

(2005) 09 BOM CK 0134

In the Bombay High Court

Case No : Writ Petition No. 5100 of 2003

Keshav Shankar Ekbote

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 16, 16(1), 16(3), 2(7), 42

Citation : (2006) 1 ALLMR 624 : (2006) 3 BomCR 404 : (2006) 1 MhLj 292

Hon'ble Judges : P.S. Brahme, J;B.R. Gavai, J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant; N. Jog, A.G.P. for respondent
Nos. 1, 3 and 4, S.P. Dharmadhikari and R.L. Khapre, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties.

2. By way of present petition, the petitioner assails the order passed by respondent No. 1 thereby dismissing the complaint of the petitioner u/s 55-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Said Act"), vide order dated 9th July, 2003.

3. Respondent No. 2 was elected as a President of the respondent No. 5-Buldana Municipal Council in the General elections which were held in the year 2001 and she assumed the charge of the Office of the President of respondent No. 5-Municipal Council, Buldana on 18th December, 2001. The petitioner who is resident of Buldana and also Ex-President of the Municipal Council filed a complaint under the provisions of Section 55-A of the said Act on 14th February, 2003 with the respondent No. 1-State of Maharashtra. It is stated in the complaint that the husband of respondent No. 2 namely Radheshyam Chandak is

President of Buldana Urban Charitable Trust (hereinafter referred to as the "said trust"). It is alleged in the complaint that a piece of land in Survey No. 99/3, Mahajan Layout, Buldana admeasuring 5619 sq. metres was allotted to the said Trust for the purpose of tree plantation and development of garden. It is stated that since the land was not utilised for the purpose for which it was allotted, vide resolution dated 23rd March, 2001 the same was taken back by the Municipal Council. It is alleged that in spite of the above referred resolution, dated 23rd March, 2001, the President of the said Society (husband of respondent No. 2) on one hand and the Chief Officer of the Municipal Council on the other hand executed an agreement on 12th July, 2001, thereby granting said land to the said Trust, contrary to the resolution dt. 23-3-2001. It is alleged that, the respondent No. 2, mis-usurping the Office of the President, has awarded valuable piece of land to her husband, who is also co-opted Member of the Municipal Council and that the said Award is contrary to the resolution of the Municipal Council. It is, therefore, alleged that this conduct on the part of respondent No. 2 amounts to disgraceful conduct and also misconduct in the discharge of duty. It was, therefore, alleged that respondent No. 2 herein has incurred disqualification u/s 55-A and was liable to be removed from the post of President.

4. The second allegation, as could be read from the memo of complaint, is that the said open space which was awarded for the purpose of development of garden, and growing of trees, was being used for school purpose and for that purpose, illegal construction was also made. It is alleged that it was done in connivance with and with the active participation of respondent No. 2 for helping her husband. It was, therefore, alleged that such an encroachment is also a misconduct as the respondent No. 2 had actively supported this and indulged in the activity of illegal construction and therefore, incurred disqualification u/s 42 of the said Act for continuing as a member of the Municipal Council. It was, therefore, alleged that the respondent No. 2 has also incurred disqualification u/s 16 of the said Act.

5. In the reply filed on behalf of respondent No. 2, it was admitted that husband of the petitioner was President of the said Trust and that the said Trust had applied for allotment of the aforesaid land for constructive purpose to the Buldana Municipal Council. It was stated that, accordingly, on 4-9-1996, the said land was awarded to the said Trust on temporary basis and thereafter, vide resolution dt. 16-7-1997, the said Trust was permitted to use the aforesaid land for the further period of seven years. It was, therefore, stated that from 4-9-1996 the said plot was in the occupation of the said Trust. It was further stated that on 12-7-2001 the Municipal Council, Buldana and the said Trust had also entered into an agreement. It was stated that vide resolution dt. 22-3-2001 a part of the aforesaid land was allotted for use by Ganesh Shikshan Sanstha. It was further alleged that the said Trust was also granted permission vide letter dt. 18-7-2001 to erect temporary tin shed. It was, therefore, alleged that all these acts have been done prior to 18-7-2001 i.e. the date on which respondent No. 2 assumed charge of the Office of the President. Respondent No. 2 had, therefore,

prayed for dismissal of the complaint.

