
(2007) 08 RAJ CK 0087
In the Rajasthan High Court

Pradeep Hinger

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2008) 1 RLW 456

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—The petitioner was elected as Member of the Municipal Council, Pali in the month of November, 2004 from Ward No.11 on the basis of ticket given by the Congress Party and was elected as Chairman of the Municipal Council, Pali on 27.11.2004. The petitioner has been suspended from the post of Chairman, Municipal Council, Pali by the State Government u/s 63(4) of the Rajasthan Municipalities Act, 1959 vide order dated 11.6.2007, hence the petitioner in this writ petition has challenged the order passed by respondent No. 1 dated 11.6.2007 (Annex. II) by which the petitioner has been suspended from the post of Chairman, Municipal Council, Pali.

2. According to the petitioner he was discharging the duties with utmost sincerity and honesty. In last more than two and half years of the tenure, no serious complaint of any misconduct has been made against the petitioner except some false complaints made by Shri Gyan Chand Parakh, MLA, Pali. Because of prejudice of rival political party, the ruling party in the State of Rajasthan and the petitioner being member of Congress Party, the complaints were submitted against the petitioner by the local MLA. The petitioner also submitted that he is aspirant for the MLA seat from Pali as Congress Party candidate, therefore, the local sitting MLA who is from BJP wants to tarnish the image of the petitioner. On the basis of these complaints, the Additional Director, Directorate, Local Bodies came to Pali for enquiry. The Additional Director conducted the thorough enquiry

in each and every allegation levelled in the complaints and has thereafter submitted his report on 24.1.2007. The copy of the complaints made against the petitioner, in bunch has been placed on record as Annex. 1. The copy of the enquiry report dated 24.1.2007 has been placed on record as Annex. 2. According to the petitioner, in the said report dated 24.1.2007 submitted by the Additional Director, Local Bodies to the Government, has proposed some action against the LDC and UDC of the Municipal Council, Pali but gave a specific finding that the Chairman-petitioner is not involved in tempering with the record of the Municipal Council, Pali particularly in the pattas of some plots for which complaints have been lodged. In the report it is also specifically observed that when the irregularity in respect of Pattas No. 5 and 23A came in the knowledge of the Chairman, he immediately stopped permission of the construction over the said plots. However, in the report it is mentioned that the Chairman has adopted a lax attitude by not filing FIR in the police. It was further observed in the report that in the matter of land allotment to INTUC, a wing of the Congress Party, the Commissioner as well as the Chairman of the Board have not taken effective proceedings when the INTUC has used the plot allotted on concessional rate for commercial purposes by raising several shops over it and, therefore, the explanation should be sought from the Commissioner/Chairman of the Municipal Council, Pali.

3. On 2.2.2007, the petitioner received an order from respondent No. 2-Deputy Secretary, Local Self Department, Government of Rajasthan, Jaipur, who directed the petitioner to lodge the FIR with the police in respect of irregularity found in the various Pattas in the enquiry report (Annex. 2). The petitioner also received another notice of the same date i.e., 2.2.2007 whereby the petitioner was asked to submit his explanation in respect of not filing FIR in the cases of Plots No. 5 and 23A and for not taking any further action in the case of use of concessional rate allotted land by the INTUC for commercial purpose after giving notice u/s 170 of the Act of 1959. The copy of this notice is also placed on record as Annex. 4. According to the petitioner, on receipt of the order dated 2.2.2007 (Annex. 3), on the next day on 3.2.2007, the petitioner submitted a report to the SHO, Police Station, Kotwali and requested him to lodge FIR. The copy of the communication sent to the SHO, Police Station, Kotwali is also submitted by the petitioner as Annex. 5. According to the petitioner, the SHO, Police Station, Kotwali, Pali returned the complaint to the petitioner at 10.00 p.m. in the night on 3.2.2007 itself by saying that in respect of Plots No. 18, 5 and 16, FIRs have already been lodged by some individuals and the investigations are going on. The concerned SHO further informed the petitioner that in respect of Plots No. 23-A, 37 and 38, details should be supplied that who forged and tempered with the pattas and separate FIR for each plot should be submitted along with all original record then only the FIRs can be registered. After receipt of the communication from the SHO, Police Station (Annex. 6), the petitioner immediately directed the Commissioner, Municipal Council, Pali to approach the SHO, Police Station, Kotwali along with original record and all other details for which the SHO, Police

Station, Kotwali has asked vide letter dated 3.2.2007. The copy of the directions issued by the petitioner to the Commissioner, Municipal Council, Pali is placed on record as Annex. 7. In that way, the FIRs have already been lodged against the suspected persons in respect of Plots No. 23-A, 37 and 38.

4. In response to the notice dated 2.2.2007 by which the explanation was sought from the petitioner, by the Director, Local Self Bodies, the petitioner submitted his representation dated 9.2.2007 and also asked for the copies of certain documents for the purpose of filing detail explanation in response to the notice. The copies of the relevant documents were not supplied to the petitioner, then again the petitioner on 17.2.2007 requested for copies of the documents. On 26.2.2007, the Additional Director, Directorate Local Bodies, Government of India informed the petitioner to inspect the record in office time at the Directorate Jaipur and to file reply within 15 days. On 8.3.2007, the petitioner again moved representation and requested for documents for the purpose of filing reply to the notice dated 2.2.2007. Ultimately, the Deputy Secretary, Local Bodies, Govt. of Rajasthan, Jaipur issued order on 13.3.2007 whereby the copy of the complaints made by the local MLA Shri Gyan Chand Parakh, copy of the report of the Additional Director, Directorate, Local Bodies dated 24.1.2007 were supplied to the petitioner but no other document for which the petitioner made request were given and the petitioner was asked to submit his explanation within three days upto 16.3.2007. The petitioner also placed on record copy of the order-sheet dated 13.3.2007 as Annex. 9. According to the petitioner, the Commissioner of the Municipal Council, Pali supplied order dated 13.3.2007 to the petitioner on 14.3.2007 at 9.15 p.m. In that situation, the petitioner was left with no option and he immediately rushed at Jaipur for filing the reply on 16.3.2007. The petitioner submitted his reply contending that all the documents have not been supplied to the petitioner and, therefore, he is filing the interim reply with the request to provide him opportunity of personal hearing before taking any decision and the petitioner also submitted to withdraw the notice dated 2.2.2007. The petitioner also placed on record copy of the reply submitted by him before respondent No. 2 as Annex. 10. According to the petitioner, by his reply, he made all the facts straight and clear before the concerned authority and informed the concerned authority that the Municipal Council, Pali was directed to lodge FIR at the Police Station, Kotwali, Pali in respect of Plot No. 5 and in respect of plot No. 23-A, the FIR has already been lodged with the police. The petitioner, in reply, further stated that in the matter of land use by the INTUC for commercial purpose, a notice u/s 170 of the Act of 1959 was already issued to the allottee on 24.4.2006 and thereafter, the INTUC applied for change of land use and has also deposited the requisite charges for and on which the Commissioner, Municipal Council, Pali has already allowed the change of land use. The petitioner, in his reply, stated that the petitioner was not informed by any authority regarding the commercial use of the land by the INTUC and the Commissioner, Municipal Council is only authority empowered to take action against the violators as per the notifications issued under the provisions of the Act of 1959.

