

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13790 OF 2017

Shobhatai w/o Arvind Nalge,
Age: 60 years, Occu : Agriculture &
Household (President of the Kandhar
Municipal Council, Kandhar,
Taluka Kandhar, District Nanded),
R/o: Nalge Galli, Kandhar,
Taluka Kandhar, District Nanded.

... Petitioner

Versus

1. The State of Maharashtra,
through its Principal Secretary,
Urban Development Department,
M.S., Mantralaya, Mumbai.
2. The Hon'ble Minister of State,
Urban Development Department,
M.S., Mantralaya, Mumbai.
3. Deepak s/o Narayan Awale,
Age: 35 years, Occu : Agriculture
and Worker (Gat Neta of Shivsena
Party, Kandhar Municipal Council,
Kandhar),
R/o: Gaikwad Galli, Kandhar,
Taluka Kandhar, District Nanded.
4. Krishna s/o Ramchandra Papinwar,
Age: 47 years, Occu : Business,
R/o: Ram Mandir Galli, Kandhar,
Taluka Kandhar, District Nanded.

5. The Kandhar Municipal Council,
Kandhar, Taluka Kandhar,
District Nanded.
through its Chief Officer.
6. The District Collector,
Nanded.
7. Shahaji s/o Arvind Nalge,
Age: 42 years, Occu : Agriculture,
R/o: Nalge Galli, Kandhar,
Taluka Kandhar, District Nanded.
8. The State Election Commission,
Annex Building,
In front of Mantralaya,
Mumbai.
through its Secretary. ... Respondents.

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Mr. R. S. Deshmukh, Advocate for the Petitioner.

Mr. A. B. Girase, Government Pleader with Mr. S. N. Kendre,
AGP for Respondent Nos. 1, 2 and 6.

Mr. R. N. Dhorde, Senior Advocate i/by Mr. A. M. Gaikwad,
Advocate for Respondent No.3.

Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for
Respondent No.4

Mr. Avinash Hande, Advocate for Respondent No.5.

Mr. Amol R. Joshi, Advocate for Respondent No.7.

Mr. S. T. Shelke, Advocate for Respondent No.8.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 14th FEBRUARY, 2018
PRONOUNCED ON : 26th FEBRUARY, 2018

JUDGMENT:-

1. Heard finally with consent at admission stage.
2. By way of this Writ Petition, the petitioner has challenged the order passed by the Hon'ble Minister for State (Urban Development Department, Maharashtra State)-respondent no.2 herein under Section 55A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, "the Act of 1965") whereby, the petitioner came to be removed from the post of President of Kandhar Municipal Council, Kandhar, Taluka Kandhar, District Nanded.
3. Brief facts giving rise to the present Writ Petition are as follows:
4. The General Elections of the Kandhar Municipal Council were held on 18.12.2016 for the term of 2016-2021. In view of the amendment of the year 2016 to the Act of 1965 in the form

of Section 51A-1A, the election to the post of President of the Municipal Council made directly by the persons whose names are included in the voters list. In pursuance to the above said election programme, the petitioner filed her nomination to the post of President as a candidate and she came to be elected directly from the voters of the said Council by majority. The said election was contested by as many as five other candidates, amongst them respondent no.4 herein also.

5. The Government of Maharashtra through the Urban Development Department has issued a Government Resolution dated 21.12.2016 whereby, an explanation has been furnished in relation to the appointment of the nominated councilors. Respondent no.3 herein, who happened to be the Gat Neta of Shivsena political party in the said Municipal Council, by letter dated 17.02.2017, submitted a proposal to the office of the District Administration Officer, Municipal Council, Administration Department, District Collector Office, Nanded and on behalf of his party, submitted nomination paper of the present respondent no.4. Further, alongwith the above said proposal and the nomination letter of respondent no.4, the

requisite documents to substantiate his nomination were also filed. However, respondent no.7 herein has raised his objection in the office of the Sub-Divisional Officer/Nomination Paper Scrutiny Officer. It has been specifically stated in the above said objection that though respondent no. 4 has been nominated as one of the office bearers of a trust, namely, "Lt. Freedom Fighter Bhanudasrao Patil Kendre Smruti Pratishthan, Kandhar", the respondent no.4 is neither a member nor an office bearer of the aforesaid trust since its registration in the year 2005. However, the office of the Deputy Collector, Kandhar has rejected the above said objection/application filed by the present respondent no.7 and recommended name of respondent no.4 for appointment as nominated councilor.

