

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 2418 of 2015****With****SPECIAL CIVIL APPLICATION NO. 3435 of 2015****With****SPECIAL CIVIL APPLICATION NO. 3436 of 2015****With****SPECIAL CIVIL APPLICATION NO. 3142 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment?	<b>Yes</b>
2	To be referred to the Reporter or not?	<b>Yes</b>
3	Whether their Lordships wish to see the fair copy of the judgment?	<b>No</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder?	<b>No</b>

**RAJESHRIBEN VINAYAKBHAI DAVE & 3....Petitioner(s)****Versus****DESIGNATED OFFICER - A K RAKESH & 7....Respondent(s)****Appearance:**

Mr. Shalin Mehta, Senior Counsel with Mr. Y.V. Vaghela, Advocate for the Petitioners in SCA No.2418/2015 and 3142/2015

Mr. Percy Kavina, Snior Counsel with Mr. Asit Joshi, Advocate for the Petitioners in SCA No.3435/2015 and 3436/2015

Mr. P.J. Kanabar, Advocate for Mr. Ankit Bachani, advocate for respondents No.4 and 5

Ms. M.L. Shah, Government Pleader with Ms. Shruti Pathak, learned AGP for the Respondent No. 1

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**CORAM: HONOURABLE MR.JUSTICE K.M.THAKER**

**Date : 31/08/2015**

**COMMON CAV JUDGMENT**

1. It is jointly declared by the learned counsel for the petitioners and the respondents that the petitioners in Special Civil Applications No.2418/2015 and 3142/2015 and the petitioners in Special Civil Applications No.3435/2015 and 3436/2015 are common and that the respondents in all four petitions are common. It is also submitted that factual background involved in all four petitions is identical and the grounds of challenge against impugned action and orders of the respondent are also common and identical. Likewise, the reply and defence by the respondents are also similar in respect of all four petitions. Therefore, these four petitions are decided by this common decision.

2. So far as writ petitions being Special Civil

Applications No.2418/2015 and 3142/2015 are concerned, Special Civil Application No.2418/2015 is taken out by petitioners who have prayed for direction against the designated authority appointed under the provisions of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Act, 1986 (hereinafter referred to as 'the Act') to hear and decide the preliminary application submitted by them by invoking Rule 6 and Rule 7 of the Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules, 1987 (hereinafter referred to as 'the Rules'). The said petitioners subsequently amended the petition and they also brought under challenge order dated 11.2.2015 passed by the designated authority in Application No.3 of 2014 filed under the Act by respondents No.2 to 8. Whereas Special Civil Application No.3142/2015 is taken out by five petitioners seeking similar relief in respect of Application No.7 of 2014 filed by respondents No.2 to 8. So far as Special Civil Applications No.3435/2015 and 3436/2015 are concerned, the said petitions have been taken out by two petitioners against order dated

11.2.2015 passed by the designated authority in Application Nos.7/2014 and 3/2014 respectively.

3. The relief prayed for in the writ petition being Special Civil Application No.2418/2014 gives composite picture of the relief prayed for by the petitioners in all four petitions and that, therefore, the reliefs prayed for in Special Civil Application No.2418/2014 are quoted hereinbelow:

“11(AA) Your Lordships may be pleased to issue appropriate writ, order or direction quashing and setting aside the impugned order dated 11.2.2015 passed by opponent no.1 herein in Application No.3/2014 as the same being illegal, arbitrary and bad in law.

(AAA) Pending admission and final disposal of this application, Your Lordships may be pleased to stay the implementation, operation and execution of the impugned order dated 11.2.2015 passed by opponent no.1 herein in Application No.3/2014.

(B) Your Lordship may be pleased to appropriate writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.1 herein to hear and decide the preliminary application filed under Rule-6 and 7 of Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules before passing any order in Application No.3/2014 filed by respondent nos.2 to 8 herein.

(C) Your Lordships may be pleased to restrain the respondent no.1 herein from passing any final order in Application No.3/2014 without deciding the preliminary application filed by the petitioners on 27.1.2015 till and pending the final disposal of the above petition.

(C-1) Your Lordships may be pleased to issue appropriate writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.1 herein to hold an inquiry as contemplated under Rule 6 and 7 of the Defection Rules and/or be pleased to direct the respondent no.1 herein to appoint any other authorized officer for purpose of holding preliminary inquiry under the Defection Rules.

(C-2) Your Lordships may be pleased to restrain the respondent

no.1 herein from passing any final orders in application no.3/2014 and 7/2014 before deciding the preliminary application filed on behalf of present petitioners.”

4. The factual background which has emerged from the details mentioned in the petition and the reply filed by the respondents and from the submissions by the learned counsel, is thus.

5. The petitioners in all four petitions were elected as councilor for Deesa Nagarpalika in the general election held in 2010. It is claimed by the petitioners that Deesa Nagarpalika has 36 councillors and after the election held in 2010, 16, out of 36 councillors, were elected on symbol of and as representative of Bharatiya Janata Party and 4 councillors are from Congress Party and 16 councillors elected during the said election, had contested election as independent candidates.

6. It appears that a meeting of the general board was to be convened on 11.2.2014. According to the case of the respondents, the political party, i.e. BJP had issued mandate for its councillors for the meeting to be convened on 11.2.2014. It is also claimed and alleged by the

respondents that the petitioners disobeyed the whip issued by their party through its authorized officer. Another meeting was convened on 4.3.2014 and for the said meeting also a mandate was issued and the petitioners allegedly disobeyed said mandate also in the meeting held on 4.3.2014. On such allegations, respondents No.2 to 8 filed applications under section 3 of the Act which came to be registered as Application No.3/2014 and Application No.7/2014.

6.1 The designated authority, i.e. respondent No.1 issued notice to the petitioners and upon service of the notice they appeared before respondent No.1 and filed reply through their advocate. The petitioners also claimed that they were not present in the meeting on 11.2.2014 on account of personal difficulty and some of them had even submitted an application in the office of Nagarpalika seeking leave to remain absent in the said meeting. On such ground, the petitioners claimed that they have not disobeyed the mandate. The petitioners also alleged in their reply that during the meeting convened on 11.2.2014 any voting had not taken place and that,

therefore, the provisions under section 3 are not attracted. The petitioners have also claimed that they had submitted application under Rule 7(4) of the Rules requesting the authority to hold preliminary inquiry, however, the designated authority ignored, and did not decide, the said application and instead, he proceeded to adjudicate and decide Applications No.3/2014 and 7/2014 filed under section 3 of the Act. It appears that since Applications No.3/2014 and 7/2014 were finally heard by respondent No.1, he passed the order dated 11.2.2015, the petitioners sought permission to amend the petitions which came to be granted vide order dated 13.2.2015. Thereafter, the petitioners challenged the orders dated 11.2.2015 passed in Applications No.3/2014 and 7/2014.

