the petitioner, and the stand taken by the respondents. The respondent no.2 is the person who had approached the respondent no.1 by moving an application to

the respondent no.1 who is appointed as per the scheme of Section 3 of the Act. There is no reply affidavit filed by respondent no.1. However, the respondent no.2 has filed his reply affidavit along with annexures which is at page no.65 to the petition. It is the say of the petitioner that a Special General meeting of the Municipality was convened on 24th July 2006. The petitioner fell ill on 21st July 2006 and was under medical treatment at the Hospital at Jamnagar upto 25th July 2006 and, therefore, he could not attend the meeting convened on 24th July 2006. The petitioner had intimated the competent authority of the Municipality about his inability to attend the meeting dated 24th July 2006. Thereafter, another meeting of the Municipality was convened on 29th July 2006. However, the respondent no.2 and other members elected as members belonging to BJP carved out a design to remove the petitioner. It is claimed by the respondent no.1 that before the meeting, the person authorized by the BJP had issued a mandate to each councellor elected as the BJP candidate to cast vote in the pattern

of the leader of the party in the House. It is not a matter of dispute that the votes were to be cast by raising hands but as the respondent no.2 and other members had decided to see that the petitioner is removed as Municipal Councillor, they had never served the mandate issued upon the petitioner in respect of the meeting dated 29th July 2006. In the House of 27 Members, 11 Members were representing BJP at the relevant point of time. In the meeting convened under Section 51(2) of the Gujarat Municipalities Act, 1963, (hereinafter referred to as 'the Act, 1963') dated 24th July 2006, the Executive Committee was to be constituted but the petitioner could not participate in the said meeting. When the meeting was convened on 24th July 2006, the person authorized by the BJP had issued a mandate to the members elected on sponsorship of the BJP. The similar mandate was issued for the meeting convened on 29th July 2006, but the petitioner was not served with the said mandate with an ulterior motive. It is alleged that after the meetings, the respondent no.2 filed an application on 23rd August 2006 before

the respondent no.1 under the provisions of the Act and placed several documentary evidence in support of the contentions raised in the said application; and the respondent no.2 claimed that the petitioner may be declared disqualified. The say of the petitioner is that the petitioner was supposed to present the application under Section 3 of the Act before the designated authority as per the scheme under Rule 6 of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987 (hereinafter referred to as 'the Rules') framed under the Act. The applicant before the designated authority was under obligation to see that the application as well as each annexure attached with the application is duly verified in the manner laid down under the sub-rule (6) of Rule 6 of the Rules. The said sub-rule (6) of Rule 6 of the Rules is mandatory in nature and the same has been held to be mandatory. If it is found that Rule 6(6) of the Rules is not complied with, the designated authority can straight way reject such application preferred under Section 3 of

the Act. The petitioner thereafter was served with the notice about filing of the application under Section 3 of the Act by the respondent no.2 and the application filed was resisted by the present petitioner by way of filing written reply to the said application. A copy of the said written reply is the part of this petition and the same is at Annexure-C. It is claimed that the documentary evidence produced by the petitioner including the medical certificate issued by the doctor show that it was not a conscious decision of the petitioner to abstain from the meeting convened on 24th July 2006. As the circumstances were unavoidable and beyond the control of the petitioner, he could not participate in the meeting convened on 24th July 2006. The petitioner had prayed before the designated authority that qua the allegations made in the said application, he is interested in examining the respondent no.2 as well as cross-examining the witnesses who have filed their affidavits in support of the said application so that truth can be surfaced before the respondent no.1. Specific prayer

was made by moving an application for the purpose but the same has resulted into serious prejudice. The order passed by the respondent no.1, according to the petitioner, is an order passed hurriedly and even there is no good sound reason. The contentions raised by the petitioner are not dealt with appropriately. It is the say of the petitioner that as the impugned order at Annexure-A is passed in contravention of the mandatory provisions of the Act and the Rules framed thereunder, it could not sustain in the eye of law. It is also the say of the petitioner that the respondent no.1 has failed in not rejecting the application preferred by the respondent no.2 under Section 3 of the Act at an initial stage. On first scrutiny the application was required to be rejected and there was no need even to serve the notice to otherside i.e. the petitioner. One further contention raised by the petitioner is that the impugned order is not an order violative of principles of natural justice keeping in mind the contents of the application at Annexure-D, but the same

is also not a reasoned order and, therefore, cannot sustain in the eye of law.

4. During the oral submissions, Shri Tushar Mehta, learned counsel appearing for the petitioner, has mainly concentrated his arguments on the point that the application preferred by the respondent no.2 under Section 3 of the Act ought to have been dismissed observing that the same is not filed in conformity with the mandatory provisions of the Act and the Rules framed thereunder. The application under Section 3 of the Act requires to contain a concise statement of material facts and should be accompanied by copies of documentary evidence on which such applicant relies upon and each such document requires to be signed by the applicant and verified in the manner laid down in the Code of Civil Procedure, 1908 for the purpose of verification of pleadings. Indisputably, practically all the vital documents filed in support of the application though are found signed by the respondent no.2, they are not found duly verified. When it is an undisputed

position that all the annexures are not verified as per the mandate issued under Rule 6(6) of the Rules, this Court may quash the order observing that the respondent no.1 has failed in appreciating this crucial aspect specifically pointed out by the petitioner during proceedings. While developing his arguments Shri Tushar Mehta has taken me through the relevant sub-rule (6) of Rule 6 of the Rules which reads as under :