6. It is in this background, a special meeting of the said council came to be held on 18.02.2017 and therein also, respondent no. 7 raised his objection/application with the office of the President (petitioner/Presiding Officer) and requested to do the needful. The petitioner, being the Presiding Officer of the above said special meeting, did not grant approval to the appointment of respondent no.4 as a nominated councilor in the

said Council for the reason that respondent no.4 did not fulfill the eligibility criteria as contemplated in the Maharashtra Municipal Councils and Nagar Panchayats (Qualifications and Procedure for Appointment of Nominated Councillors) Rules, 2010 (for short, "the Rules of 2010"), particularly in view of Rule 4(g). The minutes of the said special meeting were also recorded to that effect.

7. In consequence thereof, respondent no.3 has submitted a letter dated 18.02.2017 with the office of the Presiding Officer in the said Council and requested to make declaration in favour of respondent no.4, but the Presiding Officer (petitioner herein) vide order dated 20.02.2017, justified her decision and in case of any dissatisfaction, asked to initiate the proceedings before the competent court as provided under Section 21 of the Act of 1965, in terms of explanation to Clause (8) of the Government Resolution dated 21.12.2016. Further, the said decision in the special meeting was also communicated by the office of the Chief Officer of the said Council vide its letter dated 18.02.2017 to the office of respondent no.6/District Collector, Nanded. It has been informed through the said communication that one seat of the

said nominated councilor is vacant and only one nominated councilor has been appointed.

8. The respondent no.6-District Collector, Nanded, vide letter dated 22.02.2017, directed the Sub-Divisional Officer, Kandhar and also to the Chief Officer of the said Council to submit a self-explanatory report regarding action against the President (petitioner herein), who has failed to declare respondent no.4 as nominated councilor. Accordingly, the office of respondent no. 5/Chief Officer of the said Council submitted his report vide letter dated 04.03.2017.

9. In the above said background, and in the peculiar facts and circumstances of the case, the present respondent nos. 3 and 4 have approached the respondent no.2/Hon'ble Minister of State in Urban Development Department by filing a petition for removal of the petitioner from holding the post as a President for the remaining term. The said removal petition came to be filed under Section 55A of the Act of 1965 for removal of the petitioner from the post of President of the Municipal Council, Kandhar for the remainder term of her office for misconduct in

discharge of her duties and to neglect and incapacity in performing her duties while presiding over the special meeting in respect of nomination of the member dated 18.02.2017 vide resolution no. 334 in respect of the nomination of respondent no.4. Meanwhile, in terms of the report submitted by the Chief Officer dated 04.03.2017, respondent no.6-District Collector, Nanded, by communication dated 04.03.2017, has also directed the petitioner to hold a special meeting forthwith for nomination of the remaining councilor and the petitioner, by communication dated 07.03.2017, has also called upon guidance from the Collector, Nanded as to how a second meeting for the same purpose is to be called when in the earlier meeting the decision has been taken for nomination of the councilor. The present respondent no.7, in his capacity as Gat Neta of National Congress political party and also in the capacity as objector to the nomination of respondent no.4, has approached this Court on 10.03.2017 by filing Writ Petition No. 3542 of 2017 against the said directions issued by the Collector and the said Writ Petition is still pending consideration before this Court.

10. In the said removal petition, the present petitioner has put her appearance and raised all the contentions those are available to her. By way of abundant precaution, the petitioner has also submitted her written notes of arguments through her counsel before respondent no.2-Hon'ble Minister on the date of hearing. Respondent no.6-District Collector, Nanded, by communication dated 14.08.2017 alongwith a copy of the first order of removal dated 11.08.2017 passed by respondent no.2-Hon'ble Minister, informed the petitioner that she has been removed from the post of President of the said Council for the remaining term.

11. Being aggrieved and dissatisfied by the above said first order of removal dated 11.08.2017 passed by respondent no.2-Hon'ble Minister, the petitioner has approached this Court on 19.08.2017 by filing Writ Petition No.10971 of 2017. On 06.10.2017, the learned Government Pleader, under instructions from respondent nos. 1 and 2, withdrew the order dated 11.08.2017 with liberty to decide the said removal petition afresh after hearing all the parties. By order dated 06.10.2017, this Court has disposed of the said Writ Petition with the aforesaid liberty with certain directions. In terms of those

directions, the petitioner appeared through her counsel before respondent no.2-Hon'ble Minister and also submitted her written notes of arguments. The respondent no.2-Hon'ble Minister heard the parties afresh on 31.10.2017 and thereafter reserved the case for orders. Respondent no.2-Hon'ble Minister thereafter, by impugned order dated 22.11.2017, has removed the petitioner from the post of President of the said Council for the remaining term.

