

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9669 OF 2018

1. Pravinkumar S/o Shashikant Pathak
2. Savita W/o Yograj Sandanshiv
3. Saleem Shaikh Chiragoddin Shaikh

Petitioners
(Original Respondents)

VERSUS

1. State of Maharashtra
2. The Hon'ble State Minister
3. District Collector, Jalgaon
4. Pushpalata Sahebrao Patil

Respondents
(Original Appellants)

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Mr. V.J. Dixit Senior Counsel i/b Mr. A.N. Nagargoje for the
Petitioners
Mr. A.M. Phule, AGP for Respondent Nos.1 to 3-State
Mr. A.B. Kale, Advocate for Respondent No.4

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CORAM : V. K. JADHAV, J.
DATED : 03rd March, 2020

ORDER :-

1. Heard finally with consent of the parties at admission stage.

2. By the instant petition, the petitioners are challenging the order dated 06.07.2018 passed by respondent no.2 thereby allowing the appeal filed by respondent nos. 4 to 26 and setting aside the disqualification order dated 29.01.2018 passed by respondent no.3. By order dated

19.12.2018, by consent of the parties, the petition is directed to proceed further only against respondent no.4, who is the directly elected President. In view of the same, the petitioners have deleted the name of respondent nos. 5 to 26 from the array of respondents.

3. Brief facts giving rise to the present writ petition are as follows:

(a) The petitioners and respondent nos.4 to 26 are the Councillors of Amalner Municipal Council. The Municipal Council consist of 35 elected Members including, directly elected President i.e. respondent no.4. Besides it, there are four co-opt Councillors. Thus the total strength is 39. The general elections were held in the month of November, 2016. It is the case of the petitioners that there are encroachments on various properties of the Municipal Council and the list of such encroachments came to be prepared by Municipal Council. By letter dated 30.03.2017, the President of Municipal Council asked the concerned Revenue Officer including Tahsildar, Chief Officer of Council and the Sub Divisional Officer to take appropriate steps for removal of encroachment. Again vide reminder letter dated 08.04.2017, respondent no.4/President again renewed her request for removal of encroachment. Pursuance to the said communication, the

Sub Divisional Officer, Amalner, vide letter dated 30.04.2017 directed the Chief Officer of the Municipal Council to take appropriate steps for removal of encroachment. Even the Chief Officer of Municipal Council, vide letter dated 06.04.2017, sought the police protection for removal of encroachment scheduled on 17.04.2017. In the said letter, list of the persons, who made encroachment was also mentioned. Pursuance to the said letter, the P.I. of Police Station, Amalner, vide its letter dated 13.04.2017 informed to the Chief Officer that necessary police protection will be provided on 17.04.2017.

(b) According to the petitioners, however, surprisingly, by passing Resolution dated 11.04.2017 in the meeting of Standing Committee of the Council, it has been resolved to stay the action of removal of encroachment except the encroachment as referred at Serial Nos. 14 and 16 to 24 of the letter dated 06.04.2017. According to the petitioners, there was no such Agenda of the meeting and by taking the subject at 11th hours; the said Resolution has been passed. By passing Resolution No.57, the action of removal of encroachment has been stayed by the Standing Committee. As per the petitioners, the Standing Committee has no such authority and it cannot pass such

Resolution. Respondent no.4 herein and other Councillors are also parties to the said Resolution. According to the petitioners, in order to justify the action taken in the Standing Committee meeting dated 11.04.2017, some of the respondents/councillors made an application dated 13.04.2017 to respondent no.4 for calling the special meeting of the Municipal Council for discussion on Resolution no.57, passed by the Standing Committee. Though, no such special meeting can be called to discuss the Resolution passed by the Standing Committee, however, just to protect the encroachers, the said action was taken and in pursuance to that, the special meeting was called by issuing notice dated 13.04.2017. The special meeting was scheduled on 15.04.2017. However, the time schedule was not followed and in pursuance to the said notice, special meeting was scheduled on 17.04.2017, which was attended by respondent no.4 and all the other Councillors, who are the respondents in the present petitions.

(c) Accordingly, in the said meeting, Resolution No.119 came to be passed thereby resolving to stay the encroachment removal action scheduled on 17.04.2017. The present respondent no.4 is the party to the said Resolution along with other Councillors. On the same day

i.e. on 15.04.2016, Respondent no.4/President directed the Chief Officer to act upon the said Resolution and submit the compliance report. According to the petitioners, the said act of respondent nos.4 to 26 is fully covered by the provisions of Section 44 (1) (e) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965. Since, they have protected the encroachers. In view of the said provisions, the respondents are disqualified. Respondent no.3, vide judgment and order dated 29.01.2018, allowed the complaint filed by the petitioners and disqualified respondent no.4 and other Councillors, who were impleaded as respondents in this petition.

(d) Being aggrieved by the same, respondents had preferred an Appeal before the State Government. However, by impugned order dated 06.07.2018, respondent no.2 partly allowed the said Appeal and quashed and set aside the order passed by respondent no.3 and remitted the matter back to respondent no.3 for decision on the points referred in the impugned order. Hence this writ petition.

4. Learned counsel for the petitioners submits that the findings recorded by respondent no.2 are perverse and

contrary to the evidence on record. Respondent no.2 has misconstrued the provisions of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (hereinafter referred to as "Act of 1965") and thereby arrived at a wrong conclusion. Learned counsel submits that in terms of the provisions of Section 2(7) of the Act of 1965, the "Councillor" means a person duly elected as a Member of the Council, directly elected president including nominated Councillor. Learned counsel submits that in view of the same, respondent no.3 has jurisdiction to decide the issue of disqualification as contemplated under Section 44 (1) (e) of the Act of 1965. Respondent No.3/Collector is the Competent Authority to decide the issue of disqualification. Learned counsel submits that the provisions of Sections 55A and 55(B) are applicable, in the event, if the disqualification is sought on the ground of misconduct etc. and in terms of the said provisions, the State Government is empowered to remove the President, Vice President and Councillor, as the case may be. Learned counsel submits that in the present matter, the disqualification is not sought on the ground of misconduct and therefore, there is no question of referring the matter to the State Government. Learned counsel submits that so far as the provisions of Section 44(1) (e) of the Act of 1965 are concerned, it provides that the disqualification of the Councillor

during his term of office on various ground including the ground as mentioned in clause (e), which is squarely applicable to the facts and circumstances of the present case. Learned counsel submits that respondent no.2 has misinterpreted the Judgment of this Court in the matter of **Ramesh Gangadhar Korde Vs. The State of Maharashtra & Ors.** reported in 2006 (1) ALL MR 774. Learned counsel submits that the disqualification proceedings, which are independent proceedings, if the concerned Members incurs disqualification as provided under the Act. However, respondent no.2 has not considered all these aspects and erroneously passed the order, impugned in this writ petition. Learned counsel submits that respondent no.2 being the State Minister has no power to decide the Appeal and the power lies with the Cabinet Minister. Learned counsel submits the quasi-judicial powers cannot be delegated. Learned counsel submits that the action of respondent no.4 along with other Councillors is in violation of the provisions of Section 44 (1) (e) of the Act of 1965 and therefore, the learned District Collector has rightly disqualified the respondent no.4 and other Councillors. Learned counsel submits that despite the earlier directions given by respondent no.4/President about the removal of encroachment, the said action of removal of encroachment in respect of the commercial properties has been stayed and the action in

respect of the residential properties was not stayed. Thus, the said act itself shows the malafide intention on the part of respondent no.4. Learned counsel submits that thus the impugned order passed by respondent no.2 is liable to be quashed and set aside and the order passed by respondent no.3 dated 29.11.2018 may be confirmed.

5. Learned counsel for the petitioners, in order to substantiate his contention placed reliance on the following cases:

(i) **Gazala Yasmeen Vs. State of Maharashtra** reported in 2019 (3)Mh.LJ 325

(ii) **Ramdas Bhikaji Darade Vs. The Hon'ble Minister of State & Ors.** reported in 2009 (4) Mh.LJ 436

(iii) **Sampada Yogesh Waghdhare Vs. The State of Maharashtra and Ors.** reported in 2019 (6) SCALE578.

