
(2012) 08 P&H CK 0229
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2 of 2012

Smt. Mukesh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Haryana Municipal Act, 1973 — Section 13C, 14, 14A, 14A(1)(a), 14A(1)(b)

Citation : (2012) 168 PLR 309

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : S.K. Garg Narwana, with Mr. Naveen Gupta, for the Appellant; Sunil Nehra, D.A.G., Haryana for the State, Mr. Anil Rathee for Respondent No. 6, Mr. Puneet Bali with Mr. Abhinav Sood, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—Petitioner, who was elected as Municipal Councillor, Jind unopposed from Ward No. 26, has impugned order of her suspension, which, according to her was passed to save the "No Confidence Motion" moved by her and number of Councillors against the President Smt. Sudesh Kumari (respondent No. 7). The petitioner has approached the court crying loudly to allege malafides on the part of respondent No. 6 and against "political bosses of Ruling/Congress Party" without naming any such boss. Alleging malafide against unidentified political bosses is quite a vague manner of making allegations of malafides and would sound a bit irresponsible act. If wanted to, the petitioner could be rather specific in this regard and ought to have impleaded them also. Leaving this aspect, the facts in this case may now be noticed and would indicate that this suspension of the petitioner just at the time when there was a no confidence motion moved against the President of the Municipal Council may leave an impression that this action was not straight looking and was in violation of legal provision. On 20.5.2010, the petitioner was elected unopposed as Municipal Councillor, Jind from ward No. 26, which has more than 2500 votes.

Smt. Sudesh Kumari (impleaded as respondent No. 7 at the time of issuing notice on oral prayer made by the counsel for the petitioner) is the elected President of Municipal Council, Jind. The petitioner along with other 22 other Municipal Councillors constituting 2/3rd majority of the Council moved a requisition to the Deputy Commissioner, Jind against the President of the Council on the ground that her work and conduct was not good. These Councillors accordingly prayed for calling the meeting to pass the vote of "No Confidence" against the President. It is averred that respondent No. 7 is a staunch Congress follower and has the blessing of political leaders of the Congress Party and, thus, they were more than keen to save her from being removed as President. The post of President of Municipal Council, Jind is reserved for female candidate. Petitioner claims to be a hot contender for this post and that is why she apprehends that the axe to incapacitate her to vote has fallen on her.

2. Petitioner received a communication dated 28.11.2011 from Sub Divisional Officer (Civil) (respondent No. 5) intimating that the Deputy Commissioner had appointed/authorised him to call a special meeting due to receipt of this no confidence motion against the President. He accordingly apprised the petitioner that special meeting was convened on 14.12.2011 at 11.00 AM in the Meeting Room of Municipal Council Jind. This meeting was not held on 14.12.2011. The petitioner then received another communication dated 19.12.2011 informing her that earlier meeting could not be held and that the meeting was convened on 3.1.2012 at 11.00 AM. As per the petitioner, in between, the political bigwigs of the ruling party resorted to pressurizing the Councillors not to participate in the meeting. The Councillors, however, did not succumb to the pressures.

3. Relying on some newspaper reports, copies of which have been annexed with the writ petition, the petitioner would allege that on 6.12.2011, respondent No. 6 alongwith Member Parliament of Congress Party, Prof. Varinder Singh Advisor to Chief Minister visited Jind and pressurised the Councillors not to participate in the meeting, which was then to be held on 14.12.2011. When the Councillors did not buckle, the meeting was got postponed to 3.1.2012. Basing these allegations only on the news item may not again be a legally appropriate mode to substantiate any such assertions. Naming persons merely on the information derived from news paper report may not be a good mode to support the allegations of malafide. The further averment is made by the petitioner on the basis of some local news paper report to allege that Chief Minister was taking keen interest in the matter. Chief Minister is not impleaded as a party. This again cannot be termed an appropriate manner of alleging malafides against Chief Minister. This would show a lack of responsibility. Allegations made against him, thus, have to be ignored altogether and completely.

4. The petitioner otherwise would urge that the respondent conspired to somehow dislodge the petitioner from voting in support of the no confidence motion and with this purpose in mind, the meeting was postponed. The respondents are alleged to have obtained a complaint dated 17.11.2011 from

one Jagdish son of Bhale Ram, who is neither resident of Jind City nor has any concern with the petitioner. In this brief complaint of half page, complainant has alleged that the petitioner is resident of Jakhoda, Tehsil Bahadurgarh and had remained Sarpanch in District Jhajjar. Presently being Councillor of Municipal Council, she is alleged to have got her vote prepared in Jind. As per the complainant, petitioner could not have vote at two places and accordingly prayed that the legal action be taken against her and her membership as a Councillor may be cancelled.

