
(2009) 04 AHC CK 0202
In the Allahabad High Court

Shyam Sunder Upadhyay

APPELLANT

Vs

State of U.P.and others.

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0202

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Allowed

Judgement

Pradeep Kant, J.

The petitioner, who is Adhyaksha of Nagar Palika Parishad, Mathura, challenges the show cause notice dated 26.11.08 passed by the State Government, by means of which he has been required to submit his reply to the charges mentioned therein and at the same time has been denuded of his powers both financial and administrative, till he is exonerated of the charges levelled and also the consequential order dated 27.11.08 passed by the District Magistrate.

The aforesaid show cause notice has been issued purportedly in exercise of powers by the State Government under subsection (2) of Section 48 of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act of 1916).

The petitioner, who has been elected as Adhyaksha in November, 2006, assails the aforesaid show cause notice and the order of cessation of financial and administrative powers pleading, inter alia, that since he belongs to Congress (I) party, the ruling party has manipulated complaints against him so as to oust him from the elected office and that the order impugned is per se bad in law for the reason that (i) no opportunity was afforded to the petitioner before passing the impugned order nor was he associated with the enquiry, which is said to have been conducted by the Additional District Magistrate; (ii) the opportunity to submit the explanation to the Director, Local Bodies in a complaint which was enquired by him, is no opportunity; (iii) the charges, as they are, cannot be said to be proved even prima facie and rather the report has been submitted by the

two authorities on two different complaints, without looking into the records and material available with the office of the Nagar Palika Parishad; and (iv) the charges not being proved at all, neither his financial and administrative power could have been ceased nor he can be removed from the office of elected Adhyaksha under Section 48 of the Act.

The petitioner also challenges the vires of the provision of Section 48(2) mainly on the ground that it does not prescribe for any opportunity being given to the elected Adhyaksha before passing an order of cessation of financial and administrative powers but in view of the fact that the said question is already under reference in Civil Misc. Writ Petition No. 62427 of 2008: Hafijataullah Ansari v. State of U.P. and another, decided on 19.12.08, the parties counsel agreed that this question may not be addressed and the matter can be decided on the pleas otherwise raised.

Two complaints were made against the petitioner by the Sabhasad, which were directed to be enquired into by the District Magistrate vide order dated 14.7.07 but the District Magistrate instead of making the enquiry himself, entrusted the enquiry to the Additional District Magistrate vide order dated 15.2.08 and the Additional District Magistrate, in turn, submitted his enquiry report on 5.8.08. The District Magistrate forwarded the said report to the State Government on 11.8.08.

Thus, it is apparent that the District Magistrate himself did not make any enquiry though direction was issued by the State Government to him for holding the enquiry and no provision has been shown by the respondent State, under which the District Magistrate could have subdelegated this authority of holding the enquiry to the Additional District Magistrate.

It is also clear and an admitted fact that neither the Additional District Magistrate nor the District Magistrate afforded any opportunity to the petitioner, nor associated him with the enquiry while submitting the report to the State Government.

The second enquiry was initiated as the Standing Committee of Vidhan Sabha allegedly on reviewing the functioning of the various municipalities found that the enquiry should be conducted in the affairs of the municipalities at Mathura and Vrandavan. This was decided on 1.4.08 and on 3.7.08 a Committee was constituted by the State Government with Director of Local Bodies being the Chairman and one Assistant Director, Local Bodies and Assistant Engineer, Local bodies as members. This Committee examined the records on 4.9.08 and on 15.9.08 required the petitioner to submit his explanation. On 22.9.08 the petitioner appeared and the copies of complaints were handed over to him but no reply was submitted by the petitioner. The report was submitted by the committee to the State Government on 31.10.08.

On the basis of the aforesaid two enquiry reports, the impugned show cause notice dated 26.11.08 containing an order of cessation of financial and

administrative powers, has been passed.

The learned counsel for the petitioner emphasized that even assuming, opportunity was not required to be given to the petitioner while making an enquiry for the purpose of issuing a show cause notice under Section 48 (2), still it was imperative for the District Magistrate to see that the complaints made and for that matter charges levelled, prima facie, stand established from the material on record. His submission is that in the absence of any such material being available which could substantiate the charges, even prima facie, the State Government would not be vested with any jurisdiction or authority either to issue any show cause notice i.e. for holding regular enquiry nor it would be competent to denude the Adhyaksha of his legitimate statutory powers, which could not be taken away otherwise than in accordance with the procedure prescribed under law.

