

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7910 of 2020****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2020****In****R/SPECIAL CIVIL APPLICATION NO. 7910 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE**

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 or any order made thereunder ?	

DIPTIBEN VINUBHAI PATEL**Versus****STATE OF GUJARAT****Appearance:****MR CP CHAMPANERI(5920) for the Petitioner(s) No. 1,2****MR. DHAWAN JAYSWAL, AGP For the Respondent No.1****MR SIDDHARTH H DAVE(5306) for the Respondent(s) No. 4,5,6****MR. C.B.UPADHYAY, for the Respondent 2 to 6****SERVED BY RPAD (R)(66) for the Respondent(s) No. 1,2,3,4,5,6****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****Date : 31/08/2020****ORAL JUDGMENT**

[1] This petition under Article 226 of the Constitution of India is filed by the petitioners for seeking direction to quash and set

aside the order dated 18.03.2020 passed in Dispute Application No.3 of 2019 by the designated authority under the provisions of Gujarat Provisions for Disqualification of Members of Local Authorities for Anti Defection Act, 1986 (for short "the Anti-Defection Act"). By the impugned order, the designated authority has rejected the Dispute Application No.3 of 2019 filed by the petitioners for declaring the respondent Nos.2 to 6 as disqualified as elected councilors of Ode Municipality.

[2] After issuance of notice, the petitioners had filed Civil Application No.1 of 2020 praying for interim relief to the extent of restraining respondent Nos.2 to 6 from acting as members of Ode Municipality especially in view of the forthcoming election process for electing President and Vice President of the Ode Municipality which was declared by communication dated 10.08.2020 with the scheduled election on 24.08.2020.

[3] Learned advocate for the petitioners submitted that the respondent Nos.2 to 6 have time and again sought for adjournment before this Court to frustrate the petition and to succeed in prolonging beyond the election scheduled on 24.08.2020 and therefore, requests the Court to take up the main matter finally.

[4] As against this, learned advocate Mr.C.B.Upadhyay appeared for the respondents submitted that the election which was scheduled on 24.08.2020 is already concluded and therefore, there is no urgency in taking up the matter finally.

[5] Considering the submissions of the petitioners and the nature of prayers made in the petition as well as in Civil

Application, the Court deems it fit to take up the main matter also for arguments today with the consent of both sides.

[6] Learned advocate Mr. C.P. Champaneri for the petitioners submitted that the designated authority has completely misdirected itself on the three issues which were raised by the petitioners in their dispute application. It is submitted that the respondent Nos.2 to 6 had incurred disqualification on the ground (a) the respondent Nos.2 to 6 had acted against the whip issued by the Indian National Congress Party though the respondents were elected under the symbol of Indian National Congress Party and therefore, incurred disqualification in view of Section 3(1)(b) of the Anti-Defection Act, (b) that in view of their action against the interest of the Indian National Congress party and acting against the whip, the respondent Nos.2 to 6 have voluntarily given up the membership of Indian National Congress and have therefore, incurred disqualification under Section 3(1)(a) of the Anti Defection Act.

[7] It is submitted that the petitioners and the respondent Nos.2 to 6 are elected on the symbol of Indian National Congress party. The general elections of Ode Municipality were held in February, 2018. Total strength of Municipality is 24 members out of which, 16 members are elected on the symbol of Indian National Congress party and 8 members are elected on the symbol of Bhartiya Janta Party. It is submitted that the President of the Municipality had tendered his resignation and at the same time the Vice President of the Municipality was behind the bar in connection with some criminal complaint. As the vacancy had arisen on the post of President of Municipality, Special General Meeting was called to be convened on

14.10.2019. The agenda for calling the special general meeting was issued on 07.10.2019. The whip issuing authority of the Indian National Congress party issued a whip and directed the members elected on the symbol of Indian National Congress party to vote in favour of the petitioner No.1 in the special general meeting dated 14.10.2019.

