



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12479 OF 2023

Shri. Rohan Vishwanath Khedekar,]
Age 38 years, Occ. Service,]
Residing at Jamsande Malai, Jamsande,]
Sindhudurg, District Satara.]

...Petitioner.

Versus

1. The Divisional Commissioner,]
Konkan Division, Having its office at]
Konkan Bhavan, CBD Belapur,]
Navi Mumbai.]
2. Shri. Yogesh Prakash Chandoskar,]
At Post Jamsande, Velvadi Sada,]
Tal. Devgad, District Sindhudurg.]
3. The Collector, Sindhudurg,]
District Sindhudurg.]
4. Regional Director Municipal]
Administration, Having its office at]
Konkan Bhavan, CBD Belapur,]
Navi Mumbai.]
5. Devgad Jamsande Nagarpanchayat,]
At post Devgad, District Sindhudurg,]
Pin Code 416 613]
Through it Chief Officer.]

...Respondents.

Mr. Suresh Sabrad for the Petitioner.
Ms. Pushpa Ganediwala and Ms. Anshu Agrawal for the Respondent No. 2.
Mr. Ulhas T. Naik for the Respondent No. 5.
Ms. M. P. thakur, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : July 29, 2024

Pronounced on : August 14, 2024.

Judgment :

1. ***Rule.*** Rule made returnable forthwith and by consent of learned counsel for parties taken up for final disposal.
2. By this petition, exception is taken to the order dated 5th October 2023 passed by Respondent No.1 - Divisional Commissioner in Appeal No. 1 of 2023 confirming the order dated 17th July 2023 passed by Respondent No. 3 Collector, Sindhudurg disqualifying the Petitioner under Section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "Municipal Councils Act").

FACTS:

3. The background leading to the present Petition as discerned from the Petition is that in the year 2020, the Petitioner was elected as Councillor from Ward No.7 of Respondent No.5 Devgad Jamsande Nagar Panchayat. On 7th November 2022, the Respondent No. 2 filed a complaint with the Collector contending that the Petitioner has violated the provisions of Municipal Councils Act by carrying out illegal construction and sought disqualification of the Petitioner. Pursuant thereto, site inspection was carried out by the officers of Respondent

No.5 and the report along with panchnama dated 14th November 2022 was forwarded by the Chief Officer of Respondent No.5 to Town Planning Department. On 21st November 2022, the Town Planning Department sought information from the Chief Officer as to whether the construction was carried out during the tenure of Petitioner as Councillor and directed report to be submitted. On 22nd November 2022, Chief Officer of Respondent No. 5 submitted its report stating that the Petitioner and his brother had preferred an application for building permission on 30th June 2022 and during the pendency of same, they have carried out unauthorised construction during the tenure of Petitioner as Councillor.

4. On 22nd November 2022 the Respondent No. 3 issued a letter to the Petitioner calling upon him to remain present for hearing in the matter of complaint filed by the Respondent No. 2. On 21st December 2022 the Petitioner filed his written say to the application denying the allegation of unauthorised construction and contending that the application seeking building permission was preferred way back on 30th June 2022 and after making payment of requisite fee and on expiry of 60 days he has proceeded with the construction work under section 189 of the Municipal Councils Act.

5. On 21st December 2022, the Petitioner filed an application seeking permission to cross examine, which was objected by

Respondent No 2. The Respondent No.3 held that there is no provision for cross examination and that in view of the inquiry report and the position which can be ascertained from the GPS map, cross-examination is not required. Writ petition No. 1300 of 2023 was filed by the Petitioner against the said order of Respondent No. 3 rejecting his application seeking cross examination. Vide order dated 3rd February 2023, in view of the statement made on behalf of Respondent No.2 that the cross-examination of Respondent No. 2 can be conducted, this Court quashed the order of 21st December 2022 rejecting the cross-examination. Subsequently, the cross examination of Respondent No. 2 was conducted and thereafter an application was filed by the Petitioner for cross-examination of the witnesses of Respondent No.2 which application came to be rejected by the Respondent No.3 and Respondent No.3 passed an order of disqualification of Petitioner. Writ Petition No. 5745 of 2023 was filed challenging the order dated 11th April 2023 passed by the Respondent No.3 disqualifying the Petitioner and this Court vide order dated 25th April 2023 restored the disqualification application and directed the Respondent No.3 to grant an opportunity to the Petitioner to cross examine the witnesses and to dispose of the disqualification application within 2 months from the date of completion of evidence. Subsequently, the Petitioner examined the officers of Respondent

No.5. After hearing the parties, Respondent No. 3 vide order dated 17th July 2023 disqualified the Petitioner on the ground that the Petitioner along with his brother had carried out unauthorised construction.