Sri J.N. Mathur, learned Additional Advocate General, appearing for the respondent State, does not dispute the aforesaid proposition and rather submitted that the limited enquiry which can be made by the Court is only to the effect that whether the charges levelled are such in nature, which if found proved during the regular enquiry, would be sufficient to remove the Adhyaksha from the office and that this Court would not sit in appellate jurisdiction over the assessment of facts made by the District Magistrate nor would substitute its own finding with respect to the charges framed and findings recorded by the District Magistrate.

His further submission is that sufficiency or inadequacy of evidence can also not be the subject matter of judicial review and that the District Magistrate was not required to make a detailed enquiry and to record categorical finding against the irregularities and misconduct of the sitting Adhyaksha but was only to be satisfied, prima facie, about the complaints made and the charges framed. Once the District Magistrate on holding an enquiry, comes to the conclusion and records his satisfaction about the charges levelled against the Adhyaksha, the High Court would not reassess the evidence nor would record a different finding .

In regard to the plea aforesaid, it would be necessary to mention that an elected office bearer holding the post of Adhyaksha cannot be deprived of his legitimate right of discharging his/her statutory duties and exercise of the administrative and financial powers, otherwise than in accordance with law.

If an Adhyaksha is stripped of his financial and administrative powers, in fact, he stands virtually removed from his office in as much as, he has no business to perform and no function to discharge but for maintaining his status as Adhyaksha and enjoying the perquisites which are attached to such an office.

Such an order, therefore, cannot be passed in the absence of satisfaction recorded by the District Magistrate on the basis of the evidence on record and the charges levelled, holding that they are, prima facie, proved and in turn, the State Government also cannot pass restraint orders, without recording its

satisfaction that the charges are such which are grave and fall within the abuse of powers by the Adhyaksha or dereliction of duties, which has, or is likely to effect the functioning of the democratic institution of municipality and that that the charges levelled are, prima facie, established.

In case any other interpretation is given to the provision of Section 48(2) read with its proviso, it would mean that on any vague, inconsistent or baseless charges, if a report has been submitted by the District Magistrate, the State Government will assume jurisdiction to virtually oust the duly elected Adhyaksha by ceasing his administrative and financial powers, though final enquiry would be conducted later on, in which might or might not be, Adhyaksha stands exonerated. If on regular enquiry the Adhyaksha has been exonerated on the charges levelled against him, the deprivation of his right to exercise his statutory functions for the period during which the final enquiry remains pending, would be an uncalled for encroachment and deprivation of his statutory right to perform his functions as Adhyaksha throughout that period. The loss so occasioned cannot be compensated in either way, which not only puts such an Adhyaksha to disrepute amongst public but also makes his very functioning suspicious in the public eye, though later on, he may stand exonerated of the charges.

Here suffice would be to mention that in case the show cause notice itself is without jurisdiction and without authority and does not conform to the statutory provisions as given under the proviso attached to Section 48(2), the State Government would not have any power to proceed in the matter and the Court would be justified in looking into the validity of the show cause notice.

The proviso to Section 48(2) itself says that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is prima facie guilty on any of the grounds of this subsection resulting in the issuance of the show cause notice and proceedings under this subsection he shall, from the date of issuance of the show cause notice containing charges, cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show cause notice issued to him.

A glance of the aforesaid provision makes no room of doubt that the State Government cannot pass an order of cessation of administrative and financial powers nor can issue a show cause notice, unless it has reason to believe that the allegations do not appear to be groundless, meaning thereby that the allegations must contain substance and there must be material and evidence in support of those allegations so as to hold the Adhyaksha, prima facie, guilty and if any of the ingredients/contents aforesaid are missing, the State Government would have no authority or jurisdiction either to issue a show cause notice or order of cessation of powers of the Adhyaksha.

This protection has been given to the elected office bearer for the obvious reason that the functioning of the democratic institution like Municipalities should not be

hampered and obstructed to, by the State Government, ruling party or the State functionaries.

The legislature in its wisdom used the words that the allegation do not appear to be groundless and is prima facie guilty and, therefore, the expression "reason to believe" has been used which establishes that issuance of the show cause notice is not an empty formality and cannot be issued in routine and mechanical manner. The said show cause notice is to be issued by the State Government only on its subjective satisfaction with respect to the allegations made against the Adhyaksha on objective consideration of the material on record, which does not give any unfettered and unguided power to the State to issue the show cause notice in each and every case, irrespective of the gravity of the allegations on mere technical irregularities and without being satisfied that the allegations, do fall within the mischief of any of the clause of Section 48 subclause (2) (a) and (b) and that too only when such allegation has been prima facie proved from the material on record.