6. Respondent No. 1 vide order dt. 9-7-2003 found that all the acts alleged in the complaint are prior to the date on which the respondent No. 2 had assumed the charge of the Office and no case is made out for disqualification. However, vide the said order, respondent No. 1, finding that as the respondent No. 3-Collector, Buldana had given a report regarding unauthorised construction on the aforesaid land, directed the respondent No. 3-Collector to take necessary steps regarding unauthorised construction. Being aggrieved by the said order dt. 9-7-2003 passed by respondent No. 1, the petitioner has filed the present petition.

7. Heard Mr. P. C. Madkholkar, learned Counsel for the petitioner, Mrs. Jog, learned Assistant Government Pleader for respondent Nos. 1, 3 and 4, Mr. S. P. Dharmadhikari, Advocate for respondent No. 2 and Mr. R. L. Khapre, Advocate for respondent No. 5.

8. Mr. P. C. Madkholkar, appearing on behalf of the petitioner submits that the order passed by respondent No. 1 depicts thorough non-application of mind. He submits that on the basis of the complaint made by the petitioner, respondent No. 1 had called for a report of respondent No. 3-Collector. Respondent No. 3 after holding due enquiry has found that allotment of the said land to the Trust was in contravention of provisions of the said Act and the rules framed thereunder. He further submits that the Collector has also found that the compromise between the said Trust and Ganesh Shikshan Sanstha was on 1-4-2002, whereas the alleged agreement is dt. 12-7-2001 and therefore, the agreements have been shown to be back-dated, whereas they have been executed only after 1-4-2002. He submits that the Collector has also come to the finding of fact that the land was being used by the said Trust for the purpose other than for which it was allotted, and therefore, it amounted to misconduct u/s 42(1) of the said Act. He further submits that the Collector has also come to the finding of fact that since the said land was allotted to the said Trust illegally and that since the said land was being put to illegal use by the husband of respondent No. 2, it was her duty to take back the said land and by not doing so, she has committed misconduct under the provisions of Section 55-A of the said Act and that she has also neglected to perform her duties. He submits that the Collector unequivocally recommended disqualification of respondent No. 2 from the Office of President and her husband from the Office of Co-opted Councillor. He submits that once a fact finding enquiry had arrived at a finding of fact, then it was incumbent upon respondent No. 1 to act upon the said report and hold respondent No. 2 guilty of misconduct as recommended by respondent No. 3. He submits that the contention of respondent No. 2 that the said report is not within the knowledge of respondent No. 2 is also without substance. He submits that the Collector's report was also prepared on the report of One Rajabhau Dawane, Chief Editor of Dainik "Netrutva", about which complaint the petitioner was very much aware and as such, the petitioner cannot be heard to have any grievance of not having knowledge of the said report. He submits that from perusal of the

file, it can be seen that the department of respondent No. 1 had recommended disqualification of respondent No. 2 and also prepared a draft order disqualifying the respondent No. 2. But, however, the same was changed by the Hon"ble Minister. He, therefore, submits that, from the perusal of the file, it would appear that the Hon"ble Minister by passing the order on behalf of respondent No. 1 has acted according to political convenience and rejected the complaint of the petitioner.

9. Mr. P. C. Madkholkar, Advocate relies on the judgment of the Division Bench of this Court in, Writ Petition No. 3991 of 2005 (Ramesh s/o Gangadhar Korde v. State of Maharashtra and Ors.) in support of the proposition that the disqualification under Sections 16 and 44 will have to be read as disqualification even for the purposes of Section 55-A of the said Act. He specifically relies on the following observations of the Division Bench.