[7.1] It is submitted that the authorized person of the Indian National Congress party addressed a communication dated 14.10.2019 to the Presiding Officers of the meeting and also asked him to take the copy of whip of Indian National Congress party and to read out the same in the meeting before the voting starts. The said communication was also produced on record of the respondent No.1 authority. Thus, the whip was served by the authorized person of the party to all counsellors elected on the symbol of Indian National Congress party and the same was also read in the meeting before the voting started. The reading of the whip was also minutized in the minutes of the meeting. It is submitted that the respondent Nos.2 to 6 voted in contrary to the whip issued by the Indian National Congress party and cast their vote in favour of the candidate set up by the Bhartiya Janta Party. Thus, the respondent Nos.2 to 6 voted contrary to the whip of the party and incurred disqualification.

[7.2] It is submitted that the action of the respondent Nos.2 to 6 of voting in favour of the candidate set up by the Bhartiya Janta Party is clearly indicative that the respondent Nos.2 to 6 have voluntarily given up the membership of Indian National Congress party and has joined Bharitya Janta Party because it is well known that Bhartiya Janta Party is rival political party of

Indian National Congress party and under no such circumstances, a member of Indian National Congress party would vote for a candidate set up by Bhartiya Janta Party for the post of President unless he has changed the affiliations of the political party.

[7.3] It is submitted that the respondent No.1 authority has no power to decide whether the whip is valid or not, whether the Indian National Congress party has power to issue whip or not without inviting comments of the Indian National Congress party on the whip especially under the circumstances provisions of Rule 7(3) of the Gujarat Provisions for Disqualification of Members of Local Authorities for Defection Rules, 1987 (for short "Defection Rules) specifically provides inviting comments of political party with an object to have the say of political party on both the correctness and authorization of the whip. It is submitted that the petitioners had produced ample documentary evidences to show that the whip was served to the members of Indian National Congress party as well as the same was read out in the meeting before the voting started. The procedure being followed scrupulously leaved no room for any doubt about the service of whip to any members. Even otherwise it is the duty of the members concerned to obtain the copy of the whip and act accordingly once it is brought to their knowledge that the whip was issued by the political party.

[8] Learned advocate took this Court to the relevant document at page-92 Annexure-B, which according to the petitioners is the whip issued by the Chairman of the Election Co-ordination Committee on 11.10.2019 pertaining to the

special general meeting of Ode Municipality scheduled on 24.10.2019, wherein the name of the petitioner No.1 was filled as candidate on behalf of the Indian National Congress party. He thereafter, took this Court to the Annexure-B page-95 which is a copy of whip dated 11.10.2019 again signed by Chairman of Election Co-ordination Committee with an endorsement that the President of Taluka Congress Committee one Shri Amarbhai M. Joshi is selected as representative for communicating whip. He drew attention of this Court to page-96 to indicate that some of the respondents received the whip, whereas some of the respondents refused to receive the whip. He drew attention of this Court to page Nos.97 and 98, wherein, below the whip endorsement on behalf of the two of the respondents have been made. He thereafter, referred to a communication issued to the Election Officer dated 14.10.2019, wherein permission is sought to be read out the whip before the election proceeds. He submitted that the election proceedings have been minutized which are produced at page-104. The resolution adopted would indicate that the respondents' votes were recorded in favour of Ramanbhai Laxmansinh Ravalji with 13 votes and in favour of petitioner No.1, 10 votes to indicate that the respondent Nos.2 to 6 have cross voted against the whip. It is therefore, submitted that it is a clear cut act for defying the whip and have therefore, incurred disqualification on the date on which the respondent Nos.2 to 6 have voted against the whip.