> ***"Rule 6(6)*** *: Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."*

5. The facts of personal knowledge obviously are required to be stated on oath and if the applicant intends to rely on any document to see that his oral say in the application gets strengthened, production of all such documents should be in accordance with the aforesaid Rule; meaning thereby, there should be an endorsement/ verification which is required as per the scheme of the Code of Civil Procedure,

1908. Shri Tushar Mehta has placed reliance on two decisions of this Court. In one of the decisions, in the case of ***Pushpendra Chandra Prakash Sharma v. State of Gujarat, reported in 1996(3) GCD 792***, while appreciating the scheme of relevant sub-rule (6) of Rule 6 of the Rules, this Court has observed as under :

> ***"21.*** In the instant case, the defect pointed out in the petition is that annexures are not signed and verified by the applicant (respondent No.3) as required by Rule 6(6) of the Rules of 1987. Thus, on the face, there appears to be noncompliance of sub-rule (6) of Rule-6. According to Mr K.S.Zaveri, learned counsel, the effect of noncompliance of sub-rule (6) of Rule 6 is that the Chief Secretary or the Designated Officer was left to no option but to dismiss the petition. He further submits that sub-rules 1 and 2 of Rule 7 casts a duty on the

Designated Officer to ensure that the petition is in conformity with the Rules. The mandate under the Sub-rule (2) of Rule-7 is that if the provision has not been complied with, the petition shall be dismissed. Mr Zaveri submits that the sub-rule (6) is analogous of section 83(1)(c) of Representation of Peoples Act, 1951 (hereinafter referred to as 'the Act, 1951'), which provides that any Schedule or Annexure to the petition shall be signed by the petitioner and verified in the same manner as the petition. The effect of noncompliance is rejection of the petition under the provisions of section 86(1). On the other hand, Miss V.P.Shah, Senior Advocate, appearing for the respondent No.3, submits that, at the first instance, sub-rule (6) of Rule-6 is not mandatory on the analogy of the section-83(1)(c) of the Act of 1951, and secondly, even if it is so, factually the Annexure are not integral

part of the petition and such petition can not be rejected on the ground of Annexure being not signed and verified as required by Rule 6(6).

22. I have given my anxious and thoughtful consideration to the rival contentions. The lure of office or other similar consideration, has given rise to evil of political defection, which has brought in Legislature anarchism, endangering the foundation of Democracy. Thus, the defection law at all level. Bearing this in mind, Rule 6(6) and Rule 7(2) providing the consequences of non-compliance, is considered. The normal rule is where a statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to specific consequences, it must lead to that consequences and no other consequences. Dealing with the provisions of section 81(3) of the Act of 1951, which

provides that every election petition shall be accompanied by copies of the petition for respondents and shall be attested by the petitioner under his own signature to be true copy of petition and provision of section 86(1) which provides consequences of non-compliance of provision of section 81 i.e. dismissal of the petition, Apex Court in numerous cases held that there is no option with the High Court but to dismiss petition. Though Rule 6(6) is analogous to section 83(1)(c) of the Act of 1951, but the consequence of noncompliance of section 83(1)(c) is not provided as dismissal under section 86. However, in Dr.(Smt.) Shipra etc. vs. Shantilal case, a decision reported in J.T. 1996(5) SC 681, Apex Court held that sections 81, 83(1)(c) and 86 read with Rule 94(A) of the Rules and Form 25 are to be read jointly as integral scheme. In F.A.Sapa etc. vs. Lathuthanga reported in AIR 1991 SC 1557, the Apex

Court held that if the schedule and annexure forms an integral part of the election petition itself, strict compliance would be insisted upon.

23. What is annexure has been considered by the Panjab & Haryana High Court in case of Panna vs. Mukhtiar Singh reported in AIR 1972 P & H 451. The Court after referring to dictionary meanings of annexure and English cases, held that an annexure would necessarily be a part of the petition, if there is a substantial reference in the petition. On the other hand, the election petition makes a reference to certain proposition of law. It will not be strictly an annexure and cannot be considered as integral part of the petition.

24. In the instance case, there are six annexure. The First Annexure is xerox copy of the Gujarat Government Extra Ordinary Gazette.

Annexure-2 is a letter from the President of Kachcha District, B.J.P. regarding appointment of the Municipal Leader. Annexure-3 is a copy of the letter in form No.1. Annexure-4 is a xerox copy of the circular by the Collector, Kachcha for calling a meeting for the election of the President. Annexure-5 is a copy of the proposal as President in the prescribed form. Annexure-6 is a copy of the proposal in the prescribed form in the name of Pushpendra C. Sharma as President."