12. The learned counsel for the petitioner submits that respondent no.2-Hon'ble Minister has passed the impugned order mechanically without application of mind, which resulted into miscarriage of justice. The impugned order has been passed in colourable exercise of powers and arbitrarily with a farce to complete the hearing with a predetermined mind and without even supplying a copy of the memo of the removal petition. The learned counsel for the petitioner submits that respondent no.2-Hon'ble Minister has not considered the petitioner's contentions and submissions while passing the impugned order. The learned counsel submits that the dispute has arisen due to the exercise of powers by the petitioner in the capacity as a directly elected

President of the Municipal Council in nominating the councilors. The learned counsel submits that in view of the recent amendment to Section 9(1) of the Act of 1965, by insertion of a proviso and in view of insertion of Section 51A-1A after Section 51 of the original Act, with effect from 21.12.2016, the President is empowered to nominate the councilors under Clause (b) of Section 9(1) in case the President is directly elected under Section 51A-1A. The learned counsel submits that by any stretch of imagination, the misconduct in discharge of duties or incapacity to perform duties or being guilty of disgraceful conduct as contemplated under Sections 55A and 55B of the Act of 1965 does not spell out. The learned counsel submits that the Supreme Court, in the case of ***Ravi Yashwant Bhoir vs District Collector, Raigad and Others***, reported in ***(2012) 4 SCC 407***, has observed that removal of the elected member is a serious affair and unless a clear-cut case is made out, he should not be removed. Learned counsel submits that respondent no.2-Hon'ble Minister has not dealt with the contentions raised by the petitioner in her written statement and even ignored the amended statutory provisions of the Act. Learned Minister has given weightage to the Government Resolution and continues to

apply the pre-amended provisions of the Act which have no application to the directly elected Presidents. The learned counsel submits that even in terms of the said Government Resolution, the aggrieved persons can resort to the remedy as provided under Section 21 of the Act of 1965 and even then, the Hon'ble Minister has entertained the said removal petition and passed the impugned order erroneously, improperly and illegally. Learned counsel submits that though there is a clear documentary evidence on record which indicates that the respondent no.4 herein is not eligible person for being nominated as a councilor and when the petitioner has considered the objection raised as against the respondent no.4 about his eligibility well within the four corners of the provisions of the Act of 1965, the petitioner is held guilty of misconduct and incapable of performing duties. Learned counsel submits that even this Court, by order dated 25.04.2017 in Writ Petition No. 5393 of 2017 (Jijabai w/o. Chandrakant Rathod vs The State of Maharashtra and Others) in the identical facts, has passed interim order protecting the petitioner-President therein.

13. The learned senior counsel for respondent no.3 submits

that in view of the amendment to the Act of 1965 w.e.f. 19.05.2016, the State of Maharashtra has issued the Government Resolution dated 21.12.2016 laying down guidelines for electing Vice President as well as for nominating the councilor. Clause 6 of the said Government Resolution has specifically laid down clarification while nominating the councilor. It has been specifically laid down that the Gat Neta of a political party/*Aghadi* shall submit/forward the nomination of their candidate to the Collector and as per the prescribed procedure, the Collector/Designated Officer appointed by the Collector in this behalf is expected to scrutinize the nomination paper alongwith documents in respect of eligibility of such recommended candidate. It has been specifically prescribed in the said Government Resolution that it is within the domain of the Designated Officer to decide the validity of nomination and the decision of the Designated Officer about validity of the nomination is final. It has been specifically provided in clause 6 of the said Government Resolution that after scrutiny of the nomination paper, the decision taken by the Designated Officer is binding on the President and the President, who is also the Presiding Officer of the Municipal Council, has merely to declare

such a nominated councilor in a special meeting of the Municipal Council.