"On consideration of the section of the Act and on a reading of the section, we have no hesitation to hold that the provisions of Section 16 can be read into Section 55A, meaning thereby that if the President incurs any of the disqualifications as set out u/s 16 in the course of his term as a President he is liable for removal u/s 55A"

10. Mr. Madkholkar, Advocate further submits that the expressions "misconduct" and "disgraceful conduct" have not been defined under the said Act. He submits that the Division Bench making a comprehensive survey of the definitions of these expressions observed thus in the aforesaid judgment:

"In the New International Webster's Comprehensive Dictionary, Encyclopaedic Edition "misconduct" is defined as to behave improperly, to mismanage, improper conduct, bad behaviour. In the New Oxford American Dictionary, "misconduct" is defined to mean unacceptable or improper behaviour. In the Law Lexicon, P. Ramanatha Aiyar the term "misconduct" is described to imply a wrong intention, and not a mere error of judgment. In Black's Law Dictionary, Eighth Edition, official misconduct means a public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. Insofar as the expression "disgraceful" is concerned, the New Oxford American Dictionary explains it to mean shockingly unacceptable. In the New international Webster's Comprehensive Dictionary "disgraceful" is set out as characterized by or causing disgrace, shameful. In P. Ramanatha Aiyar's Law Lexicon "disgraceful conduct" is described as shameful behaviour. It further set out that it need not be circumscribed to something done in the course of one's duty as member or office bearer. The term means any allegation which, because it is done by an elected member or office bearer is sufficiently apprehensible to be classified as disgraceful. It is in that context that we may consider the order passed against the petitioner and whether the material justified the passing of the order.

11. He submits that applying the same analogy to the facts of the present case, it can be seen that the conduct of the petitioner in allotting a plot of land in

favour of the Trust, of which her husband is President and permitting an unauthorised construction, on his behalf, would also amount to disgraceful conduct and invite disqualification u/s 55-A. He submits that the present case is squarely covered by the judgment of the Division Bench in the case of Ramesh Korde (cited supra) and as such, the respondent No. 2 deserves to be held disqualified to hold the post of President of the Municipal Council.

12. Mrs. Jog, learned Counsel appearing on behalf of respondent Nos. 1, 3 and 4 submits that the respondent No. 1, on the basis of the material placed before it, found that the respondent No. 2 was not disqualified under the provisions of Section 55-A of the said Act. She submits that respondent No. 1, upon appreciation of the material placed before it, has come to a finding of fact that it requires no interference in exercise of the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

13. Mr. S. P. Dharmadhikari, learned Counsel for respondent No. 2 submits that the principles of natural justice requires that the complainant would succeed or fail on the basis of the averments made in the complaint. He submits that if the averments in the complaint are read, no case is made out for disqualification u/s 55 of the said Act. He submits that reliance placed by the petitioner on the report of the Collector, which finds that the agreement dt. 12-7-2001 is ante-dated is wholly misplaced, inasmuch as neither there is an allegation to that effect in the complaint nor in the findings of the Collector arrived at by giving any hearing to the parties concerned. He submits that since all the acts alleged are prior to the date on which respondent No. 2 assumed the office i.e. 18-12-2001, the petitioner cannot in any way be held to have incurred disqualification for the said acts. He submits that even on facts, the act alleged do not in any case amounts to misconduct or disgraceful conduct.

14. Mr. S. P. Dharmadhikari, Advocate further submits that the judgment of the Division Bench of this Court in the case of Ramesh Korde has been delivered without taking into consideration the judgment of another Division Bench in the case of Dilip Jejani Vs. State of Maharashtra and Others, . He submits that the Division Bench in the case of Dilip Jejani has held that Sections 42 and 44 of the said Act operates in different spheres. He further submits that the Division Bench has further held that if it is found that the act complained of falls within the ambit of disqualification contained u/s 16 or Section 44, then the procedure laid down in Section 44 has to be followed and for that, the competent Authority to exercise the power would be Collector and not the State Government. He submits that the disqualification contained in Sections 16 and 44 would not fall within the compass of disqualification u/s 42 of the said Act. The learned Counsel submits that since the Division Bench itself in the case of Ramesh Korde has held that President is also a Councillor, then the remedy for disqualification on the grounds enumerated under Sections 16 and 44 is by way of complaint to the Collector and the proceedings before the State Government are not tenable. Relying on the provisions of the Sub-section (7) of Section 2 of the said Act, he

