

CWP No.10771 of 2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

CWP No. 10771 of 2020

Date of Decision: November 11, 2020

Smt. Rubina

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Sr. Addl. A.G., Haryana.

Mr. Rajesh Lamba, Advocate
for respondents No.3 to 8.

AUGUSTINE GEORGE MASIH, J.

Petitioner has challenged the order dated 20.07.2020 (Annexure P-18) passed by the Additional Chief Secretary, Government of Haryana, Urban Local Bodies Department – respondent No.2, removing her from the post of President of Municipal Committee, Punhana, District Nuh, exercising the powers under Section 22 of the Haryana Municipal Act, 1973 (hereinafter referred to as '1973 Act') being illegal, void, without jurisdiction, unjust and arbitrary.

2. Petitioner was elected President of the Municipal Committee, Punhana, District Nuh, in the year 2016. She had been performing her duties sincerely and honestly. An Announcement No.10758 was made by the

Chief Minister, Haryana, on 03.12.2015, relating to carrying out the development works of the Municipal Committee. In pursuance thereto, a resolution was passed by the Municipal Committee, Punhana, on 16.03.2016 (Annexure P-3) that the rasta/passage along the bank of U.P. Canal, passing through Ward Nos.2, 9 and 15, be made pucca by laying interlocking tiles. This kacha rasta/passage along the bank of U.P. canal, is in existence prior to the partition and is now a dry abandoned canal with no vegetation and is out of use for the last about 40 years. It lies within the limits of Municipal Committee, Punhana, but as per the revenue records i.e. jamabandi for the year 2012-13, ownership of U.P. Government is recorded over Khasra Nos.52 to 54. It is asserted that since the land, on which the proposed work for laying the interlocking tiles was to be carried out, was shown in the revenue record as ownership of U.P. Government, the Secretary and Municipal Engineer, Municipal Committee, Punhana, wrote to Zildar, Upper Division, Agra Canal, Palwal, to take the formal approval from the authorities of the State of Uttar Pradesh. A communication dated 04.04.2016 (Annexure P-5) was received from the Zildar, which indicated that the U.P. Government did not have any objection. Estimates were prepared, which was duly sent to the Competent Authority and after getting the technical and other sanction from the Chief Engineer, Department of Urban Local Bodies, Haryana, the work was carried out by the Municipal Committee, Punhana. The relevant documents with regard to the grant of sanction have been appended as Annexure P-4. Requisite permissions were, thus, sought by the Municipal Committee from the Director of Technical

and Administrative Branch of the Department of Local Bodies, Haryana.

This exercise was carried out prior to the execution of the work.

3. After a period of almost two years, a complaint was submitted to the Chief Minister, Haryana, by Councilors/Members of the Municipal Committee, dated 26.03.2018 (Annexure P-6) against the petitioner and the other officials of the Municipal Committee, with primarily three allegations made therein. First being regarding construction of Mubarak Chaupal, second regarding construction of boundary-wall of Ambedkar Park and third regarding laying of interlocking tiles on the bank of U.P. canal. The said complaint was marked to the Sub Divisional Commissioner (Civil), Punhana, for enquiry, who submitted his report on 12.04.2019 (Annexure P-7), where all allegations against the petitioner and officials of the Municipal Committee, were found to be factually incorrect and against the records.

4. Similar complaint was again submitted by four members of the Municipal Committee against the petitioner as well as four officials of the Municipal Committee. This was again enquired into by the Sub Divisional Officer (Civil), Punhana, who submitted his report on 22.01.2020 (Annexure P-10), where allegations were found to be incorrect against the petitioner and the officials of the Municipal Committee except that it was mentioned that the work of interlocking tiles, which has been carried out on the bank of U.P. canal, has been so done without obtaining 'no objection certificate' from the Competent Authority. It has also been concluded that this work of laying interlocking tiles has been done in public interest and for their convenience.

5. On the same complaint, a third Enquiry Officer was appointed on 05.02.2020 i.e. the Additional Deputy Commissioner, Nuh, who, in his report dated 17.03.2020 (Annexure P-11), submitted that no allegation of any fraud or embezzlement of the Municipal Committee's funds has been found to be correct but the sanction, which has been obtained by the Municipal Committee, is from the Zileadar, U.P. Agra Canal, Palwal/Assistant Engineer, Agra Canal and not from the Competent Authority of U.P. Government i.e. the Irrigation Department. On this basis, petitioner was found guilty to the extent that the work of laying interlocking tiles has been carried out on the bank of canal owned by the Government of Uttar Pradesh and the payment has been approved by the petitioner for the work done.

