



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4062 OF 2021

Sou.Pratibha Sudhir Shinde
Age: 45 yrs, Occ: Public Servant,
R/at: 1787, Dhor Ali, Near Ganesh Mandir,
Ravivar Peth, Wai, Tal. Wai, Dist.
Satara - 412803. Petitioner

... Petitioner.

Versus

1. Government of Maharashtra
(Through Its Minister - Department of
Urban Development)
Having office at: New Administrative
Building, Mantrayalaya, 246, Madam
Cama Road, Nariman Point, Mumbai - 400021.

2. The Divisional Commissioner,
Pune Division
Having Office At: Poona Club Amphitheatre,
Council Hall, Bund Garden Road,
Camp, Pune-411001.

3. The District Collector, Satara
Having office at: Near LIC Building,
Powai Naka, Satara, Maharashtra-415001.

4. The Sub-Divisional Officer, Wai
Having office at: dhom colony,
Wai, Satara 412803.

5. Chief Officer, Wai Municipal Council
Having office at: 587, Motibaug road,
Danebazaar, Ganpati ali, Wai, Satara -412803.

...Respondents.

WITH
INTERIM APPLICATION NO. 1901 OF 2021
IN
WRIT PETITION NO.4062 OF 2021

Shrikant Balwant Chavan
Aged About 67 years,
Occupation : Professor,
R/o, "Jaygad" Anand Sahakari Griha
Nirman Sanstha, Vishram Dham road,
Opposite Saibaba Temple, Songirwadi,
Wai, Tal. Wai, District : Satara

... Applicant.

In The Matter Between

Sou.Pratibha Sudhir Shinde
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Ravivar Peth, Wai, Tal. Wai, Dist.
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...Respondents.

*Mr. Abhishek R. Avachat a/w. Mr. S.H. Deshpande for the Petitioner.
Mr. P.V. Nelson Rajan, AGP for the Respondent-State.
Mr. Siddharth Karpe, for Respondent No.5.*

Coram : Sharmila U. Deshmukh, J.
Reserved on : June 19, 2024
Pronounced : June 26, 2024

JUDGMENT :

- 1. Rule.** Rule made returnable forthwith and taken up for final disposal with the consent of the parties.
- 2.** The Petition takes exception to the order of disqualification dated 4th August, 2021 passed by the State Government through its Minister-Department of Urban Development by which the Petitioner has been removed from the post of the President of Wai Municipal Council, Dist- Satara and has been disqualified as Councilor of the said Municipal Council. She has been barred for a period of 6 years from contesting election from the post of Councilor of Wai Municipal Council by the impugned order.
- 3.** The facts of the case are that the general elections of Wai Municipal Council were held on 27th November, 2016. The Petitioner was directly elected as President of the Wai Municipal Council. A complaint came to be filed with the Anti Corruption Bureau alleging demand of bribe by the Petitioner and her husband by one Amit Ramchandra Jaygude on 8th June, 2017. It was alleged that ACB had set the trap and the Petitioner and her husband were caught red handed accepting a bribe of Rs. 14,000/- allegedly for the purpose of clearing the balance bill amount of Rs. 1,40,000/- towards the

payment to be made by the Wai Municipal Council for the purpose of building of public toilet. On 30th June, 2017, Cr. No. 166 of 2017 came to be registered with the Wai Police Station for the offences punishable under Section 7, 12, 13(1)(d) read with Section 30(2) of the Prevention of Corruption Act, 1988. As the Petitioner was public servant, sanction was sought from the State Government from the Anti Corruption Bureau and after examining the concerned documents, sanction was granted by the State Government on 22nd March, 2018. Pursuant thereto, the State Government decided to initiate proceedings under Section 55A and 55B of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965 (Act of 1965) for disqualification of the Petitioner. In the mean time, the requisition for removal of the Petitioner was received by the Wai Municipal Council from 16 Councilors. The State Government directed the Collector, Satara to submit a proposal to the State Government after conducting an inquiry in accordance with the procedure which has been set out in the GR dated 1st November, 1979. The Collector directed the Sub-Divisional Officer to conduct an inquiry and submit a report. Accordingly, the Sub-Divisional Officer conducted the inquiry and submitted a report which was then considered by the Collector and forwarded to the State Government with the recommendation of removal of the Petitioner on the ground of misconduct and disgraceful conduct.

