
(2018) 07 MP CK 0048

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2943 Of 2017

Smt. Satyaprakashi Parsedia

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Constitution of India, 1950 — Article 21

Municipalities Act, 1961 — Section 35, 35A, 37(2), 41A, 51, 69, 92, 323

Citation : (2018) 07 MP CK 0048

Hon'ble Judges : ANAND PATHAK, J

Bench : Single Bench

Advocate : R.D.Jain, V.K.Bhardwaj, Anand Bhardwaj, Sumit Jain, Rohit Batham, Ashish Saraswat, Prashant Sharma, MPS Raghuvanshi

Final Decision : Dismissed

Judgement

1. The instant petition is preferred by the petitioner being crestfallen by the order dated 1/5/2017 passed under Section 41-A of the Municipalities Act,

1961 (for short "Act of 1961") by the respondent No. 1-Principal Secretary, Urban Administration and Development Department; whereby, the

petitioner, who was the elected President of Municipal Council, Dabra has been removed from the post and she has been declared as ineligible for

next term as President of Municipal Council, Dabra.

2. Precisely stated facts for adjudication of the case are that petitioner is the elected President of Municipal Council, Dabra for five years for the

tenure 2014 to 2019. Petitioner was discharging her duties as assigned to her under the law and as per the submissions, she undertook several welfare

measures for the benefits of residents of the vicinity. Since, she belongs to a different political party, other than the ruling party, therefore, she was

constantly subjected to interference and interruption in her work at the instance of State Government. Through the earlier proceedings initiated against

the petitioner, learned senior counsel appearing for the petitioner tried to assert that petitioner was the victim ofÂ circumstances, wherein, despite her

welfare measures public popularity, she was an eyesore for the State Government and different methods were adopted to oust her from her post.

3. Petitioner is serving the Council since year 2004 when she was elected for the first time as President of the Municipal Council. In her secondÂ

term(2009-2014), in year 2011, an order was passed, whereby, financial and administrative powers of the petitioner were withdrawn by order dated

3/5/2011, which was challenged by the petitioner by way of filing W.P.No. 3121/2011; wherein, this Court granted interim protection on 12/5/2011 and

subsequently, writ petition was decided on 21/6/2016, in her favour vide Annexure P/3.

4. It is further submitted that earlier proceedings under Section 41-A of the Act of 1961 were initiated against the petitioner and order dated 30/1/2015

was passed purportedly under Section 35-A of the act of 1961 vide Annexure P/4. By the effect of the said order, petitioner was restrained to contest

the election for two years, but since, petitioner already elected as President of the Council in the month of December, 2014 itself and charge was

taken by her on 12/1/2015, therefore, restriction could not be imposed. Writ petition No. 1188/2015 was preferred at her instance andÂ by the efflux

of time, order dated 30/1/2015 lost its efficacy on 30/1/2017(after completion of two years), therefore, the said writ petition was withdrawn vide order

dated 2/2/2017 (Annexure P/5). One Harimohan Mody also filed a writ perdition vide W.P.No. 3386/2015 for issuance of writ of quo-warranto for her

ouster, which was dismissed by the Writ Court vide order dated 24/1/2017, against which Writ Appeal vide W.A.No. 95/2017 was preferred and

Division Bench of this Court passed an interim order on 3/3/2017 (Annexure P/7), whereby, petitioner was restrained to work as President of

Municipal Council, Dabra and State Government had been given opportunity to pass order under Section 37 (2) of the Act of 1961 and to initiate the

proceedings under Section 41-A of the Act of 1961. 5. Simultaneously,Â a complaint was received in the office of Lokayukt vide Enquiry Case No.

169/2014, against the petitioner and the complaint was handed over for enquiry to the Deputy Director, Urban Administration and Development

Department, who submitted his report on 18/2/2016. As per the submissions, petitioner was not given any opportunity of hearing before the Lokayukt

nor at the stage of enquiry conducted by Deputy Director, Urban Administration and Development Department. Meanwhile, petitioner came to know

about the pendency of case before Principal Secretary i.e. the respondent No. 1, therefore, she preferred a reply on 25/3/2017 by Annexure P/9 in

which she narrated the course of events and pleaded her innocence. It appears that her representation / application was treated as reply and since

she was show caused earlier but she allegedly never received any notice, therefore, this reply was treated as the reply against the show cause notice

and impugned order has been passed.

6. The main allegation in the impugned order against the petitioner is that she (as President of the Municipal Council) was instrumental in passing a

resolution on 25/6/2012 vide resolution No. 747; wherein, while extending the services of 59 contractual Pump Operators from 25/6/2012 to 31st

March, 2013, appointed 24 more Pump Operators and therefore, caused illegality and arbitrariness which caused heavily over the public exchequer.

7. As per the defence raised by the petitioner, immediately on 25/6/2012, after passing of the resolution (Annexure P/10), she wrote a letter to Chief

Municipal Officer, Dabra vide Annexure P/11, in which she admitted that the resolution is illegal, therefore, directed the Chief Municipal Officer to

take prompt action as per Section 323 of the Act of 1961 by referring the matter to the Collector for further action. The said letter, which she treats as

letter of her innocence is the sheet anchor of her case. It further appears that on 22/10/2012 vide Annexure P/12, the salary which was raised earlier

from Rs. 2000/- to Rs. 3500/- was reduced and it was decided to be fixed at Rs. 2800/- per month to each Pump Operator of Municipal Council,

Dabra.

8. According to learned senior counsel appearing for the petitioner, the impugned order has been passed without granting any opportunity of hearing to

the petitioner. The petitioner was not afforded reasonable opportunity of hearing to demonstrate her case. Therefore, Principles of Natural Justice are

severely violated. It is further submitted that Chief Municipal officer utterly failed to discharge his duties as per Rule 12 of Madhya Pradesh

Municipalities (The Conduct of Business of the Mayorin-Council/President-In-

Council and the Powers and Functions of the Authorities) rules, 1998 as well as Section 323 of the Act of 1961. The failure of duties on the part of Chief Municipal Officer cannot be reflected over the petitioner. Section 69 and 92 of the Act of 1961 are also important provisions in respect of the duties and obligations of the Chief Municipal Officer in which he failed utterly which caused adversity to the petitioner.

9. Once the petitioner rescinded herself from the Resolution No. 474 dated 25/6/2012 then she cannot be fastened with the liability and if she is fastened, same is guided with mala fide. Omission of the Chief Municipal Officer in not sending the letter to Collector for appropriate action cannot render her guilty of misconduct.

10. Learned senior counsel for the petitioner also raised the point of mala fide as according to them, she is an eyesore for the State Government and therefore, she was subjected to harassment which resulted into passing of impugned order. Requirement of Section 41-A of the Act of 1961 has not been fulfilled, therefore, as per the mandate of Hon'ble Apex Court in the case of Sharda Kailash Mittal Vs. State of M.P. and Ors., (2010) 2 SCC

319, the case against the petitioner deserves to be set aside by quashing the impugned order.

11. Learned senior counsel for the petitioner also disputed the manner of accounting adopted by the respondents. Through the different calculations made by the petitioner, it is submitted that the amount purportedly considered as loss of public money was not the correct figure. Therefore, on quantum of public loss also, petitioner raised his view point.

12. Another argument advanced on behalf of petitioner is the vicarious liability of other councillors as according to petitioner, 24 councillors were present at the time of passing of resolution. If for any reason, she is held guilty then those 24 councillors are also guilty of misconduct. Respondents cannot adopt pick and chose policy.

13. In sum and substance, while raising the point of opportunity of hearing, wrong arithmetic calculation, course adopted by petitioner immediately after passing of resolution dated 25/6/2012 and on the basis of mala fides, petitioner through her senior counsel vehemently opposed the impugned order.

14. Learned senior counsel appearing for the petitioner wanted the hearing on a urgent note and therefore, they submitted that they would not insist upon calling the record and any respondent because this would amount to protraction of litigation. Therefore, they wanted the matter to be heard today itself and therefore, they relinquished their right to make arguments about the service of summons to the petitioner (impliedly in violation of Principles of Natural Justice). They pressed mainly on merits. Learned senior counsel for the petitioner relied upon the decision of this Court in the matter of Bhagwandas Vaishnav Vs. Municipal Council, Chhindwara, 1968 MPLJ SN 30 and Alok Awasthi and Anr. Vs. Ram Sharma, AIR 1988 MP 253 and submits that petitioner is not the appointing authority, it is the Chief Municipal Officer therefore, she is not guilty of misconduct of appointments. Similarly petitioner relied upon the decision of Hon'ble Apex Court in the matter of Daulat Ram Gupta Vs. State of M.P. And Anr., 2003(3) MPLJ 264, Rakesh Rai Vs. State of M.P. & Three Ors., 2011 (2) MPJR 129 and Kaushalya Bai (Smt.) Vs. State of M.P., 1999 (1) J LJ 277 in support of her submissions to submit that before removal of the President under Section 41-A of the Act, State Government is required to form an opinion or reach a finding about existence of reason enumerated in section.

15. Learned senior counsel for the petitioner relied upon the decision of Fazal Bhai Dhala Vs. Custodian-general, Evacuee Property, New Delhi: Custodian, Evacuee Property, Madras, AIR 1961 SC 1397, Transmission Corpn. Of A.P. Ltd. And Ors., Vs. Sri Rama Krishna Rice Mill, (2006) 3 SCC 74 and pleaded that the case in hand is in clear violation of Principles of Natural Justice.

16. Per contra learned counsel for respondent No. 1/State has adopted the reply filed by respondent No. 2.

17. Learned counsel for respondent No. 2-Municipal Council, Dabra filed the reply and contested the claim made by the petitioner. Initially an application for vacation of stay order dated 9/5/2017 was preferred vide I.A.No. 2995/2017 by the respondent in which two documents were placed, through which it is demonstrated that on 25/6/2012, petitioner never sent a letter addressed to Chief Municipal Officer to refer the matter to Collector about the illegality of resolution passed on the same day. According to learned counsel for respondent No. 2, no such letter ever received by the Peon

of the Awak Jawak section (Inward-outward Section) of the office, therefore, submissions of the petitioner lacks credence. He also referred to Awak-

Jawak register and relevant extract to bolster his allegations.

18. In the return filed by respondent No. 2, it has been informed that on 6/5/2017, Smt. Babli Khatik was nominated by the State Government for the post of President and she did join. Respondent No. 2 also denied allegations of petitioner and submits that before passing impugned order dated

1/5/2017 an order existed against the petitioner wherein, she was debarred to contest election for a period of two years and since no relief has

been given to the petitioner by any interim order, therefore, the said disqualification still operates against the petitioner and therefore, she cannot be

held entitled for any relief in this writ petition also.

19. Learned counsel for respondent No. 2 specifically opposed the prayer of petitioner in respect of denial of opportunity of hearing. According to him,

petitioner was given sufficient opportunity of hearing. Initially notice was sent twice over her address of official residence but she was not found at

her place of residence, therefore, she was informed informally by the Council and its employees, therefore, she preferred the reply dated 25/3/2017.

Therefore, it cannot be said that petitioner never given any opportunity of hearing. She explained her view point in the said reply which was duly

considered by the authority and thereafter, impugned order has been passed.