5. According to the petitioner, thereafter the petitioner heard nothing on his representation but the petitioner came to know from some other persons that there is a news on one news-channel conveying that the Chairman of the Municipal Council, Pali has been suspended. This news came on 11.6.2007. Then the petitioner obtained the copy of the suspension order dated 11.6.2007 at about 10 p.m. by Fax. The copy of this suspension order dated 11.6.2007 has been submitted by the petitioner along with the writ petition as Annex : 11. By this order dated 11.6.2007, the State Government decided to initiate proceeding against the petitioner u/s 63 of the Municipalities Act and by invoking power u/s 63 (4) of the Act of 1959, the petitioner has been suspended from the post of Chairman and Member of the Municipal Council, Pali. In the background of these facts, the petitioner has to file the present writ petition.

6. According to the petitioner, the order dated 11.6.2007 (Annex. 11) is in violation to the provisions of Section 63 of the Act of 1959. According to the petitioner, till the date of passing order dated 11.6.2007, the State Government has not drawn up a statement of charge against the petitioner and has not sent the same for enquiry to the judicial officer u/s 63(2) of the Act of 1959. Therefore, according to the petitioner, the proceeding u/s 63 of the Act of 1959 has not commenced against the petitioner and, therefore, power u/s 63(4) of the Act of 1959 cannot be invoked. The power under Sub-section (4) of Section 63 can be exercised only after commencement of the proceeding u/s 63. The learned Counsel for the petitioner relied upon the Division Bench judgment of this Court delivered in the case of Sohan Lal Mareja v. The State of Raj. and Ors. D.B. Civil Special Appeal No. 626/2004 decided on 18.1.2005, wherein though the matter was different but the entire scheme of Section 63 has been examined by the Division Bench of this Court even with respect to the power of the State Government in suspending the Member of the Municipal Board/Council.

7. It is also submitted that before passing order dated 11.6.2007, the respondent No. 2 has not applied his mind on the explanation given by the petitioner and also has not considered the enquiry report dated 24.1.2007 (Annex. 2) submitted by the Additional Director, Local Bodies. According to the petitioner, the Additional Director specifically gave a finding that the petitioner was not involved in tempering with the record of the Municipal Council, Pali and after knowing about the irregularities in some pattas, the Chairman immediately stopped the permission for raising construction over the disputed plots. In the explanation Annex. 10, the petitioner specifically clarified that in respect of plot No. 5, he has already set up a Committee way back on 25.2.2006 and the enquiry committee has not submitted its report till date. The petitioner also made it clear that immediately after direction of the State Government on 2.2.2007, the petitioner proceeded to lodge FIR against the culprits. Therefore, it cannot be said that the petitioner was guilty of any inaction on his part. In respect of plot No. 23-A, there is not a single whisper in the enquiry report (Annex. 2) about the involvement of the petitioner. According to the petitioner, in the enquiry report, the Additional Director specifically observed that in case of

violation of conditions of allotment by the INTUC, the board has failed to take effective steps and it has not been held by the enquiry officer that solely the Chairman has failed to take effective steps. According to the petitioner, the petitioner cannot be blamed for any irregularity, misconduct or abuse of power as Chairman of the Municipal Council, Pali as the observations in the enquiry report are in favour of the petitioner and some observations are not reflecting against the petitioner's conduct.

8. The petitioner also submitted that the action of the suspension of the petitioner is malafide and is the result of political vendetta on the basis of the facts already referred above. According to the petitioner, the petitioner's suspension is an stigma in the political career of the petitioner and in the facts and circumstances of the case, no case for suspension is made out against the petitioner. The petitioner also submitted that it is impossible to say that the petitioner, as a Chairman of the Municipal Council, Pali, will affect the enquiry in any manner and, therefore, the suspension is unwarranted. The petitioner's contention of malafide is malafide in law and not against any person as such.

9. The petitioner further submitted that even if it is assumed that there was some laxity on the part of the petitioner in not taking action against the INTUC then also such a single inaction cannot be termed as an abuse of power in any manner, nor it can be said that the petitioner became unworthy of holding the office of Chairman. The petitioner further submitted that on several occasions, the petitioner directed to take disciplinary action against the employees who were not following the instructions and the resolutions of the Municipalities.

10. The learned Counsel for the petitioner vehemently submitted that the order of suspension passed against the petitioner is a clear case of malafide in law because of the reason that the respondents have not applied their mind to the facts of the case and passed the order of suspension only to achieve their object of tarnishing image of the petitioner for political gain. Not only this, the respondents did not look into the relevant provisions of law as well as the law laid down by the Hon'ble Supreme Court and the High Court in various judgments in the matter of taking action of suspending the elected member. Further, the respondents did not examine whether any of the action or inaction of the petitioner which are under consideration fall in any of the category given u/s 63(1) of the Act of 1959 for initiation of any proceeding for removal of the petitioner from the membership of the Municipal Council or from the post of Chair Person of the Municipal Council. Assuming for the sake of argument that there was some laxity on the part of the petitioner, which was in fact is not there, then the only allegations for which the judicial enquiry has been ordered, are that in some of the pattas of some plots, some over-writing/interpolation have been made. In the matter of plot No. 5 of Surya Colony and Plot No. 23-A of the Kasturba Nagar, some irregularities have been came to the notice, obviously in the knowledge of the Chairman but no FIR was lodged with respect to these irregularities by the Chairman. The another allegation is that in the matter of