6.2 With reference to the said order dated 11.2.2015, the petitioners have narrated the history of events which took place between the period from the date when the petitions were filed and the designated authority passed the order dated 11.2.2015. It is claimed, *inter alia*, by the petitioners that writ petition being Special Civil Application No.2418/2015 came up for hearing before the Court on

13.2.2015 when the Court (Coram: Hon'ble Smt. Justice Abhilasha Kumari) issued notice to the respondents and also passed order granting ad-interim relief restraining respondent No.1 from passing final order with reference to Application No.3/2014. According to the petitioners, until then the order dated 11.2.2015 was neither conveyed nor served to the petitioners, whereas the petitioners had served the order dated 13.2.2015 passed by the Court to respondent No.1 on 16.2.2015 at about 10.35 a.m. The petitioners have further alleged that the record reveals that the order dated 11.2.2015 was dispatched from the office of respondent No.1 on 18.2.2015 and it was received by the petitioners on 20.2.2015. With this background, the petitioners have alleged that respondent No.1 has tried to overreach the process of the court inasmuch as though the order dated 13.2.2015 was within his knowledge, he dispatched the order on 18.2.2015. In the above mentioned factual background, the petitioners have prayed for above-quoted reliefs.

7. The petitions are opposed by the respondents. Respondent No.5 has filed affidavit and another affidavit is



filed by respondent No.1.

8. Before proceeding further, it is appropriate to mention the difference in the factual background of these petitions which are filed against orders passed in respect of two applications viz. Application No.3 of 2014 and Application No.7 of 2014. In this context, it is relevant to mention that Application No.3 of 2014 came to be filed with reference to the meeting held on 11.2.2014 and other application, i.e. Application No.7 of 2014 came to be filed with reference to meeting held on 4.3.2014. The above-mentioned details give out the details of relevant events with reference to meeting held on 11.2.2014. So far as the meeting held on 4.3.2014 is concerned, it is relevant to note that with reference to the said meeting also, the State Level President of the concerned political party had issued authorization in favour of Mr. V.R. Purohit, authorizing him to issue mandate and in pursuance of and on strength of such authorization, Mr. Purohit, District Level President of the party had issued mandate dated 4.3.2014. According to the applicants before the original authority, the said whip was served at the residence of the

members of the party, however, present petitioners refused to accept the mandate and also refused to put their signature in token of acknowledgment when the mandate was served / sought to be served and the said mandate was read out at the commencement of the meeting held on 4.3.2014. The petitioners, despite the mandate, did not attend the meeting. It is not the case of the petitioners that even in respect of the meeting held on 4.3.2014 they had given similar intimation. After considering the facts and material on record and rival submissions the Designated Authority passed separate orders in respect of said two applications. The orders are of even date and they are almost identical, except that in the respective orders, relevant factual aspects and submissions with regard to the meetings held on 11.2.2014 and 4.3.2014.

9. Heard Mr.Shalin Mehta, learned senior counsel with Mr.Y.V. Vaghela, learned advocate for the petitioners in Special Civil Applications No.2418/2015 and 3142/2015 and Mr.Kavina, learned senior counsel with Mr.Asit Joshi, learned advocate for the petitioners in Special Civil

Applications No.3435/2015 and 3436/2015 and Mr.P.J. Kanabar, learned advocate for Mr.Bachani, learned advocate for respondents No.4 and 5 and Ms.Shah, learned Government Pleader with Ms.Pathak, learned AGP.

10. Mr. Mehta, learned senior counsel appearing for the petitioners submitted that in the facts of the case, the provision under section 3(1)(b) of the Act is not attracted and is not applicable. Learned senior counsel for the petitioners alleged that during the meeting allegedly held on 11.2.2014, voting did not take place. It is submitted that the said provision will be attracted only if voting takes place during the meeting and if voting is not conducted then the provision section 3(1)(b) will not be attracted. According to the petitioners, the term 'voting' employed under the said section means actual voting as per the Rules and that consequently, the proceedings conducted by respondent No.1 and the impugned orders are also hit by violation of principles of natural justice. It is further submitted that respondent No.1 abdicated his obligation by not passing any order with reference to the application filed by the petitioners under Rules 6 read with Rule 7 of

the Rules. According to the petitioners, the application under section 3 of the Act cannot be decided without following procedure contemplated under Rule 6 read with Rule 7, more particularly when specific application under said provision is submitted by the opponents in the application filed under section 3 of the Act. Mr. Mehta, learned senior counsel for the petitioners submitted that the power conferred on respondent No.1 is coupled with duty and since the said power affects the right of elected councillors to hold the office for whole tenure, unless disqualified in accordance with law and that, therefore, the said power should be exercised in just and reasonable manner and not arbitrarily. With reference to the impugned order dated 11.2.2015, learned senior counsel for the petitioners alleged that though it is claimed that the order was passed on 11.2.2015, it was actually passed after 13.2.2015 and respondent No.1 has in dishonest manner put 11.2.2015 as the date of the order, on the face of the order. Mr.Mehta, learned senior counsel for the petitioners also alleged that the petitioners were not duly served with the mandate allegedly issued by the

party either for the meeting convened on 11.2.2014 or the meeting convened on 4.3.2014 and some of the petitioners had sought leave to remain absent in the meeting conveyed on 11.2.2014 and that, therefore, it is not justified or correct to allege that the petitioners disobeyed the mandate and there is no basis or justification to invoke section 3(1)(b) of the Act and take any action under the said provision. Learned senior counsel further submitted that even if it is assumed that the order was actually passed on 11.2.2015, then also respondent No.1, having received the Court's order dated 13.2.2015, on 16.2.2015; should not have proceeded to dispatch the said order on 18.2.2015. Mr. Kavina, learned senior counsel for the petitioners in Special Civil Applications No.3435/2015 and 3436/2015 adopted the submissions by Mr. Mehta, learned senior counsel. Mr. Kavina, learned senior counsel for the petitioners submitted that even if it is presumed that the mandate was duly served to the petitioners since the petitioners were not present, it cannot be said that they disobeyed the mandate and since the petitioners were not present,

any occasion or question of voting in accordance with or contrary to the mandate did not arise for them. Hence, the provision under section 3(1)(b) is not attracted.