6. On the basis of this report dated 17.03.2020, a show cause notice dated 27.05.2020 (Annexure P-12) was issued to the petitioner by the Additional Chief Secretary, Department of Urban and Local Bodies, Haryana, for removal from the post of President, Municipal Committee, Punhana. Reply to this show cause notice was filed by the petitioner on 22.06.2020 (Annexure P-13) asserting therein that all the requisite sanctions and approvals have been taken and granted by the Competent Authorities prior to laying the interlocking tiles along the U.P. canal, including permission from the authorities of U.P.

Although the President exercises general control over the working of Heads of Department and passes orders on all matters that may be referred through the Executive Officer and the Secretary of the

Municipal Committee it was asserted that the concerned person, carrying out the engineering and building work as per the Haryana Municipal Business Bye-laws, 1981 (hereinafter referred to as '1981 Bye-laws') is the Municipal Engineer of the Engineering and Building Department of the Municipal Committee and therefore, petitioner cannot be held responsible for his acts and conducts. There was staring hurry shown by respondent No.2 for granting the petitioner opportunity for personal hearing, for which she was called upon to appear on 07.07.2020 despite she having given birth to a child on 09.06.2020 and was advised bed-rest and she was not in a position to travel. A request (Annexure P-14) was, therefore, made by her for a subsequent date but respondent No.2 did not heed to her request and wrote a letter to her for personal hearing through video conferencing on 08.07.2020 (Annexure P-15). As the petitioner was unable to appear, she requested that her counsel may be permitted to appear on her behalf, who appeared and put forth her case before respondent No.2. Thereafter, impugned order dated 20.07.2020 (Annexure P-18) was passed by respondent No.2 removing the petitioner as President of the Municipal Committee, Punhana, exercising the powers under Section 22 of the Haryana Municipal Act, 1973. It is this order, which has been challenged by the petitioner in the present writ petition.

7. The grounds which have been taken for challenge to the order are that the 'no objection certificate' for laying the interlocking tiles along the bank of U.P. canal had been obtained from the Zildar, Agra Canal, Palwal, i.e. 04.04.2016 (Annexure P-5) and dated 28.11.2019 (Annexure P-9) and no 'no objection certificate' has been obtained/taken from the

Irrigation Department of U.P. State, which cannot be made the basis for removal of an elected President exercising the powers under Section 22 of 1973 Act, especially when it has been found that the procedure, as prescribed under the said Act and the Rules applicable, has been followed and necessary sanctions obtained, with no fraud, embezzlement misappropriation of Municipal funds having been found against the petitioner. The fact of non-obtaining of sanction from the Competent Authority, although not admitted, even if accepted to be correct, the action of respondent No.2 removing the petitioner from the post of President is not sustainable in the light of the law settled by the Hon'ble Supreme Court in the case of **Tarlochan Dev Sharma Vs. State of Punjab & others** {(2001) 6 Supreme Court Cases 260}, where, while dealing with Section 22 of the Punjab Municipal Act, which is *pari materia* to the provisions of the Haryana Municipal Act, 1973, the Hon'ble Supreme Court has explained the term 'abuse of powers' and held that it cannot mean use of power which may appear to be simply unreasonable or inappropriate, it implies a willful abuse or an intentional wrong and a single incident does not attract Section 22 of the Act. On this basis, the order dated 20.07.2020 (Annexure P-18) is said to be illegal.

Assertion has been made that the area along the U.P. canal falls within the Municipal limits of Punhana, which being kacha, was causing great inconvenience to the residents of the area and keeping in view this aspect, resolution dated 16.03.2016 (Annexure P-3) had been passed for making it pucca by laying interlocking tiles in view of the fact that various

representations for making it pucca were received from the residents of the area.

A ground has also been pressed that the requisite permission was sought by the Municipal Committee from the Director of Technical and Administrative Branch of the Local Bodies, Haryana, due estimates were prepared and sent for approval and after getting technical and other sanction from the Competent Authority, the work was got conducted by the Municipal Committee. With regard to the payment made and the quality of work, no finger has been pointed/raised in any of the three enquiries. Referring to Haryana Municipal Business Bye-laws, 1981 (hereinafter referred to as '1981 Bye-law') concerning carrying out of the engineering and building works, it has contended that the Engineering and Building Department of the Municipal Committee is headed by the Municipal Engineer as per Bye-law 2 (1) (ii). Petitioner being President, as per Bye-law 44, was only exercising general control over the working of the Heads of the Department, as defined in Bye-law 2 (1) of the 1981 Bye-laws.

Assertion has also been made that earlier, the Additional Deputy Commissioner, Punhana, had himself got the paver work done along the pavement of the canal but at that time, no objection, as has now been taken, stood raised. Discrimination, therefore, has been pressed into service by the petitioner. *Mala fides* have been alleged against respondent No.2 as undue haste has been shown by the said respondent while proceeding against the petitioner especially when she had given birth to a child in the hospital on 09.06.2020 and her request for postpone of personal hearing had not been

accepted, rather personal hearing from her bed through video conferencing was being sought to be arranged vide letter dated 08.07.2020 (Annexure P-15). Prayer has, thus, been made for setting aside the impugned order dated 20.07.2020 (Annexure P-18).

8. Short reply to the writ petition has been filed by respondents No.1 and 2 by way of an affidavit of the Under Secretary, Urban and Local Bodies Department, Government of Haryana, justifying the order of removal. Para-wise reply to the writ petition has not been filed. It has been asserted that on receipt of the report of Additional Deputy Commissioner, Nuh, dated 17.03.2020 (Annexure P-11), wherein it was found that the interlocking tiles work on the canal owned by the Government of Uttar Pradesh had been carried out by the Municipal Committee, Punhana, under the Presidentship of the petitioner and payments have been made for the said work having been proved, huge loss of funds stood incurred to the Municipal Committee, Punhana. Since the petitioner is the custodian of public funds and entrusted with responsibility, being a public representative, to ensure proper utilization of the financial resources meant for public welfare, the action of the petitioner was found to be an act of 'misuse of power', which falls within the ambit of Section 22 of the 1973 Act and therefore, the power has been rightly exercised by respondent No.2.

Reference has been made to Clause XIII.4 of Municipal Accounts Code, 1930, according to which all tenders are opened in the presence of the President of the Committee. On the recommendation of the Municipal Engineer, tenders are accepted and the President and other

Officers or Chairman of the sub-committee sign the said tender. On this basis, it is observed that the petitioner cannot escape from the responsibility as President of a Municipal Committee, for monitoring various works being carried out by the staff of the Municipal Committee. No explanation has been given by the petitioner with regard to the execution of work beyond jurisdiction without obtaining 'no objection certificate' from the Competent Authority of the U.P. Government. On this basis, it is asserted that the said work of laying interlocking tiles was carried out with *mala fide* intention leading to escalation of value of properties abutting the rasta/passage giving undue advantage to the property owners out of the Municipal funds.

As regards the Chief Minister's Announcement No.10758, dated 03.12.2015 (Annexure R-1), it is asserted that it was a general announcement for carrying out development works amounting to Rs.5 crores within the municipal limits of Municipal Committee, Punhana. At no point of time, mention of construction of road on the bank of canal owned by Government of Uttar Pradesh be constructed out of the said amount, was made. The work has been recommended by the Municipal Committee, Punhana, with the petitioner being the President and thereafter, sending the estimates without verifying the facts about ownership of the land, where the work of laying the interlocking tiles was executed, is unjustified. This was all being done with a *mala fide* intention for giving undue benefit to the owners of the properties in the vicinity of the rasta/passage on the bank of the U.P. canal for escalating the rates of the properties by passing the resolution of the Municipal Committee and thereafter, the estimates for according administrative approval have been all approved and signed by

the petitioner.

The funds received on the basis of the Chief Minister's announcement are to be utilized for the works to be carried out in public interest. The Municipal Committee, Punhana, was required to utilize the said funds for development works within the Municipal area. No work could be carried out on a property which was not owned by the State. To this extent, laying of interlocking tiles on the bank of canal owned by the State of Uttar Pradesh is clearly an unlawful activity. It has been asserted that the action has been initiated against the officials of the Municipal Committee, Punhana and they have been placed under suspension and charge-sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016, vide order dated 24.05.2020. Prayer has, thus, been made for dismissal of the writ petition.

