

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

WRIT PETITION NO.7224 OF 2021

- 1) Sunil s/o Revansiddappa Utage,
Age: 50 years, Occu. Agril.,
R/o. Maharaj Galli, Ausa,
District : Latur.
 - 2) Unmesh s/o. Gurulingappa Wagdare,
Age: 48 years, Occu. Agril.,
R/o. Mukteshwar Mandir Road,
Ausa, District : Latur.
- ... Petitioners

Versus

- 1) State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
 - 2) Ausa Municipal Council,
Through its Chief Officer,
Office of Ausa Municipal Council,
Ausa, District : Latur,
 - 3) Shaikh Afsar Nawabuddin,
Age: 42 years, Occu. President,
Ausa Municipal Council,
R/o. Ausa, Taluka and District : Latur.
 - 4) State Election Commission,
Through its Commissioner,
Madam Cama Road, New
Administrative Building,
Hutatma Chowk Mumbai-32.
- ... Respondents

...
Advocate for Petitioners : Mr. V. J. Dixit, Sr. Advocate,
i/b Mr. S. V. Dixit
AGP for Respondents – State : Mr. P. N. Kutti
Advocate for Respondent No.3 : Mr. Sayyad Tauseef Yaseen
Advocate for Respondent No.4 : Mr. Ajit Kadethankar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06th JUNE, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. This petition filed under Articles 226 and 227 of the Constitution of India, takes exception to the order dated 17-06-2021 passed by the respondent No.1.
3. The petitioners are the elected councillors of respondent No.2 Municipal Council. Respondent No.1 passed the impugned order thereby disqualifying the petitioners under Section 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short 'the said Act').
4. Heard Mr. V. J. Dixit, Sr. Advocate, i/b Mr. S. V. Dixit, learned advocate for petitioners, Mr. P. N. Kutti learned Assistant Government Pleader for State, Mr. Sayyad Tauseef Yaseen, learned advocate for respondent No.3 and Mr. Ajit Kadethankar, learned advocate for respondent No.4. Perused the documents filed on record by the respective parties.
5. Though the learned senior advocate for petitioners

assailed the impugned order on merits, this Court is not inclined to go into the merits of the matter as it appears from record that the impugned order is passed in gross violation of principles of natural justice.

6. The respondent No.3 by filing application before respondent No.1 sought disqualification of the petitioners under Section 42 of the said Act, pursuant to which a report was called from the Collector, which was submitted on 27-11-2020. On 28-12-2020 a show cause notice was issued to the petitioners, asking them to give explanation within 15 days. The petitioners failed to submit their explanation to the show cause notice. The matter was thereafter kept on 18-02-2021 for submitting oral and written arguments. On that day the petitioners sought certain documents. The documents were made available to the petitioners on 26-02-2021, however, the petitioners failed to submit their say. Thereafter the matter was kept on 01-04-2021. On that day, the petitioners by filing application sought adjournment on the ground that their advocate Mr. Jivan Karde and petitioner No.2 are suffering from COVID-19. The matter was, therefore, adjourned to 06-04-2021, but the petitioners did not file their say or written arguments till 06-04-2021. Petitioner No.1 submitted an application on 08-04-2021 that since their advocate Mr. Karade is suffering from COVID-

19 they are not in a position to submit their say, hence, one month's time may be granted to them. The matter was, however, closed for orders.

7. Record further reveals that respondent No.3 filed Writ Petition No.7922/2019 before the Division Bench of this Court, wherein direction was given to respondent No.1 to complete the hearing of the proceedings of disqualification of the petitioners within a period of four months from the date of formation of new Government. The proceedings could not be decided within the stipulated time and hence, Contempt Petition No.398/2020 was filed. Notice was issued in the contempt petition on 10-12-2020. It, therefore, appears from the record that since notice in the contempt petition was issued, respondent No.1 proceeded to close the matter without giving reasonable opportunity of hearing to the petitioners and passed the impugned order.

8. It is, therefore, apparent from record that the impugned order is passed without obtaining the say of the petitioners and without giving the petitioners reasonable and fair opportunity of hearing. The petitioners are disqualified under Section 42 of the said Act. The impugned order since is passed in gross violation of principles of natural justice, the same is unsustainable in law and

facts of the present case.

9. In ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, AIR 2012 SC 1339***, relied upon by the learned senior advocate for the petitioners, it is held :-

"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 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.

Removal of a duly elected Member on the basis of proved misconduct is a quasi-judicial proceeding in nature. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office bearer. 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."

The petitioners' case is squarely covered by the above ratio as the petitioners who are duly elected councillors, are disqualified without giving fair opportunity of hearing to them.

10. By placing strong reliance on *Board of Directors, Himachal Pradesh Transport Corporation and Another vs. K. C. Rahi*, (2008) 11 SCC 502, the learned advocate for respondent No.3 has strenuously urged that in spite of there being reasonable opportunity the petitioners have failed to file their reply and therefore, it needs to be held that the petitioners have waived their right to file reply.

It is not possible to accept this submission. In *K. C. Rahi* (supra) a Government Servant in spite of notice of departmental inquiry failed to participate in the inquiry. Therefore, the Hon'ble Supreme Court held that principles of natural justice cannot be put in the straight jacket formula and their application depends on the circumstances of each case. To sustain a complaint of non-compliance of the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance of principle of natural justice. Since the Government Servant in that case has chosen to abstain from departmental inquiry though he knew about it, it was held that the plea of principle of natural justice is deemed to have been waived and the Government

Servant is estopped from raising it.

Such are not the facts of the present case. The petitioners who are democratically elected councillors are disqualified without giving them opportunity of hearing. In that view of the matter, there is gross violation of principles of natural justice in the case in hand and therefore, the impugned order cannot sustain.

11. For the aforestated reasons, the writ petition is allowed. The impugned order dated 17-06-2021 passed by respondent No.1 is hereby quashed and set aside. The matter is remanded back to the respondent No.1 for consideration on merits. Parties shall appear before the respondent No.1 on 13-06-2022. Notice in that behalf is waived. The petitioners shall file their reply to the proceedings before the respondent No.1 on 13-06-2022. The proceedings before the respondent No.1 shall be decided within a period of eight (08) weeks from the date of first appearance of the parties.

12. Rule is made absolute in the above terms. No costs.

13. Authenticated copy allowed.

(NITIN B. SURYAWANSHI, J.)