

(2023) 10 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No.11792 Of 2023??????????

Surekha

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965
— Section 51, 551A, 55, 55A, 55B, 55B(a), 81, 81(1), 341B(5)

Citation : (2023) 10 BOM CK 0060

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : V. D. Sapkal, Sandip R. Sapkal, D. R. Kale, Shivraj B. Kadu, Rajendrraa, Shriram V. Deshmukh, Jiwan J. Patil

Final Decision : Disposed Of

Judgement

Arun R. Pedneker, J

1. Rule. Rule made returnable forthwith. With consent of the parties, the petition is taken up for final hearing.

2. Heard Mr. V. D. Sapkal, Senior Advocate instructed by Mr. Sandip R. Sapkal, learned counsel for the Petitioner, Mr. D. R. Kale, Government Pleader for Respondent / State, Mr. Shivraj B. Kadu, learned counsel for Respondent No.5 and Mr. Rajendrraa Deshmukh, Senior Advocate along with Mr. Shriram V. Deshmukh instructed by Mr. Jiwan J. Patil, learned counsel for Respondent No.6.

3. By the present petition, the petitioner is challenging the order dated 15.09.2023, passed by the statutory authority disqualifying the petitioner from the post of President of the Jafrabad Nagar Panchayat. The facts in brief are summarized as under:

I. The petitioner is elected councilor of the Jafrabad Municipal Council for the term 2021 - 2026. On 16.02.2022, the petitioner was elected as the President of the said Municipal Council. On 27.02.2023, 12 councilors moved an application to

the Collector requesting him to call a special meeting for holding no confidence motion. However, the amended provision of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Act") does not provide for no confidence against an elected President and, as such, on 03.03.2023, the Collector issued notice for enquiry of alleged misconduct under section 341B-5 of the Act. The petitioner replied to all the allegations made in the complaint. The collector had also called for a report from the Chief Officer of the Municipal Council. The collector submitted an adverse report against the petitioner to the statutory authority for initiating proceedings under section 55A of the Act. On 13.06.2023, the statutory authority issued notice to the petitioner under section 55A of the Act. The allegation against the petitioner was that the petitioner had not conducted meetings, as required under section 81(1) of the Act. The meetings were not held in timely fashion and that the meetings were held without there being any Coram and in some meetings financial subjects were taken up on the spot and the resolutions were also passed to that effect. The petitioner was called upon to show cause in terms of section 55A of the Act.

II. On 26.06.2023, after the notice was received by the petitioner, the petitioner submitted an application for adjournment and on the same day the application was submitted by the petitioner to the collector requesting the report submitted by the collector and other documents since entire report of collector and documents supporting it was never served by the Mantralaya / statutory authority to the petitioner.

III. On 10.07.2023, letter was submitted by the petitioner to the statutory authority that the documents were not supplied by the collector and that further adjournment be granted. The hearing was kept on 11.08.2023. It was intimated to the statutory authority that on 11.08.2023, the petitioner will not be able to attend the hearing on 11.08.2023, as on the direction of the collector she was required to attend the funeral of a martyr soldier in Jafrabad. Hearing was conducted by the statutory authority on 24.08.2023. It was brought to the notice of the statutory authority that the documents were not supplied by the collector. The statutory authority by order dated 24.08.2023 directed the collector to give copies of the documents to the petitioner, and, as such, documents were given to the petitioner on 01.09.2023. On 01.09.2023, the petitioner submitted application to the statutory authority submitting that in the hearing dated 24.08.2023, there was direction to supply copies and the documents are supplied on 01.09.2023 and she needs time to respond to the documents. However, on 16.09.2023, the impugned order was forwarded to the petitioner by the secretary of the statutory authority. The petitioner has challenged the impugned order before this court.

4. The petitioner is challenging the impugned order primarily on technical grounds, so also, on merits. On technical grounds, Mr. V. D. Sapkal, Senior Advocate instructed by Mr. Sandip R. Sapkal, learned counsel for the petitioner submits that the show cause

notice seeks response from the petitioner why she should not be disqualified as President of "Jalna Nagar Parishad" (जालना नगरपरिषदेच्या नगराध्यक्षा पदावरून). The notice is not for disqualification as the President of Jafrabad Nagar Panchayat as such, the petitioner cannot be disqualified from the post of President of 'Jafrabad Nagar Panchayat'. The notice was issued under section 55A of the Act alone and the order is passed under section 55A and 55B. Thus, the final order of the statutory authority is beyond notice.

5. All the documents supporting the report of the collector were not given to the petitioner before the date of hearing before the statutory authority and on receipt of the documents supporting the report of the collector, the petitioner had sought time to file reply. However, the impugned order was passed based on the submission made in earlier hearing before the documents were supplied to the petitioner.

6. On merits, Mr. V. D. Sapkal, learned counsel for the petitioner submits that the removal of the President of the Council is a very serious issue and that as regards the allegations made, the petitioner is not at fault. The members, who have filed the complaint have themselves passed the alleged wrongful resolutions and that the petitioner being the minority member have no control over the meetings and that the majority elected members want to remove the petitioner from the post of President. The learned counsel has also submitted that the impugned order of the statutory authority has travelled far beyond the initial notice. As such, the order is bad in law.

7. The learned counsel for the petitioner has given his written submissions and it is placed on record. Some of the submissions are repetitive, the relevant submissions / grounds are as under:

1. The order passed by the Deputy Secretary is not order of quasi-judicial authority. What is there in the file is not made known to the petitioner. It is the right of the petitioner to challenge the order communicated to her. The order which is communicated specifically shows that, it is signed by the Deputy Secretary. It further makes clear that, order is passed in concurrence with the statutory authority. It is not where stated in the order that, the order is passed by the Hon'ble statutory authority.

2. The other contention is raised that, notice dated 13.06.2023 is illegal because everybody is aware that, the petitioner is President of Jafrabad Nagar Panchayat however, in clause 3, she is asked why she should not be disqualified from the post of President of Jalna Nagar Panchayat. This is clear from notice that, there is no notice to the petitioner that, why she should not be disqualified as a President of Jafrabad Nagar Panchayat. What is not there in clause 3, it cannot be read in the document. Though, the attempt is made that, it may be mistake however, it is not permissible in law to contain more particularly when a drastic action of removal of the petitioner has taken place on the said show cause notice.

3. The notice is issued u/s.55(A) however, the order is passed u/s. 55(A) and 55(B). It is clear cut violation of the Division Bench judgment of the Hon'ble High Court reported in 2003 (1) All M.R. 118. The issue is already settled by the Division Bench.

(Refer page No.125 of paper book)

4. The order is passed for disqualifying the petitioner only on the two grounds that, she has not conducted the meeting periodically and the meeting which are conducted the subjects were taken in the meeting without there being any agenda.

5. The order is passed on these two grounds which are in conflict with each other. The second issue clearly spells out that, meetings are conducted and the subjects were taken all of sudden in the meeting which goes contrary to the first issue that, meetings were not conducted. Even it is accepted that, meetings were not conducted. Even if it is accepted that, the meeting are not conducted periodically as required by law however, the fact remains that the meetings are conducted.

6. Section 81 of the Act shows that, if meeting is not called by the President then Chief Officer has to intimate this fact to the Collector and the Collector would call the meeting. Only because meeting is not called that, itself is not a ground for disqualification because it is not misconduct.

7. The second issue that, certain subjects were taken in the meeting directly is also not a misconduct because the proposer and seconder to the said subjects are the complainants. In respect of both the issues, the Hon'ble Supreme Court in case of Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors. reported in AIR 2012 SC 1339 (Please refer page no.103 of the paper book) has clearly held in Para No.46 and Para No.48 that, for taking subjects in the meeting the President herself is not responsible because it is a decision of council.

8. Whereas, so far as not holding meeting u/s. 81 will not their disqualification automatic because, it will have to be proved that, what is a lost cost to the Municipal Council or a public at large. Those are not allegation and therefore, the judgment of the Hon'ble Supreme Court is clearly applicable. The respondent has filed an affidavit and placed on record all the meetings which clearly show that, they are party to the resolution.

9. The respondent including the Government Pleader tried to argue that, the resolutions are fabricated however, these submissions are baseless for the reasons that, they are trying to insert something in the order which is not there. This cannot be done because, reasons or a submissions cannot be made more particularly when the grounds of orders are very specific. The ground cannot be substituted by an affidavit or oral submission. The judgment in case of Mohinder Singh Gill and ors. Vs. The Chief Election Commissioner, New Delhi & Ors. reported in AIR 1978 SC 851 would be applicable. The copy of judgment is

annexed herewith for ready reference. Para 8 of the judgment is relevant for the purpose of proposition.