5. This brief appistle elicited quick reaction. Promptly, on receipt of this complaint and after holding some inquiries, respondent No. 2 issued notice dated 23.12.2011 to the petitioner requiring her to remain present before respondent No. 4 on 25.12.2011. The petitioner did appear before respondent No. 4 but he adjourned the matter to 27.12.2011. As per the petitioner, this complaint was totally false. The allegation of petitioner having cast vote at two places is denied by her. The petitioner would also urge that there was no occasion for her to cast vote in the election of Municipal Council, Jind as she was elected unopposed.

6. The petitioner could not appear before respondent No. 4 on 27.12.2011 as she fell ill on 26.11.2011 and was admitted in Mittal Heart and Poison Hospital, where she remained till 28.12.2011. The petitioner claims to have been advised bed rest thereafter. She has placed on record some medical documents, collectedly annexed with the petition as Annexure P-8. Without holding proper enquiry and without waiting for response from the petitioner, respondent No. 4 being under political pressure, is alleged to have submitted a report against the petitioner to the Government. As per the petitioner, on the basis of this ex-parte illegal enquiry report, the impugned order placing the petitioner under suspension as Municipal Councillor is passed on 30.12.2011 by Director General, Urban Local Bodies, Haryana. The petitioner has reached this court equally promptly to challenge this order through the present writ petition alleging that this order is illegal, arbitrary and is actuated on account of malafide action only to save respondent No. 7, who belongs to ruling party.

7. The writ petition was listed for hearing before this court on 2.1.2012. Urgency in the matter was obvious as the meeting for discussing no confidence motion was fixed for 3.1.2012. While issuing notice of motion, this court directed that the petitioner would be allowed to vote in the proceedings for no confidence, which was slated for 3.1.2012, but her vote was ordered to be kept in a sealed cover. The petitioner accordingly has voted but the result of no confidence motion is yet to be decided subject to the final order passed in the present petition.

8. Separate replies have been filed by the respondents. Respondent No. 7 has filed a short reply by way of affidavit stating that petitioner has an alternative remedy of filing appeal u/s 14A(3) of the Haryana Municipal Act, 1973 (for short, the Act). Since the petitioner has not availed the alternative remedy, respondent No. 7 pleads that the writ petition be dismissed on this short ground. Respondent

No. 7 has further averred that the petitioner has been suspended after detailed enquiry, which shows that she is having two votes at different places. She is also accused of deliberately misrepresenting the facts at the time of filing nomination papers and so respondent No. 3 in his wisdom has suspended the petitioner, for which he has the necessary and ample power. It is urged that the charges made or proceedings taken against the petitioner are likely to embarrass her to discharge her duties. She has accordingly justified the impugned order of suspension passed by respondent No. 1.

9. Additional Deputy Commissioner has filed a separate reply on his behalf and on behalf of Deputy Commissioner. Respondent No. 2 has also raised a preliminary objection in regard to the alternative remedy of appeal available with the petitioner. Respondent No. 4 otherwise has conceded that her requisition signed by petitioner alongwith 22 Councillors for no confidence motion against respondent No. 7 was received, for which the meetings were called. He has also justified his action of postponing the meeting from 14.12.2011 to 3.1.2012 as respondent No. 5 suffered from a severe back pain and was advised bed rest for one week. He had accordingly submitted application on 12.12.2011 for casual leave from 12.12.2011 to 16.12.2011 on medical ground and this reason is advanced as a justification for postponing the special meeting which was to take place on 14.12.2011. This is the reason stated in the reply to fix a special meeting thereafter on 3.1.2012, which was communicated on 19.12.2011.

10. Perusal of the reply would show that the meeting to consider "no confidence motion" has been held on 3.1.2012. 22 Members, including MLA Jind were present. 21 members have voted in favour of the motion. The vote cast by the petitioner has been kept in a sealed cover as per the orders passed by this court and the same has not been counted. As per respondent No. 4, 21 members would not constitute 2/3rd majority of total number of Councillors being 33, including Member of Parliament, Sonapat and MLA Jind. He, however, concedes that to carry this motion, 22 Councillors have to support the same. He has accordingly stated that the final result would depend upon the direction issued by this court if this vote is to be counted or not.

11. In his reply, respondent No. 4 has referred to the complaint received against the petitioner which he was detailed to enquire. Respondent No. 4 would term it to be a regular enquiry into the charges levelled against the petitioner. Not only that, respondent No. 4 has described this enquiry as a detailed enquiry where he found that the petitioner earlier had served as a Sarpanch of village Jakhoda from June, 2005 to June, 2010, where she was having a vote. Since she was also having a vote at Municipal Council, Jind where she is elected as Councillor, he has found that she is having votes at two places. This enquiry report he has submitted accordingly, copy of which is annexed with the reply as Annexure R5.

