

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

WRIT PETITION NO. 2670 OF 2018

Smt. Karuna Anil Ashtankar
Aged about 43 years, Occupation-Councilor,
Municipal Council, Kanhan (Pipri),
R/o Kanhan(Pipri), Tq. Parshioni, Dist. Nagpur

... **PETITIONER**

...VERSUS...

1. State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-400 032.
2. Hon'ble Minister of State
Urban Development Department
Mantralaya, Mumbai-400 032.
3. Municipal Council,
Kanhan (Pipri), through its Chief Officer,
Kanhan (Pipri), Tq. Parshioni, Distt. Nagpur. ... **RESPONDENTS**

Shri M.P. Khajanchi, Advocate for petitioner.
Shri A.A. Madiwale, AGP for respondent nos.1 and 2/State.
Shri M.I. Dhatrak, Advocate for respondent no.3.
Shri F.T. Mirza, Advocate for intervenor.

CORAM : AMIT BORKAR, J.
DATED : SEPTEMBER 15, 2022.

ORAL JUDGMENT :

1. The petitioner, an elected councillor, is challenging the order dated 19.04.2018 passed by respondent no.1 disqualifying him for five years in the exercise of power under sections 42(1) and 43

(4) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, '**said Act**').

2. The petitioner was elected as a councillor of Kanhan (Pipri) Municipal Council in 2014. Respondent no.1 issued a show-cause notice to the petitioner on 17.06.2017, calling upon her to explain why action under Section 42 of the said Act should not be initiated. On 14.07.2017 and 25.07.2017, the petitioner filed her reply and additional reply to the show-cause notice by pointing out that no action could be taken against her based on unsubstantiated allegations. By order dated 19.04.2018, respondent no.1 disqualified the petitioner for five years. The petitioner has therefore filed the present petition challenging the said order.

3. This Court, on 02.05.2018, issued notice and granted an interim relief in terms of prayer clause (b).

4. Shri Khajanchi, learned advocate for the petitioner, submitted that the impugned order does not disclose whether the action of disqualification has been taken *suo motu* or on the recommendation of the Council. He submitted that neither in the report of Collector nor the material annexed along with a report of Collector is any allegation accusing petitioner of doing disgraceful conduct. According to him, no material was on record to prove the

allegation against the petitioner. The petitioner, being elected representative, cannot be removed causally without scrutinising material placed on record. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

5. *Per contra*, Shri Madiwale learned AGP supported the order stating that the reasons in the impugned order are self-explanatory and are sufficient to sustain the order of respondent no.1. According to him, the conduct alleged against the petitioner on the face is disgraceful and, therefore no interference is called for under extraordinary jurisdiction of this Court.

6. Shri Mirza, learned advocate appearing for intervenors, submitted that the report of the Chief Officer of Municipal Council was on the record of the State Government. The report contains a specific allegation against the petitioner that she and other persons forced the State Government employees to drink contaminated water and abused them. According to Shri Mirza, this allegation has not been adverted to in the impugned order. According to him, it is not necessary that in the impugned order, exercise of power as to whether on suo motu or the recommendation of council need to be stated. According to him, such mention in the order is unnecessary by the authority exercising original power. According to him, the judgment in the

case of **Shahabad Coop. Sugar Mills Ltd. Vs.Spl. Secretary to Government of Haryana Corpn. And others¹** and **M/s. D.N. Roy and S.K. Bannerjee and others Vs. the State of Bihar and others²** arise out of revisional proceedings and would not apply to original proceedings. He, therefore, prayed for the dismissal of the petition.

7. Having considered the submissions made by all parties, it appears that respondent no.1 has not considered relevant material from a proper perspective. There is no finding recorded by respondent no.1 that exercise of power is *suo moto* or on the recommendation of the Council. The material in the form of a report of the Chief Officer of the Municipal Council has not been adverted. The order of disqualification appears to be passed based on averments in a complaint filed by the complainant and the report submitted by the Collector. There is no independent enquiry made by respondent no.1 to scrutinise the allegations against the petitioner. Therefore, in my opinion, the material is required to be reconsidered by respondent no.1 in light of the observations made above. I, therefore, pass the following order:

i. The impugned order date 19.08.2018 passed by respondent no.1 (Annexure P-8) is quashed and set aside.

¹ (2006) 12 SCC 404

² 1970(3) SCC 119

- ii. Respondent no.1 shall rehear the parties to the petition and, after holding an enquiry in the light of the observations above, shall decide the matter afresh in accordance with the law.

Rule is made absolute in the above terms. No order as to costs. Pending civil application(s), if any, stand(s) disposed of.

JUDGE

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