submits that the definition of Councillor has been so amended so as to include elected President as a Councillor. He, therefore, submits that, applying the principle that when a Statute defines a term, such term is governed by the definition every time it occurs in the statute, unless by necessary implication the definition becomes inapplicable, that it will have to be held that there is nothing in Section 44 which could be said to be not applicable to the elected President. He further submits that the proceedings u/s 55-A for disqualification which is under Sections 16 and 44 were itself untenable. In support of this proposition, reliance is placed on the judgment of the Apex Court in the case of S.K. Gupta and Another Vs. K.P. Jain and Another, . He further submits that if statute provides any statutory fiction then it has to be carried to a logical end. In support of this proposition, he relies on the judgment of the Apex Court in the case of Syedabad Tea Company Limited Vs. State of Bihar, .

15. Taking into consideration the allegations in the present petition, we had also called for the original file of respondent No. 1, for our perusal.

16. Since we find that the petitioner has failed to make out a case for disqualification of respondent No. 2 on the basis of the factual matrix, we do not find it necessary to go into the other contentions raised on behalf of the petitioner or respondent No. 2.

17. Accepting the contention of the petitioner that disqualification mentioned in Sections 16 and 44 of the said Act could also have to be read as disqualification for the purpose of Section 55-A of the said Act, the case of the petitioner, at its best could fall u/s 16(1)(i) and Section 44(e) of the said Act. Section 16(1)(i) reads thus :

Disqualifications for becoming a Councillor. -- (1) No person shall be qualified to become a Councillor whether by election, or nomination, who --

has been so disqualified by or under any law,

(i) for the time being in force for the purpose of elections to the Legislature of the State :

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.

It is also relevant to note Sub-section 3(a) of Section 16 of the said Act which reads thus :

(3) A person shall not be deemed to have incurred disqualification under Clause (i) of Sub-section (1) by reason of his, --

(a) having any share or interest in any lease, sale or purchase of any immovable property or in any agreement for the same.

Sub-section (b) and Sub-section (e) of Section 44 of the said Act reads thus :

"Disqualification of Councillor during his term of office :

(b) as a Councillor or a member of any committee of the Council votes in favour of any matters in which he has directly or indirectly by himself or his partner any such share or interest as is described in Clauses (a), (b), (c), (e) and (g) of Sub-section (3) of Section 16, whatever may be the value of such share or interest or in which he is professionally interested on behalf of a client, principal or other person; or

(e) has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 (Mah.XXXVII of 1966) or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure;

Section 55-A of the said Act reads thus :

"Removal of President and Vice-President by Government. -- Without prejudice to the-provisions of Sections 51-A and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for reelection or re-appointment as President or Vice-President, as the case may be, during the remainder of the term of office of the Councillors : Provided that, no such President or Vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation.

18. While considering as to whether the complainant had made out a case for disqualification of an elected member of the Deolali Cantonment Board in the case of Nisar Ahmad Ibrahim Khan Vs. Deolali Cantonment Board and Others, , the Apex Court has observed thus :

"A person, who assails the election of a returned candidate on the ground that the latter suffered from a disqualification by the statutory standards incurs the evidential burden of establishing the facts that invoke the disqualification."

19. The Apex Court, while considering the case of disqualification of an elected President of the Municipal Council under the provisions of the Punjab Municipal Act, 1911 in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, , has observed thus:

In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the

constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out."

20. The Apex Court in the case of Baldev Singh Gandhi Vs. State of Punjab and Others, , while considering disqualification of an elected Municipal Councillor under the same Act, has observed thus :

"Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct". Thus, ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meanings of the expression "misconduct", we, therefore, have to construe the expression "misconduct" with reference to the subject and the context wherein the said expression occurs, regard being had to the aims and objects of the statute."

21. In the light of the aforesaid observations of the Apex Court, we will have to examine the present case. The action u/s 55-A is drastic inasmuch as it curtails remainder of the term of elected President and therefore, it infringes the right of such an elected President, so also electoral college to complete the term for which he is elected. It also casts stigma on a person holding a public office. We will have, therefore, to examine the allegations made in the complaint.