6. The second decision is in the case of ***Devabhai Parbatbhai Avadia and others v. P.D. Waghela-Competent Authority and others, reported in 2007(3) GLH 410***. The Court in the said decision has held that upon receiving the complaint/ application under Section 3 of the Act under Rule 7(3) of the Rules, it is the duty of the designated authority to ascertain as to whether the application complies with

the requirement prescribed under Rule 6 of the Rules and if it is found wanting, the next step he is to take is to dismiss the application and intimate the applicant that his application is dismissed as the same was not found in accordance with the statutory Rules framed under the Act. There is no scope for correction of such mistake, if any, committed in this regard. This Court has observed, *"There is no provision in the Rules like Rules 17 and 18 of Order 6 of CPC, which can authorize the Designated Officer to permit the party to amend the pleadings and only upon failure to amend after permission or order, to dismiss it."* According to Shri Tushar Mehta, the annexures though bear the signatures, it is difficult even to say that the same are signed by the respondent no.2 himself as he has not even cared to mention his name. The signatures are indisputably illegible and the contents of the application describe those documents (Annexures) attached with the said application as integral part of the application and, therefore, there was no scope for the designated authority to continue with

the proceedings, however, ignoring this infirmity the designated authority passed the impugned order declaring that the petitioner has incurred disqualification under the Act.

7. According to Shri Tushar Mehta at present one seat of the Municipality has been kept vacant in compliance of the order dated 04th November 2007 passed by this Court.

8. It is submitted by the respondent no.2 that he has appeared on caveat. As such no formal order with regard to issuance of notice appears to have been passed, the learned Single Judge has protected the interest of the petitioner; and therefore, the respondent was directed not to declare the post of the petitioner vacant and if it is declared vacant, the same shall not be filled in. The service of this order is the service of notice as to the pendency of the present proceedings before the Court and the substantive reliefs prayed for therein. The Collector is ordered to be joined as party respondent no.3 and the Court is informed that he has been served with

a copy of the said prohibitory order passed by this Court. Obviously, the respondent nos.1 and 3 cannot be said to be adversary parties in stricto senso, but the say of the learned counsel appearing for the respondent no.2, who has preferred caveat application, shall have to be considered. It is contended by the respondent no.2 that the petitioner was elected as Municipal Councillor being the candidate sponsored by the BJP and as he has been declared disqualified, he cannot continue directly or indirectly as a member of the Municipality as per the scheme of Section 8 of the Act. The impugned order is passed after hearing the parties, considering the contentions placed before the designated authority in accordance with law. The election of the Municipality had taken place on 25th October 2005 and it was claimed specifically before the designated authority that the person authorized by the BJP had issued mandate to all the Municipal Councillors belonging to the BJP including the present petitioner on 23rd July 2006, but the same was refused by the petitioner. This fact has been

observed and believed by the respondent no.1-Authority and the respondent no.2 heavily relies on this finding, and there was no reason for the designated authority to disbelieve the statement made by the respondent no.2 on oath. The petitioner had not participated in the meeting on the alleged sickness. Whether this ground was either justified or proper for remaining absent, is also a matter which can be considered when the Court is asked to invoke inherent powers vested under Article 226 of the Constitution of India, is one of the arguments of Shri Dilip B. Rana, learned counsel appearing for the respondent no.1. It is denied by the respondent no.2 that either respondent no.2 or other members belonging to the BJP had designed to remove the petitioner. No party would see that the strength of its party is reduced by one when there was a thin majority. The mandate was served to the petitioner so far as the meeting held on 29th July 2006 is concerned. The petitioner was one of the persons who had insisted that there should be a meeting to constitute the Executive

Committee. The designated authority has discussed this aspect in paragraph no.4 of the impugned order. The attempt to serve the mandate was made again on 29th July 2006. This conduct of the petitioner, according to Shri Dilip B. Rana, was sufficient to hold that the petitioner had incurred disqualification. It is not the say of the petitioner that casting of vote by him was in accordance with the voting pattern of the members elected on sponsorship of the BJP. According to Shri Rana, Rule 6(6) of the Rules is not mandatory in view of the provisions of Section 83(1)(c) of the Act, 1951. The annexures attached with the application made at Annexure-C are not and were not the integral part of the application and, therefore, it was not possible for the designated authority to reject the application without issuance of notice even to the otherside. For the sake of argument, if it is accepted that the aforesaid Rule 6(6) of the Rules is mandatory, this Court may ascertain as to whether the annexures were the integral part of the application or they were simply produced as list of documents in support of

the statement made on oath by the applicant. The affidavit of a witness is statement on oath by itself and its production in the proceedings is sufficient. Whether a statement on oath made by one witness which is found to be verified by the officer authorized to record verification of such a statement under the other relevant statute, would need further verification of the complainant-applicant, is also a crucial question. According to Shri Dilip B. Rana, the proceedings before the designated authority are small proceedings and there was no need to conduct a regular trial. Therefore, the application submitted by the petitioner during the proceedings (Annexure-D) was not required to be entertained on affidavit filed and documents produced, if any. The conduct of the petitioner has also been considered by the designated authority vis-a-vis the strength struggle between the groups; one headed by the members elected on the sponsorship of the BJP and the other rival group. The casting of vote against the party mandate is nothing but a hostility and if the respondent no.2 was able to establish the said