12. Respondent No. 4 has not disputed this fact that the petitioner had not appeared during the enquiry and that she has submitted the medical record in regard to her illness through her husband. Still, he has gone on to explain that

both the parties were then required to appear on 29.12.2011 at 2.30 PM. On this date, the complainant appeared with his counsel but the petitioner did not come present. One Shri Rohit filed an application on behalf of the petitioner and produced medical certificate. As per the reply, this record contained a discharge slip of the petitioner showing her discharge from the hospital on 28.12.2011 at 5.00 PM. Finding that due opportunity of hearing has been provided to the petitioner and that she has neither appeared in person nor through her authorized representative, respondent No. 4 opined that she was not appearing intentionally. Accordingly, the said respondent has made every effort to rebut the allegation that the report was submitted in haste and that it was without affording due opportunity to the petitioner.

13. Respondent No. 7 chose to file an additional affidavit on the ground that some additional facts had come to her notice. Reference is made to the enquiry which is held to aver that petitioner was having two votes, from which it is clear that she was also serving as a Sarpanch when she was elected as Municipal Councillor. In this regard, respondent No. 7 has made reference to Rule 22 of the Haryana Municipal Elections Rules, 1978, which provides that no person shall vote in more than one constituency or stand for election in more than one local authority, and in case of his voting or standing otherwise his votes or candidature, as the case may be, shall be void. It is accordingly urged that the candidature of the petitioner, when she stood for election as a Municipal Councillor, is void.

14. Reply on behalf of respondent No. 3 is filed by Additional Director, Urban Local Bodies and has raised preliminary objection about the alternative remedy of appeal being available to the petitioner. He has also made reference to the enquiry which has been held against the petitioner on the receipt of a complaint, reference to which is already made above. The Enquiry Officer submitted his report dated 1.12.2011 stating that the allegations against the petitioner stood proved. The Deputy Commissioner agreed with this report, whereafter respondent No. 3 had issued directions to hold a regular enquiry u/s 14 of the Act and appointed Additional Deputy Commissioner, Jind to hold this regular enquiry. On the basis of this enquiry conducted by respondent No. 4, the petitioner has been placed under suspension. It is alleged that petitioner has exposed herself for action as per Section 13-C of the Act, which deals with making false declaration. As per Section 13-C if any person makes, in connection with the preparation, revision or correction of an electoral roll; or inclusion or exclusion of any entry in or from an electoral roll, a statement or declaration in writing, which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees or with both. This is offered as a justification for placing the petitioner under suspension under the provisions of Section 14A of the Act. The reply by respondent No. 2 otherwise also is on the lines as tendered by respondent No. 4.

15. Respondent No. 6, against whom the allegations of malafide are made, has filed a separate short reply. He would allege that he has simply been impleaded with ulterior motive to avoid invoking the alternative remedy provided u/s 14A of the Act. Respondent No. 6 states that he has nothing to do with the complaint against the petitioner nor he has any connection with the enquiry. As per him, he was not aware of this enquiry and has learnt about it only when he received a notice from this court. Respondent No. 6 otherwise has toed the line of respondent No. 3 and has made reference to Section 13-C of the Act stating that the petitioner is answerable for this offence. Respondent No. 6 has gone on to state that petitioner has made this attempt to align respondent No. 7 with her, whereas he has neither any connection nor has any concern with respondent No. 7. He states that he did not participate in the meeting which was held on 3.1.2012. Rather, respondent No. 6 has also expressed his ignorance about the petitioner's husband being from Indian National Lok Dal and has further reiterated that at no point of time he has interfered with any proceedings. Respondent No. 6 has stated that he would be the last person to indulge in such type of activities, he himself being Member of Parliament elected through democratic process.

16. The counsel appearing for the parties are heard.

17. Counsel for the petitioner was rather empathetic about his allegations of malafide not only against respondent No. 6 but against "political bosses of Congress Party". In addition, the counsel has also urged that the order of suspension of the petitioner is not only a malafide action but is without jurisdiction as petitioner could not have been placed under suspension as a Councillor u/s 14A(1)(a). In this regard, he would submit that a Councillor can be suspended under this provision when a case against him in respect of any criminal offence is under investigation, enquiry or trial. He would urge that petitioner is not under either investigation, enquiry or trial for any criminal offence and as such the order of the Director placing the petitioner under suspension under this provision is beyond his power and jurisdiction. As per the counsel, for placing Municipal Councillor under suspension, the criminal case should not only be under investigation, enquiry or trial but the Director could do so only after forming an opinion that the charge made or proceedings taken against such Councillor are likely to embarrass him in discharge of his duty or involves moral turpitude or defect of character. The plea laboriously stressed is that the opinion so formed, if any, has neither been expressed in the order nor can be so made out from the order.

