

(2010) 09 MAD CK 0176

In the Madras High Court

Case No : Writ Petition No. 10632 OF 2010

Ramasamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 22

Citation : (2010) 09 MAD CK 0176

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; S. Ramasamy, Additional Advocate and Lita Srinivasan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—This writ petition has been filed by the Petitioner seeking to quash the order dated 30.04.2010 and the Tamil Nadu Government Gazette Notification No. 130 dated 04.05.2010 of the second Respondent, issued u/s 205(11) of the Tamil Nadu Panchayats Act, 1994 (shortly "the Act").

2. The brief facts leading to the filing of the present writ petition are as follows:

(a) The Petitioner was elected as President of Jampadai Panchayat in Villupuram District for the period 2006-2011.

(b) The second Respondent issued a show cause notice dated 04.10.2007 u/s 205(1)(a) of the Act, seeking explanation for the charges made against him. Those charges are:

(i) The Petitioner incurred expenses without Form 19 and vouchers.

(ii) When the second Respondent sanctioned drought relief funds with a direction to reserve funds for the works in the Panchayat, the Petitioner failed to do the same and he misappropriated the Panchayat fund.

(iii) The Petitioner incurred expenditure exceeding the ceiling limit fixed for the maintenance of hand pump, water tank and street lights, without getting the approval from the Panchayat.

(iv) The Petitioner failed to record the purchases of spare parts purchased for the maintenance of street lights and water tank in the relevant register.

(c) The Petitioner submitted his explanation on 21.11.2007 denying the allegations. With regard to charge No. 1, he explained that when the inspection took place, the vouchers were not produced by the concerned Clerk and the defect was rectified. Regarding charge No. 2, it was explained that the work was carried out under the drought relief scheme and that there was a sum of Rs. 50,138/- in Panchayat fund, when the inspection took place and there was no misappropriation of funds. As regards charge No. 3, it was explained that the maintenance works relating to drinking water tank and street lights are essential and urgent in nature and that therefore, the expenses were incurred over the limit expecting that the same could be approved by the Panchayat. It was also stated that the Panchayat later approved the same. With regard to charge No. 4, it was stated that the details of purchases were not registered when the inspection was made and the same has been done now in Form 18.

(d) It seems that the second Respondent issued an order dated 28.01.2008 to the Tahsildar, Sankarapuram to ascertain the views of the members of the Panchayat on the charges and the explanation submitted by the Petitioner.

(e) Accordingly, the Tahsildar, Sankarapuram, convened the Panchayat meeting on 06.03.2008 and sent a report dated 10.03.2008 stating that the members of the Panchayat opined that the explanation submitted by the Petitioner could be accepted.

(f) Thereafter, the second Respondent sent a notice dated 24.11.2008 to the Petitioner and other members of the Panchayat to appear before him on 08.12.2008 to hear the views of the Petitioner and other members, before taking final decision.

(g) The Petitioner and other members appeared before the second Respondent on 08.12.2008. They gave written representation that the explanation submitted by the Petitioner could be accepted and the proceedings could be dropped.

(h) However, the second Respondent issued a show cause notice dated 12.03.2010 stating that the Petitioner and the other members of the Panchayat accepted the mistakes and the explanation offered by the Petitioner was rejected. The Petitioner was also asked to submit his explanation on the said notice.

(i) Accordingly, the Petitioner submitted his explanation reiterating his earlier stand and requesting to drop the proceedings.

(j) However, the second Respondent passed the impugned order dated

30.04.2010 u/s 205(11) of the Act removing the Petitioner from the office of President on the ground that the Petitioner attempted to misappropriate the Government funds and also abused his power as President.

(k) The removal order was also notified in the Tamil Nadu Government Gazette No. 130 dated 04.05.2010 stating that the removal takes effect from the date of publication.

(l) In the gazette notification, it is stated that the Petitioner was removed for incurring improper expenditure, abusing the office and for having misappropriated the Panchayat funds.

Hence, the Petitioner has come up with the present writ petition seeking to quash the impugned order removing him from the office of President and also the Gazette Notification.

3. While admitting the writ petition on 12.05.2010, this Court granted interim stay.

4. The second Respondent filed counter affidavit and also a petition to vacate the interim stay that was granted on 12.05.2010.

5. Heard the submissions made on either side and perused the entire file produced by the learned Additional Advocate General.

6. The learned Counsel for the Petitioner assailed the impugned order and the gazette notification by submitting that these proceedings were issued in blatant violations of the principles of nature justice and without jurisdiction and also contravened Section 205 of the Act.

7. Further, the learned Counsel for the Petitioner submitted as follows:

(i) Unless the second Respondent came to the conclusion that the Petitioner abused his power wilfully, Section 205 of the Act could not be invoked. Nowhere in the entire proceedings, it was stated by the second Respondent that the Petitioner wilfully abused his power. Hence, the entire action of the second Respondent in passing the impugned order lacks jurisdiction.

(ii) The impugned order states some reasons for removal, while the impugned notification states different reasons. This is violative of principles of natural justice.

(iii) While the second Respondent passed the order dated 28.01.2008 directing the Tahsildar, Sankarapuram to ascertain the views of the Members of the Panchayat on the notice issued u/s 205(1)(a) of the Act and also the explanation submitted by the Petitioner, there was no proposal from the second Respondent for the removal of the Petitioner from the post of President and seeking the views of the Members of the Panchayat on the proposal for removal. This contravenes Section 205(2) of the Panchayat Act.

(iv) In the meeting convened by the Tahsildar, Sankarapuram, the Members of

the Panchayat did not consider the proposal for removal of President. Thus, the same contravenes Section 205(3) of the Act.

(v) Likewise, in the meeting, the Tahsildar did not read any proposal for removal of the Petitioner as President. Hence, Section 205(8) of the Act was contravened.

8. The learned Counsel for the Petitioner also submitted that there was no categorical statement, in the notice dated 24.11.2008 directing the Petitioner to appear for personal hearing on 08.12.2008, that the second Respondent was of the view to remove the Petitioner from the office of the President. It was further submitted that when the Members of the Panchayat expressed their views not to remove the President and for dropping the proceedings, the second Respondent ought to have issued notice to the Petitioner intimating the reasons for his differing views and seeking his explanation. But the notice dated 12.03.2010 was passed straight away rejecting the views instead of recording reasons for difference. In this regard, the learned Counsel for the Petitioner relied on the Full Bench decision of this Court in *The District Collector And Inspector Of District Panchayat v. Devi Parasuraman* reported in 2009 (4) CTC 609.

9. The learned Counsel for the Petitioner also heavily relied on the decisions of the Honourable Apex Court in *State of Orissa and Others Vs. Md. Illiyas*, ,

1. This writ petition has been filed by the Petitioner seeking to quash the order dated 30.04.2010 and the Tamil Nadu Government Gazette Notification No. 130 dated 04.05.2010 of the second Respondent, issued u/s 205(11) of the Tamil Nadu Panchayats Act, 1994 (shortly "the Act").

2. The brief facts leading to the filing of the present writ petition are as follows:

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(iii) The Petitioner incurred expenditure exceeding the ceiling limit fixed for the maintenance of hand pump, water tank and street lights, without getting the approval from the Panchayat.

(iv) The Petitioner failed to record the purchases of spare parts purchased for the maintenance of street lights and water tank in the relevant register.

(c) The Petitioner submitted his explanation on 21.11.2007 denying the allegations. With regard to charge No. 1, he explained that when the inspection

took place, the vouchers were not produced by the concerned Clerk and the defect was rectified. Regarding charge No. 2, it was explained that the work was carried out under the drought relief scheme and that there was a sum of Rs. 50,138/- in Panchayat fund, when the inspection took place and there was no misappropriation of funds. As regards charge No. 3, it was explained that the maintenance works relating to drinking water tank and street lights are essential and urgent in nature and that therefore, the expenses were incurred over the limit expecting that the same could be approved by the Panchayat. It was also stated that the Panchayat later approved the same. With regard to charge No. 4, it was stated that the details of purchases were not registered when the inspection was made and the same has been done now in Form 18.

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(i) Accordingly, the Petitioner submitted his explanation reiterating his earlier stand and requesting to drop the proceedings.

(j) However, the second Respondent passed the impugned order dated 30.04.2010 u/s 205(11) of the Act removing the Petitioner from the office of President on the ground that the Petitioner attempted to misappropriate the Government funds and also abused his power as President.

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(iii) While the second Respondent passed the order dated 28.01.2008 directing the Tahsildar, Sankarapuram to ascertain the views of the Members of the Panchayat on the notice issued u/s 205(1)(a) of the Act and also the explanation submitted by the Petitioner, there was no proposal from the second Respondent for the removal of the Petitioner from the post of President and seeking the views of the Members of the Panchayat on the proposal for removal. This contravenes Section 205(2) of the Panchayat Act.

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the view to remove the Petitioner from the office of the President. It was further submitted that when the Members of the Panchayat expressed their views not to remove the President and for dropping the proceedings, the second Respondent ought to have issued notice to the Petitioner intimating the reasons for his differing views and seeking his explanation. But the notice dated 12.03.2010 was passed straight away rejecting the views instead of recording reasons for difference. In this regard, the learned Counsel for the Petitioner relied on the Full Bench decision of this Court in *The District Collector And Inspector Of District Panchayat v. Devi Parasuraman* reported in 2009 (4) CTC 609.

9. The learned Counsel for the Petitioner also heavily relied on the decisions of the Honourable Apex Court in *State of Orissa and Others Vs. Md. Illiyas*, , and and submitted that the second Respondent could not remove the elected President in the casual manner, unless there was wilful abuse of power, as per the law laid down by the Honourable Apex Court. It was also submitted that some mere irregularities are not sufficient for interfering with the office of the President.

10. The learned Counsel for the Petitioner also relied on the decisions of the Honourable Apex Court *Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another*, and *Aban Loyd Chiles Offshore Limited and Others Vs. Commissioner of Customs, Maharashtra*, , wherein the Honourable Apex Court considered in detail about "wilfulness". According to the learned Counsel, in the absence of the second Respondent recording that there was "wilful omission" or "wilful abuse of power", the impugned order of removal is without jurisdiction and opposed to the above referred decisions of the Honourable Apex Court. In the said circumstances, it is submitted that the writ petition is maintainable as per the decision of the Honourable Apex Court in and the alternative remedy providing for appeal cannot be cited as a bar.

11. The learned Counsel for the Petitioner further submitted that the second Respondent erroneously proceeded as if the Petitioner and the Members of the Panchayat admitted the charges. Hence, the impugned order was passed without application of mind.

12. On the other hand, the learned Additional Advocate General submitted that the writ petition is not maintainable, as there exists effective alternative remedy u/s 205(12) of the Act. In this regard, the learned Additional Advocate General heavily relied on the decision of a Division Bench of this Court in *The District Collector Cum Inspector Of Panchayat v. S.Senthamizh Selvi* reported in 2009 (1) CTC 356.

13. The learned Additional Advocate General submitted that the submission of the learned Counsel for the Petitioner that the entire action of the second Respondent u/s 205 of the Act was without jurisdiction, has no merit. According to the learned Additional Advocate General, the want of jurisdiction could arise only if the initiation of proceedings was not made by the second Respondent and

it was done by the subordinates to the second Respondent, such as Revenue Divisional Officer etc. The learned Additional Advocate General further submitted that the removal order was final and that was notified in the Tamil Nadu Government Gazette and whether the allegations stated in the Gazette Notification were contrary to the allegations stated in the removal order were of no consequence, as notification was a mere formality.