[9] He placed reliance upon the judgment in the case of **Thakrshibhai Shavshibhai Rathod v/s A.J. Shah, Designated Authority**, reported in **2018(3) GLH 306** to indicate that once the whip is issued by an party, it is not

required to be served on each and every individual. It is the duty of the member of such party to get the whip from its party and act accordingly. The respondent Nos.2 to 6 herein despite being aware of the existence of whip have acted in clear defiance. He also relied upon the decision in the case of **Katara Bhaveshbhai Babubhai v/s. Designated Authority under the Gujarat Provision for Disqualification of Members and others**, reported in **2012 (5) GLR 4503** and submitted that the language of the whip issued was unambiguous, far from absurd and giving a clear cut direction to act as per the whip and therefore, the whip issued by the party was complete in all respect, despite this, the respondent Nos.2 to 6 not having complied with the whip and therefore, have incurred disqualification.

[10] As against this, learned advocate Mr. C.B.Upadhyaya and learned advocate Mr. Siddharth Dave, appearing for the respondents submitted that no such whip was issued by any authorized person or received by the respondent Nos.2 to 6 and therefore in absence of any such breach of any mandate or in absence of any such action being taken by the concerned political party. Without prejudice to the contention that alleged whip was not issued by the authorized person, it is submitted that the different persons of the party have claimed themselves as the authorized persons and have issued different whip in the name of different persons. The said fact clearly go to show that the alleged whip was not issued by duly authorized person and there was no any whip in the eye of law. Therefore, there is no question of any breach of mandate as alleged at all. It is further submitted that the petitioners herein have failed to place on record any resolution passed by the

Gujarat State Congress Committee, which would authorize the State committee to authorize the office bearers of State committee or district committees to issue a whip. Over and above the said decision that would be taken by the Gujarat state Congress committee by virtue of the aforesaid resolution, will have to be communicated by the Gujarat state Congress committee president, only and only in his capacity as an emissary of the decisions taken by the committee. In absence of any such document on record, there is no question of any violation of any provisions of Section 3 of the Anti Defection Act or any whip issued by any political party or any person authorized by the political party.

[10.1] It is submitted that the present petition is not in accordance with the rules and regulations of the Gujarat Provision for Disqualification of Members of Local Authorities for Anti Defection Act as well as Rules framed thereunder.

[10.2] It is further submitted that the so called whip/mandate does not fall within the purview of the definition of a whip within the meaning of the provisions of the Act. It is also to be noted that the said document, which is annexed at Annexure 'C' in the document list, has been mentioned as a whip/mandate. However, the said document is not a whip within the meaning of the Act because the said document has been signed by the so called Chairman is not legal and valid documents. It is pertinent to note that the Chairman was never authorized to sign or to issue any such mandate, for the purpose of same being falling within the purview of mandate/direction issued by the political party or any person authorized by the same, within the meaning of Section 3(1) (b)

of the Anti Defection Act. Nothing on record is produced to even remotely suggest that any delegation of power was given to said Balubhai Patel to issue any such alleged whip. The said alleged whip does not mention as to by virtue of which document, the so called authority was delegated in favour of said Balubhai Patel. Even the verification does not tally with the said Annexures "C" and that age is not mentioned in the said verification. That said aspect clearly go to show that said Diptiben is not aware about the contents of petition or the verification or the affidavit. That even no word true copy is written on the said document of so called whip, nor it is signed by the petitioners under her own signature. It is submitted that the Gujarat State Congress Committee, had never passed any resolution and any such resolution formed part of the record either, which would even authorized Mr. Balubhai Patel or Amit Chavda to Issue such a letter. It is submitted that neither Balubhai Patel nor Mr. Amit Chavda were entitled and authorized to either issue whip or delegate power on behalf of the Congress committee authorizing somebody to issue whip. That the pages at Annexure C and D (both whips) are different and the documents showing the signatures is disputed by the respondent Nos.2 to 6, as the said documents are not signed as true copy by the petitioners and the verification submitted by the petitioners is contrary to the said Annexure 'D'. Therefore, the present petition is not filed with proper verification.

[11] It is submitted that the respondent Nos.2 to 6 cannot be treated to have been disqualified in absence of any subsequent action by the Indian National Congress party and Section 3(1)(b) of the Anti Defection Act provides for condoning

by the party even in case where the direction issued by the political party is not followed by the member. It is therefore, submitted that by not initiating any action to remove the respondent Nos.2 to 6 from the membership of the party, the party has condoned their action and therefore, no disqualification is incurred.