11. Ms.Shah, learned Government Pleader vehemently opposed the submissions on behalf of the petitioners. So far as the allegation by the petitioners with reference to the issuance and service of the order dated 11.2.2015, she reiterated the details mentioned by respondent No.1 in his affidavit whereby the said respondent sought to explain the events including the action of dispatching the order on 18.2.2015. Learned Government Pleader heavily relied on communication dated 18.2.2015 issued by respondent No.1 whereby the said respondent No.1 has, himself, having regard to the order dated 13.2.2015 passed by the Court, suspended operation of the order dated 11.2.2015. In light of the said communication, learned Government Pleader submitted that the dispute and controversy raised by the petitioners on this count is unjustified and irrelevant. According to learned Government Pleader, agenda for meeting was issued on 31.1.2014 and the authorized officer of the party had

issued the whip, with reference to the meeting to be convened on 11.2.2014, on 8.2.2014 and it was duly conveyed / served to the councillors – members of the party but most of the petitioners even refused to accept the service. According to learned Government Pleader, total 12 councillors attended the meeting convened on 11.2.2014 whereas the petitioners did not attend the meeting and were absent in the meeting. So far as voting is concerned, learned Government Pleader submitted that both the allegations and the contention are incorrect and the minutes of meeting held on 11.2.2014 and several resolutions, as per the list in the agenda dated 31.1.2014, were placed for deliberations and by 'show of hands', which is permissible mode of voting as per bye-laws of the respondent municipality. Learned Government Pleader submitted that in view of provision under Rule 10A, it is the obligation of the councilor to ensure as to whether any mandate is issued or not and that, therefore, the petitioners claim that they were not served with the mandate is of no avail to the petitioners. She further submitted that on both occasions / for both meetings

mandate were issued by duly authorised person / officer and in accordance with the constitution of the party. She further submitted that by not attending the meeting, the petitioners abstained from the meeting as well as from voting and thereby disobeyed the mandate and consequently, the provision under section 3 is attracted and the petitioners stand disqualified. According to learned Government Pleader, the order dated 11.2.2014 is, therefore, correct and justified and does not warrant into interference. Learned Government Pleader also submitted that the allegation that the impugned order is hit by violation of principles of natural justice, is incorrect.

12. Mr. Kanabar, learned counsel for respondent No.5 adopted the submissions by learned Government Pleader. He also submitted that the petitioners did not attend the meeting without seeking prior permission and that, therefore, section 3 is attracted in present case. Mr.Kanabar, learned counsel denied the allegation in the petition that the petitioners were assured that their conduct / action will be condoned, however, subsequently, Applications No.3/2014 and 7/2014 came to be filed.



Learned counsel Mr.Kanabar submitted that any assurance of such nature or effect was never given by any authorized officer of the party. Mr. Kanabar, learned counsel for respondent No.5 submitted list / copies of various decisions, however, he relied on the decision dated 15.5.2008 in case of *P.S. Thakore vs. State of Gujarat* (SCA Nos.5505 & 5740 of 2008) and the decision in case of *Padhya K.S. vs. M.S. Acharya* [2009 (3) GLR 2737].

13. So as to consider and appreciate rival contentions raised on behalf of the petitioners and the respondents, it is necessary to keep in focus relevant provisions viz. sections 3 and section 6 of the Act and Rule 3(1), 3(6), Rules 6, 7, 10A of the Rules. Therefore, the said provisions are quoted hereinbelow:

“3. Disqualification on ground of defection. -

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

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

(b) If he votes or abstains from voting in any meeting of a municipal corporation, panchayat or as the case may be, municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting of

abstention.

Explanation.-

(1) 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, if any, by which he was set up as a candidate for election as such councillor or member,

(b) an appointed councillor or member shall, -

(i) where he is a member of any political party on the date of his appointment as such councillor, or as the case may be, member be deemed to belong to such political party;

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

6. Decision on question as to disqualification on ground of defection:

If any question arises as to whether, -

(1) a councillor of municipal corporation;

(2) a member of a panchayat; or

(3) a councillor of a municipality has become subject to disqualifications under this Act, the question shall be referred to the Chief Secretary to the State Government or to such officer not below the rank of a Secretary of any Department of the State Government as may be designated by the State Government in this behalf and his decision shall be final.

#### Rule 6

"6. Reference to be by petitions. - (1) No reference to any question as to whether a councilor or member has become subject to disqualification under the Act shall be made except by a petition in relation to such councilor or member made in accordance with the provisions of this rule.

(2) A petition in relation to a councilor or member may be made in writing to the Chief Secretary to the Government of Gujarat or designated officer by any other councilor or, as the case may be, member.

(3) Before making any petition in relation to any councilor or member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such councilor or member has become subject to disqualification under the Act.

(4) Every petition. –

(a) shall contain a concise statement of the materials facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person a statement containing the names and address of such persons and the gist of such information as furnished by each such person.

(5) Every petition shall be signed by the petitioner and verified in the manner laid down in the code of civil procedure, 1908 (5 of 1908), for the verification of pleadings.

(6) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

#### Rule 7

“7. Procedure. – (1) On receipt of a petition under Rule 6, the Chief Secretary to the State Government or the designated officer shall consider whether the petition complies with the requirement of rule.

(2) If the petition does not comply with the requirements of rule 6, the Chief Secretary or as the case may be, the designated officer shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Chief Secretary or, as the case may be, the designated officer shall cause copies of the petition and of the annexures thereto to be forwarded. –

(a) ... ..

(b) ... ..

(4) After considering the comments, if any, in relation to the petition received under Sub-Rule (3) within the period allowed (whether originally or on extension under that sub-rule) the Chief Secretary or designated officer may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to such officer as he deems fit for making a preliminary inquiry and submitting a report to him.

(5) ... ..

(6) ... ..

(7) ... ..

Rule 10

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

It is also necessary to take into account Rules 33 and 34 of the bye-laws framed by Deesa Nagarpalika.

14. Some of the relevant dates and events, which have bearing in the matter so far as the rival contentions are raised, are mentioned below.