hostility and the designated authority finds that for one or the other reason, there was something like 'war for power' and the Councillor elected on the sponsorship of the party if defeats the mandate of the party, he incurs disqualification. But the disqualification is required to be declared formally. In the present case, the declaration made by the respondent no.1 by passing order at the conclusion of the summary inquiry is not in any manner an illegal or discriminatory order. It is not necessary that the mandate should be from national level when a party is a national party and, therefore, the mandate given by the local member representing the BJP in District Jamnagar cannot be said to be issued by a person authorized to issue the same. The petitioner himself is the person who has attempted to play a political game on first occasion. He conveniently remained absent after refusing the service of mandate and on second occasion, he cast vote against the party mandate claiming that he has never been issued with the mandate by the party members. The cases in which the summary

rejection is found to be possible but the designated authority if decides to proceed with the matter, cannot be said to be proceedings conducted in violation of law. The said facts of the present case in particular, according to Shri Dilip B. Rana, are materially different and it was not possible for the authority to construe that certain documents were the integral part of the application and, therefore, he conducted proceedings in accordance with law and ultimately, decided against the present petitioner. For short, there is no merit in this petition and therefore, the same is required to be dismissed.

9. The Act is an act to provide disqualification of members of certain local authorities on the ground of defection and for the matters connected therewith. Indisputably, the petitioner was the municipal Councillor elected as a person belonging to a political party and at the relevant point of time i.e. in July, 2006, he was the deputy leader representing the BJP along with the leader of

the House i.e. the President. The municipal party is defined in Clause 'D' of Section 2 of the Act and the petitioner has also not disputed one fact that he was a member of the group consisting of all the Councillors of Municipality for the time being belonging to the BJP and thus, representing the BJP in the local authority namely Jamkhambhalia Municipality constituted under the Act, 1963. The petitioner was, thus, representing the original political party i.e. the BJP, for the purpose of sub-section (1) of Section 3 of the Act.

10. Section 3 of the Act provides the grounds for disqualification. The say of the petitioner is that on the first occasion i.e. when the meeting was convened, the petitioner was hospitalized as he was sick and, therefore, he could not attend the meeting because of the situation beyond his control. Of course, he has also taken a stand that the mandate was never served to him. Looking to the contents of the application submitted to the designated authority and the reply of the present

petitioner submitted during the proceedings before the designated authority, the designated authority was supposed to evaluate its stand in two conflicting versions. It is clear from the finding recorded by the designated authority that more than one person who were competent to state the fact situation have filed their affidavits saying that the party mandate was attempted to be served to the petitioner but the petitioner has refused to accept the same. One of the persons who had gone to serve the mandate of the party to the petitioner is the applicant before the designated authority. It is no where challenged by the petitioner that the applicant before the designated authority had never come to him to serve the mandate. The story of refusal is sheer concoction. Of course, the petitioner has stated that he was never served with the mandate. The other members, who are sitting Councillors of the BJP, were served with such a mandate for the meeting which was to be convened on 24th July 2006. This fact is found proved. There is no documentary evidence on record to show that

the petitioner was suffering from serious ailment and, therefore, he was shifted to Jamnagar and he was compelled to stay over at Jamnagar and it was not physically possible for him to make himself available for the General Body Meeting.

11. The petitioner has not even assailed one fact that he was the deputy leader in the House and therefore, was supposed to act in the interest of the party with sincerity and vigour; and the very person has been impeached for the political misconduct of defying the mandate of the party. The person who decides to vote or to abstain himself from voting should have courage to quit the House and to face the public without awaiting for a formal order of disqualification from the authority, is the need of the hour. Of course, this can be said to be a very high and model conduct and the people struggling for establishing high democratic values are eager to have such a representative in the democratic House elected by people. When this matter was heard, a pointed query was raised as to why the

petitioner had not opted to quit the House before the formal finding from the designated authority and waited till formal declaration of his disqualification. The petitioner could have gone to the public again and could have got himself reelected by justifying his stand for casting vote against the mandate of the party and/or for abstaining himself from voting though aware about the mandate served. Shri Tushar Mehta, learned counsel appearing for the petitioner, of course, has made a legal submission that the Court is supposed to deal with the relevant law and the pronouncement of the judgment in reference to the law enacted and the finding of the Court on such a political issue should not be moral and no Court has recorded its finding only on moral ground or keeping in mind as to what would be the model conduct of a person elected. The submission of Shri Mehta obviously has some logic and has also legal force. But the fact remains that because of the present petition, one Ward, more particularly Ward No.9, remained without any

representation or with lesser representation in the constituent House.

12. In view of the impeachment made in the application filed before the designated authority, the petitioner had incurred disqualification as per sub-section(1)(b) of Section 3 of the Act. The applicant before the designated authority was the Municipal Councillor and a person having knowledge about issuance of mandate and service of mandate on both the occasions i.e. prior to convening the actual meeting on 24th July 2006 and 29th July 2006. So the applicant was not a stranger or Municipal Councillor who was not even present when the mandate was either issued or attempted to be served to each elected member of the BJP. The backbone of the submission of Shri Mehta mainly centres around the scheme of sub-rule (6) of Rule 6 of the Rules. It is submitted that this is a case of non-compliance of the said provision and this argument requires to be dealt with in detail on the strength of the facts available on record.

13. There is no controversy that the petitioner had contested the election as a candidate sponsored by the BJP and the letter of association issued by the BJP. It is neither the defence that the petitioner had joined the BJP at a later stage i.e. after election of the General Body of the Municipality; nor it is the say of the petitioner that the case of the petitioner falls in the category of case of split in a political party; nor there is any allegation that the applicant belonging to the BJP has attempted to play a game of pick and choose and though more than one person have defied the party mandate, only the petitioner has been selected with some ulterior motive by the leaders of the BJP so that he can be kicked out of the House.