6. Learned counsel for the respondents submits that respondent no.4 is not guilty of any misconduct. In the given set of facts, the provisions of Section 44 (1) (e) of the Act of 1965 are not attracted. Respondent no.4 and other Councillors have not illegally constructed any structure or made any encroachment on public property or the property of the Municipal Council. Learned counsel submits that the action for disqualification initiated against respondent no.4 was misconceived. The said action was motivated by malafide and

vengeance. Learned counsel submits that respondent no.4 and other Councillors have always supported the action for removal encroachment and illegal construction in the city. There was no reason for them to obstruct the drive of removal of illegal and unauthorized construction. Though, drive was scheduled on 17.04.2017, however, under the compelling circumstances, the said drive was required to be deferred for certain period only. The special general body meeting was convened on 15.04.2017 and the Resolution No.119 was passed. The removal of encroachment was temporarily stayed considering the law and order of the city. Learned counsel submits that during the period from 08.04.2017 to 14.04.2017, the Government decided to celebrate and observe "Samajik Samata Saptaha". In addition to this, there was "Sangarsha Yatra" of all opposition political party and the said Yatra was to enter in Amalner City on 16.04.2017. Furthermore, there was celebrations of "Yatra Utsav of Shri Sant Sakharam Maharaj Vithal Rukhmini Sansthan" during the period from 28.04.2017 to 20.05.2017. Thus, considering the law and order situation and safety of the citizens, the respondents decided to stay the drive of removal of encroachment. Even on 03.04.2017, few residents had made representations to the Chief Officer for threatening self immolation. The people were sensitive on the issue of removal of encroachment. The action for removal of

encroachment was required to be taken by considering all aspects. Therefore, with a bonafide intention the respondent no.4 along with other Councillors passed the Resolution for temporary staying the said drive. Learned counsel submits that immediately, after the grave situation of law and order was over, Agenda was issued on 20.05.2017 and a special meeting was convened on 23.05.2017. The Resolution No.172 was passed and stay granted to the drive of removal of encroachment came to be vacated. Learned counsel submits that the provisions under which the disqualification order came to be passed, it is clear that the disqualification cannot be attracted against respondent no.4 in terms of the provisions of Section 44 (1) (e) of the Act of 1965. Learned counsel submits that the only mode provided by the Act for removing the President is Section 55-A and no proceedings have been taken by the State Government under Section 55-A for removal of respondent no.4. Learned counsel submits that Section 44 does not provide for removal of the President. The issues have already been dealt with by this Court in Writ Petition No.5558 of 2005 reported in 2006 (1) BCR Page No.121. Learned counsel submits that there is no merit in this writ petition and the writ petition is liable to be dismissed.

7. Learned counsel for respondent no.4, in order to substantiate his contentions placed reliance on the following cases:

(i) **Sunita Vilasrao Salukhe Vs. State of Maharashtra** reported in 2006 (1) Bom. C.R. 121

(ii) **Ramdas Bhikaji Darade Vs. Honble Minister of State & Ors.** reported in 2009 (3) Bom. C.R. 695.

(iii) **Dhananjaya Reddy: Vanaja: Nagaraj Kodappa Vs. State of Karnataka** reported in 2001 DGLS(SC) 440.

(iv) **Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.** reported in 2012 DGLS(SC) 143.

(v) **Mangal Meharprakash Narayankar Vs. The State of Maharashtra & Ors.** in Writ Petition No.10999 of 2018 decided on 03.10.2018.

8. I have also heard the learned AGP appearing for Respondent Nos.1 to 3-State.

9. In terms of newly amended provisions of Section 51A-1A, every Council shall have a President, who shall be elected by the persons whose names are included in the Municipal voters list prepared under Section 11. The Section 51A-1A reads as follows:

“(1) After the date of commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils,

Nagar Panchayats and Industrial Townships (Amendment) Act, 2016, in respect of the General elections to the Council, subject to the provisions of section 51-1A, every Council shall have a President who shall be elected by the persons whose names are included in the municipal voters list prepared under section 11.

