

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 3684 of 2023(O&M)
Date of Decision: April 20,2023.

Vikas Deep

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Gaurav Chopra, Sr. Advocate
with Mr. C.M.Munjal, Advocate,
Ms. Vasundhra Asija, Advocate,
Mr. Abhinandan Mutneja, Advocate and
for the petitioner.

Mr. Amit Jain, Sr. Advocate
with Mr. Ferry Sofat, Addl.AG., Punjab
and Mr. Sandeep Jain, Addl.AG., Punjab.

Mr. D.V.Sharma, Sr. Advocate
with Mr. Tushar Sharma, Advocate
for respondent no.2.

Mr. Shailendra Jain, Sr. Advocate
with Ms. Navneet Kaur, Advocate
Mr. Munish Sharma, Advocate
and Mr. Neeraj Madaan, Advocate
for respondent no.3.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notification dated 17.02.2023, Annexure P-14, whereby petitioner has been removed from the post of President, M.C Jalalabad (W), Punjab (for short 'M.C. Jalalabad) in terms of Section 22 of the Punjab Municipal Act, 1911 (for short 'the 1911 Act').

2. Brief facts as pleaded in the writ petition are that petitioner was

elected as Municipal Councillor, from Ward No. 2 of the M.C Jalalabad, in February 2021 and thereafter he was unanimously elected to the post of Municipal Councilor, Jalalabad on 26.04.2021. It is submitted that petitioner was carrying on with good work for the city of Jalalabad and development works were being carried out by the petitioner in a dedicated fashion. Respondent no.3, it is stated was elected as Member of Legislative Assembly (MLA) in the month of March 2022. Respondent no.3, it is stated belongs to the present ruling party and immediately on being elected as MLA, respondent no. 3 started pressurizing the petitioner to work as per his wishes. This was so as petitioner statedly supported the rival candidate belonging to his own party, thus offering stiff opposition to respondent no.3. When the petitioner refused to act according to respondent no.3, he allegedly started making efforts to dislodge the petitioner from the post of President. A frivolous complaint dated 27.06.2022, it is submitted, was lodged by respondent no.3 alleging bungling in the development works by Nagar Council, Jalalabad and Nagar Panchayat, before the Hon'ble Chief Minister, Punjab. Vigilance enquiry was marked on the basis of the said complaint. It is pleaded that petitioner was never associated with this enquiry by the Vigilance and after this one sided exercise, Chief Vigilance Officer, submitted a report on the basis of which show cause notice dated 17.10.2022, Annexure P-2, was issued to the petitioner. Copy of Vigilance Report, it is submitted was not supplied to the petitioner.

3. Details of the Charges against the petitioner was provided along with show cause notice stating that the petitioner is liable to be punished under Section 22 and 50 of the 1911 Act. Three charges were leveled against the petitioner. First charge against the petitioner is that petitioner by misusing his position as President of M.C Jalalabad, had a road carved out in

his private property from Ferozepur Fazilka road to Araian Wala Road. The entire land is stated to belong to the petitioner and his family members i.e., brother Parmod Chaudhary with a residential house, a school, multiplex etc., present on the property, all of which is private property of the petitioner/his family. It is alleged that while getting sanction of the site plan of Harkrishan Public School by the petitioner and Parmod Chaudhary, 40 feet road was proposed through khasra nos. 39/11, 39/15, 39/14, 39/13, 39/23 (private land of petitioner), from Araian Wala road for providing access to the school. It is stated that as per jamabandi for the year 2013-14, petitioner and Parmod Chaudhary are owners thereof and not the M.C Jalalabad and neither is construction of this road the responsibility of M.C. Jalalabad. It is stated that as per copy of the site plan provided by one complainant, namely Pawan, present at the spot, no revenue passage is reflected through these khasra numbers.

4. Second charge is that payment of Rs. 4.34 lakhs made to the firm in question, regarding work of P&L interlocking tiles on the berm of the main road from stadium to the drain is bogus as the tiles were not installed on the site and were not found to be so at the time of inspection and no other type of work mentioned in the estimate was seen executed at the site.

5. Third charge against the petitioner is that on checking of record, complainant leveled allegations that oil/fuel was supplied for the vehicles of the M.C Jalalabad from the personal petrol pump of the petitioner. Details thereof from 08.06.2021 to 21.10.2021, were mentioned therein.