land allotted to INTUC when the INTUC converted the land to commercial use, no effective step was taken, obviously by the petitioner except sending a notice u/s 170 of the Rajasthan Municipalities Act on 20.4.2006. According to the learned Counsel for the petitioner, in the enquiry report submitted by the Additional Director himself dated 24.1.2007, the finding has been recorded by the enquiry officer that the involvement of the petitioner in interpolation of the record has not been proved, therefore, so far as allegation of interpolation in any record of the Municipal Council, Pali is concerned, is not against the petitioner. The only allegation against the petitioner is that he has not lodged FIR even when the fact of irregularities about these plots were brought to the notice of the petitioner. For this allegation, the petitioner immediately in pursuance of the communication dated 2.2.2007, on the next date only i.e., 3.2.2007, submitted report to the SHO, Police Station, Kotwali, Pali and requested him to register FIR. Assuming for the sake of argument that if there would not have been any FIR lodged by the petitioner even then that itself cannot be termed to be the misconduct of the petitioner in the light of the decision of the Hon"ble Supreme Court given in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, . The same is the position about the second allegation which is allegation that the petitioner on conversion of land allotted on concessional rate to INTUC to commercial use, has not taken any further action except issuing notice u/s 170 of the Rajasthan Municipalities Act. Assuming for the sake of argument that any further action was needed in the above two matters, then also the authorised person was" only the Commissioner of the Municipal Council, Pali who was required to take action in view of Government order dated 25.11.2006 (Annex. 12). According to the learned Counsel for the petitioner, the Hon"ble Supreme Court in the case of Tarlochan Dev Sharma (supra) clearly held that a singular or casual aberration or failure in exercise of power is not sufficient for holding any person guilty of abusing the power as of authority and non- exercise of power or an indecision is not an abuse of power. The abuse of power must, willful abuse or an intentional wrong. The decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. Hon"ble the Supreme Court held that it must be such an abuse of power which would render a councilor unworthy of holding the office of President. The Hon"ble Supreme Court clearly held that an abuse of power would entail adverse civil consequences, therefore, the expression has to be narrowly construed.

11. For removal of Member including Chairman of the Municipal Council, the proceeding can be initiated on the grounds mentioned under Sub-section (1) of Section 63 of the Act of 1959 only. There is no allegation against the petitioner under Sub-clauses (a), (b) and (c) of Sub-section (1) of Section 63. From the allegations, it appears that the respondents" intention to cover it under Sub-clause (d) of Sub-section (1) of Section 63. Clause (d) of Sub-section (1) of Section 63 is about the (i) misconduct in discharging of the duties, (ii) is one being guilty of any disgraceful conduct, (iii) become incapable of performing his duties as a member and (iv) otherwise abused in any manner his position as

such member. The petitioner's case is not falling in any of the categories, even under Sub-clause (d) of Sub-section (1) of Section 63 of the Act of 1959 in the light of the law laid down by the Hon'ble Apex Court in the judgment referred above.

12. According to the learned Counsel for the petitioner, the Division Bench of this Court in the case of Jan Mohd. Vs. The State of Rajasthan and Others, clearly held that holders of elective public posts cannot be equated with the Government servants and, therefore, before a holder of an elected post is suspended, the Government must have sufficient reason to do so. Care should be taken that such suspensions should not be arbitrary and should not be brought about for political motives and consideration. According to the petitioner, by presence of the petitioner on the post of the Chairman, Municipal Council, the enquiry as it may be, cannot be adversely affected because of the plain and simple reason that the acts are concluded acts of not lodging FIR before particular time and not taking mere action against INTUC. The petitioner now cannot lodge FIR as Chairman of the Municipal Council so as to affect the enquiry in any manner. If the action can be taken u/s 63 of the Act of 1959, then that will be taken according to the events which took place prior to now. The same is position with respect to the second allegation of not taking any further action in the matter of change of use of land by the INTUC as the fact is admitted fact what has been done by the petitioner and what has not been done by the petitioner. The allegation relates to the matter of record and, therefore, also by the presence of the petitioner, in the Municipal Council, as Chairman of the Municipal Council, the enquiry cannot be affected. It is also submitted that all allegations are required to be proved and disproved only by documentary evidence which have already been collected by the concerned officers and they cannot be manipulated in any manner so as to affect the enquiry. It is submitted that the order of suspension cannot be merely on the ground that the State has decided to hold an enquiry through judicial officer under Sub-section (2) of Section 63 by referring the matter to the judicial officer. The suspension has its own aim and object and is not a natural consequence of the decision of the State Government for holding enquiry through judicial member under the provisions of Section 63 of the Act of 1959.

13. This Court in the case of Nandlal v. The State of Rajasthan 1996(2) WLC 497 held that the whole idea of suspension is that the suspended person does not cause any embarrassment in the enquiry proceeding and his presence in the office should not prejudice the enquiry. Under Sub-section (2) of Section 63, the enquiry can be conducted only by the judicial officer that too of the rank of District Judge and this fact if kept in mind then no case is made out for suspension of the petitioner from the post of Chairman Municipal Council, Pali. Since neither the facts have been considered nor the reasons have been looked into for suspending the petitioner from the post of Chairman of the Municipality nor the respondents prima facie reached to conclusion that the presence of the petitioner on the post of Chairman may cause any embarrassment in the enquiry

proceedings or his presence in the office would prejudice or affect the enquiry, therefore, it is clear case of malafide in law as well as arbitrary exercise of power by the State.

14. Lastly the learned Counsel for the petitioner vehemently submitted that if on the allegation of only not taking "mere steps" or "further action" only if an elected chair person of Municipal Council can be suspended then not a single chair person of Municipal Body can remain on post because of simple reason that normally no FIRs are lodged in all cases of encroachment upon the Government lands which involves immovable property of Municipal body. Even there may not be a single Municipality in the State where FIRs have been lodged in all such type of cases, then it is a clear case of arbitrarily choosing the petitioner alone out of all similarly situated persons. In present case, private parties have already lodged FIR for the offences which may have been committed by others and if property allotted to INTUC required to be taken back from INTUC then that can be taken now and the Municipality has not lost its said right.

15. Shri N.M. Lodha, Addl. Advocate General appearing on behalf of the respondent-State raised preliminary objection about the maintainability of the writ petition. According to the learned Counsel for the respondents, the petitioner in his writ petition stated absolutely wrong facts and, therefore, on this ground alone the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and the writ petition may be dismissed only on this ground alone. The learned Counsel for the respondents relied upon the judgment of this Court delivered in the case of Radhey Shyam v. Shri Vijai Singh, District Magistrate, Sri Ganganagar and Ors.ILR 1972 raj 968 wherein this Court dismissed the petition of the petitioner challenging the no confidence motion passed by the Municipal Corporation, Sri Ganganagar on the ground that the petitioner has spoken a lie about his knowledge of no Confidence motion.

16. The learned Counsel for the respondents pointed out that the petitioner stated in his writ petition that there were no complaints against the petitioner about his misconduct except made by the local MLA whereas serious allegations have been levelled against the petitioner by one of the employee Mangi Lal who submitted the complaint to the District Collector Pali as well as to the Superintendent of Police, Pali, copy of which has been placed on record as Annx. R/5 dated 3.2.2007. This complaint is supported by affidavit and the copy of the affidavit is also placed on record by the respondent. Another serious allegation was levelled by one Smt. Prema Devi w/o Babu Lal against the petitioner and the complaint was submitted to the Superintendent of Police, Pali, copy of which has been placed on record as Annx. R/6. This complaint is dated 7.2.2007. The petitioner is also guilty of making absolutely false statement before this Court as the petitioner in para No. 7 of the writ petition, in last, clearly mentioned that the petitioner was not informed by any authority regarding commercial use of the land by the INTUC. According to the learned Counsel for the respondents, the property in dispute is situated at the prime location of the Pali City. Several shops

were constructed on the property in question. The land was allotted to INTUC who is one of the wing of the petitioner's own political party and this fact is clearly proved from the photographs of the huge building placed on record by the respondents along with the reply as Annex. R/4, wherein the name of the allotted as well as its connection with the petitioner's political party are clearly displayed on the building. It is also submitted that the INTUC's conversion of the land, allotted on concessional rate, for commercial purpose was also talk of the entire municipal area and serious objections against it were raised and even the news paper having wide circulation in the city of Pali, published the news on 13.12.2006 with photographs of the building. The fact of interpolation in the various Pattas was also in the knowledge of the petitioner, as about these interpolation, news was published in the news-paper, copy of which is placed on record as Annex. R./8. In view of the above, the action of the petitioner cannot be said to be mere an inaction on the part of the petitioner in taking action against some irregularities.

17. On merits, the learned Counsel for the respondents submitted that during course of arguments, since the learned Counsel for the petitioner clearly admitted that the petitioner is not challenging the initiation of the proceedings against the petitioner by the State Government u/s 63 of the Act of 1959 then the petitioner cannot make any submission questioning the merit in the allegations. In that situation when the State Government is empowered to initiate proceedings u/s 63 and the Government has before initiating the proceeding u/s 63, enquired into the matter through a competent officer and obtained the report and found from the report, reasons for holding enquiry for removal of the petitioner, u/s 63, and decided to refer the matter to judicial member after considering the petitioner's representation, then in view of the several judgments of this Court, the petitioner has no right to challenge the order of suspension which is only an interim measure. The Government is required to take decision subjectively and from the record it is clear that before passing the order of suspension, the matter was considered by the various officers at various level in the Government and there is complete consideration of the explanation of the petitioner which was submitted by the petitioner in response to the notice for submitting explanation by the petitioner. The learned Counsel for the respondent-State also shown the record in which the decision was taken by the Government to suspend the petitioner. The learned Counsel for the respondents submitted that in rejoinder the petitioner stated in pleadings that in regard to case of Pattas No. 16,37 and 38 are concerned, the petitioner has specifically ordered that since these pattas are irregular, a detail inquiry should be conducted and no permissions for constructions has been given in respect of plots situated in Naya Gaon. The said fact is patent lie as well as the petitioner himself granted construction permission over these plots, despite the objections of the officers about the genuineness of the pattas. It is also submitted that this Court shall not be holding an enquiry about the correctness of the allegations nor will record any finding on merit of the allegations. Then in view of the fact that the State

Government has fairly acted and exercised power which vests in the State Government then there arises no cause for setting aside the order passed by the State Government suspending the petitioner. The petitioner's presence will adversely affect the enquiry, is also required to be examined by the State Government and that has been examined by the State Government. The petitioner is likely to interfere in the enquiry and that is clear from the complaints submitted by Mangi Lal and Smt. Prema Devi as Annx.R.4/5 and Annx. R.4/6.

18. The learned Counsel for the respondents vehemently submitted that the petitioner tried his best to lower down the gravity of the serious allegations levelled against the petitioner. The allegations on the petitioner are in relation to immovable property as well as in relation to the property which was belonging to the Municipal Council, Pali and was given on concessional rate to the INTUC on condition that in case of violation of condition of allotment, the property shall revert back to the Municipal Council. This is virtually not taking action of taking back the property of the Municipal Council by the petitioner and, therefore, the act and omission of the petitioner is grave in nature. The reason for not taking action is apparent and that is because of the political affiliation of the petitioner with the defaulter INTUC. The petitioner being Chairman of the Municipal Council, Pali, cannot say that when after holding such highest responsible position in the Municipal Council, Pali, the action should have been taken only by the officers of the Municipal Council or any other officer in this matter. According to the learned Counsel for the respondents, it appears that the petitioner deliberately gave notice u/s 170 of the Municipalities Act to favour the INTUC, to avoid any action for cancellation of allotment of the property and recovery of Municipal property.

19. The learned Counsel Shri N.M. Lodha submitted that before passing order of suspension of Chairman or Member of the Municipal Board, no prior hearing is needed and mere bald allegation that the petitioner belonging to the political party alone cannot be a ground for setting aside the order of suspension in writ jurisdiction, as held by the judgment of this Court delivered in the case of Bhanwar Lal Chhabra v. State of Raj. and Ors. 1992 (1) RLR 436. The same view was taken in the judgment of this Court delivered in the case of Smt. Archana Bohra v. The State of Rajasthan and Ors. 1998(1) WLC 245. However, before suspending the Chairman/Member of the Municipal Board, explanation submitted by the said Chairman/Member is required to be considered before passing suspension order, as held by this Court in the case of Chhagan Kanwar Rathore v. State of Rajasthan and Ors. 2000(1) RLR 718. In above decision this Court held that before passing suspension order u/s 63(4), charges as per Section 63(2) need not be framed and condition precedent for suspending the Member/Chairman are (i) preliminary enquiry conducted, (ii) report of the preliminary enquiry considered by the Government and (iii) the Government on application of mind to the report, comes to the conclusion that further probe in the matter is required and issued notice u/s 63(2) to show cause why definite charge be not framed and be referred for judicial enquiry. This Court also held

that this is a stage where proceeding starts against delinquent and once the proceeding commences, the Government has power to suspend the Chairman/ Member even simultaneously when it decides to issue show cause notice u/s 63(2). The same was the view taken by this Court in the judgment delivered in the case of Shyam Sunder Sharma v. State of Rajasthan 1992(2) RLR 543. This Court in the case of Chander Prakash v. State of Rajasthan and Ors. 1999 DNJ 614 : RLW 1999(3) 1551 held that when suspension order is not passed as a punishment then it is only an interim measure. Therefore, in view of the fact that it is an interim order, this Court may not interfere in the order passed by the State Government by exercising powers which vest in the State Government. This Court in the case of Smt. Saroj Chotiya Vs. State of Rajasthan and Others, held the power of the State Government u/s 63(4) not violative of Article 14 or 21 of the Constitution of India. The Division Bench of this Court also considered the constitutional validity of Section 63(4) of the Act of 1959 with reference to Article 243(u) and 243(v) and thereafter dismissed the writ petition. In the alternative, the learned Counsel for the respondents submitted that in the case of Parmanand Paliwal Vs. The State of Rajasthan and Another, when suspension was made after service of charge-sheet and suspension order was challenged by the petitioner, then this Court dismissed the writ petition with the direction that in case enquiry is not completed within six months, the suspension shall stand revoked. In view of the above reasons, at the most, if this Court deems proper, may issue direction for completion of enquiry expeditiously.

20. I considered the submissions of the learned Counsel for the parties and perused the record also.

21. So far as the first preliminary objection raised by the respondents against the maintainability of the writ petition as well as for dismissal of the writ petition on the ground of making false statement of the petitioner before this Court is concerned, a bare look at the pleadings of the petitioner and referred by the learned Counsel for the respondents, clearly shows that the facts which according to the respondents were narrated falsely are that "(1)...no serious complaint of misconduct has been made against the petitioner except some false complaints made by Shri Gyan Chand Parakh, MLA, Pali...", "(2)...he (petitioner) was not informed by any authority regarding the commercial use of the land by INTUC...(Para 7 last of the writ)", "(3)...that he was never informed by any authority or anybody else regarding the use of the land for commercial purposes by the INTUC in violation of allotment conditions" (para (d) of the writ) and (4)"...it is further submitted that so far as regarding in the case of Patta Nos.16,37 and 38 of Naya Gaon are concerned, the petitioner has specifically ordered that since these pattas are irregular, a detail inquiry should be conducted and no permissions for construction has been given in respect of plots situated in Naya Gaon."

22. The first alleged false statement is that no serious complaint of any misconduct has been made against the petitioner except complaint made by local

MLA. Then that is also the statement that "no serious complaints" have been made against the petitioner. This cannot be said to be a false statement of fact. The person holding a public post or office that too as elected representative, may have to face several complaints and whether there was any serious complaint or not and that too any person against whom there may be complaint, he may state that complaint was not of serious nature or complainant was not serious in making or pursuing the complaint or the complaint was not treated to be of serious nature despite allegations are of serious nature. The Government also initiated enquiry because of several complaints lodged by the local MLA is apparent from the bunch of complaints submitted by the local MLA and copies of which are placed on record by the petitioner along with the writ petition. Even the Government initiated enquiry because of the complaints of local MLA which is clear from inquiry report (Annex. 2) itself. The respondents placed on record the complaints Annex. R/5 and R/6 which are dated 3.2.2007 and 7.2.2007, lodged much after the completion of the enquiry on 24.1.2007. Again about the plots of Naya Gaon are concerned, in fact for these plots, the explanation has not been sought from the petitioner by communication dated 2.2.2007 (Annex. 4) even by the State Government.

23. The second and third facts mentioned in the pleading referred above, appears to have been read out of context as these facts were mentioned in the reply submitted by the petitioner before respondent No. 2, copy of which has been placed on record as Annex. 10. The petitioner in this writ petition, only disclosed that what he mentioned in his reply submitted before respondent No. 2. The petitioner could not have suppressed the facts mentioned in the reply Annex. 2 which was submitted before respondent No. 2. The petitioner nowhere stated that he had no knowledge of the fact of commercial use of the land by the INTUC.

24 It is true that the petitioner is required to come with clean hands and should state true and correct facts irrespective of the fact whether those facts are relevant or touching the controversy itself. The background facts are also required to be narrated truly and correctly. The jurisdiction under Article 226 of the Constitution of India is equitable jurisdiction. Dismissing of a writ petition on the ground of making false statement, is also in the interest of justice and to maintain the high standards in judicial proceedings, where the court can certainly rely upon the facts stated by any person in pleadings and may pass appropriate order. On what statement the writ petition of the petitioner can be dismissed, depends upon the facts of each case. There may be some cases in which facts pleaded ultimately may be found wrong, after enquiry/trial. The some facts may have been alleged but the person alleging the facts failed to prove the facts. In above situation, the court is required to see whether the false statements have been made in the pleadings by any party with clear aim and object to mislead the court and to take benefit out of false statement then in that situation, the writ petition can be dismissed solely on the ground of making false statement before the Court. There may be some exaggeration in narrating the facts about

one's own prestige and personality or honesty as well as writing about others. The court as well as the opposite party well understand the hollowness and exaggeration in such narration and are not influenced by those exaggerations. Those narrations are relevant and better to be ignored when they come in the way of the actual justice. Then the justice cannot be denied on such technical ground. In this case, the facts mentioned by the petitioner with respect to not making any serious complaint against the petitioner by any body except the local MLA and the fact that no permission of construction has been given in respect of the some plots having Nos. 16, 37 and 38 that illegal conversion of property for commercial use by INTUC, appears to be not of much relevance in the facts of this case. In the communication dated 2.2.2007, addressed to the Chairman (petitioner), Municipal Council, Pali, even after observing that from the enquiry report it is proved that in some of the Pattas, there are some over-writing and interpolation and in the record of the Pattas of Plot Nos. 16, 37 and 38 of Gram Panchayat, Naya Gaon and one plot of Surya Nagar having No. 5, there are manipulation and the patta of plot No. 23-A appears to be forged one, therefore, the FIR may be lodged in the police. But it appears that the State Government itself in its another communication dated 2.2.2006 by which the petitioner's explanation was sought, sought explanation of the petitioner about not lodging the FIR only and that was the petitioner's alleged misconduct. Prima facie, in the show cause notice dated 2.2.2007, there are no allegations that the petitioner was involved in the interpolation or forging the Patta of plot No. 23-A.

