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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

WRIT PETITION NO. 5483 OF 2015

Sau. Nilam Sandeep Khajekar
Age 25 years, occup. President
of Gangapur Municipal Council,
R/o Samta Nagar, Gangapur,
Taluka Gangapur, Dist. Aurangabad

.. Petitioner

versus

1. Ashok Kacharu Khajekar,
Age 40 years, occup. Social Work
and Agril., r/o Sakham Panth
Nagar, Gangapur, Taluka Gangapur,
District: Aurangabad
2. The Chief Officer,
Municipal Council, Gangapur,
Taluka: Gangapur, Dist. Aurangabad
3. The District Collector, Aurangabad,
Collector Office Compound, Aurangabad,
Taluka and District : Aurangabad
4. Sau. Mandabai Ashok Khajekar,
Age : major, occup. President,
Municipal Council, Gangapur,
R/o Sakham Pant Nagar, Gangapur,
Taluka Gangapur, Dist. Aurangabad
5. The State Election Commission,
New Administrative Building,
Opp. Mantralaya, Mumbai.

.. Respondents

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Mr. P. B. Shirsath, Advocate for petitioner
Mr. R.N. Dhorde, senior advocate i/by Mr. N.P. Ghanwat
and V. R. Dhorde, Advocate for respondent No.1
Mr. Y. V. Kakade, Advocate for respondent No.2
Mr. V. G. Shelke, Asstt. Govt. Pleader for respondent No. 3
Mr. V.D. Sapkal, i/b Mr. Y. S. Chaudhary, for respondent No. 4
Mr. S. T. Shelke, Advocate for respondent No. 5

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 1st OCTOBER, 2015

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned advocates for the parties finally, with consent.

2. The petitioner poses challenge to various orders passed by respondent No.3 – Collector, in proceedings initiated at the instance of respondent No. 1 under an application dated 19th March, 2014, seeking disqualification of petitioner from holding office as a councillor of Municipal Council, Gangapur, for the acts attributable to her, under section 44 (1) (e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for brevity, "MC Act"), *inter alia*, praying for issuance of writ of certiorari quashing order dated 6th May, 2015 passed by respondent No.3, election programme dated 15th May, 2015 for the presidential post and a direction to restore charge to her of president of the municipal council purported to have been withdrawn from her under order dated 14th May, 2015.

3. Heard Mr. P.B. Shirsath, learned advocate for petitioner, learned senior advocate Mr. R. N. Dhorde for respondent No.1, Mr. Y. V. Kakade, advocate for respondent No.2, Mr. V. G.

Shelke, learned Assistant Government Pleader for respondent No. 3 and Mr. V.D. Sapkal, advocate for respondent No. 4 and Mr. S. T. Shelke, advocate for respondent No.5,

4. Position with regard to indisputable facts emerges as follows:

The petitioner had been elected as a councillor from Ward No. 2-A from Scheduled Caste (women) category on 14th April, 2011 whereas respondent No. 1 had been elected as a councillor from ward No. 4-A on a seat reserved for Scheduled Caste category. Subsequently, respondent No. 1 had resigned and said post was occupied by his wife who is respondent No. 4 who subsequently is said to have been elected as president after decision by respondent No 3 disqualifying the petitioner, dated 6th May, 2015.

5. After petitioner's election as a councillor from ward No. 2-A, from women's category, for the next half term of the council, from middle of the year 2014, the post of president having been reserved for Scheduled Caste (women) category, the petitioner had been declared to be President of the municipal council, Gangapur on 14th July, 2014.

6. Meanwhile, on 1st January, 2014, it appears, a notice had been issued to father-in-law of the petitioner with regard to some construction without permission and on various other allegations. It further appears that petitioner's father-in-law had in April, 2014 applied to the planning authority for permission and / or regularization of construction alleged to be unauthorized etc. and consequently, planning authority by accepting certain amount as charges for regularization of construction, has regularized the same.

7. There appears to be debate and dispute over receipt of notice by petitioner in respect of application/proceedings dated 19th March, 2014 at the behest of respondent No.1, seeking petitioner's disqualification. While petitioner claims to have received it in January, 2015, respondent No.2 - municipal council contends that as a matter of fact, father-in-law of the petitioner had applied for permission/regularization of construction only after notice dated 19th March, 2014 had been received at the end of petitioner. The petitioner appears to have submitted written resistance to notice dated 19th March, 2014 regarding disqualification sought under section 14 (1) (e) of the MC Act, on 30th January, 2015. Respondent No. 3 had decided the matter on 6th May, 2015, under which petitioner was

declared disqualified and her councillorship came to be cancelled.

8. However, it is undisputed that on 14th May, 2015, the petitioner had been directed, pursuant to section 57(2) of the MC Act, to handover charge of the office of the president to the vice president and that programme for electing president came to be declared by respondent No. 3 on 15th May, 2015.

9. While this petition had been moved, it came up before hon'ble vacation judge on 20-05-2015. This court, during vacation, had passed an order that the elections pursuant to the programme would be subject to outcome of the writ petition.

10. Mr. Shirsath learned advocate appearing for the petitioner predominantly assails the actions of respondent No. 3, submitting that respondent No. 3 had no authority, power or jurisdiction to proceed with the matter with reference to section 44 of the MC Act, the petitioner being the president and particularly having regard to section 55A of the Act, it is only the State Government which is empowered to take action against the president of a municipal council. He further submits that pursuant to provisions of section 44(2) of the MC Act, respondent No. 3 is under obligation to act only after a report is

made to him by the chief officer of the municipal council with regard to disqualification under sub-section (1) of section 44 of the MC Act. He further submits that it is thereafter the Collector is expected to decide on the occurrence of vacancy. Making reference to sub-section (3) of section 44 of the MC Act he submits, respondent No. 3 is required to communicate his decision to the councillor concerned and in the present matter, there is no situation referable to sub-section (3) of section 44 of the MC Act. Having regard to phraseology of sub-section (3) of section 44, the petitioner would not be deemed to have ceased to occupy the office of president. He further vehemently submits that the Collector is not empowered to declare disqualification of president of a municipal council and as such, by directing the petitioner to hand over charge of president's post under section 57(2) of the MC Act to the vice president and further declaring election of the post of president, the Collector has overstepped his powers under the statutory provisions or rather has trampled on and contravened the same.

11. The other leg of submissions of Mr. Shirsath on the allegations contained in the application / proceedings dated 19th March, 2014 is that the acts done by petitioner's father-in-law cannot be attributed to the petitioner and she cannot be held

responsible for the same. On the basis of the same, in law, no disqualification can be said to have been incurred by her, for, father-in-law is not dependent on her and that clearly emerges from the observations appearing in the impugned order referring to that petitioner's father-in-law has been working as a head master. Mr. Shirsath further purports to draw attention to that, subsequently, due permission had been sought and the same has been granted by the concerned authorities pursuant to which the construction alleged to be unauthorized has been regularized. These aspects, according to him are sufficiently borne out from the factual position of acceptance of certain charges from petitioner's father-in-law by the planning authority towards regularization / authorization of the construction and that subsequent to the same, no further proceedings have been taken up in respect of said construction.

12. Under the circumstances, learned counsel Mr. Shirsath goes on to submit that the remedy of appeal purportedly available under sub-section (4) of section 44 of the MC Act does not form an efficacious alternate remedy for the reliefs sought in the writ petition. According to him, the impugned orders and resultant actions by respondent No. 3 *per se*, are arbitrary, unreasonable, unjust and perverse. The actions subsequent to

impugned order dated 06-05-2015 are in colourable exercise of powers by respondent No. 3 and as such, are untenable and for such actions, there is no other alternate remedy provided.

13 Mr. Shirsath submits, even otherwise, writ jurisdiction of this court does not cease merely because there is an alternate remedy available. He submits, under the circumstances, the remedy pursuant to section 44 (4) of the MC Act has been rendered only formal in nature and would not be very efficacious. He takes support to this submission from the judgment in the case of *Shivram vs State of Maharashtra*, reported in 2010 (1) Mh.L.J. 602 more particularly from paragraph number 25 of the same which reads :

“ 25. So far as the alternate remedy is concerned, it is well settled that under Article 227, the jurisdiction of this Court does not cease merely because there is an alternate remedy available in law. However, as far as possible, the Court should be slow in showing indulgence if there is an alternate efficacious remedy available in law. In the instant case, under section 44 of the Act, power to bifurcate or amalgamate is vested in the State Government which has been delegated to the DDR, who has passed the impugned order dated 22-9-2008. The contention of the learned Government Pleader that the appeal against the said order lies before the State Government, in our view, in these facts and circumstances would be an empty formality and, therefore, we do not agree with the said contentions. So far as non-joinder of APMC, Sakoli as party-respondent is concerned, it is not in dispute that the State Government has already appointed Assistant Registrar, Co-operative Societies

as an Administrator to run said APMC, Sakoli which is already joined as party-respondent in the present writ petition. He is the nominee of the State Government and the learned Government Pleader is representing the State who is protecting the interests of the State Government as well as its officers. In these circumstances, the said contention is also rejected. “

14. Mr. Shirsath also relies on paragraphs number 20 and 21 from the judgment in *“Whirlpool Corporation vs Registrar of Trade Marks, Mumbai”*, reported in *AIR 1999 SC 22 (1)*. Said paragraphs No. 20 and 21 read thus;

“ 20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the “TRIBUNAL ”.

15. He further relies on paragraphs number 32, 33 and 34 from the judgment in the case of *Javed s/o Sheikh Mustaque Patel vs. State of Maharashtra*, reported in *2009 (2) Mh. L.J. 925 to*

emphasize that when the orders impugned are arbitrary, unjust, unreasonable and perverse, this court is empowered to look into the matter and decide on the same. Paragraphs No. 32, 33 and 34 of said judgment read as under;

" 32. We shall now deal with Letters Patent Appeal No. 320/2008. Mr. Khajanchi has challenged the maintainability of the appeal preferred by the appellant. In our considered opinion, the issue is squarely covered in favour of the appellant by the Judgment of the Apex Court in [Shahu Shikshan Prasarak Mandal and another vs. Lata P. Kore and others](#) (2008 AIR SCW 7409) relied by Mr. Chandurkar, the learned counsel for the appellant. In the said Judgment, the Apex Court has considered several Judgments of the Apex Court including the case of [Mayji C. Lakum vs. Central Bank of India](#) (2008(7) Scale 32) in which the Apex Court held that since the writ petition was filed under [Article 226](#) of the Constitution of India and in the grounds taken in the petition the petitioner had alleged that the order of the Tribunal was arbitrary, unreasonable, unjust and perverse, the writ petition was maintainable under [Article 226](#) of the Constitution of India and consequently the Letters Patent Appeal was maintainable. Considering the facts in Shahu Shikshan Prasarak Mandal's case, the Apex Court held that since not only the petition was filed under Articles 226 and 227 of the Constitution of India but it was also averred that the order passed by the Tribunal was arbitrary, unreasonable, unjust and perverse, the petition filed under [Article 226](#) was maintainable. In Writ Petition No. 2203/08 the petitioner has specifically averred that the impugned orders were perverse, contrary to the principle of natural justice and also to the settled principles of law. Moreover, the ground of denial of reasonable opportunity to defend the petitioner, has also been urged. Moreover, the interpretation of [Section 44\(1\)\(e\)](#) fell for consideration before the learned Single Judge. The writ petition was styled as under Articles 226 and 227 of the Constitution of India. Therefore, in our considered opinion, the writ petition was maintainable under

Articles 226 and 227 of the Constitution of India and, therefore, the present Letters Patent Appeal is maintainable.

33. *In so far as the Judgment in Surya Deo Rai (supra) relied upon by Mr. Khajanchi is concerned, we are unable to place reliance upon the same in support of the submission of Mr. Khajanchi that the Writ Petition was under [Article 227](#) of the Constitution of India for the reasons stated above. We have already held that the Writ Petition was maintainable under Articles 226 and 227 of the Constitution of India and, therefore, the said Judgment does not advance the case of the respondent nos. 3 and 4.*

34. *In so far as the Judgment in Uttam Gawali's case (supra) is concerned, the same also does not advance the case of the respondents since in the said petition, the Division Bench considered the nature of the petition and the relief sought in the petition was maintainable under [Article 227](#) of the Constitution only and, therefore, held that the Letters Patent Appeal was not maintainable. As stated above, since we have held that the petition filed by the appellant under Articles 226 and 227 was maintainable, the said Judgment does not also help the respondent nos. 3 and 4. "*

16. Mr. Dhorde, learned senior advocate appearing for respondent No.1 submits that disqualification proceedings prosecuted against the petitioner are in respect of her acts / omissions while she was a councillor and not the president. He submits that section 55A of the MC Act in the present case would not have any application, for, disqualification proceedings are not in respect of misconduct of the petitioner in discharge of duty or neglect or in capacity to perform or her being guilty in

disgraceful conduct as president or vice president in order to have its application. The proceedings are in respect of acts / omissions referred to under section 44 (1) (e) of the MC act. He counters submissions of learned advocate for the petitioner in respect of section 55A of the MC Act, submitting that said provision has no application in the present scenario, for, the petitioner has not been disqualified as the president. Under the impugned order, she is simply unseated as a councillor and in such a case, she will have to stand down from president's post as a necessary fall out of unseating as a councillor. By that it cannot be said that respondent No.3 - Collector has removed the petitioner from presidential seat under section 44 (1) (e) of the MC Act. This is the effect, since the president can only be from elected councillors and once she is disqualified as a councillor, basic qualification for being the president being unavailable, her position as president stands razed. He submits that necessary communications referable to section 44 (2) and 42 of the MC Act, have already been there and those requirements have been and shall be deemed to have been satisfied. He refers to phraseology of sub section (3) of section 44 stating that even otherwise the collector has *suo motu* powers.

17. Mr. Dhorde, learned senior advocate relies on a decision

reported in 2008 (5) SCC 287 "*Satyawati Sharma V. Union of India*" to submit that as far as section 55A of the MC Act is concerned in the present circumstances has no application and is redundant to the present controversy. He, for said purpose relies on head note "A", as appearing in said citation. He further submits that reliance on behalf of the petitioner on decision reported in 2006 (3) *Mh.L.J.* 227 "*Sunita Vilasrao Salukhe V. State of Maharashtra*" is misplaced, for that was the case wherein provisions for direct election to the post of president under the subsisting provision then, in the context of that, the hon'ble single judge of this court in said reported judgment has considered that in such a case, section 44 of the MC Act may not hold field. He, therefore, submits that said case has no application in the present set of circumstances. He further submits that while the notice with regard to unauthorized / illegal construction had been issued to father in law of the petitioner, the petitioner, having regard to her residence in the same premises, was under obligation to prevent such an act, however, she omitted her duty and as such, same tantamounts to support to unauthorized / illegal construction of her father in law, incurring her disqualification under section 44 (1) (e) of the MC Act. Subsequent corrective action of father in law of the petitioner and the proceedings

would not be able to negate unauthorized act or illegal act, as had been subsisting while the notice had been issued. He, therefore, submits that said argument on behalf of the petitioner on merits is untenable. He states that the acts/omissions imputed against the petitioner are not in respect of two and half years' term of the petitioner as president. While post of councillor had been occupied by her, it is an act / omission about which imputations had been made against the petitioner and respondent No.3 has found substance in the same, which fortifies disqualification under section 44 (1) (e) MC Act. He contends that various disputed questions arise in the present matter and various questions have been raised about construction being legal, illegal or unauthorized and having regard to facts and circumstances of the case, would require a closer and intricate verification, which would be hardly possible in the proceedings under the writ petition. He, therefore, purports to persuade the court to consider that the petition is not liable to be considered in view of alternate efficacious remedy available under sub section 4 of section 44 of the MC Act.

18. Mr. Sapkal, learned advocate for respondent No.4, who has been elected as President pursuant to election programme

declared on 15th May, 2015, submits, having regard to that election to the post of president having been taken place, if any dispute in respect of the same is sought to be raised, that has to be resolved pursuant to sub section (6) of section 51 of the MC Act and in the present case even if it is considered that this court had observed that the election of president would be subject to outcome of the writ petition, the decision can be legitimately taken by the state government in this respect. He further refers to section 42 of the MC Act and states that as in the case of section 55A of the MC Act, where the State Government has power to remove a President from office, if the President is guilty of any misconduct in discharge of duty or any disgraceful conduct during current term of office or even for the term preceding the current term or has become incapable to perform duty, the State Government has also been empowered, to remove a councillor under section 42 of the MC Act, for the acts referred to therein. He distinguishes these provisions from section 44 of the MC Act stating that for the acts, imputations and omissions, referable to section 44 (1) of the MC Act, it is collector only who has been empowered to unseat a councillor. For such acts and imputations, powers under section 42 and 55A of the MC Act would not be available to the state government.

He further contends that unseating of a president is a statutory fall out of disqualification of a councillor incurred under section 44 (1) (e) of the MC Act and that collector has been obligated to unseat councillor under the provisions of the MC Act and the actions have accordingly been taken by the collector, which cannot be imputed as colourable exercise, as alleged by the petitioner.

19. Parties have referred to provisions of Maharashtra Regional Town Planning Act. Learned advocates for the respondents have referred to section 52 thereof submitting that penalty is to be imposed for an act, which is considered to be unauthorized, if construction is without permission and commission of such an act by father in law of the petitioner, according to them, has a tacit acceptance under the conduct of the father in law of the petitioner, him having applied for permission for construction subsequent to the notice issued to him. They, therefore, contend that these aspects have been properly considered by the collector - respondent No.3.

20. Learned advocates have referred to definitions of the terms "*councillor*" as appearing under section 2 sub section (7) as well as "*president*" appearing under section 2 sub section (36), which

read as under :-

*“ 2 (7) "**Councillor**" means a person duly elected as a member of the Council, [the directly elected President] and includes the nominated Councillor, who shall not have the right,-*

(i) to vote at any meeting of the Council and Committees of the Council; and

(ii) to get elected as a President of the Council or a chairperson of any the Committees of council ”

*“2 (36) "**President**" and "Vice-President" means the President and Vice-President of the Council;”*

21. Parties have referred to sections 42, 44, 51, 51-1A, 52, 55A, 55B of the MC Act, which can conveniently be reproduced for ready reference.

“ 42. Liability of Councillors to removal from office-

(1) The State Government may on its own motion or on the recommendation of the Council remove any Councillor from office if such Councillor has been guilty of any misconduct in the discharge of his duties, or of [any disgraceful conduct, during his current term of office or even during his immediately preceding term of office as a Councillor.]

(2) The State Government may likewise remove any Councillor from office if such Councillor has in the opinion of the State Government become incapable of performing his duties as a Councillor.

(3) No resolution recommending the removal of any Councillor for the purposes of sub-sections (1) or (2) shall be passed by a Council and no order of removal shall be made by the State Government, unless the Councillor to whom it relates has been given a reasonable opportunity of showing cause why such recommendation or order, as the case may be, should not be made.

(4) In every case the State Government makes an order under sub-sections (1) or (2), the Councillor shall be disqualified from becoming a Councillor, or a Councillor or member of any other local authority for a period of five years from the date of such order.”

“ 44. Disqualification of Councillor during his term of office.

1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he -

(a) is or becomes subject to any of the disqualifications specified in Section 16 except the disqualification specified in clause (h) of sub-section (1) of that section; or

(b) as a Councillor or as a member of any committee of the Council votes in favour of any matters in which he has directly or indirectly by himself or his partner any such share or interest as is described in clauses (a), (b), (c), (e), and (g) of sub-section (3) of section 16, whatever may be the value of such share or interest or in which he is professionally interested on behalf of a client, principal or other person; or

(c) is professionally interested or engaged in any case for or against the Council; or

(d) absents himself during six successive months from the meetings of the Council, except with the leave of absence granted by the Council by a resolution on his written application for such leave; [or]

(e) has constructed or construct by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for; or helped in his capacity as such Councillor in, carrying out such illegal or unauthorized construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure:

and he shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant:

Provided that-

(i) a Councillor shall not be disqualified under clause (c) if he is engaged for the Council without receiving any remuneration therefor or appears and conducts his own case in a Court of law or before any authority under this Act against the Council irrespective of whether such a Councillor is a legal practitioner by profession or not;

(ii) for the purpose of clause (d) when the Councillor applies for leave, such leave shall be deemed to have been granted unless it is refused

within a period of sixty days from the date of his application.

(2) When a Councillor whether elected, or nominated incurs any of the disqualifications in sub-section (1), it shall be the duty of the Chief Officer to submit a report to the Collector within one month of his becoming aware of the disqualification through any source whatsoever.

(3) In every case the authority to decide whether a vacancy has arisen shall be the Collector. The Collector may give his decision on receipt of the report of the Chief Officer under sub-section (2), or on his own motion or on an application made to him by a voter and such decision shall be communicated to the Councillor concerned, the Chief Officer and the applicant, if any. Until the Collector decides that a vacancy has arisen and such decision is communicated as provided above, the Councillor shall not be deemed to have ceased to hold office.

(4) Any person aggrieved by the decision of the Collector may within a period of fifteen days from the date of receipt of the decision of the Collector by him, appeal to the State Government and the orders passed by the State Government shall be final:

Provided that, no order shall be passed under sub-section (3) by the Collector or under sub-section (4) by the State Government in appeal, against any Councillor without giving him a reasonable opportunity of being heard.

Explanation.- If any elected or nominated Councillor were subject to any disqualification specified in Section 16, at the time of his election, [or nomination] and continues to be so disqualified, the disqualification shall, for the purposes of this section, be deemed to have been incurred during the term for which he is elected or nominated. ”

“ 51. Election of President

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

(2) The Collector shall, within twenty-five days from the date on which the names of the Councillors elected to a Council are published or, as the case may be, first published under sub-section (1) of section 19, in the Official Gazette, convene a special meeting of the Councillors for election of a President:

Provided that, a meeting under this section shall not be held before the expiry of the term of office of the outgoing Councillors.

(3) The meeting called under sub-section (2) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the President of a Council when presiding over a meeting of the Council has, but shall not have the right to vote:

Provided that, notwithstanding anything contained in this Act for regulating the procedure at meetings (including the quorum required thereat), the Collector or the officer presiding over such meeting may, for reasons which in his opinion are sufficient, refuse to adjourn such meeting.

(4) Any Councillor aggrieved by any decision of the Collector or such officer, accepting or rejecting any nomination paper, may, within forty-eight hours from intimation of such decision, present an appeal to the Regional Director of Municipal Administration concerned and simultaneously give notice of such appeal to the Collector or such officer. Such appeal shall be disposed of by the Regional Director, as expeditiously as possible, after giving a reasonable opportunity of being heard to the parties concerned. The decision of the Regional Director on such appeal, and subject only to such decision (if any), the decision of the Collector or such officer, as the case may be, accepting or rejecting the nomination of a candidate shall be final and conclusive and shall not be called in question in any Court.

(5) If, in the election of the President there is an equality of votes, the result of the election shall be decided by lots to be drawn in the presence of the Collector or the officer presiding in such manner as he may determine.

(6) Any dispute regarding election of the President shall be referred to the State Government whose decision in that behalf shall be final.

