

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

WRIT PETITION NO. 10212 OF 2021

Premlata Parmeshwar Topge
Age : 45 years, Occ. Household
R/o Omerga, Tq. Omerga,
District Osmanabad.

PETITIONER

VERSUS

1. The State of Maharashtra
Through Hon'ble Minister,
Urban Development Department,
Mantralaya, Mumbai.
2. Hansraj Annarao Gaikwad
Age : Major, Oc. Business,
R/o Omerga, Tq. Omerga,
District Osmanabad.
3. Govind Dinkar Ghodke
Age : Major, Occ. Business,
R/o as above.
4. Shilpa Akash Shinde,
Age : Major, Occu. Business,
R/o As above.
5. Pandharinath Kashinath Kone,
Age : Major, Occ. Business,
R/o As above.
6. Sunandabai Gulab Warwate,
Age : Major, Occu. Business,
R/o As above.

7. Rajeshwari Nagesh Swami,
Age : Major, Occ. Business,
R/o As above.

8. Irappa Bhimsu Ghodake,
Age : Major, Occ. Business,
R/o As above.

9. Anusaya Shankar Nagde
Age : Major, Occ. Business,
R/o As above.

10. Rubina Azruddin Attar,
Age : Major, Occ. Business,
R/o As above.

(Respondent Nos.3 to 10 deleted as
per Court order dated 15/9/2021)

11. Sanjay Vasantrao Pawar,
Age : Major, Occ. Business,
R/o As above.

12. Santosh Baburao Sagar,
Age : Major, Occ. Business,
R/o As above.

13. Pratibha Tanaji Chavan,
Age : Major, Occ. Business,
R/o As above.

14. Jayashir Sanjaykumar Chavan,
Age : Major, Occ. Business,
R/o As above.

15. Balaji Machindra Patil,
Age : Major, Occ. Business,
R/o As above.

16. Arun Nagnathrao Igave,
Age : Major, Occ. Business,
R/o As above.

(Respondent Nos.12 to 16 deleted as
per Court order dated 15/9/2021)

17. The District Collector,
Osmanabad, District Osmanabad.

18. The Chief Officer,
Municipal Council, Omerga,
District Osmanabad.

RESPONDENTS

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Mr.V.D.Sapkal,Senior Advocate i/b Mr.L.C.Patil,Advocate for the petitioner
Mr.D.R.Kale Government Pleader, for respondent State
Mr.N.P.Patil Jamalpurkar, Advocate for respondent nos.2 and 11
Mr.PD.Bachate,Advocate for respondent no.18.

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**WITH
CIVIL APPLICATION NO. 26970 OF 2021
IN WRIT PETITION NO. 10212 OF 2021**

1. Santosh s/o Baburao Sagar,
Age : 45 years, Occu. : Business,
R/o Omerga, Tq. Omerga,
Dist. Osmanabad

2. Arun s/o Nagnathrao Igve,
Age : 42 years, Occ. Business,
R/o As above

3. Irrappa s/o Bhimsu Ghodke,
Age : 36 years, Occ. Business,
R/o As above

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Hon'ble Minister,
Urban Development Department,
Mantralaya, Mumbai-32

2. The District Collector, Osmanabad,
Tq. & Dist. Osmanabad

3. Chief Officer,
Omerga, Tq. Omerga,
Dist. Osmanabad

4. Premlata w/o Parmeshwar Topge,
Age : 45 years, Occ. Household,
R/o Omerga, Tq. Omerga,
Dist. Osmanabad

RESPONDENTS

.....

Mr.S.S.Gangakhedkar, Advocate for Applicant-Intervener

Mr. D.R.Kale, G.P. for Respondent-State

Mr.VD.Sapkal,Senior Advocate i/b Mr.L.C.Patil,Advocate for the Respondent
No. 4

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CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 07/10/2021

JUDGMENT PRONOUNCED ON : 14/10/2021

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioner was a directly elected President of Municipal Council, Omerga. He is challenging decision of the State Government taken under

Section 55(1) and 55A, 55B of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter the Act) and disqualifying her from becoming a Councillor for a period of 6 years.