14. I have considered the submissions made on either side. The impugned order dated 30.04.2010 removing the Petitioner from the post of President reads as follows:

"jkh;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 cl;gphpt[11d; fPH; Cuhl;rpfsdpd; Ma;thsh; kw;Wk; khtl;l Ml;rpahpd; cj;jut[.

JpU/rp//,uhkrhkp Cuhl;rp kd;wj;jiytu; \$k;gil Cuhl;rp mth;fspd; kPJ jkh;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205d;go vLj;j eltof;ifapy; ,uz;lhtJ Kiw tpsf;fk; nfhug;gl;ljpgd; gjpy; kw;Wk; ,ju gpw midj;J Mtz";fisa[k; ghprPypf;fg;gl;lJ.

1/Ma;tpd;ngH Jiz bryt[rPl;Lfs;. gotk; 19 fhz;gpf;f ,aytpy;iy/ ,jid vGj;jh; jdpj;jdpahf itj;jpUe;jhh; vd;gJk;. Jiz bryt[rPl;L bgwg;gl;l gpd;dh;jhd; brytpdk; nkw;bfhs;sg;gl;lJ vd;w gjpy; Vw;fj;jf;f tifapy; ,y;iy/ Kiwahf mDkjpak; brytpdKk; nkw;bfhz;oUg;gpd; Jiz bryt[rPl;L Ma;tpd;ngHnj fhz;gpj;J ,Uf;f ,aYk;/ mij fhz;gpf;f ,ayhikf;F rhpahd fhuzKk; Twtpy;iy/ ,J jtW bra;jij cWjpgg;gLj;JfpwJ.

2/,nj ngHd;n;w twl;rp fhyk; vd;gjhy; xnu neu;jjpy; FoePh; gzpfs; nkw;bfhs;sg;gl;lJhy; cldoahf gzpfs; Kof;f ,aytpy;iy vd;gJk; Vw;f ,aytpy;iy/ twl;rp vd;gjhy; tpjpfSf;F g[wk;ghf bray;gl;lJ Vw;f ,ayhJ/

3/FoePh; bghUl;fs; vd;gjhyk; tpjpf;F khwhf bray;gl;lJ jtW/

nkw;fhQqk; Fw;wr;rhl;LfSf;F ,uz;lhtJ Kiw tpsf;fk; mspj;jJk; nkw;Twpa fhuz";fspdhy; Vw;f ,aytpy;iy/

vdnt tprhuiz kw;Wk; Mtz";fspd; mog;gilapy; KiwnfLfs; cWjpahd epiyapy; muR epjpapid ifahly; bra;a Kad;w fhuzj;jpdhYk; Cuhl;rp kd;wj;jiyth; vd;Dk; mjpgfhuj;j jtwhf gad;gLj;jpa \$k;gil Cuhl;rp kd;wj;jiytu; jpU/rp//,uhkrhkp vd;gtiu gjtp ePf;fk; bra;jpl Kot[bra;ag;gl;lJ."

In the ultimate conclusions in the impugned order, there is no reference to charge No. 4.

15. Charge No. 2 alone made allegations of misappropriation. But, there is nothing stated while recording its final decision on charge No. 2 that the Petitioner misappropriated the funds. In fact, the charge No. 2 itself was vague without giving the details of misappropriation. In this regard, para 9 of the judgment of the Honourable Apex Court in Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, is extracted hereunder:

"9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned Counsel for the

Respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned Counsel for the Appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the Respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the Respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the Respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that Respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that Respondent's name was not included in the schedule appended to GO Ms 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf."

16. Furthermore, while the findings relating to charge Nos. 1 to 3 in the impugned order u/s 205(11) of the Act nowhere recorded that the Petitioner involved in misappropriation of funds. It was stated therein that the Petitioner attempted to misappropriate the funds. There is no such allegation. Moreover, in the notice u/s 205(1)(a) of the Act making the charges, there was no mention that the Petitioner abused his power. But in the final order, it was stated that there was abuse of power.

17. In the Tamil Nadu Government Gazette Notification dated 04.05.2010, the following was notified:

"jkh;ehl Cuhl;rpfs; rl;lk;. 1994 gphpt[205. cl;gphpt[11d; fPH; Cuhl;rpfsdpd; Ma;thsh; / khtl;l Ml;rpj; jiytUf;F mspf;fg;gl;Ls;s mjpgfhuj;jpd;go. \$k;gil Cuhl;rp kd;wj;jiytu; Cuhl;rp epjpapy; gotk; 19 kw;Wk; Jiz bryt[r;rpI;Lfs; v. Jk; ,y;yhky; brytpdk; nkw;bfhz;lJ/ twl;rp ephuz gzpfsf;F khtl;l Ml;rpah; eph;thf mDkjp mspj;J Cuhl;rp epjpapy; ,g;gzpapid Jt";fhkYk;. nghjpa epjp ,Ug;g[itf;fhkYk; Cuhl;rp epjpapid ifahly; bra;jJ. Kiwnflhf brytpdk; nkw;bfhz;l Cuhl;rp kd;wj;jiyth; vd;Dk; mjpgfhuj;ij jtw hf gad;gLj;jp Cuhl;rp;F ,Hg;gp id Vw;gLj;jpa \$k;gil Cuhl;rp kd;wj;jiyth; jpU.rp.,uhkrhkp vd;gtiu gjtp ePf;fk; bra;J mwptpf;if btspaplg;gLfpwJ/ ,e;j mwptpf;if jkh;ehl murpjHpy; btspaplg;gLk; ehs; Kjy; mK Yf;F tUfpwJ/"

18. While the impugned removal order dated 30.04.2010 stated that the Petitioner attempted to misappropriate the funds, the Gazette Notification dated 04.05.2010 stated that the Petitioner misappropriated the Government funds. As already stated that while abuse of power was not specifically stated in the charge sheet, it was stated so in the impugned removal order dated 30.04.2010 as well

as in the Gazette Notification dated 04.05.2010.

19. The show cause notice dated 04.10.2007 u/s 205(1)(a) of the Act was issued based on the inspection report of the Assistant Director, Villupuram. However, nowhere in the inspection report, the Assistant Director stated that the Petitioner misappropriated the Government funds. The deficiencies noted during his inspection was stated as follows:

"21.,ju FiwghLfs ; 1) vt;tp[j brytpd rPl;LfSk; ,y;yhky; Cuhl;rp epjpapy; brytpdk; nkw;bfhs;sg;gl;Ls;sJ/

2) bjhif gl;Lthlh nkw;bfhz;likf;F gotk; 14y; xg;g[jy; v. Jk; bgwg;gltpy;iy/

3) bjU kpd;tpsf;F kw;Wk; ,ju cgfuz";fs; bfhs;Kjy; Kiwahf nkw;bfhs;sg;gltpy;iy/ gotk;; 18 & 17y; gjpag;gltpy;iy/"

20. In my considered view, the learned Counsel for the Petitioner was correct in his submission that the reasons for removal given in the Gazette Notification dated 04.05.2010 were different from the reasons contained in the removal order dated 30.04.2010. But the learned Additional Advocate General submitted that the different reasons found in the Gazette Notification were immaterial, as it was a formality to notify the removal order as contemplated u/s 205(11) of the Act and one should look only into the removal order.

21.I am not in agreement with the submissions made by the learned Additional Advocate General. When the second Respondent came to the conclusion to remove the Petitioner from the elected office of President, they should exercise more care and caution as observed by the Honourable Apex Court in Tarlochan Dev Sharma Vs. State of Punjab and Others, . The relevant passage from para 16 of the said judgment is as follows:

"16... Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power u/s 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality u/s 22 of the Act. To say the least, what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave it at that and say no more on this issue."

22. As rightly contended by the learned Counsel for the Petitioner, the ultimate finding in the removal order relating to charge Nos. 1 to 3 were mere some irregularities and not following certain procedures in the maintenance of records and accounts. Those matters could not form the basis for removal of the elected President as held by the Honourable Apex Court in its decision reported in Tarlochan Dev Sharma Vs. State of Punjab and Others, . In this regard, paras 7, 8 and 9 of the said judgment are extracted hereunder:

"7. 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. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of "abuse of his powers" (of President), inter alia. This is the phrase with which we are concerned in the present case.

23. The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between, a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The Appellant is not charged with habitual failure to perform the duties of President of the Municipal Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1-10-1999 have to be tested on the touchstone of the availability of this ground.

24. The phrase "abuse of powers" as providing a ground for proceeding u/s 22 is not defined in the Act. Black's Law Dictionary (7th Edn., 1999) gives the meaning of "abuse" as "to depart from legal or reasonable use in dealing with (a person or thing)", "to injure (a person) physically or mentally", "to damage (a thing)". In Corpus Juris Secundum (Vol. 1, p.402) it is so stated:

"ABUSE As noun.-It has been said that the word is not a term of art in the law and that its everyday popular sense is well known; but that its proper signification when employed depends upon the context and subject-matter. In its largest sense, ill-use or improper treatment of another; misuse. In the plural as used with reference to the authority of governmental commissions to correct "abuses", the word has been held to mean a disregard of duty imposed by law; any improper use of a right or privilege."

The word "abuse" as occurring in Section 5(1)(d) of the Prevention of Corruption Act, 1947 came up for consideration of this Court in *M. Narayanan Nambiar v. State of Kerala*¹. This Court observed: (AIR p.1118, para 10) " "Abuse" means misuse i.e. using his position for something for which it is not intended. That

abuse may be by corrupt or illegal means or otherwise than those means. The word "otherwise" has wide connotation and if no limitation is placed on it, the words "corrupt", "illegal", and "otherwise" mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned Counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word "otherwise" with the words "corrupt or illegal means", and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause."

25. Likewise, in the judgment reported in *Sharda Kailash Mittal Vs. State of M.P. and Others*, the Honourable Apex Court categorically held that the removal of President could be resorted to only under grave and exceptional circumstances. Paras 22, 24, 26 and 27 of the said judgment are extracted hereunder:

"22. The analysis of these materials, particularly, the background shows that the State Government failed to appreciate that the decisions for publication of advertisements, calling for tenders and payment of salaries were made by the entire Council and the President, Appellant could not be singled out for those decisions taken by the Council. The High Court failed to appreciate that the removal u/s 41-A of the Act could be resorted to only under grave and exceptional circumstances which were not present in the Appellant's case. No charge of causing financial loss to the Nagar Palika could be established by the State Government.

26. In *Tarlochan Dev Sharma v. State of Punjab*¹ this Court while dealing with the removal of a President of the Council under the Punjab Municipal Act of 1911, held in para 7 as under: (SCC pp.268-69)

"7. In a democracy governed by the 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. ... 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."

In para 11 this Court observed as under: (*Tarlochan Dev Sharma* case, SCC pp. 270-71)

"11. ...A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of

power and that too involving dishonesty of intention is.... The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

The same consideration must be taken into account while interpreting Section 41-A of the Act. The President under the M.P. Municipalities Act, 1961 is a democratically elected officer, and the removal of such an officer is an extreme step which must be resorted to only in grave and exceptional circumstances.

27. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

28. In the present case, the actions of the Appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s 41-A."

29. The aforesaid decisions of the Honourable Apex Court squarely apply to the facts and circumstances of this case. Charge No. 1 is only relating to not following the procedure. In fact, relating to charge No. 1, in para 7 of the counter affidavit, it is stated as follows:

"7. The Petitioner himself has admitted that he was not able to properly show the voucher and has since rectified it and will submit it for inspection, which implies that he has fabricated the bills to cover up the irregularity. The Panchayat Assistant in his statement has submitted that the amount has been withdrawn without Form -19 and sub-vouchers and no proper entries were made in the register. This itself is strong evidence indicating the irregularities."

30. Even according to the second Respondent, it was an irregularity. In fact, the Petitioner stated that he was occupying the office as a first time and that he was not conversant with the procedures and the defects pointed out by the Assistant Director were subsequently rectified. But the second Respondent stated that the subsequent rectification could not be considered and proceeded to remove the Petitioner from the office. Charge No. 3 was relating to the excess expenditure made for the aintenance of drinking water pumps and street lights. The Petitioner, as President, stated that those are all essential matters for the general public and that therefore, the xpenditure were incurred and subsequent ratification was obtained. But the same was not considered by the second Respondent in proper perspective.

31. Furthermore, as rightly contended by the learned Counsel for the Petitioner, Section 205(1) of the Act contemplates that there should be wilful omission or wilful abuse of power for initiating action u/s 205(1) of the Act. Section 205 of the Act is extracted hereunder:

"205. Removal of president.-(1) The Inspector -

(a) of his own motion, or

(b) on a representation in writing signed by not less than two-thirds of the sanctioned strength of the village panchayat containing a statement of charges against the president and presented in person to the Inspector by any two of the members of the village panchayat, is satisfied that the president wilfully omits or refuses to carry out or disobeys any provision of this Act, or any rule, by-law, regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the president to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.

(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in Sub-section (1) and the explanation of the president if received within the specified date with a proposal for the removal of the president for ascertaining the views of the village panchayat.

(3) The Tahsildar shall then convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the president, at the office of the village panchayat at a time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be delivered to the president and to all the members of the village panchayat by the Tahsildar at least seven days before the date of the meeting.

(5) The Tahsildar shall preside at the meeting convened under this section and no other person shall preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the president by the Tahsildar under Sub-section(6).

(6) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date so appointed for the meeting under Sub-section (3). Notice of not less than seven clear days shall be given to the members and the president of the time appointed for the adjourned meeting.

(7) Save as provided in Sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any, and the proposal for the removal of the president under this section shall not for any reasons, be adjourned.

(8) As soon as the meeting convened under this section is commenced, the Tahsildar, shall read to the village panchayat the notice of the Inspector and the explanation if any, of the president [and the proposal for the removal of the president], for the consideration of which it has been convened.

[(8A) There shall be no debate in any meeting under this section.]

(9) The Tahsildar shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(10) The views of the village panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(11) The Inspector may, after considering the views of the village panchayat in this regard, in his discretion either remove the president from office by notification with effect from a date to be specified therein or drop further action.

(12) The Government shall have power to cancel any notification issued under Sub-section(11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

(13) Any person in respect of whom a notification has been issued under Sub-section (11) removing him from the office of president shall, unless the notification is cancelled under Sub-section (12), be ineligible for election as president until the date on which notice of the next ordinary elections to the village panchayat is published in the prescribed manner, or the expiry of one year from the date specified in such notification as postponed by the order, if any, issued under Sub-section (12) whichever is earlier."

32. However, nowhere in the entire proceedings, it was stated that the Petitioner "wilfully acted", "wilfully omitted", "wilfully committed" or "wilfully abused the power". The Honourable Apex Court considered Section 22 of the Punjab Municipal Act in the judgment reported in Tarlochan Dev Sharma Vs. State of Punjab and Others, and though the word "wilful" is not found in Section 22 of the Punjab Municipal Act, the Honourable Apex Court red "wilful" into Section 22 of the said Act. Para 11 of the said judgment is extracted hereunder, in this regard.

"11. 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 wilful 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. Yet again, the expression employed in Section 22 is "abuse of his powers or of habitual failure to perform his duties". The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase "abuse of powers" must take colour from the next following expression - "or habitual failure to perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

33. The term "wilful" was interpreted by the Honourable Apex Court in the judgment relied on by the learned Counsel for the Petitioner in State of Orissa and Others Vs. Md. Illiyas, . In the said judgment, the Honourable Apex Court held that though the concerned authority, while placing the President under suspension, has noted down that he acted willfully, the High Court interfered in the order of suspension. The Honourable Apex Court categorically held that the authority carefully recorded that the President "wilfully acted", while placing him under suspension. In the said case, Section 115(1) of the Orissa Gram Panchayat Act came up for consideration.

34. In the present case, as stated above, the second Respondent nowhere stated that the Petitioner "wilfully" omitted or committed certain acts or "wilfully" abused the office.

35. Further, the order dated 28.01.2008 issued by the second Respondent to the Tahsildar, Sankarapuram to convene a meeting nowhere stated about his proposal to remove the Petitioner from the elected office. The said notice dated 28.01.2008 is extracted hereunder:

"cj;;jut[

Cuhl;rp epjpapid chpa tpjpKiwfSf;F cl;glhkYk;/ Cuhl;rp gotk; 19 kw;Wk; Jiz brytpdr; rPl;Lfs; v. Jkpd;wp Cuhl;rpapy; brytpdk; nkw;bfbhz;likf;fhf jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(1) M fPH; r";fuhg[uk; Cuhl;rp xd;wpaj;ij rhh;e;j K:uhh;ghisak; / \$k;gil Cuhl;rp kd;wj;jiyth; gh;it 1y; fhQ Dk; mwptpf;ifapd; tHp tpsf;fk; nfhug;gl;lJ/ tpsf;fk; nfhUk; mwptpf;if Cuhl;rp kd;wj;jiythplk; 19.10.97 md;W rhh;t[bra;ag;gl;L. Cuhl;rp kd;wj;jiythpd; tpsf;fk; bgwg;gl;Ls;sJ/

vdnt Cuhl;rp kd;wj;jiyth; mspj;Js;s tpsf;fj;jpid ghprPyid bra;J jdJ fUj;jpid \$k;gil Cuhl;rp kd;wk; bjhptpf;f v. Jthf Cuhl;rp kd;wf;Tl;lJ;jpid Tl;l jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(3) Kjy; (10) tiuapyhd rl;lg{h;tkhd eltof;if nkw;bfbhs;s jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(2) d; fPH; r";fuhg[uk; tl;lhl;rpaiu

epakdk; bra;J ,jd;tHp cj;jutplg;gLfpwJ/

Cuhl;rpkd;wj;jiythplk; tpsf;fk; nfhUk; mwptpf;ifapd; efy;. Cuhl;rp kd;wj;jiyth; mspj;Js;s tpsf;f fojj;jpd; efy; kw;Wk; jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 g[j;jf efy; Mfpait jftYf;fhf ,j;Jld; ,izj;J mDg;gg;gLfpwJ/

nkYk; ,t;t[j;jutpid bgw;Wf; bfhz;likf;fhd xg;g[jiy kW m";rypy; mDg;gpitf;f tl;lhl;rpah; mwpt[Wj;jg;gLfpwhh;/ ,g;gzpapid gpg;uthp 2008 jp";fSf;Fs; Koj;J mwpf;ifapid mDg;gp itj;jplt[k; tl;lhl;rpah; gzpf;fg;gLfpwhh;."

36. Hence, as rightly contended by the learned Counsel for the Petitioner, Section 205(3) of the Act has been contravened. Likewise, when the Tahsildar issued notice to the President and other Members, he informed them that the meeting was convened to ascertain their views on the notice issued u/s 205(1)(a) of the Act and the explanation submitted by the Petitioner thereon and nowhere it was stated that the proposal of removal was forwarded by the second Respondent. The said notice dated 22.02.2008 is extracted hereunder:

"ghh;itapy; fhQ Dk; khtl;l Ml;rpj;jiyth;. tpGg;g[uk; mth;fspd; cj;jutpd;go hpcopte;jpak; Cuhl;rp xd;wpaj;ijr; nrh;e;j \$k;gil Cuhl;rp kd;wj; jiyth; kPJ njrpa Cuf ntiy cWjppj; jpl;l epjp KiwnfL ifahly; bra;jJ bjhlh;ghf jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 (cl;gphpt[3 Kjy; 10 tiuapyhd) rl;lg;g{h;t eltof;if nkw;bffhs;s jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 (2)d; fPH; r";fuhg[uk; tl;lhl;rpaiu epakdk; bra;ag;;gl;Ls;sJ/

,jd; mog;gilapy; \$k;gil Cuhl;rp kd;wf; Tl;l;j;ij vjph;tUk; 05/03/2008 gpw;gfy; 3/00 kzpastpy;

\$k;gil Cuhl;rpkd;w mYtyfj;jpy; r";fuhg[uk;tl;lhl;rpah; jiyikapy; eilbgwt[s;s Tl;l;j;jpw;fhd tpthjg; bghUs; ,j;Jld; ,izj;J mDg;gp itf;fg;gLfpwJ/

,e;j mwptpg;gp id bgw;Wf;bfhz;likf;fhd xg;g[jy; mspg;gJld; nkw;go Tl;l;j;jpw;F jtwhJ M\$uhfptp;l ,jd; K:yk; mwptpf;fg;gLfpwJ/

bghUs; vz;

jPh;khdk; vz;

05/03/2008 md;W tl;lhl;rpah; jiyikapy; \$k;gil Cuhl;rp kd;wf; Tl;lk; eilbgWtjw;fhd Tl;lg; bghUs;/

r";fuhg[uk; Cuhl;rp xd;wpak;. \$k;gil Cuhl;rpapy; 2006-2007 Mk; Mz;L bray;gLj;jg;gl;l njrpa Cuf ntiy cWjpasp;g[j; jpl;l epjpapy; KiwnfL kw;Wk; ifahly; bra;jJ bjhlh;ghf tpGg;g[uk; khtl;l Ml;rpj; jiyth; mth;fspd; e/f/m/2/5830/2007 ehs; 04/10/2007-d;go jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 cl;gphpt[(1) (m)-d; fPH; tpsf;fk; nfhug;gl;lj/ \$k;gil Cuhl;rp kd;wj; jiyth; mspj;Js;s tpsf;fj;jpid \$k;gil Cuhl;rp kd;wj;jpd; fUj;jwpa[k; bghUl;L ghh;itf;F itf;fg;gLfpwJ/

Cuhl;rp kd;wj; jiythpd; tpsf;fj;jpid Vw;gJ Fwpj;J kd;wj;jpd; fUj;jpid bjhptpf;f kd;wk; jPh;khdpj;jy; bjhlh;ghf/"

Hence, Section 205(7) and (8) of the Act was also contravened as rightly contended by the learned Counsel for the Petitioner.

37. Though the second Respondent issued the notice dated 12.03.2010 stating that he did not agree with the views expressed by the Members of the Panchayat and he differed with the views, he recorded that he rejected those views, before seeking explanation from the Petitioner. Hence, the law laid down by the Full Bench of this Court in the judgment reported in 2009 (4) CTC 609 was not complied in letter and spirit. In this regard, the relevant passage from the said judgment is extracted hereunder:

"17.(iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President."

37. In view of the aforesaid findings, the learned Additional Advocate General is not correct in his submission that the Petitioner could seek redressal by filing appeal. The judgment relied on by the learned Additional Advocate General does not lay down the law that the writ petition is not maintainable, even when the removal was passed in violations of principles of natural justice and there are violations of statutory provisions.

38. In view of the aforesaid discussions, the writ petition is maintainable and the judgment relied on by the learned Counsel for the Petitioner in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, squarely applies to the facts and circumstances of this case. Para 7 of the said judgment is extracted hereunder.

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the Appellants and therefore the writ petition filed by the Appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the Petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the Appellants should have been allowed relief by the High Court itself instead of

driving them to the need of initiating arbitration proceedings."

39. For all the aforesaid reasons, the impugned order dated 30.04.2010 and the Gazette Notification No. 130 dated 04.05.2010 are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed. rda Sharda Kailash Mittal Vs. State of M.P. and Others, and Tarlochan Dev Sharma Vs. State of Punjab and Others, and submitted that the second Respondent could not remove the elected President in the casual manner, unless there was wilful abuse of power, as per the law laid down by the Honourable Apex Court. It was also submitted that some mere irregularities are not sufficient for interfering with the office of the President.

10. The learned Counsel for the Petitioner also relied on the decisions of the Honourable Apex Court Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another, and Aban Loyd Chiles Offshore Limited and Others Vs. Commissioner of Customs, Maharashtra, , wherein the Honourable Apex Court considered in detail about "wilfulness". According to the learned Counsel, in the absence of the second Respondent recording that there was "wilful omission" or "wilful abuse of power", the impugned order of removal is without jurisdiction and opposed to the above referred decisions of the Honourable Apex Court. In the said circumstances, it is submitted that the writ petition is maintainable as per the decision of the Honourable Apex Court in and the alternative remedy providing for appeal cannot be cited as a bar.

11. The learned Counsel for the Petitioner further submitted that the second Respondent erroneously proceeded as if the Petitioner and the Members of the Panchayat admitted the charges. Hence, the impugned order was passed without application of mind.

12. On the other hand, the learned Additional Advocate General submitted that the writ petition is not maintainable, as there exists effective alternative remedy u/s 205(12) of the Act. In this regard, the learned Additional Advocate General heavily relied on the decision of a Division Bench of this Court in The District Collector Cum Inspector Of Panchayat v. S.Senthamizh Selvi reported in 2009 (1) CTC 356.

13. The learned Additional Advocate General submitted that the submission of the learned Counsel for the Petitioner that the entire action of the second Respondent u/s 205 of the Act was without jurisdiction, has no merit. According to the learned Additional Advocate General, the want of jurisdiction could arise only if the initiation of proceedings was not made by the second Respondent and it was done by the subordinates to the second Respondent, such as Revenue Divisional Officer etc. The learned Additional Advocate General further submitted that the removal order was final and that was notified in the Tamil Nadu Government Gazette and whether the allegations stated in the Gazette Notification were contrary to the allegations stated in the removal order were of no consequence, as notification was a mere formality.

14. I have considered the submissions made on either side. The impugned order dated 30.04.2010 removing the Petitioner from the post of President reads as follows:

"jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 cl;gphpt[11d; fPH; Cuhl;rpfsdpd; Ma;thsh; kw;Wk; khtl;l Ml;rpahpd; cj;jut[.

JpU/rp//,uhkrhkp Cuhl;rp kd;wj;jiytu; \$k;gil Cuhl;rp mth;fspd; kPJ jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205d;go vLj;j eltof;ifapy; ,uz;lhtJ Kiw tpsf;fk; nfhug;gl;ljpg; gjpy; kw;Wk; ,ju gpw midj;J Mtz";fisa[k; ghprPypf;fg;gl;lJ.

1/Ma;tpd;ngHJ Jiz bryt[rPl;Lfs;. gotk; 19 fhz;gpf;f ,aytpy;iy/ ,jid vGj;jh; jdpj;jdpahf itj;jpUe;jhh; vd;gJk;. Jiz bryt[rPl;L bgwg;gl;l gpd;dh;jhd; brytpdk; nkW;bfs;sg;gl;lJ vd;w gjpy; Vw;fj;jf;f tifapy; ,y;iy/ Kiwahf mDkjpak; brytpdKk; nkW;bfs;og;gp; Jiz bryt[rPl;L Ma;tpd;ngHnj fhz;gpj;J ,Uf;f ,aYk;/ mij fhz;gpf;f ,ayhikf;F rhpahd fhuzKk; Twtpy;iy/ ,J jtW bra;jij cWjpg;gl;JfwpJ.

2/,nj ngHd;n;w twl;rp fhyk; vd;gjhy; xnu neuj;jpy; FoePh; gzpfs; nkW;bfs;sg;gl;lJhy; clDoahf gzpfs; Kof;f ,aytpy;iy vd;gJk; Vw;f ,aytpy;iy/ twl;rp vd;gjhy; tpjpfSf;F g[wk;ghf bray;gl;lJ Vw;f ,ayHJ/

3/FoePh; bghUl;fs; vd;gjHYk; tpjpf;F khwhf bray;gl;lJ jtW/

nkW;fhQqk; Fw;wr;rh;lLfSf;F ,uz;lhtJ Kiw tpsf;fk; mspj;jJk; nkW;Twpa fhuz";fspdhy; Vw;f ,aytpy;iy/

vdnt tprhuiz kw;Wk; Mtz";fspd; mog;gilapy; KiwnfLfs; cWjpahd epiyapy; muR epjpapid ifahly; bra;a Kad;w fhuzj;jpdhYk; Cuhl;rp kd;wj;jiyth; vd;Dk; mjpfhuj;j jtwhf gad;gl;jpa \$k;gil Cuhl;rp kd;wj;jiytu; jpU/rp//,uhkrhkp vd;gtiu gjtp ePf;fk; bra;jpl Kot[bra;ag;gl;lJ."

In the ultimate conclusions in the impugned order, there is no reference to charge No. 4.

15. Charge No. 2 alone made allegations of misappropriation. But, there is nothing stated while recording its final decision on charge No. 2 that the Petitioner misappropriated the funds. In fact, the charge No. 2 itself was vague without giving the details of misappropriation. In this regard, para 9 of the judgment of the Honourable Apex Court in

1. This writ petition has been filed by the Petitioner seeking to quash the order dated 30.04.2010 and the Tamil Nadu Government Gazette Notification No. 130 dated 04.05.2010 of the second Respondent, issued u/s Orissa Gram Panchayat of the Tamil Nadu Panchayats Act, 1994 (shortly "the Act").

2. The brief facts leading to the filing of the present writ petition are as follows:

(a) The Petitioner was elected as President of Jampadai Panchayat in Villupuram District for the period 2006-2011.

(b) The second Respondent issued a show cause notice dated 04.10.2007 u/s

205(1)(a) of the Act, seeking explanation for the charges made against him. Those charges are:

(i) The Petitioner incurred expenses without Form 19 and vouchers.

(ii) When the second Respondent sanctioned drought relief funds with a direction to reserve funds for the works in the Panchayat, the Petitioner failed to do the same and he misappropriated the Panchayat fund.

(iii) The Petitioner incurred expenditure exceeding the ceiling limit fixed for the maintenance of hand pump, water tank and street lights, without getting the approval from the Panchayat.

(iv) The Petitioner failed to record the purchases of spare parts purchased for the maintenance of street lights and water tank in the relevant register.

(c) The Petitioner submitted his explanation on 21.11.2007 denying the allegations. With regard to charge No. 1, he explained that when the inspection took place, the vouchers were not produced by the concerned Clerk and the defect was rectified. Regarding charge No. 2, it was explained that the work was carried out under the drought relief scheme and that there was a sum of Rs. 50,138/- in Panchayat fund, when the inspection took place and there was no misappropriation of funds. As regards charge No. 3, it was explained that the maintenance works relating to drinking water tank and street lights are essential and urgent in nature and that therefore, the expenses were incurred over the limit expecting that the same could be approved by the Panchayat. It was also stated that the Panchayat later approved the same. With regard to charge No. 4, it was stated that the details of purchases were not registered when the inspection was made and the same has been done now in Form 18.

(d) It seems that the second Respondent issued an order dated 28.01.2008 to the Tahsildar, Sankarapuram to ascertain the views of the members of the Panchayat on the charges and the explanation submitted by the Petitioner.

(e) Accordingly, the Tahsildar, Sankarapuram, convened the Panchayat meeting on 06.03.2008 and sent a report dated 10.03.2008 stating that the members of the Panchayat opined that the explanation submitted by the Petitioner could be accepted.

(f) Thereafter, the second Respondent sent a notice dated 24.11.2008 to the Petitioner and other members of the Panchayat to appear before him on 08.12.2008 to hear the views of the Petitioner and other members, before taking final decision.

(g) The Petitioner and other members appeared before the second Respondent on 08.12.2008. They gave written representation that the explanation submitted by the Petitioner could be accepted and the proceedings could be dropped.

(h) However, the second Respondent issued a show cause notice dated 12.03.2010 stating that the Petitioner and the other members of the Panchayat

accepted the mistakes and the explanation offered by the Petitioner was rejected. The Petitioner was also asked to submit his explanation on the said notice.

(i) Accordingly, the Petitioner submitted his explanation reiterating his earlier stand and requesting to drop the proceedings.

(j) However, the second Respondent passed the impugned order dated 30.04.2010 u/s Orissa Gram Panchayat of the Act removing the Petitioner from the office of President on the ground that the Petitioner attempted to misappropriate the Government funds and also abused his power as President.

(k) The removal order was also notified in the Tamil Nadu Government Gazette No. 130 dated 04.05.2010 stating that the removal takes effect from the date of publication.

(l) In the gazette notification, it is stated that the Petitioner was removed for incurring improper expenditure, abusing the office and for having misappropriated the Panchayat funds.

Hence, the Petitioner has come up with the present writ petition seeking to quash the impugned order removing him from the office of President and also the Gazette Notification.

3. While admitting the writ petition on 12.05.2010, this Court granted interim stay.

4. The second Respondent filed counter affidavit and also a petition to vacate the interim stay that was granted on 12.05.2010.

5. Heard the submissions made on either side and perused the entire file produced by the learned Additional Advocate General.

6. The learned Counsel for the Petitioner assailed the impugned order and the gazette notification by submitting that these proceedings were issued in blatant violations of the principles of nature justice and without jurisdiction and also contravened Section 205 of the Act.

7. Further, the learned Counsel for the Petitioner submitted as follows:

(i) Unless the second Respondent came to the conclusion that the Petitioner abused his power wilfully, Section 205 of the Act could not be invoked. Nowhere in the entire proceedings, it was stated by the second Respondent that the Petitioner wilfully abused his power. Hence, the entire action of the second Respondent in passing the impugned order lacks jurisdiction.

(ii) The impugned order states some reasons for removal, while the impugned notification states different reasons. This is violative of principles of natural justice.

(iii) While the second Respondent passed the order dated 28.01.2008 directing

the Tahsildar, Sankarapuram to ascertain the views of the Members of the Panchayat on the notice issued u/s 205(1)(a) of the Act and also the explanation submitted by the Petitioner, there was no proposal from the second Respondent for the removal of the Petitioner from the post of President and seeking the views of the Members of the Panchayat on the proposal for removal. This contravenes Section 205(2) of the Panchayat Act.

(iv) In the meeting convened by the Tahsildar, Sankarapuram, the Members of the Panchayat did not consider the proposal for removal of President. Thus, the same contravenes Section 205(3) of the Act.

(v) Likewise, in the meeting, the Tahsildar did not read any proposal for removal of the Petitioner as President. Hence, Section 205(8) of the Act was contravened.

8. The learned Counsel for the Petitioner also submitted that there was no categorical statement, in the notice dated 24.11.2008 directing the Petitioner to appear for personal hearing on 08.12.2008, that the second Respondent was of the view to remove the Petitioner from the office of the President. It was further submitted that when the Members of the Panchayat expressed their views not to remove the President and for dropping the proceedings, the second Respondent ought to have issued notice to the Petitioner intimating the reasons for his differing views and seeking his explanation. But the notice dated 12.03.2010 was passed straight away rejecting the views instead of recording reasons for difference. In this regard, the learned Counsel for the Petitioner relied on the Full Bench decision of this Court in THE DISTRICT COLLECTOR AND INSPECTOR OF DISTRICT PANCHAYAT v. DEVI PARASURAMAN reported in 2009 (4) CTC 609.

9. The learned Counsel for the Petitioner also heavily relied on the decisions of the Honourable Apex Court in State of Orissa and Others Vs. Md. Illiyas, , Sharda Kailash Mittal Vs. State of M.P. and Others, and Tarlochan Dev Sharma Vs. State of Punjab and Others, and submitted that the second Respondent could not remove the elected President in the casual manner, unless there was wilful abuse of power, as per the law laid down by the Honourable Apex Court. It was also submitted that some mere irregularities are not sufficient for interfering with the office of the President.

10. The learned Counsel for the Petitioner also relied on the decisions of the Honourable Apex Court Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another, and Aban Loyd Chiles Offshore Limited and Others Vs. Commissioner of Customs, Maharashtra, , wherein the Honourable Apex Court considered in detail about "wilfulness". According to the learned Counsel, in the absence of the second Respondent recording that there was "wilful omission" or "wilful abuse of power", the impugned order of removal is without jurisdiction and opposed to the above referred decisions of the Honourable Apex Court. In the said circumstances, it is submitted that the writ petition is maintainable as per the decision of the Honourable Apex Court in and the alternative remedy providing for appeal cannot be cited as a bar.

11. The learned Counsel for the Petitioner further submitted that the second Respondent erroneously proceeded as if the Petitioner and the Members of the Panchayat admitted the charges. Hence, the impugned order was passed without application of mind.

12. On the other hand, the learned Additional Advocate General submitted that the writ petition is not maintainable, as there exists effective alternative remedy u/s 205(12) of the Act. In this regard, the learned Additional Advocate General heavily relied on the decision of a Division Bench of this Court in THE DISTRICT COLLECTOR CUM INSPECTOR OF PANCHAYAT v. S.SENTHAMIZH SELVI reported in 2009 (1) CTC 356.

13. The learned Additional Advocate General submitted that the submission of the learned Counsel for the Petitioner that the entire action of the second Respondent u/s 205 of the Act was without jurisdiction, has no merit. According to the learned Additional Advocate General, the want of jurisdiction could arise only if the initiation of proceedings was not made by the second Respondent and it was done by the subordinates to the second Respondent, such as Revenue Divisional Officer etc. The learned Additional Advocate General further submitted that the removal order was final and that was notified in the Tamil Nadu Government Gazette and whether the allegations stated in the Gazette Notification were contrary to the allegations stated in the removal order were of no consequence, as notification was a mere formality.

14. I have considered the submissions made on either side. The impugned order dated 30.04.2010 removing the Petitioner from the post of President reads as follows:

"jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 cl;gphpt[11d; fPH; Cuhl;rpfsdpd; Ma;thsh; kw;Wk; khtl;l Ml;rpahpd; cj;jut[.

JpU/rp//,uhkrhkp Cuhl;rp kd;wj;jiyt; \$k;gil Cuhl;rp mth;fspd; kPJ jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205d;go vLj;j eltof;ifapy; ,uz;lhtJ Kiw tpsf;fk; nfhug;gl;ljpgd; gjpy; kw;Wk; ,ju gpw midj;J Mtz";fisa[k; ghprPypf;fg;gl;lJ.

1/Ma;tpd;ngHJ Jiz bryt[rPl;Lfs;. gotk; 19 fhz;gpf;f ,aytpy;iy/ ,jid vGj;jh; jdpj;jdpahf itj;jpUe;jhh; vd;gJk;. Jiz bryt[rPl;L bgwg;gl;l gpd;dh;jhd; brytpdk; nkw;bfhs;sg;gl;lJ vd;w gjpy; Vw;fj;jf;f tifapy; ,y;iy/ Kiwahf mDkjp[a[k; brytpdKk; nkw;bfhz;oUg;gpd; Jiz bryt[rPl;L Ma;tpd;ngHnj fhz;gpj;J ,Uf;f ,aYk;/ mij fhz;gpf;f ,ayhikf;F rhpahd fhuzKk; Twtpy;iy/ ,J jtW bra;jij cWjpgg;gLj;JfpwJ.

2/,nj ngHd;n;w twl;rp fhyk; vd;gjhy; xnu neu;jjpy; FoePh; gzpfs; nkw;bfhs;sg;gl;lJhy; cldoahf gzpfs; Kof;f ,aytpy;iy vd;gJk; Vw;f ,aytpy;iy/ twl;rp vd;gjhy; tpjpfSf;F g[wk;ghf bray;gl;lJ Vw;f ,ayhJ/

3/FoePh; bghUl;fs; vd;gjhy; tpjpf;F khwhf bray;gl;lJ jtW/

nkw;fhQqk; Fw;wr;rhl;LfSf;F ,uz;lhtJ Kiw tpsf;fk; mspj;jJk; nkw;Twpa fhuz";fspdh; Vw;f ,aytpy;iy/

vdnt tprhuiz kw;Wk; Mtz";fspd; mog;gilapy; KiwnfLfs; cWjpahd epiyapy; muR
epjpapid ifahly; bra;a Kad;w fhuzj;jpdhYk; Cuhl;rp kd;wj;jiyth; vd;Dk; mjpfhuj;ij
jtwhf gad;gLj;jpa \$k;gil Cuhl;rp kd;wj;jiytu; jpU/rp//,uhkrhkp vd;gtiu gjtp
ePf;fk; bra;jpl Kot[bra;ag;gl;IJ."

In the ultimate conclusions in the impugned order, there is no reference to charge No. 4.

15. Charge No. 2 alone made allegations of misappropriation. But, there is nothing stated while recording its final decision on charge No. 2 that the Petitioner misappropriated the funds. In fact, the charge No. 2 itself was vague without giving the details of misappropriation. In this regard, para 9 of the judgment of the Honourable Apex Court in Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, is extracted hereunder:

"9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned Counsel for the Respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned Counsel for the Appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the Respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the Respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the Respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that Respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that Respondent's name was not included in the schedule appended to GO Ms 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf."

16. Furthermore, while the findings relating to charge Nos. 1 to 3 in the impugned order u/s Orissa Gram Panchayat of the Act nowhere recorded that the Petitioner involved in misappropriation of funds. It was stated therein that the Petitioner attempted to misappropriated the funds. There is no such allegation. Moreover, in the notice u/s 205(1)(a) of the Act making the charges, there was no mention that the Petitioner abused his power. But in the final order, it was stated that there was abuse of power.

17. In the Tamil Nadu Government Gazette Notification dated 04.05.2010, the following was notified:

"jkpH;ehL Cuhl;rpfs; rl;lk;. 1994 gphpt[205. cl;gphpt[11d; fPH; Cuhl;rpfsdpd; Ma;thsh; / khtl;l Ml;rpj; jiytUf;F mspf;fg;gl;Ls;s mjpgfhuj;jpd;go. \$k;gil Cuhl;rp kd;wj;jiytu; Cuhl;rp epjpapy; gotk; 19 kw;Wk; Jiz bryt[r;rPl;Lfs; v. Jk; ,y;yhky; brytpdk; nkw;bfhz;lJ/ twl;rp ephuz gzpfSf;F khtl;l Ml;rpah; eph;thf mDkjp mspj;J Cuhl;rp epjpapy; ,g;gzpapid Jt'';fhkYk;. nghjpa epjp ,Ug;g[itf;fhkYk; Cuhl;rp epjpapid ifahly; bra;jJ. Kiwnflhf brytpdk; nkw;bfhz;l Cuhl;rp kd;wj;jiyth; vd;Dk; mjpgfhuj;ij jtwhf gad;gLj;jp Cuhl;rp;F ,Hg;gpId Vw;gLj;jpa \$k;gil Cuhl;rp kd;wj;jiyth; jpU.rp.,uhkrhkp vd;gtiu gjtp ePf;fk; bra;J mwptpf;if btspaplg;gLfpwJ/ ,e;j mwptpf;if jkpH;ehL murpjHpy; btspaplg;gLk; ehs; Kjy; mK Yf;F tUfpwJ/"

18. While the impugned removal order dated 30.04.2010 stated that the Petitioner attempted to misappropriate the funds, the Gazette Notification dated 04.05.2010 stated that the Petitioner misappropriated the Government funds. As already stated that while abuse of power was not specifically stated in the charge sheet, it was stated so in the impugned removal order dated 30.04.2010 as well as in the Gazette Notification dated 04.05.2010.

19. The show cause notice dated 04.10.2007 u/s 205(1)(a) of the Act was issued based on the inspection report of the Assistant Director, Villupuram. However, nowhere in the inspection report, the Assistant Director stated that the Petitioner misappropriated the Government funds. The deficiencies noted during his inspection was stated as follows:

"21.,ju FiwghLfs ;:: 1) vt;tp[j brytpd rPl;LfSk;; ,y;yhky; Cuhl;rp epjpapy; brytpdk; nkw;bfhs;sg;gl;Ls;sJ/

2) bjhif gl;Lthlh nkw;bfhz;likf;F gotk; 14y; xg;g[jy; v. Jk; bgwg;gltpy;iy/

3) bjU kpd;tpsf;F kw;Wk; ,ju cgfuz'';fs; bfhs;Kjy; Kiwahf nkw;bfhs;sg;gltpy;iy/ gotk;; 18 & 17y; gjpag;gltpy;iy/"

20. In my considered view, the learned Counsel for the Petitioner was correct in his submission that the reasons for removal given in the Gazette Notification dated 04.05.2010 were different from the reasons contained in the removal order dated 30.04.2010. But the learned Additional Advocate General submitted that the different reasons found in the Gazette Notification were immaterial, as it was a formality to notify the removal order as contemplated u/s Orissa Gram Panchayat of the Act and one should look only into the removal order.

21.I am not in agreement with the submissions made by the learned Additional Advocate General. When the second Respondent came to the conclusion to remove the Petitioner from the elected office of President, they should exercise more care and caution as observed by the Honourable Apex Court in Tarlochan Dev Sharma Vs. State of Punjab and Others, . The relevant passage from para 16 of the said judgment is as follows:

"16..... Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The

manner in which the power u/s 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality u/s 22 of the Act. To say the least, what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave it at that and say no more on this issue."

22. As rightly contended by the learned Counsel for the Petitioner, the ultimate finding in the removal order relating to charge Nos. 1 to 3 were mere some irregularities and not following certain procedures in the maintenance of records and accounts. Those matters could not form the basis for removal of the elected President as held by the Honourable Apex Court in its decision reported in *Tarlochan Dev Sharma Vs. State of Punjab and Others*, . In this regard, paras 7, 8 and 9 of the said judgment are extracted hereunder:

"7. 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. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of "abuse of his powers" (of President), *inter alia*. This is the phrase with which we are concerned in the present case.

23. The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between, a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The Appellant is not charged with habitual failure to perform the duties of President of the Municipal Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1-10-1999 have to be tested on the touchstone of the availability of this ground.

24. The phrase "abuse of powers" as providing a ground for proceeding u/s 22 is not defined in the Act. Black's Law Dictionary (7th Edn., 1999) gives the

meaning of "abuse" as "to depart from legal or reasonable use in dealing with (a person or thing)", "to injure (a person) physically or mentally", "to damage (a thing)". In Corpus Juris Secundum (Vol. 1, p.402) it is so stated:

"ABUSE As noun.-It has been said that the word is not a term of art in the law and that its everyday popular sense is well known; but that its proper signification when employed depends upon the context and subject-matter. In its largest sense, ill-use or improper treatment of another; misuse. In the plural as used with reference to the authority of governmental commissions to correct "abuses", the word has been held to mean a disregard of duty imposed by law; any improper use of a right or privilege."

The word "abuse" as occurring in Section 5(1)(d) of the Prevention of Corruption Act, 1947 came up for consideration of this Court in *M. Narayanan Nambiar v. State of Kerala*¹. This Court observed: (AIR p.1118, para 10) " "Abuse" means misuse i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word "otherwise" has wide connotation and if no limitation is placed on it, the words "corrupt", "illegal", and "otherwise" mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned Counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word "otherwise" with the words "corrupt or illegal means", and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause.""

25. Likewise, in the judgment reported in *Sharda Kailash Mittal Vs. State of M.P. and Others*, the Honourable Apex Court categorically held that the removal of President could be resorted to only under grave and exceptional circumstances. Paras 22, 24, 26 and 27 of the said judgment are extracted hereunder:

"22. The analysis of these materials, particularly, the background shows that the State Government failed to appreciate that the decisions for publication of advertisements, calling for tenders and payment of salaries were made by the entire Council and the President, Appellant could not be singled out for those decisions taken by the Council. The High Court failed to appreciate that the removal u/s 41-A of the Act could be resorted to only under grave and exceptional circumstances which were not present in the Appellant's case. No charge of causing financial loss to the Nagar Palika could be established by the State Government.

26. In *Tarlochan Dev Sharma v. State of Punjab*¹ this Court while dealing with the removal of a President of the Council under the Punjab Municipal Act of 1911, held in para 7 as under: (SCC pp.268-69)

"7. In a democracy governed by the 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. ... 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."

In para 11 this Court observed as under: (*Tarlochan Dev Sharma* case, SCC pp. 270-71)

"11. ...A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is.... The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

The same consideration must be taken into account while interpreting Section 41-A of the Act. The President under the M.P. Municipalities Act, 1961 is a democratically elected officer, and the removal of such an officer is an extreme step which must be resorted to only in grave and exceptional circumstances.

27. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

28. In the present case, the actions of the Appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s 41-A."

29. The aforesaid decisions of the Honourable Apex Court squarely apply to the facts and circumstances of this case. Charge No. 1 is only relating to not following the procedure. In fact, relating to charge No. 1, in para 7 of the counter affidavit, it is stated as follows:

"7. The Petitioner himself has admitted that he was not able to properly show the voucher and has since rectified it and will submit it for inspection, which implies

that he has fabricated the bills to cover up the irregularity. The Panchayat Assistant in his statement has submitted that the amount has been withdrawn without Form -19 and sub-vouchers and no proper entries were made in the register. This itself is strong evidence indicating the irregularities."

30. Even according to the second Respondent, it was an irregularity. In fact, the Petitioner stated that he was occupying the office as a first time and that he was not conversant with the procedures and the defects pointed out by the Assistant Director were subsequently rectified. But the second Respondent stated that the subsequent rectification could not be considered and proceeded to remove the Petitioner from the office. Charge No. 3 was relating to the excess expenditure made for the aintenance of drinking water pumps and street lights. The Petitioner, as President, stated that those are all essential matters for the general public and that therefore, the xpenditure were incurred and subsequent ratification was obtained. But the same was not considered by the second Respondent in proper perspective.

31. Furthermore, as rightly contended by the learned Counsel for the Petitioner, Section 205(1) of the Act contemplates that there should be wilful omission or wilful abuse of power for initiating action u/s 205(1) of the Act. Section 205 of the Act is extracted hereunder:

"205. Removal of president.-(1) The Inspector -

(a) of his own motion, or

(b) on a representation in writing signed by not less than two-thirds of the sanctioned strength of the village panchayat containing a statement of charges against the president and presented in person to the Inspector by any two of the members of the village panchayat, is satisfied that the president wilfully omits or refuses to carry out or disobeys any provision of this Act, or any rule, by-law, regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the president to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.

(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in Sub-section (1) and the explanation of the president if received within the specified date with a proposal for the removal of the president for ascertaining the views of the village panchayat.

(3) The Tahsildar shall then convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the president, at the office of the village panchayat at a time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be delivered to the president and to all the members of the village panchayat by the Tahsildar at least seven days before the date of the meeting.

(5) The Tahsildar shall preside at the meeting convened under this section and no other person shall preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the president by the Tahsildar under Sub-section(6).

(6) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date so appointed for the meeting under Sub-section (3). Notice of not less than seven clear days shall be given to the members and the president of the time appointed for the adjourned meeting.

(7) Save as provided in Sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any, and the proposal for the removal of the president under this section shall not for any reasons, be adjourned.

(8) As soon as the meeting convened under this section is commenced, the Tahsildar, shall read to the village panchayat the notice of the Inspector and the explanation if any, of the president [and the proposal for the removal of the president], for the consideration of which it has been convened.

[(8A) There shall be no debate in any meeting under this section.]

(9) The Tahsildar shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(10) The views of the village panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(11) The Inspector may, after considering the views of the village panchayat in this regard, in his discretion either remove the president from office by notification with effect from a date to be specified therein or drop further action.

(12) The Government shall have power to cancel any notification issued under Sub-section(11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

(13) Any person in respect of whom a notification has been issued under Sub-section (11) removing him from the office of president shall, unless the notification is cancelled under Sub-section (12), be ineligible for election as president until the date on which notice of the next ordinary elections to the village panchayat is published in the prescribed manner, or the expiry of one year from the date specified in such notification as postponed by the order, if any,

issued under Sub-section (12) whichever is earlier."

32. However, nowhere in the entire proceedings, it was stated that the Petitioner "wilfully acted", "wilfully omitted", "wilfully committed" or "wilfully abused the power". The Honourable Apex Court considered Section 22 of the Punjab Municipal Act in the judgment reported in Tarlochan Dev Sharma Vs. State of Punjab and Others, and though the word "wilful" is not found in Section 22 of the Punjab Municipal Act, the Honourable Apex Court read "wilful" into Section 22 of the said Act. Para 11 of the said judgment is extracted hereunder, in this regard.

"11. 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 wilful 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. Yet again, the expression employed in Section 22 is "abuse of his powers or of habitual failure to perform his duties". The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase "abuse of powers" must take colour from the next following expression - "or habitual failure to perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

33. The term "wilful" was interpreted by the Honourable Apex Court in the judgment relied on by the learned Counsel for the Petitioner in State of Orissa and Others Vs. Md. Illiyas, . In the said judgment, the Honourable Apex Court held that though the concerned authority, while placing the President under suspension, has noted down that he acted wilfully, the High Court interfered in the order of suspension. The Honourable Apex Court categorically held that the authority carefully recorded that the President "wilfully acted", while placing him under suspension. In the said case, Section 115(1) of the Orissa Gram Panchayat Act came up for consideration.

34. In the present case, as stated above, the second Respondent nowhere stated that the Petitioner "wilfully" omitted or committed certain acts or "wilfully" abused the office.

35. Further, the order dated 28.01.2008 issued by the second Respondent to the Tahsildar, Sankarapuram to convene a meeting nowhere stated about his

proposal to remove the Petitioner from the elected office. The said notice dated 28.01.2008 is extracted hereunder:

"cj;;jut[

Cuhl;rp epjpapid chpa tpjpKiwfSf;F cl;glhkYk;/ Cuhl;rp gotk; 19 kw;Wk; Jiz brytpdr; rPl;Lfs; v. Jkpd;wp Cuhl;rpapy; brytpdk; nkw;bfhz;likf;fhf jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(1) M fPH; r";fuhg[uk; Cuhl;rp xd;wpaj;ij rhh;e;j K:uhh;ghisak; / \$k;gil Cuhl;rp kd;wj;jiyth; ghh;it 1y; fhQ Dk; mwptpf;ifapd; tHp tpsf;fk; nfhug;gl;lj/ tpsf;fk; nfhUk; mwptpf;if Cuhl;rp kd;wj;jiythplk; 19.10.97 md;W rhh;t[bra;ag;gl;L. Cuhl;rp kd;wj;jiythpd; tpsf;fk; bgwg;gl;Ls;sJ/

vdnt Cuhl;rp kd;wj;jiyth; mspj;Js;s tpsf;fj;jpid ghprPyid bra;J jdJ fUj;jpid \$k;gil Cuhl;rp kd;wk; bjhptpf;f v. Jthf Cuhl;rp kd;wf;Tl;lj;jpid Tl;l jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(3) Kjy; (10) tiuapyhd rl;lg{h;tkhd eltof;if nkw;bfhs;s jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(2) d; fPH; r";fuhg[uk; tl;lhl;rpaiu epakdk; bra;J ,jd;tHp cj;jutplg;gLfpwJ/

Cuhl;rpkd;wj;jiythplk; tpsf;fk; nfhUk; mwptpf;ifapd; efy;. Cuhl;rp kd;wj;jiyth; mspj;Js;s tpsf;f fojj;jpd; efy; kw;Wk; jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 g[j;jf efy; Mfpait jftYf;fhf ,j;Jld; ,izj;J mDg;gg;gLfpwJ/

nkYk; ,t;t[j;jutpid bgw;Wf; bfhz;likf;fhd xg;g[jiy kW m";rypy; mDg;gpitf;f tl;lhl;rpah; mwpt[Wj;jg;gLfpwhh;/ ,g;gzpapid gpg;uthp 2008 jp";fSf;Fs; Koj;J mwptpf;ifapid mDg;gp itj;jplt[k; tl;lhl;rpah; gzp;fg;gLfpwhh;."

36. Hence, as rightly contended by the learned Counsel for the Petitioner, Section 205(3) of the Act has been contravened. Likewise, when the Tahsildar issued notice to the President and other Members, he informed them that the meeting was convened to ascertain their views on the notice issued u/s 205(1)(a) of the Act and the explanation submitted by the Petitioner thereon and nowhere it was stated that the proposal of removal was forwarded by the second Respondent. The said notice dated 22.02.2008 is extracted hereunder:

"ghh;itapy; fhQ Dk; khtl;l Ml;rpj;jiyth;. tpGg;g[uk; mth;fspd; cj;jutpd;go hpcpte;jpak; Cuhl;rp xd;wpaj;ijr; nrh;e;j \$k;gil Cuhl;rp kd;wj; jiyth; kPJ njrpa Cuf ntiy cWjpp; jpl;l epjp KiwnfL ifahly; bra;jJ bjhlh;ghf jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 (cl;gphpt[3 Kjy; 10 tiuapyhd) rl;lg;g{h;t eltof;if nkw;bfhs;s jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 (2)d; fPH; r";fuhg[uk; tl;lhl;rpaiu epakdk; bra;ag;gl;Ls;sJ/

,jd; mog;gilapy; \$k;gil Cuhl;rp kd;wf; Tl;lj;ij vjph;tUk; 05/03/2008 gpw;gfy; 3/00 kzpastpy;

\$k;gil Cuhl;rpkd;w mYtyfj;jpy; r";fuhg[uk;tl;lhl;rpah; jiyikapy; eilbgwt[s;s Tl;lj;jpw;fhd tpthjg; bghUs; ,j;Jld; ,izj;J mDg;gp itf;fg;gLfpwJ/

,e;j mwptpg;gp id bgw;Wf;bfhz;likf;fhd xg;g[jy; mspg;gJld; nkw;go Tl;lj;jpw;F jtwhJ M\$uhfptp;l ,jd; K:yk; mwptpf;fg;gLfpwJ/

bghUs; vz;

jPh;khdk; vz;

05/03/2008 md;W tl;lhl;rpah; jiyikapy; \$k;gil Cuhl;rp kd;wf; Tl;lk; eilbgWtjw;fhd Tl;lg; bghUs;/

r";fuhg[uk; Cuhl;rp xd;wpak;. \$k;gil Cuhl;rpapy; 2006-2007 Mk; Mz;L bray;gLj;jg;gl;l njrpa Cuf ntiy cWjpasp;g[j; jpl;l epjpapy; KiwnfL kw;Wk; ifahly; bra;jJ bjhlh;ghf tpGg;g[uk; khtl;l Ml;rpj; jiyth; mth;fspd; e/f/m/2/5830/2007 ehs; 04/10/2007-d;go jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 cl;gphpt[(1) (m)-d; fPH; tpsf;fk; nfhug;gl;lJ/ \$k;gil Cuhl;rp kd;wj; jiyth; mspj;Js;s tpsf;fj;jpid \$k;gil Cuhl;rp kd;wj;jpd; fUj;jwpa[k; bghUl;L ghh;itf;F itf;fg;gLfpwJ/

Cuhl;rp kd;wj; jiythpd; tpsf;fj;jpid Vw;gJ Fwpj;J kd;wj;jpd; fUj;jpid bjhptpf;f kd;wk; jPh;khdpj;jy; bjhlh;ghf/"

Hence, Section 205(7)and (8) of the Act was also contravened as rightly contended by the learned Counsel for the Petitioner.

37. Though the second Respondent issued the notice dated 12.03.2010 stating that he did not agree with the views expressed by the Members of the Panchayat and he differed with the views, he recorded that he rejected those views, before seeking explanation from the Petitioner. Hence, the law laid down by the Full Bench of this Court in the judgment reported in 2009 (4) CTC 609 was not complied in letter and spirit. In this regard, the relevant passage from the said judgment is extracted hereunder:

"17.(iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President."

37. In view of the aforesaid findings, the learned Additional Advocate General is not correct in his submission that the Petitioner could seek redressal by filing appeal. The judgment relied on by the learned Additional Advocate General does not lay down the law that the writ petition is not maintainable, even when the removal was passed in violations of principles of natural justice and there are violations of statutory provisions.

38. In view of the aforesaid discussions, the writ petition is maintainable and the judgment relied on by the learned Counsel for the Petitioner in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, squarely applies to the facts and circumstances of this case. Para 7 of the said judgment is extracted hereunder.

"7. So far as the view taken by the High Court that the remedy by way of

recourse to arbitration clause was available to the Appellants and therefore the writ petition filed by the Appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks.*) The present case attracts applicability of the first two contingencies. Moreover, as noted, the Petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the Appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

39. For all the aforesaid reasons, the impugned order dated 30.04.2010 and the Gazette Notification No. 130 dated 04.05.2010 are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

"9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned Counsel for the Respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned Counsel for the Appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the Respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the Respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the Respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that Respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that Respondent's name was not included in the schedule appended to GO Ms 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf."

16. Furthermore, while the findings relating to charge Nos. 1 to 3 in the impugned order u/s Orissa Gram Panchayat of the Act nowhere recorded that the Petitioner involved in misappropriation of funds. It was stated therein that the Petitioner attempted to misappropriated the funds. There is no such allegation.

Moreover, in the notice u/s 205(1)(a) of the Act making the charges, there was no mention that the Petitioner abused his power. But in the final order, it was stated that there was abuse of power.

17. In the Tamil Nadu Government Gazette Notification dated 04.05.2010, the following was notified:

"jkh;ehl Cuhl;rpfs; rl;lk;. 1994 gphpt[205. cl;gphpt[11d; fPH; Cuhl;rpfsdpd; Ma;thsh; / khtl;l Ml;rpj; jiyUf;F mspf;fg;gl;Ls;s mjpfhuj;jpd;go. \$k;gil Cuhl;rp kd;wj;jiyU; Cuhl;rp epjpapy; gotk; 19 kw;Wk; Jiz bryt[r;rPl;Lfs; v. Jk; ,y;yhky; brytpdk; nkw;bfhz;lJ/ twl;rp ephuz gzpSf;F khtl;l Ml;rpah; eph;thf mDkjp mspj;J Cuhl;rp epjpapy; ,g;gzpapid Jt";fhkYk;. nghjpa epjp ,Ug;g[itf;fhkYk; Cuhl;rp epjpapid ifahly; bra;jJ. Kiwnflhf brytpdk; nkw;bfhz;l Cuhl;rp kd;wj;jiyth; vd;Dk; mjpfhuj;ij jtwfh gad;gLj;jp Cuhl;rp;F ,Hg;gpId Vw;gLj;jpa \$k;gil Cuhl;rp kd;wj;jiyth; jpU.rp.,uhkrhkp vd;gtiu gjtp ePf;fk; bra;J mwptpf;if btspaplg;gLfpwJ/ ,e;j mwptpf;if jkh;ehl murpjHpy; btspaplg;gLk; ehs; Kjy; mK Yf;F tUfpwJ/"

18. While the impugned removal order dated 30.04.2010 stated that the Petitioner attempted to misappropriate the funds, the Gazette Notification dated 04.05.2010 stated that the Petitioner misappropriated the Government funds. As already stated that while abuse of power was not specifically stated in the charge sheet, it was stated so in the impugned removal order dated 30.04.2010 as well as in the Gazette Notification dated 04.05.2010.

19. The show cause notice dated 04.10.2007 u/s 205(1)(a) of the Act was issued based on the inspection report of the Assistant Director, Villupuram. However, nowhere in the inspection report, the Assistant Director stated that the Petitioner misappropriated the Government funds. The deficiencies noted during his inspection was stated as follows:

"21.,ju FiwghLfs ;:: 1) vt;tp[j brytpd rPl;LfSk;; ,y;yhky; Cuhl;rp epjpapy; brytpdk; nkw;bfhs;sg;gl;Ls;sJ/

2) bjhif gl;Lthlh nkw;bfhz;likf;F gotk; 14y; xg;g[jy; v. Jk; bgwg;gltpy;iy/

3) bjU kpd;tpsf;F kw;Wk; ,ju cgfuz";fs; bfhs;Kjy; Kiwahf nkw;bfhs;sg;gltpy;iy/ gotk;; 18 & 17y; gjpag;gltpy;iy/"

20. In my considered view, the learned Counsel for the Petitioner was correct in his submission that the reasons for removal given in the Gazette Notification dated 04.05.2010 were different from the reasons contained in the removal order dated 30.04.2010. But the learned Additional Advocate General submitted that the different reasons found in the Gazette Notification were immaterial, as it was a formality to notify the removal order as contemplated u/s 205(11) of the Act and one should look only into the removal order.

21. I am not in agreement with the submissions made by the learned Additional Advocate General. When the second Respondent came to the conclusion to remove the Petitioner from the elected office of President, they should exercise

more care and caution as observed by the Honourable Apex Court in *Tarlochan Dev Sharma Vs. State of Punjab and Others*, . The relevant passage from para 16 of the said judgment is as follows:

"16..... Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power u/s 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality u/s 22 of the Act. To say the least, what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave it at that and say no more on this issue."

22. As rightly contended by the learned Counsel for the Petitioner, the ultimate finding in the removal order relating to charge Nos. 1 to 3 were mere some irregularities and not following certain procedures in the maintenance of records and accounts. Those matters could not form the basis for removal of the elected President as held by the Honourable Apex Court in its decision reported in *Tarlochan Dev Sharma Vs. State of Punjab and Others*, . In this regard, paras 7, 8 and 9 of the said judgment are extracted hereunder:

"7. 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. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of "abuse of his powers" (of President), *inter alia*. This is the phrase with which we are concerned in the present case.

23. The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between, a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The Appellant is not charged with habitual failure to perform the duties of President of the Municipal

Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1-10-1999 have to be tested on the touchstone of the availability of this ground.

24. The phrase "abuse of powers" as providing a ground for proceeding u/s 22 is not defined in the Act. Black's Law Dictionary (7th Edn., 1999) gives the meaning of "abuse" as "to depart from legal or reasonable use in dealing with (a person or thing)", "to injure (a person) physically or mentally", "to damage (a thing)". In Corpus Juris Secundum (Vol. 1, p.402) it is so stated:

"ABUSE As noun.-It has been said that the word is not a term of art in the law and that its everyday popular sense is well known; but that its proper signification when employed depends upon the context and subject-matter. In its largest sense, ill-use or improper treatment of another; misuse. In the plural as used with reference to the authority of governmental commissions to correct "abuses", the word has been held to mean a disregard of duty imposed by law; any improper use of a right or privilege."

The word "abuse" as occurring in Section 5(1)(d) of the Prevention of Corruption Act, 1947 came up for consideration of this Court in *M. Narayanan Nambiar v. State of Kerala*¹. This Court observed: (AIR p.1118, para 10) " "Abuse" means misuse i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word "otherwise" has wide connotation and if no limitation is placed on it, the words "corrupt", "illegal", and "otherwise" mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned Counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word "otherwise" with the words "corrupt or illegal means", and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause.""

25. Likewise, in the judgment reported in *Sharda Kailash Mittal Vs. State of M.P. and Others*, the Honourable Apex Court categorically held that the removal of President could be resorted to only under grave and exceptional circumstances. Paras 22, 24, 26 and 27 of the said judgment are extracted hereunder:

"22. The analysis of these materials, particularly, the background shows that the State Government failed to appreciate that the decisions for publication of advertisements, calling for tenders and payment of salaries were made by the entire Council and the President, Appellant could not be singled out for those

decisions taken by the Council. The High Court failed to appreciate that the removal u/s 41-A of the Act could be resorted to only under grave and exceptional circumstances which were not present in the Appellant's case. No charge of causing financial loss to the Nagar Palika could be established by the State Government.

26. In *Tarlochan Dev Sharma v. State of Punjab*¹ this Court while dealing with the removal of a President of the Council under the Punjab Municipal Act of 1911, held in para 7 as under: (SCC pp.268-69)

"7. In a democracy governed by the 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. ... 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."

In para 11 this Court observed as under: (*Tarlochan Dev Sharma* case, SCC pp. 270-71)

"11. ...A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is.... The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

The same consideration must be taken into account while interpreting Section 41-A of the Act. The President under the M.P. Municipalities Act, 1961 is a democratically elected officer, and the removal of such an officer is an extreme step which must be resorted to only in grave and exceptional circumstances.

27. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

28. In the present case, the actions of the Appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s 41-A."

29. The aforesaid decisions of the Honourable Apex Court squarely apply to the

facts and circumstances of this case. Charge No. 1 is only relating to not following the procedure. In fact, relating to charge No. 1, in para 7 of the counter affidavit, it is stated as follows:

"7. The Petitioner himself has admitted that he was not able to properly show the voucher and has since rectified it and will submit it for inspection, which implies that he has fabricated the bills to cover up the irregularity. The Panchayat Assistant in his statement has submitted that the amount has been withdrawn without Form -19 and sub-vouchers and no proper entries were made in the register. This itself is strong evidence indicating the irregularities."

30. Even according to the second Respondent, it was an irregularity. In fact, the Petitioner stated that he was occupying the office as a first time and that he was not conversant with the procedures and the defects pointed out by the Assistant Director were subsequently rectified. But the second Respondent stated that the subsequent rectification could not be considered and proceeded to remove the Petitioner from the office. Charge No. 3 was relating to the excess expenditure made for the aintenance of drinking water pumps and street lights. The Petitioner, as President, stated that those are all essential matters for the general public and that therefore, the xpenditure were incurred and subsequent ratification was obtained. But the same was not considered by the second Respondent in proper perspective.

31. Furthermore, as rightly contended by the learned Counsel for the Petitioner, Section 205(1) of the Act contemplates that there should be wilful omission or wilful abuse of power for initiating action u/s 205(1) of the Act. Section 205 of the Act is extracted hereunder:

"205. Removal of president.-(1) The Inspector -

(a) of his own motion, or

(b) on a representation in writing signed by not less than two-thirds of the sanctioned strength of the village panchayat containing a statement of charges against the president and presented in person to the Inspector by any two of the members of the village panchayat, is satisfied that the president wilfully omits or refuses to carry out or disobeys any provision of this Act, or any rule, by-law, regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the president to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.

(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in Sub-section (1) and the explanation of the president if received within the specified date with a proposal

for the removal of the president for ascertaining the views of the village panchayat.

(3) The Tahsildar shall then convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the president, at the office of the village panchayat at a time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be delivered to the president and to all the members of the village panchayat by the Tahsildar at least seven days before the date of the meeting.

(5) The Tahsildar shall preside at the meeting convened under this section and no other person shall preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the president by the Tahsildar under Sub-section(6).

(6) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date so appointed for the meeting under Sub-section (3). Notice of not less than seven clear days shall be given to the members and the president of the time appointed for the adjourned meeting.

(7) Save as provided in Sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any, and the proposal for the removal of the president under this section shall not for any reasons, be adjourned.

(8) As soon as the meeting convened under this section is commenced, the Tahsildar, shall read to the village panchayat the notice of the Inspector and the explanation if any, of the president [and the proposal for the removal of the president], for the consideration of which it has been convened.

[(8A) There shall be no debate in any meeting under this section.]

(9) The Tahsildar shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(10) The views of the village panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(11) The Inspector may, after considering the views of the village panchayat in this regard, in his discretion either remove the president from office by notification with effect from a date to be specified therein or drop further action.

(12) The Government shall have power to cancel any notification issued under Sub-section(11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

(13) Any person in respect of whom a notification has been issued under Sub-section (11) removing him from the office of president shall, unless the notification is cancelled under Sub-section (12), be ineligible for election as president until the date on which notice of the next ordinary elections to the village panchayat is published in the prescribed manner, or the expiry of one year from the date specified in such notification as postponed by the order, if any, issued under Sub-section (12) whichever is earlier."

32. However, nowhere in the entire proceedings, it was stated that the Petitioner "wilfully acted", "wilfully omitted", "wilfully committed" or "wilfully abused the power". The Honourable Apex Court considered Section 22 of the Punjab Municipal Act in the judgment reported in Tarlochan Dev Sharma Vs. State of Punjab and Others, and though the word "wilful" is not found in Section 22 of the Punjab Municipal Act, the Honourable Apex Court read "wilful" into Section 22 of the said Act. Para 11 of the said judgment is extracted hereunder, in this regard.

"11. 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 wilful 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. Yet again, the expression employed in Section 22 is "abuse of his powers or of habitual failure to perform his duties". The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase "abuse of powers" must take colour from the next following expression - "or habitual failure to perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision."

33. The term "wilful" was interpreted by the Honourable Apex Court in the judgment relied on by the learned Counsel for the Petitioner in State of Orissa and Others Vs. Md. Illiyas, . In the said judgment, the Honourable Apex Court held that though the concerned authority, while placing the President under suspension, has noted down that he acted wilfully, the High Court interfered in the order of suspension. The Honourable Apex Court categorically held that the authority carefully recorded that the President "wilfully acted", while placing him under suspension. In the said case, Section 115(1) of the Orissa Gram Panchayat Act came up for consideration.

34. In the present case, as stated above, the second Respondent nowhere stated that the Petitioner "wilfully" omitted or committed certain acts or "wilfully" abused the office.

35. Further, the order dated 28.01.2008 issued by the second Respondent to the Tahsildar, Sankarapuram to convene a meeting nowhere stated about his proposal to remove the Petitioner from the elected office. The said notice dated 28.01.2008 is extracted hereunder:

"cj;;jut[

Cuhl;rp epjapid chpa tpjpKiwfSf;F cl;glhkYk;/ Cuhl;rp gotk; 19 kw;Wk; Jiz brytpdr; rPl;Lfs; v. Jkpd;wp Cuhl;rpapy; brytpdk; nkw;bfbhz;likf;fhf jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(1) M fPH; r";fuhg[uk; Cuhl;rp xd;wpaj;ij rhh;e;j K:uhh;ghisak; / \$k;gil Cuhl;rp kd;wj;jiyth; ghh;it 1y; fhQ Dk; mwptpf;ifapd; tHp tpsf;fk; nfhug;gl;lj/ tpsf;fk; nfhUk; mwptpf;if Cuhl;rp kd;wj;jiythplk; 19.10.97 md;W rhh;t[bra;ag;gl;L. Cuhl;rp kd;wj;jiythpd; tpsf;fk; bgwg;gl;Ls;sJ/

vdnt Cuhl;rp kd;wj;jiyth; mspj;Js;s tpsf;fj;jpid ghprPyid bra;J jdJ fUj;jpid \$k;gil Cuhl;rp kd;wk; bjhptpf;f v. Jthf Cuhl;rp kd;wf;Tl;lj;jpid Tl;l jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(3) Kjy; (10) tiuapyhd rl;lg{h;tkhd eltof;if nkw;bfbhs;s jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205(2) d; fPH; r";fuhg[uk; tl;lhl;rpaiu epakdk; bra;J ,jd;tHp cj;jutplg;gLfpwJ/

Cuhl;rpkd;wj;jiythplk; tpsf;fk; nfhUk; mwptpf;ifapd; efy;. Cuhl;rp kd;wj;jiyth; mspj;Js;s tpsf;f fojj;jpd; efy; kw;Wk; jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 g[j;jf efy; Mfpait jftYf;fhf ,j;Jld; ,izj;J mDg;gg;gLfpwJ/

nkYk; ,t;t[j;jutpid bgw;Wf; bfbhz;likf;fhf xg;g[jiy kW m";rypy; mDg;gpitf;f tl;lhl;rpah; mwpt[Wj;jg;gLfpwhh;/ ,g;gzpapid gpg;uthp 2008 jp";fSf;Fs; Koj;J mwptpf;ifapid mDg;gp itj;jplt[k; tl;lhl;rpah; gzpfg;gLfpwhh;."

36. Hence, as rightly contended by the learned Counsel for the Petitioner, Section 205(3) of the Act has been contravened. Likewise, when the Tahsildar issued notice to the President and other Members, he informed them that the meeting was convened to ascertain their views on the notice issued u/s 205(1)(a) of the Act and the explanation submitted by the Petitioner thereon and nowhere it was stated that the proposal of removal was forwarded by the second Respondent. The said notice dated 22.02.2008 is extracted hereunder:

"ghh;itapy; fhQ Dk; khtl;l Ml;rpj;jiyth;. tpGg;g[uk; mth;fspd; cj;jutpd;go hpcopte;jpak; Cuhl;rp xd;wpaj;ijr; nrh;e;j \$k;gil Cuhl;rp kd;wj; jiyth; kPJ njrpa Cuf ntiy cWjpp; jpl;l epjp KiwnfL ifahly; bra;jJ bjhlh;ghf jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 (cl;gphpt[3 Kjy; 10 tiuapyhd) rl;lg;g{h;t eltof;if nkw;bfbhs;s jkpH;ehL Cuhl;rpfs; rl;lk; 1994 gphpt[205 (2)d; fPH; r";fuhg[uk; tl;lhl;rpaiu epakdk; bra;ag;;gl;Ls;sJ/

,jd; mog;gilapy; \$k;gil Cuhl;rp kd;wf; Tl;lj;ij vjph;tUk; 05/03/2008 gpw;gfy;

3/00 kzipastpy;

\$k;gil Cuhl;rpkd;w mYtyfj;jpy; r";fuhg[uk;tl;lhl;rpah; jiyikapy; eilbgwt[s;s
Tl;l;j;wpw;fhd tpthjg; bghUs; ,j;Jld; ,izj;J mDg;gp itf;fg;gLfpwJ/

,e;j mwptpg;gpjd bgw;Wf;bfhz;likf;fhd xg;g[jy; mspg;gJld; nkw;go Tl;l;j;wpw;F
jtwHJ M\$uhfptp;l ,jd; K:yk; mwptpf;fg;gLfpwJ/

bghUs; vz;

jPh;khdK; vz;

05/03/2008 md;W tl;lhl;rpah; jiyikapy; \$k;gil Cuhl;rp kd;wf; Tl;lK;
eilbgWtjw;fhd Tl;lG; bghUs;/

r";fuhg[uk; Cuhl;rp xd;wpak;. \$k;gil Cuhl;rpapy; 2006-2007 Mk; Mz;L
bray;gLj;jg;gl;l njrpa Cuf ntiy cWjpasp;g[j; jpl;l epjpapy; KiwnfL kw;Wk; ifahly;
bra;jJ bjhlh;ghf tpGg;g[uk; khtl;l Ml;rpj; jiyth; mth;fspd; e/f/m/2/5830/2007
ehs; 04/10/2007-d;go jkpH;ehL Cuhl;rpfs; rl;lK; 1994 gphpt[205 cl;gphpt[(1)
(m)-d; fPH; tpsf;fk; nfhug;gl;lJ/ \$k;gil Cuhl;rp kd;wj; jiyth; mspj;Js;s tpsf;jj;jpid
\$k;gil Cuhl;rp kd;wj;jpd; fUj;jwpa[k; bghUl;L ghH;itf;F itf;fg;gLfpwJ/

Cuhl;rp kd;wj; jiythpd; tpsf;jj;jpid Vw;gJ Fwpj;J kd;wj;jpd; fUj;jpid bjhptpf;f
kd;wk; jPh;khdPj;jy; bjhlh;ghf/"

Hence, Section 205(7)and (8) of the Act was also contravened as rightly
contended by the learned Counsel for the Petitioner.

37. Though the second Respondent issued the notice dated 12.03.2010 stating
that he did not agree with the views expressed by the Members of the Panchayat
and he differed with the views, he recorded that he rejected those views, before
seeking explanation from the Petitioner. Hence, the law laid down by the Full
Bench of this Court in the judgment reported in 2009 (4) CTC 609 was not
complied in letter and spirit. In this regard, the relevant passage from the said
judgment is extracted hereunder:

"17.(iii) If the Inspector differs with the views expressed by the Village
Panchayat and decides to remove the President or to drop the proceeding against
the President, he is not only required to record the reasons for differing with the
views of the Village Panchayat, but before taking any decision to remove the
President, the Inspector is also required to provide further notice to the President
intimating the reasons for difference and can issue notification only on
consideration of cause, if any, shown by the President."

37. In view of the aforesaid findings, the learned Additional Advocate General is
not correct in his submission that the Petitioner could seek redressal by filing
appeal. The judgment relied on by the learned Additional Advocate General does
not lay down the law that the writ petition is not maintainable, even when the
removal was passed in violations of principles of natural justice and there are
violations of statutory provisions.

38. In view of the aforesaid discussions, the writ petition is maintainable and the judgment relied on by the learned Counsel for the Petitioner in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, squarely applies to the facts and circumstances of this case. Para 7 of the said judgment is extracted hereunder.

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the Appellants and therefore the writ petition filed by the Appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the Petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the Appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

39. For all the aforesaid reasons, the impugned order dated 30.04.2010 and the Gazette Notification No. 130 dated 04.05.2010 are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.