(7) After election of the President, the Council shall continue its meeting for the purpose of [electing vice-President].

(8).....

(9) If, there is a vacancy in the office of the President due to any reason whatsoever, then for subsequent election of a President, the same procedure as laid down in sub-sections (2) to (6) (both inclusive) shall apply except that the special meeting shall be called by the Collector within twenty-five days from the date on which the vacancy occurs.]

10. The subsequent election to the post of President after expiry of the first term of the two and a half years of the President election under

the provisions of sub-section (2), shall be held within a period of eight days prior to the expiry of the said term of the earlier president.

Provided that, the newly elected President shall take charge on the last day of the term of the outgoing President or next day thereafter.”

“ 51-1A Reservation of office of President

1) The Offices of the President shall be reserved for the Scheduled Castes, the Scheduled Tribes, Women and the Backward Class of Citizens in the prescribed manner.

(2) Notwithstanding anything contained in the Maharashtra Municipal Councils, Nagar Panchyats (President Election) Rules, 1981, the roster relating to the reservation of the offices of the President in force on the 30th April, 1999, shall be deemed to have been amended to provide for the extended tenure of the President as specified in section 52.

(3) Notwithstanding anything contained in the Maharashtra Municipal Councils and Nagar Panchayats (President Election) Rules, 1981, the roster relating to the reservation of offices of the President in force on the date of commencement of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Act, 2006 (Maharashtra XLVIII of 2006), shall be deemed to have been amended to give effect to the provisions of the term of office of the President, specified in section 52.”

“ 52. Term of Office of President's

The term of office of the President shall be of two and half years.

Provided that, nothing in this section shall apply to the Presidents who are holding the office of President on the date of coming into force of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Act, 2006 (Mah. XLVII of 2006) and their term shall be co-terminus with the term of their respective Councils.”

“ 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 reasonable opportunity to furnish an explanation. ”

22. From the facts, the position surfaces that imputations against present petitioner are in respect of acts / omissions while she had been a councillor and proceedings accordingly had been initiated before she had been elected as a president in July, 2014 albeit, those appear to have culminated in May, 2015. A reply submitted on behalf of the petitioner does not object to the proceedings on the ground that she being a president, section 44 is not available for disqualification and it is only the state government under section 55A of the MC Act is empowered to take action. It appears to be a fact that she had submitted a written reply without taking any such objection nor there appears to be resistance to the proceedings having been canvassed before respondent No.3.

23. It is apparent that action mooted against the petitioner has been in respect of her act / omission during her holding of office as a councillor on the ground referable to section 44 (1) (e), which is a specific provision in the MC Act, disqualifying the

councillor on that ground and the proceedings have accordingly been taken up against her.

24. The ground that it is only state government which can invoke powers under section 55A of the MC Act disqualifying the petitioner from presidential post, however, in the present case, it does not appear to be in tune with the statutory provision, for, the imputation does not appear to be referable to her term as president, for her acts and omissions, proceedings have been taken up before respondent No.3 before she became President.

25. In the circumstances, it does not appear that case can be said to be covered under section 55A of the MC Act. It may be debatable, whether for the acts of father in law, the petitioner would attract disqualification, and the same will have to be verified on facts by a proper forum. May be it is open for the petitioner to contend that the order passed by respondent No.3 is not correct in fact and in law.

26. Under the circumstances, I am not in a position to accede to the request being made on behalf of the petitioner to entertain the writ petition. The writ petition as such, is dismissed without any order as to costs giving liberty to the petitioner to make an approach under an appeal pursuant to section 44 of the

MC Act and it is further being made clear that all the subsequent acts of holding election of president's post as well as that of councillor would depend on the fate of the decision to be rendered in appeal, by the authority. Rule stands discharged.

27. Needless to refer to that pendency of this writ petition including time taken for uploading the order would be amenable for consideration, if it comes for delay condonation in the appeal that would be prosecuted by the petitioner.

[SUNIL P. DESHMUKH, J.]