9. No separate reply has been filed by respondents No.3 to 8.

10. Learned senior counsel appearing for the petitioner has referred to the facts of the case as have been mentioned above and asserted that the findings, which have been recorded by all the three Enquiry Officers, substantiate a fact that there has not been any embezzlement of funds by the petitioner nor has the quality of work been found to be compromised in any manner. Out of the three basic allegations, which had come forth in the complaint, two were outrightly rejected to be without any basis and it is with regard to the laying of interlocking tiles along the U.P. canal that an irregularity has been pointed out, which is limited to non-obtaining of 'no objection certificate' from the Competent Authority of Government of Uttar

Pradesh. It is, on this basis, opined that the payments made for this work are unjustified putting the responsibility upon the petitioner for the same. This, the learned senior counsel for the petitioner contends, is totally unjustified.

The factum that the rasta/passage was being used by the general public on the bank of the U.P. canal, which was kacha and causing lot of inconvenience for the users of the said rasta/passage, stands acknowledged and accepted by all the enquiry officers. The necessity for laying the interlocking tiles for removing the inconvenience to the public at large has also not been faulted with. Sanction from the Competent Authority of the Government of Haryana for carrying out the work has also been admitted and therefore, the petitioner cannot be held liable for the work which has been carried out especially when it has been found upto the standard. It is asserted that the rules and regulations have been properly followed. The Competent Authorities have looked into the matter in detail with reference to the proposals, which have been sent by the Municipal Committee as also the estimates, which on consideration, have been found to be in order, therefore, merely because the 'no objection certificate' has been obtained from a wrong department and not from the Irrigation Department of the Government of Uttar Pradesh, cannot be said to be an act, which would fall within the ambit of term 'abuse of power', as mentioned in Section 22 of the 1973 Act, for removal of the President from the said office. It is asserted that this is the only allegation against the petitioner as also the single incident. The honesty and integrity of the petitioner although questioned has not been found to be shattered as no funds have been found to be

siphoned out.

Learned senior counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in Tarlochan Dev Sharma Vs. State of Punjab & others {(2001) 6 Supreme Court Cases 260}, where the language used in the Punjab Act is almost identical as that of the State of Haryana, while dealing with the expression 'abuse of powers' in the context and setting of the language, it has been said that use of power may appear to be simply unreasonable or inappropriate. An honest though erroneous exercise of power or an indecision is not an abuse of power. The abuse of power must be of such a nature, which would render the President unworthy of holding the office. It is, thus, asserted that the impugned order dated 20.07.2020 (Annexure P-18) on this score deserves to be set aside.

It is asserted that the impugned order has been passed in rushing haste without taking into consideration the reply which has been filed by the petitioner and the explanation submitted by her. No time has been granted to the petitioner despite her ill-health ignoring the aspect that she had given birth to a child. Video conferencing was ordered to be arranged instead of accepting her request for postponement of personal hearing, which shows that the order has been passed by respondent No.2 in a hurry denying the petitioner due opportunity to explain her stand to the extent that she was forced to seek the assistance of the counsel to put forth her submissions before respondent No.2. Prayer has, thus, been made for setting aside the impugned order dated 20.07.2020 (Annexure P-18).

11. On the other hand, learned Senior Additional Advocate

General, Haryana, has taken the Court through the enquiry report dated 17.03.2020 (Annexure P-11) submitted by the Additional Deputy Commissioner, District Nuh and on that basis, he has justified the impugned order by asserting that the funds of the Municipal Committee have been wasted by constructing the path on the land which is not of Municipal Committee nor is it owned by the Government of Haryana rather it is in the ownership of Government of Uttar Pradesh. The work, therefore, being carried out on the land of different State and that too, without obtaining 'no objection certificate' from the Competent Authority of that State would amount to abuse of powers within the term of Section 22 of the 1973 Act and therefore, action taken against the petitioner being in accordance with law and by following the relevant provisions of the statute, cannot be faulted with. Learned counsel asserts that shelter is being sought to be taken from Chief Minister's Announcement No.10758, dated 03.12.2015 (Annexure R-1), which does not refer to the said path, which has been got constructed by the petitioner. It is a general announcement that an amount of ₹ 5 crores for urban and ₹ 10 crores has been granted for rural development works for Punhana Assembly Segment. Petitioner has misused the Chief Minister's announcement to make the basis for carrying out the construction work of interlocking tiles on the land, which belongs to the State of Uttar Pradesh. Assertion has also been made that once the work has been carried out on the land, which does not belong to the State of Haryana, it is apparent that the State funds has been mis-utilized and misused leading to loss to the Municipal Committee. Therefore, the petitioner cannot

absolve herself of the responsibility especially when all the documents have either been approved by her or signed by her. Prayer has, thus, been made for dismissal of the writ petition.

12. Counsel for respondents No.3 to 8 has also referred to the fact finding reports. He has also asserted that the action of the petitioner is laced with *mala fides* as she intentionally wanted to help the property owners along the U.P. canal by laying interlocking tiles on the bank of U.P. canal. The said aspect has also been found to be correct and made the basis for passing the impugned order, which cannot be faulted with. Counsel has, therefore, prayed for dismissal of the writ petition.

13. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and the documents which have been attached.

14. The admitted facts are that three enquiries have been held with regard to the allegations made against the petitioner. In none of the enquiry reports, embezzlement and siphoning of the municipal funds have been found nor has the quality and quantity of work been found to be compromised. It is also not disputed that a resolution has been passed by the Municipal Committee, Punhana, dated 16.03.2016 (Annexure P-3) for laying the interlocking tiles along the U.P. canal passing through Ward Nos.2, 9 and 15. This resolution is stated to have been passed in pursuance to the Chief Minister's Announcement No.10758, dated 03.12.2015 (Annexure R-1), which according to the State was general announcement for carrying out the development works within the Punhana Assembly

Segment. The resolution along with the work cost estimate and the other detailed aspects were duly forwarded to the Competent Authority of the Government of Haryana for consideration and approval. Sanction was granted by the Competent Authority. It is, on receipt of the technical and administrative sanction granted by the Competent Authority that the Municipal Committee, Punhana, proceeded to carry out the work of laying the interlocking tiles along the U.P. canal.

15. The allegation which ultimately boils down to, as per the enquiry reports, is that the land belongs to the State of Uttar Pradesh, upon which the said work of interlocking tiles has been carried out, for which 'no objection certificate', which has been sought to have been obtained, is not from the Competent Authority of that State.

16. The factum that the work, which has been carried out after due sanction by the Competent Authority of the Haryana Government, is of good quality as per the standards and is as per the request, need and requirements of the residents of the area and for public convenience, stands admitted. Stand of the petitioner is that the officials of the Municipal Committee had approached the Zileadar, Upper Division, Agra Canal, Palwal, for obtaining the approval for construction of the interlocking tiles along the bank of U.P. canal, which admittedly is not in use, lying abandoned and dry for almost 40 years with no vegetation. It is not the case of the respondents that the canal has been filled in the process and then the rasta/road has been made pucca by laying the interlocking tiles, rather it is admitted that the tiles have been laid on the bank adjacent to which the land

of the Municipal Committee, Punhana, is situated especially when the U.P. canal falls within the Municipal limits of the Committee. Except for this stretch of canal, the land on both sides of this canal is of Haryana. It is also not in dispute that the beneficiaries of the said rasta/passage would be the residents of the Municipal Committee, Punhana and in the absence of this interlocked passage, it was a dusty/kacha bumpy passage causing lot of inconvenience and hardships to the residents. The passage being beneficial to the residents of the Municipal Committee, Punhana, cannot be said to be with any ulterior motive except for betterment of the residents of the Municipal Committee, Punhana, for providing them convenience for commuting. The benefit, if any, of the road is, therefore, to be reaped by the residents of State of Haryana and not by the State of Uttar Pradesh or its residents.

It would not be out of way to mention here that the State of Uttar Pradesh has not raised any objection with regard to laying the interlocking tiles on the bank of U.P. canal, which is owned by it and understandable so as the adjacent land on both sides of the canal does not belong to State of Uttar Pradesh. Further, it is an unused, dry and abandoned canal. The communications on record, dated 04/05.04.2016 (Annexure P-5) and dated 28.11.2019 (Annexure P-9) would show that the State of Uttar Pradesh, especially the concerned Department of Canal and irrigation, has specifically said that the Department has not raised any objection on making the path pucca at the spot on the bank of canal from the date of execution of the work i.e. 2016 till 2019 when the communication

(Annexure P-9) was received as no harm has been caused to the bank of the canal nor will it cause any hindrance to the flow of water. There being no encroachment made on the internal structure of the canal and by construction the said passage on the bank of the canal, no loss has been caused to the Department and it is for convenience of the people that these tiles have been laid down, which is being used by general public. This communication dated 28.11.2019 (Annexure P-9) received from the Zileadar, 3rd Upper Division, Agra Canal, Palwal, was in reference to the letter dated 04/05.04.2016 (Annexure P-5), which leads to the clear conclusion that the Government of Uttar Pradesh did not have any objection with regard to the construction/laying of interlocking tiles on of the said passage and its use by the general public.

