

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7717 OF 2020

Sahel Bin Amer Chaus,
Age : 58 years, Occu. Ex-President,
Majalgaon Municipal Council,
Dist. Beed,
r/o. Raj Galli, Majalgaon,
Tq. Majalgaon,
Dist. Beed

..Petitioner

Vs.

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032
2. The Collector,
Office of Collector at Beed
3. Smt. Suman Manikrao Munde,
Age : 58 years,
Occ. Vice-President,
Majalgaon Municipal Council,
Dist. Beed
r/o. Bhagyashree Nivas,
Samta Colony, Majalgaon,
Tq. Majalgaon, Dist. Beed
4. Sub Divisional Officer,
Majalgaon

..Respondents

Mr.V.D.Sapkal, Senior Advocate i/b. Mr.Sayyed Tauseef Yaseen, Advocate
for petitioner

Mr.K.B.Jadhavar, AGP for respondent nos.1, 2 and 4

Mr.V.D.Salunke, Advocate for intervenor

**CIVIL APPLICATION NO.7486 OF 2020
IN
WRIT PETITION NO.7717 OF 2020**

Shaikh Manjur Shaikh Chand Sab	..Applicant
Vs.	
Sahal Bin Amer Chaus and ors.	..Respondents

Mr.V.D.Salunke, Advocate for applicant
Mr.V.D.Sapkal, Senior Advocate h/f. Mr.Sayyed Tauseef Yaseen,
Advocate for respondent no.1
Mr.K.B.Jadhavar, AGP for respondent nos.2, 3 and 5
Mr.V.D.Salunke, Advocate for intervenor

**CORAM : R.G. AVACHAT, J.
(Vacation Court)**

DATE : NOVEMBER 09, 2020

ORAL JUDGMENT:-

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, the petition is taken up for final hearing at admission stage.

2. The petitioner was directly elected President of Majalgaon Municipal Council, Beed. Since he remained absent from the Municipal area for a period exceeding three months i.e. from 04.03.2020 at a time without obtaining a leave from the Municipal

Council for his absence, the Collector Beed, vide his order dated 28.06.2020, held the the petitioner to have ceased to hold the office of the President of Municipal Council, Majalgaon. The record indicates the petitioner to have been granted an opportunity of hearing, before the Collector passed the order dated 28.06.2020. It was the order passed under Section 56(3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 Act ("the Act of 1965", for short.

Sub-section (4) of Section 56 of the Act of 1965 provides for a remedy of appeal to the State Government. Instead of resorting to the remedy of appeal, the petitioner filed Writ Petition (4942 of 2020). This Court disposed of the said Writ Petition vide its order dated 07.10.2020 as withdrawn, with liberty to the petitioner to prefer an appeal under Section 56 of the Act of 1965. The petitioner preferred appeal to the Hon'ble Minister on 13.10.2020. It appears that there was delay of 90 days in preferring the appeal. No application for condonation of delay was preferred along with the appeal.

3. It appears that the Collector, Beed, vide order dated 21.10.2020, declared the programme for election to the post of President, Municipal Council, Majalgaon, the vacancy that arose due to the petitioner being declared to have ceased to hold the office of President. As per the election programme, the election is to be held by 12.30 p.m. today i.e. on 09.11.2020. It appears that after the election programme was declared, the petitioner moved the Division Bench of this Court, seeking direction to Hon'ble Minister to decide the appeal at the earliest i.e. before the scheduled election programme is over. Learned AGP had, on 06.11.2020, made a statement before the Division Bench of this Court, that "today the hearing has taken place before the Hon'ble Cabinet Minister and the decision would be taken either today or by tomorrow". As per the statement made, Hon'ble Minister who is seized of the appeal, vide order dated 06.11.2020, turned down the application for stay of the order of the Collector dated 28.06.2020, holding the petitioner to have ceased to hold the office of the President, Municipal Council. This is how, the petitioner is before this Court.

4. Heard Mr.Sapkal, learned Senior counsel for the petitioner and Mr.Jadhavar, learned AGP for respondent nos.1 and 2. Mr.Salunke, learned counsel, has preferred an application for intervention. Without deciding his locus to intervene in the matter, the Court allowed him to make a few submissions to assist the Court in this matter.

5. Mr.Sapkal, learned Senior counsel for the petitioner, would submit that there were compelling circumstances for the petitioner to remain absent from the Municipal area. The petitioner has been arrested in connection with a crime and was lodged in a prison at Beed. According to learned Senior counsel, the words “absents himself” appearing in Section 56(1) of the Act, were subject of interpretation in many a decisions of this Court and other High Courts as well. In support of his contentions, learned Senior counsel has relied upon following three authorities:-

i) Bhaskar Atmaram Joshi Vs. State of Maharashtra and ors., AIR 1976 Bombay 206;

ii) Sajjan Narayanrao Salunke Vs. State of Maharashtra and ors., (2004)1 All.M.R. 893

iii) Shaik Ahamed Vs. The Deputy Commissioner, Chitradurga and anr., (1992)1 KantLJ 316.