18. Some precedents have been placed before me to urge that the reason, if any, in regard to this opinion, ought to be expressed in the order itself and cannot be subsequently supplemented by affidavits. The counsel would also urge that no proper opportunity of hearing was given to the petitioner during the course of enquiry which was formed the basis of placing the petitioner under suspension. The enquiry, says the counsel, was not only held in hurry but was concluded so

hurriedly and in a hush manner leading to a impugned order which was also made in utter haste with electric speed.

19. State counsel, on the other hand, has only emphasized about the alternative remedy being available to the petitioner and in support has relied upon United Bank of India Vs. Satyawati Tondon and Others, . The State counsel has also joined issue with the counsel for the petitioner in regard to the power of the Director to place a Councillor under suspension, which, according to him has been done on the basis of enquiry and, thus, would be within the purview of Section 14A of the Act. Counsel appearing for respondent No. 7 would, in addition, submit that word "Enquiry" used in Section 14A(1)(a) of the Act would also envisage an enquiry other than the enquiry in a criminal case or offence and the Director would have power to suspend a Municipal Councillor even when enquiry is on in cases other than criminal cases. In addition, the counsel has referred to Rule 22 of the Haryana Municipal Elections Rules, which provides that no person shall vote in more than one constituency or stand for election in more than one local authority, and in case of his voting or standing otherwise his votes or candidature, as the case may be, shall be void. The counsel accordingly would submit that the petitioner would suffer this infirmity and as such the impugned action is fully justified.

20. Let us first take up the preliminary objection raised by the respondents about the alternative remedy of appeal available to the petitioner and if her challenge should fail on this count alone. No doubt, remedy under Article 226 in general being discretionary, the High Court may refuse to grant writ/relief where an alternative remedy exists. The alternative remedy has to be equally efficient and adequate. It is equally well settled that existence of an alternative remedy is not an absolute bar to grant relief under Article 226. It is a circumstance which the court has to take into consideration in exercising its discretionary power but it does not take away the jurisdiction of the court to grant relief under Article 226, that too in exceptional circumstances. Thus, where the alternative remedy, may be of appeal, revision or review, is too dilatory or difficult to give quick relief, then it would not be a bar to relief under Art.226. Alternative remedy is not a bar when it is found ineffective or would entail delay that the person would be irreparably prejudiced or subjected to unnecessary harassment. Rule of exhausting alternative statutory remedy is a rule of policy, convenience and discretion rather than any rule of law. This rule which is self imposed restriction, does not bar the jurisdiction of the court under Art.226. It is not possible and desirable to enumerate these exceptional circumstances as matter is pre-eminently one for the discretion of the court in issuing writs.

21. Present one is a case where alternative remedy of appeal is ill-suited to meet the demands of an extra-ordinary situation. Asking the petitioner to invoke alternative remedy of appeal will entail such delay that the petitioner would be irreparably prejudiced. Sending petitioner to invoke remedy of appeal would render the relief sought illusory and no relief at all. Alternative remedy is no

bar if the authority against whom the complaint is made has violated rules of natural justice. If the petitioner is asked to invoke alternative remedy, her whole challenge would be rendered meaningless and the respondents would succeed in their aim in ensuring defeat of this "No Confidence Motion". These circumstances are reasons enough for me to reject this preliminary objection. The writ petition calls for decision on merits.

22 The impugned order placing the petitioner under suspension annexed with the petitioner as Annexure P-1 clearly shows that Director General has placed the petitioner under suspension in exercise of his powers conferred upon him u/s 14A(1)(a) of the Act Since the counsel have joined issue in regard to the scope of this provision, it will be of advantage to look into this Section. This is as under:-

14A. Suspension of members.- (1) The Director may, suspend any member of committee where-

(a) a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director the charge made or proceedings taken against him, are likely to embarrass him in the discharge of his duties to involves moral turpitude or defect of a character.

b) during the course of an enquiry for any of the reasons for which he can be removed u/s 14, after giving him a reasonable opportunity of being heard.

(2) Any member suspended under sub-section (1) shall not take part in any act or proceedings of the committee during the period of suspension and shall hand over the records, money or any other property of the committee in his possession or under his control -

(i) to president/vice-president, as the case may be ;

(ii) in case both the president and vice-president are suspended, to such person as the Director may appoint in this behalf:

Provided that the suspension period of a member shall not exceed six months from the date of issuance of suspension order except in criminal cases involving moral turpitude.

(3) Any person aggrieved by an order passed under subsection (1) may, within a period of thirty days from the communication of the order, prefer an appeal to the Government.]

23. Section 14A(1)(a) as referred to above appears to be clear in its sweep. Director may suspend any member where a case against him in respect of any criminal offence is under investigation, enquiry or trial. Whether this "enquiry" is to be construed enquiry in relation to criminal offence or in any independent enquiry which may be in progress against a member where no such criminal offence is registered, is a question posed in this case?