22. The allegations are two fold. Firstly, that though the Municipal Council, vide resolution of the General Body dt. 23-3-2001, had taken back the land allotted to the said Society, the Chief Officer of the Municipal Council has executed an agreement dt. 12-7-2001 thereby leasing out the said land to the said Trust, the President of which Trust was husband of respondent No. 2 and as such, the said amounts to disgraceful conduct inviting disqualification u/s 55-A. Secondly, though the land in question was leased out for development of garden and tree plantation, the same was being used for school purpose and for that purpose, illegal construction was also made and that the same was done in connivance with and with the active participation of respondent No. 1 for helping her husband. As such, respondent No. 2 has incurred disqualification under Sections 42 and 16 of the said Act.

23. It can, thus, be seen that the first allegation pertains to Section 16(1)(i) of the said Act and the second allegation pertains to Section 44(e) of the said Act.

24. Insofar as the first allegation is concerned, it can be seen from perusal of Sub-section 3(a) of Section 16 that a person shall not be deemed to have incurred disqualification under Clause (i) of Section (1) by reason of his having any share or interest in any lease, sale or purchase of any immovable property or any agreement for the same. Therefore, merely because the husband of respondent No. 2 has any share or interest in the lease of the said land, it will

not be sufficient enough to invite provisions of Section 16(1)(i) of the said Act for disqualification. Only when a Councillor as a Councillor or a member of any committee votes in favour of any matter, in which he has, directly or indirectly by himself or his partner, any such share or interest as described in Clauses (a), (b), (c), (e) and (g) of Sub-section (3) of Section 16, it would invite disqualification as provided under Sections 16 and 44(b) of the said Act. In the present case, we have perused the entire record. In the reply, which is filed on behalf of the Municipal Council before the State Government, it is stated that the said Trust, of which the husband of the petitioner is President, had applied for grant of lease of the said land for purposeful use in the year 1996. It is stated in the reply that on 4-9-1996 the said land was granted on temporary basis to the said Trust and thereafter, vide resolution No. 18 of the Municipal Council, in its meeting dt. 16-11-1997, it was resolved to allot the said land to the said Trust for a period of seven years. It is also stated in the reply that, vide resolution No. 29, in the meeting dt. 23rd March, 2001, a part of the said land was allotted to one Ganesh Shikshan Shanstha. It is stated in the reply that though possession of the said land was given to the said Trust on 4-9-1996 and though the said Trust was informed vide communication dt. 18-7-1997 to get the agreement executed, the agreement was in fact executed on 12-7-2001. It is, therefore, stated in the reply that the decision regarding allotment of the said land to the said Trust as well as said Ganesh Shikshan Sanstha was much prior to the date on which the respondent No. 2 had assumed charge of President of the Municipal Council. The Chief Officer of the Municipal Council has also stated that allotment of the said land was on the basis of communication of the State Government dt. 6-6-1996. We have also perused the communication dt. 18-7-1997 and the resolution of Municipal Council dt. 16-7-1997 which is on record of the file of respondent No. 1. The said communication dt. 18-7-1997 refers to the resolution dt 16-7-1997 and perusal of the resolution dt. 16-7-1997 would show that though the land was allotted to the said Trust on temporary basis on 4-9-1996, it was resolved to grant the said land to the said Trust for a future period of seven years for the purpose of tree plantation and development of garden. We have perused the agreement dt. 12-7-2001. On perusal of the agreement, it is clear that the same is signed by the President of the said Trust i.e. husband of respondent No. 2 and the Chief Officer of respondent No. 5-Municipal Council. On perusal of the agreement, it is clear that the said agreement is executed on the stamp paper which is purchased on 11-7-2001. It is, therefore, difficult to appreciate as to on what basis the Collector has come to a finding that the agreement is back dated. The so-called compromise between the Municipal Council, the President of the said Trust and the Ganesh Shikshan Shanstha, which is alleged to have been executed on 1-4-2002, on perusal would show that though the lands were earlier allotted to the said Trust as well as said Ganesh Shikshan Sanstha, said Ganesh Shikshan Sanstha had encroached upon the land which was allotted to the said Trust, it was, therefore, compromised that the land on which said Ganesh Shikshan Sanstha had constructed a tin shed should be allotted to the share of Ganesh Shikshan Sanstha. Accordingly, demarcation was done in the land. We