14. The learned senior counsel submits that in the instant case, the petitioner has not paid any heed to the directives issued in the form of the Government Resolution dated 21.12.2016. The learned senior counsel submits that respondent no.3, in the capacity as Gat Neta, has proposed name of respondent no.4 for his nomination as a councilor with the Collector and as per the procedure prescribed, the said nomination has been forwarded by the Collector to the authorized/Designated Officer for scrutiny. Thereafter, during scrutiny of the said nomination paper, respondent no.7, who happened to be the son of present petitioner, has raised objection to the nomination paper of respondent no.4. Thereafter, the said Designated Officer has considered the objection and after carrying out scrutiny of the nomination paper, rejected the said objection and declared the nomination of respondent no.4 as valid by his order dated 18.02.2017. The learned senior counsel submits that, since the attempt on the part of respondent no.7 to object the nomination of respondent no.4 has failed when the objection to the

nomination has been rejected by the Designated Officer, respondent no.7, with connivance of his mother i.e. the petitioner herein, who is the President/Presiding Officer of the special meeting, has again raised objection to the nomination of respondent no.4. It was a planned move of the petitioner and respondent no.7 to entertain the said objection without any authority of law. Even though respondent no.3 has pointed out to the petitioner that the objection before the petitioner in the capacity as Presiding Officer of the special meeting is not maintainable and the decision of the Designated Officer regarding validity of the nomination is final and the Presiding Officer is not having any authority to decide the validity, the petitioner has not paid any heed to the legal procedure as well as the objection raised by respondent no.3. The petitioner, in collusion with respondent no.7, has acted high-handedly with total disregard to the procedure prescribed and declared the nomination of respondent no.4 as invalid and consequently, the Resolution No. 334 came to be passed thereby nominating only one member which belongs to the political party to which the present petitioner/President belongs.

15. The learned senior counsel submits that respondent no.3, thereafter, has filed representation to the Collector bringing to his notice as to how the petitioner/President has conducted the affairs of the Municipal Council with utter disregard to the provisions of law and the directions issued by the State of Maharashtra. In view of the said representation, the Collector has asked the Chief Officer of the Municipal Council to submit his self-explanatory report and on the basis of the report submitted by the office bearers of the Municipal Council and the representation filed by respondent no.3, the Collector, by its communication dated 04.03.2017, directed the present petitioner to immediately call special meeting and nominate the councilor in accordance with law. However, the present petitioner, in collusion with respondent no.7, has decided not to obey the directions issued by the State of Maharashtra through the Collector and on the contrary, challenged the said letter dated 04.03.2017 by filing Writ Petition No.3542 of 2017. The learned senior counsel submits that despite directions issued by the State Government as well as the Collector, the petitioner has not convened the meeting to fill up one post of the nominated councilor. Consequently, the Collector has directed the Sub-

Divisional Officer, who was also the Designated Officer, to hold an inquiry and submit report. Accordingly, the Sub-Divisional Officer has submitted a report dated 05.05.2017 to the Collector and the State. Meanwhile, respondent no.3, alongwith respondent no.4, has submitted an application in the form of grievance before the State of Maharashtra requesting therein to take appropriate action under Section 55-A of the Act of 1965 against the petitioner. In accordance thereof and also on the basis of the report submitted by the Collector alongwith the report of the Designated Officer, respondent no.1 has issued the show cause notice under Section 55 of the Act of 1965 to the petitioner and thereafter, after following the principles of natural justice, the hon'ble Minister has passed the impugned order.

16. The learned senior counsel submits that the petitioner has deliberately flouted the legal provisions while conducting the affairs of the special meeting by entertaining the objection raised to the eligibility of the nomination by respondent no.7, who happened to be her son. As per the procedure prescribed, the decision of the Designated Officer regarding eligibility of the nominated councilor is final and is binding on the President. The

learned senior counsel submits that despite passing illegal orders and even though opportunity was given to the petitioner to cure the said defect by the State Government by letter dated 04.03.2017, the petitioner has failed to carry out the corrective measures. On the other hand, the petitioner, through her son i.e. respondent no.7, has even challenged the said letter dated 04.03.2017 by filing Writ Petition before this Court. The learned senior counsel submits that this conduct of the petitioner in not obeying the directions of the State of Maharashtra and not obeying the directions issued by the authorities constituted as per the provisions of law amounts to misconduct as well as disgraceful conduct. The Hon'ble Minister, after following due procedure of law and giving sufficient opportunity of hearing to the petitioner, has passed the impugned order of removal from the post of President of the Municipal Council. There is no infirmity/illegality in the impugned order. There is no substance in the Writ Petition.