14. No serious question has been raised as to the authority of the designated authority who has passed the impugned order. The petitioner has neither challenged nor it is even argued by Shri Tushar Mehta that the application preferred before the designated authority was

not verified. The application filed under Section 3 of the Act is a verified application which is there on record at Annexure-B. Over and above the verification, the applicant filed his affidavit. This document when tendered before the authority was original and, therefore, obviously was not required to be verified at all. It is not the say of the petitioner that he was not supplied with the documents relied upon by the applicant. The say of the petitioner is that each document produced by the applicant is not verified document as per the scheme of Code of Civil Procedure, 1908 though mandatory. So on the sole count, the designated authority ought to have dismissed the application of the applicant. On plain reading of the judgment relied upon by the petitioner in the case of ***Devabhai Parbatbhai Avadiya, reported in (2007) 3 GLH 410***, it has been held that if the application filed under Section 3 of the Act is not verified in accordance with the provisions of the Code of Civil Procedure, 1908 and if the documents are found even not

signed, on non-compliance of the scheme of sub-rule (6) of Rule 6 of the Rules, the application of the applicant ought to have been dismissed even without passing any formal order of issuance of notice. In paragraph no.5 of the judgment, the learned Single Judge has observed as under:

> ***"5.*** .. .. .. However, in the instant case the petition is not verified in accordance with the provisions of Order 6 Rule 15 of the CPC and the annexures thereto are not at all signed and verified. This requirement is mandatory and, therefore, non-compliance thereof renders the petition liable to be dismissed. According to him, when the mandatory provisions are not complied with while making the petition, the Designated Officer has no option but to dismiss the petition in accordance with rule 7 (2) of the Rules. .. .. .."

15. Of course, this observation is in reference to context of the submissions which were made before the Court by the learned counsel appearing for the petitioner. The said petitioner had challenged the initiation of proceedings by the designated authority on the strength of the application made under Section 3 of the Act. So in this cited decision, the Court was not scrutinizing the legality and validity of the finding recorded. If the scheme is read in its entirety of the Act as well as Rules framed thereunder, Rule 7(2) of the Rules is a provision as to consequential effect of non-compliance of the Rule 6 of the Rules. Sub-rule (2) of Rule 7 confers privilege to reject the application summarily even without entertaining it as an invalidly instituted proceeding. In the case of Devabhai (supra), it is clear from the judgment that the application preferred by the applicant under Section 3 of the Act before the designated authority was not even verified as per the scheme of the Code of Civil Procedure, 1908 and the documents relied upon by the applicant were not even signed. In the present

case, the facts are materially different. The application is found not only verified but also supported by signature of the applicant and the averments made in the application seeking disqualification of the petitioner as Municipal Councillor are supported by affidavits of more than one person who were knowing the facts stated in the application. It is not the say or submission before the Court that these original affidavits were never tendered before the designated authority and only xerox copies of the said documents were produced. The original document if is produced before the competent authority, obviously it may not need any formal verification because these affidavits obviously have to be verified by the competent officer and they are pieces of evidence. In the case of Pushpendra Chandra (supra) this Court has observed that the proceedings before the designated authority are summary proceedings and so if any party intends to rely upon a piece of evidence, such an evidence can be led in the form of affidavit and, therefore, the affidavits were filed. So

like the case of Devabhai (supra), the designated authority was neither supposed to dismiss the application of the applicant in limine nor it was statutorily required for the designated authority to dismiss the application saying that he refuses to entertain the application being an application not submitted in compliance of Rule 6 of the Rules. True it is that the documents tendered to the designated authority do not bear any formal verification as per the scheme of Code of Civil Procedure, 1908 and these documents including the list bear the signatures; of course, the said signatures are not legible but the application filed by Shailesh Bhavanbhai Kanajariya and the affidavit filed by him in support of the application bear the signature and it was not legally impossible or improper for the designated authority to compare the undisputed signatures of the applicant-Shailesh Kanajariya i.e. signatures of the applicant on the application and on the affidavit vis-a-vis on the documents tendered. It is settled that the Order 6 Rule 17 of the Code of Civil Procedure, 1908 has no room to

play and the applicant cannot be permitted to amend the pleading or to put verification below the main application preferred under Section 3 of the Act. But when the signatures were there on each document submitted along with the application, whether it can be considered as a document verified within the meaning of Order 6 Rule 17 of the Code of Civil Procedure, 1908 or whether the category of the document itself puts the document in the category of a document which cannot be said to be an integral part of the application, are the questions which need consideration keeping in mind the observations made by this Court in the above cited two decisions i.e. in the cases of Devabhai (supra) and Pushpendra (supra). In the case of ***Amrubhai Nagbhai Maitra v. Competent Authority (in Special Civil Application No.11015 of 2001, decided on 05th September 2003***), the learned Single Judge of this Court has held as under :

> ***"16.*** From the foregoing discussion about statutory provisions, it becomes crystal clear that if conditions laid down in Rule 6(5) of the Rules are not satisfied, the petition is required to be dismissed as per the provisions contained in Rule 7(2) of the Rules. Whether these Rules are mandatory or directory, can be decided on the basis of fact as to whether they provide any consequence as held by the Supreme Court in the case of Sharif-Un-Din vs. Abdul Gani Lone (Supra). Here in the present case, Rule 7(2) prescribes the consequence of dismissal of petition and hence the case squarely falls within the ratio laid down by the Hon'ble Supreme Court."