3] On a complaint dated 27.10.2020 of some of the Councillors made to the respondent Collector, regarding various misdeeds of the petitioner, the Collector Osmanabad appointed a committee headed by Chief Officer of the Municipal Council Kallamb to enquire into the allegations, by his order dated 31.12.2020. The committee conducted an enquiry and submitted its report on 27.03.2021. In turn the Collector Osmanabad by his letter dated 3.6.2021 forwarded the report to the State Government soliciting appropriate action. The State Government served a notice to the petitioner in response to which she submitted her reply and thereupon the impugned order was passed holding her guilty of following acts which can be broadly described as under :

[i] Misusing the powers under Section 58(2) of the Act for misappropriating amount by awarding tenders without following the prescribed procedure.

[ii] Failure to undertake technical inspection and quality check in respect of the works that were undertaken exceeding the expenditure of Rs. 10 lakh.

[iii] In spite of resolution passed by the Municipal Council appointing two persons as law officers was

cancelled by the Collector, allowed them to illegally continue to function.

[iv] Floating tenders, awarding contracts and making payments without following the Government orders.

4] The learned senior Advocate Mr. V.D.Sapkal for the petitioner at the outset fairly concedes that though in the grounds averred in the petition a dispute is raised regarding applicability of the provisions of Sections 55(1) and 55(1)(3) of the Act, he is not pressing that issue and there is no illegality in invoking those provisions while passing the impugned order.

5] Taking a leaf out of these very provisions, the learned senior Advocate submits that since a drastic action of removal of directly elected President was being sought to be taken, the provisions should be strictly applied and necessary steps ought to have been taken within the time frame provided for in this provision. He would point out that sub Section 2 of Section 55(1) requires the Collector to undertake an enquiry into the charges and complete it within a month from the date of receipt of the requisition. He would further submit that according to the proviso to Sub Section 2 such enquiry cannot extend beyond the period of 3 months and even for such extended period a prior assent of the State Government is necessary. He

would further point out that according to Sub Section 3 the Collector has to record a finding and forward it to the Government. He would therefore, point out that in the present matter the Collector had received the complaint on 27.10.2020 but, the enquiry was not concluded within the stipulated period of one month. No assent was obtained from the Government since the enquiry was extending beyond the period and he submitted the report to the Government on 3.6.2021. Again the Collector himself did not undertake any enquiry and had appointed a committee. Even if he had taken help of such a committee in enquiring into the allegations, he should have applied his mind and should have come to a conclusion before forwarding it to the Government. He would submit that the Collector has simply forwarded the report without application of mind and based on such report to which the Collector had not recorded any finding, the impugned order has been passed. It clearly defies the statutory mandate and is illegal for this reason alone.

6] The learned senior Advocate submits that the Supreme Court in the case of Ravi Yashwant Bhoir V/s The Collector, District Raigad and others; (2012) 4 SCC 407 has elaborately considered the scope and ambit of the very same provisions. If the State Government was to take a drastic action of non sitting the petitioner who was a directly elected President, which has the

consequence of not only depriving her of completing her turn but, even disqualifies her for being elected as a Councillor for next six years, the procedure ought to have been strictly followed. In support of his submissions he particularly referred to the observations of the Supreme Court in paragraph No. 28.

“28 In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the 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 his choice. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like ‘No Confidence Motion’ etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

7] Mr. Sapkal would further, referring to the decision in the case of *Ravi Bhoir* (Supra), submit that the impugned decision has been reached without recording any reasons. He would submit that the alleged acts do not constitute misconduct inasmuch as accepting the allegations which are stated to have been proved, all these actions were the result of a consensus in the

form of resolutions passed by the Municipal Council. He would further point out that even according to the initial report forwarded by the Collector, except one charge, the rest of the charges clearly demonstrate that apart from the petitioner, the Chief Officer, other officers and even some Councillors were responsible. Thus, according to the learned senior Advocate, if the alleged actions were the result of a consensus in such a form, the petitioner alone could not have been held to have committed the misconduct.

8] By referring to the interpretation of the word “misconduct”, in the decision of *Ravi Bhoir* (Supra) the learned Advocate would submit that the alleged actions attributed to the petitioner would not fit into the definition of misconduct as interpreted therein.

