

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

WRIT PETITION NO. 3753 OF 2016

Kewalbai Dattu Aurade ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. Amit Mukhedkar, Advocate h/f Mr. L.C. Patil, Advocate for petitioner.

Mr. S.N. Kendre, A.G.P. for Respondent Nos.1 to 3.

Mr. K.B. Jadhavar, Advocate for Respondent No.4.

Mr. N.P. Patil Jamalpurkar, Advocate for Respondent No.5.

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CORAM : T.V. NALAWADE, J.

DATED : 20th OCTOBER, 2016

ORDER :

1. The petition is filed against the order made by Hon'ble Minister, Urban Development, Maharashtra State under Section 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The petitioner is disqualified to hold the post of President of Municipal Council from the date of the order and she is disqualified for further period of six years for being elected to the post of Councilor. Both sides are heard.

2. The petitioner was elected in the general elections of the Municipal Council, Omerga for the term 2011-16. She was elected to the

post of President on 17th April, 2014. This post was reserved for woman (General). Respondent No.5 – Abdul Razzak and three other members of this local body made a complaint to the Hon'ble Minister and requested to take action like disqualification against the petitioner as she had not held general body meeting for more than 10 months. In support of this contention, the record like copy of minutes of meetings dated 24th August, 2014 and 18th June, 2015 were produced to show that for about ten months no general body meeting was convened by the present petitioner. The Councilors had already approached the Chief Officer with the said grievance but no action was taken against the present petitioner and so they had filed proceeding before the Hon'ble Minister. They contended that due to the approach of the President, many matter of public interest remained unattended and development activities were halted. It was also contended that even when fifteen members of the local body had given requisition to call special meeting, such meeting was also not called by the petitioner.

3. The disqualification proceeding was started under Section 55A and 55B of the aforesaid Act. Show cause notice was issued to the petitioner and it was served on her on 30th November, 2015. In the meantime, the State Government had given direction to the Divisional Commissioner who happens to be the Regional Director for administration of municipal council

to make enquiry and report about the irregularities. The Divisional Commissioner made enquiry through Collector and reported that there was non compliance of the provision of Section 81(1) of the Act and it was necessary to take action against the President as provided under Section 55A and 55B of the Act.

4. The petitioner appeared before the Hon'ble Minister but she sought many adjournments by giving lame excuses. As no reply was filed before the date fixed, the matter was fixed for hearing on 31st December, 2015. On that date the petitioner remained present through advocate but she requested for adjournment. In view of the conduct of the petitioner, no further adjournment was given and the matter came to be decided on 05th January, 2016 and petitioner was disqualified.

5. The petitioner filed Writ Petition No. 4131 of 2016 in this Court to challenge the decision of Hon'ble Minister. By the order dated 14th March, 2016, this Court (other Hon'ble Judge) allowed the petition. The order made by Hon'ble Minister was set aside by this Court and time of four weeks was fixed for deciding the disqualification proceeding. Thus opportunity was given to the petitioner to contest the proceeding by filing say. Due to the order made by this Court, the result of election to the post of President which

was already held was withheld. The petitioner filed reply before the Hon'ble Minister and she contended that after the elections, first general body meeting was held on 22nd August, 2014. She admitted that second general body meeting was held on 18th June, 2015 and for about ten months no general body meeting was held. However, the petitioner contended that after 21st August, 2014, there was code of conduct declared in view of general elections to the State Legislative Assembly and due to that she could not conven any general body meeting. She contended that then there was by-election for few wards of the local body as the area of municipal council was extended.

6. The petitioner contended in the reply that she had convened many special meetings and they were in August 2014, September 2014, November 2014, December 2014, January 2015, February 2015, May 2015, August 2015 and September 2015. She contended that all the urgent and necessary subjects were discussed in the special meetings and necessary decisions were taken and so development activities were not stopped. She contended that her act of not convening the meetings in ten months cannot be called as disgraceful and she cannot be disqualified for such conduct.

7. After giving hearing to learned Counsel appointed by petitioner, Hon'ble Minister again made order of disqualification of aforesaid nature. The Hon'ble Minister has held that for such conduct action as provided under Section 55B of the Act needs to be taken.