Date	Events
31.1.2014	Agenda for the meeting to be convened on 11.2.2014 was issued and served.
8.2.2014	The State President of the party had authorized Mr.V.R. Purohit, District Vice President to issue whip to the member – councillors of the party.
11.2.2014	The authorized officer of the concerned political party (i.e. BJP) issued the mandate.

11.2.2014	Meeting was convened.
11.2.2014	The petitioners did not remain present in the meeting convened on 11.2.2014.
11.2.2014	12 members of the board attended the meeting and the business, mentioned in the agenda, was transacted.
28.2.2014	7 persons (i.e. present respondents No.2 to 8) filed application under section 3 of the Act before present respondent No.1, against the petitioners and prayed that the petitioners be declared disqualified in view of section 3 of the Act.
03/03/14	For the meeting convened on 4.3.2014 the President of the political party had authorised Mr. V.R. Purohit, District Vice President to issue mandate to the members – councillors of the party.
04/03/14	Accordingly, the said authorised concerned political party issued the mandate.
September 2014	The opponents (in Application No.3/2014) No.2, 3, 4 and 6 filed common reply / written statement.
21.1.2015	Some of the opponents in said Application

	No.3/2014 submitted an application to hold preliminary inquiry.
11.2.2015	The designated authority passed the impugned order.

15. Before proceeding further, it is appropriate and necessary to mention that so far as entire controversy and dispute raised by the petitioners with reference to the order dated 11.2.2015, is concerned, the Court is of the view that having regard to the subsequent instruction / order dated 18.2.2015 said to have been issued by respondent No.1, it is not necessary to enter into and decide the said allegations and controversy. The respondent No.5 has raised contention that after having passed the order dated 11.2.2015, the designated authority, i.e. respondent No.1 became *functus officio* and therefore, he could not have passed the order / instruction dated 18.2.2015, however, in view of the undisputed fact that the said order dated 11.2.2015 is actually not implemented and also having regard to the reasons and directions recorded by the Court in the order dated

13.2.2015 and subsequent order dated 24.2.2015 passed by the Court in Civil Application No.2546 of 2015, wherein the Court has recorded, *inter alia*, that:

“4. In view of the fact that the amendment pertains to developments that have taken place prior to the passing of the order dated 13.02.2015 of this Court, which were not in the knowledge of the applicants on that date, the amendment is required to be granted.

7. In view of the fact that the Designated Authority has himself stayed the order dated 11.02.2015, the stay is required to be extended, the next date of hearing.”

and in light of subsequent orders dated 17.3.2015, 27.3.2015, 6.4.2015, 10.4.2015, the operation of the order dated 11.2.2015 remains suspended even by virtue of Court's order, it is not necessary to enter into and decide the said controversy and the allegations by the petitioners.

16. It appears appropriate to start with the allegation that the mandate was not served and that, therefore, they did not know anything about the mandate, hence, it cannot be said that they are guilty of violating the mandate.

16.1 On this count it is necessary to take into account Rule 10. The said Rule 10 imposes obligation on the member of the panchayat or councillor of municipal

corporation or municipality who is elected on the symbol of any political party, to ensure, while attending any meeting of the panchayat or municipality or municipal corporation, as to whether the party has issued any mandate and the said Rule imposes further obligation that if any mandate is issued, then it is the duty and obligation of the member to obtain such mandate from the party or authorised person. If a councilor or member of panchayat or municipality / nagarpalika or municipal corporation acts contrary to the mandate and thereby contrary to section 3(1)(b) then defence on the ground that he was not aware about the whip or that the mandate was not served to him, would not be available to him in light of said Rule 10. In light of the said provision, the petitioners cannot be heard to contend that they were not served with or informed about the mandate. The duty and obligation to inquire and ascertain – confirm whether any mandate is issued or not is on the member and that, therefore, in light of the provision under Rule 10, the allegations and contentions by the petitioners are not sustainable and the designated authority has not committed any error in not



accepting the petitioners' allegation and defence or contention on this count.

16.2 Moreover, it has also emerged from the material on record that the State Level President of the party, being the person / officer authorised by the party had authorised Mr. V.R. Purohit, Vice President of the District Committee to issue mandate (page 100 with affidavit of the respondent No.5). It is pertinent that before this Court during the hearing of the petition neither the authority of State Level President to authorise other officer / member of the party to issue mandate nor the authority (and/or action) of the Vice President of District Committee to act as per the direction by State Level President and to issue whip is challenged and/or disputed. It was on strength of said authorisation that the mandate was issued and was served on the members of the party through a messenger at their respective residents. A document which contained signatures of the members, in token of acknowledgment of service of the mandate were put by the members, is also placed on record. The signatures and the said document include signatures of 3 petitioners. The said 3

petitioners have not disputed their signatures. The petitioners have denied the allegation by original applicants before the designated authority that the other petitioners had refused to accept the mandate. Be that as it may, the fact that the mandate was sought to be served to the members and other members had accepted the mandate (when served) and put their signatures in token of acknowledgment of the mandate is matter of record and stares in the face of the petitioners. Besides this, the record of the meeting which was convened on 11.2.2014 also reflects that at the commencement of the meeting, the Chairman of the meeting had read out the mandate. This aspect is expressly recorded in the minutes of meeting and the veracity of the minutes and the contents are not disputed. Thus, the said fact is duly established and the designated authority has not committed any error in holding that the mandate was duly served.

17. From the mandate dated 11.2.2014, it comes out that the mandate included direction (a) to remain present in the meeting / to attend the meeting and (b) the whip also includes the mandate to not 'remain absent' (i.e. to

not avoid the meeting and to not avoid remaining present in the meeting) and (c) the mandate to cast vote with and as per the direction of the President. The mandate for the meeting held on 4.3.2014 was also identical. Thus, there was clear and specific mandate and the said directions were not restricted only to cast vote as per the President's direction, but they also directed the members to attend the meeting and remain in present in the meeting. Above discussed facts establish that the petitioners did not act in accordance with the said mandate and they disobeyed the mandate completely and thereby committed breach of section 3(1)(b) of the Act.

18. Now, it is time to take up the contention with reference to voting. The petitioners have alleged that during the meeting voting did not take place. It is, then, claimed that unless voting takes place section 3(1)(b) will not be attracted and will not be applicable. So as to deal with the factual part of the allegation, the respondents have placed on record the minutes of the meetings convened on 11.2.2014 and on 4.3.2014 and the business which was transacted during the said meetings.

