

(2014) 12 BOM CK 0172
In the Bombay High Court
Case No : Writ Petition No. 10961 of 2014

Sau. Yojna Bharat Mali

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Constitution of India, 1950 — Article 136
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 308, 313, 44, 44(1)(e), 44(3)

Citation : (2015) 4 ABR 649 : (2015) 3 ALLMR 831 : (2015) 5 MhLj 469

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : V.J. Dixit, Sr. Advocate i/b D.S. Bagul, Advocates for the Appellant;
G.K. Naik Thigale, Addl. GP, Advocates for the Respondent

Judgement

R.V. Ghuge, J.—I have heard the learned Advocates for the respective sides at length.

2. The petitioner is aggrieved by the impugned order dated 26.11.2014 passed by the State of Maharashtra, thereby removing the petitioner from the position of President of Taloda Municipal Council under Section 55A and as a Councillor under Section 55B of the Maharashtra Nagar Parishad, Nagar Panchayat and Industrial Township Act, 1965 ("the said Act").

3. The learned Advocates for the respective sides have argued extensively on 2.12.2014, 3.12.2014, 5.12.2014, 8.12.2014, 10.12.2014, 11.12.2014, 18.12.2014 and 22.12.2014.

4. The submissions of the learned Sr. Advocate Shri Dixit on behalf of the petitioner can be summarized as follows:-

(A) The petitioner was elected as a Councillor of the Taloda Municipal Council, District Nandurbar for the first time in the year 2007 for a five year term to last upto 2012.

(B) The petitioner was once again elected as a Councillor for the said Municipal Council for the term of 2012 to 2017. So also, her husband Bharat Mali and her brother-in-law Laxman Mali were elected as Councillors.

(C) The petitioner was elected as a President of the Taloda Municipal Council in December 2012.

(D) The petitioner was issued with a show cause notice dated 14.8.2014 calling upon the petitioner to show cause as to why action should not be initiated against her under Sections 55A and 55B of the said Act.

(E) The petitioner has stated in the petition in paragraph No. 15 that she suddenly received a notice of hearing dated 17.9.2014 directing her to remain present in the hearing on 22.9.2014.

(F) Copy of the complaint filed by respondent No. 4 herein was not served upon the petitioner.

(G) The letter issued by the Chief Officer of the Municipal Council, dated 26.12.2013 was not served upon the petitioner.

(H) The report of the Collector, dated 3.2.2014, was not served upon the petitioner.

(I) Respondent No. 4 filed Writ Petition No. 1157 of 2014 seeking directions to the Government to decide his complaint.

(J) The Division Bench by its order date 6.2.2014 had directed the Government to consider the complaint of the fourth respondent in accordance with law.

(K) On 22.9.2014, the Advocate for the petitioner appeared before the Principal Secretary and orally sought a copy of the complaint filed by respondent No. 4 under Section 55B of the said Act. The said request was rejected.

(L) The learned Advocate for the petitioner orally sought an adjournment so as to study the papers on record. The said request was also rejected.

(M) The learned Advocate for the petitioner was compelled to submit a reply after inspecting the file in the Mantralaya. Accordingly, he hurriedly drafted the reply and filed the same before the Principal Secretary.

(N) On 26.11.2014, the respondent/State delivered the impugned judgment and removed the petitioner as a President of the Municipal Council under Section 55A of the said Act, as also as a Councillor under Section 55B of the said Act.

(O) The grounds for removing the petitioner as a Councillor are based upon certain Resolutions passed on 25.2.1980, 29.7.1995 and 10.7.1996. The petitioner was not a Councillor or President as on date of the said Resolutions.

(P) The impugned order heavily relies upon the report submitted by the Collector, copy of which was never supplied to the petitioner.

(Q) The Resolution dated 25.2.1980 was passed thereby allotting the property belonging to the Municipal Council in Survey No. 502, to Smt. Vimalbai Baban Suryawanshi, who is the mother-in-law of the petitioner, on lease for 99 years, on behalf of the petitioner's husband and three brothers-in-law.

(R) The Resolution dated 29.7.1995 was passed for allotting a portion of City Survey Nos. 3075 and 3181 to Shri Laxman Babanrao Mali, who is the brother-in-law of the petitioner. The lease over the said land was for a period of 99 years.

(S) The Resolution dated 10.7.1996 was passed by the Municipal Council for allotting a portion of CTS No. 416 belonging to the Municipal Council, to Smt. Vimalbai Babanrao Mali, who is the same person Smt. Vimalbai Baban Suryawanshi, mother-in-law of the petitioner. The said land was allotted to enable Vimalbai to utilise the same on license fee for a period of 99 years. Vimalbai had to pay Rs. 3000/- as deposit money and she was permitted to erect a construction on the said land.

(T) The petitioner was never a Councillor when the above mentioned three Resolutions were passed.

(U) Though Section 92 of the said Act prohibits a lease of the properties beyond a maximum tenure of 9 years, the sanction of the Government was sought for the said purpose.

(V) Prior to the petitioner becoming the President of the Municipal Council, a Councillor belonging to the Bhartiya Janata Party was elected as the President in 2010.

(W) In a Special General Body Meeting dated 18.4.2012, a Resolution was passed, whereby, it was concluded that the three Resolutions, referred to above, had been passed contrary to the provisions of Section 92 of the said Act. No permission was obtained from the appropriate authority before granting the said lands for use of the close relatives of the petitioner.

(X) By the said Resolution dated 18.4.2012, the lands allotted to the petitioner, vide three Resolutions were sought to be recovered and the matter was referred to the District Collector under Section 308 of the said Act.

(Y) The petitioner and her husband Bharat Mali @ Bharat Baban Suryawanshi were both elected to the Municipal Council. Both of them belonged to the Indian National Congress.

(Z) On 18.4.2012, the President belonging to the BJP, called for a Special General Body meeting and passed a Resolution at Sr. No. 27, by which, the earlier three Resolutions granting land to the petitioner's mother-in-law and brother-in-law were stayed and the matter was referred to the appropriate authority for initiating action.

(AA) After the petitioner and her husband were elected as President and Councillor respectively, a Resolution was passed on 21.1.2013 vide which the

earlier Resolution dated 18.4.2012 was stayed and the three Resolutions dated 25.2.1980, 29.7.1995 and 10.7.1996 were restored. Rent to be paid by the petitioner's relatives for the occupation of the concerned lands was raised by 10 per cent by fresh leave and license agreement (Paragraph No. 10 of the petition).

(AB) The Resolution dated 21.1.2013 was passed by a majority.

(AC) Respondent No. 4 challenged the said Resolution on 21.1.2013 in Dispute Application No. 4 of 2013 before the Collector, Nandurbar and the same is stayed under Section 308. Therefore, no blame can lie on the petitioner.

(AD) The Dispute No. 1 of 2013 was raised under Section 44 of the said Act, by Respondent No. 4 seeking disqualification of three Councillors (excluding the petitioner).

(AE) On 28.1.2014, the Collector passed an order under Section 44 of the said Act and dis-qualified the three persons as Councillors including the petitioner's husband.

(AF) The petitioner was not a party to the said order. The three persons were removed as Councillors and which includes the husband and brother-in-law of the petitioner.

(AG) The said three persons have filed an appeal before the State and their removal has been temporarily stayed.

(AH) The action of removing the petitioner suffers from non-adherence to the principles of natural justice.

(AI) The show cause notice dated 14.8.2014 does not contain any statement which would indicate that the copy of the Collector's report was served upon the petitioner.

(AJ) The impugned order heavily relies upon the report of the Collector.

(AK) After the petitioner was forced to participate in the hearing on 22.9.2014, no further date of hearing was ever intimated to the petitioner thereafter.

(AL) Respondent No. 4 filed Contempt Petition No. 390 of 2014 before the learned Division Bench of this Court which passed an order dated 17.11.2014.

(AM) The defence of the petitioner was weakened due to non-supply of material documents.

(AN) The learned Sr. Advocate has orally stated that the petitioner was served with the show cause notice dated 14.8.2014 and the statement in the petition that she did not receive the show cause notice, has been inadvertently made.

(AO) The petitioner has placed reliance upon the following judgments:-

(i) Baburao Vishwanath Mathpati and etc. Vs. State of Maharashtra and others etc.,

(ii) Umesh Dattatray Naik Vs. The Hon''ble Minister of State Ministry of Urban Development and Others,

(iii) Rameshchandra Saboo (Dr.) Vs. State of Maharashtra and Others,

(iv) Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,

(v) Keshav Shankar Ekbote Vs. State of Maharashtra and Others,

(AP) The conclusions set out in the impugned order are primarily based upon the disqualification meted out to the four Councillors under Section 44 of the said Act. Conclusion is that because the four Councillors were removed on the ground of misdemeanor, the same principle would apply to the case of the petitioner.

(AQ) An order under Section 55B could not be passed unless an order is first passed under Section 55A of the said Act.

(AR) The petitioner was never given an opportunity of hearing under Section 55A of the said Act. As such the order under Section 55B is rendered null and void.

(AS) The petition be allowed and the impugned order be quashed and set aside.

5. The learned Additional Government Pleader Shri Naik Thigale, on behalf of the State Government has defended the impugned order. His submissions can be summarized as under:-

(A) The original record from the Mantralaya is available before the Court and the petitioner has also been permitted to go through the same.

(B) In the show cause notice dated 14.8.2014, the first paragraph indicates that the copy of the District Collector, Nandurbar has been enclosed to the show cause notice.

(C) The record maintained by the State authorities has presumptive value.

(D) The fact that the show cause notice dated 14.8.2014 mentions that the report of the District Collector is enclosed with it, indicates that the petitioner was served with a copy of the report of the District Collector.

(E) In paragraph No. 2 of the show cause notice, it is specifically mentioned that the said notice is under Section 55A and Section 55B of the said Act.

(F) It is mentioned in the show cause notice that the petitioner is charged with having behaved in a disgraceful manner and has committed misdemeanors, as are set out in the report of the District Collector.

(G) The petitioner was given 15 days" time to reply to the notice. Yet the petitioner has suppressed this fact and has deliberately not produced the said notice with the petition.

(H) The petitioner has received the said notice on 3.9.2014. However, there is no such statement made in the petition, which clearly indicates that the petitioner

desired to suppress the fact that an opportunity of submitting her reply was afforded to her.

(I) Till the filing of this petition, the petitioner, neither in her reply filed, nor in any application, has contended that the copy of the District Collector's report was not served upon her.

(J) Till the filing of this petition, the petitioner has not raised any grievance that she was served only with a copy of the show cause notice and not the District Collector's report.

(K) No adjournment application has been filed by the petitioner on 22.9.2014 during the course of the hearing in Mantralaya. No oral request was made.

(L) No application has been filed by the petitioner during the course of hearing on 22.9.2014 in Mantralaya that she has not prepared her reply and she seeks an adjournment so as to be able to draft her reply.

(M) In fact, the Advocate for the petitioner has appeared before the competent authority on 22.9.2014 and has filed his detailed Written Say along with the copies of various Resolutions as well as various reported judgments of the High Court and the Apex Court in support of her case. This indicates that the petitioner had received the copy of the District Collector's report and was fully aware about the charges levelled upon her. Even in the Written Say, there is no grievance that she has not received the District Collector's report or that she was not given an adequate opportunity to submit her reply.

(N) The contentions set out in paragraph No. 15, 16 and 18 of the petition that the petitioner was forced to participate in the hearing, was permitted to read the District Collector's report then and there itself on 22.9.2014 and that she hurriedly drafted her reply, is clearly against the record and establishes the fact that the petitioner has willfully and intentionally made false statements in the Writ Petition for obtaining relief in the matter.

(O) The petitioner has not disputed the three Resolutions dated 25.2.1980, 29.7.1995 and 10.7.1996 allotting Government land to her husband, mother-in-law and brother-in-law by the Municipal Council.

(P) The petitioner has not disputed that the Resolution dated 18.4.2012 had been passed by the Municipal Council for withdrawing the said lands allotted to her mother-in-law and brother-in-law.