Learned Senior counsel has also relied upon following observations of the Apex Court in the case of **Ravi Yashwant Bhoir Vs. Direct Collector, Raigad and ors., (2012)4 SCC 407:-**

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

32.

33.

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35.

36. *In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/ electoral college is also deprived of representation by the person of their choice.*

Learned Senior counsel would further submit that the Hon'ble Minister has not given reasons for rejecting the application for stay. According to him, every such action may be informed by reason and it follows that an act un-informed by reason is arbitrary. He would further submit that if a strong reason is made out, a judicial authority is under an obligation to pass ad-interim order. It cannot be observed that no such order can be passed since the main appeal is still pending. According to him, the petitioner is a victim of political circumstances. The absence from the Municipal area was due to the reasons beyond his control. The order of the Collector declaring him to have ceased of holding the office is, therefore, bad in law. The petitioner has been

elected by the voters. He has every right to continue to hold the office until his statutory term is over. Learned Senior counsel, therefore, urged for allowing the Writ Petition.

6. Learned AGP read out the order of the Collector dated 28.06.2020 and submitted the same to be well reasoned and in accordance with law.

7. Mr. Salunke, learned counsel appearing for the intervenor, took me through the chronology of the events to submit that the petitioner has *prima facie* no case to challenge the impugned order. The petitioner even did not prefer an application for condonation of delay occurred in preferring appeal to the State Government. He supports the impugned order.

8. I have considered the submissions advanced on behalf of the respective parties. Perused the petition, documents filed in support thereof and the citations relied upon.

9. The petitioner has been declared to have ceased to hold the office of President on account of his absence from the Municipal area for a period exceeding three months at a time, without leave

granted by the Municipal Council. True, the Division Bench of this Court in the case of **Bhaskar Joshi** (supra) has held that the term “absented himself” means kept himself away or stayed away. It presupposes an intentional act. Absenting himself cannot denote deliberation, something positive in the attitude of the person whose conduct in not being present is the subject of consideration. The facts of the said case indicate that the petitioner therein was detained under MISA. The detention was preventive in nature and not punitive.

10. The petitioner in this case had been arrested in connection with two crimes registered against him, alleging him to have misappropriated the Municipal funds reserved for development of roads and other works. Learned Senior counsel may be right in submitting that the petitioner may be presumed to be innocent until held guilty. It is true that in the case of **Sajjan Salunke** (supra), learned single Judge of this Court found the petitioner therein to have been unable to remain present in the meeting of the Council on account of he having been behind the bars in connection with registration of a crime against him.

11. In the present case, the petitioner ceased to hold the office of President since 28.06.2020. In his absence, the Vice-President might have held the post of President. The Collector declared the election programme to elect the successor in office of the petitioner. The election is scheduled by 12.30 p.m. today i.e. 09.11.2020. It is only after the election programme was declared, the petitioner appears to have got momentum to seek stay to the order holding him to have ceased to hold the office, and to stall the election of his successor in office. Hon'ble Minister, vide order dated 06.11.2020, observed that the petitioner did not prefer appeal within the period of limitation. In view of the Hon'ble Minister, it was necessary to find whether the petitioner had been given a reasonable opportunity of hearing before the Collector passed the order dated 28.06.2020. Hon'ble Minister found the petitioner to have had not handed over the charge of the post of President to the Vice-President, during his absence from the Municipal area. It appears that Hon'ble Minister has not considered the grounds raised by the petitioner, which compelled him to be behind the bars or to have been out of the Municipal Council's area for

a period exceeding three months at a time. The fact that the petitioner was behind the bars on account of his involvement in two crimes registered against him for his alleged involvement in misappropriation of funds leads me to *prima facie* observe that this is because of the situation of his own creation.

12. Needless to mention that the observations made herein above are *prima facie* in nature. Hon'ble Minister is required to decide the appeal on its own merits and uninfluenced by above observations. The relief of granting stay is discretionary in nature. In the backdrop of the entire scenario, I am not inclined to interfere with the impugned order and the schedule of election to elect the successor in office of the petitioner that is to take place within an hour or two.

13. In view of the above, the Writ Petition is disposed of in terms of the following order:-

- (i) The Hon'ble Minister, Urban Development Department, Maharashtra State, Mantralaya, Mumbai, shall decide Appeal No. एमयुएन-5620/प्र.क्र. 123/नावि-15, within a period of two months from the date of receipt of copy of this order.

- (ii) The process to elect the President i.e. successor in office of the present petitioner, which is scheduled to be held today i.e. 09.11.2020, pursuant to the election programme dated 21.10.2020 declared by the Collector, Beed, may go on, but result of the same shall be subject to decision of the appeal to be decided by the Minister.
- (iii) Rule is made absolute accordingly.

14. Civil Application No.7486 of 2020 for intervention, stands disposed of.

[R.G. AVACHAT, J.]

kbp