18.1 On reading the said minutes, contents whereof and their veracity are not disputed, it emerges that the Chairman of the meeting had read out the whip / mandate and thereafter Resolutions No.33 to 38, 38(1), 39, 40(1), 40(2), 40(3), 40(4), 41 to 43 were placed for consideration and deliberation by the meeting and in the meeting and after such deliberation the said resolutions came to be passed unanimously by show of hands. The facts about the meeting held on 4.3.2014 are similar except that in the said meeting Resolutions No.45(1) and 45(2) were placed for deliberations and approval and in similar manner, i.e. by show of hands, they were passed unanimously. The respondents have asserted that voting was conducted and that voting had actually taken place in the meeting held on 11.2.2014 as well as in the meeting held on 4.3.2014 and the allegation that the actual voting did not take place, is incorrect and to support the said assertion the respondents have placed on record the minutes of the meetings dated 11.2.2014 and 4.3.2014. The fact that the minutes of both the meetings record that the said resolutions came to be passed unanimously

presupposes and also establishes the fact that the resolutions were put for voting and that actual voting, by show of hands, did take place and in respect of each of 16 resolutions considered in the meeting held on 11.2.2014 as well as Resolutions No.45(1) and 45(2), such process was undertaken and it was unanimously resolved to pass said resolutions.

18.2 The petitioners have not placed any evidence to controvert the facts recorded in the minutes (viz. that the said resolutions were deliberated in the said two meetings and placed for voting and came to be passed unanimously). As against the material on record and said reply, the petitioners have, except their own bald allegations (that actual voting had not taken place) not placed on record either before the designated authority or in present petition, any evidence to support and justify their said allegation.

18.3 It is pertinent that the statement and allegation by the petitioners with regard to the proceedings of the meeting are not made on the strength and basis of their

personal knowledge inasmuch as they were not even present in the meeting and that, therefore, they cannot have and cannot claim personal knowledge about the proceedings.

18.4 Further, any evidence of any member or staff member or any other person, who was present during the meeting and who could state anything with regard to the proceedings of the meeting on the basis of his personal knowledge – more particularly that in respect of any resolution, any process of voting was not undertaken, is not placed on record by the petitioners.

18.5 Thus, the statements and allegations by the petitioners are bald allegations and they are not supported by any evidence and the assertion by the respondents are not controverted or shaken. Whereas the record / minutes of the meeting give out that the said resolutions came to be considered, deliberated upon and unanimously passed by show of hands during the meetings convened on 11.2.2014 and on 4.3.2014.

19. So as to come out of the said facts and position, Mr.

Mehta, learned senior counsel for the petitioners claimed and contended that only that process of voting which takes place in accordance with Rules, can be taken into account. The reply to said contention is found in the bye-laws of the society (copy is placed on record by the respondents), more particularly Rule 33 which provides, *inter alia*, that voting shall ordinarily be by show of hands.

19.1 In light of the facts of the case and material on record and in light of said provision, it has emerged and it is established that voting was carried out by show of hands which is permissible mode of voting as per Rule 33 of the Bye-Laws of the panchayat.

19.2 Thus, the submission that voting during the meetings held on 11.2.2014 and 4.3.2014 was not conducted in accordance with the applicable bye-laws and that, therefore, the process of voting conducted during the said two meetings, not being in accordance with the bye-laws, has no relevance or valuing in eye of law and that, therefore, the respondents cannot claim that the process of voting was conducted, and consequently, the petitioners cannot be held guilty of violating the mandate,

is not sustainable either on facts or in law.

20. In light of these details and material and in view of the said facts, the allegations by the petitioners are not sustainable and cannot be accepted and the case of the respondents that (a) the concerned political party (on whose symbol the petitioners contested election and got elected) had duly issued mandates for the meetings scheduled to take place on 11.2.2014 and 4.3.2014; (b) the said whip contained mandate to (i) remain present at and during the meeting; (ii) not to be absent in the meeting and not to avoid the meeting; and (iii) to vote with and as per the direction of the President; (c) the petitioners disobeyed the whip by not attending the meeting and by remaining absent in the meeting and by abstaining from the meeting; (d) the whip was duly served to the members and it was also read out during the meeting; (e) various resolutions were placed for consideration and deliberation and for approval by the meeting; (f) resolutions were duly considered and deliberated upon by the members present in the meeting; (g) votes by the members were invited; (h) process of



voting was undertaken by way of show of hands which is permissible mode of voting as per applicable bye-laws; (i) all members who were present in the meeting cast their votes (by show of hands) in favour of the said resolutions; (j) consequently, the resolutions came to be passed unanimously; and (k) the petitioners did not participate in the process of voting and abstained from the meeting and voting cannot be rejected or discarded and ignored. The decision by the designated authority that the applicants / complainants have established that the petitioners disobeyed the mandate and the said act of omission or commission by the petitioners has attracted provision under section 3 of the Act and the petitioners have, by their act and conduct, invited disqualification and in light of the fact of the case the said decision cannot be faulted and his conclusion is justified and does not warrant interference.

21. So as to wriggle out of the said position, the petitioners have raised the contention that they did not violate section 3(1)(b) of the Act because they had sought leave to not attend the meeting held on 11.2.2014 and

that, therefore, it cannot be said that they abstained from voting and thereby disobeyed the mandate.

21.1 So far as the said contention and defence is concerned, it is necessary to note that even according to petitioners' claim, they had submitted intimations about their absence to the nagarpalika (and not to the concerned party), whereas the prescribed condition and requirement, according to the provision, obliges the members to obtain prior permission from the 'concerned political party' and not be nagarpalika or the municipality or the municipal corporation.

21.2 On this count, it is also appropriate to revert the provision under section 3 of the Act. Sub-section (6) of section 3 provides that in the event any member intends to not attend the meeting then 'prior' permission must be obtained and that such 'prior' permission must be obtained from 'such political party' or the person or authority and not from the nagarpalika, or the municipality or the panchayat or the municipal corporation. In present case, the intimations, even according to the petitioners,

were addressed to and served in the office of nagarpalika and not to the concerned political party or person or authority. The intimations which are said to have been submitted by the petitioners with reference to the meeting held on 11.2.2014 in the office of nagarpalika (and not to the concerned political party) cannot be considered as compliance of the condition and requirement prescribed by section 3(1)(b). The words 'person' and 'authority' travel with the words 'political party'. In the first part of section 3(1)(b) of the Act, the said words 'person' and 'authority', are preceded by the words 'direction issued by the political party to which he belongs ... ..' and they are followed by the words 'authorised by it in this behalf' and that, therefore, by necessary corollary, the said words would mean and take its fold the person or the authority of the political party and not of the nagarpalika or municipality or panchayat or municipal corporation.