16. I am of the view that when the main application is found verified and is supported by affidavit along with the other affidavits proving the contents of the application made

seeking disqualification of a member of the local authority, as substantive piece of evidence, and it is possible for the designated authority to decide the matter on merit ignoring the documents produced along with the application, the designated authority can pass appropriate orders either allowing the application and declaring the member of the local authority disqualified or rejecting the plea raised by the applicant. In the case of Pushpendra (supra), this Court has made certain observations keeping in mind certain decisions of the Apex Court in reference to Sections 83(1)(c) and 86(1) of the Act, 1951. It is observed that Rule 6(6) of the Rules is analogous to Section 83(1)(c) of the Act, 1951, but the consequence of non-compliance of the said Section is not provided as dismissal under Section 86 of the Act, 1951. In the case of ***Dr. Smt. Kshipra v. Shantilal, reported in JT 1996(5) SC 685***, the Apex Court has held that Sections 81, 83(1)(c) and 86 read with Section 84(a) of the Act, 1951 and the Rules framed thereunder and Form

No.25 are to be read jointly as integral scheme. In the case of ***F.A. Sapa and others v. Singora and others, reported in AIR 1991 SC 1557***, it is held that if schedule and annexures form integral part of the petition/application itself, strict compliance of the same would be insisted upon. It would be beneficial to reproduce the relevant paragraph nos.21, 23 and 24 of the said decision, which are as under :

> “21. The proviso to Section 83(1) was inserted by Section 18 of Amendment Act 40 of 1961. It is attracted where the petitioner alleges any corrupt practice. In that case the election petition must be accompanied by an affidavit in the prescribed form i.e. Form No. 25. The affidavit is intended to support the allegation of corrupt practice and the particulars thereof pleaded in the election petition. Order 19, Rule 3 of the Code provides that affidavits should be confined to such

facts as the deponent is able on his own knowledge to prove. Here again the submission was that the affidavit to be sworn in Form No. 25 Prescribed by Rule 94A must be sworn consistently with Order 19, Rule 3 of the Code. The submission, therefore, was that the affidavit must disclose the source of information for otherwise it will be no affidavit at all. In this connection reliance is placed on the decision of this Court in State of Bombay v. Purushottam Jog Naik, 1952 SCR 674 wherein at page 681 : (AIR 1952 SC 317 at p. 319) this Court while dealing with the verification of the affidavit of the Home Secretary observed that when the matter deposed to is not based on personal knowledge the source of information should be clearly disclosed. Again in The Barium Chemicals Ltd. v. The Company Law Board (1966) Supp SCR 311, Shelat J. at page 352. (AIR 1967 SC 295 at p. 319) reiterated that where allegations of

mala fides are not grounded on personal knowledge but only on reason to believe, the source of information must invariably be disclosed. Same was the view expressed in the case of K. K. Nambiar v. Union of India, (1970) 3 SCR 121 at 125 : (AIR 1970 SC 652 at p. 653). Based on the law laid down in the aforesaid three cases the learned Counsel for the appellants submitted that an affidavit which omits to disclose, he source of information has no efficacy in law and is not worth the paper on which it is written, more so in an election petition alleging corrupt practice for otherwise it will fail to achieve the purpose, namely, to give an opportunity to the returned candidate to counter the allegation. According to the learned counsel, the affidavit contemplated by the proviso to Section 83(1) is intended to be an integral part of the petition under Section 81 and failure to comply with the requirement of disclosing the

source of information renders the petition liable to summary dismissal under Section 86(1) of the R. P. Act. Reliance was placed on Jadav Gilua v. Surai Narain Jha, AIR 1974 Patna 207 Sunder Industries.Ltd. v. G.E. Works, AIR 1982 Delhi 220; K.K. Somanathan v. K. K. Ramachandran, AIR 1988 Ker 259; Kamalam v. Dr. Syed Mohamad,,(1978) 3 SCR 446: (AIR 1978 SC 840); and M/s. Sukhwinder Pal v. State of Punjab, (1982) 1 SCC 31: (AIR 1982 SC 65), which support this view.

xxx xxx xxx

23. In Virendra Kumar Saklecha v. Jag jiwan, (1972) 3 SCR 955 : (AIR 1974 SC 1957) Rule 7 of the M. P. High Court Rules provided that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is based on information or belief and must also state the source of information or belief. This Court held that the

requirements of Form 25 were not consistent with Rule 7 which purported to give effect to Order 19 of the Code. In that case the affidavit accompanying the petition did not disclose the source of information in respect of certain speeches alleged to have been made by the appellant which constituted corrupt practice nor were the notes thereof allegedly made by certain persons produced therewith. 'This Court while stating that it was not necessary to express any opinion on the question whether the non-disclosure of the source or ground of information in the affidavit can prove fatal, nevertheless observed that the grounds or sources of information are required to be stated since Section 83 states that an election petition shall be verified in the manner laid down by the Code and the affidavit was, therefore, required to be modelled as required by Order 19 of the Code. This decision is not an authority for the proposition that

failure to disclose the source or ground of information would result in dismissal of the petition under Section 86(1) of the R. P. Act.

