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**(2000) 05 RAJ CK 0070**

**In the Rajasthan High Court**

**Case No : Civil Special Appeal No. 194 of 2000**

State of Rajasthan and Another

APPELLANT

Vs

Ram Niwas Rathi and Another

RESPONDENT

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**Date of Decision : 02-05-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation : (2000) 2 WLN 300**

**Hon'ble Judges : Rajesh Balia, J; Mohd. Yamin, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The respondent-petitioner has challenged by way of petition under Article 226 order passed by the respondent State dt. 20th January, 2000 (Annexure/3 to the writ petition) by which the petitioner was informed that Government has decided to hold a judicial enquiry against the alleged misconduct of the petitioner Under/section 69 of the Rajasthan Municipalities Act, 1959 and ordered suspension from the office of Chairman, Municipal Board, Parbatsar. Learned Single Judge after hearing the petitioner as well as the appellant-caveator held that so far as holding enquiry is concerned no interference is called for. Finding that the charge related to a period of about nine years before the decision to hold an enquiry, the order of suspension did not conform to exercise of power in a reasonable manner and therefore partly allowed the writ petition by quashing the order to the extent of the suspension of the petitioner as Chairman of the Municipal Board. Aggrieved with that order, the State of Rajasthan has filed this appeal.

3. While issuing show cause notice to the appellant the Court directed for hearing and final disposal of the appeal at this stage. Learned counsel for the appellant has urged that necessary power to hold an enquiry in respect of misconduct alleged in past against a person who ceased to be a member of the Municipal

Board exists and therefore, there is no inhibition of period after which the charges of misconduct cannot be investigated and consequently where a person who is presently holding an office is subjected to an enquiry in relation to past misconduct, he can also be placed under suspension Under/section 63(4).

4. Learned counsel for the respondent urged that power to suspension and holding of elected officer under the Municipal Act was never challenged by the petitioner. The only challenge to the order by the petitioner was that the exercise of power was not in a reasonable manner and for the purpose for it has been conferred. It was also pointed out that so far as holding an enquiry is concerned the learned Single Judge has not disturbed that part of the order therefore no grievance can be made on this ground.

5. We are of the opinion that no interference is called for in this appeal. Enquiry in the present case is not about the existence of necessary power to hold an enquiry or place an holder of office under suspension. But the enquiry concerns whether the power has been exercised reasonably so as to conform to the norms of Article 14 which pervades all States action.

6. In the present case, it is not in dispute that the charges of the alleged misconduct relates to almost a decade in past. The charge for which the respondent-petitioner was called upon to explain vide Annexure/1 goes to show that even no allegation has been made of any mala fide exercise of power to gain undue advantage for himself or to confer unfair largess to somebody's advantage to favour him. The charge is only to the extent that resolution which the petitioner-respondent has got through in the meeting dt. 25.4.1991 by use of his influence was contrary to the rules, for which the Board was not authorised under law without expressing any opinion on the merits.

7. We are of the opinion that looking to the charge disclosed in Annexure/1 it hardly justifies suspension of the petitioner from the elected post which he held for the subsequent period for which the Board was constituted after the period of the Board during which the alleged resolution has taken place has already expired. We are not persuaded to agree with the submission of the learned Counsel for the appellant that continued discharge of function as Chairman is likely to affect the proceedings of the enquiry which is to be conducted by the judicial officer. We are unable to see how in considering whether resolution is contrary to rules or not continuance of incumbent on an elected post is likely to interfere with fair conduct of enquiry. We are also not prepared to accept that as a rule in all case where the State decides to hold an enquiry, suspension must follow as a matter of course. The power has to be exercised in reasonable manner, like any other power to use discretion, and must have nexus to the object of holding a fair and free enquiry. The power is not to be used as power to punish before guilt is proved in a mechanical manner.

8. Accordingly this appeal fails and is hereby dismissed with no order as to costs.