find that the finding of the Collector in this respect appears to be on conjectures and surmises. In any case, before arriving at such a finding of fact, respondent No. 3-Collector has not given any opportunity to respondent No. 2 of explaining her stand and therefore, in our view, the said finding in the report is not of much assistance to the case of the petitioner. In any case, the petitioner has not even whispered in his complaint regarding possibility of the said agreements being back dated. As laid down in the aforesaid judgments of the Apex Court, it is duty of the complainant not only to make specific allegation so as to fit the same in the grounds mentioned in the statutory disqualification, but also to establish the same by placing cogent material. We find that the petitioner has utterly failed to do so. We, therefore, find that allotment of said land in favour of the said Trust is much prior to the date on which the petitioner was elected and assumed charge as a President of the Municipal Council. In any case, stretching the case of the petitioner to the extremity, even if the husband of the petitioner has any share or interest in the said lease, then merely by having such share or interest, a case is not made out for disqualification u/s 16(1)(i), unless it is proved that such Councillor, as a Councillor or a member of Committee has voted in favour of a resolution of any matter in which he has share or interest as contemplated in any of the clauses in Sub-section (3) of Section 16. This is not the case of the petitioner. Even factually also it cannot be; since the resolution to award the land to the said Trust was passed in the year 1997 i.e. much prior to the date on which respondent No. 2 was elected as a President.

25. Now we come to the second allegation. For establishing that a case is made out for disqualification u/s 44(e), the petitioner has to allege and establish either of the following things :

- 1) that the respondent No. 2 has constructed or constructs by her or by her spouse or her dependent any illegal or unauthorized structure violating the provisions of the said Act or M.R.T.P. Act or rules or bye-laws framed under the said Act.
- 2) has directly or indirectly been responsible for or helped in his capacity as such Councillor in carrying out such illegal or unauthorised construction.
- 3) has by written communication or physically obstructed or trying to obstruct any competent authority from discharging its official duty in demolishing any illegal or unauthorised structure.

26. As held by the Apex Court in the case of Tarlochan Dev Sharma (cited supra), the case of availability"" of ground squarely falling within the provision providing for disqualification must be clearly made out. As held by the Apex Court in the case of Nisar Ahmed, a person who assails the election on the ground of disqualification by statutory standards, incurs evidential burden of establishing the facts that invite the disqualification. The only allegation made by the petitioner in this behalf is that the land which is allotted to the said Trust is being used for the school purpose and for that purpose, illegal construction is being

made. It is alleged that this has been done in connivance with and with the active participation of respondent No. 2 for helping her husband. Apart from making these allegations, nothing more can be found in the complaint. Perusal of the record would also show that the petitioner has not discharged the burden on him by producing any material on record so as to establish that any of the actions complained squarely stands within the ambit of the aforesaid three grounds. We find that mere allegation in this respect is not sufficient enough to discharge the burden of a person who invokes the jurisdiction for disqualification on a statutory ground. It is necessary for such a person, to establish the allegations made by producing cogent material. Though reliance is sought to be placed even for this purpose on the report of the Collector, we are unable to accept that the said report would be sufficient enough to discharge the burden that lies on the complainant. In any case, as we have observed hereinabove that the report of the Collector is without giving opportunity of being heard to the respondent No. 2 or offering her explanation, it cannot be relied on. From the allegations and the material relied by the petitioner, we find that the petitioner has failed to establish that a case is made out for incurring disqualification under 44(e) on any of the aforesaid grounds. Even factually, from the perusal of the record, it is difficult to accept that the so-called construction is in any way illegal or unauthorised. Perusal of the record would show that vide order dt. 18-7-2001 the Chief Officer of respondent No. 5-Municipal Council has granted permission to the President of the said Trust to make construction of the tin shed on a temporary basis. It can thus be seen that the construction made by the said Trust has been made with prior approval of respondent No. 5-Municipal Council. It has also to be noted that on the date on which said permission was granted i.e. 18-7-2001, respondent No. 2 was not President of the Municipal Council, but she assumed the charge of the said office only on 18-12-2001. We, therefore, find that the petitioner has also failed to make out a case of disqualification u/s 44(e) of the said Act; insofar as the first ground is concerned, we find that the said construction was constructed in view of the permission granted by the Chief Officer of respondent No. 1-Municipal Council, much prior to the date on which respondent No. 2 has assumed the office of President of Municipal Council and therefore, a case for disqualification is not made out on the said ground. Insofar as the second ground is concerned, it has to be established that the Councillor has directly or indirectly been responsible for or has helped in his capacity as such Councillor in carrying out any illegal or unauthorised construction. It is, thus, clear that the said disqualification would incur if a Councillor, directly or indirectly, is responsible or has helped in his capacity as such Councillor in carrying out the illegal or unauthorised construction. It is not in dispute that the construction, which is made is prior to the date on which respondent No. 2 has assumed the charge and therefore, the case of the petitioner would also not fit in this ground. Insofar as the third ground is concerned, it is not even the allegation that the respondent No. 2 has obstructed the competent authority either by written communication or has physically obstructed or tried to obstruct any competent authority from discharging its official duty in demolishing any illegal

or unauthorised construction. Therefore, the case of the petitioner would also not fall under the third ground. We, therefore, find that the petitioner has utterly failed to make out the case for disqualification u/s 44(e) of the said Act.

27. Insofar as reliance placed on behalf of the learned Counsel for the petitioner on the judgment of this Court in the case of Ramesh Korde (cited supra) is concerned, we find that the ratio laid down in the aforesaid case would not be applicable to the facts of the present case. In the aforesaid case, the President of the Municipal Council had opened a joint account with a partner of a firm who was allotted contract for construction on behalf of the Municipal Council. On facts, it was proved that the Municipal Council has deposited the payment to be made to the said Contractor in the aforesaid joint account. The same was withdrawn in cash. The Court, therefore, came to the conclusion that the inference which could be drawn by a reasonable man was that the President of the Municipal Council has share or interest in the said work. This Court, therefore, came to the conclusion that the case is made out for disqualification u/s 16(1)(i) of the said Act and as such, it also came to the conclusion that the conduct of the petitioner therein was disgraceful. The same is not the case here. On the facts of the present case, the petitioner has miserably failed to make out a case for disqualification u/s 16(1)(i) read with Section 44(b) of the said Act and also u/s 44(e) of the said Act.

28. Insofar as the allegation regarding the draft order finding the respondent No. 2 liable for disqualification and the final order exonerating the respondent No. 2 is concerned, we do not find any merit in the said contention also. It is a settled law that the Authority which hears the matter is bound to follow its own best judgments. The Authority is not expected to be guided by the departmental notings. But it has to arrive at its own conclusion on the basis of subjective satisfaction by adopting process of reasoning. It appears that the first draft order and the departmental notings are prepared only on the basis of the report of the Collector. However, it appears that the Hon"ble Minister, who heard the matter on behalf of respondent No. 1, after taking into consideration the material placed on record and particularly, the reply of respondent No. 2, so also the reply of Municipal Council, came to a finding of fact that the acts alleged were much prior to the date on which the respondent No. 1 has assumed charge of the Municipal Council and therefore, he held that she was not liable to be disqualified under the provisions of the Section 55-A of the said Act. We find that it was not necessary for Hon"ble Minister to take a decision dictated by departmental notings and report of the Collector. We find that the Hon"ble Minister has rightly decided the matter by following his own best judgments and arrived at subjective satisfaction after considering the relevant material. We do not find that the order of the Hon"ble Minister is in any way vitiated by non-consideration of relevant material or consideration of extraneous material. The contention in this respect will, therefore, also have to be rejected. We, therefore, find that the petition is devoid of merits and as such, it is dismissed.

29. Since the subject-matter of challenge before us was limited to that part of order dt. 9-7-2003 passed by respondent No. 1 which holds that respondent No. 2 is not disqualified, nothing observed herein should be construed as having bearing on that part of the order by which the respondent No. 1 has directed respondent No. 3-Collector to take action regarding unauthorised construction.

The original record and proceedings of respondent No. 1 be handed over to the learned Assistant Government Pleader for returning it to the respondent No. 1.

Rule is accordingly discharged with no orders as to costs.