(Q) The petitioner has not disputed that the Resolution dated 21.1.2013 staying the Resolution dated 18.4.2012 was passed by the Municipal Council when she was the President and her husband and brother-in-law were Councillors.

(R) The impugned order dated 26.11.2014 is a detailed order and the conclusions drawn by the concerned authority are supported with reasons, which are based upon the documentary evidence placed before the said authority and in light of the submissions of the petitioner.

(S) Section 92 of the said Act deals with the manner in which the properties of the Municipal Council can be utilized.

(T) Section 92(3) of the said Act limits the lease in relation to the properties of the Municipal Council.

(U) In passing the resolution dated 21.1.2013, the petitioner has got the lease renewed in favour of her mother-in-law representing the petitioner's husband and also her brother-in-law. This is admitted by her in paragraph No. 10 of the petition.

(V) The petitioner has behaved in a manner disgraceful to the position of the President, unbecoming on the part of the President and has resorted to misdemeanors.

(W) The impugned order ought not to be interfered with on technicalities since the persons like the petitioner, holding high offices cannot be above the law.

(X) The petition be dismissed with heavy costs.

6. The submissions of Shri V.D. Sapkal, learned Advocate on behalf of the respondent No. 4 complainant can be summarized as follows: -

(A) Respondent No. 4 is the complainant who has exposed the mis deeds of the petitioner.

(B) The first resolution dated 25/02/1980 indicates that the petitioner's husband, three brothers-in-law and her mother-in-law had demanded properties on lease which belonged to the Municipal Council. The said property was leased to her mother-in-law Vimalbai Baban Suryavanshi/Mali on behalf of the said four persons (her husband included).

(C) All the three resolutions have been illegally passed for a period of 99 years.

(D) Section 92(3) of The said Act prohibits any lease beyond a period of 3 years and permits only two extensions of three years each. As such, the lease agreement cannot be beyond a maximum of 9 years.

(E) There is no relaxation prescribed as regards the lease agreement under the said Act.

(F) By a resolution amongst the three, the property was handed over to the petitioner's mother-in-law for construction of a mini-theater.

(G) All the three lands handed over to close relatives of the petitioner are three separate and distinct portions of land.

(H) The newly elected body of the Municipal Council, realizing the illegalities indulged into by the petitioner's close relatives, passed the resolution dated 18/04/2012 for cancelling the earlier three resolutions, which were illegal and unsustainable.

(I) The husband of the petitioner was earlier the President of the Municipal Council. Presently, he is a Councillor.

(J) By a detailed resolution dated 18/04/2012, the matter was referred to the Collector u/s. 308 of the said Act.

(K) Three paragraphs on page No. 2 of the Resolution dated 18/04/2012 are self-explanatory and indicate the illegalities committed by the petitioner, her husband and her close relatives.

(L) The brother-in-law of the petitioner namely Laxman Babanrao Mali has indulged in carrying out RCC construction on the property of the Municipal Council leased out to him, without the prior permission of the Municipal Council.

(M) No permission from the Government was obtained for passing the three resolutions dated 25/02/1980, 29/07/1995 and 10/07/1996 granting lease for 99 years.

(N) The petitioner, as the Chairman of the Municipal Council, had prepared the Agenda for the meeting dated 21.1.2013. One of the items on the Agenda was the subject pertaining to the resolution dated 18/04/2012.

(O) A resolution was passed on 21.1.2013 staying the resolution dated 18/04/2012, consequentially leading to the revival of the three resolutions dated 25/02/1980, 29/07/1995 and 10/07/1996, by which the three lease agreements were sought to be revived.

(P) The agenda was prepared under the instructions of the petitioner and she was the chair-person of the Municipal Council in the meeting on 21.1.2013, when the said resolution was passed.

(Q) Though the petitioner was not even the member of the Municipal Council prior to 2007, her direct involvement in getting the resolution dated 21.1.2013 passed, is writ large on the face of the record.

(R) The contention of the petitioner that by retaining the three lease agreements, the rent was enhanced by 10% thereby earning revenue for the Municipal Council is a clear admission of her involvement.

(S) The contention of the petitioner that the resolution dated 21.1.2013 was passed by majority does not absolve the petitioner from the disgraceful conduct.

(T) In separate proceedings, three Councillors were held disqualified by the Collector u/s. 44 of the said Act.

(U) The First Appeal filed by the said persons is pending and the competent authority has granted a temporary stay to the order of disqualification passed by the Collector.

(V) The petitioner has no concern with the said dispute. The roznama placed on record pertaining to the hearing of the petitioner's case indicates that the

petitioner has not sought time for submitting oral arguments.

(W) The notice dated 17/09/2014 issued to the petitioner and respondent No. 4 indicates in the subject caption that the report of the District Collector, Nandurbar was the basis of initiating the hearing on 22/09/2014.

(X) The petitioner was never a party to the proceedings in relation to the disqualification of the three Councillors who have been disqualified by the order dated 28/01/2014 passed by the Collector u/s. 44.

(Y) Though in the impugned order, it is mentioned that the principle applicable to the three Councillors would also apply to the petitioner, does not mean that the same facts were made applicable to the case of the petitioner.

(Z) The petitioner has made a false statement in the petition that she did not receive the show cause notice dated 14/08/2014.

(AA) It is only owing to the fear of being exposed in this petition, that the petitioner is now orally contending that she had received the show cause notice dated 14/08/2014 on 03/09/2014.

(AB) No objection has been raised before the competent authority by the petitioner as regards alleged non service of the District Collector's report.

(AC) The reply of the petitioner dated 22/09/2014 clearly indicates that the petitioner has received the report of the Collector.

(AD) No contention, even by way of a whisper, has been set out in the reply of the petitioner that she never received the District Collector's Report.

(AE) The petitioner has not denied the factum of passing of the said five resolutions.

(AF) Paragraph Nos. 6 of the impugned order is important and indicates the reasons assigned by the competent authority while disqualifying the petitioner.

(AG) The petitioner has made a false statement in paragraph Nos. 16 and 18 that no opportunity of defence was given to the petitioner before passing the impugned order.

(AH) False statement of "no opportunity of hearing" and violation of the principles of natural justice has been made willfully and intentionally to obtain reliefs from this Court.