24. The Legislature, in my view, has expressed itself in a very clear manner. This provision talks of a case against a Councillor in respect of criminal offence and then has gone on to qualify that when such criminal offence is under investigation, enquiry or trial. The enquiry envisaged is regarding criminal offence. On this aspect one can assure oneself from the manner in which the words "enquiry" and "trial" are joined with word "or" and these three words being in commas before and after. If the intention of the Legislature had been to construe this enquiry to be independent of criminal offence, the same ought to have been so mentioned in the section in clear terms. Rather, the intention of the Legislature can clearly be made out from this section itself and is so expressed in Section 14A(1)(b). This Section clearly provides that the Director can suspend a Councillor during the course of an enquiry for any reason for which he may be removed u/s 14. This is the enquiry which is envisaged other than enquiry of a criminal charge. One can reasonably say that Section 14A(1)(a) referred to above talks of suspension when a criminal offence is under investigation, enquiry or trial and when any enquiry other than relating to criminal charge is in progress, the Councillor can be placed under suspension u/s 14A(1)(b). If enquiry as mentioned in 14A(1)(a) was meant to apply to enquiries other than in a criminal case, there was no need to separately legislate and provide Section 14A(1)(b). There is no need of much debate in this regard.

25. Going by the words used in Section 14A(1)(a), one can reasonably say that the Director before placing an elected Councillor under suspension, when a criminal offence is registered against him or is under investigation, enquiry or trial, is also called upon to form an opinion that the charge made or proceeding so taken are likely to embarrass the Councillor in discharge of his duties etc. In addition, the Director may also suspend a Municipal Councillor if he forms an opinion that the offence, for which this investigation, enquiry or trial is in progress, is for an offence which involves mortal turpitude and may still place a Municipal Councillor under suspension if he finds that the offence for which he is facing trial or enquiry etc., is such which shows "defect of a character". It would be safe to infer that progress of investigation, enquiry or trial for a criminal offence alone may not be enough to place a Councillor under suspension and this can be done so when the Director forms an opinion that either the charge made or proceedings are likely to embarrass him in discharge of his duties or where such offence involves mortal turpitude or if it depicts defect of character. This opinion ought to be reflected in the order which is passed to show that the order has been passed upon due application of mind. This issue should not have any scope of debate and seems to be well settled by series of judgments. Some of these may just need brief notice here.

26. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, it is observed that where a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and can not be supplemented by fresh reasons in shape of affidavit or otherwise. This is the view expressed by the Hon'ble Supreme Court in

Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . In this case, it has been observed as under:-

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

27. The impugned order simply narrates that on the basis of enquiry report, the charge of casting double votes stands proved against the petitioner and, therefore, in exercise of power conferred u/s "14A(1)(a)", Director has placed the petitioner under suspension with immediate effect.

28. Strictly speaking, the Director does not appear to have wisely invoked the provisions of Section 14A(1)(a) as there was no criminal offence under investigation, enquiry or trial when this order was passed. Since he has chosen to place the petitioner under suspension on the basis of enquiry, more appropriately it could be done by using the enabling power u/s 14A(1)(b). As a word of caution here, it is observed that the power under this provision is during the course of enquiry and could be so exercised when such enquiry is in progress for an allegation for which a member can be removed u/s 14 and that too after giving him a reasonable opportunity of being heard. Thus, the Director before invoking the power u/s 14A(1)(b) is also required to satisfy himself that this enquiry is in respect of an allegation for which such a member can be removed. The grounds on which a member can be removed are given in Section 14, and are as under:-

14. Powers of State Government as to removal of members.- (1) The State Government may by notification remove any member of a committee-

(a) if he refuses to act or becomes, in the opinion, of the State Government, incapable of acting, or has been declared a bankrupt or an insolvent by a competent court or has been convicted of any such offence or subjected by a criminal court to any such order as implies, in the opinion of the State Government a defect of character which renders him unfit to be a member;

(b) if he has been declared by notification to be disqualified for employment in, or has been dismissed from, the public service and the reason for the disqualification or dismissal is such as implies in the opinion of the State Government a defect of character which renders him unfit to be a member ;

(c) if he has without reasonable cause in the opinion of the State Government absented himself for more than three consecutive months from the meetings of committee;

(d) If he fails to pay any amount due from him to the committee within three

months of the service of notice making the claim. It shall be the duty of the {Executive Officer, and where there is no Executive Officer, the Secretary}, to serve such a notice at the earliest possible date after the amount has become due;

(e) if, in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through his negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee;

(f) if he has, since his election or nomination becomes subject to any disqualification which, if it had existed at the time of his election or nomination, would have rendered him ineligible under any law for the time being in force regulating the qualifications of candidates for election or nomination, or if it appears that he was, at the time of his election or nomination subject to any such disqualification;

(g) if, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the committee or on behalf of or against the State Government where in the opinion of the State Government such action or appearance is contrary to the interests of the Committee:

[Provided that no removal of a member shall be notified unless the matter has been enquired into by an officer, not below the rank of an Extra Assistant Commissioner, appointed by the State Government and the member concerned has been given a reasonable opportunity of being heard {or there is a finding by the competent court in this regard}]

(2) A person removed under this section or whose election has been declared void for corrupt practices or intimidation under the provisions of section 272, shall be disqualified for election for a period not exceeding five years.