It is very common that because of political rivalry the sitting Adhyaksha viz. the elected office bearer is sought to be removed and for that matter allegations and charges are levelled, though there may be no evidence or substance or proof. An elected office bearer on the post of Adhyaksha has a right to continue for the whole term, the term being prescribed under the constitutional scheme and, therefore, any curtailment of the term can be done only if the law so permits, and the manner, so prescribed.

The power of the State Government to remove the Adhyaksha requires caution and cannot be allowed to be exercised merely because the State Government wishes that a particular elected Adhyaksha be removed from the office. The power so conferred upon the State Government is neither unguided nor can be exercised arbitrarily. It is only when the conditions, as laid down under the proviso of Section 48(2) do exist, that such an order can be passed.

The two reports, one submitted by the District Magistrate, though the enquiry was conducted by the Additional District Magistrate and the report was also prepared by him and also the other report submitted by the Committee constituted by the State Government on the report of the Standing committee of the Vidhan Sabha, do contain same substance, same charges, but the show cause notice, impugned in the present petition does not specify as to on what report, which charge has been framed as against the three charges against the petitioner, which can be summarized as under:

1. It is not clear that how Sri Kishori Lal was allowed to run the Sewerage Treatment Plan (STP) after 1.5.08, when his term had already expired in March, 2008. Even if he had been granted an extension after the expiry of his term, such extension should have been got approved by the Board, which in this case, was not done. Thus, it appears that Adhyaksha Nagar Palika Parishad did not follow the procedure for tender and he, in collusion with Executive Officer, and

Engineer, Water Works, illegally, extended the term of Sri Kishori Lal and allowed unauthorised payments to be made to him.

2. Relating to alleged irregularities in the matter of cleaning of "Nalas" in the year 2007-08.

(1) A very short time gap was allowed between the tender publication and the invitation of tenders, which had the effect of depriving the Parishad of the benefit of healthy competition in the bidding process. The estimates/rates for cleaning of the "Nalas" were neither analyzed nor verified by the competent authority and rates were fixed as per the PWD scheduled items:

(2) The Executive Officer vide letter dated 12.6.07, had asked the District Administration to nominate an officer for the purpose of verification of cleaning work. There was no document available from which it may appear that any such verification was done even though a large sum appears to have been made towards the payment of the aforementioned verification in one single instalment.

(3) In allowing a separate expenditure of Rs. 36 lacs for the work of cleaning of "Nalas", misuse of the funds of the Parishad has been committed specially when sufficient labour and requisite equipment was available with the Parishad for that work.

3. The procedure for tender for hiring of two "Scorpio" cars was not followed and instead of hiring, if the cars had been purchased on instalment basis, it would have been more economical for the Parishad. Thus omission to follow the tender procedure and payment of a greater amount towards hiring of the vehicles amounts to grave irregularity on the part of the Adhyaksha.

The question, therefore, would be that (i) whether the aforesaid charges stand substantiated even prima facie on the basis of the material on record; (ii) whether the aforesaid charges have been found prima facie proved by the District Magistrate and; (iii) whether the irregularities said to have been committed by the petitioner are mere technical defaults, which, in fact, neither have effected the functioning of the Municipality nor they have any impact upon the work undertaken by the Municipality.

Also, it is to be seen that whether the charges, if found proved or even on the face of it, do make out any case of financial irregularity or any personal or individual gain to the Adhyaksha.

Lastly it is to be seen that whether the work undertaken by the Adhyaksha has resulted into improvement in the functioning of Municipality and in providing basic necessities to the public in general, without deriving any personal gain and misutilizing the funds.

In regard to Charge no. 1, the material on record, which is official record of the Nagar Palika Parishad and the explanation given by the petitioner in the writ petition, show that the agreement executed between the contractor M/s Kishori

Lal itself contained a clause, namely, clause no. 1, which stated that the agreement was for a period of 10 months, i.e. upto 30.3.08 and if for some unavoidable reasons, the tender process for the next financial year is not finalised, then the present contractor (Kishori Lal) will have to perform the work upto 30.6.08. The charge is that the extension was granted to the contractor for performing the work of Sewage Treatment Plant (STP) but approval was not taken by the Board and that there was collusion between the Adhyaksha, Treasury Officer and the Engineer.