6. The Petitioner preferred an appeal before Respondent No.1 under Section 44(1)(3) and (4) of the Municipal Councils Act. On 12th September 2023, the Respondent No.1 issued notice for hearing on the appeal and scheduled the video conferencing hearing on 15th September 2023. The said hearing was postponed and on 27th September 2023 the Respondent No.1 issued notice to the Petitioner informing him that the hearing is scheduled on 3rd October 2023. On 3rd October 2023 an application came to be filed by the Advocate on behalf of the Petitioner stating that the written arguments will be filed within period of two days and the appeal be fixed after two days. The Application states that after the written arguments are filed, the appeal to be closed for decision and sought adjournment by two days.

7. Roznama of 3rd October 2023 records that the Advocate for the appellant has stated that written say in the matter will be filed on or before 6th October 2023, that the Advocate for the Respondent has submitted his written say and the copy was served on the Advocate for appellant. It further records that both the Advocates agree that they do not want any date for oral arguments. The Roznama records that based on written say the matter is reserved for final decision.

8. On 5th October 2023 written arguments were filed on behalf of the Petitioner and on the same day itself the order came to be passed by the Respondent No.1 dismissing the appeal filed by the Petitioner and confirming the order of disqualification passed by the Collector.

SUBMISSIONS:

9. Mr. Sabrad, learned counsel for the Petitioner would submit that every effort was made to ensure that no opportunity of hearing was given to the Petitioner by referring to the previous orders. He would further submit that in the order of 25th April 2023, the Division Bench of this Court has held that the Petitioner was entitled to seek an opportunity to cross examine other 3 witnesses and due to the refusal of such opportunity by the Collector, the impugned order is in gross violation of the principles of natural justice. He would further submit that this Court had protected the Petitioner in event any adverse order was passed and had remanded the matter back. He submits that against the order of disqualification, appeal came to be filed before the Additional Commissioner which was not being heard and the Petitioner was once again constrained to approach this Court where upon this Court directed the Divisional Commissioner to decide the appeal within a period of 6 weeks from 28th August 2023 and stayed the order of disqualification passed by the Collector. He would further point out the additional affidavit filed on behalf of the Respondent

No.1 which states that on 3rd October 2023 the Junior Advocate of Petitioner had attended the hearing and submitted that she would file an affidavit in reply on the next date of hearing, that is, on 6th October 2023. He submits that it is therefore clear that the matter was fixed for hearing on 6th October 2023 and that on 5th October 2023 after the written say was filed without giving an opportunity of hearing to the Petitioner, the order was passed. He points out the application filed by the Junior Advocate on 3rd October 2023 requesting for appeal to be listed after two days and submits that by that application an adjournment of 2 days was sought. He would further submit that roznama of 3rd October 2023 was signed by the Advocates prior to the hearing as per usual practice and particulars were filled-in later on. He therefore submits that though the matter was adjourned for the purpose of filing written arguments, on 3rd October 2023 itself the appeal was reserved for final decision despite the written arguments not being on record.

10. *Per contra* Ms. Ganediwala, learned counsel appearing for the Respondent No. 2 would submit that the application of 3rd October 2023 is not for adjournment and does not mention that the arguing counsel was not available. Pointing out to the roznama of 3rd October 2023 she would submit that the roznama clearly records that both the Advocates agreed that they do not want any date for oral arguments

and that the written say would be filed on or before 6th October 2023. She submits that considering the roznama, it is too late in the day to contend that the contents therein are not correct. She submits that it was open for the Petitioner to approach the Respondent No.1 to correct the record which has not been done in the present case. She would further point out the affidavit filed by the Junior Advocate and would submit that it is pleaded that the presiding officer had asked questions to the legal officer and Respondent No. 2 and thus it is clear that there was oral hearing held. She would submit that that section 44(1)(e) of the Municipal Councils Act provides for disqualification of Councillor if during the term of his office he has carried out any illegal or unauthorised construction. She submits that enquiry contemplated under section 44 of the Municipal Councils Act is summary inquiry and it is not necessary that an opportunity of being heard is required to be given. She would further submit that while considering the aspect of principles of natural justice, it is also necessary that real prejudice must be proved. She submits that in the present case the admitted facts would lead to only one conclusion and therefore remand would be a useless formality. In support of her contentions, she relied upon following case law :