24. In Krishan Chand v. Ram Lal (1973) 2 SCC 759: (AIR 1973 SC 2513), the appellant, a voter questioned Ram Lal's election on the allegation that he, his election agent and some others with his consent, had committed various acts of corrupt practices detailed in paragraphs 11 and 12 of the petition. The petition was verified by the appellant and was accompanied by an affidavit wherein he stated that paragraphs 11 and 12 were based on information received and believed to-be true. The respondent raised a preliminary objection that the petition was liable to be dismissed for non-compliance with the provisions of the R. P. Act read with the Code as the sources of information were not disclosed. In support of this

contention reliance was placed on the decisions rendered under order 6, Rule 15 and Order 19, Rule 2 of the Code. Dealing with this submission, this Court observed in paragraph 6 of the judgment as under:

> "At the outset it may be stated that the provision for setting out the sources of the information where the allegations have been verified as having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which are applicable to the filing of an election petition. Under sub-section (1) of Section 83 an election petition has to contain a concise statement of the material facts on which the petitioner relies; it has to set forth full particulars of any corrupt practice that the petitioner alleges,

> including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of the pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof"

Setting out Form 25 prescribed under Rule 94A, this Court proceeded to further observe (para 6):

> "There is nothing in this form which requires the petitioner to state under clause (b) of Form 25 the source or sources of his

> information. The appellant has referred us to Order XI, Rule 13 of the Supreme Court Rules as also to Rule 12(A) of the Punjab High Court Rules, in which when the deponent in the affidavit filed in support of the petition states that he has made the allegations in the paragraph or paragraphs specified on information, he is required also to disclose the sources of information. But when there are specific rules made under the Act which govern the election petitions, no other rules are applicable. Nor is the disclosure of the source of information a requisite under Order VI, Rule 15(2) C. P. C. On this ground alone the submission of the appellant can be rejected.

Thus this Court came to the conclusion that the election petition under Section 83(1)(b) must itself contain

all the necessary material facts and in the affidavit in support the petitioner is required to say which of the allegations are based on personal knowledge and which are based on information received and believed to be true. If the source of information has not been set out and the opposite party finds it difficult to answer the allegations regarding corrupt practice, he can always apply for better particulars. In other words the failure to disclose or divulge the source of information was not considered fatal to the petition. This Court, therefore, concluded that the election petition did not suffer from any defect on that source."

17. Here it would be relevant to note that as per the settled legal position, a Civil Court can permit a party to verify a particular fact if it is required to be verified. The verification is a type of endorsement which is required to be made in a particular language

and in a particular manner, especially when the scheme provides that the same should be made in accordance with the scheme of Order 6 Rule 17 of the Code of Civil Procedure, 1908. It is observed that such a verification, if is missed, can be permitted to be made and according to me, such an exercise cannot be equated with amendment of pleading. The verification is a verification of facts of the statement made or the facts stated either in the pleading or in a document. Such endorsement in the form of a particular language and style binds a party who signs below verification i.e. maker of a statement of verification and it also simultaneously strengthens the confidence of the authority or the Court. There are other consequences also of the verification if made and if not made, though required. But when this Court has observed that the verification of each document in such a proceeding is only required when the same is an integral part of the application. The said decision of the learned Single Judge of this Court was also dealing with a case where the petitioner has

approached the Court before recording of a formal finding by the designated authority and immediately after initiation of proceedings by the designated authority on receipt of application under Section 3 of the Act. Here the petitioner had participated in the proceedings. It is not possible for this Court to accept the argument that he ought to have been permitted to cross-examine the witnesses because the proceedings are summary proceedings and to falsify the contents of the application and the witnesses, he could have filed affidavits from his side. The petitioner also could have adduced other cogent and convincing evidence in the form of documents or by placing circumstances that on none of the occasions the mandate was either served to him or he was aware about the mandate issued. Indisputably, the Municipal Councillors belonging to the BJP were asked to vote in a particular pattern and the petitioner was supposed to cast vote in favour of the candidate sponsored by the BJP. It is the claim of the petitioner that in advance he had informed the President and the Chief Officer

about his inability to remain present and participate in the Special General Body Meeting held on 24th July 2006. So obviously he cannot dispute these facts pleaded in the application and supported by the documents signed by the applicant. Obviously, therefore, those documents cannot be said to be integral part of the application preferred under Section 3 of the Act. On the contrary, the petitioner ought to have submitted certain convincing documents which would lead to a conclusion that he was physically unable even to travel or stir out of his home. In given circumstances, the leader of the party in the House could have been informed and in such circumstances, the party leader even can arrange for presence of a sick member of the House so that such a respected member can participate in a crucial meeting convened for the purpose. It is submitted that it was a requisition meeting called for and the petitioner was one of the parties who had signed the letter of requisition submitted to the Chief Officer. These facts have neither been disputed by Shri Tushar Mehta, learned

counsel appearing for the petitioner, nor were disputed by the petitioner before the designated authority. The documents produced in support of the say of the applicant do not appear to be documents which can be said to be integral part of the application. So they are not required to be verified individually. It is also possible for this Court to observe that on a given set of facts and circumstances, it is possible for this Court to observe that if certain classes of documents which are produced along with the application under Section 3 of the Act are found signed by the maker of the application who has signed the application under Section 3 of the Act, it can be construed to be the signature placed with a view to authenticate the said document. So while evaluating the evidence of the applicant as well as the opponent, led in the nature of affidavit, the designated authority ought to have a look on such documents in a fact finding exercise.