17. The learned senior counsel submits that in terms of the amended provisions of Section 9 of the Act of 1965, particularly by insertion of the proviso to the effect that in case of a

Municipal Council, where the President is directly elected under Section 51A-1A, the President so elected shall nominate the councilors under clause (b). In terms of the provisions of the Rules of 2010 and in terms of the Government Resolution dated 21.12.2016, the procedure prescribed for nomination of a councilor in terms of Rule 5 of the said Rules of 2010, in nominating the councilors, it is necessary to take into account the relative strength of recognized parties or registered parties or groups, and nomination of the members may be in proportion to the strength of such parties or groups in the Council, after consulting the leader of such parties or groups. In terms of the provisions of the said Rule 5, every endeavour shall be made to ensure that one councilor each possessing any of the qualifications referred to in clauses (a) to (g) of Rule 4 has been nominated. The learned senior counsel submits that by referring the amendments in the Act of 1965 and due to the repeated queries in respect of the powers of the President directly elected by the voters in such process of nomination of councilors, the State of Maharashtra has issued the Government Resolution dated 21.12.2016 by prescribing such procedure and it was incumbent upon the petitioner, who was presiding over the said

special meeting in the capacity as the President directly elected by the voters, to follow the said guidelines in the form of explanation which is the important part of the said Government Resolution. Even then, the petitioner has flouted the said directives and invalidated the nomination of respondent no.4 which amounts to misconduct in discharge of duties, neglect of or incapacity to perform duties and as such, the Hon'ble Minister has rightly passed the impugned order. There is no substance in the Writ Petition and the Writ Petition is liable to be dismissed.

18. The learned senior counsel, in order to substantiate his contentions, placed reliance on the decisions in the following cases:

1. *Patel Narshi Thakershi and others vs. Pradyumansinghji Arjunsinghji*, reported in *AIR 1970 SC 1273*,
2. *Deorao Vithoba Kale vs. Divisional Joint Registrar Co-operative Societies, Nagpur and others*, reported in *1982 Mh.L.J. 543*,
3. *Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd. And Another*, reported in *(2005) 13 SCC 777* and
4. *Babaji Kondaji Garad and others vs. Nasik Merchants Co-operative Bank Ltd., Nasik and others*, reported in *AIR 1984 SC 192*.

19. Mr. Hon, the learned senior counsel appearing for respondent no.4 has almost adopted the submissions made on behalf of respondent no.3 and further submitted that after due scrutiny, the Designated Officer has accepted the nomination of respondent no.4 as valid nomination and in terms of clause 6 of the Government Resolution dated 21.12.2016, recommended the name of respondent no.4 as eligible person for being nominated as councilor. The said decision of the Designated Officer on scrutiny of the nominations is binding on the petitioner/President. However, the petitioner, in collusion with respondent no.7, has reconsidered the validity of nomination of respondent no.4 and refused to declare respondent no.4 as a nominated councilor.

20. The learned Government Pleader for respondent nos. 1, 2 and 6 submits that the District Administrative Officer has received the proposals alongwith the recommendations by the leaders of the political parties (Gat Netas) for respondent no.4 from Shivsena political party and for one Dr. Deepak Baliram Badwane from Indian National Congress party. Learned Government Pleader submits that for the purpose of scrutiny of

the applications/proposals, the Sub-Divisional Officer, Kandhar has been appointed as designated officer as per the provisions prescribed for the said purpose. After scrutiny, the Designated Officer has handed over valid two proposals to the President/Presiding Officer in the special meeting held on 18.02.2017. The learned Government Pleader submits that in terms of the procedure prescribed and in terms of the Government Resolution dated 21.12.2016, the decision of the competent officer about scrutiny of the proposal is final and binding on the Presiding Officer. However, the petitioner has announced the name of Dr. Deepak Baliram Badwane as a nominated councilor of the Nagar Parishad, Kandhar. Further, on the basis of the objection raised by respondent no.7 herein, the petitioner disqualified and cancelled the valid proposal recommending the name of respondent no.4. The learned Government Pleader submits that as the procedure of the nomination of member is not complied with in accordance with law, in terms of the directives issued by the Urban Development Department, Government of Maharashtra, the petitioner was directed to hold a meeting for appointment of a nominated councilor of the Nagar Parishad vide letter dated 04.03.2017.

21. The learned Government Pleader submits that the petitioner has not followed the directives as per clause 6(u) of the Government Resolution dated 21.12.2016 and when the nomination of the councilor was validated by the Designated Officer, the petitioner was not empowered to entertain the objections if raised in such a special meeting. However, the petitioner had disobeyed the directions issued. The learned Government Pleader submits that the petitioner is not capable to hold the office of the President, Nagar Parishad, Kandhar as provided under Section 55-A of the Act of 1965. Thus, the Hon'ble Minister has rightly passed the order after giving due opportunity of being heard to the petitioner. The learned Government Pleader submits that in terms of the procedure prescribed in the Rules of 2010, particularly Rules 4 and 5 and the Government Resolution dated 21.12.2016, it was incumbent upon the petitioner to nominate respondent no.4 as councilor and despite an opportunity was given to the petitioner to take corrective measures, the petitioner has deliberately flouted the orders and as such, guilty of misconduct and incapacity to hold the office of the President.

22. The learned counsel for respondent no.7 submits that though the Gat Neta of Shivsena political party, vide his letter dated 17.12.2017, has nominated the present respondent no.4 who has been defeated in the direct elections, respondent no.7 had submitted his objection in the office of the Sub-Divisional Officer/Nomination Paper Scrutiny Officer. It has been specifically stated in the objection petition that the respondent no.4, though nominated as one of the office bearers of the trust, namely Late Freedom Fighter Bhanudasrao Patil Kendre Smruti Pratishthan, Kandhar, is neither a member nor an office bearer of the said trust since its registration in the year 2005. Respondent no.7 has also enclosed requisite documents to substantiate his above said objection. In spite of the above said objection, the Scrutiny Officer did not apply his mind to the specific contention raised in the objection petition and in a casual manner, rejected the objection petition filed by respondent no.7 and recommended name of respondent no.4 for being appointed as nominated councilor. In this background, a special meeting of the said Council came to be held on 18.02.2017 and respondent no.7 has also submitted his objection application to the

petitioner/Presiding Officer and requested to do the needful. It has been specifically recorded in the minutes of the said special meeting that as to why respondent no.4 could not be appointed as a nominated councilor. Respondent no.7, in his capacity as Gat Neta of National Congress Party, has approached this Court by filing Writ Petition No. 3542 of 2017 wherein this Court has issued notice before admission and the said Writ Petition is pending. The learned counsel submits that even there is no whisper about the eligibility of respondent no.4 in the impugned order passed by the Hon'ble Minister. The impugned order is not justified on any ground. The same has been passed arbitrarily and in colourable exercise of powers.

23. I have also heard Mr. Hande, learned counsel for respondent no.5-Kandhar Municipal Council and Mr. Shelke, learned counsel for respondent no.8.

24. The Apex Court, while considering as to whether the complainant had made out a case for disqualification of an elected member of Deolali Cantonment Board, in the case of *Nisar Ahmad Ibrahim Khan vs Deolali Cantonment Board*

And Ors, reported in *AIR 1988 SC 290*, has observed that “A person, who assails the election of a returned candidate on the ground that the latter suffered from a disqualification by the statutory standards incurs the evidential burden of establishing the facts that invoke the disqualification.

25. The Apex Court, while considering the case of disqualification of an elected President of the Municipal Council under the provisions of the Punjab Municipal Act, 1911, in the case of *Tarlochan Dev Sharma vs. State of Punjab and Ors.*, reported in *(2001) 3 SCR 1146*, has observed thus:

“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.”

26. The Apex Court, in the case of *Baldev Singh Gandhi vs. State of Punjab and Ors.*, reported in (2002) 1 SCR 1021, while considering disqualification of an elected Municipal Councilor under the same Act, has observed thus:

“Misconduct” has not been defined in the Act. The word “misconduct” is antithesis of the word “conduct”. Thus, ordinarily the expression “misconduct” means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meanings of the expression “misconduct”, we, therefore, have to construe the expression “misconduct” with reference to the subject and the context wherein the said expression occurs, regard being had to the aims and objects of the statute.”

27. In the case of *Ravi Yashwant Bhoir* (supra), reported in *(2012) 4 SCC 407*, wherein election of President of a Municipal Council was set aside by the Chief Minister and the challenge to the Chief Minister's order was negated by this Court, the Supreme Court, on further Appeal, observed therein that removal of elected Member is a serious affair and unless a clear cut case is made out, he should not be removed.

28. This Court, in *Writ Petition No.5393 of 2017 (Jijabai w/o. Chandrakant Rathod vs. The State of Maharashtra and Ors.)* had an occasion to deal with identical facts. While referring the amended provisions of the Act of 1965, in para 12 of the order dated 25.04.2017, this Court made the following observations:

“12. Further the impugned order has invoked Sections 55A and 55B of the Act on account of misbehaviour/negligence or shameful behaviour. None of the above words find mention in the two Sections invoked viz. Sections 55A and 55B of the Act. The words used are “misconduct in the discharge of duties or incapacity to perform his duties or being guilty of

disgraceful conduct”. The impugned order does not spell out how misbehaviour / negligence or shameful behaviour would fall within the meaning of the words used in Sections 55A and 55B of the Act. Consequently, it does not deal with the Apex Court observations in *Ravi Yashwant Bhoir* (supra) while explaining the meaning or misconduct. Thus, the impugned order appears *prima facie* unsustainable for the above reasons.”

29. In the instant case, in terms of the amended provisions of the Act of 1965 and in terms of the insertion of Section 51A-1A, the petitioner has been elected directly by voters.

30. Prior to the amendment, Sub-section (1) of Section 9 of the Act of 1965, which is relevant for the present discussion, reads thus:

“9. Composition of Councils

(1) Every Council shall consist of-

(a) Councillors elected at ward elections, by direct elections; and

(b) such number of Councillors, not exceeding ten per cent of the total number of elected Councillors

or five, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the Collector in such manner as may be prescribed.”

(Emphasis supplied)

After the amendment in Sub-Section (1) of Section 9 of the Act of 1965, it reads thus:

9. Composition of Councils

(1) Every Council shall consist of-

(a) the President and the Councillors elected at ward elections, by direct elections; and

(b) such number of Councillors, not exceeding ten per cent of the total number of elected Councillors or five, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the Collector in such manner as may be prescribed.

Provided that, in case of the Municipal Council where the President is directly elected under section 51A-1A, the President so elected shall nominate the Councilors under clause (b).”

(Emphasis supplied)

31. In terms of Rules 3, 4 and 5 of the Rules of 2010, the determination of number of nominated councilors, qualification for nomination and nomination of councilors has been prescribed. It is not out of place to mention here that in exercise of powers conferred by Clause (b) of Sub-Section (1) of Section 9 and Sub-Section (2) of Section 51-B read with Sub-Sections (1) and (2) of Section 321 of the Act of 1965, the said Rules of 2010 have been framed. Rules 3, 4 and 5 of the said Rules of 2010 read as under:

“3. Determination of number of nominated Councilors.- Subject to the provisions of Rule 4, the Collector shall nominate such number of Councillors, not exceeding ten per cent of the total number of elected councillors or five, whichever is less, at the first meeting of the Council after the election of the President and Vice-president :

Provided that, while determining the number of nominated Councilors, a fraction of less than one-half shall be ignored and a fraction of one-half or more shall be reckoned as one.

4. Qualification for nomination.- A person shall be eligible for being nominated as a candidate for the

office of the nominated Councillors if he has special knowledge or experience in municipal administration and he,-

- (a) has been a recognized and registered medical practitioner in the State for a minimum period of five years, or
- (b) has been an educationist including retired Professor, Lecturer, Principal, Head-master, etc. of a recognised school or college for a minimum period of five years, or
- (c) has been a Chartered accountant or Cost Accountant for a minimum period of five years, or
- (d) possesses a degree in engineering from a recognized University and has professional experience for a minimum period of five years, or
- (e) has been an Advocate for a minimum period of five years or is a person possessing degree in Law from a recognized University with an experience in the legal field in the State for a minimum period of five years, or
- (f) has experience of working for not less than five years as the Chief Officer of a Municipal Council or as Assistant Commissioner or the Deputy Commissioner or experience of not less than two years as the Commissioner of a Municipal Corporation, and has retired from service, or
- (g) has experience of not less than five years as an

office bearer of a Non-Government Organization registered under the Bombay Public Trusts Act, 1950 engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.

5. Nomination of Councilors.- In nominating the Councilors, the Collector shall take into account the relative strength of recognized parties or registered parties or groups, and nominate the members, as nearly as may be, in proportion to the strength of such parties or groups in the Council, after consulting leader of each of such parties or groups:

Provided that, nothing containing in this rule shall be construed as preventing the Collector from nominating any member not belonging to any such party or group:

Provided further that, every endeavour shall be made to ensure that one Councilor each possessing any of the qualifications referred to in clauses (a) to (g) of Rule 4 has been nominated”

32. In terms of the insertion of the proviso to Section 9(1)(b) of the Act of 1965, the President, in case is directly elected under Section 51A-1A, is empowered to nominate the councilors under

Clause (b). The petitioner has raised objection before the Hon'ble Minister based on the amendment of year 2016 to the Act of 1965 that it is the President alone who has powers to nominate Members of the Council and even though the same is not disputed by the Hon'ble Minister himself, the petitioner has been declared as guilty of misconduct or incapacity to hold the office of President for exercising those powers for nomination of the councilor as contemplated by way of insertion of the proviso to Section 9 Sub-Section (1) Clause (b) of the Act of 1965.

33. On careful perusal of the Government Resolution dated 21.12.2016, it appears that the Government has issued the said circular to tender explanation to the queries made repeatedly with regard to the amendment of the year 2016 to the Act of 1965. In terms of Clause 6(u), it has been stated in the said explanatory circular that the decision taken by the Scrutiny Officer about the validity of nomination of a candidate being appointed as a councilor will be final and it is binding on the President to appoint such person as nominated councilor. I do not find such procedure prescribed in the Act of 1965 or the Rules of 2010. Even assuming that the Government has issued

those explanatory directions, in clause 8 of the said Government Resolution dated 21.12.2016, it is specifically stated that in case the President has not followed the directions with regard to nomination of the councilors, then, the grievance can be redressed under the provisions of Section 51-A(5) and Section 21 of the Act of 1965.

34. In terms of the pre-amended provisions of the Act of 1965 and in terms of the Rules framed under the Act and the procedure prescribed therein, the Collector alone can nominate two councilors and the President has to perform a ministerial act of merely nominating the persons as suggested by the Collector. However, the same does not appear to be so as per the amended Act with effect from 21.12.2016, empowering the directly elected President to nominate two councilors keeping away with the earlier practice of the Collector, either by convening the general body meeting of the Council and also nominating the non elected members to the Council. The said Rules still continue to be applied to the Municipal Councils where the President is not elected directly. However, it has no application in case of a President directly elected by the voters post

amendment to the Act of 1965.

35. On careful perusal of the impugned order, it appears that the Hon'ble Minister has not considered the contention raised by the petitioner and yet, the order proposes to impose severe punishment of removing the directly elected President of the Municipal Council, Kandhar.

36. So far as Sections 55-A and 55-B of the Act of 1965 are concerned, the specific words used are “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”. In terms of the amendment to Section 9 of the Act of 1965, the impugned order is also silent as to how the aforesaid act on the part of the petitioner would amount to misconduct in the discharge of duties or incapacity to perform duties or being guilty of disgraceful conduct. Though I am not inclined to enter into the dispute as to the eligibility of respondent no.4 for being nominated as a councilor, if the objection raised about his eligibility in terms of Rule 4 of the Rules of 2010 by the other Gat Neta of a registered political party, how far the decision

taken by the petitioner/President while dealing with the said objection would amount to misconduct in the discharge of duties as contemplated under Sections 55-A and 55-B of the Act of 1965. The impugned order also does not spell out as to how the said action on the part of the President would fall within the meaning of the words used in Sections 55-A and 55-B of the Act of 1965. In view of the same, the impugned order is not sustainable and the same deserves to be quashed and set aside. Hence the following order:

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 22.11.2017 passed by the Hon'ble Minister for State (Urban Development) under Section 55-A of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965, whereby the petitioner came to be removed from the post of President of Kandhar Municipal Council, Kandhar for the remainder of the term of the office, is hereby quashed and set aside.
- III. The Writ Petition is accordingly disposed of.

37. At this stage, learned counsel for respondent no.3 submits that this order may be stayed for a period of four weeks from today so as to enable respondent no.3 to approach the Supreme Court.

38. I do not find any justifiable reason to stay the order passed by this Court today. The request stands refused.

(V. K. JADHAV, J.)

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