

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.6382 of 2016

Triveni Kuttarmare Vs. State of Maharashtra Through Its Secretary and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anjan De, Advocate for petitioner
Mr. B.M. Lonare, AGP for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 11, 2019

By this writ petition, the petitioner has challenged order dated 17/10/2016, passed by the respondent No.1 under Section 55(A) of the Maharashtra Municipal Councils and Nagar Panchayats and Industrial Township Act, 1965, whereby the petitioner was removed from the elected position of President of the Municipal Council, Wardha.

2. The aforesaid action of removal was taken against the petitioner in pursuance of a show cause notice issued on 08/07/2016, whereby two charges were levelled against her. Since action was taken against the petitioner only in respect of charge No.1, this Court is called upon to consider the challenge raised by the petitioner, only in respect thereof. The said charge levelled against the petitioner was that despite the requirement under Section 81(1) of the

said Act to hold meeting of the standing committee once in every two months, for a period of four months meetings were not called by the petitioner in the capacity of President of Municipal Council.

3. In respect of the said charge levelled against the petitioner, a report dated 01/07/2015 was on record submitted by the Chief Officer of the Municipal Council to the respondent - Collector wherein specific dates regarding ordinary and special meetings held during the tenure of the petitioner were mentioned. The respondent No.1 proceeded to pass the impugned order on 17/10/2016, holding against the petitioner by concluding that the said charge levelled against the petitioner was made out. The reasoning in the impugned order simply mentioned that the material available on record demonstrated that the meetings as required under Section 81 of the said Act were not conducted and that the petitioner had virtually admitted such wrong doing. On this basis, it was held that the petitioner was liable to be removed from the post of President of Municipal Council under Section 55-A of the said Act.

4. The learned counsel for the petitioner invited attention of this Court to Section 55-A of the said Act, contending that the President of the Municipal Council could be removed from the said elected post if it was found he / she had indulged in

misconduct in discharge of duties or negligence in performing them or that there was incapacity on the part of such person to perform his duty, apart from the ground that such a person had indulged in disgraceful conduct. It was submitted that the relevant material, including the aforesaid report of Chief Officer was not taken into account by the respondent No.1 while passing the impugned order. It was further submitted that perusal of Section 81 of the aforesaid Act would show that if for any reason meeting as contemplated under subsection (1) of Section 81 of the Act was not conducted, the Collector could call such a meeting and further that 1/4th of the total number of the Municipal Councillors could also cause special meeting to be called under subsection (2) of Section 81 of the said Act. It was submitted that even if it was to be assumed that the aforesaid charge was made out against the petitioner, it would not amount to a misconduct or disgraceful conduct inviting the order of removal under Section 55(A) of the said Act. It was submitted that consequences of such order were drastic and that by order of the State the will of majority of the people in electing the person stood cancelled. It was submitted that such power was to be exercised in a circumspect manner and that in the present case the order of removal was passed in a casual manner.

5. The learned counsel for the petitioner relied upon the judgment of this Court in the case of **Ravi**

Yashwant Bhoir Vs. District Collector, Raigad and Others (2012) 4 SCC 407, particularly, paragraphs Nos.61 and 62 thereof.

6. On the other hand, the learned AGP submitted that since conducting meeting of standing committee was a statutory requirement under Section 81 of the said Act, failure to perform such duty amounted to misconduct and that, therefore, respondent No.1 was justified in passing the impugned order.

7. A perusal of section 55(A) of the said Act would show that the respondent No.1 is supposed to exercise power under the said provision which has drastic consequences, after concluding that the President or Vice President of the Municipal Council had indulged in misconduct in discharge of duties or negligence in performing duties or having been incapacitated in performing such duties. It is also provided that such power can be exercised if the elected President or Vice President is found to be guilty of disgraceful conduct or misconduct. There is no doubt about the fact that if the President or Vice President is found to have indulged in such conduct, the State can certainly exercise power under Section 55(A) of the said Act. But, since the consequence of exercise of such power is drastic and it amounts to annulling the will of the people in electing such person,

sufficient material should be on record to make out either misconduct or disgraceful conduct on the part of such an elected person.

8. In the present case, the only charge on which the respondent No.1 proceeded against the petitioner was failure to conduct meetings for a continuous period of four months, which was in violation of the requirement of holding such meeting every two months under Section 81(1) of the said Act. The provisions of the said Act shows that if the President of the Municipal Council fails to call an ordinary meeting within the period specified in subsection (1) of Section 81, the Chief Officer shall report the matter to the Collector, who upon receipt of such a report shall call for such an ordinary meeting within 7 days. Therefore, it is evident that if such an ordinary meeting is not called within the stipulated period of time, the Collector could exercise powers to call such a meeting. Apart from this, subsection (2) of Section 81 of the said Act provides that a special meeting of the standing council can be called if at least $1/4^{\text{th}}$ number of councillors submit a written request to the President of the Municipal Council. Therefore, failure to conduct meeting within a period of two months can be taken care of by resort to sub-sections (1-A) and (2) of Section 81 of the said Act. The question for consideration is whether the conduct of the petitioner in the present case could be said to be of

such a grave nature that it would invite an order of removal under Section 55-A of the said Act, assuming that the charge was made out.

9. In this respect reliance placed by the learned counsel for the petitioner on the judgment of the Hon'ble supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others (2012) 4 SCC 407** (supra) is appropriate. The relevant portion of the said judgment reads as follows :

“61. In such a fact situation, the complaint filed by Respondent 5 could at the most be pressed into service as a material exhibit in order to collect the evidence to find out the truth. In the instant case, as all the charges proved against the appellant have been dealt with exclusively on the basis of documentary evidence, there is nothing on record by which the complainant could show that the general body meeting was not called, as statutorily required, by the appellant intentionally.

62. Not calling the meeting of the general body of the House may be merely a technical misconduct committed inadvertently in ignorance of statutory requirements. It is nobody's case that the appellant had done it intentionally / purposely in order to avoid some unpleasant resolution / demand of the Council. No finding of fact has been recorded either by the competent authority or by the High Court that some urgent / important work could not be carried out for want of general body meeting of the Council.”

10. Thus, it becomes clear that mere failure to conduct meeting would not be the kind of misconduct that could invite action under Section 55-A of the said

Act, unless it was further demonstrated that such failure to conduct meeting was intentional and deliberate. The consequences of the action under Section 55-A of the said Act being drastic, such safeguard appears to be necessary when a question arises regarding removal of an elected President of a Municipal Council.

11. Apart from this, in the facts of the present case, there is report submitted by the Chief Officer to the Collector which records the number of ordinary and special meetings of the Municipal Council conducted during the tenure of the petitioner. The said report does indicate that meetings were conducted frequently. This was certainly relevant while considering action contemplated under Section 55-A of the said Act against the petitioner. A perusal of the impugned order shows that no reference is made to the aforesaid material, further indicating the error committed by the respondent no.1 while passing the impugned order.

12. Hence, this Court finds that the impugned order passed by the respondent No.1 against the petitioner is unsustainable.

13. Consequently, the writ petition is allowed and the impugned order is quashed and set aside.

14. The learned counsel appearing for the petitioner informs this Court that although the tenure of the body in which the petitioner was the President was over, but, the petitioner was further aggrieved by the impugned order because apart from removing her from the post of President of the Municipal Council, she was held to be disqualified for further six years to hold the post of member of the Municipal Council. Therefore, this writ petition was heard on merits by this Court. The writ petition is disposed of in above terms.

13. Pending applications stand disposed of.

JUDGE