18. It is clear from the application, reply affidavit filed by the present petitioner

before the designated authority and the affidavits filed in support of the application of the applicant before the designated authority and other members, on one occasion the petitioner had remained absent under the guise of his sickness and the mandate was not served; and on another occasion, he was intimated about issuance of the mandate and attempt to serve the mandate was also made before the meeting which was convened on 29th July 2006, however, he voted against the mandate of the party. So the conduct of the petitioner appears to be consistently hostile to the Municipal Party. This part could not have been ignored by the designated authority and should not be ignored in such or similar cases.

19. In view of the decisions of the Apex Court relied upon by Shri Tushar Mehta, learned counsel appearing for the petitioner, and referred to by the learned Single Judge of this Court while discussing the provisions of Sections 86 and 83(1)(c) of the Act, 1951, it is clear that all these cases are the cases

where the applications praying for disqualification were made on the allegations of indulging into corrupt practices. So the candidate elected and the opponent to the proceedings initiated for disqualification under the provisions of Act, 1951 should be made aware as to what type of allegations he is facing, by whom and on which type of evidence the applicant relies upon to expose and prove alleged corrupt practice indulged into by him and terming it a corrupt practice.

20. The elections of a local authority are the grooming grounds for the people who intend to serve the society and the country in a democratic structure. So in the cases where disqualification is sought for by other sitting member of the House, such an application should not be thrown out unless it is found infirm. In the case of Devabhai (supra), the learned Single Judge found that the application tendered by itself was infirm and was not even verified and none of the documents was even signed and, therefore, it has been held that such an application ought

to have been dismissed in limine. This leads me to a conclusion that the cases where the application is verified and supported by an affidavit and if the documents relied upon by the applicant which are not integral part of the application by themselves, even then they are signed by the maker of such application, then such an application should not be thrown out by the designated authority as per the scheme of Rule 6(6) of the Rules; and in the present case, the designated authority has rightly entertained the application of the said applicant on merit.

21. It is not possible for the Court to agree that the BJP being a National Party, the mandate was required to be issued from national leader or it was necessary to produce a proof that the district had a political party which was authorized to issue a mandate. There is nothing on record to show that the members of the BJP sitting in the Municipality had elected any party whip popularly known as 'Dandak'. So the Court is not inclined to grant any benefit to the petitioner on this

count as there is sufficient evidence on record to show that a member of one party i.e. the BJP, who was elected on a party ticket cast vote against the mandate in the process of electing Executive Committee.

22. The administration of the Local Self Government by an elected Body is the elementary of democracy. The lame excuses, if, are accepted against proof, the people would be encouraged in defying the law carved out to strengthen the basic democratic values. The conduct and behaviour of the petitioner as a member of the Party has been rightly appreciated by the respondent no.1.

23. In the present case, the petitioner has not disputed his conduct but he has attempted to justify his conduct and has claimed that he cannot be blamed for defying the mandate of the party. The submission of the petitioner is that he was not at all aware about the mandate as the same was not served and, therefore, he was not aware as to how and in what manner the vote is to be cast. Thus, he impliedly admits

that he voted as per his conscious and not as per the method and manner of voting adopted by his party members sitting in the House. It is neither the say nor the defence of the petitioner from the very beginning that in the meeting dated 29th July 2006, when a particular item was placed for voting and for which he has been impeached for defying the party mandate, he was the first person to cast the vote and the party leader had raised his hand subsequently and, therefore, it was not possible for him to follow the stand taken by the leader of the party in the House. For short, on close reading of the order impugned in the petition vis-a-vis the facts placed before the Court and the arguments advanced by the learned counsel appearing for the parties, I do not find any merit in this petition and therefore, the same is required to be dismissed.

24. In view of aforesaid facts and circumstances of the case, I do not find any merit in this petition and therefore, the same is hereby dismissed. The order dated 25th January 2007 at

Annexure-A to the petition passed by the respondent no.1 herein declaring that the petitioner has incurred disqualification, is hereby confirmed. The interim relief granted earlier by this Court asking the otherside to keep one seat vacant in the House, stands hereby vacated. Obviously, therefore, now the competent authority can undertake exercise to hold by-election in Ward No.9 of Jamkhambhalia Municipality of District Jamnagar, if it so desires. Rule is discharged. The petitioner is directed to pay the costs of Rs.10,000/- (Rupees Ten Thousand only) towards this petition with the Registry of this Court.

(C.K. Buch, J)

:: ***FURTHER ORDER*** ::

As per the discussion made by this Court in this CAV Judgment itself, the request to stay the operation of this Judgment extended by Shri Tushar Mehta, learned counsel appearing for the petitioner, is hereby rejected.

(C.K. Buch, J)

Aakar