10. The opportunity of hearing is not extended or there is a violation of principle of natural justice in the order because, it is reflected in the order that, on 24.08.2023, the hearing was given by the statutory authority on 24.08.2023 directing the District Administration, Jalna to supply the document on 31.08.2023. It is very clear from the communication made by the District Administration that, documents were made available on 01.09.2023 (refer page No.95)

11. The order further speaks that, thereafter, the petitioner was not given opportunity to submit her say on the basis of document which are received. The contention which are raised by the respondent that, the petitioner was having already document or the document were already supplied. This is an attempt made by the respondent to insert something in the order of the authority which is not there, when it was realized by the authority on 24.08.2023 that documents are not supplied and therefore, directions were issued therefore, the contention of the respondent that the petitioner was having documents already is baseless. Again reliance is being placed on the judgment of the Hon'ble Supreme Court in a case of Mohinde Singh Gill & Ors. Vs. The Chief Election Commissioner, New Delhi & Ors. (Para 8 for ready reference the judgment is placed on record)

8. Per contra, the learned counsel for respondent no.6 has given his written submissions and it is placed on record. The written submissions / grounds are as under:

"1. The present Respondent along with the other 11 councilors of the Respondent no.5 Nagar Panchayat has filed an application dated 27/02/2023 (Exhibit 'A' of the Petition Pg. No.35) to the Respondent No.4 and prayed therein that the petitioner who is President of the Respondent No.5 Nagar Panchayat be removed or the special meeting for the no confidence may be called for. The plain reading of the application crystalizes that the application filed by the present Respondent and other councilors was not only for calling for the special meeting for no confidence it was the alternate prayer but the main prayer was to remove the petitioner. Therefor the contention of the petitioner that the Respondent no.4 has suo moto has conducted the enquiry when no application to that effect has been filed by the Councilor is misconceived and not in consonance with the record. At the cost of repetition it is to be stated that the application was filed either for removal of the president or for calling the special meeting for no confidence, since there is no provision for calling the no confidence motion meeting and therefore the Respondent No.4 has conducted the detailed enquiry.

2. Respondent no.4 after the receipt of the application / requisition from the councilors has issued the show cause notice to all the concern and intimated that the hearing in regard to he subject matter is kept on 09/03/2023 (Exh. 'B' Pg. No.39).

The perusal of the notice issued by the Respondent No.4 makes it crystal clear that the notice was issued along with the statement of allegations made by the answering Respondent and other councilor and the Respondent No.4 has conducted the enquiry only in respect of those allegations which have been levelled by the councilors. Respondent No.4 has never travelled beyond the allegations in enquiry and therefore the contention that the Respondent No.4 travelled beyond the scope and contentions of the application / requisition is misconceived.

3. The present Respondent has submitted the detailed affidavit along with the documents in support of the imputations / allegations on 20/03/2023. That the answering Respondent and other councilor in the affidavit has categorically stated the imputations / allegations in detailed and also placed on record the documents in support of their allegations / imputations. The copy of the said affidavit and documents has also been served on the petitioner on the same day i.e. on 20.03.2023.

4. Respondent No.4 has given the several opportunities during his enquiry to the petitioner to file its defense statement and documents in her support. The petitioner has filed her say / defense statement which is placed on record by the petitioner at Exhibit 'C'. I say and submit that the petitioner except the evasive denial has not placed anything in her support, when the answering Respondent along with other councilors submitted the specific charges of allegations / imputations, the petitioner was very well being in position to file her detailed say / defense statement. But she chose to evasively deny the allegations / imputations. That the present Respondent along with the other councilors has pointed out the incidences of the misconduct, negligence and misappropriation of the fund or fabrication of the record.

5. That the incidence of not holding meetings as per Section 81 of the Act is not the single incidence but it is the repeated act of the petitioner which does not only amounts to negligence but also dereliction of duty. In the notice of the Respondent No.4 at point No.4 it is specifically mentioned that the petitioner has not held the meetings as per the Sec. 81 and therefore the contention of the petitioner is not in consonance with the record. There are also allegations about the mismanagement and misappropriation by the petitioner in the application / requisition filed before the Respondent No.4 and the show cause notice dated 09.03.2023 contents the said fact at clause No.8 of the show cause notice since the show cause notice is the reproduction of the statement of allegations / imputations.

6. Respondent No.4 has never travelled beyond the allegations / imputations, in fact the Respondent No.4 has issued the show cause notice and conducted the enquiry only respect of the allegations and imputations made by the answering Respondent and other councilors. Chief Officer (CO) has prepared and submitted its report dated 23/03/2023 (Exh. 'E' Pg. No.60) from the administrative point of view and the report is silent on the points of allegations. It is also not out of

place to mention here that the CO himself has not conducted the enquiry on the points of allegations but he directed the Head of the Departments to file their reports and by complying the same forwarded to the Respondent No.4. The report prepared by the CO is about the administrative actions and not about the actions and inactions of the petitioner and therefore the Respondent No.4 has directed the answering Respondent and others as well as to the petitioner to file the documentary evidence either in their support of allegations or in support of the defence. The petitioner except the evasive denial has not placed on record anything in her support.

7. There are specific allegations about not conducting the meeting as per the statutory provisions as well as it was specifically stated that subjects which were not the on the agenda were taken at eleventh hour and by fabricating the signatures of the councilors has manipulated the proceedings of the meeting. To that effect all the 14 councilors has also filed their statement on affidavit.

8. The contention of the petitioner that the resolutions as mentioned in the enquiry report in Clause No.2 (a) to (d) (at Pg. No. 76 & 77) were not passed during her tenure, is misconceived. In fact, for carrying out those works mentioned the respective clauses are resolved by the administrator but tenders are being sanctioned during the tenure of the petitioner and in respect of the same 14 councilors has made allegations that those resolutions were not signed by them. The councilors have made the specific allegations that the said tender process and the petitioner has misappropriated the huge funds.

9. The petitioner by playing various tactics have tried to prolong the proceedings pending before the Respondent No.2. That when the petitioner has filed the application for the adjournment on 26.06.2023 has not made any prayer to supply the documents. It is not out of place to mention here that the documents which petitioner has claimed were already possessed by her as same is supplied during the enquiry before the Respondent No.4. The resolution which were sought by the petitioner were supplied to her during the enquiry before the Collector. It is also not out of place to mention here that when the show cause notice is issued to the petitioner by the Respondent No.2 along with the show cause notice dated 13.06.2023 the contents of the report of the Respondent No.4 were supplied to the petitioner by way of annexure 1 and 2 which is at Pg. No.83 to 86 of the petition. From the above facts it is crystal clear that the petitioner tried to prolong the proceedings and by making the asset of non-supply of the documents is trying to taken the favourable order from this Hon'ble High Court under the garb of violation of the principle of natural justice.

10. In the democratic set up prayer for removing the President by the majority of the councilors amounts to payer of removal by the electorate itself that is too when the said prayer is based on the ground of misappropriate and misconduct of the President and when same is proved. By applying the too technical tool of interpretation of the statutory provision and setting aside of the removal / disqualification of the petitioner amounts to replacing the will of the majority of

the electorate and same is against the democratic set up.

11. That the Hon'ble Apex Court has laid down the object and principles behind the no-confidence motion / recall / removal of the president in the democratic process in the case of Mohan Lal Tripathi vs. District magistrate Rai Bareilly & others reported in (1992) 4 SCC 80 as -

4. Force of these submissions or their merit may not be as doubtful as its applicability to the circumstances of the present case. Misapprehension appeared to be the foundation for vehement submission that removal of a President, elected by the electorate, by the Board would be substituting confidence of people by a much smaller body which would, apart, from violating the basic norm of recall of an elected representative by the same body which elected him would be unreasonable, irrational and against public interest. Vote of no-confidence against elected representative is direct check flowing from accountability. Today democracy is not a rule of 'Poor' as said by Aristotle or of 'Masses' as opposed to 'Classes' but by the majority elected from out of the people on basis of broad franchise. Recall of elected representative is advancement of political democracy ensuring true, fair, honest and just representation of th electorate. Therefore a provsiion in a statute for recall of an elected representative has to be tested not on general or vague notions but on practical possibility and electoral feasibility of entrusting the power of recall to a body which is representative in character and is capable of projecting views of the electorate. Even though there was no provision in the Act initially for recall of a President it came to be introduced in 1926 and since then it has continued and the power always vested in the Board irrespective of whether the President was elected by the electorate or Board....The copy of the judgment delivered in the case of Mohan Lal Tripathi vs. District Magistrate Rai Bareilly & others reported in (1992) 4 SCC 80 is already placed on record along with affidavit in reply.

12. The enquiry conducted by the Respondent No.4 and action taken thereon by the Respondent No.2 is in consonance with the statutory principles and by adhering to the principle of natural justice hence no interference is required to be made in the impugned order and writ petition filed by the petitioner deserves to be dismissed and same may kindly be dismissed."

9. Considering the rival submissions, the issues that arise for consideration are as under:-

1] Whether the notice dated 13.06.2023 is defective and whether in consequence of the defective notice the petitioner can be disqualified as the President of the Jafrabad Nagar Panchayat ?

2] Whether insufficient opportunity was granted to the petitioner to defend the case ?

3] Whether order can be passed under section

55B of the Act, where the notice is limited to section 55A of the Act ?

4] On merit, whether the order passed by the statutory authority disqualifying the petitioner is lawful ?

5] Whether the impugned order in the instant case is passed by the statutory authority or an officer subordinate to the statutory authority and consequently whether the impugned order is bad in law ?

10. The relevant provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 necessary to decide the above issues are quoted below:

“55. Removal of President by Councillors

(1) The requisition for removal of the President elected under section 51 shall be signed by not less than one-half of the total number of Councillors and shall contain the charges of misconduct against such President and shall be sent to the Collector:

Provided that, no such requisition shall be sent within a period of one year from the date of election of such President.

(2) Upon receipt of the requisition under sub-section (1), the Collector shall conduct the enquiry of such charges and complete such enquiry within a period of one month from the date of receipt of the requisition:

Provided that, in no case such period of enquiry shall be extended beyond three months and for such extended period, prior assent of the State Government shall be obtained by the Collector, if the enquiry proceeding is delayed due to unavoidable reasons.

(3) The Collector shall submit the findings of such enquiry to the Government for taking appropriate action under section 55A.”

“55A. Removal of President and Vice-President by Government

Without prejudice to the provisions of section 55-1A and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President, as the case may be, during the remainder of the term of office of the Councillors:

Provided that, no such President or Vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation.

Provided further that, the Government shall take a decision on the report submitted by the Collector under section 55-1, within a period of six months from the date of receipt of the report.”

“55B. Disqualification for continuing as Councillor or becoming Councillor on

removal as President or Vice-President

Notwithstanding anything contained in section 55A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding or while he was holding the office of the President or Vice-President, as the case may be, the State Government may,-

(a) disqualify such Councillor to continue as a Councillor for the remainder of his terms of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification;

(b) disqualify such person for being elected as a Councillor till the period of six years has elapsed from the order of such disqualification.”

341B-1. Election of President of Nagar Panchayat

(1) Subject to the provisions of section 51-1A, every Nagar Panchayat shall have a President who shall be elected by the elected Councillors from amongst themselves.”

“341B-5. Removal of President of Nagar Panchayats by Councillors

(1) The requisition for removal of the President elected under section 341B-1 shall be signed by not less than one-half of the total number of Councillors and shall contain the charges of misconduct against such President and shall be sent to the Collector:

Provided that, no such requisition shall be sent within a period of one year from the date of election of such President.

(2) Upon receipt of the requisition under sub-section (1), the Collector shall conduct the enquiry of such charges and complete such enquiry within a period of one month from the date of receipt of the requisition:

Provided that, in no case such period of enquiry shall be extended beyond three months and for such extended period, prior assent of the State Government shall be obtained by the Collector, if the enquiry proceeding is delayed due to unavoidable reasons.

(3) The Collector shall submit the findings of the enquiry to the Government for taking appropriate action under section 55A as applicable therefor.”

11. In view of the submissions by the learned counsel for the petitioner that the order is passed by the Deputy Secretary and not by the quasi judicial authority the original file was produced by the Government Pleader from the office of the statutory authority. From the perusal of the file, it is seen that the order is passed by the statutory authority, which has heard the matter. However, while issuing the copy of the order passed by the statutory authority the Deputy Secretary has inserted the following words in the copy of the order of the statutory authority as under:-

“मा. मुख्यमंत्री यांचे मान्यतेने प्रस्तुत आदेश निनग!निमत करण्यात.”येत आहेत

The above inserted words indicate that the order is issued with concurrence of the statutory authority.

12. Thus, there is no merit in the submissions of the petitioner that the order is not passed by the statutory authority. However, a word of caution to the authorities sub-ordinate to the statutory authority that while issuing the copy of the quasi judicial order passed by the statutory authority, the concerned secretary / officer should not insert the above quoted words in the order passed by the statutory authority. The entire order has to be issued as it is along with the signature of the statutory authority and that the above quoted statement if required to be mentioned should be mentioned in the covering letter and not in the order so as to avoid any doubt as to the authority, which passed the order. Thus, the issue raised at paragraph no. 9(5) is answered accordingly.

13. Coming to the next submission of the petitioner that the notice dated 13.06.2023 stipulates that why the petitioner should not be disqualified from the post of President of the “Jalna Nagar Parishad”. The notice dated 13.06.2023 indicates that the petitioner is called upon to answer, why she should not be disqualified from the post of President of ‘Jalna Nagar Parishad’. Since the disqualification provision has serious repercussions, that the elected member can loose their membership so also the electorate also looses the candidate of their choice, the notice under section 55A has to be strictly construed and the principle of prejudice cannot be applied. The petitioner is not called upon to explain the charge as to why she should not be disqualified as a President of Jafrabad Nagar Panchayat and, as such, the notice is defective. On such defective notice when the petitioner is called upon to answer that why she should not be disqualified from the post of “President of Jalna Nagar Panchayat”, she cannot be disqualified from any other post. Thus, the impugned order which disqualifies the petitioner from the post of President of Jafrabad Nagar Panchyat travels beyond the notice and is bad in law. Thus, the issue raised at para 9(1) is answered accordingly.

14. The next contention of the petitioner is that there is denial of principle of natural justice to defend her case before the statutory authority and that the notice dated 13.06.2023 is issued under section 55A of the Act, however, the order is passed under Section 55A and 55B(a) of the Act and there is a clear violation of the division bench judgment of this court in the case of Rameshchandra Shankarlal Saboo Vs. State of Maharashtra through Secretary & others, 2003 (1) All.M.R. 118.

15. The perusal of section 55A (quoted at paragraph no.8), of the Act indicates that prior to the issuance of notice under section 55A of the Act an inquiry is contemplated by the Collector under section 341B(5) of the Act. On the inquiry being conducted and a report being submitted by the collector, the authority concerned, issues notice for removal of the President or the Vice-President of the Municipal Council. In the instant case, when the notice under section 55A was

issued to the petitioner for seeking an explanation, the petitioner had replied to the statutory authority that all the material on the basis of which the Collector had submitted an adverse report be given to her so as to enable her to file an affidavit in reply. On record, there is the direction by the statutory authority asking the collector to forward the relevant material to the petitioner as under:

16. The collector had forwarded the documents supporting the report on 31.08.2023 and the same was received by the petitioner on 01.09.2023 and on the same day the petitioner submitted to the concerned statutory authority that she needs one month time to respond to the notice. However, she was informed that the hearing was already concluded on 24.08.2023, as such, there is complete denial of natural justice in responding to the notice. The submission of the learned counsel for the respondents that while the Collector had conducted the inquiry, all the material was supplied to the petitioner is of no assistance.

17. The proceedings before the statutory authority are quasi judicial and there is a order by the quasi judicial authority directing the Collector to give documents after issuance of notice under section 55A. Without compliance of the interim order of the statutory authority it is not available to the respondents to canvass that all material is available with the petitioner. There is no compliance of this particular order. Furthermore, the order is also passed under section 55B of the Act disqualifying the petitioner for a further period of 6 years. The order under section 55B of the Act cannot be passed without notice the petitioner, as much as a severe consequences follow from order under section 55B. The same has to be passed after notice to the petitioner. It is not a mere consequential order and the petitioner has to be given an opportunity to explain, why the order under section 55B of the Act is not to be passed.

18. In the case of Rameshchandra Saboo (supra), the Division Bench of this court at paragraphs no.38 and 40 has held as under:

"38. ...If the show cause notice issued in this case specifically calls upon the petitioner as to why action under section 55-A should not be taken against him, then merely by making a reference in the last paragraph of the show cause notice and that too observing that if action contemplated under section 55-A is not completed before the expiry of his term as Presidentship or Vice Presidentship, then action under section 55-B would be continued against him, in our opinion this could be said to be a vague notice, so far as regards the action under section 55-B is concerned.

40. ...In our opinion, therefore, so far as regards the action under section 55-A is concerned, it appears to be absolutely right and removal of the present petitioner from the post of President cannot be said to be wrong in any manner, particularly when the removal is for one of the reasons as contemplated in section 55-A of the Act. However, in our opinion action taken under section 55-B cannot be said to be justifiable one and therefore, the removal o the present petitioner from the Councillorship itself in our opinion and debarring him for six years from the date

of the action under section 55-A, cannot be sustained in the eye of law.”

19. Thus, the order under section 55B of the Act cannot be passed without giving opportunity to the elected member of explaining, why such an order under section 55B of the Act should not be passed.

20. Thus, the order of the statutory authority is passed without compliance of principles of natural justice and sufficient opportunity is not given to the petitioner to defend her case. There cannot be a presumption that all material relied upon by the statutory authority is in possession of the petitioner. So also the order passed under section 55B is without calling for an explanation from the petitioner for invoking powers under section 55B. The impugned order of the statutory authority is bad in law for non-compliance of principle of natural justice. Issues raised at para 9(2) and 9(3) are answered accordingly.

21. Coming to the merit of the case, the petitioner is disqualified on 2 grounds, (i) that she had not conducted the meetings periodically and in the meetings which were conducted the subjects were taken for consideration without there being any agenda. There is no provision under the Act to disqualify the President for non conduct of the meetings in the Act. Section 81 of the Act stipulates that in the event the President does not call for the meeting the Chief Officer has to intimate this fact to the Collector and the Collector is required to call the meeting. Unless the meeting is deliberately avoided for a certain reason which would amount to a misconduct the elected member cannot be disqualified for misconduct under section 55A of the Act.

(ii) subjects having financial implication were taken in the meeting directly. It is to be seen that the petitioner is in minority in the municipal council and that in the alleged meetings some of the proposers and the seconders are the complainants themselves. The submissions of the complainants is that the signatures are forged or manipulated.

22. It is to be noticed that the impugned judgment does not analyse this aspect in detail also there is no reply from the petitioner. The judgment does not reflect the submissions of the petitioner, so also, it does not reflect reason as to how the petitioner is liable for taking up of the subjects at the last minute when the petitioner is in minority. There is no discussion whether the petitioner benefited illegally by non conduct of the meetings. The disqualification in the instant case, under section 55A of the Act has to be for misconduct under section 341B-5 read with section 55A of the Act. The word “misconduct” has been explained in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Ors., AIR 2012 SC 1339 as under:-

“MISCONDUCT:

8. Misconduct has been defined in Black's Law Dictionary, Sixth Edition as:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong

behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offense, but not negligence or carelessness.

Misconduct in office has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821 defines 'misconduct' thus:

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behavior or neglect by a public officer, by which the rights of a party have been affected."

Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve?"

(See also: State of Punjab and Ors. v. Ram Singh Ex. Constable AIR 1992 SC 2188).

9. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct.

When the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. (Vide: Disciplinary Authority-cum-Regional Manager and Ors. v. Nikunja Bihari Patnaik (1996) 9 SCC 69; Government of Tamil Nadu v. K.N. Ramamurthy AIR 1997 SC 3571; Inspector Prem Chand v. Govt. of NCT of Delhi and Ors. (2007) 4 SCC 566; and State Bank of India and Ors. v. S.N. Goyal, AIR 2008 SC 2594).

10. In Government of A.P. v. P. Posetty (2000) 2 SCC 220, this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

11. In M.M. Malhotra v. Union of India and Ors., AIR 2006 SC 80, this Court explained as under:

"...It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

A similar view has been reiterated in Baldev Singh Gandhi v. State of Punjab and Ors., AIR 2002 SC 1124.

12. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment.

(See: Union of India and Ors. v. J. Ahmed, AIR 1979 SC 1022).

13. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. (Vide: General Manager, Appellate Authority, Bank of India and Anr. v. Mohd. Nizamuddin, AIR 2006 SC 3290).

14. The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behavior, willful in character. It may be synonymous as mis-demeanor in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term

occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.”

23. The word used in section 55A of the Act is misconduct and also disgraceful conduct. However, the inquiry which is contemplated under section 341B-5 of the Act is for misconduct alone. There is no word used of disgraceful conduct in section 341B-5 of the Act. In the instant case, inquiry as contemplated under section 341B-5 of the Act is dealt by the Collector and forwarded to Government for taking appropriate action under section 55A of the Act. The power of the Government under section 55A of the Act is for misconduct in discharge of duties or for being guilty of any disgraceful conduct. The power of the State under section 55A of the Act is wider than the inquiry that is contemplated under section 341B-5 of the Act. The proceedings under section 55A of the Act are initiated on the basis of report under section 341B-5 of the Act. The proceedings under section 55A of the Act are independent and the report of the Collector forms the basis of an inquiry under section 55A of the Act.

24. Perusal of the impugned order shows that there is no discussion on the merit of the report and there is no response of the petitioner on record. The petitioner has been held to be disqualified apparently for the following reasons:-

25. Perusal of the above quoted portion would indicate that the petitioner has not called meetings of the Council every month and that the policy decisions are taken up for discussion in the meeting at the last minute and without taking into consideration the recommendations or the approval of the financial committee and has passed resolutions of higher amounts and the petitioner is disqualified under section 55A and 55B(a) of the Act.

26. It is to be noticed that there is no discussion as to how the petitioner is responsible for non-convening the meetings. There is no provision under the Act disqualifying the President for non holding of the meetings. The petitioner has to be given an opportunity to explain, why the meetings were not held and what is the benefit that the petitioner is going to receive on account of non-holding of meetings, and whether the non-holding of the meeting amounts to misconduct or disgraceful conduct. It is only when the said authority reaches such finding that the conduct of the petitioner amounts to misconduct or is disgraceful conduct under section 55A of the Act that the petitioner can be disqualified. It is to be noticed that in Bhoir’s case (supra) the Hon’ble Supreme Court at paras 46 and 47 has held as under:-

“46. Not calling the meeting of the General Body of the House may be merely a technical misconduct committed inadvertently in ignorance of statutory requirements. It is nobody’s case that the appellant had done it intentionally / purposely in order to avoid some unpleasant resolution / demand of the council. No finding of fact has been recorded either by the competent authority or by the

High Court that some urgent / important work could not be carried out for want of General Body meeting of the Council. Merely not to conduct oneself according to the procedure prescribed or omission to conduct a meeting without any corresponding loss to the corporate body, would not be an automatic misconduct by inference, unless some positive intentional misconduct is shown. It was an admitted fact that the meeting had not been called. However, in the absence of any imputation of motive, not calling the meeting by the appellant could not in itself, be enough to prove the charge.

Section 81 of the Act 1965 requires that for the disposal of the general business, the President should call the meeting of the Council within a period of two months from the date on which the last preceding ordinary meeting was held. The statutory provisions further provided that in case the President fails to call the ordinary meeting within the said stipulated period, the Chief Officer may report such failure to the Collector and the Collector can call the ordinary meeting of the Council following the procedure prescribed therein. The President can also call the meeting on the request of the members not less than one-fourth of the total number of Councils. Therefore, the cogent reading of all the provisions makes it clear that in case the President fails to call the meeting, there are other modes of calling the meeting and in such an eventuality where reasonable explanation has been furnished by the appellant to the show cause notice on this count, the competent authority could not have passed such a harsh order.

47. So far as the other charges regarding laying down the pipelines at a much higher rate are concerned, it has been a positive case of the appellant that as earlier contractor had abandoned the work in between and there was a scarcity of water in the city, the chief Officer, the Junior Engineer considered the technical aspect and then recommendations were forwarded under the signatures of the appellant, the Chief Officer and Junior Engineer to the Council, which ultimately passed the resolution accepting the said tenders. In such a fact-situation, it was a collective consensus decision of the house after due deliberations.

Admittedly, it was not even the ratification of contract awarded by the appellant himself. Thus, even by any stretch of imagination it cannot be held to be an individual decision of the appellant and the competent authority failed to appreciate that the tenders were accepted by the Council itself and not by the appellant alone. Therefore, he could not be held responsible for acceptance of tenders. We have gone through the counter-affidavit filed by respondent No.5, complainant before this court and he has not stated anywhere that the tenders were not accepted by the Council, rather allegations have been made that the tenders had been accepted at a higher rate so that the contractor could get the financial gain. Similarly, technical issue has been raised for not calling the meeting, committing serious irregularities sufficiently warranting disqualification of the appellant on his omission to call the meeting, but it is not his case that he did it intentionally. The counter-affidavit filed by the State does not reveal

anything in relation to the issues involved herein and it appears that the deponent/officer has merely completed the formalities without any purpose.”

27. Further, the Hon’ble Supreme Court in Bhoir’s case has held at paras 26, 27 and 28 as under:-

“26. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

27. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: Jyoti Basu and Ors. v. Debi Ghosal and Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Bareilly and Ors., AIR 1993 SC 2042; and Ram Beti etc. v. District Panchayat Rajadhikari and Ors., AIR 1998 SC 1222 : (1998 AIR SCW 1059).

28. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reasons that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of his choice. A duly elected person is entitled to hold office for the terms for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like ‘No Confidence Motion’ etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.”

28. The Hon’ble Supreme Court in Bhoir’s case (supra) has held that the removal of the elected member is a very serious affair and that the proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed and that the elected member can be removed only in exceptional circumstances giving

strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent and opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice. The elected official is accountable to it's electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period. The issue raised at para 9(4) is answered accordingly.

29. For the reasons that the petitioner did not have the opportunity of giving explanation before the statutory authority, the proceedings before the statutory authority are quashed and the matter is remitted back to the statutory authority to initiate a fresh proceedings from the stage of issuance of notice under section 55A by giving appropriate notice to the petitioner and seeking an explanation and giving an opportunity to the petitioner to explain her case.

30. In view of the same, the impugned order is set aside. The matter is remitted to the statutory authority for fresh adjudication from the stage of issuance of fresh notice by the statutory authority under section 55A of the Act.

31. Observations made in this judgment are limited for the remand of the case and are not to influence the statutory authority in passing the final orders. The statutory authority to independently decide the proceedings before it.

32. Rule is made absolute in above terms.

33. The Writ Petition stands disposed of.

[ARUN R. PEDNEKER, J.]

34. After pronouncement of the Judgment, the learned counsel for the respondents submits that the remanded proceedings be expedited.

35. In is hereby directed that, in the event, the statutory authority decides to issue notice, the parties shall not seek any unnecessary adjournments in the matter.