6. Reply, Annexure P-3, to this show cause notice was submitted by the petitioner well within the stipulated time. Additional facts were again mentioned in his reply, Annexure P-4. It is stated in the reply that all

allegations levelled by respondent no.3 are incorrect being based on political considerations. It is stated that enquiry had been conducted by the Chief Vigilance Officer, without any intimation to the petitioner and neither was he associated with the same. Part of the street from Araian Wala road, was stated to be in existence since 1970 as there was a Cinema, Vicky Touringer Talky, now converted to Harkishan Multiplex. In 1990's, Sant Nirankari Bhawan, come in existence and reference is made to Resolution No. 509 dated 29.05.2006, passed by the M.C Jalalabad, for incurring expenditure of Rs.1,00,000/- on the road from Ferozepur-Fazilka Road to Sant Nirankari Bhawan. Foundation of the road was laid by the then Irrigation Minister along with the then President of M.C Jalalabad, and others. Restructuring/repair of the road is stated to have been carried out by Municipal Committee on 23.09.2011, through PWD (B&R) while considering it to be a public street, with Rs. One lakh being given by the Irrigation Minister from his quota. Site plan of the school in question was sanctioned and the school became functional in the year 2013. Thereafter, restructure/ repair/ construction/ extension of the road from Arian Wala Road/New Link Road, Jalalabad to Harkishan Public School was undertaken. Rs. 5 Lakhs was being given by the then Member Parliament, Ferozepur from his MP Land Development (MPLAD) fund. Insofar as latest restructuring/repair of this road by Municipal Committee is concerned, Resolution dated 07.05.2021, was statedly passed in presence of senior vice president and other members and approved by the Deputy Director on 16.06.2021. General public is stated to be using the road since then for access to the School, Multiplex, Nirankari Bhawan etc.

7. In respect to the allegations of bogus release of payment, petitioner's stand is that work done had been inspected and verified by

employees of the Municipal Committee, Executive Officer, Municipal Councilor and Sectional Officer and other concerned staff. Payment had been released after due verification by the said officers. Therefore, the petitioner, could not be held responsible for the same.

8. In reply to the third charge, it is explained that the petrol pump came in existence in the year 2020 and fuel was supplied to Municipal Council at the asking of the Executive Officer and not on instructions from the petitioner and on this fact coming to his notice, petitioner immediately directed that no fuel be supplied from his petrol pump. As per the reply there is no allegation of any bungling whatsoever in the supply of fuel or any incorrect bills having been raised and in-fact during the period six months prior to constitution of the present Committee, bills for fuel were much higher. In the supplementary subsequent replies, Annexures P-4 and P-5, allegations have again been denied with certain more details being provided and a specific averment that the petitioner was not present at the time of passing of resolution dated 07.05.2021, as he was affected by COVID at that time. Petitioner also sought fresh inquiry to be conducted by senior officers with regard to notice dated 17.12.2022, issued under Sections 22 and 50 of the 1911 Act.

9. Principal Secretary, Government of Punjab, passed impugned order dated 17.02.2023, wherein petitioner was removed from the post of President, M.C Jalalabad, keeping in view the enquiry conducted by the Chief Vigilance Officer and in view of the charges leveled under Section 22 of the 1911 Act. Order has not been passed under Section 50 of the 1911 Act.

10. Aggrieved therefrom, present writ petition has been filed.

11. Learned senior counsel for the petitioner vehemently argued

that the entire exercise is a mala fide one, at the behest of respondent no.3 and is motivated solely by political considerations. It is contended that impugned order is completely vitiated due to non application of mind and in violation of principles of natural justice. It is argued that a democratically elected candidate has been removed in an absolutely illegal and arbitrary manner without even being associated with the alleged enquiry conducted by the Chief Vigilance Officer. Furthermore, no opportunity of hearing was provided to the petitioner, who could have presented the entire facts before the authority concerned. Moreover, allegations as raised are neither supported by evidence on record and neither can they amount to misuse of powers by the petitioner. Part of the road in question, it is contended has been in existence since the year 1970 and other part from Ferozepur-Fazilka Road to Nirankari Road laid down in the year 2006, and then extended/repared in 2011 and then construction/extension from Arian Wala Road (from the already existing road since 1970) to the School was carried out in the year 2013. Expenditure thereof was incurred by the Municipal Council.