25. In the case of Radhey Shyam (supra) relied upon by the learned Counsel for the respondents, no confidence motion itself was under challenge as challenged by the petitioner in that writ petition. When the petitioner stated a wrong fact with respect to his knowledge of the no confidence motion itself and which was impugned in the writ petition itself, then in that situation this Court held that the petitioner had undoubtedly spoken a lie when he stated in the writ petition that he did not know about the no confidence motion and he came to know about the no confidence motion on 30.9.1971, when the notice of Collector, through the post office to convene the meeting of the Municipal Council on 18.9.1971 was received by him. In that situation if the petitioner said that for convening the meeting for consideration of no confidence motion on 18.9.1971, came to the petitioner's notice on 30.9.1971 then that was a material and relevant fact whereas in the present case, the allegation against the petitioner is with respect to the some ancillary facts which according to the respondents may not be correctly stated but those facts are ancillary facts only and has no direct relation with the point in controversy involved in this writ petition as merit in the allegations against the petitioner are not to be decided in this petition. Therefore, the judgment of Radhey Shyam cannot be of any help to the respondents for getting the writ petition dismissed. In view of the above reason, the writ petition of the petitioner cannot be dismissed on the ground that the petitioner stated any wrong facts before this Court.

26. So far as contention of the petitioner that the proceedings have not been

commenced as contemplated in Sub-section (2) of Section 63 of the Act of 1959 by drawing up a statement setting out distinct charge against the petitioner, therefore, the State had no power under Sub-section (4) of Section 63 is concerned, this cannot be accepted in view of the judgment of this Court delivered in the case of Shyam Sunder Sharma, Chhagan Kanwar Rathore and Bhanwar Lal Chhabra (supra). This is admitted case that before passing the order under Sub-section (4) of Section 63 of the Act of 1959, the State Government held an enquiry as required by the proviso to Sub-section (1) of section 63 and sought explanation from the petitioner and thereafter, after considering the explanation of the petitioner, decided to proceed under Sub-section (2) of Section 63 of the Act of 1959, then at this stage, the State Government could have exercised its power under Sub-section (4) of Section 63.

27. So far as allegations of malafide against the local MLA are concerned, that cannot be gone into because of the fact that the said local MLA in person has not been impleaded as party in this writ petition. The allegation of arbitrariness and malafide in law alone survives.

28. To examine whether it is a case of arbitrary exercise of power by the State or it is a case of bonafide exercise of power by the State Government, the facts are required to be recapitulated again. The allegations against the petitioner are mentioned in the show cause notice issued to the petitioner asking the petitioner to submit his explanation. The said show cause notice seeking explanation of the petitioner is as under:

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mijksDr lanHkZ esa ys[k gS fd uxj ifj"kn ikyh esa gq, QthZ] iV~Vks] fjdkMZ esa gsjkQsjh ds lanHkZ esa vfrfjDr funs"kd }kjk djkbZ xbZ tkap esa vusd iV~Vks es dkaV&NkaV gksuk izekf.kr gqvk gSA tkap esa ;g Hkh Li"V gqvk gS fd lw;Zuxj dkyksuh es Hkw[k.M+ la[;k 5 ,oa dLrwjck uxj esa Hkw[k.M+ la[;k 23&, ds lanHkZ esa vfu;ferrk mtkxj gksus ds ckn Hkh lacaf/kr iqfyl Fkkus esa vfu;ferrk mtkxj gksus ds ckn Hkh lacaf/kr iqfyl Fkkus es izFke lwpuk fjiksZV ntZ ugha djkbZ tdkj mnklhurk cjrH xbZ A

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29. This Court neither can nor required to examine the correctness in the allegations as the allegations are required to be examined in accordance with law by the competent authority appointed by the State Government under Sub-section (2) of Section 63 of the Act of 1959 and because of reason that counsel for the petitioner clearly stated that the petitioner is challenging order of petitioner's suspension as Chairman of the Municipal Council and has not challenged the initiation of proceeding u/s 63(2) of the Act of 1959. The question for consideration before this Court is that whether the State Government suspended the petitioner on the ground of any lawful reason, as suspension of an elected Member cannot be in routine manner nor it can be merely because the State Government had decided to hold enquiry on allegations levelled against the petitioner, as held by this Court in the case of Bhanwar Lal Chhabra (supra). This Court in the above decision held as under:

...the office of a Chairman is an elective office and he should not be suspended in a routine manner without some foundation of misconduct/disgraceful conduct in the discharge of his duties etc. If the interpretation, as argued by the learned Advocate General is accepted, then, no Chairman would be in a position to function in the democratic set up of multi-party system prevailing in our country, as he would be suspended by merely initiating a preliminary inquiry even on a false complaint if the party in power is averse to him.

30. The Division Bench of this Court in the case of Jan Mohd. (supra) even after holding that suspension of Chairman/Member of the Municipal Board pending enquiry being an interim measure and the suspension does not result in civil or evil consequences and it is not penal in character, held as under:

However, we will like to add a word of caution that the holders of these elective public posts cannot be equated with Govt. servants and, therefore, before a holder of an elected post is suspended, the Government must have sufficient reasons to do so. Care should be taken that such suspensions should not be arbitrary and the suspensions of such elected representatives should not be brought about for political motives or consideration.

31. In the judgment of this Court given in the case of NandLal (supra), this Court observed that:

whole idea of suspension is that the suspended person does not cause any embarrassment in the enquiry proceeding and his presence in the office should not prejudice the enquiry.