4. Upon receipt of the report of the Collector, show cause notice dated 15th May, 2018 was issued by the State Government to the Petitioner calling upon her to show cause as to why she should not be removed from the post of President on the ground of misconduct and disgraceful conduct. The Petitioner submitted her reply to the show

cause notice on 24th May, 2018 and the oral hearing was conducted on 3rd September, 2020. Upon consideration of the reports submitted to the State Government and upon hearing the Petitioner and considering her written submissions, the State Government by the impugned order dated 4th August, 2021, exercised power under Section 55A and 55B of the Act of 1965 removing the Petitioner from the post of the President and Councilor and disqualifying and barring the Petitioner from contesting election for the post of Councilor for a period of 6 years.

5. Heard Mr. Avachat, learned counsel for the Petitioner, learned AGP Mr. P.V. Nelsonrajan and Mr. Kapre learned counsel for Respondent No.5.

6. Learned counsel for the Petitioner has taken this Court through the findings of the Hon'ble Minister as well as the findings of the Sub-Divisional Officer and the Collector. He would also point out the report given by the CEO of the Wai Municipal Council and would submit that the allegation in the complaint is about accepting of bribe of Rs.14,000/- for clearing of the bill. He submits that the Complainant is one Amit Jaygude who was not awarded any contract and in fact, the contract was awarded to one Sachin Gurav who has not filed any complaint. He would further point out the report of the Collector which is at page 79 of the Petition and would contend that the Collector has also recorded a finding that the complainant Amit Jaygude was not awarded any contract and in fact Sachin Gurav was awarded the contract. He would submit that the Sub-Divisional Officer relies upon certain phone recordings which are not made available to the Petitioner. He submits that the sanction was granted on 22nd March, 2018 for the offence under the Prevention of Corruption Act,

1988 without noticing that the complainant Amit Jaygude was not awarded any contract and thus, there is no question of Amit Jaygude seeking release of his bill for which bribe was alleged to be offered. He would submit that the Collector's report is of 5th October, 2017, at which stage the investigation was still on and the sanction has been granted on 22nd March, 2018 and the chargesheet was filed on 26th April, 2018. He would further submit that the Sub-Divisional Officer has merely taken into consideration the allegations made in the complaint as well as the report of the Anti Corruption Bureau and has thereafter forwarded the report reiterating the contents of the complaint. He would further submit that the copies of the report of the Anti Corruption Bureau was not furnished to the Petitioner. He would submit that the requirement is of full fledged inquiry as laid down by the Apex Court in the case of ***Ravi Yashwant Bhoir vs. District Collector Raigad And Ors., [AIR 2012 SCC 1339]***.

7. *Per contra*, learned counsel for the Respondent No. 5 would distinguish the decision of the Apex Court in the case of ***Ravi Yashwant Bhoir*** (supra) and would contend that in that case, the allegation was of not taking action against unauthorized construction and there was no opportunity of hearing given resulting in violation of principles of natural justice. He would further submit that in the present case, the inquiry has been conducted by three authorities. He would further submit that in accordance with the guidelines laid down, the enquiry was firstly conducted by the Sub Divisional Officer who after hearing the Petitioner forwarded the report to the Collector and thereafter the Collector has forwarded its report to the Divisional Commissioner and then, to the State Government. He would further submit that the Petitioner has not denied the fact that

the bribe money has been accepted and it is immaterial whether the same has been given by Amit Jaygude or Sachin Gurav. He relies upon the decision of this Court in the case of ***Dr. Gazala Yasmeen W/o Maruf Khan vs. State of Maharashtra And Ors. [delivered on 22nd January, 2019 in Writ Petition No. 4792 of 2018]***.

8. Considered the submissions and perused the record.

9. Before proceeding to the facts of this case it would profitable to refer to the statutory provisions governing the removal of the President elected directly by the voters under the Act of 1965. Section 51A-1A of the Act of 1965 provides for direct election of the President who shall be elected by the persons whose name are included in the Municipal Council's voters list prepared under Section 11 of Act of 1965.

10. Section 55 provides for removal of President by Councilors and by Amendment Act 25 of 2018 w.e.f 25th January, 2018, the proviso to Section 55 (1) provides that for removal of President directly elected under Section 51A-1A, the provisions of Section 55-1 shall apply.

11. Section 55-1 reads as under :

"(1) The requisition for removal of the President directly elected under section 51A-1A shall be signed by not less than one half of the total number of Councilors and shall contain the charges of misconduct against such President and shall be sent to the Collector :

Provided that, no such requisition shall be sent within a period of two and half years from the date of election of such President.

(2) Upon receipt of the requisition under sub-section (1), the Collector shall conduct the enquiry of such charges and complete

such enquiry within a period of one month from the date of receipt of the requisition:

Provided that, in no case such period of enquiry shall be extended beyond three months and for such extended period, prior assent of the State Government shall be obtained by the Collector, if the enquiry proceeding is delayed due to unavoidable reasons.

(3) The collector shall submit the findings of the enquiry to the Government for taking appropriate action under Section 55A."

12. Section 55A provides for the removal of the President by the Government and reads as under:

"Without prejudice to the provisions of section [55-1A] and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President, as the case may be, during the remainder of the term of office of the Councilors:

Provided that, no such President or vice-President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation

[Provided further that, the Government shall take a decision on the report submitted by the collector under Section 55-1, within a period of six months from the date of receipt of the report.]"

13. For removal of the directly elected President, the relevant statutory provisions are Section 55-1 and Section 55A of Act of 1965. Section 55(1) which was amended by Amendment Act No. 8 of 2002 provides that a President shall cease to be the President, if the Councilors pass a resolution at a special meeting by majority of not

less than three fourths of the total number of Councilors. The proviso to Section 55(1) was amended by Amendment Act 25 of 2018 providing for applicability of Section 55-1 for removal of President directly elected under Section 51A-1A.

14. Section 55-1 specifies the procedure to be followed for removal of President directly elected. Section 55-1(1) provides that the requisition for removal of directly elected President shall be signed by not less than one half of the number of Councilors and shall contain the charges of misconduct against such President and shall be sent to the Collector. Proviso to Section 55-1(1) provides that no such requisition shall be sent within a period of two and half years from date of election of such President. Sub Section (2) provides that upon receipt of requisition, the Collector shall conduct the enquiry of such charges and complete such enquiry within one month from date of receipt of the requisition and the period of enquiry cannot exceed beyond three months without prior assent of State Government. Sub Section (3) provides that the Collector shall submit the findings of the enquiry to the Government for taking appropriate action under Section 55A.

15. Coming to the facts of the present case the filing of the complaint by the Anti Corruption Bureau as well as the submitting of requisition by 16 councilors is not disputed. The Collector has acted upon the directions received from the State Government on 15th July, 2017 directing the Collector to conduct an inquiry in accordance with the Government Resolutions of 1st November, 1989 and 4th September, 2010. The GR of 1st November, 1989 provides that for purpose of conducting inquiry, Class-I officer should be appointed as inquiry officer. It further provides that after the inquiry is conducted,

the inquiry report is to be submitted by the Collector along with his recommendation to be routed through the Divisional Commissioner to the State Government. The Government Resolution dated 4th September, 2010 is a clarification to the GR of 1st November, 1989 subsequent to the order passed by this Court in Writ Petition No. 5558 of 2005 holding that without exercising the powers under Section 55A 55B of the Act 1965, the action under Section 44 of the Act of 1965 for disqualification of the Councilor cannot be conducted.

16. An inquiry was accordingly conducted by the Sub-Divisional Officer who called for report of Anti Corruption Bureau and CEO of Wai Municipal Council. Perusal of the report of the CEO of Wai Municipal Council dated 27th July 2017, would indicate that the tender had been allotted to Sachin Gurav and the details of the tender have been given. The contention of the Petitioner before the Sub-Divisional Officer is that the chargesheet is not yet submitted and the investigation in Cr. No. 166 of 2017 is still going on and that she has been released on bail. It is her contention that the complainant Amit Jaygude was not concerned with Wai Municipal Council and he has not been awarded any contract and only for the purpose of removal of her from the post of the President, a false case has been registered by Amit Jaygude due to political rivalry.

17. The Sub-Divisional Officer noted that on 12th June, 2017, the Vice President and other 14 Councilors had submitted representation seeking removal of the Petitioner from the post of the President. The finding of the Sub-Divisional Officer is that Amit Jaygude is not the contractor and there is no bill which is required to be paid to him and that the contract has been given to Sachin Gurav. The Sub-Divisional Officer noted that there is some phone recording asking for bribe for

the purpose of clearing the balance bill and in the reply of the Petitioner there is no explanation as to why the sum of Rs. 14,000/- is accepted. With this report, the Sub-Divisional Officer forwarded the findings to the Collector for appropriate action who has reproduced the findings of the Sub-Divisional Officer and recommended action under Section 55A and 55B of Act of 1965.

18. It needs to be noted that what has been alleged against the Petitioner is misconduct or disgraceful conduct seeking removal of directly elected President from her post. It is settled that the proceedings for removal of duly elected member are quasi judicial proceedings in nature. Therefore, apart from following the principle of natural justice, it is also necessary that full fledged inquiry should be conducted in accordance with the statutory provisions. Perusal of the inquiry report of Sub-Divisional Officer dated 16th August 2018 does not indicate any findings arrived at by the Sub-Divisional Officer qua the misconduct alleged. The Sub-Divisional Officer was appointed as an Inquiry Officer to conduct an inquiry into the alleged misconduct and disgraceful conduct of the Petitioner. During the inquiry the concerned stake holders had submitted their respective contentions and it was expected of the Sub Divisional Officer in his capacity as the Inquiry Officer to discuss the respective contentions and arrive at a finding on the allegation of misconduct or disgraceful conduct backed by reasoned discussion. The Sub Divisional Officer has merely reproduced the allegations in the complaint, the submission of the Petitioner, the report of the CEO and the report of the Anti Corruption Bureau and by cryptic observations, forwarded the report to the Collector for taking appropriate action. The purpose of the inquiry which is the foundation for further action of removal of the

President has to necessarily reflect application of mind and reasoned findings to inspire confidence that proper inquiry has been conducted based on which the further procedure of removal of a duly elected President can be initiated. Perusal of the report of the Collector would indicate that the Collector has after merely reproducing the findings of the Sub-Divisional Officer's report, forwarded the same to the State Government. As the inquiry report was to be forwarded along with the recommendations of Collector, the Collector is required to independently assess the inquiry report and then recommend action to the State Government, which was not done in the present case.

19. At the time when the State Government proposed to initiate action under Section 55A of Act of 1965, the provisions of Section 55, and Section 55A were amended by Amendment Act of 2018 and Section 55-1 was incorporated. The statutory provisions governing the removal of directly elected President came up for consideration of Learned Single Judge of this Court in the case of ***Dr. Gazala Yasmeen Khan (supra)*** which has been tendered by the learned Counsel for the Respondents. One of the issue under consideration in that case was as under:

"Whether the State Government can remove the President directly elected as per Section 51A-1A of the Maharashtra Act No XL of 1965 without there being a requisition for removal of President signed by not less than one half of the total number of Councilors and without there being any inquiry by the Collector and finding recorded by the Collector on the inquiry regarding charges of misconduct against the President".

20. In that case, the general elections were held in November, 2016 and the Petitioner therein was directly elected as President of the

Municipal Counsel on 31st December, 2016. A complaint was made by Respondent No. 3 there in to the Hon'ble Minister on 14th July, 2017 under Section 55A and 55B of the Act of 1965 which was allowed. The learned Single Judge considered the various provisions of the Act 1965 and held in paragraph 15 as under :

"The harmonious construction of Section 55-1 and Section 55-A including the proviso below Section 55-A of the Maharashtra Act No.XL of 1965 would lead to the conclusion that the President directly elected under Section 51A-1A of the Maharashtra Act No.XL of 1965 cannot be removed by the State Government under Section 55-A unless the motion is initiated by requisition signed by not less than one half of the total number of Councilors and rooted through Collector and after the Collector conducts an enquiry as per Section 55-1(2) and submits the findings/report of the enquiry to the State Government as per Section 55-1(3) of the Maharashtra Act No.XL of 1965. The provisions are required to be read harmoniously and interpreted in such manner, as the intention of Legislature appears to be that the President who is elected directly as per Section 51A-1A of the Maharashtra Act No.XL. of 1965 should not be removed from the office by the State Government on its own and looking to the democratic principles, the requirement of requisition for removal of directly elected President by not less than one half of the total number of Councilors and then an enquiry by the Collector that too time bound and then findings of the enquiry by the Collector is necessitated. The 2nd proviso below Section 55-A of the Maharashtra Act No.XL of 1965 mandates that the State Government has to take decision on the report submitted by the Collector under Section 55-1 of the Maharashtra Act No.XL. of 1965 and that too within six months from the date of receipt of the report. The provisions of Section 55-A does not give absolute power to the State Government to remove a President directly elected under Section 51A-1A of the Maharashtra Act No. XL of 1965."