29. It has not been pleaded before me that the powers have been invoked by the Director u/s 14A(1)(b) and that the enquiry is for an allegation for which the petitioner could be removed as a member. The line of submission pursued before me by and on behalf of the respondents is that the Director has rightly invoked his power u/s 14A(1)(a) and to substantiate the same, the counsel would submit that the word "enquiry" used in this section is the enquiry which can be other than these "enquiries" as envisaged for a criminal charge. I can not accept this to be a correct line from the plain reading of the section, when it is examined in the light of Section 14A(1)(b). Once it is not pleaded before me that the suspension has followed when the enquiry was for an allegation for which the petitioner could be removed from the office of Councillor, it is not appropriate for me to consider the case from this angle.

30. May be because of this difficulty arising from the impugned order, a subtle attempt appears to have been made by counsel by making reference to Section 13-C. Efforts seem to be to urge that a criminal offence is made out against the

petitioner under this section. With this aim, certain documents have also been placed on record with the additional affidavit filed by respondent No. 7. This method may not help the cause of respondents. As per records, there is no offence registered against the petitioner. There can not be any investigation or trial for any criminal offence. Enquiry, if any, for criminal offence has to be under Cr.P.C. For this reason only, the respondents have perused the line of that enquiry under this clause is any enquiry other than criminal charge or allegation. This line is found to be against the scheme of this Act. Accordingly, this subtle attempt to bring the case within Section 14A(1)(a) on the ground is again an unsuccessful attempt to justify suspension.

31. In any event, the above aspect would be of no significance as the petition is bound to succeed on the second ground pressed by the petitioner that this suspension was with the aim to deprive the petitioner from supporting "No Confidence Motion" and to reduce the majority below 2/3rd so as to fail the motion of No Confidence. Allegation of malafide exercise of power by official respondents is, thus, alleged against them from the manner in which the official respondents have acted to exercise their powers. Besides pleading malafides against respondent No. 6 and unidentified bosses of a political party, the petitioner has very strongly pleaded that the order was passed without affording due and reasonable opportunity to her while passing this order.

32. The background and the manner in which this order has been passed suspending the petitioner would not commend itself to me.

33. 17.11.2011, is the date when the petitioner alongwith others has initiated this move for no confidence motion against respondent No. 7. Incidentally, this is the date of the complaint filed against the petitioner which is received by the Deputy Commissioner, on 18.11.2011. What locus this person would have to suddenly wake up to file this complaint is really not made out from the record. The complainant has not mentioned anything in this regard in his complaint. The Deputy Commissioner ought to have known that petitioner and others have moved a no confidence motion and such a complaint may have some link or something to do with the move concerning no confidence motion. Deputy Commissioner is unmindful of this situation and is rather prompt in directing enquiry into the matter. Where would be the hurry to immediately enquire into this issue but for the pending no confidence motion, requisition for which was received. The date to consider this no confidence motion is fixed on 14.12.2011 and communication in this regard is dated 28.11.2011. The date of this meeting is postponed to 3.1.2012. This intimation is also initiated on 19.12.2011 i.e. after the date of meeting. The justification given in this regard in the reply is severe back pain suffered by Sub Divisional Officer w.e.f. 10.12.2011. In support, the medical report advising bed rest for one week is highlighted. The SDO (Civil) had statelty asked for casual leave on medical ground w.e.f. 12.12.2011 to 16.12.2011. Is it a real back pain or the cause of this pain is the meeting which he was to supervise on 14.12.2011. The Sub Divisional Officer apparently has

either proceeded on leave on this flimsy ground or was asked to fake or procure a leave? Was pain in the back of SDO(Civil) a sufficient cause to postpone a meeting? Was not it possible to detail another officer to supervise this meeting on 14.12.2011? The sickness of the Sub Divisional Officer (Civil) was a well known fact two days before the meeting as he applied for casual leave on 12.12.2011. Severe back pain is a disease which would be hard for the doctor to diagnose and could be so easily pressed by anyone. Why this pain came during this time is not free from suspicion and doubt. A possible reason to postpone the meeting could be that till then the issue of complaint and ultimate suspension which was to come subsequently, was in process and not complete. More I think and more I am inclined to believe that this suspension order was passed just to defeat the no confidence motion somehow or the others. It is sad to notice that senior officer became willing tool in this exercise.

34. News paper reports may not be fully authentic, but still one cannot ignore the actual conduct and the manner in which the officials, like Director, Deputy Commissioner, Addl. Deputy Commissioner and Sub Divisional Officer have conducted themselves in this case. Having postponed this meeting, the reasons for which are now forthcoming in the reply, Addl. Deputy Commissioner (respondent No. 4) promptly took up the enquiry and summoned the complainant as well as the petitioner. Even if the justification for postponing the meeting is accepted, there was no cause to postpone it to 3.1.2012 as the SDO (Civil) now was available after 16.12.2011. It appears that during this time, the Addl. Deputy Commissioner had task in hand to perform. He seems to have done everything with speed. One would wish that he would do his other duties as promptly. He held the enquiry so that the required order of disarming a member from supporting the no confidence motion is achieved. Addl. Deputy Commissioner called the parties to his office on 23.12.2012. The petitioner did appear on the said date. Addl. Deputy Commissioner was busy with the State Election Commissioner and, thus, the adjourned the enquiry to 27.12.2011 as he had hardly any time at his disposal. Indeed, he was having a limited time with him. On this date, complainant appears with an Advocate and record his evidence. The petitioner does not appear but her husband does. He submitted an affidavit that his wife (petitioner) had gone to Bhiwani on 26.12.2011, where she had fallen ill and was admitted in Mittal Heard and Poison Hospital for treatment and as such had not been able to come and attend the enquiry on the said date. The hurry on the part of Addl. Deputy Commissioner can very well be noticed when he adjourns the hearing to 29.12.2011 at 2.30 PM. He seems to be aware and conscious of the "D-date" which is January 3, 2012. He would be aware that after enquiry, it was to go to Deputy Commissioner and then to Director for passing the order. Time was too short to complete the task. Any delay would have rendered this exercise totally futile.

35. On the adjourned date, the complainant again appeared with his counsel. The petitioner was absent. One Rohit appeared on her behalf and submitted the medical certificate as was required by the Enquiry Officer. The medical record

shows that the petitioner had been discharged the previous day at 5.00 PM and, thus, the Enquiry Officer finds this to be enough reason and sufficient opportunity for her to present her side. Promptly he records that the petitioner is doing so to linger the enquiry. He accordingly prepares and submits his report on the same date i.e. 29.12.2011. On the basis of affidavit given as evidence by the complainant, respondent No. 4 concludes that the petitioner is voter at two places. This is the only conclusion he records and does not say anything whether the petitioner had exercised right of vote at two places or it amounts any criminal offence. He also does give any finding that it is an offence etc.

36. This report given by respondent No. 4 on 29.12.2011 apparently is dealt with alacrity and lightening speed. Within a day it is cleared by the Deputy Commissioner and it has reached the Director General Office at Chandigarh, who was equally prompt in taking up the same to pass the impugned order of suspension on same very day, i.e., 30.12.2011. Within one day, enquiry report completed, seen by Deputy Commissioner, had reached Chandigarh, taken up by Director and suspension order passed. One may note that Addl. Deputy Commissioner has called the petitioner at 2.30 PM on 29.12.2011. There is hardly any scope of delay or wait as 3.1.2012 is approaching fast. That is the only reasonable conclusion to draw from the manner in which the official respondents have acted in this case. On the basis of this suspension, the petitioner obviously is disarmed from voting and the result is achieved to reduce the 2/3rd majority of the complaining members seeking no confidence motion.

37. The hurry with which the respondents have acted in this case at every stage starting from the manner and date of receipt of the complaint to the date when petitioner is placed under suspension would leave no scope of doubt with any sane minded person to conclude that there is something at play and it is not a normal routine exercise by the officers who otherwise are generally required to be woken up from their lethargic slumbers to perform. It is not for the court to find that this was to oblige some powers that be, but it can reasonably be inferred that the officers have failed to conduct themselves in a manner expected from them while they were performing quasi judicial functions. The officers exercising quasi judicial power, ought to realise that by acting in this unwarranted manner, they are likely to expose themselves as their action is amenable to judicial scrutiny.

38. Will such a conduct in holding an enquiry pass the test of due opportunity of hearing which ought to be fair, just and reasonable? May be that the petitioner was delaying this enquiry, but no different was the conduct of the official respondents in hurrying it up. The petitioner being individual and likely to be affected could be under advise to adopt such tactics, but what was the reason on the part of these officials to give go bye to the principle of fair hearing and conclude the enquiry in this hurried manner. The impression that this manner would convey is that somebody was behind this to apply speed to this action. The most obvious reason apparently was approaching third January, 2012. It was

fast approaching and any delay would have rendered this exercise to be utterly and entirely futile. That seems to be the reason with the official respondents to act as so obliging tools.

39. The Deputy Commissioner had postponed the date of no confidence motion due to complaint of back pain by Sub Divisional Officer (Civil), who went on leave without being in any hospital and on bed rest. Deputy Commissioner did not find this plea to be unjust, but the Addl. Deputy Commissioner did not accommodate the petitioner, who also relied upon a medical record to justify her absence on one date. The enquiry is not postponed perhaps due to approaching date fixed for no confidence motion. This was postponed after fixing it easily for more than half a month, but the enquiry could not be delayed for a day. The only reason which would emerge from the record is that this was done only to complete this exercise before 3.1.2012. This was to be completed to disentitle the petitioner to participate in no confidence motion. In the bargain, Addl. Deputy Commissioner has not only denied due and fair opportunity to the petitioner to defend this serious onslaught on her right to represent a constituency. This is a serious intrusion in the rights of elective representative by the executive and an issue of quite serious dimension and cannot be lightly countenanced. If this is the manner in which the executive has to ease out the democratically elected representatives to exercise their right and to prevent them from performing their duties and responsibility, then it is a very sad and bad day for the democracy at the grass root level. The Director, Deputy Commissioner and Addl. Deputy Commissioner ought to know and understand that they were not exercising these powers in respect of any ordinarily and a routine matter but their action was going to seriously impinge upon the rights of an elected representative to exercise her will in supporting or opposing the no confidence motion. The Deputy Commissioner, the Addl. Deputy Commissioner and Director apparently acted to advance the interest of respondent No. 7 and have done this to save her from being ousted from the office of President, Municipal Council. In the bargain, they all have joined hands to take away the right of the petitioner to a reasonable fair hearing. The opportunity afforded to the petitioner was minimum and meager and cannot be termed as just, fair and reasonable. If the official respondents had just referred to the contents of Section 14A, they would have been able to understand that this section in itself makes a provision for giving reasonable opportunity of being heard. Though I am not prepared to accept the wild and unsubstantiated allegations of malafide against the Chief Minister and respondent No. 6 only on the basis of news paper report, but the circumstances of this case would tend to show that this entire exercise was or is not innocent as it is made out to be. The petitioner was denied fair opportunity to defend herself against this serious violation of her right as elected representative. The order was passed in hurry while violating the principles of natural justice and apparently was with an aim to deny her right to participate in the move of no confidence motion against respondent No. 7.

40. Principles of fair hearing being fully established may not need to be discussed

here. Just for information of the official respondents, these may require a brief mention which may guide them in future. The courts have actively applied two principles of natural justice and these are:-

Nemo Judge in Causa Sua - No one should be made a Judge in his own cause-it is a rule against bias. Audi Alteram partem - Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard.

41. "Plea in this case relates to denial of "fair hearing" and so there may not be any need to discuss the first principle relating to rule against bias.

42. This rule of fair hearing is a long aim of natural justice which protects the little man from arbitrary administrative actions. The principle is a sine quo non of every civilized society. Benefit of this is observed to have been extended to "Adm" and "Eve" even by God before they were punished. Therefore, no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against passing of such order and this rule is applicable to quasi-judicial and administrative proceedings would also a fortiori apply to judicial proceedings as well. The non observance of natural justice is in itself a prejudice caused. [See S.L. Kapoor Vs. Jagmohan and Others, . Rule of fair hearing would include right to notice. It is not enough that notice in a case is given but it must be adequate also. Notice to be adequate must contain:-

(i) Time, place and nature of hearing, (ii) Legal authority under which hearing is to be held (iii) Statement of specific charges which the person has to meet. Not only this, the adjudicatory authority should afford reasonable opportunity to the party to present his case. The administrative authority must further provide full opportunity to present evidence. Right to rebut adverse evidence is also a facet of fair hearing. Evidence should also not be taken at the back of a person. Seemingly none of these facets of fair hearing were kept in view while passing the order.

43. Accordingly, the impugned order passed suspending the petitioner cannot be sustained and is set-aside. Direction is issued to the Sub Divisional Officer (Civil), who has conducted this proceeding of "No Confidence Motion", to count the vote of the petitioner kept in a sealed cover to arrive at a decision whether this no confidence motion was carried against respondent No. 7 or not. Further consequential action shall thereafter follow.

44. The writ petition is allowed with costs assessed as Rs. 50,000/-. Half of the costs shall be recovered from the Director General, Deputy Commissioner and the Addl. Deputy Commissioner jointly whereas the remaining half of the costs shall be recovered from respondent No. 7.

45. The writ petition is accordingly allowed in the above terms. This order, however, would not be a bar to take any action against the petitioner, if she is found to be responsible for any chargeable conduct, but it has to be done in accordance with law.