32. In Nandlal's case, this Court held that "in case the petitioner remains the Chairman of the Board, it would not cause any embarrassment to the enquiry officer or it is not a case that enquiry will be prejudiced in any way." and further held that in view of the Division Bench Decision of this Court given in Jan Mohd's

case (supra), it has been left to the discretion of the court to examine whether the satisfaction was arrived at objectively or arbitrarily. From the above decisions, it is clear that the power of suspension vests in the State Government. The elected Member can be suspended during the pendency of the enquiry under Sub-section (2) of Section 63 of the Act of 1959. The suspension is not a punishment. The suspension cannot be in routine manner of an elected Member. The suspension is not natural consequences of initiation of enquiry. Then in that situation, there must exist some reason for the suspension of the elected Member, other than the decision of the State Government to initiate the proceeding under Sub-section (2) of Section 63 alone. In the Act, it is not provided that the initiation of the proceedings under Sub-section (2) of Section 63 the Chairman/Member is required to be suspended. A separate provision has been made under Sub-section (4) of Section 63 of the Act of 1959 empowering the State Government to suspend the delinquent Member/Chairman. This power, as held in the judgments referred above, is not as of an employer and the elected Member is not a civil servant. Even in the judgment of Radhey Shyam (supra), while dismissing the writ petition of the petitioner on the ground of his making false statement before the Court, this Court observed as under:

The traditions of democracy require that the person who wants to hold the elected office of a local body must give due respect to the wishes of the majority of the members of that body and if he has lost the confidence of that majority then he should not try to stay in that office even for a moment and should not come forward to seek the protection of this Court under the extraordinary jurisdiction conferred by Article 226 of the Constitution.

33. That was a case of no confidence against the petitioner. He lost the confidence of majority of members and in that background, his conduct of making false statement may have resulted in the dismissal of his petition but, at the same time, no one questioned that the traditions of democracy require that every person must give due respect to the wishes of the majority of the members of that body. The petitioner is elected Member and firstly elected by the public at large and, therefore, by public representative. The petitioner was elected Chairman of the Municipal Council and till he was suspended, he was holding the confidence of majority and it is not the case of any body that the petitioner lost the confidence of majority even by now. The petitioner owes duty not only statutorily, but also morally not to commit any misconduct in discharge of his duties nor he should have any disgraceful conduct and he should work only till he is capable of performing his duties as Member/Chairman. That is the aim and object of enacting Sub-clause (d) of Sub-section (1) of Section 63. Moral duty is consequence of faith reposed in the elected Member by its electoral. It may be true that on the ground of moral obligation, the elected Member cannot be removed by public from the office but the elected member can be removed when he incurred disqualification within the four corners of Sub-section (1) of Section 63 of the Act of 1959. The proviso to Sub-section (1) of Section 63 is very relevant which provides that:

until a member is removed from office by an order of the State Government under this section, He shall not vacate his office and shall, subject to the provisions contained in Sub-section (4), continue to act as, and exercise all the powers and perform all the duties of, a member and shall as such be entitled to all the rights and be subject to all the liabilities, of a member under this Act.

34. Therefore, until a persons is removed from office, he is entitled to continue to act and exercise all powers and perform all duties of a member. The exception to it has been given under Sub-section (4) of Section 63 of the Act of 1959. The petitioner, after election as Member of the council and Chairman of the Municipal Council, is elected for a term and that he acquires right to continue and exercise all powers and perform all duties as Member/Chairman, still proviso has been appended under Sub-section (1) of Section 63 of the Act of 1959. Exception to it is because of Sub-section (4) of Section 63 of the Rajasthan Municipalities Act, 1959. Because of this provision only, the elected member, before he is removed, cannot exercise his right as of Member/Chairman. The removal dis-entitles the elected Member from exercising his said right permanently and for ever, whereas suspension makes him dis-entitles such person from exercising his rights as such as elected Member or as Chairman as the case may be till his suspension is revoked or he is exonerated. It is true that the suspension is not punishment but the consequence of suspension of an elected Member during enquiry, also cannot be taken either in the light manner or in routine manner as that is against the democratic governance policy established by the Constitution of India which gives status and recognition of elected member who are elected by the majority of votes of public. This proposition that the suspension order cannot be passed lightly or in routine manner or in mere consequence of State Government's decision to hold enquiry u/s 63(2) has its own purpose. Therefore, it must come out from the record that the presence of the said suspended Member will affect the enquiry or will prejudice the enquiry, as held in the judgments referred above.

35. It will be further beneficial to look into the reasons given by the Division Bench of This Court in the case of Sohan Lal Mareja v. The State of Raj. and Ors. D.B. Civil Special Appeal No. 626/2004 dated 18.1.2005. The Division Bench of this Court after considering the seriousness and gravity in the order suspending a Member/Chairman of the Municipal Council, clearly held as under:

Thus wholesom reading of Sub-section (1) read with Sub-section (2) prima facie suggests that ordinarily temporary removal from the office is not contemplated as a matter of course by resorting to Sub-section (4) simply on subjective satisfaction of the State about holding an enquiry into facts which may lead to removal of members under Sub-section. (1) of Section 63, or on mere commencement or proceedings contemplated under proviso to Sub-section (1).

36. The Division Bench also considered Sub-section (4) of Section 63 which provides that the period upto which the order of suspension once made shall remain in force and which says that order of suspension once passed shall continue till the conclusion of the enquiry and passing of order and it further

debars the Member from taking part in any proceedings of the Board or to perform the duties of a Member and thereafter, after taking note of serious consequence of the order of suspension of Member/Chairman of the Municipal Council, the Division Bench held as under:

This also brings in inherent limitation on power to suspend only in very serious matters.

37. After considering in detail, the Division Bench of this Court held that" the questions of general importance arise in this case and need to be decided in the comprehensive interpretation of Section 63 in its entirety, relating to scope and ambit of power of State to suspend an elected member, period for which suspension order remain in force, contours of power of State to revoke order of suspension once it is made, keeping in view the period of suspension prescribed under Sub-section (4-A) of Section 63 and referred the matter to the larger Bench.

38. This Court also take guidance from the Division Bench judgment delivered in the case of Sohan Lal Mareja (supra) as well as the judgments referred above relied upon by both the parties and on facts, this Court is of the view that the suspension order may not be the punishment and may not have civil and evil consequences but still it denies an elected Member from discharging his duties as well as deprives him from his right to hold the post and, therefore, the suspension order cannot be made merely in consequence of decision to hold an enquiry under Sub-section (2) of Section 63 and/or in routine manner.