21. The learned Single Judge has specifically held that the provisions of Section 55A does not give absolute power to the State

Government to remove a President directly elected under the Act of 1965. In the present case, the State Government though directed an inquiry by the Collector, the same was pursuant to the Government resolution of 1989 and in fact the inquiry was not conducted by the Collector but by the Sub-Divisional Officer and as such, there is no inquiry as contemplated under Section 55-1 (2) of the Act of 1965. That apart, in the present case, the Collector has not recorded any finding and has merely forwarded the recommendation based on the inquiry conducted by the Sub-Divisional Officer. Before this Court there is no submission by the learned Counsel for the Respondents that the provisions of Section 55-1 were complied with. There is no requisition passed by not less than one half of total number of Councilors placed on record of this Court. The Hon'ble Minister has directed removal of the Petitioner without there being any requisition by the required number of Councilors and without without any enquiry report of the Collector under Section 55-1(2) of Act of 1965 and the impugned order of Hon'ble Minister suffers from patent error of Jurisdiction.

22. The Apex Court in the decision of ***Ravi Yashwant Bhoir*** (*supra*) though considering different charges, the allegation was of misconduct as no action was taken against the unauthorized construction as well as no meetings were being held and tenders were allotted violating the standing orders. The Apex Court considered the expression "misconduct" and "disgraceful conduct" and has also considered the impact of a removal of an elected office bearer. The Apex Court has held that a full fledged inquiry is mandated in case of removal of a Government Servant and for the removal of an elected official, a more stringent procedure and standard of proof is required.

The Apex Court has further noted the decision in the case of ***Tarlochan Dev Sharma vs. State of Punjab and Ors. [AIR 2001 SC 2524]*** which held that the elected officer bearer must not be removed unless a clear cut case is made out. The Apex Court has further emphasized the importance of recording of reasons. It is thus clear that the dictum of the Apex Court is that there has to be inquiry of stringent nature before an elected office bearer can be removed which inquiry shall contain reasons for removal.

23. In the present case, the Petition is required to be allowed on two grounds. Firstly in view of the decision in ***Dr. Gazala Yasmeen W/o Maruf Khan*** (supra), Section 55-A does not give absolute power to the State Government to remove a directly elected President unless a motion is initiated by requisition signed by not less than one half of the total number of Councilors and routed through Collector and after the Collector conducts an enquiry as per Section 55-1(2) and submits the findings to the State Government under Section 55-1(3) of Act of 1965. In the present case, the State Government passed the order of removal of the directly elected Petitioner in exercise of powers under Section 55A of the Act of 1965 without there being requisition of the mandated number of Councilors and enquiry by Collector as per Section 55-1(2). The order thus suffered from error of jurisdiction. The inquiry by the Sub Divisional Officer as directed by the Collector cannot qualify as an inquiry by the Collector under Section 55-1(2) of Act of 1965.

24. Secondly, even on merits of the matter as the Sub Divisional Officer was appointed as an inquiry officer, what was expected was a full fledged inquiry in the charges of misconduct and disgraceful conduct. Instead in the name of an inquiry, only the gist of various

reports was reproduced and forwarded to the Collector without any discussion or finding who has thereafter based on the report recommended action under Section 55A of the Act of 1965. The impugned order of the Hon'ble Minister based on the so called inquiry by the Sub-Divisional Officer discloses that the allegations in the crime registered against the Petitioner has been accepted by the Hon'ble Minister without there being any independent finding of misconduct or disgraceful conduct which is unsustainable.

25. In light of the discussion above, the impugned order dated 4th August, 2021 is hereby quashed and set aside. The Petitioner to continue as President of Wai Municipal Office unless she is removed by following the statutory provisions prescribed for her removal. Rule is made absolute in the above terms.

26. In view disposal of Writ Petition, Interim Application does not survive for consideration and same is disposed of.

[Sharmila U. Deshmukh, J.]