

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

**WRIT PETITION NO. 413 OF 2016
WITH
CIVIL APPLICATION NO. 657 OF 2016**

Smt. Kewalbai W/o Dattu Aurade,
Aged: 50 years, Occ: Household
& President of Municipal Council,
Omerga, Dist. Osmanabad,
R/o : Omerga, Dist. Osmanabad.

...PETITIONER

versus

1. The State of Maharashtra
Through the Secretary to the
Government of Maharashtra
in Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Hon'ble State Minister,
Urban Development Department,
Mantralaya, Mumbai -32
3. The Collector, Osmanabad,
Dist. Osmanabad.
4. The Chief Officer,
Municipal Council, Omerga,
Dist. Osmanabad.
5. Abdul Razzak S/o Babulal Attar,
Aged: Major Occ: Agriculture,
& Councillor of Municipal Council,
Omerga, Dist. Osmanabad,
R/o : Omerga, Dist. Osmanabad.

...RESPONDENTS

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Mr. V.D. Sapkal, Advocate holding for
Mr. L.C. Patil, Advocate for petitioner
Mr. A.G. Girase, Government Pleader and
Mr. S.N. Kendre, Asstt. Govt. Pleader for respondents No. 1 to 3
Mr. S.S. Thombre, Advocate for respondent No. 4
Mr. N.P. Patil, Jamalpurkar, Advocate for respondent No. 5

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 14th MARCH, 2016.

ORAL JUDGMENT :-

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

2. After hearing learned counsel for the parties, the question that emerges for consideration is, as to whether it can be said that sufficient opportunity had not been afforded to the petitioner to answer the charges levelled against her pursuant to show cause notice dated 30-11-2015 (Exhibit-G) at page No. 91.

3. Mr. Sapkal, learned counsel for petitioner vehemently submits that noble principles of natural justice have not been adhered to at all. He submits that proceedings to unseat petitioner from the seat of President of Municipal Council, Omerga are being conducted in haste without giving proper opportunity to the petitioner and/or for that matter without hearing her. He submits that even otherwise on merits respondents have no case against the petitioner at all. Thus, it is an attempt to unseat the petitioner by adopting dubious means. It is submitted by the learned counsel that, in the process, the petitioner is being kept away from the proceedings in order to avoid possible failure of the proceedings. The impugned order tantamounts to condemnation without hearing.

4. Despite request for time, according to learned counsel, without passing any orders on applications, the matter has been purportedly heard on 31-12-2015 and order came to be passed on 05-01-2016. He submits that even otherwise there is no reflection of application of

independent and objective mind to the facts involved in the case and as to whether section 55B of the Act of 1965 can be at all attracted in the circumstances. The authority has not weighed the facts or law and has cursorily gone through the proceedings.

5. Learned counsel for respondents vehemently submit that there had been gross breach by the petitioner in discharging official duties and she had been guilty of disgraceful conduct while holding office as President of Municipal Council, Omerga, more particularly, referable to section 81(1) of the Maharashtra Nagar Parishad, Nagar Panchayat and Industrial Township Act, 1965 (for short " Act of 1965"). According to them, position clearly emerges that the breach as alleged against the petitioner has been admitted having regard to the contents of writ petition itself. Even otherwise her demeanor is quite blatant and she does not deserve any sympathy.

6. Mr. Girase, learned Government Pleader states that it cannot be said that matter suffered infirmity of compliance of principles of natural justice. Practically the principles and rules may have little efficacy in the present petition. Taking into account observations as have been quoted by learned single Judge of this court in paragraph No. 28 of judgment dated 22-12-2014 in writ petition No. 10961 of 2014 as extracted from judgment of the Supreme Court in the case of *Biecco Lawrie Ltd. and another vs. State of West Bengal and another* reported in 2009 (10) SCC 32, it is being urged that no indulgence be shown to the petitioner at all. With reference to quotation as appearing in paragraph No. 28 of the judgment of learned single Judge of this court he submits

that contents of the petition themselves are sufficient to show that disqualification has been incurred having not adhered to the requirements of the provisions of section 81(1) of the Act of 1965. He further submits that the impugned order may not be faulted simply on the ground of non adherence of principles of natural justice having regard to aforesaid position.

7. Mr. N.P. Patil, Jamapurkar, learned counsel appearing for respondent No. 5 submits that the petition is not tenable and is misconceived having not made party to three from four complainants, upon whose application/complaint, proceedings had been initiated against the petitioner. He further submits that rest of the three complainants are required to be arraigned as parties to the petition and deserve to be heard in the matter. Even notice to them is also must. In case, they are impleaded in the matter as party respondents, notice to them shall also be issued. The petition deserves to be dismissed in limine for want of necessary parties.

8. Mr. S.S. Thombre, learned counsel appearing for respondent No. 4 submits that because of the breaches committed by the petitioner, to hold meetings, even after directions by the Collector and then meetings being held pursuant to orders of the Collector, is indeed an indication of that not only breaches by the petitioner, however, those had a drastic fall out against official as actions have been directed to be initiated against officers concerned, he therefore, supports the impugned order. He further submits that such incumbent may put in peril other officials in the municipal council.

9. Mr. Sapkal, learned counsel countering submissions advanced on behalf of respondents, at the outset submits that contention of learned counsel on behalf of respondents that the complainants are necessary parties to the petition is not tenable and cannot be given any regard to. He refers to and relies on a decision of the Supreme Court in the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others* reported in 2012 (2) (BCR), 859 and emphasises rationale applied by the Supreme Court to consider that as to how, in such cases, the complainants are not necessary parties. He submits that even going by the complaints made, it cannot be said such breaches would call for disqualification upon allegations of misconduct or disgraceful conduct or negligence in carrying on business of Municipal Council. He purports to rely on quite a few paragraphs of said judgment.

10. Taking into account overall contentions as have been advanced by the learned counsel for parties, the position emerges that, notice to petitioner by the State purportedly had been issued on 30-11-2015, it bears out ward date 01-12-2015. There is no report as to when the notice was served on petitioner. It appears that petitioner had applied for a month's time on 15-12-2015 before the State authority. It appears that no order had been passed on said application. From affidavit-in-reply on behalf of respondent No. 5, position further emerges that some notice is purportedly issued by office of the State Authority on 22-12-2015 of the date scheduled on 29-12-2015 for hearing. It further appears that there had been application moved on 31-12-2015 on behalf of the petitioner by her advocate, seeking further

time to file written statement. No order appears to have been passed on said application.

11. The impugned order as annexed to the petition discloses that the petitioner, had sought time on two occasions i.e. on 15-12-2015 and on 30-12-2015. On 31-12-2015 matter had been purportedly heard. From the extracts of paragraphs No. 4 and 5 of the impugned order dated 05-01-2016, it appears that it is very difficult to say that the authority concerned had applied its mind, at least order does not show application of mind to the factual and legal position. As such, order is deficient not only in respect of non observance of principles of natural justice but also falls short for want of objective application of mind. In the circumstances, I deem it appropriate to set aside the impugned order and remit the matter to the State Authority for reconsideration after affording opportunity to all the concerned including the petitioner.

12. In the circumstances, the impugned order dated 05-01-2016 passed by the State Minister, Urban Development Department Maharashtra State, Mantralaya, Mumbai stands set aside. The parties concerned to appear before the State Authority on 23rd March, 2016. The parties shall abide the schedule stipulated by State Authority. It is expected that the petitioner shall submit her reply on appearance. Having regard to dispute involved and intensity with which the parties have approached, the State Authority shall dispose of the matter pending before it by affording opportunity to all concerned including the petitioner as expeditiously as possible preferably within a period of four weeks from the date of appearance of the parties.

13. It is being informed that election to the post of President of Municipal Council, Omerga had been conducted pursuant to the election programme. However, the position is that declaration of result of that election has been stayed by this court under order dated 22-01-2016, said position be continued during pendency of proceeding before the State Authority.

14. Writ petition stands disposed of in above terms. Rule is made absolute accordingly.

15. In view of aforesaid, pending civil application does not survive and stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

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