(AI) The show cause notice clearly indicates that Section 55A and Section 55B of the said Act have been specifically invoked and the petitioner was given the opportunity to reply to the same. The reply of the petitioner dealt with every aspect of the case and copies of various resolutions were filed along with several judgments with the reply dated 22/09/2014.

(AJ) Section 81(12) of the Act mandates voting on every proposal. No voting was

taken on any of the three resolutions passed as well as there was no voting on the resolution dated 21.1.2013 which stayed the effect of the resolution dated 18/04/2012.

(AK) The Vice President of the Municipal Council Shri Gaurav Devendralal Wani has been exonerated since there was no resolution passed granting him or any of his relatives any land owned by the Municipal Council.

(AL) The impugned order is based on independent conclusions that the petitioner has indulged in a disgraceful conduct as the President of the Council.

(AM) Despite the three resolutions being contrary to Section 92, yet the Chief Officer gave a favourable report almost indicating that there was nothing wrong in the allotment of the land belonging to the Municipal Council, to the close relatives of the petitioner for a period of 99 years.

(AN) Section 58(1)(a), (c) and (d) and section 58(2)(C)(iv) of the said Act have been relied upon by respondent No. 4.

(AO) The contentions of the petitioner are to be tested on the touchstone of prejudice and on the preponderance of the principles of natural justice.

(AP) Facts as regards the three resolutions and the resolution dated 21.1.2013 have been admitted by the petitioner.

(AQ) The Collector's Report is based on such admitted facts.

(AR) Following judgments were relied upon by respondent No. 4:-

- (1) Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another,
- (2) State of Manipur and Others Vs. Y. Token Singh and Others,
- (3) Union of India (UOI) Vs. Jyoti Prakash Mitter,
- (4) Rameshchandra Saboo (Dr.) Vs. State of Maharashtra and Others,
- (5) Municipal Corporation of the City of Ahmedabad Vs. Ben Hiraben Manilal, .

7. Having extensively heard the learned Advocates for the respective sides, I have gone through the entire petition paper book and the record with their assistance. The issues raised for my consideration are as follows:-

(A) Whether the conduct of the petitioner could be said to be unbecoming on her part as President and disgraceful?

(B) Whether an adequate opportunity of hearing was afforded to her so as to conclude that the principles of natural justice have been complied with? and

(C) Whether the State had invoked Section 55A and Section 55B of the said Act before passing the impugned order?

8. As regards the first aspect of this case is concerned, the admitted position is

that the three Resolutions dated 25.2.1980, 29.7.1995 and 10.7.1996 have been passed by the Taloda Municipal Council. By the first Resolution, the property Survey No. 502 belonging to the Municipal Council was allotted to the mother-in-law of the petitioner on behalf of her husband and three brothers-in-law. By the second Resolution, dated 29.7.1995, a portion of CTS No. 3075 and 3181 have been allotted to the brother-in-law of the petitioner. By the third Resolution, dated 10.7.1996, a portion of CTS No. 416 was allotted to the mother-in-law of the petitioner. The husband of the petitioner was earlier a Councillor as well as the President of the Council.

9. When a different political party came to power, the Resolution dated 18.4.2012 was passed by which the earlier three Resolutions, said to have been illegally passed, were sought to be stayed and the matter was referred to the appropriate Government for initiating action. Thereafter, the petitioner and her husband were elected as Councillors for a five year term from 2012 to 2017.

10. In December 2012, the petitioner was elected as the President of the Municipal Council. Immediately thereafter, as the President of the Municipal Council, she prepared the agenda and in the meeting dated 21.1.2013, a Resolution was passed by which the earlier Resolution dated 18.4.2012 was stayed and the first three Resolutions were restored. It is by the said Resolution dated 21.1.2013 that the properties leased out to the close relatives of the petitioner were continued to be held by them under a lease for 99 years and as such, the financial interests of such close relatives were protected. There is nothing on record to indicate that the petitioner had recused herself from participating in the said meeting or had abstained from the said meeting along with her husband so as to allow the Municipal Council to impartially take a decision. Similarly, there is nothing on record to indicate that the petitioner had not prepared the agenda which included the subject resolution dated 18.4.2012.

11. I find from the record/proceeding book that the meeting convened on 21.1.2013 was a specially convened meeting. The petitioner, her husband as well as her brother-in-law were present in the meeting. The earlier Resolution dated 18.4.2012 was taken up and it was resolved to stay the said Resolution. As a direct effect of the said Resolution, the financial interests of the close relatives of the petitioner were secured and promoted.

12. In fact, it appears from the proceeding book that a farce was created to indicate that the lease charges were enhanced in relation to the lease agreement with the close relatives of the petitioner and therefore, it was projected that the Municipal Council was to earn more revenue on the basis of the said hike in the charges.

13. The contention of the petitioner is that she herself has not acquired any advantage from the said Resolutions and it cannot be said that she had enriched herself in an unjust manner. It is tried to be canvassed that the petitioner is a lady and has derived no interest from the said lease agreements and the

allegation that she had acted in a disgraceful manner, cannot be sustained. The very first resolution dated 25.2.1980 granted property on lease to the husband of the petitioner and her three brothers-in-law through her mother-in-law.

14. It is apparent that the petitioner herself has not derived any benefit from the said transactions. However, it is a fact situation that her husband has been a Councillor and President of the Municipal Council. The lease agreements are against the provisions of law enshrined under Section 92 of the said Act. However, after the petitioner was elected as President of the Council in December, 2012, immediately thereafter, a special meeting was convened on 21.1.2013 in which the said Resolution was passed by which her husband, brothers-in-law and mother-in-law have directly derived monetary benefits.

15. I find from the record that as a direct effect of the Resolution dated 21.1.2013, the interest of the close relatives of the petitioner were not only protected, but were also promoted de-hors Section 92.

16. The petitioner has relied upon the judgment of this Court in the matter of Umesh Dattatray Naik (supra). Paragraph Nos. 3, 6, 23, 28, 30 and 34 are cited in support of the contention that the fact situation should demonstrate that the allegations of disgraceful conduct must be in connection with the tenure and functions of the President. It would be of assistance to refer to said paragraphs herein below:-

"3. The facts leading to the petition are that the petitioner was elected as a President of the Council in the election held on 10.4.2005. He continues to be the President of the Municipal Council. It appears that a complaint was lodged by the respondent No. 4 alleging that the petitioner had carried out unauthorized construction. Similar complaint was made by one Rakesh Madhukar Zaveri. The Government did not take any action initially on the complaints and even the Collector, Thane rejected the representation of the said, Rakesh Zaveri.

6. Mr. Jahagirdar, Learned Senior Counsel appearing for the petitioner, submits that, the impugned order is contrary to law. He submits that the First Respondent has erred in disqualifying the petitioner. He submits that there is no case made out either under Section 55A or Section 55B of the Act. He submits that the entire action is politically motivated. He submits that the Show Cause Notice and the allegations are based upon something which has no connection with the petitioner's duties and functions as a President of the Council. Relying upon Section 55A, it is contended that the Section applies to the post of President. Any action or act of omission or commission as a President falls within the purview of the said provision. That alone would be covered by the same. There is no question of the petitioner being disqualified for the acts allegedly committed when the petitioner was not the President of the Council. In other words, the acts complained of, must have some nexus with the duties of the petitioner as a President and the exercise of powers in that behalf. He submits that the acts alleged in the Show Cause Notice have no connection or bearing

with the petitioner's functioning as a President. In this view of the matter, the impugned order deserves to be quashed and set aside on this ground alone.

23. A perusal of this provision would indicate that the President can be removed by Government and that power of removal is distinct from the power granted to the Councillors. While Councillors can remove the President by passing a Resolution in terms of Section 55(1), the Government can remove a President or a Vice President from office under Section 55A, if he/she has committed misconduct in the discharge of his duties or has neglected to perform his duties or in capacity to perform his duties or he is guilty of any disgraceful conduct. The ambit and scope of these powers have been subject matter of several Decisions including of this Court. A reference can be made to the judgment of the Division Bench in the case of Baburao Vishwanath Mathpati v. State of Maharashtra and Ors.. Reliance is placed upon para-38 and 52 of the said judgment. They read thus: -

38. We think it would be appropriate to deal with some of the arguments advanced by the learned Counsel for the petitioner in relation to the meaning of word "neglect" as used in Section 55A and the procedure for exercise of powers under Section 55A of the Act. Before we advert to these arguments, we may mention that preamble of the Act intends to provide for a unified pattern of constitution, administration and powers of the municipalities in the State of Maharashtra and to make better provisions thereof. The Act contains several chapters and chapter III contains provisions regarding the duties and functions of the council as well as the municipal executives. Section 51 of the Act inter alia provides that every council shall have a President, which shall be elected by the elected councillors from amongst themselves. The term of a President is co-terminus with the term of elected councillors. Section 55, however contains a provision to remove President by Councillors whereas Section 55A empowers the State Government to remove him from his office for misconduct in discharge of his duties or for an enquiry or in capacity of performing his duties or for being guilty of any disgraceful conduct and the President so removed shall not be eligible for re-election or reappointment as a President during the remainder period of the office of council. It may be stated that Section 55A is introduced by Section 21 of the Maharashtra Act 19 of 1981. Proviso to Section 55A provides that no such President shall be removed from the office unless he has been given a reasonable opportunity to furnish an explanation. There is another mode whereby a President can be dislodged from the office of the President. Section 313 confers a power on the State Government to appoint an administrator in certain circumstances by supersession of the Municipal Council.

50. We may observe that a confusion may arise by reading the words "neglect" and "negligence". The word "neglect" appears to have a different connotation than the word "negligence". The word "neglect" as earlier said means "gross neglect", willful, intentional, culpable or flagrant disregard of duties." It is mentioned earlier that the President of Municipal Council can be dislodged by

resorting to the power conferred on the councillors by moving no-confidence motion under Section 55 of the Act for no grounds or reason are required to be stated. The object behind this is that there should not be any stigma on the President so removed. We have also referred to Section 313 of the Act where the power is conferred on the State Government for supersession of the Municipal Council by appointing an administrator. There the word "misconduct" has been interpreted to mean "gross misconduct". Section 55A of the Act no doubt confers power on the State Government to remove the President on account of "misconduct", neglect of duties, incapacity to perform duties and disgraceful conduct. This provision sufficiently entails civil consequences and attaches stigma to the President and therefore, in order to remove a President on these grounds the order must be founded on strong grounds. Therefore, the word "neglect" must be understood from the gravity of the charges and therefore, the word "neglect" as used in the section means "gross neglect" which may be synonymous to the word "willful, intentional or culpable as the case may be". There should be flagrant disregard of duties so as to call for removal of the President under Section 55A of the Act. Therefore, applying the "golden rule" of construction of statute which has been recognised by the Apex Court, we have no hesitation to come to the conclusion that the word "neglect" has a connotation as "gross, willful" or "intentional" neglect."

28. It is rather surprising that the Authority takes into consideration, the charges levelled against the petitioner in his capacity as a Councillor. The Minister seems to be aware that he could not have exercised the powers under Section 44(3) of the Act, because, those are to be exercised by the Collector. He is aware of the fact that the petitioner is directly elected President of the Council. In such circumstances, his removal under Section 55A is possible at the hands of the State Government. The Minister is also aware of the fact that the power cannot be exercised to remove the Councillor by the State. Still, he proceeds to take cognizance of the allegations against the petitioner, when they are pertaining to his tenure as a Councillor. It is specifically urged before me by Mr. Jahagirdar that the petitioner was a directly elected President of the Council. The petitioner is sought to be proceeded against for his alleged disqualification as a Councillor. This is possibly because, the petitioner is a directly elected President and the apprehension is that if the petitioner is removed as President, still, he may continue as a Councillor. Therefore, overlooking Section 55B and taking a reverse route, the petitioner was dealt with under Section 55A. Section 55B speaks of a Councillor who is found guilty of misconduct in the discharge of his official duties or being guilty of disgraceful conduct, while he was holding the office of the President or Vice President, as the case may be. Such a Councillor can be disqualified as a Councillor for remainder of his term, even, if he is not proceeded against under Section 55A. However, when the President is directly elected, then, proceeding against him under Section 44(1)(e) would not be permissible, is the submission.

