

(2002) 07 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No. 3265 of 2001

Rameshchandra Saboo (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 55A, 55B

Citation : (2003) 1 ALLMR 118 : (2003) 1 BomCR 126 : (2002) 4 MhLj 892

Hon'ble Judges : R.G. Deshpande, J; P.S. Brahme, J

Bench : Division Bench

Advocate : S.R. Deshpande, for the Appellant; T.R. Kankale, A.G.P. for respondent No. 1, A. Joshi, for respondent No. 4; N.W. Sambre, for respondent Nos. 6 to 8 and Abhay Sambre, for the Respondent

Final Decision : Partly Allowed

Judgement

R.G. Deshpande, J.—The petitioner has approached this court challenging the order passed by Shri Sunil Tatkar - the then State Minister for Urban Development Department, Government of Maharashtra, whereby the present petitioner Shri Saboo is removed from the post of President, Municipal Council, Risod and further that, he has been held disqualified for contesting election for six years on any post as a Member of the Municipal Council. This order dated 7-9-2001 is communicated to the petitioner by the Desk Officer by letter dated 12-9-2001.

2. The petitioner was issued a show cause notice in accordance with the provisions of Section 55-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the Act of the purpose of brevity). As per the show-cause notice in all six charges were levelled against the petitioner. These six charges are as under :

1] Non holding of the meetings as per the Rules.

2] Unauthorisedly disposal of the Survey No. 10/1 which was reserved for the development of the Nagar Parishad.

3] For having recorded the resolutions which were not in accordance with law and further for keeping the record in that respect at his own residence whereby the financial loss is also caused to the Municipal Council.

4] For creating unnecessary hurdles in the development programmer/work of the Municipal Council.

5] For creating unnecessary hurdles in re-fixing of the property taxes.

6] For not depositing the development charges for the development of Municipal Council.

3. There is no dispute that this charge-sheet was duly served on the petitioner and the petitioner replied the same by his reply dated 27-6-2001. While replying the charges so far as regards the charge No. 1 was concerned the petitioner tried to explain that in accordance with the provisions of Section 81(1) the Municipal Council is supposed to hold the General Body Meeting once in two months and if no such meeting could be held for whatsoever reasons, it may be the duty of the Chief Officer, Municipal Council to bring it to the notice of the Collector concerned and the Collector thereafter in consultation with the Chief Officer, should hold the meeting. It is the contention of the petitioner that the government did not provide a regular Chief Officer for this Municipal Council. Either there used to be a constant change in the Chief Officers or whosoever were sent as Chief Officer of this Municipal Council were not attending the work regularly. According to him on certain occasions the Chief Officers were appointed for this Municipal Council who were holding post of Chief Officer of this Council by way of Additional Charge. Because of this situation the meetings could not be held by the Chief Officers and it was the failure on the part of the Chief Officer to have not communicated the same to the Collector. The petitioner, therefore, suggested through his reply that in fact the action should have been taken against the concerned Chief Officer and not the petitioner. The petitioner claimed that he cannot be held responsible for not holding of the meetings in accordance with law. The petitioner further tried to point out that during his tenure, there were about 9 Chief Executive Officers changed in the Municipal Council and out of them most of the Chief Officers were holding it by way of Additional Charge and they even did not remain present in the Municipal Council, even once in six months. The petitioner therefore, claimed to be totally exonerated of this charge.

4. As regards the second charge which pertains to sale of Survey No. 10/1 by the petitioner in spite of the same being reserved for the development plan, it is replied by the petitioner mentioning that this was the transaction prior to his becoming President of the Municipal Council. According to him, he became President of Municipal Council on 14-3-2000. The property which is alleged to have been sold, did belong to him and revenue record also indicated the same. According to the petitioner since there were no acquisition proceedings going on

and since there was no notice of any type to the petitioner to that effect, the petitioner was at liberty to sale the same. He therefore, claimed that this transaction could not be said to be the sale of property unauthorisedly. The petitioner therefore, contended that the question of contravention of any of the provisions of the Act, much less of sections 49, 58 and 96 of the Act does not arise.

5. While refuting the charge No. 3 which pertains to the keeping of the record at home and recording of false resolutions, it is the contention of the petitioner that on 3-5-2000 when the meeting was held, the concerned Clerk refused to record the minutes of the meeting and said clerk had handed over the said record to the President and left the place. Since in spite of the best efforts on the part of the petitioner, concerned clerk did not record the resolutions and the minutes, the petitioner was required to write the same. However, according to him since certain resolutions required sanction of the Municipal Council, the same were required to be written by the petitioner.

6. As regards the charge No. 4, it is the contention of the petitioner that the petitioner in no manner did create any hurdle or obstacle in the development plan of the council and particularly when no such development plan was ever sanctioned. He therefore, contended that no development plan was brought to the notice of the President/petitioner. He flatly refused to have created any such hurdles in the development. According to the petitioner in fact it was the responsibility of the Chief Officer, Municipal Council to have brought it to the notice of the President as regards any development plan, but the Chief Officer failed in the same. Petitioner therefore, claimed that he be declared to be not connected in any manner.

7. As regards the charge No. 5, the petitioner explained that while fixing the property tax or levying the property tax, what should be the method of fixing the same and in what manner it is to be implemented, in fact the Municipal Council is supposed to know the same. However, his grievance is that he was never made aware about the said procedure and the method for levying such tax. He further contended that even otherwise the final fixation of the property tax is to be decided by three members committee of the council and petitioner was totally ignorant of the procedure. It is his contention that for getting such information he was also required to undergo the hunger strike, but neither the Government nor the Chief Officer has brought to the notice of the President any such method of levying or fixing of property Tax. According to him, there appear to be certain difficulties in the levying of the property tax, which is apparent from the record. However, petitioner claimed to be totally innocent about the same and he claimed to be exonerated from the said charge.

8. So far as regards the charge No. 6 is concerned, it is the say of the petitioner that if any land is permitted to be used as non-agricultural land, the owner has to deposit the development charges. The necessary provisions to that effect are there under sections 124 and 150 of the Act. Further, according to him Section

150 of the Act does not stipulate anything as regards the deposit of the development charges. The petitioner contended that he cannot be held responsible for any transaction in that respect and he be exonerated of this charge also.

9. In short the contention of the petitioner is that, he has not committed any mistake or anything wrong and he cannot be held responsible for not having complied with the provisions of law. According to him, there were no shortcomings of any type in his working.

10. The petitioner while explaining in the abovesaid manner, further specifically narrated in his reply that in spite of demand, he was not supplied with the relevant documents and relevant documentary information, which he had asked for, from the Chief Officer, Municipal Council and hence the petitioner was constrained to submit his reply on the meager material whatsoever was available at his disposal.

11. After having received the explanation the petitioner was given due hearing by the concerned Minister and after having considered the material evidence on record, which was in nature of documentary evidence on the record, the learned Minister passed order on 7-9-2001 holding all the charges having been proved against the petitioner and further ordering removal of the petitioner from the post of President and further debarring the petitioner in accordance with the provisions of Section 55(B)(a)(b), from contesting elections of the Municipal Council.

12. Shri Deshpande, learned counsel appearing on behalf of the petitioner vehemently contended that while passing the order impugned, the authority concerned totally flouted the rules and principles of natural justice inasmuch as, he was not provided with the documents so as to defend himself by giving a detailed and proper reply to the show cause notice. Shri Deshpande further contended that the very issuance of the show cause notice itself was mala fide and it was by way of political vengeance. Shri Deshpande contended that though the charges are said to have been proved against the petitioner, in fact, the petitioner could not be held responsible for any of the alleged act or shortcomings or misconduct and therefore, the conclusions arrived at by the authority concerned were perverse.

13. Shri Deshpande, further scathingly assailed the impugned order contending that in fact whatever charges which were levelled against the petitioner were without any substance and did not constitute any of the disqualifications as referred to u/s 55 of the Act.

14. In support of his contention Shri Deshpande took us through the complete record of the petition so as to demonstrate that in spite of having asked for the relevant documents, no such documents were supplied to the petitioner so as to give him reasonable opportunity to defend himself. In this respect, he invited our attention to the last paragraph of his reply to the show cause notice, wherein

according to Shri Deshpande the petitioner made it clear that neither the Collector nor the Chief Officer of the Municipal Council supplied him relevant documents and detail information which was sought for. According to Shri Deshpande therefore, he had to submit his reply on the basis of information which was with the petitioner. Shri Deshpande invited our attention to the correspondence which he alleged to have made in that respect and particularly whereby he had demanded the information and documents. This letter is undated which is at Annexure : Z-I at page 6 of the documents which the petitioner produced along with the pursis on 29-4-2000, production of which is not seriously objected by the respondents. By this letter dated - nil, the petitioner asked for certain documents to which a reference is made therein. It is a long list given by the petitioner and really many of the documents and information sought for even in our opinion could be said to be unnecessary for the purpose of the points in question, but no information was supplied to him and therefore, he was required to give this reminder letter. The first letter of the petitioner to which now a reference is found which can be said to be of 3-3-2001 was replied by the Collector Washim informing the petitioner that the concerned departments were informed to give all the information which Mr. Saboo had asked for preparing his reply. This letter of Collector is dated 16-3-2001. All the concerned officers and departments to which such directions were given are mentioned in this letter. The Desk Officer by his letter dated 21-3-2001 also informed the Collector, Washim that all that information and documents sought for by Mr. Saboo should be given to him.

15. According to respondents all the documents and information relevant to the charges were supplied to the petitioner and according to the respondents there was no substance in the contention of the petitioner that he was not given the information and documents sought for by the petitioner.

16. Shri Kankale, learned A.G.P. appearing for the respondent - State and Mrs. Joshi, learned Advocate appearing for respondent Municipal Council brought to our notice the original record of the Municipal Council which clearly indicates that majority of the documents and information was supplied to the petitioner as per his demand and as per the directions of the Collector. These records were perused in the courts of arguments and petitioner saw the same. For considering these documents at the time of the decision, no serious objection is raised by the petitioner's counsel, in fact in ordinary course it was necessary for the respondents to put all these documents on record. However, merely because they are not placed, would not mean that we cannot consider those documents at this stage, particularly when the authenticity of the same is in no way doubted.

17. We see that as per the show cause notice the petitioner was specifically informed that, if at all after receipt of the show cause notice, the petitioner wanted any documents in that respect, he should have asked for the same in writing and should have obtained the same within 10 days of the receipt of that show cause notice and thereafter within 10 days he was supposed to file his

reply to the show cause notice. It is further made clear in the said show cause notice that only relevant and concerned documents would be supplied to the petitioner and irrelevant documents or the documents which were not required for his defence would not be given to him. The petitioner was also informed by show cause notice that if at all he wanted to have personal hearing, he should inform the concerned respondent in writing in that respect.

18. Keeping in view that, the relevant documents were either given to the petitioner as per his demand and whatever information was sought for which was relevant for the purpose of the case was also supplied to him, merely because certain alleged documents were not supplied to the petitioner, would not mean that the petitioner was not afforded a reasonable opportunity to defend himself.

19. So far as regards the conduct of the matter was there, the petitioner was given due hearing and therefore, the contention of Shri Deshpande, counsel for the petitioner that principles of natural justice are not observed, cannot be accepted in the facts and circumstances of the case.

20. Shri Deshpande, learned counsel for the petitioner contended that the charge No. 1 levelled against the petitioner which pertains to holding of the meetings in fact should not have been levelled against him. According to Shri Deshpande, in accordance with the Section 81(1) of the Act for the disposal of general business which is restricted to matters relating to the powers, duties and functions of the council, as specified in the Act or any other law for the time being in force, and any welcome address to a distinguished visitor, proposal for giving Manpatra to any distinguished person, or resolution of condolence, [where all or any of these are duly proposed] an ordinary meeting shall be held once in two months and the first such meeting is to be held within two months from the date on which the meeting of the council [under Section 5] is held and each succeeding ordinary meeting shall be held within two months from the date on which the last preceding ordinary meeting is held. According to Shri Deshpande, the present petitioner held the meetings on 3-5-2000, 19-8-2000, 13-11-2000 and 22-11-2000. Shri Deshpande further contended that since the petitioner was heart patient he was required to undergo medical treatment and that too at Chennai in Apollo Hospital, this according to him is a reason as to why the fifth meeting count not be held in accordance with the provisions of Section 81(1) of the Act.

21. Shri Deshpande further contended that even otherwise, it was the duty of the Chief Officer to convene the meeting and if the Chief Officer has failed in his duties, the petitioner could not be held responsible for the Chief Officer's failure. Shri Deshpande further contended that even otherwise there was no regular Chief Officer who could be said to be particular and attentive in his working and who was regularly attending the duty. In support of his contention Shri Deshpande tried to invite our attention to certain correspondence which he has annexed with his petition whereby he had made requests to the Government constantly to appoint a regular Chief Officer and that the Chief Officer should not

be the person holding any additional charge so as to regularise the working of the Risod Municipal Council. According to Shri Deshpande, this request of the petitioner remained unattended and therefore, whatsoever shortcomings were there so far as regards the meetings were concerned, he should not be held responsible. While scanning this argument of Shri Deshpande one thing is apparent that if at all there were any defects so far as regards to the calling of the meetings were concerned, it is not open for the President to escape from his own responsibility. If the Chief Officer was not acting as per either the directions and requests of the President, it was yet open for him to have approached the higher authorities, if the lower authorities were not attentive towards his complaints. Shri Deshpande during the course of arguments contended that it was nothing but a political vengeance and it was at the instance of the political parties, that the Chief Officers were not co-operating with the President. Though apparently it may appear to be a considerable reason, we are not much impressed by this argument, as if the position was such that the Chief Officers were not even attentive towards the instructions and directions of the President of the Municipal Council, that in our view definitely reflects otherwise, i.e. inefficiency of the President to work. In our opinion, just by shifting the responsibility on the Chief Officer, the President cannot escape from his responsibility. As regards the alleged meetings are concerned to which a reference is made above, it is absolutely clear that even assuming for the sake of arguments that the petitioner was suffering from some heart ailment, however, the facts as are obtained on the record clearly indicate that, prior to the relevant dates the petitioner had already undergone the treatment for his ailment and therefore, he could hold the first meeting on 3-5-2000. During his tenure in ordinary course he could have conducted four meetings, but factual position is that he conducted only three meetings, those are dated 3-5-2000, 19-8-2000 and 22-11-2000. So far as the meeting dated 13-11-2000 is concerned, the meeting though called could not be held because of the absence of the Chief Officer and therefore for all practical purposes the meeting dated 13-11-2000 cannot be treated to be a meeting to complete four meetings which he was supposed to conduct. The medical reason forwarded by the petitioner in our opinion, therefore, does not appear to be convincing even in slightest manner. Shri Deshpande, learned counsel during the arguments had to fairly concede to this position that the relevant reason for not conducting the required 4th meeting was non-co-operation of the Chief Officer and the non-availability of the Chief Officer for conducting the meeting. Shri Deshpande, therefore contended that for the shortcomings on the part of the Chief Officer the petitioner cannot be blamed.

22. Shri Kankale, learned A.G.P. appearing on behalf of the State and Mrs. Joshi learned Advocate appearing for Municipal Council, Risod brought to our notice that every time the Chief Officer was appointed, Chief Officer used to be free from any other work and that it is false on the part of the petitioner to say that the Chief Officers were not co-operating. Learned Advocate further contended that, to refuse the charges and the shortcomings the petitioner is trying to shift

the burden on the Chief Officer. The fact remains that the responsibility which was cast upon the President of the Municipal Council, the President appears to have definitely failed to discharge the same and that appears to be the reason as to why the learned Minister held the petitioner guilty in that respect.

23. So far as regards the other charges are concerned, it is clear that Minister has taken into consideration the relevant documents which are on record and has given due reasoning as to why the charges levelled against the petitioner can be said to have been proved against him.

24. Shri Deshpande contended that while dealing with the charges a cryptic order is passed by the Minister. However, after having gone through the order we see that respondent No. 1 has definitely taken into consideration all these documents and contention of the parties, and we restrain ourselves from reappreciating that evidence again our writ jurisdiction. If the view taken by the authority concerned could be said to be justifiable and possible view, then it would not be advisable and proper on the part of this Court to interfere unnecessarily with the same.

25. So far as regards the argument of Shri Deshpande that the findings arrived at are perverse, we are not in a position to accept this contention of Shri Deshpande as with the help of Shri Deshpande we have gone through the record of the case and also the original record which is made available during the course of the arguments by the respondents.

26. Shri Deshpande, further contended that so far as regards the charge Nos. 2 and 6 are concerned, according to him, these charges in fact in no way can be said to have been related to the duty of the President of the Municipal Council. According to him, however, there could be some nexus which could be said to be there and some remote relationship so far as regards the charges No. 1, 3, 4 and 5 were concerned. We therefore, do not wish to dilate on these four charges. However, so far as the charge Nos. 2 and 6 are concerned, we find that the charge No. 2 relates to disposal of Survey No. 10/1 which was the land owned by the petitioner and it was kept reserved by Municipal Council for Development Programme. Shri Deshpande contended that the land was disposed of much prior to his becoming President of the Municipal Council.-According to him he took over as President of the Municipal Council on 14-3-2000, but in fact he was granted permission to construct the house in February 1990 itself. The reply which is given to the show cause notice in our opinion is absolutely vague. The petitioner definitely has not made the things clear in his reply. However, Mrs. Joshi, learned counsel appearing for Municipal Council brought to our notice that the land was reserved under the Development Plan right in the year 1986 itself. Though he was granted permission to do the construction in 1990, factually the petitioner drew a lay-out on the site in question and started selling the plots therefrom, even that is after he had taken over as President and in spite of having been aware about the reservation of the site in question for Development Plan, he continued to sale and last such sale had taken place on 29-9- 2000, that

clearly means that even as President of Municipal Council, he has sold the land which he knew that in fact was kept reserved for Development Plan. In our opinion, though this could not be said to be a direct contravention of Section 49, however, the fact remains that in accordance with Section 55-A if the President or the Vice President is found to have involved in any misconduct in discharge of his duties or is found guilty of neglect in duties, or is found to be incapacitated to perform his duties, or if he is found guilty of any disgraceful conduct, then in such circumstances it is open for the government to remove such President or the Vice President as the case may be and during the remainder period he would not hold that office of Councillor. However, the only thing which is required to be observed is, before passing any order of such removal he has to be provided with a reasonable opportunity to furnish his explanation. If Section 55-A of the Act is read as is drafted by the Legislature and its true meaning and spirit, it even does not require holding of any type of enquiry at all.

27. So far as the question in the present petition is concerned, though there cannot be said to be any direct contravention of Section 49 of the Act, however, the facts as are obtained on the record clearly indicate that the petitioner can be well found guilty so far as regards his conduct was concerned, and to be precise, so far as regards the neglect and failure in discharging the duty, at the cost of repetition, we have to observe that not holding of complete meetings as provided u/s 81(1) of the Act, no doubt can be termed to be a neglect towards duty and failure in duty on the part of the petitioner. So far as regards the misconduct is concerned, we have no hesitation in observing that when the petitioner in spite of having been aware of the fact that, his field survey No. 10/1 was the land kept reserved for Development Plan, he at least after having become the President of the Municipal Council, should have restrained himself in any way dealing with that property and only after it would have been resolved by the Municipal Council to have let it free from such reservation, only then in ordinary course would have taken steps for disposal of the said land. The explanation on the other hand as is given by the petitioner is indicative of his adamant attitude when the petitioner contended that, that was his own property, and he had every right to dispose of it in any way, and particularly when he was permitted by the Municipal Council to have raise the construction on the property. The record is not yet clear before us as to whether it was the permission granted for his own construction or whether the permission was granted to lay the plot therein and to dispose it of so as to benefit himself financially and at the same time putting the Municipal Council at financial loss.

28. The another point which Mr. Deshpande argued is that, the action taken against the petitioner was very much tainted with mala fides. However, so far as the allegations of mala fides are concerned, it is absolutely clear from the record that the mala fides are alleged against the respondents Nos. 6, 7 and 8 who happened to be the employees of the Municipal Council. According to the Petitioner, these persons did not intentionally assist, helped and co-operated the petitioner so as to spoil his career as President of Municipal Council. Shri

Deshpande further argued that those acts were done by these persons at the instance of some political personalities and those persons utilized the services of these respondents Nos. 6, 7 and 8 so as to oust the petitioner from the chair of the President. However, after, having gone through the contents of the petition, we see that, but for bald allegations there is nothing on record to substantiate those alleged mala fides. We are therefore, not much impressed by this argument of Shri Deshpande, nor we find any justifiable reason to interfere with the order passed by authority below on this sole ground.

29. Shri Deshpande, learned counsel appearing on behalf of the petitioner in support of his contention relied on the decision reported in *Mohansingh Tanwani and Another Vs. State of Maharashtra and Others*, . Shri Deshpande contended that in view of this judgment, it is clear that if the Chief Officers of the Municipal Council are frequently transferred, and because of which the work of the Municipal Council is adversely affected and which made the President difficult to carry out his duties and responsibilities, cannot be said to be the deficiency on the part of the President. However, in the case cited by Shri Deshpande it was shown beyond doubt that work was affected because of the frequent transfers. However, in the instant case a specific stand is taken by the government that the Chief Officers were regularly provided and they were regularly working. We are therefore, not in a position to accept the contention of Shri Deshpande.

30. Shri Deshpande also invited our attention to a decision reported in AIR 2000 SC 1124 in the matter of *Baldeo Singh Gandhi v. State of Punjab*. Relying on this judgment Shri Deshpande contended that merely because the petitioner sold his land which might have otherwise affected the Municipal Council financially would not amount to misconduct on the part of the petitioner. However, in our opinion as we have already narrated at least after having taken over as a President of the Municipal Council the petitioner would have restrained himself from parting with the land which otherwise was reserved for a specific purpose in the Municipal Council.

31. We feel it necessary to point out that the word "misconduct" has a very wide meaning as has been observed by Supreme Court in the aforesaid cases, it is antithesis of the word "conduct". Ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. Since there are these very many shades of the word "misconduct", it has to be construed with reference to the subject and the context in which the expression is used. In our opinion, therefore, the misconduct pointed out on the part of the petitioner so far as regards action u/s 55-A is concerned is sufficient.

32. Shri Deshpande also relied on a decision reported in *S.L. Kapoor Vs. Jagmohan and Others*, relied on this judgment for the purpose to show that the principles of natural justice were not followed in the present matter. However, after having gone through the judgment cited above, we find that the facts are absolutely different and though principles of natural justice in the present case

are applicable, we do not feel that the same are not followed in the present case. In our opinion therefore, this judgment is of no help to Shri Deshpande in any manner.

33. Shri Kankale, learned A.G.P. on behalf of the State on the other hand relied on the judgment of this Court reported in 2001(1) Mh.L.J. 901 in the matter of Sureshkumar Kanhaiyalal Jethlia v. State of Maharashtra and Ors. The Division bench of this court in the abovesaid judgment specifically observed that the removal of President of Municipal Council is permissible only in clear cases of misconduct and neglect. However, mere failure or laxity on account of supervision cannot be a reason for justifying the removal from the post of President. In the instant matter, we have already observed that the shortcomings pointed out on the part of the petitioner was not a mere failure, or laxity on his part, but it was a clear-cut case of dereliction in the duties which are cast on the President under the Act. Non - holding of the meeting as per the provisions of the Act which is a statutory duty cast on the President, in our opinion can also be said to be sufficient to hold him responsible calling for his removal. In the same judgment it is further observed that a persistent default on the part of the President are not necessary, but a default as against the statutory duty though may be solitary, but without sufficient reasons would definitely call for the action of his removal. We are therefore, of the opinion that the action of removal of the present Petitioner from the Presidentship can very well be justified, though the action u/s 55-B is doubtful to be justified about which a detailed discussion is made in the subsequent paragraphs of this judgment.

34. Shri Deshpande, learned Advocate further contended that the show-cause notice was specifically issued under Sections 55-A of the Act calling upon the petitioner as to why he be not removed from the post of President of the Municipal Council. Section 55-A reads as under :

"55-A. Removal of President and Vice President by Government --Without prejudice to the provisions of Sections 51-A and 55, a President or a Vice President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform his duties or for being guilty of any disgraceful conduct; and the President or Vice President so removed shall not be eligible for re-election reappointment as President or Vice President, as the case may be, during the remainder of the term of office of the Councillors :

Provided that, no such President or Vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation."

According to Shri Deshpande, if the show cause notice was issued under the abovesaid section, merely by making a reference to Section 55-B in the last paragraph of the show cause notice would not entitle the respondents to initiate action u/s 55-B, particularly when the period of Presidentship of the present petitioner was yet to be completed. Shri Deshpande contended that Section 55-B

deals with the disqualification for continuing as Councillor or becoming the Councillor on removal as President or Vice-President. Shri Deshpande contended that these two sections, if are read harmoniously, it is absolutely clear that so far as regards Section 55-A is concerned, the President can be removed from his office by the State Government for misconduct in the discharge of his duties, or for neglect of, or for incapacity to perform his duties or for being guilty of any disgraceful conduct, and the President or Vice President so removed is not be eligible for re-election or reappointment as the President or Vice-President as the case may be during the remainder of the term of office of the Councillor. The plain meaning of this section is that for the reasons stated in this section, if a person is removed from Presidentship or Vice-Presidentship, he is not entitled or eligible for re-election or reappointment on the said post and that too during his remainder term as Councillor in the council. An embargo is there by way of proviso that the abovesaid action has to be taken only after giving reasonable opportunity to the delinquent to furnish his explanation. The provision does not contemplate any type of inquiry, but it only invites explanation on show cause notice.

35. So far as Section 55-B is concerned it reads :

"55-B. Disqualification for continuing as Councillor or becoming Councillor on removal as President or Vice-President. -- Notwithstanding anything contained in Section 55-A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding or while he was holding the office of the President or Vice-President, as the case may be, that State Government may,

(a) disqualify such Councillor to continue as a Councillor for the remainder of his term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification;

(b) disqualify such person for being elected as Councillor till the period of six years has elapsed from the order of such disqualification"

This section deals with the point of disqualification for continuing as a Councillor or becoming Councillor on removal as President or Vice President. In this section, notwithstanding anything contained in Section 55-A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding the office of the President or Vice president, then it is competent for the State Government to remove him by inflicting any of the punishments such as: that he will be disqualified as a Councillor to continue as a Councillor for the remainder of his term in the office and also for being elected as Councillor till the period of six years has elapsed from the order of such disqualification. Sub-clause (b) of Section 55-B directs that he may be disqualified for being elected as a Councillor till the period of six years has elapsed from the order of such disqualification. Thus it is clear that if the action is proposed to be taken u/s 55-A, then in that case and if the person

concerned holding the post of President or Vice President is found guilty, he would cease to be a President or Vice President and would not be entitled for becoming a President or Vice President in any manner till the expiry of the term of his office as a Councillor. That clearly postulates that if after the term of the Councillor is over, and that person is re-elected, then in that case, he would again be entitled to become the President or Vice President, but such is not the case so far as regards Section 55-B is concerned.

36. Section 55-B is a non-obstinate clause, it starts with the words - notwithstanding anything contained in Section 55-A, that clearly means action u/s 55-B has to be treated as an independent action and it would empower the State Government to remove a person concerned even from the Councillorship itself and further disqualify him for next 6 years from contesting election.

37. The argument of Shri Deshpande on this point is vehemently opposed by the learned A.G.P. and learned counsel for respondent - Municipal Council, contending that once action u/s 55-A is taken, then action u/s 55-B can be said to be the natural consequence thereof and therefore, there was no necessity to give a show cause u/s 55-B of the Act. Shri Kankale, learned A.G.P. further pointed out that so far as regards the argument which is advanced before this Court by Shri Deshpande as regards interpretation of Section 55-A and 55-B of the Act is concerned, this was not his stand at any point of time earlier, nor has he so raised this contention in his petition. We pointed out to the learned advocates that since the point relates to interpretation of the sections, it is not always necessary that such a point has to be raised in the petition. It is the discretion of the court and it generally has to be allowed, and we therefore, allowed Shri Deshpande to argue this point before us.

38. Shri Kankale, learned A.G.P. further contended that once a reference is made in the notice as regards contemplated action u/s 55-B and precisely in the last paragraph of the show - cause notice, according to him, petitioner can be said to have been well aware as to what were the charges against him and what action he was likely to face. According to Shri Kankale, therefore, it was not necessary at all either to have included Section 55-B in the title clause of the notice itself, or to issue him another notice u/s 55-B after taking action u/s 55 of the Act. Per se this argument, though appear to be impressive, however, in our opinion, it is not convincing. We cannot forget that while taking such a harsh action against a person concerned, which also happened to be punitive in nature as it casts out a stigma, on that person, it is very much necessary that the person concerned is made aware of as to what are the exact charges which he was supposed to answer and the proposed action contemplated against him. If the show cause notice issued in this case specifically calls upon the petitioner as to why action u/s 55-A should not be taken against him, then merely by making a reference in the last paragraph of the show cause notice and that too observing that if action contemplated u/s 55-A is not completed before the expiry of his term as Presidentship or Vice Presidentship, then action u/s 55-B would be continued

against him, in our opinion this could be said could be said to be a vague notice, so far as regards the action u/s 55-B is concerned.

39. It is brought to our notice that after the order was passed by the State Government fresh elections were held so far as regards the vacant post of Councillorship was there, which occurred because of the removal of the present petitioner. No doubt the petitioner had requested for staying that election, however, this Court did not stay the election by its order dated 24-4-2002, but it was also specifically directed by that order that the result of that election was subject to the final decision of this petition. In view of this, it is for the respondent Municipal Council to take appropriate action in the matter in view of our judgment. It is brought to our notice that the term of the present petitioner, in ordinary course, is to expire in the year 2005 and therefore, till that period expires, present petitioner cannot cease to be a Councilor though he ceases to be a President.

40. Having read the notice between the lines, it is absolutely clear that there does not appear to be an intention on the part of respondents to initiate action against the petitioner u/s 55-B if the action is not completed well before the expiry of the term of the petitioner as a President. If suppose this action would have been completed before expiry of the petitioner's term as President, then there appear to be no intention on the part of the respondent to initiate action u/s 55-B simultaneously and if at all it had an intention to initiate any action u/s 55-B then another show cause notice would have been required to be given calling upon him as to why action u/s 55-B should not be taken against him. In our opinion, therefore, so far as regards the action u/s 55-A is concerned, it appears to be absolutely right and removal of the present petitioner from the post of President cannot be said to be wrong in any manner, particularly when the removal is for one of the reasons as contemplated in Section 55-A of the Act. However, in our opinion action taken u/s 55-B cannot be said to be justifiable one and therefore, the removal of the present petitioner from the Councillorship itself in our opinion and debarring him for six years from the date of the action u/s 55-A, cannot be sustained in the eye of law. We therefore, have to set aside this latter part of the order whereby the petitioner is removed from councillorship and is debarred for six years from contesting election as a Councillor itself. We therefore, direct that, it has to be treated that the Councillorship of the petitioner is not cancelled and that he is not debarred from contesting the election for the post of Councillor for six years as observed in the order from the date of the order u/s 55-A. However, it is needless to mention that the petitioner cannot continue to be a President of the Municipal Council for the remainder term as observed till the expiry of his term as a President and a Councillor in any manner. In the circumstances, petition has to be partly allowed in the abovesaid terms. Rule accordingly. However, in the circumstances of the case there would be no orders as to costs.

41. At this stage, Shri Kankale, learned A.G.P. requested that the effect and

operation of this judgment be stayed for four weeks from today. Taking into consideration the point in question we feel that the request is just and proper and Mr. Kankale expressed that the respondent-State may go in appeal in the Supreme Court, we therefore, direct that this judgment will come into operation immediately after expiry of four weeks from today. C.C. may be granted out of turn.