17. Bye-laws 2, 41 and 44 of The Haryana Municipal Business Bye-laws, 1981, which are applicable and relevant for this case, read as follows:-

“2. Definitions (Section 31)- (1) In these bye-laws, unless the context otherwise requires,-

(a) "Act" means the Haryana Municipal Act, 1973.

(b) **"Head of the Department" means -**

(i) in respect of the Sanitation, Public Health and Health Departments of a Committee, the Municipal Medical Officer of Health;

(ii) **in respect of the Engineering and Building Department of a Committee, the Municipal Engineer;**
and

41. Duties of Municipal Engineer, [Section 31 (b) and

(i)].- (1) The Municipal Engineer shall be incharge of the Engineering and Building Department. He shall be responsible for house connections of filtered water supply system, road lighting, water meters, municipal lands and properties, machinery, plants and stores and shall maintain registers and stock books laid down in the Municipal Accounts Code and the Municipal Works Rules.

(2) He shall be responsible for the preparation of estimates and execution of all works according to the provisions of the Municipal Accounts Code and the Municipal Works Rules.

(3) He shall ensure that all cases of unauthorised constructions and encroachments are detected and reported in time for action.

44. President. [Section 31 (f)].- The President shall exercise general control over the work of Heads of Departments and shall pass orders on all matters that may be referred to him through the “Executive Officer or the Secretary”.”

The aspect which cannot be ignored is that the petitioner, although being President, is exercising the general control over the working of Head of the Department and pass order in all matters that may be referred

to her through the Executive Officer or the Secretary, as laid down in Bye-law 44 of the 1981 Bye-laws, but as per Bye-law 2 (1) (b), Head of Department, in relation to Engineering and Building Department of a Committee, is the Municipal Engineer. Under Bye-law 41, duties of the Municipal Engineer have been culled out, he is Incharge of the Engineering and Building Department and is responsible for house connections of plants and stores and shall maintain registers and stock books laid down in the Municipal Accounts Code and the Municipal Works Rules. Responsibility for preparation of estimates and execution of all works according to the provisions of Municipal Accounts Code and the Municipal Works Rules is also upon the Municipal Engineer.

If that be so, it was the responsibility of the Municipal Engineer to have looked into the resolution passed by the Municipal Committee, Punhana, dated 16.03.2016 (Annexure P-3) as to whether the same could be given effect to or not and to check all aspects relating to the proposed passage along the U.P. canal passing through Ward Nos.2, 9 and 15, which was being sought to be made pucca by laying interlocking tiles. He was required to look into the fact as to whether the area in question falls within the Municipal limits or not and further, whether proper permission/sanction and that too from the Competent Authority, stands obtained or not, in case the land is not owned by the Municipal limits. Petitioner, merely because she has signed the documents which have been duly put to her with proper recommendations by the Officer, who have been assigned duties as per 1981 Bye-laws, cannot be held liable.

18. Reference has also been made to Clause XIII.4 of the Municipal Accounts Code, 1930, in the impugned order dated 20.07.2018 (Annexure P-18), which reads as follows:-

“XIII.4. Acceptance of tenders. - All tenders shall be opened by the Municipal Engineer at the time and place specified in the notice issued under the provisions of rule XIII.2 in the presence of the President or a Vice-President of the committee, and the Municipal Engineer shall thereafter submit to the President or other officer or sub-committee authorised by the committee in this behalf all the valid tenders received by that date, together with his recommendation as to which tender should be accepted and the President, other officer or Chairman of the sub-committee shall sign the tender or tenders which he or it considers should be accepted, in token of such acceptance.”

This deals with the acceptance of the tenders, as it says that all tenders have to be opened by the Municipal Engineer in the presence of the President of the Municipal Committee and it is after that, the Municipal Engineer submits to the President valid tenders received by that date together with his recommendation as to which tender should be accepted and it is thereafter, the President signs the tender. On this basis, responsibility is being said to be foisted upon the petitioner. As stated above, as per Bye-law 41, it is the duty and responsibility of the Municipal

Engineer to ensure that the provisions of the Municipal Accounts Code, 1930 and the Municipal Works Rules are duly followed. Reliance, therefore, on this Clause XIII.4 of the Municipal Accounts Code, 1930, for making the petitioner responsible, is misplaced.

19. The ground which has been taken in the impugned order dated 20.07.2020 (Annexure P-18) to conclude that the work, which has been carried out by the petitioner is with a *mala fide* intention to help the owners of the property of a particular locality/area, is also without any basis or evidence on record. Merely because, complainant has alleged that by constructing this passage, the value of the property abutting the said passage would result in escalation giving undue advantage to the owners of the properties out of the Municipal funds, the allegations could not be said to be proved. If this reason, which has been given by respondent No.2, is accepted and that too, without any evidence being on record showing/establishing the benefit being given to a particular person(s) in this manner then, no development work would and could be carried out anywhere. It is known to one and all and it is not a secret that wherever public amenities improve, escalation of the value of the properties of the said area and abutting thereto, takes place. Being a representative of the public, President of the Municipal Committee, is mandated and required to act for the benefit of the public at large and as stated above, construction of this passage has been found to be for the benefit of the public and not merely the residents of the particular locality. Therefore, the allegation that the petitioner had acted with a *mala fide* intention, is without any

justification and basis.

20. Now coming to the power of the State Government under Section 22 of the 1973 Act, under which the impugned order dated 20.07.2020 (Annexure P-18) has been passed. The said section reads as under:-

“S.22- Removal of President of Vice-President – The State Government may, at any time, by notification, remove a President or Vice-President from his office on the ground of abuse of his power or of habitual failure to perform his duties.

Provided that no removal of the President or Vice-President shall be notified unless the matter has been enquired into by an officer, not below the rank of an Extra-Assistant Commissioner, appointed by the State Government and the President or Vice-President, as the case may be, has been given a reasonable opportunity of being heard or there is a finding by the competent court in this regard.”

A perusal of the above would show that the State Government may remove the President at any time on the ground of abuse of power or of habitual failure to perform his/her duties. Of course, after holding an enquiry by an Officer, not below the rank of Extra-Assistant Commissioner appointed by the State Government and giving reasonable opportunity of being heard or if there is a finding of the Competent Court in this regard, a

President of the Municipal Committee can be removed. The Government, thus, could have acted against the petitioner only in three circumstances, first being abuse of power, second being habitual failures to perform her duties cast upon her and third on a finding by the Competent Court with regard to the earlier two grounds.

The Hon'ble Supreme Court, while dealing with Section 22 of the Punjab Municipal Act, which is *pari materia* to the provisions of the Haryana Municipal Act, 1973, has dealt with the term 'abuse of power' in *Tarlochan Dev Sharma's* case (supra), where, in para 11, it has been held as follows:-

“11. The expression “abuse of powers” in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councilor unworthy of holding the office of President. In as much as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is “abuse of his powers or habitual failure to perform his duties”. The use of plural - powers, and the setting of

the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase “abuse of powers” must take colour from the next following expression - “or habitual failure to perform duties”. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is “abuse of powers” within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.”

A perusal of the above would show that even if by any stretch of imagination, it is assumed that the petitioner was responsible to verify the Competent Authority of Government of Uttar Pradesh, from whom the sanction was to be obtained but without such verification proceeded to get the sanction from some other authority, the same could, at best, be said an erroneous or inappropriate decision, which would not an abuse of power. As per the admitted facts, the officials of the Committee did seek sanctions from the authority of the State of Uttar Pradesh, which was incompetent according to the enquiry report, this would, not in any manner, reflect upon the petitioner to have abused the power conferred on her.

21. The Hon'ble Supreme Court, had said in the context of term 'abuse of power' to be such which would render a Councilor unworthy of

holding the office of President. It is not in dispute that this is the only single instance, where petitioner has been alleged to have acted without due caution and care, which would not be a ground for holding the petitioner guilty of abuse of power nor would it fall within the term of habitual failures to perform duties as it would require multiple failures to perform duties for invoking this power. Present is not such a case and therefore, the power which has been exercised by respondent No.2 while passing the impugned order dated 20.07.2020 (Annexure P-18) cannot be said to be in accordance with the statute and the law.

22. In view of the above, the present writ petition is allowed and the impugned order 20.07.2020 (Annexure P-18) having been passed and being in violation of the provisions of Section 22 of the Haryana Municipal Act, 1973, is hereby set aside.

November 11, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No