



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

WRIT PETITION NO. 521 OF 2022

(Shri Namdeo Jayaram Sasane.. Vs.. State of Maharashtra and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Amol Mardikar, Advocate for petitioner.

Mr. N.S. Rao, Assistant Government Pleader for respondents.

CORAM : NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.

DATE : AUGUST 05, 2024

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We have heard learned counsel appearing for the parties.

2. The petitioner, a directly elected President of Municipal Council, Umarkhed was served with a show cause notice under Sections 55A and 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, 'Act of 1965'), which deals with removal of President and Vice President by the Government and disqualification for continuing as Councillor or becoming Councillor on removal as President or Vice-President. Amongst other, the causes cited against which explanation is sought are (a) that in the matter of award of contract for management of solid waste within the territorial limits of Municipal Council, the Work Order was issued on December 27, 2017; (b) the payments were made to the Contractors on February 08, 2018; and (c) *ex post facto* sanction of the Standing Committee was submitted on March 26, 2018. Since the contract amount was more than Rupees Ten Lakhs, the recourse to e-tender process should have been taken to. The said conduct is in violation of sub-section 2 of Section 58 of the Act of 1965. The petitioner had tendered his explanation to the same, which has resulted into passing of the impugned order dated January 31, 2022.

3. Amongst other, the contentions of Shri Amol Mardikar, learned Counsel for the petitioner are that Clause 8A of the impugned order dated January 31, 2022 is without any basis as there is no element of *mens rea*. It is claimed that before passing the order of lodging of complaint and registration of offences against the petitioner, the respondent Authority has not recorded any finding of the criminal act at the behest of the petitioner. It is further claimed that the observation in Clause 8B is rendered infructuous as the petitioner has already completed his tenure on the post of President of the Municipal Council and in such an eventuality, the provisions of Section 55A or 55B of the Act of 1965 for removal of the petitioner from the post of President cannot be taken recourse to by the Collector.

The learned counsel for the petitioner would urge that the respondent-State Government has failed to comply with the mandatory procedure prescribed under Section 55A of the Act of 1965 which deals with removal of President or Vice-President by the Government. According to him, the procedure laid down in the said provision is mandatory in nature as the consequences of action under the said provision are penal in nature. He would invite our attention to the observations in the impugned order so as to claim that the report called and submitted by the Collector, Yavatmal under the 'second proviso' of Section 55A of the Act of 1965 was not made available and that being so, there is violation of principles of natural justice.

4. As against above, Shri N.S. Rao, learned Assistant Government Pleader for the respondents, would urge that under the general powers, particularly under Section 58 of the Act of 1965, it is always open for the State Government to issue direction for registration of

offences. He would claim that the nature of default mentioned in the show cause notice and the impugned order sufficiently establishes the criminal intention of the petitioner. As such, the learned Assistant Government Pleader would urge that the order impugned is quite sustainable.

5. We have appreciated the submissions canvassed by the learned Counsel for the parties.

6. The respondent State Government has passed the impugned order in exercise of powers under Section 55-A of the Act of 1965, which deals with removal of the President or the Vice President of the Municipal Council by the Government.

7. The fact remains that the order impugned is passed by the Hon'ble Minister on January 31, 2022 thereby directing registration of offences against the petitioner and other Office bearers and contractors mentioned in the order. We hardly see any express provision in the Act of 1965 empowering the Hon'ble Minister to direct registration of offences while passing an order in exercise of powers under Section 55A of the Act of 1965. The basic requirement for registration of offence and charge-sheeting the petitioner will be of *mens rea* on the part of the petitioner. The order impugned in express terms is not dealing with the said issue at all. Apart from above, as rightly pointed out by the counsel for the petitioner, the Hon'ble Minister has relied on the report of the Collector, Yavatmal which is not made available to the petitioner. The Hon'ble Minister has directed the Collector, Yavatmal to consider the investigation papers and pass an order as to whether the petitioner can be removed or disqualified from the post of the President.

When confronted, the Assistant Government Pleader is unable to satisfy this Court as to the powers of the Hon'ble Minister to direct the action to be taken by the Collector, Yavatmal for disqualifying the petitioner from the post of President.

8. As such, the order impugned goes contrary to the very scheme of Section 55A of the Act of 1965. In our opinion, the procedure contemplated under Section 55A of the Act of 1965 to be adopted by the State Government for removal of President or Vice-President is mandatory as the consequences of the order passed in exercise of the said provision are penal in nature. In such an eventuality, it is necessary that all the relevant papers which are formed to be the basis for passing an order adverse to the interest of the parties like the petitioner must precede with complete opportunity of hearing including that of making available all the documents.

9. That being so, for passing the impugned order, we hardly see any basis for satisfaction to *prima facie* infer that the petitioner has committed criminal acts.

10. In this background, we are of the view that the impugned order dated January 31, 2022 goes contrary to the scheme of Sections 55-A, 55-B and Section 58 (1) and (2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. That being so, the impugned order dated January 31, 2022 is hereby quashed and set aside. We direct the petitioner to appear before the State Government on September 02, 2024. The State Government is directed to pass an order afresh after hearing the petitioner.

11. The writ petition stands allowed in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede