

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 539 OF 2019

Shaikh Afsar Nawaboddin,  
Age : 40 years, Occu. : Service as  
Assistant Professor in English,  
Azad College, Ausa, Taluka : Ausa,  
District : Latur, R/o : Khandak Galli,  
Ausa, Taluka : Ausa, District : Latur

.. 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] Sunil S/o Revansiddhappa Utage,  
Age : 51 years, Occu.: Agriculture,  
R/o : Maharaj Galli, Ausa,  
Taluka: Ausa, District : Latur
- 4] The Ausa Municipal Council,  
Ausa, Taluka : Ausa,  
District : Latur,  
through its Chief Officer
- 5] The District Collector,  
Latur
- 6] The State Election Commission,  
Annex Building, In front of  
Mantralaya, Mumbai  
through its Secretary

.. Respondents

...  
Mr. R.N. Dhorde, Sr. Advocate h/f. Mr. Rajendrraa S. Deshmukkh,  
Advocate for petitioner  
Mr. S.N. Kendre, AGP for respondents no. 1, 2 and 5  
Mr. V.J. Dixit, Sr. Advocate with Mr. Ashutosh S. Kulkarni, Advocate  
h/f. Mr. M.L. Dharashive, Advocate for respondent no.3  
Mr. B.L. Sagar Killarikar, Advocate for respondent no.4  
Mr. A.B. Kadethankar, Advocate for respondent no. 6

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CORAM : SUNIL P. DESHMUKH, J.  
DATE : 05-03-2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.
2. The writ petition questions propriety, legality and validity of decision dated 11-12-2018 by respondent no. 2 in the proceedings having its initiation in lodging of application by respondent no. 3 on 24-08-2017 for removal of petitioner who had been elected as president pursuant to provisions of section 51A-1A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "**the Act**").
3. Factual situation about which largely there is no dispute is, on 14-12-2016 elections to municipal council, AUSA had been held and the petitioner had been a directly elected president

in the same. First meeting of the council had been held on 30-12-2016. Notices of four meetings *viz*; general body, standing committee, special and budget had been issued under signatures of petitioner on 23-02-2017 which were scheduled to be held on 04-03-2017. Further, there had been notice on 27-02-2017 by petitioner in respect of meeting scheduled to be held on 04-03-2017. On 27-02-2017 itself, there had been a communication by collector to the petitioner about meeting with the member of parliament having been scheduled on 04-03-2017. There is also no dispute that as per the notices dated 23-02-2017, meetings as scheduled were held on 04-03-2017, three of which petitioner had presided over as president. One, however, he could not preside over, having been required to proceed to attend meeting with the member of parliament at Latur on the very same day and as such, fourth meeting had been presided over by the vice president.

4. Subsequently, the president proceeded on leave on 08-05-2017. On 28-08-2017, aforesaid application had been lodged by respondent no. 3. On 10-10-2017, petitioner resumed his office. On 16-10-2017, a report had been made by chief officer to the collector as petitioner had finalized the minutes of meetings dated 04-03-2017 and 27-03-2017. On 16-10-2017, a notice of

general body meeting scheduled to be held on 30-10-2017 had been issued. On 03-11-2017, collector had made a report to the State government. There had been a lull thereafter for a considerably long period. On 13-07-2018, another report had been submitted by collector to the State government. On 28-09-2018, a show cause notice had been issued to petitioner appending with same a copy of application by respondent no.3 and report of collector. (It is not specified as to which of the reports of collector had accompanied the notice whether dated 03-11-2017 or 13-07-2018.)

5. On 08-10-2018, upon receipt of show cause notice, a challenge had been posed, by present petitioner, to the same in writ petition bearing no. 12573 of 2018. Notice had been issued by office of respondent no.2 in respect of show cause notice about hearing been scheduled on 15-11-2018. It appears that, vice president had submitted his response to show cause notice in the interregnum. On 15-11-2018, two applications were moved by present petitioner; one seeking adjournment having regard to challenge been posed to show cause notice before high court and another seeking accommodation enabling petitioner to lodge response to show cause notice. It appears that, such an accommodation had been let in and petitioner had been permitted

to submit his response by 20-11-2018. On 19-11-2018, the writ petition posing challenge to show cause notice had been withdrawn. Petitioner had submitted his response with the State Government, *inter-alia*, purporting to point out deficiency in supply of relevant documents and requesting furnishing of the same.

6. Thereafter, it appears that two applications have been submitted by petitioner, one on 24-11-2018 to respondent no.2, requesting for supply of certain documents and had also given some explanation and similar request had been made by petitioner on 06-12-2018.

7. On 11-12-2018, respondent no.2 passed impugned order. The same had been received at the end of petitioner under covering letter of even date. Pursuant to the same, petitioner had handed over the charge of the post he had held to vice president on the very next day.

8. In the application by respondent no.3, it had been alleged that president in his absence and in times of difficulties, gave charge to vice president for getting illegal work done through him. Trust had been reposed by the electors in the petitioner with a view to have development of the city, however, petitioner has been misusing his position. In the notice issued on 23-02-2017 for

general body meeting, 24 subjects were kept. The notice had been illegal and in contravention of the provisions of the Act. Comments of chief officer had not been called in respect of the subjects while comments ought to have been supplied along with agenda of meeting. Notice had not been issued as per the required format. Since meeting had been illegal, same had been hastily conducted and same had been shown to have been conducted and completed. Minutes of meeting had not been finalized for over 5-1/2 months and the period has been utilized for creation of record. Certain information / books had not been provided giving flimsy reasons. Holding of four meetings within a period of two hours had not been proper. There had been breach of provisions of section 81 of the Act. It had been alleged that petitioner had not conducted meetings as required under section 81(1) of the Act and certain breaches against concerned had also been alleged requesting to take action in accordance with section 55A and to act according to section 311 of the Act.

9. It appears that, collector has made a report in respect of events as occurred, stating that *prima facie*, it does not appear that an administrative action would be required and petitioner had been on leave for a period of five months and he had conducted one general body meeting on 04-03-2017 and the minutes have

been confirmed after seven months and, therefore, he is required to give explanation. In second report, while referring to earlier report, it has been opined that complaint does not appear to carry any substance.

10. Respondents no. 1 and 2 had issued show cause notice on 28-09-2018 and had referred to application by respondent no.3 and his request thereunder and had also referred to report of collector and had called explanation from petitioner.

11. The petitioner, it appears, had submitted his response on 20-11-2018, contending that the allegations are vague and also that during 08-05-2017 to 09-10-2017, he had been on leave and charge of the president's post had been handed over to vice president. He had also submitted certain documents in this respect. It had been purportedly explained that after election till 08-05-2017, major time had been consumed by code of conduct and no major financial work had been done during this period. Besides vague allegations, no material substantiating those had been produced. Vice president had signed proceedings of the meeting, the allegations imputed about there being delay in finalizing minutes of meeting, are not attributable to him. It has particularly been referred to that during the meetings on 04-03-2017, there had been no complaints whatsoever, not even

by respondent no. 3. Referring to that he was required to attend a meeting at Latur and one meeting of council on 04-03-2017 had to be skipped. It has particularly been referred to that decisions in meetings had been taken by majority. There had also been explanation in respect of holding of four meetings on 04-03-2017 and had referred to report. He also referred to section 81(1) and had given explanation on the same with reference to certain events. It has been specifically referred to that notice had not been received along with proper form and documents and that despite demand of documents, those have not been supplied to him, in order to file effective response, documents be given to him. It appears that he has also requested opportunity for evidence and had sought framing of issues. He had also demanded opportunity to make submissions and had requested to follow the principles of natural justice. It is referred to in the response that respondent no. 3 had submitted certain documents of 15-11-2018 and those are not supplied to petitioner. He had referred to certain citations along with submissions. On 24-11-2018, he had reiterated his submissions and had requested for documents and to follow the principles of natural justice and had also demanded time to file further explanation. Once again, he had reiterated his request under a reminder dated 06-12-2018.

12. It appears that, in the impugned order, respondent no. 2 has observed that hearing had taken place on 15-11-2018 in respect of the complaint against petitioner by respondent no.3 and he has purportedly referred to the submissions of parties. He has observed in paragraph no. 5 about petitioner going on leave for five months for personal reasons, is too long a period and the reason given for such long absence does not appear to be plausible. Since the notice had been given without comments by chief officer, meeting appears to have been arranged without consultation of the chief officer. Non-finalization of the minutes of general body meeting of 04-03-2017 for 7 months is a serious matter, giving an indication that petitioner is not performing his duties with due diligence. Holding of four meetings on 04-03-2017 and having 24 subjects for general body meeting and other important subjects in the other meetings on same day, without any reason despite the knowledge that petitioner was to attend meeting with the member of parliament at Latur was not proper. Clauses no. V and VI of reasons in impugned order are not attributable to the petitioner. In reason no. VII, it has been observed that minutes of the meeting dated 04-03-2017 ought to have been finalized within two months and the same could have been possible had the petitioner not proceeded on leave. However,

he had neither called for meeting nor finalized minutes of the general body meeting. It is referred to that Mr. Suryawanshi's lawyer had not brought attention to the aspects as appearing in response dated 20-11-2018. Clause VIII of reasons does not refer to petitioner.

13. During the course of hearing before this court, learned counsel for the petitioner has submitted that there is gross violation of principles of natural justice. Respondent no.2 has acted with alarming haste and has gone about the matter haphazardly without letting proper opportunity to the petitioner. The whole proceedings smack of political malafides. There is no reference whatsoever to the explanation tendered by petitioner on 20-11-2018. He submits that the petitioner had been on leave for five months to attend to his ailing father who eventually had succumbed to the sufferance. This although is purportedly sought to be questioned on behalf of respondent no. 3, yet, the factual position about sufferance of father of petitioner and yielding to the sufferance had not been denied.

14. Petitioner has relied on decision by learned Single Judge at Nagpur in the case of *Dr. Gazala Yasmeeen W/o Maruf Khan Vs. State of Maharashtra and others* (writ petition no. 4792 of 2018 dated 22-01-2019), particularly paragraph no. 15 thereof, to contend

that a directly elected President under section 51A-1A of the Act cannot be removed by the State government under Section 55A in absence of procedure prescribed under section 55 of the Act being followed.

15. Aforesaid submissions are being countered on behalf of the respondents, stating that the facts would speak for themselves. There are no holding of meetings as required under the provisions of the Act nor finalization of minutes of meeting as required under the rules. The explanation being given about code of conduct is untenable as report of the collector makes reference to that certain codes of conduct would not be applicable for day to day business of the municipal council or for taking financial decisions.

16. It is being submitted that the situation emerges that the petitioner has faltered in his duties and there had been neglect of duties and case is thus squarely covered by the contingencies referred to under section 55A of the Act. It is submitted that proper opportunity as required had been afforded to the petitioner which he had failed to utilize whiling away the same, initially challenging show cause notice and ought to have availed of opportunity of hearing. In such a case, it could not be stated that there had been breach of principles of natural justice.

17. The argument on behalf of petitioner in respect of decision rendered by learned Single Judge at Nagpur in the case of *Dr. Gazala Yasmeen W/o Maruf Khan Vs. State of Maharashtra and others* (supra) based on its paragraph no. 15 is unsustainable. It is further being referred to that decision by learned Single Judge in the case of *Dr. Gazala Yasmeen W/o Maruf Khan Vs. State of Maharashtra and others* (supra), would not be able to hold the situation since said judgment has been rendered in the absence of attention being drawn of learned Single Judge to a decision in the case of *Sunita Vilasrao Salukhe Vs. State of Maharashtra and others* reported in 2006 (3) *Mh.L.J.* 227, wherein it has been observed that the president can be removed pursuant to section 55A of the Act.

18. While submissions are as aforesaid on behalf of the parties, the situation emerges that application had been moved by respondent no.3 in August, 2017 in respect of the events primarily which have occurred before the petitioner had proceeded on leave and certain decisions being taken while he had been on leave. The application does not specify as to what are the irregularities or illegalities committed with imputation that there is non-observance of statutory provision under section 81 of the Act. The collector had submitted report once in November, 2017 and the other in July, 2018 opining that the allegations do not carry much

substance. While the respondent no. 3 purports to make certain allegations, it does appear that the show cause notice has apprised of same to the petitioner.

19. While the petitioner had made an attempt to challenge the show cause notice in a writ petition which had been pending, in the proceedings before respondent no.2 hearing was scheduled and there had been demand by petitioner for adjournment and opportunity to respond to the show cause notice, yet, it appears that with the situation of proceedings on the very first scheduled date, decision has been rendered.

20. In the intervening period from 15-11-2018 to 11-12-2018, in addition to response submitted on 20-11-2018 there are atleast two requests on behalf of the petitioner to afford opportunity of hearing and to supply certain documents, however, impugned order is grossly short of reference to the same. The observations of respondent no. 2 do show that those are in excess of imputations in the show cause notice nor does it reflect upon that there has been application of mind to the explanation tendered by petitioner on 20-11-2018 and/or to subsequent submission on 24-11-2018 and 06-12-2018. The order is deficient of consideration of contents of response submitted by petitioner although petitioner had been allowed to submit the same upon a

request made by him on 15-11-2018. Apart from that there is no reference to demands being made by petitioner for supply of documents or whether those were required to be attended to or why those would not be considered.

21. Removal of an elected person would be a serious matter as observed by supreme court in the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others* reported in *2012 AIR (SC) 1339* particularly, paragraph no. 48, to the effect that the duly elected member/chairman of the council could not have been removed in a casual and cavalier manner without strict adherence to the safeguards provided under the statute which had to be scrupulously followed. In present case, petitioner is a directly elected president and, as such, the matter of his removal will have to be approached with more care and seriousness.

22. Having regard to aforesaid, while the proceedings before respondent no.2 appear to have been rather hastily and haphazardly conducted, it would be expedient that petitioner is afforded opportunity to defend his case before the State government.

23. In view of the aforesaid, impugned order dated 11-12-2018 passed by respondent no.2 is set aside. The matter is

remitted to respondent no.2 and restored to its position as had been subsisting before 11-12-2018. Respondent no. 2 shall proceed with the matter as expeditiously as possible and dispose of the same preferably within a period of three (3) months from the date of receipt of writ of this order following principles of natural justice giving adequate opportunity to the parties concerned.

24. Learned senior counsel appearing on behalf of petitioner at this stage refers to judgment of learned single judge of this court in the case of *Sunita Vilasrao Salukhe Vs. State of Maharashtra and others* (supra), *albeit* the same had been cited by respondent no. 3, urging to pass similar order emphasizing paragraph no. 10 thereof. Paragraph no. 10 reads, thus,

*“ 10. It appears that the charge of the post of the president was taken away from the petitioner, consequent upon the impugned order of the minister dated 22-08-2005. Apparently, this charge was taken on 23-08-2005 i.e. one day prior to the order of status quo granted by this court in this writ petition. Since the disqualification is set aside, it is expedient in the interest of justice, to direct the respondents to reinstate the petitioner forthwith. Order accordingly. ”*

25. Having regard to that the impugned order is set aside, necessary consequences would follow.

26. Needless to refer to that observations appearing under this order are for the purpose of this writ petition and shall not

influence the decision making in the proceedings before respondent no. 2.

27. Parties to appear before respondent no. 2 on 05-04-2019, which shall obviate issuance of fresh notices to the parties concerned. Thereafter, the parties shall abide by the schedule given by respondent no. 2.

28. Writ petition is disposed of.

29. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]  
JUDGE

arp/