[11.1] Learned advocates jointly submitted that the document which is produced at page 95 is a concocted document and for the first time is produced before the designated authority alongwith the dispute application. It is emphatically stated that the document at page-95 was never served upon the petitioners as a whip of the Indian National Congress party and what was served upon the petitioners is produced before the authority which is at page-133 of the petition. Therefore, it cannot be contended that the whip at page-95 is a valid document and non-compliance of the same has incurred disqualification of the respondent Nos.2 to 6. It is also submitted that the documents at page-96 also indicate that the whip was never served upon the respondent Nos.2 to 6, but by way of an escape route, the relatives of respondent Nos.2 to 6 were handed over the copy of the whip which cannot be termed to be a effective service of whip upon the respondent Nos.2 to 6 and it is nobody's case that in some exigency situation or on account of non-availability of the respondent Nos.2 to 6 that the whip was required to be served upon the relatives of the respondent Nos.2 to 6. It is also contended that the whip which the petitioners want this Court to believe to have been read out is not the very whip as though the application given by the representative of Indian National Congress to the Presiding Officer mentions a note of copy of

the whip annexed with the letter dated 14.10.2019. The same is not placed on record and the reason for not placing the same on record is that the same is a concocted whip. He placed reliance in the case of **Katara Bhaveshbhai Babubhai** (Supra).

[12] In rejoinder, learned advocate appearing for the petitioners has stated that the whip which is produced at page-133 issued by the President of District Congress Committee cannot be treated as a valid whip as the said President who had issued the whip has been suspended from the party. He refers to page-177 a newspaper report recording such President of District Congress Committee joining the rival party.

[13] The Court has heard learned advocates for the parties and perused the documents placed on record. At the outset, it is pertinent to record that the designated authority has framed three questions to be decided viz. (1) whether the whip was issued by authorized person, (2) whether the respondent Nos.2 to 6 have voted against the whip and have acted against the whip during the course of voting and (3) whether the respondent Nos.2 to 6 have voluntarily given up the membership of the political party.

[13.1] On the factual matrix, the designated authority has recorded that considering documentary evidences and the details mentioned in the appeal application by the applicant, it appears that Shri Balubhai Patel, Chairman, Election Coordination Committee, Gujarat State Congress Committee, Ahmedabad has issued a whip through a letter dated 11/10/2019 to caste votes in the favour of Shri Diptiben

Vinubhai Patel as the candidate for the post of President in the General Meeting on 14/10/2019 for the election of the President of the Ode Municipality. Further, Shri Balubhai Patel, Chairman, Election Coordination Committee, Gujarat State Congress Committee has sent the copy of the whip of the Congress Party for the General Meeting of 14/10/2019 regarding the election of the President of Ode Municipality through a letter dated 11/10/2019 to the Election Officer, Ode Municipality. In it, it has been stated that Shri Amarbhai Mahendrabhai Joshi has been appointed as the representative to issue the whip as the president of the Taluka Congress Committee for the election of Ode Municipality on 14/10/2019. Shri Amarbhai M. Joshi, the President of Umreth Taluka Congress Committee, has requested the Election Officer, Ode Municipality, to read out the whip before the members of the Congress Party prior to the meeting of 14/10/2019 of Ode Municipality begins. But the copy of the whip has not been attached with the letter. The name of the candidate of the Indian National Congress Party for the post of the President, Shri Diptiben Vinubhai Patel has been mentioned in the letter. Shri Amit Chavda, in the letter dated 06-04-2018 regarding power of issuing whip, has not mentioned the resolution of the INC party's executive through which authority was assigned, nor a copy of the resolution has been attached with the letter. He has delegated the power as party president. No reference to any resolution of INC party's committee is made the authority letter and the resolution of the committee has not been kept on record. Further, he has not been able to prove any documentary evidence regarding authority. Whip issued by Shri Balubhai Patel, Chairman, Election Co-ordination Committee, Gujarat Pradesh Congress Committee, Ahmedabad

on 11.10.2019 was issued to vote in favour of the candidates decided by the party. Authorization of the whip issued for election of President, Ode Municipality in the meeting dated 14.10.2019 is not attached. Evidence of giving authority of whip to Shri Balubhai Patel, Chairman, Election Co-ordination Committee, Gujarat Pradesh Congress Committee, Ahmedabad is not kept on record. Under the aforesaid circumstances, as authorization letter or evidence regarding whip of holding election of president of Ode Municipality dated 14/10/2019 is not kept on record, it is not a valid whip. Further, reference or copy of the resolution of the Pradesh Congress Committee by which whip was issued has not been attached.

[13.1] It is further recorded that no documentary evidences have been attached with the Dispute Application memo as to how the letter of whip dated 11.10.2019 given by Mr. Balubhai Patel, Chairman of Election Co-ordination Committee, Gujarat State Congress Committee for the election dated 14.10.2019 was served. If the whip has been served personally, whether the signatures of the respondent Nos.2 to 6 have been obtained or not and in this regard, the respondent Nos.2 to 6 have mentioned that, they had accepted the party's whip but denied to put their initial. That means, it has neither been clearly mentioned about mode of service of party's whip in the application nor any evidences in this regard have been placed on record. The respondent Nos.2 to 6 have stated in the written arguments that they have not been served any whip or mandate regarding the meeting dated 14.10.2019 or it has not been received by their relatives. It clearly appears that there are no signatures of the respondent Nos.2 to 6 in the list attached with the letter of Mr. Balubhai Patel, Chairman of

Election Co-ordination Committee dated 11.10.2019 and no date is mentioned in the list or no authority has put his signature in this list. Though the whip was read in the meeting dated 14.10.2019, no such evidences have been placed on record that the concerned respondents were served with the whip and the same was acknowledged to them. Neither the respondent Nos.2 to 6 are suspended from the membership of the party nor any action has been taken against them.

[14] Over and above this, the Court has also taken into consideration the reply before the designated authority at page-133, which is a whip dated 10.10.2019 issued by the President of Anand District Congress Committee, which is a whip other than the whip produced at page-95. The name mentioned therein is also different than that is mentioned in the whip at page-95 dated 11.10.2019. It is pertinent to observe that the communication of Shri Amit Chavda dated 06.04.2018 on the letter head of Gujarat Pradesh Congress Committee assigning power to issue whip includes at Sr No.3 the President of District Congress Committee. Page-133 dated 10.10.2019 is a whip which according to the respondent Nos.2 to 6 was served upon them. The designated authority on one hand had whip which was served upon the relatives of the respondent Nos.2 to 6 as per the petitioners and on the other hand, whip which is claimed by the respondent Nos.2 to 6 to have been served upon them which is dated 10.10.2019. In view of the aforesaid factual position, it certainly cannot be held that the whip at page-95 dated 1.10.2019 is a valid whip, as there were two whips on record of the designated authority. Moreover, in absence of the copy of the whip attached to the communication to Presiding Officer being brought on record,

the Designated Authority could not have concluded the whip at page 95 to be the valid whip.

[15] The other reason for the Court not to treat the whip at page-95 to be valid whip is on account of the variation in the form of whip which is page-92, wherein the name of candidate set out on behalf of the Indian National Congress party is written and is dated 11.10.2019 issued by Balubhai Patel, Chairman of Election Co-ordination Committee, whereas the whips at page-95, page-97 and page-98, which according to the petitioners are whip communicated to the petitioners though dated 11.10.2019 bears the names of the candidates set out by the party, which is in hand written manner. The service of the whip even from the record appears to be served upon the relatives of the respondent Nos.2 to 6 and not upon the respondent Nos.2 to 6.