12. Learned senior counsel referred to Resolution dated 29.05.2006, passed by the M.C Jalalabad and refers to item at serial no. 15 i.e., development of street of Sant Nirankari Bhawan i.e., part of the street in question from Ferozepur-Fazilka Road to said Bhawan. Reference was thereafter made to a detailed estimate for provision of interlocking tiles from Ferozepur Farilka Road to Nirankari Bhawan street of Ward No. 8, Annexure P-8 and thereafter, communication dated 26.04.2013 from the Executive Engineer Construction Division No.1, PWD (B&R), Ferozepur, to a contractor in respect to construction of new link road (Compaction of earth to one coat surface dressing) Jalalabad-Pire Ke Road (statedly synonymous

with Araianwala road) to Guru Harkrishan Public School (Length 0.20 K.M.), to submit that the road in question has been in existence since a number of years when the petitioner was not remotely associated with the Municipal Council, therefore phantom of misuse of position of President, MC has been illegally raised.

13. Insofar as, resolution dated 07.05.2021, Annexure P-10 is concerned, it had been passed under the Presidentship of Smt. Nataliya (Senior Vice President), as the petitioner was suffering from COVID at that time. Proposal No. 15 deals with 51 items including the one for laying interlocking tiles in street Parmod Chaudhary Ariyan Wala Road. Learned senior counsel further submits that he has categorical instructions to state that neither the petitioner nor his family members would ever stake any claim whatsoever to the land on which the street/road has been constructed and that they would submit their undertaking to this effect. Learned senior counsel argues that as the road constructed by the Municipal Council has been in existence for such long years, the same is in-fact a public street as defined in Section 3(13) (a) & (b) of the 1911 Act. In respect to second charge regarding bogus payments to the contractor regarding interlocking tiles in drain, main road, stadium, the work was undertaken by the employees of Municipal Council as per rules and the entire work was verified by the Executive Officer, Municipal Engineer and Sectional Officer of M.C Jalalabad and only then, petitioner on the basis of their verification had appended his signatures. No ulterior motive or *mala fides* are proved on record neither is there any allegation of any unlawful gain to the petitioner or loss to the Municipal Council, which is proved on record. Furthermore, there is no bungling whatsoever in the supply of fuel to the Municipal Council.

Petitioner immediately on coming to know of supply of fuel from his petrol

pump stopped the same.

14. It is vehemently argued that procedure adopted by the authority is clearly illegal and arbitrary. Furthermore, merely on the basis of a Vigilance Report in the proceedings of which the petitioner was never associated, impugned order has been incorrectly passed. Learned counsel for the petitioner submits that the impugned order is an absolutely non-speaking order with no reasoning being set-forth by the authority to arrive at the conclusion, other than a simple observation that report of the Chief Vigilance Officer and the comments are found to be acceptable. It is contended that none of the pleas raised by the petitioner have been discussed and dealt with. It is reiterated that the entire exercise, as undertaken, is a *mala fide* one at the behest of respondent no.3 who was offered stiff opposition in the Assembly elections by the present petitioner, who belongs to a different political party. Learned counsel has referred to certain photographs attached as Annexure P-16 along with rejoinder to the short reply filed on behalf of respondent no.3 to submit that respondent no.3 is actively interfering in the matters of M.C., Jalalabad and he even went to the extent of occupying the chair of the President of M.C., Jalalabad in the photographs with a view to denigrate the authority of the petitioner. It is submitted that alleged complainant-Pawan Kumar as mentioned in the charge sheet, has been identified to be sitting on the chair of the Executive Officer of the M.C. Jalalabad. Learned counsel for the petitioner submits that strangely in the reply/ies submitted by the respondents, it is mentioned that it was only a general complaint filed by respondent no.3, however the same is belied by a bare reading of the charges and the impugned order which indicate that petitioner has been specifically targeted. It is thus prayed that this writ petition be allowed.