[a] ***Sagar v. Ilahi [2011(3) Mh.L.J. 552];***

[b] ***Sanjay Baban Parve v. State of Maharashtra [2018 SCC***

OnLine Bom 1819];

- [c] *Rahul Raju Kulsange v. Additional Collector [2021 SCC OnLine Bom 3443];***
- [d] *Patel Engineering Ltd v. Union of India [2014 SCC OnLine Bom 791];***
- [e] *Aligarh Muslim University v. Mansoor Ali Khan [(2000) 7 SCC 529];***
- [f] *Ganpat Gaonkar v. State of Goa [2021 SCC OnLine Bom 121];***
- [g] *Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260]; and***
- [h] *Vishwas v. Devendra [2016(4) Mh.L.J. 178].***

11. Learned AGP would point out the affidavit filed by the Respondent No.1 where it is specifically averred that both the Advocates had agreed that they do not want any date for oral arguments and based on the written arguments the matter was reserved for final decision. She would submit that subsequently upon written arguments being filed, the matter was reserved for judgment. She would further point out that in the impugned order it is recorded that on 3rd October 2023 during the hearing, Advocates for Appellant and Respondent had orally argued the matter.

12. In view of the impugned order recording that oral arguments were advanced, this Court directed the Respondent No.1 to file an additional affidavit explaining the discrepancy in the order recording that oral submissions were advanced on 3rd October, 2023 which does not find place in the roznama of 3rd October 2023. In view thereof an

additional affidavit came to be filed by the Respondent No.1 on 24th July 2024. In the said affidavit, the Respondent No.1 has stated that though the order dated 5th October 2023 records that the parties were heard, from the record it appears that the order dated 5th October 2023 was passed taking into consideration the written submissions made by both the parties. It is further stated that the matter may be remanded to Respondent no.1 who will pass a fresh order within a period of 2 months.

REASONS AND ANALYSIS:

13. The singular challenge mounted by Mr. Sabrad is denial of opportunity of personal hearing resulting in violation of principles of natural justice. The position which emerges from the material on record is that on 3rd October, 2023 an application was filed by the Advocate for Petitioner stating that the Appeal be listed after two days and that time of 2 days be granted to the Petitioner to file written arguments. The request for listing of Appeal after two days was in fact a request for adjournment. The first Affidavit in reply dated 5th December, 2023 filed by the Deputy Commissioner on behalf of Respondent No.1 states in paragraph 7 as under:

"....I say that Ld. Junior Advocate for the Petitioner has herself attended hearing on 03.10.2023 and submitted that she will file Affidavit in Reply on next date i.e. 06.10.2023. I say that on 05.10.2023 she on her own attended the office of Respondent No 1 with written

arguments and thereafter the order was passed on same day after considering the contentions and written arguments of both the parties.” [Emphasis supplied.]

14. Considering the stand taken by the Respondent No 1 that the next date was on 6th October, 2023, the Roznama of 3rd October, 2023 reserving the matter for final decision is palpably incorrect recording of proceedings. In view of the request made by the application of 3rd October, 2023 that the written arguments will be filed within two days, the appropriate course would have been to list the matter for filing of written submissions after two days. Propriety demands that only after ensuring that the written arguments are placed on record, the matter should have been reserved for final decision.

15. It is stated that on 5th October 2023, the written arguments came to be filed by the Advocate for the Petitioner. However, there is no roznama of 5th October 2023 taking the written arguments on record. On the same day, the impugned order came to be passed. It is submitted by learned AGP that as both the Advocates agreed that they do not want any date for oral arguments and based on the written say, the matter was reserved for final decision on 3rd October 2023, however, the impugned order dated 5th October 2023 records that on 3rd October 2023 the Advocate for Appellant and the Advocate for Respondent had advanced oral arguments. If on 3rd October 2023, oral

arguments were advanced then the roznama of 3rd October 2023 would not record that both the Advocates agreed that they do not want any date for oral arguments. The recording of the proceedings in the Roznama maintained by the Respondent No 1 appears to be doubtful and in my view is not the correct record of the proceedings.