21.3 Likewise, in the second part of the provision also, the said two words, i.e. 'person' and 'authority' are used in continuation of the earlier part of that provision and they are preceded by the words 'prior permission of such

political party' and are followed by the words 'and such voting and abstention' has not been condoned by such political party, person or authority. Thus, it becomes clear that the word 'authority' does not mean and does not convey any 'authority' of the municipality or the municipal corporation or the panchayat and the word 'person' is also not used to mean and convey or apply to any 'person' from the municipality or the panchayat or the municipal corporation, but it refers to a 'person or authority of the political party' who issued the mandate. Consequently, 'prior permission' contemplated under said provision must be asked for from and should be granted by the political party or by any person or authority or officer of the party and not the municipality or the municipal corporation or the panchayat.

21.4 Therefore, the intimation forwarded by the petitioners to the nagarpalika and served in the office of nagarpalika does not fulfill the requirement and does not comply the condition, prescribed in section 3(1)(b). Since there is no compliance of the said condition and since the said conduct is not condoned by the political party within

prescribed time limit, the consequences contemplated by the provision are attracted.

21.5 Besides this, mere intimation or service of the intimation, if not followed by 'permission', would not amount to compliance of the requirement prescribed by section 3(1)(b). By merely forwarding an intimation and without waiting for permission and without confirming or ascertaining as to whether permission is granted or refused, a person – member cannot act contrary to the mandate and cannot abstain from the meeting. A person cannot presume that if intimation is given, permission will follow. It is true that the section does not prescribe that the request for permission and/or the permission should be in writing and any form is not prescribed for making – submitting the request or for granting permission. However, even by oral communication, request must be made to the political party or to the person authorised by the political party and permission by the political party or the authorised person should have also been conveyed, though orally. The permission should be real and actual and must have been granted by the political party or its

authorised person and it cannot be presumed.

21.6 In this view of the matter, the petitioners and their conduct in connection with the meeting held on 11.2.2014 cannot be said to be in accordance with section 3(1)(b) and the conclusion recorded by the Designated Authority is not erroneous and cannot be faulted. So far as the meeting conducted on 4.3.2014 is concerned, such question does not arise because even any intimation about their absence was not given by the petitioners.

21.7 The petitioners have placed on record copies of the intimations said to have been given by them. Assuming that the petitioners had actually served the said intimations, it comes out, on plain reading of the copies which are placed on record (and even from submissions of the petitioners) that the said intimations were not addressed to the concerned political party (on whose symbol they are elected) but they were addressed to and served to the Nagarpalika. Further, it also emerges that all intimations were submitted in the office of the Nagarpalika at the same time, i.e. 9.45 a.m. and all intimations were

prepared on the same date, i.e. on 11.2.2014 and the reasons mentioned in the intimation, are almost common / similar, viz. social work. It is also relevant to note that the reasons assigned for not attending the meeting are similar, i.e. all petitioners have mentioned same or similar reason in their respective applications. Thus, it appears that there is some substance in the claim by original applicants that the conduct by the petitioner was 'in concert' and 'by design'. However, even if the said aspect is overlooked and not given any weightage, then also the fact that all petitioners addressed their intimations to the municipality and not to the concerned political party stares in the face of the petitioners. By addressing and serving the intimations to the nagarpalika, instead of the concerned political party or its authorized person, it cannot be claimed by the petitioners that they complied the condition prescribed by law. Therefore, the conclusion and decision by the Designated Authority on this count cannot be faulted.

21.8 Now, so far as the meeting held on 4.3.2014 is concerned, it is pertinent that it is not even the case of the

petitioners that they had submitted any intimation and sought prior permission with reference to the meeting held on 4.3.2014. Such claim is raised only with reference to the meeting held on 11.2.2014. Therefore, even if it is assumed that there is any substance in the contention that intimation was given to the competent authority, and thereby condition was complied, then also said the fact stares in their face that such intimation were given only in respect of meeting held on 11.2.2014 and not for the meeting held on 4.3.2014. Hence, the breach and violation of section 3(1)(b) would still survive in view of their own conduct of acting contrary to the mandate.

21.9 In light of the material on record, it is established to the satisfaction of the Court that the mandate, with reference to both meetings, were issued and served to the petitioners and that the petitioners did not attend the meetings and 'prior permission', in accordance with the condition prescribed in section 3(1)(b) for absence, was not asked for and obtained and granted and the petitioners did not participate in voting and did not cast their votes in both the meetings. The Court does not find



any error, either of facts or law, in the decision of the Designated Authority on this count.

22. The petitioners have, then, claimed that since they were not present in the meetings on 11.2.2014 and 4.3.2014, the provision under Rule 10 will not be attracted and applicable inasmuch as since they were not present in the meeting, it cannot be said that they abstained from voting and they defied the mandate and acted in breach of the whip as well as section 3(1)(b) of the Act.

22.1 In this context it is appropriate to mention that a candidate who gets elected as a member in local authority as a candidate of any political party, would be obliged to accept, respect and abide by the discipline and principles of the party. When any direction to cast vote in any meeting in favour of, or against, the issue / resolution in a meeting is issued by a political party, then its members would be obliged to act in consonance with, and obey, such mandate. An action by any member of such political party (who has issued the whip) which violates the whip, would invite and earn disqualification for such member,

unless the action / conduct is condoned by the political party. Such obligation is, now, not merely subject of rules of a political party but now the obligation is cast, on the members or councilors of local authority who get elected as representative on the symbol of a political party, by law. Now, law provides for consequence of an action or conduct which violates the mandate, i.e. 'direction issued by political party'. In this regard, provisions under Section 3 to Section 6 of the Act read with Rule 10 of the Rules are relevant which impose the obligation and prescribe consequence.

23. The purport and effect of the submissions by the petitioners is that the said provision merely imposes obligation to vote according to the direction issued by the political party and the obligation will come in play only when the person / member is present in the meeting and despite being present in the meeting he abstains from voting or does not vote as per direction of the political party.