(2) Every person qualified to be elected as a Councillor under section 15 shall be qualified to be elected as a President at an election.

(3) Elections of the President shall be held simultaneously with the general elections of the Council and the procedure regarding holding of elections to the Council shall, *mutatis mutandis*, apply to such election.

(4) If at an election, no President is elected, a fresh election shall be held to elect a President, and if there is a failure to elect a President at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected Councillors from amongst themselves.

(5) Any person elected under sub-section (4) or (7) shall be deemed to be duly elected at an election under this section.

(6) If, in the election of the President, there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election Commissioner or the officer appointed by him for the purpose.

(7) If, during the term of the elected Councillors, there is a vacancy in the office of the President due to any reason, the same procedure as provided in sub-sections (1) to (6) shall apply and such President shall remain in office only for the remainder of the term, for which his predecessor would have remained in office but for such casual vacancy:

Provided that, if a vacancy occurs, which is within six months prior to the date on which the term of office of the elected Councillors expires, the same shall be filled in by election from amongst the elected Councillors.

(8) In case of a dispute regarding election of the President, the provisions of section 21 shall, *mutatis mutandis*, apply.

(9) The Collector shall convene first general meeting of the Council within twenty-five days from the date on which the name of the President and the elected Councillors is published in the Official Gazette after the general election of the Council and the President. The nomination of the Councillors under clause (b) of sub-section (1) of section 9 shall be made in the prescribed manner in this meeting.”

In the instant case, respondent no.4 is directly elected President in terms of the provisions of Section 51A-1A of the Act of 1965.

10. Section 55A of the Act of 1965 provides for removal of the President and the said powers vests in the Government.

Section 55A of the Act of 1965 reads as follows:

“ 55A. Removal of President and Vice-President by Government
Without prejudice to the provisions of section [55-1A] and 55, a Resident 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 Councillors:

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.

11. So far as the provisions of Section 44 (1)(e) of the Act of 1965 are concerned, the said provisions has contemplated disqualification of Councillor during his term of office. Though, the term of Councillor includes directly elected president, however, the only mode provided by the act for removing the President is contemplated under Section 55-A of the Act of 1965. The relevant part of Section 44 (1) (e) of the Act of 1965 reads as follows:

“ 44. Disqualification of Councillor during his term of office:

(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he -

(a)

(b)

(c)

(d)

(e) has constructed or construct by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorized construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure.”

12. In a case of Sunita Vilasrao Salukhe Vs. State of Maharashtra & Ors. (Supra) relied upon by the learned counsel for respondent no.4, this Court (Coram: S.A. Bobde, J.) in paragraph nos.7, 8 & 9 has made the following observations:

“7. The only mode provided by the Act for removing the President is section 55-A. Obviously, no proceedings have been taken by the State Government under section 55-A for removal of the petitioner. The proceedings taken by the Collector under section 44 must be held to be void since a Councillor alone can be disqualified under that section. The section does not provide for removal of the President.

8. It is clear that the petitioner could not have been disqualified as a Councillor under section 44, nor could her disqualification be upheld under section 55 without any proceedings having been taken against her under the later section. The impugned disqualification is violative of the statutory scheme in view of the well-settled principle of law reiterated by the Supreme Court in (Dhananjaya Reddy v. State of Karnataka) 1, 2001 (Supp. 2) Bom.C.R. (S.C.) 597: A.I.R. 2001 S.C.W. 1217 in the following words:

9. Peculiarly, the learned Minister has, while upholding the disqualification of the petitioner under section 44, which could not have been done, has purported to confirm that order under section 55-A which is clearly impermissible. In effect, what has happened therefore is that proceedings which are without jurisdiction, qua a President, have been confirmed in purported exercise of power which enables the State Government to remove the President of a Municipal Council under that provision. In this view of the matter, it is clear that the petitioner

must succeed and her disqualification and its subsequent confirmation by the impugned order of the State Government must be held to be illegal. Order accordingly.