The respondents have laid great emphasis on the plea that though there was an extension clause in the contract and the contract was to be extended for a period upto 30.6.08 but this could have been done only with the approval of the Board and, therefore, it is a serious irregularity.

A perusal of the agreement and in particular clause (1) reveals that it is an obligation placed upon the contractor to continue to perform the work of STP upto 30.6.08, in case the tender/contract for the said work for the next financial year is not finalised. This did not require any approval by the Board and rather, any sanction from the Adhyaksha also, for the reason that duty was cast upon the contractor to continue with the work in the interest of maintenance of the STP, which cannot be left unattended in the absence of proper arrangement being made or for want of finalisation of contract for the next financial year. The Junior Engineer or the Assistant Engineer, who submitted the report for extension of contract to M/s Kishori Lal were obliged to do so and to inform the Adhyaksha that the contract has not been finalised for the next financial year and, therefore, in the interest of functioning of the STP, necessary direction be issued.

The petitioner asserts and which is admitted to by the respondent State also, that the said extension granted by the Nagar Palika Parishad under the approval of the Adhyaksha upto 30.6.08 was placed before the Board and it was ratified vide resolution dated 28.11.08.

The argument of the State is that this resolution was passed after the report was submitted by the Director, Local Bodies on 31.10.08 just to legalise the irregularity committed by the Adhyaksha.

There was no requirement under the agreement itself to seek any approval from the Board while extending the term of the contract, which automatically stood extended at least upto 30.6.08 under the binding terms of the contract, as admittedly the contract for the next financial year could not be finalised at that time. The permission to continue with the STP work under the existing contract upto 30.6.08 was a necessity and compulsion as during the period till the contract could be finalised for the next financial year, the running of the STP could not have been abruptly stopped, therefore, if the Adhyaksha allowed the work of STP to continue till 30.6.08, it cannot be said that he committed any irregularity, in as much as any financial irregularity and violated any statutory provision or the byelaws.

It may also be taken into account that the tender for the next financial year was for the same work were invited on 24.3.08 i.e. before the expiry of the term of the existing contractor Kishori Lal but the lowest tenderer was not having the required experience, therefore, the tender could not be finalised and thereafter tenders were invited for the second time on 29.4.08 and since no tenders were either sold or received and, therefore, third tenders were invited on 27.6.08 and the tender process was completed and the tender was granted on 26.7.08 in favour of Sarvesh Builders and Engineers, Lucknow who is presently running the S.T.P.

There is also an allegation that the payment of the work done for the extended period has been made to the contractor whereas the documents on record show that the amount for the period commencing from April, 2008 to 31.7.08 has not been paid to the contractor.

The net result of the aforesaid discussion is that the term of the contract for running the STP was necessarily to be extended until 30.6.08, and the rather it automatically stood extended as the contract was for the next financial year i.e. after 31.3.08 could not be finalised and that the petitioner only permitted in terms of the agreement to carry on the functioning of the STP by the then existing contractor till were finalised in July, 2008. The approval having been granted by the Board aforesaid to the extension, the technical plea that such an approval was not taken does not stand corroborated.

However, in case the Board had been of the view that such an extension could not have been granted, it could have very well taken a decision otherwise, instead of ratifying the action of the Adhyaksha.

The payment was also not made by the petitioner to the contractor for the extended period of work. Thus, it cannot be said that such a charge is a charge which constitutes any financial irregularity.

The charge nos. 2 (1) and (2) also are against the material on record and appears to have been made only with a view to oust the petitioner from his elected office of Adhyaksha. The model code of conduct because of assembly elections remained in force only upto 14.5.07 and the cleaning work of "Nalas" was to be completed by 15th June, 2007 (prior to the rainy season). Since only a month time was available immediately the short term notice was published in three daily newspapers "Dainik Jagran", "Hindustan" and Punjab Kesari" inviting the tenders. The last date of submission of tenders was fixed as 18.5.07 on which date the tender forms were to be opened at 3 O" Clock.

It is also not out of place to mention that continuously the Government issued orders for completing the cleaning work of "Nalas" on priority basis and vide Government order dated 22.6.02, it was also provided that in place of making fresh appointment, the cleaning work in the local bodies may be got done on contract basis. Copies of the Government orders have been brought on record. Since the work related to cleaning of "Nalas" was to be performed by the local

contractor, the publication was made in 3 daily newspapers for the purposes of giving wide publicity. Three tenders were received in pursuance thereof and the tender was finalised in favour of the lowest tenderer Raju Gupta.