20. In respect of illegal appointments made by the petitioner, it is submitted that although Resolution No. 747 dated 25/6/2012 was for extension of

tenure of 59 Pump Operators but 24 more Pump Operators were appointed without any regular appointment process being adopted and the State

Exchequer was burdened with the salary of these candidates which amounted to back door entry. Initially the salary was Rs. 2,000/- per month which

has been enhanced to Rs. 3,500/- which later on vide order dated 22/10/2012 (Annexure P/12) was reduced to Rs. 2,800/- because the establishment

cost exceeded 65% of the total extent which was not permissible. The said resolution dated 22/10/2012 was passed by the President and her Council

Members and petitioner was given the authority to remove the Pump Operators (Contractual) at the recommendations of Corporators and with a

further authority to appoint any other contractual employee. Therefore, this is the endorsement of earlier resolution No. 747 dated 25/6/2012 and

therefore, the letter dated 25/6/2012 addressed to Chief Municipal Officer, Municipal Council, Dabra (Annexure P/11) has no meaning at all. The mala fide and a desire to bypass the procedure is apparent on record.

21. It is further submitted that conduct of petitioner for the tenure 2009-2014 can be scrutinized and with the end of tenure her misdeeds cannot come to an end. State Government can take into consideration any misdeed or misconduct of public functionaries of earlier tenure, at subsequent stage.

22. Learned counsel for intervenor also opposed the prayer made by the petitioner and submits that after the order dated 1/5/2017 passed by the respondents, a fresh notification was issued in which Ms. Anita Maurya has been elected and her election has not been put to challenge by the

petitioner on the ground that she will continue to be held as elected President for tenure 2014-2019. Learned counsel for the intervenor vehemently

referred the earlier disqualification incurred by the petitioner for a period of two years under Section 35-A of the Act of 1961 and submits that a

person who is disqualified under Section 35-A of the Act of 1961 will earn disqualification under Section 35 of the Act of 1961 and as a consequence

thereof, he/she will automatically ceased to hold the office. The only rider of notification is for subsequent election and not for cessation of office and

unless she is re-elected, the petitioner cannot continue even after the disqualification period is over. He relied upon the decision of Hon'ble Apex Court

in the matter of Election Commission of India Vs. Bajrang Bahadur Singh and Ors., (2015) 12 SCC 570 in this regard.

23. Learned counsel for the intervenor also opposed the submissions of petitioner raised on the ground of opportunity of hearing. According to learned

counsel, scope of judicial review is limited except on the ground of mala fide, violation of statutory provisions or competence of authority passing the

order. He relied upon the decision of Hon'ble Apex Court in the matter of Raghunath Jew at Bhapur Vs. State of Orissa and Ors., AIR 1999 SC 693

and Govt. of A.P. And Ors. Vs. Mohd. Nasrullah Khan, (2006) 2 SCC 373.

24. It is further submitted that being the public functionary, public accountability is much higher. She failed in that test. He prayed for dismissal of the writ petition.

25. Heard learned counsel for the parties at length and perused the documents

brought on record by respective parties as well as record produced by the authorities.

26. The petitioner, in the case in hand is serving Public at large serving as President, living in municipal limit of Municipal Council, Dabra, District

Gwalior. For three consecutive terms, 2004-2009, 2009-2014 and then she re-elected for the third time for the period 2014 to 2019. This fact indicates

that she not only garnered Votes of the people but Trust was also reposed by the people of the area in her and therefore, she enjoyed Public Trust

also. With the Constitutional Amendment by the Constitution (74th Amendment) Act, 1992 and while incorporating part IX A in the Constitution and incorporating Article 243P to 243Z, 243ZA to 243ZG, the Municipalities were given Constitutional existence and validity. Therefore, their region-d-etire

is Constitution and Constitutional Trust reposed into the institution of Municipality.