16. The noting in the order as regards the oral arguments being heard is attempted to be substantiated by Ms. Ganediwala by pointing out the Affidavit filed by the Junior Advocate for the Petitioner stating that the Presiding Officer had asked few questions to the legal officer and Advocate of the Respondent No 2. By no stretch of imagination, asking of few questions by the presiding officer that also to the legal officer and Advocate of Respondent No 2 can be construed as hearing of oral arguments of the Advocate of the Petitioner of an Appeal challenging disqualification of the elected Councillor.

17. Apart from the above, the fact that no oral hearing was given to the Petitioner is more than substantiated by additional affidavit dated 24th July, 2024 filed by the Respondent No.1 through the Divisional Commissioner admitting that no roznama of 5th October, 2023 was maintained and though the order of 5th October, 2023 records that parties were heard, however, from the records it appears that order of 5th October, 2023 was passed taking into consideration the written submissions. The Deponent has requested for remand and that a fresh

order will be passed within two months.

18. From the material on record, I have no hesitation in holding that no opportunity of oral hearing was given to the Petitioner and on the date of filing of the written arguments itself, the impugned order has been passed. Although such efficiency is most desirable but usually lacking, when viewed in the light of material on record casts a doubt on the impugned order. At this stage itself the matter ought to have been remitted to the Respondent No.1 for fresh consideration, however, it is necessary to deal with the submissions of Respondent No 2 opposing the remand for the reason that the enquiry being summary enquiry no opportunity of oral hearing is contemplated and secondly no prejudice is shown to have been caused.

19. Before dealing with the said submissions, it will be apposite to refer to the relevant statutory provision to ascertain whether the same expressly provides for grant of hearing. The disqualification relevant for our purpose contained in Section 44 of Municipal Councils Act reads thus:

"44. Disqualification of Councillor during his term of office.

(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he —

- (a)
- (b)
- (c)
- (d)
- (e) has constructed or constructs by himself, his

spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts ; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure.

And he shall be disabled subject to the provisions of Sub-Section (3) from continuing to be a Councillor and his office shall become vacant.

Provided that—

(i) a Councillor shall not be disqualified under clause (c) if he is engaged for the Council without receiving any remuneration therefor or appears and conducts his own case in a court of law or before any authority under this Act against the Council irrespective of whether such a Councillor is a legal practitioner by profession or not ;

(ii) for the purpose of clause (d) when the Councillor applies for leave, such leave shall be deemed to have been granted unless it is refused within a period of sixty days from the date of his application.

(2)

(3)

(4) Any person aggrieved by the decision of the Collector may within a period of fifteen days from the date of receipt of the decision of the Collector by him, appeal to the State Government and the orders passed by the State Government shall be final :

Provided that, no order shall be passed under Sub-Section (3) by the Collector or under Sub-Section (4) by the State Government in appeal, against any Councillor without giving him a reasonable opportunity of being heard.”

20. The proviso to Sub-Section (4) of Section 44 mandates affording a reasonable opportunity of being heard to the Councillor before passing of the order of disqualification. The expression “reasonable opportunity of being heard” came up for consideration of the Apex Court in ***Fedco (P) Ltd vs S.N. Bilgrami [AIR 1960 SC 415]*** in the context of Import Control Order, 1955 where it was held thus:

“The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable.

There can be no invariable standard for "reasonableness" in such matters except that the Court's conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question.”

21. The contention of Ms. Ganediwala is that no prejudice is shown to have been caused. The provision itself mandates granting a reasonable opportunity of being heard and what is thus required to be considered is whether in the facts of the case a reasonable opportunity of being heard was given. In the present case, the Petitioner has incurred a disqualification for carrying out unauthorised construction which is sought to be explained by the the Petitioner stating that there was requisite application seeking construction permission filed, the requisite fees paid and there is no unauthorised construction in view of the deeming fiction under section 189 of the Municipal Councils Act. During the hearing before Collector, there was detailed evidence led and the witnesses were duly cross examined by the parties which postulates that disputed issues arose pertaining to the nature of the construction, the date of filing of the application for construction, the date on which the requisite fees for development was paid, the date on which the construction was carried out and whether the same could have been construed as deemed permission.

22. The present case is not a clear case of unauthorised construction being carried out in which case only one conclusion would be possible and thus remand would be an exercise in futility, but a case where legal defence of deemed permission has been taken. Sufficient opportunity of oral hearing was required to be given to the Petitioner to convince

the authority that the construction cannot be termed as unauthorised construction. It is but evident that the aspect of deemed permission would most likely be supported by judicial pronouncements during the oral arguments, which opportunity was lost to the Petitioner. In this case the Petitioner was not heard at all.

23. In my view, the filing of written submission does not satisfy the mandate of giving of reasonable opportunity of being heard to the Petitioner. The issue of whether any real prejudice is caused or not , in my view, will not arise as the statute itself provides for granting reasonable opportunity of being heard and the only consideration is whether the mandate has been complied with by the authorities. Having held that no reasonable opportunity of being heard was given to the Petitioner as provided by the statute, the submission about no prejudice was shown to have been caused and remand would be an empty formality are sufficiently answered. Even otherwise it is only where there is no dispute about the unauthorised construction based on admitted facts that it can be said that remand would be an empty formality. Considering the facts of the present case where an elected representative is sought to be disqualified, it is necessary to ensure strict compliance with every facet of principle of natural justice.

24. It is no doubt true that the inquiry under Section 44 of the Municipal Councils Act is summary inquiry but at the same time the fact

cannot be ignored that by the impugned order a duly elected Councillor has been held disqualified. In ***Ravi Yashwant Bhoir v. The District Collector, Raigad [AIR 2012 SC 1339]*** in the context of consideration of removal of the Councillor on ground of misconduct and disgraceful conduct, the Apex Court has held as under:

“This Court examined the provisions of the [Punjab Municipal Act, 1911](#), providing for the procedure of removal of the President of the Municipal Council on similar grounds in [Tarlochan Dev Sharma v. State of Punjab & Ors.](#), [AIR 2001 SC 2524] and observed that removal of an elected office bearer is a serious matter. The elected office bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

26. In a democratic institution, like ours, 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 or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.

27. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal.

28. In view of the above, the law on the issue stands crystallized to the effect that 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."

25. Considering the significance attached by the Apex Court to the disqualification of a duly elected representative, it is evident that there must strict compliance of requirements of principles of natural justice.

The statute itself providing for reasonable opportunity of being heard, the manner in which the entire proceedings have been conducted leaves no manner of doubt that the proceedings were conducted in haste. Such an adjudication is not contemplated when serious consequences of disqualification ensue from the proceedings. The remit of the matter is essential to ensure that before an adjudication on disqualification, the Petitioner has been given sufficient opportunity of raising all submissions to convince the authority that the construction is not unauthorised.

DECISIONS CITED BY RESPONDENT NO.2:

26. Although a compilation of judgments was tendered by the learned counsel appearing for the Respondent No.2 only few were relied upon which are being dealt with hereinafter.

27. In facts of the case of ***Sagar v. Ilahi*** (supra), learned Single Judge of this Court has held that the inquiry contemplated under Section 44 of the Municipal Councils Act is a summary inquiry and there cannot be any strait-jacket formula regarding the manner in which the inquiry is to be held by the Collector and it is not possible to read into the provisions of Section 44 of the Municipal Councils Act the provisions which are analogous to the Code of Civil Procedure. What distinguishes the said decision is that the Court was considering the submission canvassed that the Collector be directed to decide the

preliminary objections of the Petitioner afresh. It is in that context, learned Single Judge of this Court held that the inquiry under Section 44 of the Municipal Councils Act is the summary inquiry and thus the submission that the Collector should first decide the preliminary objection regarding maintainability and thereafter proceed to decide the case on merits cannot be accepted.

28. In *Sanjay Baban Parve* (supra), the contention raised was that no effective opportunity of hearing was granted as no opportunity of cross-examination was given. In the present case the said issue no longer survives for consideration in view of the orders passed by this Court directing the cross examination to be permitted. In that case, one of the objections raised was that the Collector had passed the final order after 3 months after the closure of case for final order which was in violation of the law laid down by the Division Bench of this Court in the case of *Shivsagar Veg Restaurant v. Income Tax Commissioner [(2009) 2 Bom CR 153]*. In that context, learned Single Judge of this Court held that whenever breach of the guidelines is to be seen, the question of prejudice being caused to the party is required to be seen. The same was rendered in the context of the late delivery of judgment by the Collector and the facts are clearly distinguishable.

29. Next decision relied upon is in the case of *Rahul Raju Kulsange* (supra). The said decision considers the provisions of Section 16 of the

Maharashtra Village Panchayats Act which provides that the inquiry therein is summary in nature and right of the person facing the same is restricted to the giving of an opportunity of being heard and nothing else. In the said decision, learned Single Judge of this Court has held that when on the question of fact there is no dispute, no real prejudice has been caused to the party aggrieved by the order by absence of any formal opportunity of cross-examination and that unless some prejudice is shown to have been caused by non observance of the principles of natural justice, then, the decision cannot be vitiated or set aside. What is pertinent is the observation in paragraph 32 wherein it has been held that inquiry under Section 16(2) of the Maharashtra Village Panchayats Act has to be summary in nature restricted to the observation of principles of natural justice and cannot be converted into an inquiry of adversarial nature requiring evidence to be laid and permitting cross examination. In that case, the issue was as regards the nature of inquiry under Section 16 of the Maharashtra Village Panchayats Act and it was held that the argument that while following the principles of natural justice, the Collector is bound to record the evidence has been rejected. The said decision also does not assist the case of the Petitioner as it emphasizes what is required is the observance of principles of natural justice.

30. The next decision is in the case of ***Patel Engineering*** (supra)

wherein the Division Bench of this Court has considered the aspect of natural justice and that in addition to natural justice, prejudice must also be proved to have developed. The Division Bench observed that any departure or every breach does not necessarily result in miscarriage of justice or gross failure of justice. The Division Bench has held that which principle of natural justice or which facet of the same is applicable depends upon the nature of *lis*, the statute under which the adjudication is undertaken and several other factors. It is therefore clear that what is required to be considered is the nature of dispute between the parties and whether the filing of written say could be said to be sufficient compliance with the principles of natural justice. As discussed above considering the nature of dispute which was as regards the unauthorised construction an opportunity of oral hearing was required to be given to the Petitioner to point out various provisions of the Municipal Councils Act and particularly argue on the aspect of deemed permission.

CONCLUSION:

31. In light of the above discussion, in my view, the impugned order dated 5th October, 2023 stands vitiated as no reasonable opportunity of being heard was afforded to the Petitioner as the Appeal came to be decided based on written arguments without affording oral hearing to the Petitioner. Considering that the disqualification was ordered on

the ground of unauthorised construction, an opportunity of oral hearing ought to have been given to the Petitioner to convince the authority that the permission was deemed to have been given under Section 189 of the Municipal Councils Act. I have refrained from entering into the merits of the matter as I intend to remit the matter to Respondent No.1. Hence, I pass the following order:

: ORDER :

- (a)** The impugned order dated 5th October, 2023 passed by the Respondent No.1 in Appeal No. 1 of 2023 is hereby quashed and set aside.
- (b)** Appeal No. 1 of 2023 is restored to the file of Respondent No.1 to be considered afresh after giving opportunity of oral hearing to both the parties.
- (c)** The parties are directed to appear before the Respondent No.1 on 26th August, 2024 at 11.00 a.m and advance oral arguments. Additional written arguments, if any, to be placed by the parties on or before 26th August, 2024.
- (d)** Respondent No.1 is requested to consider the Appeal afresh and decide the same expeditiously and in any event within a period of six weeks from 26th August, 2024 uninfluenced by the observations contained in the impugned order.

32. Petition stands allowed in the above terms. Rule is made absolute.

[Sharmila U. Deshmukh, J.]

33. At this stage, request is made by the learned counsel for the Petitioner that in event any adverse order is passed, the same may not be given any effect to for the period of two weeks from the date of passing of order. The said request is opposed by the learned counsel for the Respondent. As the interim relief was operating in favour of the Petitioner, in event any adverse order is passed, the same would not be given any effect to for the period of two weeks from the date of passing of order.

[Sharmila U. Deshmukh, J.]