39. Coupled with above proposition, the balance is required to be there so as to give due respect to the wish of the public who elected the person to hold the post as of Member or as for the post for which the person is directly elected by the majority of votes of the electoral and for the persons who are elected indirectly to the post by the elected member from public in election. From above proposition, this will be reasonable and just interpretation of Sub-section (4) of Section 63 that the elected Member cannot be deprived from discharging his duties and exercising his rights till he holds the majority of votes in his favour as well as public faith, is an important right of not only elected candidate but also a right of public to have governance of and from man of their choice. The elected Member can be removed from the post of Chairman when he loses confidence of the public/body concerned. The suspension of chair person should not be substitute of desperate effort of some one who cannot remove the elected person by no confidence motion. (Of course there may be mere chances that even a corrupt person may not be removed because of majority of Members of his political party and/or due to lack of commitment to fairness in public life.) When the order of suspension is under challenge, the court is required to keep all these principles of law laid down in mind to decide whether the action of the State suspending a Member of the Municipal Council exercising power under Sub-section (4) of Section 63, there were reasons to show that the action is not arbitrary.

40. In the background of these facts, charges levelled against the petitioner are relevant and required to be looked into. The charges against the petitioner as stated in the notice calling explanation from the petitioner (Annex. 4) quoted above, are that he is guilty because he did not lodge FIR in the matter of interpolation made in some pattas or records of plots. The allegations are not that the petitioner was involved in that interpolation in any manner. The petitioner has a finding in his favour in the enquiry which was conducted on order passed by the State Government that the petitioner was not guilty of making any interpolation in any record. This finding was before the State Government. The allegation is, therefore, only that he did not lodge the FIR in relation to some interpolations made in the files relating to some plots. That is a concluded act. What the petitioner did and what the petitioner did not do, cannot be changed by the petitioner by his continuing in the office as Chairman of the Municipal Council. The same is the position with respect to the allegation that for commercial use of a land allotted to the petitioner's own party wing, the petitioner did not initiate any proceedings except giving a notice u/s 170 of the Rajasthan Municipalities Act. That act is also completed and concluded act. The petitioner being elected Member, if has not taken any action to the extent which could have been taken had any other person would have been there then that will also be required to be judged in the light of the decision given by the Hon"ble Apex Court in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, wherein it has been held by the Hon"ble Apex Court that:

The expression "abuse of powers" in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed.

and further held that:

The legislature could not have intended to occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

41. It is also required to keep in mind that the action, timing and promptness are also relevant facts which depends upon the administrative capability of persons which vary with person to person and for finding out the gravity of misconduct that fact cannot be ignored when it is a case of allegation of misconduct when there is no specific motive imputed against the delinquent. In the allegations levelled against the petitioner as comes out from the enquiry report and the notice by which explanation has been sought from the petitioner, prima facie, the motive has not been imputed of the petitioner nor it is a matter of any financial

irregularity or of a corruption but his alleged misconduct is about his handling the issue only.

42. At this place, it will not be out of context to mention that the petitioner has placed on record copy of the Government order dated 25.11.2006(Annx. P 12) wherein the State Government made it clear that it will be responsibility of the Commissioner/Executive Officer to stop the illegal construction as well as the constructions which are raised in violation to construction permission granted by the Municipal Council. The Commissioner as well as the Executive Officer were further directed not to stop the proceedings against those defaulters by serving notice under Sections 170 and 203 of the Act of 1950. The petitioner also placed on record copy of the resolution passed by the General Body of the Municipal Council, Pali (Annx.15) wherein it has been recorded that the matter about the plot No. 5 of Surya Colony was considered by the Municipal Council and was decided to constitute a committee to investigate into the matter and the petitioner being the Chairman of the Municipal Council, informed that the possession of the plot No. 5 was not taken in the tenure of the petitioner even then the Committee may be constituted and the Committee was in fact constituted and it was decided that the petitioner himself permitted the Committee to take the concerned officer with them. In view of the above reasons, the learned Counsel for the petitioner tried to submit that the Executive Officer/Commissioner of the Municipal Council, Pali was responsible for taking action in the light of the Government order and further the Committee, for this matter, was constituted by the Municipal Council in the month of June, 2006, much before the impugned order was passed by the State Government.

43. This Court is not examining the defence of the petitioner because of the reason, as stated above, that the matter will be examined by the competent authority appointed under Sub-section (2) of Section 63 of the Act of 1959 and this Court is examining the act of the State Government in suspending the petitioner in the light of the allegations levelled against the petitioner and the reasons for suspension only.

44. The question before the authority will be to draw inference from the facts which may be before the said authority. This Court is trying to refrain from making any comment upon merit in the allegation levelled against the petitioner and it is specifically made clear that none of the observation made above which was found necessary for deciding this writ petition to find out the reason for suspension, may not be treated to be a decision or even comments upon the merit of the allegation. This Court is only examined whether from the facts it is a case of passing of suspension order in routine manner and in consequence of the decision of the State Government to proceed under Sub-section (2) of Section 63 alone or it has some specific reason for suspending the petitioner. The comments be read only in the context and not out of context to prejudice the enquiry against the petitioner or in favour of the petitioner.

45. In view of the above legal position and the facts came on record, the order of

suspension of the petitioner appears to be in consequence of only initiation of enquiry by the State Government u/s 63(2) of the Rajasthan Municipalities Act, 1959 and there appears to be no reason available for suspension of the petitioner from the post of the Chairman, Municipal Council, Pali as the respondents failed to prove that the presence of the petitioner on the post of the Chairman, Municipal Council, Pali may prejudice the enquiry to be conducted by the competent authority under Sub-section (2) of Section 63 of the Rajasthan Municipalities Act 1959 in any manner. Therefore, the order of suspension of the petitioner vide Annex. 11 dated 11.6.2007 deserves to be quashed.

46. In the result, the writ petition of the petitioner is allowed. The part of the order dated 11.6.2007 (Annex. 11) suspending the petitioner from the post of Chairman, Municipal Council, Pali is quashed and set aside. The respondents are directed to restore the position which was in existence before 11.6.2007.