23.1 The said contention is misconceived and it overlooks

and ignores very purpose and object of the Act in general and the said provision in particular. If such contention is entertained and accepted, it will put licence in the hands of members of a political party who get elected as member of panchayat or municipality or councilors of municipal corporation to conduct themselves during meetings as per their own whims and without having regard to the principles, philosophy, decision and direction by the political party with regard to a particular issue / subject placed for deliberation and its approval by process of voting. Such reading and construction of the provision will do injustice to the purpose of the provision and will also amount to, as well as result into, frustrating the very object of the provision.

23.2 The provision prescribes that if any member belonging to the political party which has issued mandates acts contrary to such direction, then he shall invite and earn disqualification for being a councilor or a member.

23.3 The words and expression 'contrary to any direction issued by the political party to which he belongs' are

attached to and travel along with both the expressions, viz. 'if he votes' as well as the words 'or (if he) abstains from voting'. Moreover, the words 'in any meeting of' are also attached to the said words, viz. 'if he votes' and the words 'or (if he) abstains from voting'. The said words, i.e. 'if he votes' and 'abstains from voting' cannot be dis-attached or cannot be divorced from the expression 'in any meeting'. The words 'in any meeting' also travel along with said expressions. The net effect of said words in the provision is that the obligation cast by section 3(1) (b) of the Act on the member or councilor or panchayat or municipal corporation or municipality to not vote contrary to direction issued by the political party and/or to not abstain from voting contrary to any direction issued by the political party also presupposes an obligation to remain present in the meeting and to not abstain from the meeting and thus, the said obligation includes, and thereby imposes, the duty to attend the meeting and not avoid the meeting. The said duty is necessary – though implied – corollary to what is explicit viz. the obligation to vote and to not abstain from voting as per the mandate.

The obligation and duty 'to vote' and 'to not abstain from voting' in the meeting presupposes and implies the obligation and duty to attend, and to remain present in, the meeting and to not abstain from the meeting. This is also evident from the expression 'either case', i.e. 'without obtaining in 'either case' the prior permission of such political party' used in said section 3(1)(b). The words 'in either case' are as crucial as the words 'without obtaining prior permission'. The words 'in either case' obligation to attend the meeting. If a member, at his will, does not attend the meeting and he avoids the meeting (without seeking and obtaining prior permission) then such action would translate into and result into 'abstaining from voting', i.e. not obeying the mandate and consequently will amount to breach of section 3(1)(b) of the Act.

23.4 Further, if the submission by the petitioners is accepted, it would lead to very anomalous situation inasmuch as in that event the provision will have to be read to mean that the section obliges the member of a political party to 'vote' and to not abstain from voting contrary to the direction issued by it, however, the

provision does not oblige the member of such political party to attend the meeting / to remain present in a meeting. If such interpretation is accepted and the provision is construed in such manner, then it would not only frustrate the mandate issued by the political party, but it will also frustrate the provision itself which obliges the members of the political party to act in accordance with the mandate. Such contention amounts to accepting the proposition that even though a mandate directing members to vote and to not abstain from voting is issued by a political party, member of such political party is free and is at liberty to abstain from meeting.

24. In the event the provision is construed in such manner, then the members – councillors from political party who has issued mandate can act as per their whims and fancies and walk away with their act of defying the mandate. This will nullify the very object and principle for which the rule is framed and it will not only give hand to the members but it will also give arise to the menace which the said provision aims to curb and will render the section unworkable and would lead to a situation whereby

a member of the concerned political party can, by merely not attending the meeting escape from the direction to not abstain from voting and/or from the direction to vote as per the mandate of the political party. Such submission and proposition is contrary to the scheme, purpose and object of the Act. The scheme of the Act, intention of legislation, object and even language of the provision, does not permit such interpretation.

25. Likewise, the submission that the said provision will be attracted only if process of voting is actually undertaken and not if voting is actually not done, is also misconceived. It is true that occasion of voting or abstaining from voting contrary to the direction issued by the political party would arise only if process of voting is undertaken. However, that does not mean that even before commencement of the meeting, a member may, on his own, imagine or presume that actual voting will not take place in the meeting and he, on such wishful and unilateral presumption, may abstain from meeting and then if voting is not conducted for some reasons he may use such situation to his benefit and to cover his conduct

of not obeying the mandate. When a mandate to vote and to not abstain from voting is issued by the political party, then member of such political party cannot on his own decide to not attend the meeting without seeking prior permission and he, on his own, cannot presume that in the meeting actual voting is not going to be conducted and therefore he can abstain from the meeting without obtaining prior permission from such political party or its authorized person / officer. If any other construction of the provision is accepted, then it would give liberty and licence to the members of political party to abstain from the meeting and thereby defy the direction to vote or to not abstain from voting as per the direction by the political party and it will frustrate and nullify the purpose and object of the provision and will render the said provision, otiose. Therefore, the said contention cannot be sustained.

26. Now, so far as the petitioners' grievance and contention with reference to the application under Rule 7(4) read with Rule 6 viz. that though an application requesting the Designated Authority to undertake preliminary inquiry was submitted, the Designated



Authority did not decide the said application and proceeded to finally adjudicate and decide the application under section 3 of the Act and the said action vitiates the final order, is concerned, it is pertinent to note that the rules, i.e. the Gujarat Provision for Disqualification of Members of Local Authority for Defection Rules, 1987, are procedural provision. The said Rules including Rule 7 read with Rule 6, are directory and not mandatory. The said rules being in the realm of procedure are intended to facilitate determination of application filed by invoking sections 3 to 6 of the Act. The object and purpose of the said rules is to aid early adjudication and decision by the Designated Authority and not to frustrate or obstruct the process of adjudication in determination of the application.

26.1 Besides this, the said Rule 7(4) itself confers discretion on the authority to decide as to whether preliminary inquiry is required or not and whether any direction to conduct preliminary inquiry should be issued or not. These aspects are within the realm of discretion of the Designated Authority. If in a given case, the Designated Authority does not issue direction for

preliminary inquiry, then merely because such direction was not issued and/or merely because preliminary inquiry was not conducted the proceedings related to the application under section 3 and/or the final order passed in respect of such application will not be vitiated and/or invalidated or will not be rendered illegal or unsustainable. In view of the fact that the requirement contemplated under Rule 7(4) is discretionary and the said Rules of 1987 are directory in nature, the decision to not order preliminary inquiry or to not undertake preliminary inquiry the final order in respect of application under section 3 cannot be interfered with and invalidated. In this view of the matter, if the Designated Authority exercises its discretion and decides that it is not necessary to conduct or order preliminary inquiry, then such decision cannot be faulted. In this context, it would be appropriate to take into account the observations by Hon'ble Apex Court in para 16 of the decision in case of *Dr. Mahachandra Prasad Singh*.