[16] Rule 6 of the Defection Rules concerning references to be by petitions, wherein Sub-Rule 4 requires that every petition to contain concise statement of material facts on which the petitioner relies and shall be accompanied by the 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 names and addresses of such person and gist of such information as furnished by each such person. Sub-Rule 5 provides for verification of the pleadings in the manner laid down by Code of Civil Procedure. Sub Rule 6 provides for every annexures to the petition be signed by the petitioner and verified in the same manner as the petition. Perusal of the documents at page-101, Annexure-B which is a letter addressed by one Amar

M. Joshi dated 14.10.2019 in his capacity as representative to issue whip and at the footnote mentioned that copy of the whip is produced. This document is produced on a verification which was supplied by President of Umreth Taluka Congress Committee. The document at page-104 which is the minutes of the meeting recorded are produced on record of the designated authority with the verification that the same were supplied by the Chief Officer of the Municipality. On the record of the designated authority, there is no copy of whip which is mentioned at the footnote of the letter dated 14.10.2019 addressed to the election officer by Shri Amar M. Joshi. Therefore, till date there is nothing on record to establish that the copy of the whip which is at page-95 is the whip which was produced before the Election Officer. There is nothing on record to indicate that the petitioners in any manner were prevented from procuring such copy from the record of the Municipality and producing the same before the designated authority. In absence of such exercise, this Court is not inclined to interfere with the finding of the designated authority that the whip in question cannot be termed to be a valid whip. In absence of valid whip, the conduct of the respondent Nos.2 to 6 therefore, could not have earned any disqualification.

[17] The petitioners have relied upon the decision of this Court in the case of **Thakrshibhai Shavshibhai Rathod** (supra) in contending that it was the duty of the respondent Nos.2 to 6 to make themselves aware of the whip of the party and it is the duty cast upon the members to get the copy of the mandate and thereafter, act as per the mandate. In the aforesaid judgment, the Court was examining the decision of the designated authority which had declared the petitioners as

disqualified members of the District Panchayat, which was challenged on the ground that the whip which was issued for meeting on a particular date could not be made applicable to meeting which was convened on the date other than the date for which the whip was meant for. It was a challenge also on the ground that the whip meant for the earlier meeting was never served upon the petitioners therein and that the original applicant of the dispute application after the decision of the designated authority wanted to withdraw the main dispute application itself. The reference was made to Rule 10(A) of the Defection Rules which cast duty upon the members to procure the copy of the whip and act accordingly. In the present facts, the issue of non service of the whip may not be relevant as respondent Nos.2 to 6 have claimed that they have been served with the whip which is produced at page-133 of the petition which is dated 10.10.2019 and issued by the President of District Congress Committee, whereas the whip which the petitioners claim to be a valid whip issued was never served upon the respondent Nos.2 to 6 and therefore, as one whip was already served upon the respondent Nos.2 to 6, there was no question of the respondent Nos.2 to 6 taking up the stand on non-service of whip of the party, coupled with the fact that the petitioners have failed to satisfy the designated authority that the whip at page-95 dated 11.10.2019 is a valid whip on the record of the Municipality. Hence, the decision of **Thakrshibhai Shavshibhai Rathod** (supra) will not be helpful to the petitioners.

[18] The contention of petitioners that page-133 is not a valid whip in view of the action taken against the author of such whip cannot be considered as even if the party has taken

action against the author of such whip, the same is a decision to suspend him that too on 11.10.2019. Meaning thereby, the whip which was issued on 10.10.2019, the author of the whip was very much the President of the District Committee which is also authorized to issue the whip even as per the communication dated 06.04.2018 by Shri Amit Chavda (Page 110).

[19] For the aforementioned reasonings, the Court finds no reason to interfere with the decision of the Designated Authority dated 18.03.2020 passed in Dispute Application No.3 of 2019, the petition deserves to be and is hereby ***dismissed***.

[20] In view of the order in main petition, no separate order in Civil Application is required to be passed. Hence, the Civil Application is ***disposed of*** accordingly.

CAROLINE/Siddharth

(A.Y. KOGJE, J)