

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

WRIT PETITION NO.531 OF 2021

Shri Chandrashekhar s/o Janardhan
 Belkhode, Aged about 37 years,
 Occupation-Agriculturist,
 R/o. Ward No.16, Sindhi (Railway),
 Pipla Road, Tq. Seloo,
 District-Wardha. Petitioner

.. Versus ..

- 1] Hon'ble Minister, Ministry of Urban
 Development Department,
 Mantralaya, Mumbai-32.
- 2] The Collector, Wardha,
 Tq. & Dist. Wardha.
- 3] Sau. Sangeeta w/o Sunil Shende,
 Aged about 42 years,
 Occupation-Housewife,
 R/o. Near Prajapati Bramhakumari
 Centre, Sindhi (Railway), Tq. Seloo,
 District-Wardha.
- 4] Municipal Council, Sindhi (Railway),
 through its Chief Officer, Tq. Seloo,
 Dist. Wardha. ... Respondents

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Shri Amit V. Band, Advocate for petitioner,
 Shri K.L. Dharmadhikari, Assistant Government Pleader for
 respondent nos.1 and 2-State,
 Shri A.K. Choube, Advocate for respondent no.3,
 Shri Arjun Singh, Advocate for respondent no.4.

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CORAM : N.B. SURYAWANSHI, J.

RESERVED ON : 15.07.2021.

PRONOUNCED ON : 22.07.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard the petition finally with the consent of the parties.

2. This petition filed under Articles 226 and 227 of the Constitution of India challenges the order passed by the Hon'ble Minister (R-1), granting stay to the order passed by the Collector, Wardha (R-2), by which the respondent no.3 was disqualified from the post of President of Nagar Parishad, Sindhi (Railway), Tq. Seloo, District-Wardha.

3. The petitioner filed application under Section 44 (3) r/w 44 (1)(a), 16(1)(m) of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965 (for short, the 'Act of 1965') seeking disqualification of the respondent no.3 as a President of Nagar Parishad, Sindhi (Railway), on the ground that the respondent no.3 has failed to submit the certificate that she has a toilet in her house and she regularly

uses the toilet, as contemplated under Section 16 (1) (m) of the Act of 1965, at the time of filing nomination or thereafter within 180 days from the date of commencement of the amended section. After hearing the parties, the respondent no.2-Collector allowed the said application and ordered disqualification of the respondent no.3, vide order dated 18.12.2020.

4. Being aggrieved by the order of disqualification passed by the Collector, the third respondent approached the Hon'ble Minister of Urban Development Department (Respondent No.1), by filing Appeal under Section 44 (4) of the Act of 1965. Along with Appeal, an application seeking stay to the order of disqualification was filed. On 1.1.2021, the respondent no.1 passed following order on the stay application :

“प्रकरणात जिल्हाधिकारी वर्धा यांच्या आदेशाला स्थगिती देण्यात येते तातडीने संबंधितांना सुनावणी आयोजित करावी.”

This order is challenged by the petitioner on various grounds, including that the impugned order is passed without assigning any reason and it is in violation of principles of natural justice. The petitioner had filed a caveat, however, he was not heard

before passing the impugned order. Hence the same is liable to be quashed and set aside.

5. The learned advocate for the petitioner relied upon the ratio in **Bajrang Manohar Sonavane and others .vs. State of Maharashtra and others, 2018 (5) Mh.L.J. 780**, in support of his argument that the order of stay granted by the first respondent without hearing the concerned parties and which is a non-speaking order, cannot be sustained.

6. The learned Assistant Government Pleader, on the other hand, supported the order by submitting that ad-interim relief is granted and immediately the hearing was directed to be arranged. Since ad-interim order is passed and no reasons are given, that by itself, does not make the order illegal.

7. The learned Advocate for the respondent no.3 supported the impugned order, submitting that since the statutory appeal is filed by the respondent no.3, the respondent no.1 was justified in granting stay to the order impugned in the appeal.

8. Admittedly, the impugned order passed by the respondent no.1 is one line order, which does not assign any reason, it is not clear on what ground, the respondent no.1 was convinced that there is *prima facie* case in favour of the respondent no.3 and a case was made out for grant of stay.

9. In **Bajrang Manohar Sonavane (supra)**, in similar facts, this Court held thus :

“22. The order passed as aforesaid apparently does not show or carry any averment therein that the Honourable Minister has read the impugned order, or petition or has perused the document before passing the said order. It also does not reflect that the Honourable Minister had heard the applicant or any other person on behalf of the applicant before passing the said order. Admittedly, no reasons are recorded by the Honourable Minister while passing such order. The question arises can such an order be sustained. Law is well settled that the absence of reasons renders an order unsustainable. Recording of reasons is a basic principle of natural justice and every judicial order must be supported by reasons, may be in brief, irrespective of the fact whether the order is final or interim. The order must disclose conscious application of mind to the effect that the decision making authority has applied the law to the fact brought before it correctly. Cryptic order indicates non application of mind. A non speaking, unreasoned order cannot be considered to be

valid.

31. *It is apparent that, the Hon'ble Minister has ignored the said aspect. The Hon'ble Minister before passing the said order must have heard all concerned and with all seriousness must have considered the rival contentions, must have applied law to the facts brought on record and then should have passed a speaking order. As there is no reasoned order, nor any finding is recorded by the Hon'ble Minister while passing the impugned order, it is very difficult for this Court to ascertain as to which were the facts, which warranted the Hon'ble Minister to grant blanket stay to the order passed by the learned Collector. It will also not be possible for me to accept the contentions of the learned Counsel appearing for the parties as there is no merited order in existence."*

10. The above ratio is squarely applicable to the facts of the instant case. Here also, one line order passed by the respondent no.1 does not reflect application of mind. Since the impugned order is unreasoned order, therefore the same is passed in violation of principles of natural justice and, therefore, it is unsustainable.

11. The argument of the learned Assistant Government Pleader that it is an ad-interim order is unacceptable in the light

of the fact that in spite of passing of six months since the date of impugned order, no notice of hearing is served on the petitioner till today. Though it is mentioned in the impugned order that immediate hearing be arranged to the concerned parties, no hearing has taken place so far. In view of the aforesaid reasons, the impugned order is unsustainable. Hence, the following order :

ORDER

(i) The impugned order (Annexure-8) dated 1.1.2021 passed by the respondent no.1–Hon’ble Minister, thereby granting stay to the decision of the respondent no.2–Collector, Wardha (Annexure-4) is hereby quashed and set aside.

(ii) The matter is remitted back to the respondent no.1–Hon’ble Minister. The Hon’ble Minister shall take fresh decision on the said application, in accordance with the law, after giving due opportunity of hearing to the concerned parties.

(iii) The pending appeal shall be decided within a period of **three months** from today.

(iv) All the contentions raised by the respective parties are kept open.

(v) Rule is made absolute in above terms.
There shall be no order as to costs.

(N.B. Suryawanshi, J.)