8. The provision of Section 81 of the Act shows that first meeting of general body needs to be convened by the President within two months from the meeting of council held under Section 51 of the Act. The provision further shows that after such first meeting, each successive meeting of general body needs to be held within two months from the date on which the last ordinary meeting was held. This provision shows that if the President fails to discharge such duty and the meetings are not called, the Chief Officer is expected to give report to the Collector. Such report needs to be given within seven days from the failure of the President to hold the meeting and after receipt of such report, the Collector is expected to call the meeting which is not called by the President. This provision shows that it is mandatory for the President to call general body meeting and the only thing which can save the President from disqualification is showing sufficient cause. The provision shows that President has power to call special meeting whenever the President thinks fit. However, it does not mean that after calling special meeting the President is absolved from the duty to call the

statutory general body meeting. The provision further shows that the President is bound to call special meeting if 1/4th of the total number of councilors of the local body give written requisition to the President for calling such meeting. If the President fails to call such special meeting, the councilors can request the Collector to take such meeting and in that case also the Collector can call special meeting. The power of Collector to call meeting is enabling provision and this provision does not mean that only this mode needs to be used.

9. The wording of Section 81 shows that it is the duty of the President to call at least one general body meeting in every two months. If President fails to call such meeting, it is misconduct. Learned Counsel for President submits that it was open to the Chief Officer and Collector to take steps to call meeting as provided under Section 81 itself and for not convening such meeting, the President cannot be disqualified.

10. Learned Counsel for petitioner placed reliance on case reported as **2012(2) Bom. C.R. 859 (Supreme Court) (Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others)**. Learned Counsel for petitioner submitted that when many special meetings were called by the President, it cannot be said that the President had intentionally avoided to call general

body meetings. This submission is not at all acceptable. Further, the facts of reported case are altogether different. Whether there was sufficient cause for not calling meeting will depend on facts of that case. The facts of reported case show that for about three months for the period from 28th February, 2007 to 28th May, 2007 no general body meeting was called by the President and on fact it was held that explanation offered was worth acceptable. In the present matter, for continuously ten months no general body meeting was conveyed by President. Further even when requisition was given by Councilors as provided under Section 81 of the Act, the President did not call the special meeting.

11. Even after giving direction by the Collector, such meeting was not called by the President. From the facts and circumstances of the present matter, inference is that President wanted to show that she was not bound by the requisition given by Councilors or even by the provisions of law giving right to Councilors. Such conduct cannot be upheld in the democratic society. The conduct of the petitioner shows that she was not ready to obey even the orders of authority and she was not ready to respect the rights of the Councilors. There are more allegations that due to such conduct the interests of the people of the town were affected and no policy decisions were taken. Thus there is no need to discuss more about this allegation and

inference is that voice of Councilors was suppressed and no opportunity was given to them to raise issues with regard to the interests of the persons of the wards which they were representing. This conduct of the President definitely amount to misconduct. Thus on facts, this Court holds that no error is committed by the Hon'ble Minister in making order of disqualification.

12. Reliance was placed by learned Counsel for petitioner on case reported as **1996 (3) Bom.C.R. 15 (Aurangabad Bench) (Baburao Vishvanath Mathpati Vs. State of Maharashtra and Others)** as observations are made in order with regard to the requirement for making order under Section 55B of the Act. There was allegation of “negligence” against the President. This Court observed that for the purpose of Section 55A of the Act “negligence” would mean willful or intentional neglect. This Court had held that not calling requisite number of general body meetings itself cannot amount to misconduct or neglect when explanation was given that due to disturbances in some meetings, the general body meetings were not held. On fact it was held that action to remove the President was for political consideration. These observations cannot be used in the present matter. This Court has no hesitation to observe that it is the statutory duty of the President to hold general body meeting and only escape to President is

to show sufficient cause. Provision of Section 55A and 55B of the Act read as under:-

“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 Councilors:

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.

55B. Disqualification for continuing as Councilor or becoming Councilor on removal as President or Vice-President

Notwithstanding anything contained in section 55A, if a Councilor 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 Councilor to continue as a Councilor for the remainder of his term of office as a Councilor and also for being elected as a Councilor, till the period of six years has elapsed from the order of such disqualification;*

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

13. The procedure followed by the Hon'ble Minister – State Government is already quoted. In the provisions of Section 42, 55A and 55B of the Act, there is mention of the power of the State Government to take action like removal or disqualification of Councilor, President or Vice-President. All these sections show that reasonable opportunity of showing cause needs to be given to the persons like the present petitioner. The facts of present petition shows that reasonable opportunity was given to the petitioner but the petitioner misused the process of law and protracted the decision of disqualification proceeding. In any case, due to order made by this Court, more opportunity was given to file say and say has been considered by the Hon'ble Minister.

14. By misusing the procedure, the petitioner enjoyed her entire term when she could have been disqualified within few months after the receipt of

application given by the Councilors. In view of this circumstance, this Court holds that only removal of the President from the post would not have served the purpose of the Act. There is discretionary power given to the State Government to use the provision of Section 55B of the Act. This Court holds that present case is fit case where the discretion can be used. For using discretion, there is material which is already quoted.

15. In view of these circumstances, this Court holds that it is not possible to interfere in the order made by the Hon'ble Minister. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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