13. In a case of Ramdas Bhikaji Darade Vs. Honble Minister of State & Ors. (Supra) wherein this Court (Coram: Mohta Anoop V., J.), by referring the aforesaid case of Sunita Vilasrao Salukhe Vs. State of Maharashtra & Ors. (Supra) has held that the provisions of Section 44 as invoked, for disqualification of President and whole action as initiated is void and impermissible.

14. In a case of Mangal Meharprakash Narayankar Vs. The State of Maharashtra & Ors. decided by this Court in Writ Petition No.10999 of 2018 on 03.10.2018, wherein, the Division Bench has also dealt with the provisions of Section 2(7) along with Sections 44 and 55A of the Act of 1965 and in paragraph No.7 has made the following observations:

“7. Respondent no.4 is elected as President directly by the voters within the municipal area under section 55A-1A of the Act of 1965. It is true that the directly elected President is a Councillor within meaning of section 2(7) of the Act. It is also true that according to section 51A-1A, every person qualified to be elected as Councillor under Section 15 of the Act shall be qualified to be elected as the President. Qualifications attributable to the President for being elected as the President are the same qualifications prescribed for getting elected as Councillor of the Municipal Council. Though, to the extent of

ineligibility to get elected as the President, section 16 of the Act would be relevant, however, for removal of the elected President during continuance of his tenure, recourse to Section 44 of the Act cannot be taken and an application tendered to the Collector seeking removal of the elected President cannot be maintained. Secondly, an application under section 55A of the Act tendered to the State Government can also be maintained on the grounds referred to under section 55A of the Act. It would be open for the voters or the contesting candidate to impeach the election of the President on the grounds referred to under section 51A(1-A) of the Act. In the instance matter, no such course appears to have been adopted by the petitioner.”

15. The aforesaid three cases are directly applicable to the facts and circumstances of the present case. It is constantly held by this Court and even the Division Bench of this Court that so far as the removal of President is concerned, the only mode provided by the Act is Section 55-A. It is also held that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed.

16. In a case of *Gazala Yasmeen Vs. State of Maharashtra* (Supra) relied upon by the learned counsel for the petitioners, the issues altogether different pertaining to the removal of directly elected President in terms of the

provisions of Section 55-A without following the procedure as contemplated under Sections 55-1(1), 55-1(2) and Section 55-1(3) of the Act of 1965. Thus, the ratio laid down in this case is not applicable to the facts and circumstances of the present case.

17. Similarly, the other cases relied upon by the learned counsel for the petitioners are mainly on the provisions of Sections 55-A and B of the Act of 1965, those are not helpful to the petitioners so far as the facts and circumstances of the present case.

18. So far as the case of Sampada Yogesh Waghdhare Vs. The State of Maharashtra & Ors. (Supra) relied upon by the learned counsel for the petitioners, the same pertains to the disqualification of the Councillor, who was later elected as a President of the Municipal Council, under Section 44 (1) (e) of the Act of 1965. However, the Supreme Court had no occasion to deal with the provisions of Section 55-A of the Act of 1965. It appears from the tenor of judgment that the appellant's status as a Municipal Councillor was considered in terms of the provisions of Section 44 (1)(e) of the Act of 1965.

19. In view of the discussion above and in terms of the ratio laid down by this Court and Divisions Bench, respondent no.4 could not have been disqualified as Councillor under Section 44 of the Act of 1965. It further appears that no proceedings have been taken by the State Government under Section 55-A for removing of the President. The Hon'ble Minister has, therefore, rightly quashed and set aside the order passed by the Respondent/Collector and further directed to submit proposal, if any, for removal of respondent no.4, directly elected President after due compliance with the relevant provisions of the Act. I find no fault in the impugned order passed by the Hon'ble Minister. There is no substance in this writ petition and the same is liable to be dismissed. Hence, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby dismissed.

(V. K. JADHAV, J.)

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