30. In this behalf, a perusal of the Show Cause notice, would demonstrate that

the allegations do not pertain to the petitioner's tenure as a President. Even the allegations of alleged disgraceful conduct do not pertain to the tenure as a President.

34. A bare reading of Section 44(1)(e), it is apparent that a Councillor is disqualified to hold office, if at any time during his term of office, he has constructed either by himself, his spouse or his dependent any illegal or unauthorized structure violating the provisions of the Municipal Councils Act or the MRTP Act, 1966 or the Rules or Bye-Laws framed under the said Act. This is one part of the disqualification provision. However, the other part is, if the Councillor has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorized construction or has by written communication or physically obstructed or tried to obstruct any Competent Authority from discharging its official duty in demolishing any illegal or unauthorized structure. This the last part of the provision."

17. I find that the allegations levelled against Umesh Dattatray Naik (supra) were not in connection with his tenure as the President of the Council. There was no material before this Court to indicate that his duties as a President could be connected with the allegations of having committed acts unbecoming on the part of the President. In the instant case, though the first three Resolutions were passed when the petitioner was not the President of the Council, it is the same Council under the Presidentship of the petitioner and with her husband and brother-in-law as Councillors in tow, that was instrumental in convening a special meeting on 21.1.2013 for staying the operation of the Resolution dated 18.4.2012 and for restoring the earlier three Resolutions.

18. The petitioner has relied upon the Division Bench judgment of this Court in the case of Baburao Vishvanath Mathpati (supra), in support of the contention that strong grounds must be set out to prove the mis-deeds of a President of the Municipal Council. In the said judgment, the order of disqualifying the petitioner was interfered with primarily on the ground that relevant reports of the enquiry were withheld from the petitioner on the ground of confidentiality and the same were not served upon him. Similarly, the allegation of neglect against the petitioner was not based upon any reasons assigned in support of the conclusions. The petitioner Baburao had specifically requested for copies of the relevant material and the same were not made available to him. In the instant case, through out the proceedings, the petitioner has never made such a request.

19. The petitioner has relied upon the Division Bench judgment of this Court in the case of Keshav Shankar Ekbote (supra). In the said case, the allegation against the petitioner was that the President had awarded valuable piece of land to her husband who is member of a trust, in whose favour the land was donated. It was proved that the land was allotted prior to her election as President. This Court, therefore, concluded that the President had no role to play in the allotment of the land to her husband in her capacity as a President.

20. In the instant case, the petitioner has not denied the existence of any Resolution which is connected to the case in hand. In fact, it was in her capacity as a President that she immediately convened a special meeting on 21.1.2013 and had facilitated the staying of the Resolution dated 18.4.2012 by which the financial interests of her close relatives were taken away. The same were restored by the said Resolution. As observed herein above, as a President of the Council, she was instrumental in preparing the agenda and taking up the said issue as the Chairperson of the said meeting. This indicates her involvement in safeguarding and promoting the interests of her close relatives which includes her husband.

21. The salient aspect of this case is that the petitioner has not denied the existence of the Resolutions dated 25.2.1980, 29.7.1995, 10.7.1996, 18.4.2012 and 21.1.2013. The agenda for the meeting dated 21.1.2013 was prepared by the petitioner in her capacity as the President of the Council. Section 58 of the Act indicates that the petitioner presides over all meetings of the Municipal Council and regulates the conduct of business at such meetings. The President is empowered to prepare the agenda and conduct the business of the meeting. The effect of the Resolution dated 18.4.2012 was wiped out by the Resolution dated 21.1.2013. Despite it being revealed through the Resolution dated 18.4.2012 that Section 92 governs the period of the lease agreement and prohibits the tenure of a lease agreement beyond 9 years, it was resolved in the meeting dated 21.1.2013 that the said properties earlier leased out to the close relatives of the petitioner, be continued for a lease period of 99 years. The husband and brother-in-law of the petitioner were the Councillors present in the meeting on 21.1.2013. The Resolution was not put to voting as was expected under Section 81(12). In my view, the petitioner's husband, mother-in-law and brothers-in-law were the direct beneficiaries of the Resolution dated 21.1.2013.

22. Dealing with the issue of disgraceful conduct, this Court, in the case of Rameshchandra Shankarlal Saboo (supra), has held as under:-

"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 Councilor. 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.

"38. Shri Kankale, learned A.G.P. further contended that once a reference is made in the notice as regards contemplated action under Section 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 under Section 55-B after taking action under Section 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 under Section 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 under Section 55-A is not completed before the expiry of his term as Presidentship or Vice Presidentship, then action under Section 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 under Section 55-B is concerned."

23. Taking an over all view of the factors recorded herein above, I find that the

petitioner's conduct can be said to be disgraceful while holding the office of the President. Notwithstanding the submissions of the petitioner placing reliance upon paragraph 26 of the Keshav S. Ekbote's judgment (*supra*), that the report of the Collector should be discarded if the petitioner is not heard by the Collector while arriving at his conclusions or if the copy of the report is not supplied, the guilt of the petitioner and her involvement in protecting and promoting the interest of her close relatives is writ large on the basis of admitted facts in this case.

24. In so far as, whether an adequate opportunity of hearing was afforded to the petitioner so as to conclude that the principles of natural justice have been complied with, is concerned, I find that the copy of the Collector's report was annexed to the show cause notice issued to the petitioner dated 14.8.2012. So also, the petitioner had got her reply prepared well in advance through her Advocate before participating in the hearing dated 22.9.2014.

25. The record reveals that the petitioner was absent on the date of hearing since she had deputed her Advocate to participate in the proceedings. It is pertinent to note that the petitioner has neither raised any grievance as regards non-supply of the Collector's report, nor was any grievance made as regards adequate opportunity of hearing. The written reply of the petitioner carried her signature along with her Advocate. Various Resolutions were annexed to the reply. Several judgments (citations) were also enclosed with her reply. Her Advocate travelled to Mumbai and filed the reply with all the above mentioned documents and case law. There is no whisper about any adjournment having been sought by the petitioner.

26. The record reveals that the complainant/respondent No. 4 and the Advocate of the petitioner had participated in the hearing before the Competent Authority on 22.9.2014. The petitioner has no explanation to offer as to why a grievance was not raised before the Competent Authority as regards the purported non-supply of the Collector's report and the copy of the complaint filed by respondent No. 4. Similarly, there is no grievance by the petitioner that charges were not framed by the Competent Authority before commencing the hearing. At the same time, the petitioner is unable to point out any provision of law or Rules which mandates framing of charges by the Competent Authority before commencing the hearing.

27. The petitioner has also raised a grievance that in only one hearing, the proceedings were concluded. I do not find from the record that the petitioner had ever sought an adjournment or a further opportunity for filing documents or advancing submissions. The peculiarity of this case is that it proceeds mainly on admitted facts pertaining to the 5 resolutions at issue. It is not an anathema to conclude the proceedings in a single hearing. There is no denial by the petitioner as regards the existence of the five resolutions.

28. In *Biecco Lawrie Ltd. and Anr.* (*supra*), the Apex Court dealing with the issue

of opportunity of hearing, has held as under:-

"16. Fair hearing also calls for a right to rebut any evidence that necessarily involves essentially two factors namely-(a) cross examination; and (b) legal representation State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, . In S.C. Girotra v. United Commercial Bank, the Bank obtained certain reports prepared on which the charges were based and these reports were submitted by bank officers who were examined by the Enquiry Officer. On the basis of the report an employee was dismissed and the court held that there was violation of the principles of natural justice as the employee was not allowed to cross-examine the officers who deposed orally before the Inquiry Officer. In the present case, the Inquiry Officer had sent due notice and postponed the date of hearing various times with an intention to permit the respondent to present his case, nevertheless the respondent did not present himself except on three days and ultimately the Enquiry Officer conducted the inquiry ex parte. Therefore, this was not a case where the respondent was not afforded a chance to cross examine the witnesses done by the prosecution witnesses rather it seems to be a case where the respondent, had waived his right to cross examine by absenting himself from the inquiry on the grounds that he was not permitted legal representation nor was furnished with the documents or list of evidences upon which the management was relying. In Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd., , this Court held that a representation through a lawyer in any administrative proceeding is not considered as an indispensable part of natural justice as oral hearing is not included in the minima of fair hearing. To what extent it is allowed depends upon the provisions of the statute, like the Factories Law does not permit it whilst Industrial Disputes Act allows it with the permission of the Tribunal. In Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, , this Court held that right to legal representation through a lawyer or agent of choice may be restricted by a standing order also and it would amount to denial of natural justice. Further more in the case of Harinarayan Srivastava v. United Commercial Bank and Anr., this Court again held that refusal of Inquiry Officer to permit representation by an advocate even when the management was being represented by a law graduate will not be violative of the principles of natural justice if the charges are simple and not complicated. In this case, the respondent had based his case firmly on the fact that he was denied legal representation but nonetheless he could have resorted the help of a friend who could have presented his case or the registered Union could have very well taken up the matter of the concerned workman. The High Court had decided on the fact that the management was represented by a person who was a commerce graduate and passed the diploma course of social welfare who even though was not a lawyer, yet was a legally trained person and thus there was violation of the principles of natural justice, which this Court believes is untenable as the respondent would have sought permission from the tribunal or would have asked help from the registered trade union. We are, therefore, of the opinion that the charges were specific and simple and not difficult to comprehend. Assuming but

not admitting that there has been a denial of the principles of natural justice to the respondent to the extent that he did not know the specifications of the charges leveled, was denied a right to engage a lawyer and not furnished with the copies of the documents and list of witnesses to be relied upon by the management, even then, we are of the firm opinion that observance of the principles of natural justice to the respondent would be a useless formality which is an exception to the rationale underlying the principles of natural justice. In *S.L. Kapoor Vs. Jagmohan and Others*, , this Court under similar circumstances dealing with the denial of the principles of natural justice held that-

"It is yet another exception to the application of the principles of natural justice. Where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible, the court may not insist on the observance of the principles of natural justice because it would be futile to order its observance."

17. In *Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another*, , this Court again observed as follows-

"Where the respondent had committed repeated acts of misconduct and had also accepted minor punishment he is not entitled to the principles on natural justice as it would be a mere formality, that too misconduct in the case of a daily wage. The question as to what extent principles of natural justice are required to be complied within a particular case would depend upon the factual situation obtained in each case and the principles cannot be applied in a vacuum. They cannot be put in a straight jacket formula."

In the present case, in the letter dated 22nd of November, 1985, the respondent had admitted all the charges and had stated unequivocally that his behavior was due to mental sickness and prayed for sympathy and mercy. This along with the fact that the respondent was earlier charged on similar grounds and dismissed but, on his request, was exonerated and given a chance to amend his conduct also goes a long way to project the fact that observance of the principles of natural justice would be merely a useless formality since he had admitted the charges against him. The High Court found that a poor workman in such a situation would be left with no option but to seek sympathy by accepting the allegations raised and praying for mercy. But we are of the opinion that it is too far fetched an imagination of the High Court, adhering to the belief that these are the erstwhile time preceding industrial revolution where the employer was the God and the employee was the slave."

29. The petitioner, by placing reliance upon the judgment of this Court in *Keshav S. Ekbote's* case (supra), has prayed that the report of the District Collector be discarded, notwithstanding the fact that the petitioner has been unable to establish non supply of the District Collector's report. Nevertheless, even if the said report is discarded at this stage, the record indicates the involvement of the petitioner as the President of the Council in the business transacted under

Section 81(11) in the meeting dated 21.1.2013. So also, the petitioner has violated the mandate enshrined under Section 81(12) and 81(13) by not putting the subject to voting.

30. I have specifically called upon Shri Dixit, learned Sr. Advocate to make his submissions on the aspect of discarding the District Collector's report and its effect on the case of the petitioner. I have also heard the Additional Government Pleader and Shri Sapkal on this aspect. Having considered their submissions, I am of the view that even if the District Collector's report is discarded, the conduct of the petitioner in protecting and promoting the interest of her husband, brother-in-law and mother-in-law is established on admitted facts through the record. I am, therefore, unable to accept the contention of the petitioner that principles of natural justice were violated and an adequate opportunity of hearing was not afforded to her.

31. In *State of Manipur and Others Vs. Y. Token Singh and Others*, , the Apex Court has held as under:-

"30. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , this Court developed the "useless formality" theory stating:

"More recently Lord Bingham has deprecated the useless formality theory in *R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton* by giving six reasons. (See also his article *Should Public Law Remedies be Discretionary?* 1991 PL, p. 64.) A detailed and emphatic criticism of the useless formality theory has been made much earlier in *Natural Justice, Substance or Shadow* by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch and Glynn* were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a real likelihood of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their discretion, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma, Rajendra Singh v. State of M.P.* that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In

the former case, it can be waived while in the case of the latter, it cannot be waived."

32. In so far as the issue relating to the applicability of Sections 55(A) and 55(B) of the Act is concerned, it is evident from paragraph No. 2 of the show cause notice dated 14/08/2014 that the competent authority has specifically invoked Sections 55(A) and 55(B) of the Act. The show cause notice had indicated to the petitioner that she was to explain her conduct as against action contemplated under Sections 55(A) and 55(B).

33. The petitioner contends that the complaint filed by respondent No. 4 invokes only Section 55(B) and not Section 55(A). I do not find the submissions of the petitioner sustainable on this count. Respondent No. 4, by filing his complaint, has exposed the conduct of the petitioner. It was not necessary for respondent No. 4 to specify any section of the Act before the competent authority. It is within the domain of the competent authority to consider the complaint and invoke such provisions of Law within which the conduct of the petitioner could be said to be objectionable. As a consequence of the complaint, the competent authority invoked Section 55(A) and 55(B), which was made known to the petitioner.

34. The petitioner has contended that the impugned order is not sustainable since the petitioner cannot be removed as a Councillor u/s. 55(B) unless she is first removed as the President of the Municipal Council. The competent authority has passed an order u/s. 55(A) thereby removing the petitioner as the President of the Municipal Council. Since her conduct was disgraceful and was removed from office, she has been disqualified as a Councillor u/s. 55(B). I therefore do not find the submissions of the petitioner sustainable in this context.

35. The petitioner has contended that the impugned order is only based upon the report of the District Collector and the competent authority has not assigned any reasons or has not come to an independent conclusion. If the report of the District Collector is discarded, the impugned order is rendered unsustainable. These submissions of the petitioner cannot be accepted. The competent authority has considered the report of the Chief Officer, who has exonerated the petitioner and has also considered the report of the District Collector. However, from paragraph No. 7(1 to 8) and paragraph 9, the competent authority has assigned specific reasons and has arrived at specific findings as regards the conduct of the petitioner. It is concluded that four different properties had been illegally leased out to the petitioner's husband and brothers-in-law through her mother-in-law. The concerned resolution No. 38 dated 21.1.2013 is declared to have been passed without putting the resolution for voting. The competent authority has therefore come to a conclusion that the petitioner is guilty of disgraceful conduct.

36. Respondent No. 4 had lodged his complaint against the petitioner as well as the Vice-President of the Council namely Gaurav Devendralal Wani. The competent authority arrived at a conclusion that Gaurav Devendralal Wani was

neither involved in passing of the resolutions nor has any person from his family derived any benefit from the said resolutions. I, therefore, find that the impugned order is supported with detailed reasons based on the record before it and which includes an admitted position as regards the five resolutions concerned.

37. I find from the pleadings set out in the petition several incorrect or inaccurate statements having been made by the petitioner. The respondents have urged that the said statements are not inaccurate statements, but are false statements made deliberately and willfully by the petitioner for self serving purposes.

38. From paragraph Nos. 16 and 18 of the petition, it is indeed revealed that the said statements have been shrewdly made by the petitioner for self serving purposes. It is projected by the petitioner that oral request for adjournment and for time to file reply was made by the Advocate before the competent authority. It is also stated that the reply of the petitioner was not ready and because the competent authority rejected the oral request for adjournment that the petitioner hurriedly prepared her reply and filed it.

39. However, the record indicates that the petitioner was not present on 22.9.14. Her Advocate had prepared a detailed reply and had annexed several resolutions and judgments to the reply which was duly signed by the petitioner and the Vice-President Gaurav Devendralal Wani. This indicates that the submissions of the petitioner in paragraph No. 16 of the petition are false. So also, despite having been served with the show cause notice dated 14.8.2014, this aspect is suppressed and a false statement is made in paragraph No. 15 of the petition. Copy of the show cause notice dated 14.8.2014 has not been placed on record by the petitioner, obviously, to mislead the Court.

40. It is in these circumstances that the law as laid down by the Apex Court in the case of Kishore Samrite Vs. State of U.P. and Others, becomes applicable. The Apex Court while dealing with cases of suppression of material facts for obtaining favourable orders, has held as under:-

"34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the justice-delivery system.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to

ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer: Tilokchand H.B. Motichand v. Munshi, A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, Chandra Shashi Vs. Anil Kumar Verma, Abhudaya Sanstha Vs. Union of India, State of Madhya Pradesh v. Narmada Bachao Andolan, Kalyaneshwari v. Union of India)

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. (K.D. Sharma v. Steel Authority of India Ltd.)"

41. In the light of the above, I do not find that the impugned order could be

termed as perverse or erroneous. The petition, being devoid of merits, is dismissed. I was inclined to impose costs of Rs. 50,000/- (Rs. Fifty Thousand only/-). However, since Shri Dixit, learned Sr. Advocate has orally conceded to the fact of having received the show cause notice dated 14.8.2014, that I am not imposing costs.

42. The learned Sr. Advocate for the petitioner makes a request that since the petitioner is desirous of questioning the judgment and order of this Court before the Apex Court and in view of the ensuing vacations, ad-interim order granted on 3.12.2014 be continued for eight weeks. Shri V.D. Sapkal, learned Advocate and the learned AGP have vehemently opposed the said request.

43. In the light of the above, the said order dated 3.12.2014 shall continue for a period upto 7.2.2015 to enable the petitioner to approach the Apex Court.