27. The allegation against the petitioner is that vide resolution No. 747 dated 25/6/2012 (Annexure P/10) she considered the case of extension of

tenure of 59 Pump Operators (Contractual) till 31st March, 2013 (because subject of the said resolution reflected so) but in effect the contents of the

order indicates that while giving extension of tenure of 59 Pump Operators, she also gave appointment to 24 Pump Operators (Total 83 Pump

Operators), therefore, for that she was instrumental in granting administrative and financial permission to appoint 24 extra persons without authority

of Law. The said resolution included the determination of contractual rates of payment (to be paid to contractual employees). Earlier contractual

Pump Operators were getting contractual rate of Rs. 2,000/- per month, which was raised by instant resolution to Rs. 3,500/- per month. Contrary

to subject placed for discussion, she alongwith other Corporators, were instrumental in passing the resolution. The contractual rate of payment was

enhanced and it continued upto October 2012 for almost four months when on 22/10/2012 vide Annexure P/12 case was again put up for

reconsideration and at that point of time, petitioner had the occasion to correct her earlier mistake but the streak of illegality continued and by the

resolution dated 22/10/2012 (as referred in Annexure P/12), it was reduced to Rs. 2,800/- per month because it was exceeding 65% of the

establishment cost. Therefore, partial reduction was made. Resolution dated 25/6/2012 and resolution dated 22/10/2012, if are seen in juxtaposition

then it appears that petitioner got the authority and used it to appoint and terminate employees at will.

28. The act of petitioner was contrary to the established principles of service jurisprudence as well as provisions of M.P. Municipalities Act, 1961

because nowhere, President is authorized to appoint persons as per his/her choice de hors rules. Hon'ble Apex Court in the case of Secretary, State

of Karnataka Vs. Uma Devi and ors. (2006) 4 SCC 1, has deprecated the practice of illegal and irregular appointments. Here illegality is writ large

and amounts to back door entries causing burden over Public Exchequer.

29. The defence raised by the petitioner is two folds. One, pleading innocence on the basis of letter dated 25/6/2012 (Annexure P/11) whereby,

petitioner allegedly wrote a letter to the Chief Municipal Officer for referring the matter to Collector under Section 323 of the Act and another is

violation of Principle of Natural Justice.

30. So far as the defence taken by the petitioner through the letter dated 25/6/2012 is concerned, she herself accepted in the letter that

administrative and financial permission granted by Resolution No. 747 dated 25/6/2012 is without authority of law and is illegal. When she herself

accepted the illegality of the resolution then why she confined her dissent qua earlier resolution dated 25/6/2012 by writing a letter only, receipt of

same is strongly opposed by respondents especially Municipal Council. She could have taken more proactive steps to reach to the authorities about the

illegality or manipulative nature of resolution but she kept silent after allegedly writing a letter and ever after four months she re-validated her earlier

illegality in the Council meeting dated 22/10/2012 (Annexure P/12). The subject of resolution No. 747 dated 25/6/2012 was only in respect of extension

of tenure of 59 contractual Pump Operators and it was not for any fresh appointments. Still 24 persons were appointed and later on duly endorsed and

validated by the councillors by authorizing the President for the same and petitioner readily and happily adorned the mantle.

31. The petitioner in the present case is holding the public office created to further the cause of Local Self Government and for democratization of

institution. Since the post of petitioner (and petitioner herself) are the creation of Constitutional Amendment, therefore, she holds the post of

Constitutional and Public Trust. A public authority who holds the property of the

public acts as a Trustee and, therefore it has to act fairly and

reasonably. The Public Trust doctrine is part of law of the land. The doctrine has grown from Article 21 of the Constitution of India. The rule of law is

the foundation of the democratic society. Hon'ble Apex Court in the matter of Noida Entrepreneurs Association Vs. Noida and Ors., (2011) 6 SCC

508 has held in para 40 as under:-

40. The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the

action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of powers.

The rule of law is the foundation of a democratic society. (Vide Erusian Equipment & Chemicals Ltd. Vs. State of W.B., AIR 1975 SC 266, Ramana

Dayaram Shetty Vs. International Airport Authority of India, AIR 1979 SC 1628, Haji T.M.Hassan Rawther Vs. Kerala Financial Corpn., AIR 1988

SC 157, Shrilekha Vidyarthi V. State of U.P., AIR 1991 SC 537 and M.I.Builders (P) Ltd. Vs. Radhey Shyam Sahu, AIR 1999 SC 2468).

32. Here petitioner has appointed 24 Pump Operators of her choice for which they were to be paid from public money and the said appointments were

contrary to the legal provision as well as mandate of Apex Court passed in this regard from time to time. This type of appointments are fraud played

upon the Constitutional spirit because these appointments amount to backdoor entry and reminds about the Spoil System rather than promoting

Merit. Every person ought to be given a chance as a matter of right of consideration for appointment to any public or civil post.

33. Hon'ble Apex Court in the matter of Noida Entrepreneurs Association (supra) reiterated the principle in para 25 as under:-

25. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous

contrivance on the principle of *quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*, which means whenever a thing is

prohibited, it is prohibited whether done directly or indirectly. (See: Swamtraj Vs. State of Maharashtra, AIR 1974 SC 517, CCE Vs. Acer India

Ltd., (2004) 8 SCC 173 and Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336).

34. Here the petitioner who was holding the public office did not stand over the

post withÂ DemocraticÂ Accountability and acted contrary to the public interest as well as the interest of the Municipality. Calculation of amount or error in accounting cannot alter the complexion of the misconduct.Â Therefore, the ground raised by the learned senior counsel for the petitioner about the calculation error has no credence at all.

35. The another ground raised by the petitioner is in respect of violation of Principle of Natural Justice. It is true that nobody can be condemned unheard, but here in the present case, when the case was referred to the Principal Secretary for determination of the controversy then petitioner came to know about the pendency of complaint against her and vide letter dated 25/3/2017 (Annexure P/9), she replied against the show cause notice. In her reply dated 25/3/2017, she referred the letter No. F-4-13/2016/18-3 issued by the Mantralaya dated 21/3/2017, therefore, it can be gathered from the said letter that she knew the pendency of complaint against her and the issuance of show cause notice in this regard. Reply further reveals that she knew the nitty gritty of different litigations pending against her.

36. Respondents have produced the record in which show cause notice dated 21/3/2017 is available and the service report of Process Server is also enclosed which says that on 23/3/2017, petitioner refused to accept the notice because of the pendency of case in the Court. Similarly, service report dated 25/3/2017, 1/4/2017 and 3/4/2017 indicate that she was informed about the show cause notice and the copy of show cause notice was affixed over her residence.

37. Letter dated 4/4/2017 written by Joint Director,Urban Administration and Development Department addressed to Additional Secretary, Urban Administration and Development Department, Bhopal indicates that the service was effected over the petitioner althoughÂ she avoided. Another show cause notice dated 7/4/2017 was also issued to the petitioner to plead her side and same was served upon her, which is reflected in the letter dated 10/4/2017 written by Chief Municipal Officer, Dabra. TheÂ process report of Peon dated 8/4/2017 was also perused. The service was made through affixure because sheÂ was not available. The record indicates that she was given sufficient opportunity to plead her case and to reply the show cause notice. Although she participated in the proceedings by filing reply to the show cause notice while referring the show cause notice dated

21/3/2017 in her reply, but later on she refused to participate. Such pick and chose policy cannot be given premium because petitioner was well aware about the pendency of case and she deliberately decided not to participate. As a public representative she has to maintain high level of Conduct and cannot resort to common human frailties and minor technicalities. This amounts to mala fide on the part of petitioner herself; wherein, partly she was in a fray and partly she acted as fence sitter. She had to show her conduct, competency and integrity befitting the post.

38. As far as submissions regarding opportunity of hearing before the Office of Lokayukt and Deputy Director, Urban Administration and Development Department are concerned, since it was the preliminary enquiry, therefore, the opportunity of hearing was not required. The respondents show caused the petitioner when there was substance existed against her for show cause notice. Therefore, the opportunity of hearing was not required to be given at the initial stage because it was not adversely affecting her in any manner.

39. The Apex Court while dealing a case of appointment of Central Vigilance Commissioner in the matter of Centre for PIL & Anr. Vs. Union of India & Anr., AIR 2011 SC 1267 has dealt with the Principle of Institutional Integrity. Para 33 of the said decision reads as under:-

“33. We find no merit in the above submissions. Judicial review seeks to ensure that the statutory duty of the HPC to recommend under the proviso to Section 4 (1) is performed keeping in mind the policy and the purpose of the 2003 Act. We are not sitting in appeal over the opinion of the HPC. What we have to see is whether relevant material and vital aspects having nexus to the object of the 2003 Act were taken into account when the decision to recommend took place on 3rd September, 2010. Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation [see para 88 of N. Kannadasan (supra)]. The decision to recommend has got to be an informed decision keeping in mind the fact that CVC as an institution has to perform an important function of vigilance administration. If a statutory body like HPC, for any reason whatsoever, fails to look into the relevant material having nexus to the object and purpose of the 2003 Act or takes into account irrelevant circumstances then its decision would stand vitiated on the ground of official arbitrariness

[see State of Andhra Pradesh Vs. Nalla Raja Reddy (1967) 3 SCR 28 (AIR 1967 SC 1458)]. Under the proviso to Section 4(1), the HPC had to take

into consideration what is good for the institution and not what is good for the candidate [see para 93 of N. Kannadasan (supra)].

When institutional integrity is in question, the touchstone should be "public interest" which has got to be taken into consideration by the HPC and in such

cases the HPC may not insist upon proof [see para 103 of N. Kannadasan (supra)]. We should not be understood to mean that the personal integrity is

not relevant. It certainly has a co-relationship with institutional integrity.

(Emphasis supplied)

40. In the present case, it appears that the interest of public was defeated when petitioner appointed 24 Pump Operators on her own by taking

authority from the councillors on herself. Repeated illegality takes out the sheen of plea of ignorance, innocence and harassment as tried to be

advanced by the petitioner.

41. Public Representatives are holding public money therefore, cannot use the same on their own whims and fancies. They hold the Chair of Public

Office and same is founded on Public Trust and Democratic Accountability. Therefore, President of the Municipal Council or Head of any Local Self

Body cannot appoint any employee in the council circumventing the procedure and rules provided for appointments. Such appointments are anti thesis

to rule of law.

42. Perusal of impugned order reveals that the point raised by the petitioner in her reply dated 25/3/2017 have been duly dealt with. Fate of all pending

litigations have been taken into consideration and thereafter impugned order has been passed. As such, no litigation pending before the Court has any

adverse impact. Pendency of any case does not come to rescue the petitioner any more. Therefore, the aspect of pendency of different litigations has

no meaning and that cannot come in way of respondents to pass impugned order.

43. Therefore, in the considered opinion of this Court, petitioner has committed misconduct and illegality, therefore, as per Section 41-A of the Act of

1961, she has rightly been removed from the post. Section 41-A of the Act of 1961 reads as under:-

41-A. Removal of President or Vice-President or Chairman of a Committee.- The President or a Chairman of any Committee, if his continuance

as such is not in the opinion of the State Government desirable in public interest or in the interest of the Council or if it is found that he is incapable of

performing his duties or is working against the provisions of the Act or any rules made thereunder or if it is found that he does not belong to the

reserved category for which the seat was reserved. (2) As a result of the order of removal of Vice-President or Chairman of any Committee, as the

case may be, under sub-section (1) it shall be deemed that such Vice-President or a Chairman of any Committee, as the case may be, has been

removed from the office of Councillor also. At the time of passing order under sub-section (1), the State Government may also pass such order that

the President or Vice-President or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President

or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman, as the case

may be for the next term:

Provided that no such order under this Section shall be passed unless a reasonable opportunity of being heard is given.??

44. In the present case, it was the duty of the petitioner as President of Municipal Council that interest of council lies in reduction of establishment cost

rather than inflating it by giving appointments to the persons more than required. In absence of any objective consideration being made, the same

amounts to causing pilferage to the public money and advancing spoil system which is not permissible as per the provisions of Section 41-A of the

Municipalities Act, 1961. In fact, petitioner acted contrary to Public Interest, rather, defeated it.

45. Although, in the case of Sharda Kailash Mittal (surpa), Hon'ble Apex Court in the case of removal of President of Municipal Council, Jaura,

District Morena in the given fact situation has held that the said President of the Council caused irregularity and on the basis of singular irregularity,

removal cannot be made. In the said case, she was removed on the charge levelled by the State against her that she caused monetary loss to the

Council by publishing advertisement for more than Rs. 1500/- and she struck off her signature from the minutes dated 27/12/2005 and the then Chief

Municipal Officer had signed the minutes, which has been accepted by the Council. Another charge was regarding appointment of one person as

Chief Municipal Officer and compelling him to make various payments. Here in the present case, petitioner knowing fully well about the implications of appointment of additional Pump Operators, appointed them and re-validated their appointments after four months as referred above. When she had the chance to correct her course of action, which is reflected by the alleged letter dated 25/6/2012 itself, where she accepted the illegality involved in the act. She maintained her illegality. Therefore, conduct of petitioner was of repeated illegality while appointing them and raising their salary without any legal sanction. As discussed earlier, Apex Court in the case of Uma Devi (supra) as well as catena of judgments deprecated the practice of illegal appointments / irregular appointments. Therefore, the act of the petitioner was contrary to law of the land.

46. Thus, the argument raised by the petitioner in respect of power available to the petitioner under Section 51 of the Act of 1961 cannot save the petitioner to proceed for an illegality and to cause financial loss to the body which she headed as President. Section 51 of the Act of 1961 and any rule referred by the petitioner cannot mandate for illegality and its subsequent re-validation. Duties of public office as public representative are to be performed by the petitioner in accordance with law and not de hors the law.

47. Here the public trust enjoyed by the petitioner was broken by her misconduct and public interest and interest of Municipality mandate the ouster of the petitioner, rightly reflected in the impugned order. Thus, petition sans merits.

48. So far as ground raised by counsel for respondent/intervenor in respect of Section 35-A of the Act of 1961 is concerned, since impugned order is upheld by this Court; wherein, petitioner has been directed to be removed under Section 41-A of the Act of 1961, this Court does not intend to dwell upon the arguments advanced by respondents at this juncture. Even otherwise, the respondent/intervenor through intervention application cannot seek relief for which appropriate remedy lies somewhere else and not through the intervention application. The said aspect while giving liberty, has already been taken care by order passed by the Division Bench of this Court dated 4/5/2017 passed in W.A.No. 95/2017.

49. The judgments cited by learned senior counsel for the petitioner to bolster their submissions are of no help as precedent because the case of the petitioner moves in different factual realm and here in the considered opinion of

this Court, sufficient opportunity was given to the petitioner to make out her case before the authority, but she failed.

50. In the instant case, this Court cannot sit as Appellate Authority to re-appreciate evidence. The scope of judicial review is limited in such cases.

However, from the perusal of controversy, it appears that the authority, vested with the power, passed the order after giving reasonable opportunity of

hearing to the petitioner invoking the essence of provisions contained under Section 41-A of the Act of 1961. Therefore, no case for interference is

made out on the basis of preceding analysis.

51. So far as the ground raised by the petitioner in respect of vicarious liability, same is not the domain of this litigation. However, State Government is

at liberty to proceed against the erring councillors in accordance with law, if any misconduct is apparent under the relevant provisions of Act of 1961

and rules made thereunder. Two wrongs cannot make one right, therefore, petitioner cannot get shelter of vicarious liability for passing of resolution

dated 25/6/2012.

52. In view of aforesaid analysis, in the opinion of this Court no case for interference is made out. Petition sans merits and is therefore, dismissed.

No costs.