9] Mr. Sapkal would then submit that neither the communication dated 3.6.2011 forwarded by the Collector to the State Government nor the impugned order demonstrates, any application of mind by the authorities independently. They are absolutely devoid of any reasonings. Simply by referring to the report forwarded by the Collector in few lines directly findings have been recorded holding the charges to have been proved. Again by referring to the decision in the case of *Ravi Bhor* (Supra) Mr. Sapkal would

submit that since a drastic action of removal of a directly elected President was being proposed, it was highly imperative for not only the Collector but, even for the State Government to have recorded reasons for arriving at the conclusions to which they have. In the absence of such reasonings, the impugned order does not fit into and constitute any adjudication which the law expects to be before taking drastic action of the nature taken against the petitioner.

10] The learned Government Pleader supported the order.

11] The learned Advocate Mr. N.P. Patil-Jamalpurkar for the respondent Nos. 2 and 11 referring to the affidavit in reply of the respondent Sanjay Vasantrao Pawar submitted that since the petitioner was a directly elected President, her conduct ought to have been above board. Though the provisions require the Collector to conduct an enquiry, the provision has to be understood pragmatically. No fault can be found with him if he has appointed a committee to conduct the enquiry. After such committee conducted the enquiry he has forwarded it which implies that he has subscribed to the conclusions drawn by it. It is not expected of him to have recorded reasons for arriving at any conclusion. He would then submit that even the State

Government after extending an opportunity to the petitioner of being heard has recorded the findings by upholding the conclusions drawn by the committee. There is no error or illegality. The principles of natural justice have been duly observed. Apart from the proved misconduct, the petitioner has indulged in rampant misappropriation and misdeeds and audit is still to be conducted. In view of such rampant misappropriation she is not entitled to continue to hold the seat. He would cite the following decisions :

- 1] Biecco Lawrie Ltd. And Anr. V/s State of W.B. and Anr; AIR 2010 S.C.142
- 2] State of Manipur and Ors. V/s Y.Token Singh and Ors; AIR 2007 SC (Supp) 145
- 3] Municipal Corporation of the City of Ahmedabad V/s Ben Hiraben Manilal; AIR 1983 SC 537
- 4] Rameshchandra S/o Shankarlal Saboo (Dr.) V/s State of Maharashtra and ors; 2002(4) Mh.L.J.892
- 5] Kishore Samrite V/s State of Uttar Pradesh and others; (2013) 2 SCC 398
- 6] Union of India V/s Jyoti Prakash Mitter; AIR 1971 S.C. 1093.
- 7] Kewalbai Dattu Aurade V/s State of Maharashtra and others in Writ Petition No.3753/2016 (Coram T.V.Nalawade,J.) dated 20/10/2016
- 8] Sau.Yojna Bharat Mali V/s The State of Maharashtra and others in Writ Petition No.10961/2014 (Coram : Ravindra V. Ghuge,J.) dated 22/12/2014.

12] Mr. Gangakhedkar learned Advocate for the interveners who have filed Civil Application (Stamp) No. 26970 of 2021 would also support the impugned order of the State Government. He submitted that he would subscribe to the arguments advanced by the learned Advocate Mr. N.P. Patil-Jamalpurkar. In addition, he would submit that earlier the petitioner had filed Writ Petition No. 7595 of 2021 in this Court questioning the show-cause notice issued to her in the very same matter. In that proceeding she had practised fraud upon this Court by falsely submitting that she was suffering from Covid-19 when in fact she had actually signed bills during the period during which according to her she was suffering. This was noted by the Division Bench in its order dated 12.7.2021 and if such is her conduct of practicing fraud, this Court should also follow the course that was followed in the case of *Sau. Yojana Mali* (Supra). Relying upon the decision in the case of *Kishor Samrite* (supra), he would point out that the allegations against the petitioner regarding misappropriation and misdeeds were not the subject matter in Criminal Writ Petition 580 of 2020 of this Court and there is categorical observation made in that proceeding that the audit that was undertaken would only report that the Clerks and Cashier had misappropriated the fund of the Municipal Council, but, even the President

that is the petitioner herein was actively involved. Some record to that effect was also produced before the Division Bench and it is thereafter that it had directed the special audit to be undertaken and completed within the time frame. Therefore, there is no escape from the conclusion that the petitioner has been guilty of the misconduct.

13] The learned Advocate Mr. Gangakhedkar would then point out that the initial audit report dated 16.4.2019 is sufficient to reach a conclusion about misappropriation by the petitioner by misusing the powers under Section 58(2) of the Act.

14] I have carefully considered the rival submissions and minutely perused the papers.

15] To begin with, a President can be removed for a misconduct or a disgraceful conduct. As can be seen from the order under challenge, the petitioner has not been found guilty of any disgraceful conduct albeit the learned Advocates Mr. N.P.Patil-Jamalpurkar and Mr. Gangakhedkar as also learned Government Pleader tried to castigate the alleged misconduct as constituting a disgraceful conduct as well. It is pertinent to note that, the

impugned order does not specifically find the petitioner guilty of any disgraceful conduct and therefore, the submission of the learned Government Pleader and the learned advocates cannot be accepted.

16] Before turning to the legal aspects, if one starts deciphering the facts in the form of charges levelled against the petitioner and which have been held to be proved, the Collector while forwarding the report with the communication dated 3.6.2021 has nowhere recorded any reasons even cursorily for concluding as to in what manner these charges can be said to be substantiated. The impugned order also nowhere discloses iota of reasons. The order runs into 9 pages and the reasonings can be found only in last one page before the operative order. In first paragraph of the reasonings a reference is made to how the proceeding generated including a reference to the order passed in Criminal Writ Petition No. 580 of 2020. In Clause II of the reasoning it has been noted that out of 28 points of allegations a special audit was being undertaken in respect of 24 points. In Clause III it has been mentioned that as per the Collector's report, in respect of two items that is Item Nos. 1.3 and 7 showed that the petitioner misused the powers vested in her under Section 58(2) of the Act and is guilty therefor. In Clause IV it has merely been observed that though there was no irregularity in allotting

tenders in respect of the work worth more than Rs.10 lakh, the technical inspection and quality check were not undertaken and for which the President that is the petitioner and the Chief Officer were responsible. In Clause V in one line it has been mentioned that the allegation in respect of point No. 3 was already discarded by the Collector. In Clause VI it has been observed that two persons were appointed as law officers, by passing a resolution but the resolution was cancelled by the Collector and still they were permitted to function and for that illegality the President, the Chief Officer and other officers of the Municipal Council were responsible. In Clause VII it has been observed that as per the report of the Sub Divisional Officer who had conducted an enquiry there were some illegalities committed in floating tenders, awarding contracts, making payments and for which apart from the President, the auditor, the departmental head and some Councillors were responsible. It is thereafter that the operative part can be found.

17] Such an order to my mind clearly demonstrates utter lack of application of mind. There is a complete go-by given to the trite norms which require the authorities exercising quasi judicial power to adjudicate the issues. Such cryptic and unreasoned order cannot be allowed to be made the basis for non-sitting a publicly elected President. If at all there were other rampant

irregularities and illegalities, regarding which a special audit has been undertaken, one cannot comprehend as to what had weighed with the State Government in not waiting for that report and speeding up the process for removing the petitioner. Therefore, the submission of the learned Advocate Mr. N.PPatil-Jamalpurkar and Mr. Gangakhedkar that apart from the charges levelled against the petitioner she has been involved in several other misdeeds and misconducts and therefore, she cannot be allowed to continue, is not legally tenable.

18] One can gainfully refer to the observations in the case of *Ravi Bhoir* (Supra) touching the importance of recording of reasons in paragraph Nos. 29 to 36 and particularly the following observations relied upon in that decision from the case of Santlal Gupta and Ors. V/s Modern Co-operative Group Housing Society Ltd. And Ors.; (2010) 13 SCC 336 :

“28. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice –

delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

If one applies these principles to the facts in the matter in hand, there is no escape from the conclusion that the impugned order does not fit into the required parameters.

19] Apart from the above state of affairs, it is also important to note that the alleged acts which have been found favour with the Government for removing the petitioner and disqualifying her and taking into consideration she alone is apparently being singled out. Admittedly, apart from her, even the Chief Officer, some Councillors and other officers of the Municipal Council

have been held to be responsible for those acts. If such is the case, one can easily conclude that there is every room to believe that the proposed action is prompted by some extraneous reasons. It is a clear case of malice in law as discussed and laid down in the case of *Ravi Bhoir* (Supra) in paragraph No. 37:

“37 This Court has consistently held that the State is under an obligation to act fairly without ill will or malice – in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. “Legal malice” or “malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for “purposes foreign to those for which it is in law intended.” It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorised purpose constitutes malice in law (see:- **Additional District Magistrate, Jabalpur v. Shivkant Shukla**, AIR 1976 SC 1207; **Union of India the Government of Pondecherry and another. v. V. Ramkrishnan and Ors.**, (2005) 8 SCC 394; and **Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors.**, AIR 2010 SC 3745.)”

20] The decisions cited on behalf of the respondents in the case of *Sau. Yojana Mali and Kewalbai Aurade* (supra) were rendered by this Court in

the peculiar state of facts obtaining in those respective matters and are of no help to us in deciding the present Writ Petition. In the case of *Sau. Yojana Mali*, the President had managed to lease out the municipal properties to her near and dear ones and the fact was duly proved, whereas in the case of *Kewalbai Aurade*, inspite of directions by the Collector to hold meeting, the President had failed to convene the meeting and the fact was proved. In the matter in hand, as discussed hereinabove the facts have not been duly proved and apart from the fact that the impugned decision is not judicious decision in the eye of law and the alleged misconduct is found to be not a misconduct which can be attributed to the petitioner exclusively.

21] Now, turning back to the legal provisions, as is submitted by the learned senior Advocate Mr. Sapkal, the Collector has not strictly adhered to the time line required to be followed while undertaking the process of removal, as is required by the provisions of Section 55-1(1). The provision reads as under :

“55-1. (1) The requisition for removal of the President directly elected under Section 51A-1A shall be signed by not less than one half of the total number of Councilors and shall contain the charges of misconduct against such President and shall be sent to the Collector :

Provided that, no such requisition shall be sent within a period of two and half years from the date of election of such President.

(2) Upon receipt of the requisition under Sub Section (1), the Collector shall conduct the enquiry of such charges and complete such enquiry within a period of one month from the date of receipt of requisition :

Provided that, in no case such period of enquiry shall be extended beyond three months and for such extended period, prior assent of the State Government shall be obtained by the Collector, if the enquiry proceeding is delayed due to unavoidable reasons.

(3) The Collector shall submit the findings of the enquiry to the Government for taking appropriate action under Section 55A.”

22] The complaint was filed by the Councillors with the Collector on 27.10.2020. The Collector was expected to complete the enquiry within one month. However, he failed to do so. As per the proviso to Sub Section 2 he ought to have obtained prior assent of the State Government, if he was not able to complete the enquiry within one month. Admittedly, no such prior assent was ever obtained. The Government never seems to have condoned the delay. Rather no such request was ever made. It is only by way of an explanation while submitting the report to the State Government the Collector in his communication dated 3.6.2021 (Exh. C) submitted that because of the pandemic he was unable to complete the enquiry in time. It is thus apparent that he took more than six months in forwarding the report to the State Government. Again, though no fault can be found with the Collector in taking assistance of his subordinates in conducting the enquiry, it was imperative for him to have recorded findings by application of mind, whereas his communication is merely a forwarding letter and does not demonstrate application of mind. All these circumstances clearly indicate that there is absolutely no adherence to the statutory provisions as is expected of the Collector and as per the observation in the case of *Ravi Bhoir* (Supra).

23] The upshot of the above discussion, the action of the State

Government in removing and disqualifying the petitioner is grossly erroneous and is liable to be quashed and set aside.

24] The Writ Petition is allowed. The impugned order is quashed and set aside. The Rule is made absolute.

[MANGESH S. PATIL, J.]

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25] After pronouncement of judgment, the learned advocate Mr.Patil submits that operation of the judgment and order may be stayed for a period of four weeks to enable the respondents to challenge the order.

26] The learned advocate Mr.L.C.Patil for the petitioner objects. Admittedly the election process to fill the vacancy is underway. A specific order is passed directing that the result of such election would be subject to the outcome of the Writ Petition. Therefore, operation of the judgment and order shall stand stayed for a period of four weeks.

[MANGESH S. PATIL,J.]