15. *Per contra*, learned counsel for the respondent-State vehemently argued that impugned order has been correctly passed. Petitioner has clearly misused his power in order to achieve unlawful gain for himself inasmuch as a road has been constructed through the land which is admittedly owned by him and his family members. It is submitted that by way of construction of this road by the Municipal Council, there is no gain to any other member of the public as egress from and ingress to this road is only for exclusive use of admittedly private property of the petitioner/ his family members. It is submitted that there is no public building belonging to any other person in the area. No person other than the petitioner and his family members are to gain by construction of this road. Gates have also been erected by the petitioner. Learned counsel for the respondent-State further submitted that estimate of Rs. 23.35 Lakhs, Annexure R2/4, for construction of road was prepared on verbal orders of the petitioner to the Section Officer. Agenda to this effect was then prepared and laid before the Municipal Council. Pursuant thereto Resolution, Annexure P-10, approving the same was passed on 07.05.2021. Mere absence of the petitioner on 07.05.2021, does not in any way absolve him from his responsibility and complicity. It is further contended that it is by way of an afterthought that petitioner stated that he was suffering from COVID on 07.05.2021, though there is no pleading to this effect. Petitioner's absence on the said date, it is submitted is only a futile attempt to give a colour of impartiality to the proceedings held on 07.05.2021. (This is refuted by learned counsel for the petitioner by referring to his subsequent reply attached as Annexure P-4, wherein it is so mentioned.) Learned counsel for the petitioner submitted that merely because there is no bungling etc., in the accounts regarding supply of fuel, does not in any manner suggest that petitioner is not guilty of misuse of

position as he has furthered his personal interest by allowing fuel from his own pump to be supplied to vehicles of the Municipal Council, while he is the president. Furthermore, petitioner cannot be absolved of his responsibility of bogus payments only on specious ground that he signed the cheques/bills on the basis of verification by the officers.

16. Learned counsel for the State further contended that there is no requirement of personal hearing to be afforded in terms of second proviso to Section 22 of the 1911 Act. Show cause notice, it is asserted was accompanied by detailed charges against the petitioner. Entire details were made available to the petitioner and it was also stated in the show cause notice dated 17.10.2022 that petitioner is at liberty to inspect the relevant record on any working day at the concerned office. However, no attempt was ever made by the petitioner to inspect the record, therefore it does not lie in his mouth to now say that copy of vigilance report was not supplied to him, as he never ever asked for it. It is further submitted that there is no question of non application of mind by the concerned authority. Detailed order has been passed and same has to be read in the context of the Vigilance Report. Learned counsel for the State submitted that pursuant to submission of Vigilance Report, action has been taken against a number of persons including some former presidents.

17. Learned counsel for the Municipal Council has also opposed this writ petition. It is submitted that declaration at this stage that the petitioner or his family members would not claim ownership rights over the land on which road is constructed is irrelevant and does not in any manner reduce the seriousness of the charges against the petitioner. Learned counsel for the Municipal Council and State have referred to the objections raised in this regard, vide communication dated 21.05.2021 from the office of Deputy

Commissioner to the Executive Officer, M.C Jalalabad, wherein it is directed that the works mentioned in Resolution no. 15 be conducted only after preparing proper estimates and after the funds are available and that it should be clarified that this work is not being carried out in any unauthorized colony. Learned counsel submits that on earlier occasion, petitioner's mother had raised a claim for compensation for construction of street/road by the Municipal Council on her land. Her claim was upheld upto the Hon'ble Supreme Court, thus putting the Municipal Council to much prejudice. It is further contended that the estimate, Annexure R-2/4 was prepared in respect to the road/street measuring 10 feet x 1384 feet, whereas the road/street on the spot is 30 feet wide. The bill cleared is for the road/street measuring 10 feet x 1085 feet, therefore misuse lies in the fact that 30 feet road has been carved out instead of 10 feet area. Misuse of position by the petitioner, it is submitted is apparent. It is denied that impugned order dated 17.02.2023, is a non-speaking order. It is submitted that the whole controversy has been considered in its entity and all the facts noted by the competent authority while passing impugned order.

18. Learned counsel for respondent no.3 submits that all allegations of malice and malicious intent are vehemently denied being incorrect. It is stated that it was only a general complaint submitted by respondent no.3 in regard to all development works having been carried out since the year 2017 and it was not that any particular person was being targeted. Learned counsel while buttressing the argument raised on behalf of the other respondents submits that present is a clear cut case of misuse of position, where benefit accrues only and only to the petitioner and his family at the cost of public funds. No public welfare is involved in construction of the said street.

Learned counsel has also contended that the present writ petition should be

dismissed for concealment of facts inasmuch as there is no pleading regarding the petitioner suffering from COVID on 07.05.2021, neither has he revealed in the writ petition that the estimate, Annexure R-2/4 was drawn up at his verbal instructions or the agenda for the meeting dated 07.05.2021 drawn up at his instance. It is submitted that factual position is virtually admitted by the petitioner and he has only raised fake and fumbling pleas which hold no water. It is thus prayed that the present writ petition be dismissed.

19. We have heard learned counsel for the parties and have gone through the file with their able assistance.

20. At the outset, it is relevant to refer to Section 22 and 50 of the 1911 Act.

“22. Resignation or removal of President and Vice-President. –

Whenever a President or Vice-President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any president or vice-president may be removed from office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee :

[Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two-thirds of the members of the committee the President or, as the case may be the Vice- President shall be deemed to be under suspension immediately after such resolution is passed] :

Provided further that before the State Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be called upon to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the appropriate Secretary to Government within

twenty one days of the dispatch of the said registered letter, the State Government may proceed to notify his removal.

50. Liability of members of the committee. - (1) Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a committee, if such loss, waste or misapplication is reported by the Examiner of Local Fund Accounts, or other audit authority empowered by the State Government in this behalf to be a direct consequence of his neglect or misconduct in the performance of his duties while a member of the committee; and he may after being given an opportunity, by notice served in the manner provided for the service of summonses in the Civil Procedure Code, to show cause by written or oral representation why he should not be required to make good the loss, be surcharged with the value of such property or the amount of such money by the Deputy Commissioner and if the amount is not paid within fourteen days from the expiry of the period of appeal prescribed by sub-section (2) the Collector at the request of the Deputy Commissioner shall proceed forthwith to recover the amount as if it were an arrear of land revenue and have it credited to the municipal fund.

(2) The person against whom an order under sub-section (1) is made, may within thirty days of the notification of such order appeal to the State Government who shall appoint an officer to hear the appeal: and the appellate authority shall have the power of confirming, modifying or disallowing the surcharge :

Provided that no person shall under this section be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of one year from the time of his ceasing to be a member: Provided further that nothing in this section shall be deemed to debar the aggrieved party from seeking a remedy in a civil court against an order made under sub-section (1).

(3) Nothing in this section shall apply to an associate member.”

21. It is relevant to note that impugned order has admittedly been passed only under Section 22 of the 1911 Act, though, charge against the petitioner also mentions that the petitioner is liable to be punished under Section 50 of the 1911 Act, as well. Arguments have been focused primarily on the question of construction of road/street from Ferozpur Fazilka road to Arianwala road on the private land of the petitioner.

Specific charge in this respect is reproduced as under:-

“It is written vide letter received from the office of the Chief Minister received through Shri Jagdeep Kamboj, M.L.A. Halqa Jalalabad (West) vide his semi government letter No. 151 dated 02.06.2022 against you (Shri Vikas Deep President M.C Jalalabad) that all the works which have been done at Municipal Council Jalalabad since 2019 till now, there is huge corruption in the same and it has been prayed to conduct the enquiry of the same. On the complaint received about the same according to the enquiry report submitted to the government by the team of Chief Vigilance Officer, Local Government department after conducting enquiry on 04.08.2022, 05.08.2022 regarding the different development works last time at M.C Jalalabad, after preparing the estimates of the work of P/L interlocking tiles in street parmod to arianwala road got approved by the Municipal Council Jalalabad vide resolution No. 15(38) dated 07.05.2021. It found on checking at the spot that above said street while starting from Ferozpur Fazilka Road joins at Arianwala Road and there is only one residential house present in this street. Apart from this, there is access from this street to Shri Harkishan School, Shri Harkishan Palace, Shri Harkishan Cinema and Nirankari Satsang Bhawan. Majority of the property abutting with the street at the spot seems to have of private persons. It got informed by the persons of the locality that your residence is in this street and the adjoining property is also yours. Besides this, Shri Harkishan Palace and Shri Harkishan Cinema are also yours.

1. Apart from the above, it found from observing the record available in the file of passed site plan of Shri Harkishan Public School that site plan of Shri Harkishan Public School was passed by you and Shri Parmod Chaudhary. In the produced site plan of the school, there has been mentioned 40 feet proposed road for giving the access to the school, which has been mentioned existing out of Khasra No.39/11, 39/15, 39/14, 39/13, 39/18, 39/23 from Araian Wala Road. Whereas according to the Jamabandi for the year 2013- 14 attached with the site plan, you and Shri Parmod Chaudhary have the ownership of above said Khasra Numbers described in Khewat No.604/70. From which, it is clear that above proposed road wide measuring 40° feet road has to be taken out from the property of yourself and Shri Parmod Chaudhary according to the above. Ownership of the same is not with the M.C Jalalabad and nor the M.C Jalalabad has responsibility to construct this road. According to the copy of the site plan provided by complainant Shri Pawan present at the spot, there is no existing revenue passage in these khasra numbers.”

22. Petitioner has put forth his case that the road from Ferozepur Fazilka road to Nirankari Bhawan and residence of the petitioner, came in existence in the year 2006. Same was extended upto the School in 2011. Insofar as the road from Araian Wala Road is concerned, part of it, upto the Harkishan Multiplex i.e., erstwhile Vicky Touringer Talky, was in existence since the year 1970. Rest of the road i.e., from Arianwala road up till the school statedly came into existence in the year 2013.

23. Despite specific and pointed queries to learned counsel for the State as well as Municipal Council, no response is forthcoming which would render any clarity on the question as to which part of the road was constructed at what point of time. It is pertinent to note at this stage that existence of parts of the road as mentioned, at-least from the year 2006

onwards is indicated from the documents on record and is in-fact admitted

by the State and Municipal Council.

24. At this stage, we deem it appropriate to refer to para 10 of the preliminary objections/ submissions of the written statement filed on behalf of respondent no.2-Executive Officer, Municipal Council, Jalalabad. It is stated therein that Chief Vigilance Officer of the Department of Local Government, Punjab, on conducting an enquiry found that 40 feet approved road has been constructed on the private land at the instance of Nagar Council, Jalalabad. However, as per the site plan, Annexure R-2/9 placed on record subsequently on 12.04.2023 by learned counsel for the State, width of the existing road is mentioned as 30 feet. It has further been stated in reply to para 9 of the writ petition that Rs. 23.35 Lakhs has been incurred on the road leading from Ferozepur-Fazilka Road to Nirankari Bhawan, whereas the expenditure was spent for construction of a private road which is shown in black colour in the site plan attached as Annexure R-2/3, width of the road being mentioned as 40 feet. We reiterate that despite pointed query, exact dimensions of the road/parts of the road over the years are not forthcoming and neither is there any discussion in this regard in the impugned order.

25. During the course of arguments, we had asked learned counsel for the respondent-State and Municipal Council to submit details to inform as to whether other streets, the repair and restructuring of which has been approved as mentioned in Proposal No. 15 of Resolution dated 07.05.2021, are situated on private land or on Municipal Land. This question was raised as Proposal No. 15 deals with as many as 51 works including repair etc., of about 36 streets/ roads which are referred to by name/s, the work at serial no. 50 and 51 i.e., laying interlocking tiles F.F. Road on berms From Hariale Shop to House of Ex.M.P and laying interlocking tiles F.F Road on berms from BSF Sector to Nr. Bhamma Chakki, for an estimate of 98.46 lakhs

each, being approved additionally on 07.05.2021.

26. At the time of arguments, learned counsel for the petitioner orally stated that all the streets mentioned under Proposal No. 15 are located on private land. However, learned counsel for the State or Municipal Council neither verify nor deny the same. It is stated by learned counsel for the State that he is not in possession of necessary information in this respect.

27. The issue of other streets of which the repair has been undertaken being on private or Municipal Council land, has not been touched and there is not a whisper in the order about the impact or otherwise thereof or action which has been taken against other persons.

28. Perusal of order dated 17.02.2023, indeed reveals that there is copious narration of facts by the authority. Reference has been made to the report of Chief Vigilance Officer, Local Government, Punjab. Reference is also made to comments of the Chief Vigilance Officer, which were called for by the authority, besides reply to show cause notice issued to the petitioner. Thereafter, while referring to comments of the Chief Vigilance Officer, it is simply observed that allegations of misuse of power and misuse of funds of M.C Jalalabad are proved. Non application of mind by the authority in question is reflected clearly as there is not a shred of reasoning available.

29. It is to be noted that petitioner is a democratically elected candidate. Serious allegations of misuse of his position have been leveled against him. Though, it was vehemently argued that it was only a general complaint filed by respondent no.3 and no specific allegation has been raised against the petitioner, it is mentioned in the charges itself that a Semi Government Letter No. 151 dated 02.06.2022, was received against the petitioner from respondent no.3 at the office of the Hon'ble Chief Minister.

There is also a reference to one complainant namely Pawan, who is stated to have provided a copy of the site plan at the spot to the Vigilance authority. It is pertinent to note at this stage that copy of the vigilance report or the complaint by Pawan Kumar, was not supplied to the petitioner. Said report and complaint have also not been annexed along with written statements filed on behalf of the State or the Municipal Council. Though, learned counsel for the State stated that vigilance report was in regard to number of other issues also, therefore the same was not placed on record, we do not find any merit in this explanation sought to be put forth. Equally misconceived is the argument that as the petitioner had not asked for the report in question, it was not supplied to him. It is a settled position of law that it is necessary to supply to the affected person, the entire material upon which reliance is placed as admittedly serious consequences flow from such orders, therefore a casual approach cannot be countenanced in any manner.

30. At this stage, it is pertinent to mention that the Hon'ble Supreme Court in case of **Tarlochan Dev Sharma Vs. State of Punjab, 2001 (3) RCR (Civil) 809**, has observed as under:-

“6. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held.

Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of "abuse of his powers" (of President), inter alia. This is the phrase with which we are concerned in the present case.

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10. The expression 'abuse of powers' in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councilor unworthy of holding the office of President, Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is 'abuse of his powers or habitual failure to perform his duties'. The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase 'abuse of powers' must take colour from the next following expression - 'or habitual failure to perform duties'. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is 'abuse of powers' within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

11. One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to

the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a necessary corollary therefrom that what has not been communicated or not relied on in the show cause notice as a ground providing reason for the proposal removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to be explanation furnished by the person proceeded against and this must appear from the order passed under Section 22.”

31. It has been held by a Full Bench of this High Court in **State of Punjab Vs. Bhagat Ram Patanga, 1969 PLR 625** that ‘order of removal of a member of a Municipality is a quasi judicial order and the competent authority is expected to give an outline of the process of reasoning by which the decision has been arrived at.’

32. The Hon’ble Supreme Court in **Kranti Associates Private Limited and another versus Masood Ahmed Khan and others, (2010) 9 Supreme Court Cases 496** while summarizing the principles *qua* recording of reasons, held as under:-

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions"

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process."

33. In the present case, it is an indisputable position that impugned order has been passed with a bare narration of the facts and simple observation that the order is being passed on the basis of the enquiry by the Vigilance. None of the points, issues and contentions as raised have even

been considered, deliberated upon and thereafter decided with attendant reasoning. There is nothing on record to indicate that the relevant record was looked into, examined and considered by the competent authority. Pleas of the petitioner including the one that part of the road in question has been in existence since 1970, 2006, 2011 and 2013 with the same being constructed out of the Municipal Council funds since then has not been dealt with. Discrepancies as narrated in the foregoing paras have also not been considered, neither their impact or otherwise discussed. It was indeed incumbent upon the authority to have looked into all these aspects.

34. In our considered opinion, it was the duty of the competent authority to look into all these aspects and pass a considered order with appropriate reasoning. In the given factual matrix, we feel that in view of serious allegations raised against the petitioner, conscientious exercise in accordance with law should have been undertaken and an order having serious consequences should not have been passed in a lackadaisical manner. An order of such nature should reflect reasoning with seriousness the matter deserves. It is incumbent upon the competent authority to record reasons for its decision with precise clarity. It is to be pointed out at this stage that the official respondents have also not placed any material before us which would indicate/reflect the process of reasoning which may have enabled the competent authority to reach its conclusion. As noted in the foregoing paras, relevant issues, impact of the pleas raised especially in conjunction with the entire record has not been considered while passing the impugned order, including non supply of inquiry report besides the complaint/ allegations by one Pawan Kumar as mentioned in the charges. There is indeed no material to indicate that relevant record was called for by the competent authority and examined in right earnest to reach the conclusion as recorded in the

impugned order.

35. Keeping in view the facts and circumstances as above, order/notification dated 17.02.2023, Annexure P-14, is set aside and the matter is remanded to the competent authority to decide the same afresh after considering the entire facts and circumstances, pleas raised by the petitioner and thereafter pass a reasoned order after thorough examination of the entire record within four weeks. Copy of vigilance report and any other material relied on be supplied to the petitioner within one week who shall be at liberty to respond within one week thereafter. Matter be decided within two weeks thereafter. It is clarified that there is no expression of opinion on the merits of the controversy as agitated before us and the same is within the realm of consideration by the competent authority. Observations in this order are only for the purpose of decision of this writ petition and are not to be construed in favour or against any of the parties.

36. Writ petition is accordingly disposed of. Pending applications, if any, stands disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 20, 2023.
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.