So far the charge that in the estimates, the rates of Rural Engineering Services (R.E.S.) have been applied and not the rates of the P.W.D. Scheduled item, the petitioner has submitted that the estimates so prepared by the Nagar Palika Parishad were also verified by the Assistant Engineer of R.E.S. as well as the Junior Engineer of Nagar Palika Parishad and further even the P.W.D. vide its letter dated 22.9.08 had informed that there are no rates prescribed for cleaning of "Nalas".

The charge that cleaning work has not been verified/approved by any officer of the district administration, also does not stand substantiated from the document on record.

Firstly, for the reason that the power of the Executive Officer of Nagar Palika Parishad, Mathura has been exercised by the S.D.M., nominated by the District Magistrate. Secondly, the District Magistrate got the enquiry conducted for cleaning work of "Nalas" though the Deputy Collector Mathura has submitted his report on 24.12.07 mentioning therein that the cleaning work has been done efficiently and is also being appreciated by the local people. After submission of the report dated 24.12.07, the Executive Officer/S.D.M. has made the payment on 24.4.08. Thus, it is clear that prior to making of payments to the Contractor, the enquiry had been done and the work had been verified and certified by the Deputy Collector, Mathura, an officer of the district administration. Copy of the report dated 24.12.07 has been brought on record.

It has also been incorrectly alleged that the entire payment has been made, whereas till date the entire payments have not been made to the contractor for cleaning work of "Nalas" and still Rs. 8,29,945/ is due upon the Nagar Palika Parishad.

The charge no. 2(3) is that the engagement of the labourers for the said works caused loss of Rs. 36 lakhs to the Nagar Palika Parishad, when for the same work, the sufficient number of employees and resources were available.

It is not out of place to mention here that in the year 200708 exactly the same situation was existing as it was in the previous year at the time of Administrator and exactly the same equipment was available in the Nagar Palika Parishad. It is also pertinent to mention here that number of employees in the year 200708 had reduced and the Nagar Palika Parishad had also to perform the additional cleaning work of 10 Wards which was being done by about 200 employees on contract basis. Thus, in view of the scarcity of the equipments as well as man power for the year 200708, the 37 kms. of "Nala" has been cleaned within a span of 17 months by engaging labourers.

It has come on record, which fact has not been disputed by the respondents that

at the time of cleaning of "Nalas" there were 649 employees working in the Nagar Palika Parishad which fact also stood verified from the report dated 9.6.08 submitted by the S.D.M./Executive Officer, Nagar Palika Parishad, Mathura to the Additional District Magistrate, Mathura, who investigated the complaint against the petitioner.

As per the circular/office order dated 29.7.92 issued by the Director, Local Bodies, U.P. to all the Executive Officers and the Adhyakshas mentioning therein that the determination of "Safai Workers" has to be made on the basis of the population and as per the said circular it has been provided that 28 Safai Workers were required on every 10,000 population, whereas the population of the Nagar Palika Parishad, Mathura is about 4 lakhs at present and for the population of 4 lakhs, at least 11000 Safai workers are required and in the last Census which was held in the year 2001, the population of Mathura was 3,02,770.

It is best known to the respondents that for the last so many years, the work of cleanliness of Nalas is to be done either through contractor or by the Rural Engineering Services and the similar situation arose in the year 1999/2000, when sum of Rs. 33,31,288/- was spent and the objections were raised but the same has been considered by the committee on 15.5.08 constituted by the State of U.P. and the said Audit Objection was rejected, as approval of the work was given.

It is thus, clear that the "Nalas" which were lying in very bad shape making the life of general public miserable, were got cleaned by the Adhyaksha as per the norms and since the already engaged staff was highly inadequate to deal with the entire area as given above and there being precedence in previous years of giving contract for cleaning of "Nala", it cannot be said that any financial irregularity or otherwise irregularity was committed by the petitioner.

In regard to charge no. 3, it would be pertinent to mention that the State Government itself vide Government order dated 7.3.96 has totally banned the purchase of Motor Car, Jeep and Gypsy etc.

The Board of Nagar Palika Parishad, in view of the ban imposed by the State Government, finding that it was necessary to have the vehicles, unanimously resolved on 17.1.07 for having two vehicles and after making detailed enquiry for the rates prevalent in other departments, tenders were invited on 30.1.07 by publishing in the local newspapers for hire of two vehicles and in pursuance of which three tenders were received by the Nagar Palika Parishad, and after comparing the rates, the lowest tender was accepted for supply of two vehicles on hire basis. The resolution of the Board dated 17.1.07 and the documents showing the rates of the vehicles hired in Uttar Pradesh State Road Project (P.W.D.) and the tender publication have been brought on record, showing that comparative rate chart was prepared under the signatures of the Executive Officer.

The matter regarding hiring of vehicles was also placed before the Board of Nagar Palika Parishad and in its meeting dated 16.2.08, the Board had approved

the agenda for hiring two vehicles at the given rates.

On careful examination of the aforesaid charges, the conclusions drawn by the enquiry officer in presence of the material available on record of the Nagar Palika Parishad, cannot be said to be even prima facie established. It is clear that the charges are nonexistent and they have not been proved even prima facie and rather the enquiring authority by submitting his report, has conveniently ignored the documentary evidence and the record of the Nagar Palika Parishad, which if had been taken into account, could have itself established that the petitioner has acted in accordance with the terms of the contract, so far the first charge is concerned and in accordance with Government orders and the practice prevailing so far the charges no. 2 and 3 are concerned. No financial loss or financial irregularity also could be established.

Since the charges on which the petitioner has been issued the notice under Section 48(2) are, in fact, nonexistent and cannot be said to be proved even prima facie, and the order impugned also does not show as to how the State Government has reached to the satisfaction about the legality and validity of the charges, much less about the proof even prima facie, coupled with the fact that the petitioner has acted not against the interest of the Nagar Palika Parishad, and rather in the interest of general public, it cannot be said that the charges are not groundless or the petitioner can be said to be prima facie guilty of any such charge. That being so, the State Government was having no authority and jurisdiction to issue the show cause notice or to cease the administrative and financial powers.

The argument of the learned counsel for the State that it is only a preliminary enquiry on the basis of which the show cause notice has been issued and, therefore, the final order would be passed by the State Government after detailed reply is submitted by the petitioner, therefore, the petition deserves to be dismissed, is also not tenable at all.

The State Government assumes jurisdiction to issue show cause notice under Section 48(2), which may either result into exoneration of the Adhyaksha in the enquiry or may oust him from his office, only when the State Government has "reason to believe" that the allegations are such, which do not appear to be "groundless" and the Adhyaksha is prima facie found guilty of the charges, meaning thereby that it is not merely on bald allegations with no prima facie proof, the show cause notice can be issued on the premise that the Adhyaksha would be afforded opportunity, when regular enquiry is conducted.

Holding of regular enquiry after ceasing the administrative and financial powers of the Adhyaksha amounts to virtual removal of the Adhyaksha from his office during all the period when the enquiry is continuing but for the fact that he retains his status and perquisites attached to the office of Adhyaksha. Such an action cannot be taken unless allegations made against the Adhyaksha do constitute any of the misconduct as given in Section 48 subsection (2). Some

technical irregularity or some oversight or minor deviations in the functioning of the Nagar Palika Parishad, which does not effect its smooth functioning nor causes any financial loss or any financial irregularity nor is violation of any statutory provisions or byelaws nor the action taken is for the undue gain of the Adhyaksha or members of his family i.e. to say, unless the conduct of the Adhyaksha is abuse of his powers, the action under Section 48(2) cannot be taken.

Care has to be taken that the Adhyaksha is an elected representative and he has to be given some play in the joints for the efficient and smooth functioning of the Municipality and for that matter every trivial deviation or discrepancy in his functioning, subject to the aforesaid conditions of Section 48 (2)(a) and (b) cannot be the basis for removal from his office. So far the Adhyaksha functions in the interest of the Municipality and carries on the functions in the interest of the general public in accordance with the requirement with no financial irregularity and of course subject to following of rules or the procedure and the byelaws enacted for the purpose, there would hardly be any reason for removal of such an Adhyaksha.

For the reasons stated hereinabove, we are of the considered opinion that none of the charges levelled against the petitioner actually exist nor could have been framed and in any case could not be said to be prima facie proved, so as to hold the petitioner guilty of any misconduct as given under Section 48(2)(b) and, therefore, the impugned order and the show cause notice are liable to be set aside which are hereby quashed.

The petitioner shall be allowed to discharge the administrative and financial powers forthwith.

The petition is allowed. No order as to costs.