

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3949 OF 2021

<u>PETITIONER</u>	:	Smt. Yogita Pramod Pipare, Aged about 43 years, President, Municipal Council, Gadchiroli, Tah. and District- Gadchiroli
		<u>VERSUS</u>
<u>RESPONDENTS</u>	:	1. State of Maharashtra, Through its Principal Secretary, Department of Urban Development, N. V.-2, Madam Cama Road, Mantralaya, Mumbai.
		2. The Collector, Gadchiroli, District Gadchiroli.
		3. Chief Officer, Municipal Council, Gadchiroli, District Gadchiroli.
		4. Anand Namdeorao Shrungarpawar, Age Major, Chairman (Construction),
		5. Anil s/o Pandurang Kunghadkar, Age Major, Vice President,
		6. Bhupesh s/o Umashankar Kulmethe, Age Major, Councillor,
		7. Sanjay s/o Gopalrao Meshram, Age Major, Councillor,
		8. Pravin Pundlik Waghare, Age Major, Councillor,
		9. Sau. Anita Avinash Vishorjwar, Age Major Councillor,

	10.	Sau. Alka Anil Pohankar, Age Major Councillor,
	11.	Sau. Varsha Arvind Netam, Age Major Councillor,
	12.	Sau. Ranjana Sambhuvidhi Gedamm, Age Major Councillor,
	13.	Sau. Ritu Rupesh Kotle, Age Major Councillor,
	14.	Sau. Varshatai Wasudeo Batte, Age Major Councillor,
	15.	Sau. Pujatai Duryodhan Bobate, Age Major Councillor,
	16.	Sau. Manjusha Jagdish Akhade, Age Major Councillor,
	17.	Gulabrao Ganpat Madavi, Age Major Councillor,
		All Respondent Nos.3 to 17 Gadchiroli Municipal Council, Gadchiroli, District Gadchiroli.

Shri. S. V. Manohar, Senior Advocate a/w Shri. G. N. Khanzode, Advocate for Petitioner
Shri. K. L. Dharmadhikari, AGP for Respondent Nos.1 and 2

Shri. V. N. Morande, Advocate a/w Shri. R. D. Karode, Advocate for Respondent Nos.4 to
17.

<u>CORAM</u>	:	<u>N. B. SURYAWANSHI, J.</u>
<u>DATE</u>	:	<u>08.10.2021.</u>

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard
finally with the consent of the parties.

2. Shri. S. V. Morande, learned Advocate waives for the Respondent Nos.4 to 17. Shri. K. L. Dharmadhikari, learned Assistant Government Pleader waives for the Respondent Nos.1 and 2. Shri. S. V. Manohar, the learned Senior Advocate appearing for Petitioner seeks leave to delete Respondent No.3. leave granted. Amendment to be carried out forthwith.

3. This petition takes exception to the order dated 28.09.2021 (Annexure-K) passed by Respondent No.1/Principal Secretary, Department of Urban Development, Mantralaya, Mumbai under Section 55(A) and (B) of the Maharashtra (Municipal Councils), (Nagar Panchayats) and Industrial Townships Act, 1965 (for short, “the said Act”).

4. The Petitioner was elected as a Councillor of Municipal Council, Gadchiroli in the General Elections held in the month of December, 2016. Thereafter, the Petitioner was elected as a President and took charge of the said post on 18.12.2016.

5. The Respondent Nos.4 to 17 on 20.05.2020 submitted a requisition before the Collector/Respondent No.2 under Section 55(1) of the said Act, alleging that the Petitioner is guilty of misconduct in discharge of her duty as a President. She has illegally passed a Resolution in the meeting of Council held on 26.12.2019 in respect of sanction of the conveyance bills towards use of personal vehicle. Though, the said Subject No.17 was unanimously defeated by a Resolution in the meeting dated 19.09.2019, still the same issue was kept before the meeting on 26.12.2019 as Subject No.25. The Husband of Petitioner, who is co-opted Councillor, participated in the meeting and allowed to vote in the meeting dated 26.12.2019.

6. The Petitioner was called upon to submit her reply against the complaint made by the Respondent Nos.4 to 17. A detail reply denying all the allegations was filed by the Petitioner on 01.06.2020. The Respondent No.2 after holding inquiry submitted a report to Respondent No.1 under Section 55-1(2) on 10.06.2020, holding that

misconduct against Petitioner is proved.

7. On 29.01.2021, the Respondent No.1/Principal Secretary of Urban Development Department by exercising powers under Section 55(A) and (B) issued a show cause notice to Petitioner calling upon her to submit explanation against the said report and why she should not be removed from the post of President for violation of Section 55 (A) and (B) of the said Act.

8. The Petitioner submitted her explanation to the show cause notice on 10.03.2021. Thereafter due to pandemic, hearing on video conferencing was held before Respondent No.1 on 08.04.2021. The Petitioner alongwith her Advocate and the Respondents and their Advocates participated in the said hearing.

9. Since there was no decision given by Respondent No.1, the Respondent Nos.4, 6 and 17 filed Writ Petition No.1528 of 2021 seeking directions to Respondent No.1 to decide the said proceedings. Vide

order dated 12.07.2021, the Division Bench of this Court directed Respondent No.1 to take decision in accordance with law, within a period of six weeks from the date of the order, after giving due opportunity of hearing to the parties, through physical or virtual presence, as may be permissible under the Covid protocol.

10. In spite of this Order, though six weeks period was over, the said proceeding was not decided by Respondent No.1. Hence, contempt petition came to be filed and notice of contempt was served on Respondent No.1. Then, the impugned order came to be passed by Respondent No.1 on 28.09.2021, thereby disqualifying the Petitioner under Section 55 (A) and (B) of the said Act. This order is impugned in the present petition.

11. Heard Shri. S. V. Manohar, the learned Senior Advocate for Petitioner, Shri. K. L. Dharmadhikari, learned Assistant Government Pleader for the Respondent Nos.1 and 2 and Shri. V. N. Morande, learned Advocate for the Respondent Nos.4 to 17.

12. The learned Senior Advocate for Petitioner submitted that no opportunity of hearing was given to Petitioner before passing the impugned order. He further submitted that hearing took place on 08.04.2021 and after a lapse of almost 5 months and 20 days, the impugned order is passed. In spite of specific direction by this Court, no hearing was given to Petitioner and the impugned order is passed hurriedly, as the contempt notice was served on Respondent No.1. He also assailed the impugned order on merits.

13. The learned Advocate for the Respondent Nos.4 to 17, supported the impugned order by arguing on the merits of the order. According to him, misconduct of Petitioner is proved from the documents on record, and therefore, no case is made out by the Petitioner to interfere in the impugned order.

14. The learned Assistant Government Pleader supported the impugned order contending that hearing was given to Petitioner on 08.04.2021. Therefore, no

interference is called for in the present petition.

15. Since the impugned order is unsustainable on the ground that it is passed in violation of the order passed by this Court in Writ Petition No.1528 of 2021 and the same is in violation of the principles of natural justice. This Court is not going into the merits of the impugned order.

16. It is a matter of record that hearing took place before Respondent No.1 on video conferencing on 08.04.2021, which was attended by all the concerned parties. It is clear from the impugned order dated 28.09.2021 that the same is passed on the basis of hearing conducted on 08.04.2021.

17. The Division Bench of this Court passed an order in Writ Petition No.1528 of 2021 on 12.07.2021 observing that :

4. “We are of the further view that there is no need to issue any notice to respondent No.3, as there is no claim made against her in this

petition, although opportunity would have to be granted to her by the respondent No.1, if any final decision is to be taken in the matter.

5. Accordingly, we dispose of this petition by directing the respondent No.1 to take decision in this matter, in accordance with law, after giving due opportunity of hearing to the parties, through physical or virtual presence, as may be permissible under the Covid protocol, within a period of six weeks from the date of the order.”

18. In spite of this specific order, it appears that the Respondent No.1 failed to take decision within stipulated time. Which led to filing of contempt petition in which, notice was issued and it was served on Respondent No.1.

It appears that with a view to come out of the contempt, the Respondent No.1 hastily passed the impugned order on the basis of the hearing conducted on 08.04.2021, without giving an opportunity of hearing to the Petitioner. It is thus clear that the impugned order is passed in violation of the orders passed by this Court in Writ Petition No.1528 of 2021 and in gross violation of the

principles of natural justice. On this ground alone, the impugned order is liable to be quashed and set aside.

19. The impugned order is passed on 28.09.2021, after a period of 5 months and 20 days after the hearing was held on 08.04.2021.

In *Chaya Jagan Kale ..vs.. State of Maharashtra, 2011(4) Bom. C.R. 423*, the Division Bench of this Court in Para 17 has laid down procedural guidelines for quasi judicial authorities. Guideline No.14 provides that:

“a speaking order shall be passed by the Authority wherein the matter as early as possible after the hearing is concluded and, as far as possible within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as a submissions made at the hearing. The order must contain reasons in support of the order.”

In *Anil Rai ..vs.. State of Bihar, 2001(7) SCC 518*, it is held by the Hon’ble Supreme Court in clear terms that :

“The proceedings once heard and closed for passing of orders should be decided expeditiously without any delay. The outer limit of three months has been prescribed for passing final order.”

20. In the light of above ratio also, the impugned order is unsustainable.

21. For the aforestated reasons, the impugned order is liable to be quashed and set aside. Hence, the following order :

ORDER

i) The impugned order dated 28.09.2021 (Annexure-K) passed by Respondent No.1, is hereby quashed and set aside.

ii) The parties are directed to appear before Respondent No.1 on 13.10.2021 and after hearing the matter, the Respondent No.1 shall decide the same on or before 27.10.2021.

All the contentions of respective parties are kept open.

Rule made absolute in the above terms with no
order as to costs.

(N. B. SURYAWANSHI, J.)

TAMBE