26.2 The petitioners also claimed that the authority ought to have passed an order either allowing the said

application under Rule 7(4) or rejecting the same but ought not have passed final order in respect of application under section 3 without passing any order below application under Rule 7(4). The said submission overlooks the factual aspect and background. It has emerged from the record that the hearing of the application under section 3 was concluded on 27.1.2015 and it was at that stage that the petitioners submitted the application under Rule 7(4). Undisputedly, the application was submitted on 27.1.2015 which is evident from the paragraph No.3.8 of the petition, wherein the petitioners have claimed that:

“3.8 The petitioners had therefore filed an application under Rule 6 and 7 of Gujarat Provision for Disqualification of Members of Local Authorities for Defection Rules for holding a preliminary inquiry since there were disputed questions of fact and law on 27/1/2015 before the office of respondent no.1 herein.”

26.3 The respondent No.1 has, in his affidavit filed in Special Civil Application No.2418 of 2015 mentioned some details related to the proceedings. It is appropriate and necessary to take into account the said details. In paragraph No.11, the respondent No.1 has mentioned that:

“11. Since the filing of the application, the matter came to be adjourned from time to time. The matter was adjourned for various reasons time to time. Vide notification dated 06.09.2014, the matter was entrusted to the then Designated Officer Shri A.K. Rakesh, IAS, C.E.O. and Vice Chairman, Gujarat Maritime Board, Gandhinagar as Designated Authority under the Disqualification Act and hearing was fixed for 07.01.2015 and consequential notice to that effect was issued on 18.12.2014. On 21.01.2015, on the said date, rejoinder affidavit in reply and written submission were filed and matter was adjourned to file arguments on 27.01.2015. On 27.01.2015, the arguments were concluded as the arguments of the petitioner as well as respondent no.2 to 8 were concluded. However, the advocate for the petitioner sought time and the matter was finally posted for hearing on 04.02.2015. On the said date after hearing both the petitioners as well as respondents counsels for the petitioner as well as respondents concluded their final arguments. In so far as the application preferred by the petitioner seeking preliminary inquiry to be made, the same was preferred on 27.01.2015, prior to that arguments were completed and the matter was almost at the stage of conclusion. Furthermore, it is most respectfully submitted that rules 6 and 7 stipulate of the said Rules prescribed the manner in which references to be made by applicant seeking disqualification of councillors of members of the procedure to be followed thereon sub-Rule 4 of Rule 7, stipulates that the Designated Officer may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient to do, refer the petition to such officer as he deems fit for making a preliminary inquiry and submitting a report to him.”

26.4 Thus, it emerges that the said application was submitted after conclusion of the hearing on merits of the applications under section 3 of the Act. Therefore, the submission by the respondents that the application was submitted only with a view to obstructing or prolonging the proceedings before the Designated Authority, appears justified. If the petitioners genuinely and *bona fide* desired that preliminary inquiry is required and deserves to be

ordered, then such application could have been and ought to have been submitted at the threshold of the proceeding, i.e. immediately after the notice in respect of the Application No.3 of 2014 and/or Application No.7 of 2014 were issued by the authority and served on the petitioners or at least before or along with the written statement filed by the petitioners in response to main Application No.3 of 2014 and/or Application No.7 of 2014. However, instead of submitting such application at the threshold of the proceedings or at least at the time of filing written statement, the petitioners submitted such application after conclusion of hearing on merits of main Application No.3 of 2014 and/or Application No.7 of 2014. When detailed written statements were filed by the petitioners and other material / documents by the parties were placed on record which would enable the Designated Authority to decide main applications on merits and when the said applications were heard on merits and hearing was concluded, there was, even otherwise, no basis or justification to revert to the initial or pre-hearing stage and direct preliminary inquiry.

26.5 Besides this, during the hearing of main applications on merits, the parties have addressed all issues on merits including the disputed facts and placed relevant and necessary evidence and other documents / material on record before the authority and addressed those issues on merits during the hearing of main applications and that, therefore, otherwise also there was neither any justification nor any practical purpose of reverting to pre-hearing stage and grant preliminary inquiry as demanded by the petitioners, and that too after conclusion of hearing on merits.

26.6 In this background and more particularly in light of the details with reference to the proceedings conducted before the authority prior to 27.1.2015 and on 27.1.2015 and the reason why the applications were adjourned and the order was deferred after 27.1.2015 mentioned in the affidavit filed by the respondents, there is no justification to set aside the impugned orders and entire proceedings in respect of main applications, conducted on merits before the Designated Authority, merely on the ground that the authority did not pass any separate and specific

order with reference to the said application under Rule 7(4). From the overall case of the fact and conduct of the proceedings and the details of dates and events mentioned by respondent No.1 in his affidavit with reference to the proceedings related to main applications, it has emerged that the respondents are justified in contending that the said application under Rule 7(4) was issued with a view to delaying or obstructing or prolonging the proceedings before the Designated Authority. In this background and for the foregoing discussion, the Court is neither convinced nor inclined to accept such submission and to exercise writ jurisdiction and discretion to set aside the impugned orders and entire proceedings in respect of main applications, conducted on merits before the Designated Authority, merely on the ground that any separate order with reference to the said application under Rule 7(4) is not passed by the Designated Authority, more particularly when such application was submitted at such belated stage. Therefore, the said submission is not accepted and is hereby rejected.

27. In the light of the foregoing discussion and the

reasons recorded in this decision, the petitions do not deserve to be accepted and are not accepted. The petitioners have failed to successfully assail the final decision of the Designated Authority. The final decision by the Designated Authority does not, for the reasons recorded in this order, warrant interference and in view of this Court, the petitioners have failed to make out any reason or justification to set aside the impugned orders dated 11.2.2015. Thus, the petitions fail and are hereby rejected.

**(K.M.THAKER, J.)**

At this stage, learned advocates for the petitioners requested that the operation of the judgment may be stayed for four weeks so as to enable the petitioners to prefer appeal and the interim relief which is in operation may be continued for three weeks.

Having regard to the fact that the request made by learned advocate for the petitioners, the operation of this judgment and order is suspended till 24.9.2015 so as to



enable the petitioners to take out appeal.

**(K.M.THAKER, J.)**

Bharat