

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1522 of 2015**

Radha Krishna Tandon, S/o. Jai Shankar Tandon, aged about 42 years, R/o. Ward No.10, Upparpara, Abhanpur, District Raipur (Chhattisgarh).

---**Petitioner**

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration & Development, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station – Naya Raipur, District Raipur (Chhattisgarh).
2. Under Secretary, Department of Urban Administration & Development, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station – Naya Raipur, District Raipur (Chhattisgarh).
3. Director, Urban Administration & Development, Chhattisgarh, Raipur (Chhattisgarh).
4. Nagar Panchayat, Abhanpur, through the Chief Municipal Officer, Nagar Panchayat, Abhanpur, District Raipur (Chhattisgarh).

---**Respondents**

For petitioner : Mr. B. D. Guru, Advocate.

For respondents/State : Mr. Gary Mukhopadhyay, Dy. G.A. with
Mr. Ashish Surana, Panel Lawyer.

For respondent No.4 : Mr. Jitendra Pali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

31/07/2017

1. The petitioner was elected as President of Nagar Panchayat, Abhanpur, District Raipur and completed his tenure without any dent on his reputation, however, he was served with show cause notice on 28.02.2015 stating that during his tenure Nagar Panchayat

passed a resolution dated 02.11.2010 recommending allotment of land in favour of his wife and in which the petitioner also participated, which is violative of Section 85 of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as "Act of 1961"), therefore, show cause as to why he be not proceeded with Section 35-A of Act of 1961.

2. The petitioner filed his reply before the State Government that Nagar Panchayat in its resolution only gave 'No Objection' in favour of that applicant and authority to allot land vests with the State Government, therefore, proceedings initiated against him be dropped.

3. The State Government by its impugned order dated 30.07.2015 disqualified the petitioner in exercise of power conferred under Section 35-A of the Act of 1961 for a period of five years from the date of order finding that he being the husband of applicant seeking allotment of land ought not to have participated in the said proceedings of Nagar Panchayat.

4. Feeling unhappy and dissatisfied with the impugned order, the petitioner has filed this writ petition and questioned the same.

5. Mr. B. D. Guru, learned counsel for the petitioner would submit that the impugned order passed by the State Government is illegal, perverse and contrary to law and is liable to be set aside.

6. Mr. Gary Mukhopadhyay, Dy. Government Advocate with Mr.

Ashish Surana, Panel Lawyer would support the impugned order.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

8. At this stage, it would be appropriate to notice under Section 35-A of the Act of 1961 which reads as under:-

“35-A. Power to disqualify Ex-President, Vice-President etc.- (1) If as a result of audit report or an enquiry or any other proceeding, it comes to the notice of the State Government that any person, while he was holding the office of the President, Vice-President, Chairman or Member of a Committee constituted under the Act or a Council or has committed such acts of commission or omission which, in the opinion of the State Government, would have made his continuance in such office undesirable in the interest of the public or the Municipality, the State Government may, notwithstanding the fact that he has ceased to hold such office, by an order in writing, declare such person to be disqualified for further election, [or nomination] [as a Councillor or President] for such period not exceeding five years as may be specified by the State Government in such order.

(2) No order under sub-section (1) shall be passed unless reasonable opportunity has been given to the person concerned to furnish an explanation.”

9. Thus, in order to disqualify a Ex-President of Municipality, it must be established that he/she has committed act/omission, which in the opinion of such State Government, would have made his continuance in such office undesirable in the interest of public or municipality.

10. Section 85 of the Act of 1961 provides as under:-

“85. Councillors not to take part in discussion in

certain cases-- No Councillors shall vote on, or take any part in, the discussion of any matter in which he has directly or indirectly any pecuniary interest.”

11. What would be the effect of disqualification of a returned candidate from the elected seat has been succinctly laid down by R.C. Lahoti, J, speaking for the Supreme Court in the matter of **Sadashiv H. Patil v. Vithal D. Teke and others**¹ which states as under: -

“14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.”

It was clearly held that a rigorous compliance with the provisions of the Act and the Rules must be followed while acting with disqualification provisions.

12. In the matter of **Tarlochan Dev Sharma v. State of Punjab and others**² the Supreme Court while considering removal of President of Municipal Council under the Punjab Municipal Act, 1911, held that in removal proceeding principles of natural justice

1 (2000) 8 SCC 82

2 (2001) 6 SCC 260

must be complied with and laid down as under: -

“7. In a democracy governed by rule of law, once elected to an office in a democratic institution, 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. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of “abuse of his powers” (of President), *inter alia*. This is the phrase with which we are concerned in the present case.

8. The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between, a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The appellant is not charged with habitual failure to perform the duties of President of the Municipal Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1-10-1999 have to be tested on the touchstone of the availability of this ground.

12. One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or

omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a necessary corollary therefrom that what has not been communicated or not relied on in the show-cause notice as a ground providing reason for the proposed removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to the explanation furnished by the person proceeded against and this must appear from the order passed under Section 22.”

13. In the matter of Delhi Transport Corporation v. DTC Mazdoor Congress³, it has been held by Their Lordships of the Supreme Court that right to fair treatment is an essential inbuilt of natural justice which is an integral part of the guarantee of equality assured by Article 14 of the Constitution of India. The concept of reasonableness and non-arbitrariness pervades the entire Constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution.

14. In the matter of Sharda Kailash Mittal v. State of Madhya Pradesh and others⁴, Their Lordships of the Supreme Court have held as under:-

“28. From the materials placed before us, we are satisfied that the advertisements, tenders calling for attending day-to-day work of the Municipality such as provision for drinking water, sanitation etc. were duly put out only after due deliberation by the Council of Nagar Palika and no decision was taken by the appellant herself.....”

3 AIR 1991 SC 101

4 (2010) 2 SCC 319

15. Further, Their Lordships of the Supreme Court in the matter of

Ravi Yashwant Bhoir v. District Collector, Raigad and others⁵

have observed as under:-

“22. Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the institution.

28. In *State of Punjab v. Baldev Singh*⁶, this Court considered the issue of removal of an elected office-bearer and held that where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in *Mohinder Kumar v. State*⁷ and *Ali Mustaffa Abdul Rahman Moosa v. State of Kerala*⁸ held as under:

“28. ... It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed.”

30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide *Indian National Congress (I) v. Institute of Social Welfare*⁹.] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab*¹⁰ and

5 (2012) 4 SCC 407

6 (1999) 6 SCC 172

7 (1998) 8 SCC 655

8 (1994) 6 SCC 569

9 (2002) 5 SCC 685

10 AIR 1963 SC 395

*Union of India v. H.C. Goel*¹¹. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office-bearer can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.

33. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in *Tarlochan Dev Sharma v. State of Punjab* (supra) and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

34. 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.

35. 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 v. Debi Ghosal*¹², *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly*¹³ and *Ram Beti v. District Panchayat Raj Adhikari*¹⁴).

36. In view of the above, the law on the issue stands crystallised 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 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.

37. A duly elected person is entitled to hold office for the term 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.”

16. Applying the principle of law laid down by Their Lordships of the

12 (1982) 1 SCC 691

13 (1992) 4 SCC 80

14 (1998) 1 SCC 680

Supreme Court in the above-stated judgments (supra) and further keeping in view the statutory requirement contained in Section 35-A of Act of 1961, it is *quite vivid* that there is no finding in the impugned order that in the opinion of the State Government the petitioner's act of participating in the meeting of Nagar Panchayat, in which resolution was passed stating no objection in allotting land in favour of his wife would have made his continuance as President of Nagar Panchayat undesirable in the public interest or municipality, which is *sine quo non* for passing an order for disqualification of Ex-President like the petitioner and the impugned order is in teeth of the provisions contained in Section 35-A of Act of 1961.

17. On the basis of above-stated discussion, this Court is of considered opinion that the State Government is absolutely unjustified in disqualifying the petitioner for further election without satisfying the condition precedent for exercise of stringent provision contained in Section 35-A of the Act of 1961 and accordingly the impugned order passed by the State Government disqualifying the petitioner for further election deserves to be quashed.

18. As a fallout and consequence of the above-stated legal analysis, the writ petition is allowed and the order of the State Government dated 30.07.2015 (Annexure Rd-1) is hereby quashed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge