



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

WRIT PETITION NO. 3391 OF 2020

1. Sau. Vaishali W/o. Dilip Thakur,
Aged about 50 years, Occupation :
Social Worker and President of
Municipal Council, Katol,
R/o. Railway Station Main Road,
Katol, Tq. Katol, Distt. Nagpur.
2. Jitendra S/o. Nemalalji Tupkar,
Aged about 45 years, Occupation :
Social Worker and Business,
R/o. Katol, Tq. Katol, District :
Nagpur.
- 3) Charansingh S/o. Babulalji Thakur,
Aged about 61 years, Occupation :
Agriculturist as well as Councilor of
Municipal Council, Katol, R/o. Railway
Station Main Road, Katol, District :
Nagpur.

.... **PETITIONERS.**

// VERSUS //

1. State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. Hon'ble State Minister,
Urban Development Department,
Mantralaya, Mumbai -32.

3. Radheshyam Kisanlal Basewar,
Aged about 43 years, Occupation:
Agriculturist, R/o. Near Ram Mandir,
Katol, Tah. : Katol, Distt.: Nagpur.

.... **RESPONDENTS.**

Shri M.G.Bhangde, Sr. Advocate a/b Shri M.P.Khajanchi & Shri M.I.Dhatrak,
Advocates for Petitioners.

Shri Amit A. Yadkikar & Shri K.J. Tople, Spl. Counsel for Resp. Nos.1 and 2.

Shri A.S.Jaiswal & Shri C.S.Kaptan, Sr. Advocates a/b. Shri S.V.Deshmukh and Shri
K.V.Deshmukh, Advocate for Respondent No.3.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 06/11/2023

DATE OF PRONOUNCING THE JUDGMENT:06/02/2024

JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. This writ petition takes exception to the order dated 04/12/2020 passed by the Respondent No.1 -Hon'ble Minister, removing the petitioner No.1 as President of the Municipal Council, Katol under Section 55A and 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to

as “the Act of 1965”), the petitioner No.2 from the post of Councilor under Section 55B of the Act of 1965 and the petitioner No.3 from the post of Councilor under Section 42 of the Act of 1965.

The brief facts of the present case are as follows:

4. The petitioner No.1 got directly elected as President under Section 51A(1)(a) of the Act of 1965 on 08/01/2017 and the petitioner Nos. 2 and 3 as Councilors of Municipal Council, Katol in the general elections. Thereafter, the petitioner No.2 came to be elected as Vice President.

5. Then on a complaint by one Radheshyam Basewar the Hon’ble Minister directed the Regional Director of Municipal Administration to make an enquiry. The enquiry was directed to be initiated through the office of the Divisional Commissioner. Accordingly, the enquiry was conducted in the matter of appointment of one Shri Vishal Tadas as Project Management Consultant (PMC) for preparation of project report for “*Pradhanmantri Aawas Yojana*”. It is alleged that by making such appointment the petitioners have caused financial loss to the Municipal Council.

6. On conclusion of such enquiry a show cause notice dated 24/10/2018 was issued to the petitioners, calling upon them to give explanation why they should not be removed under Sections 42, 55A and 55B of the Act of 1965.

7. The petitioners, thereupon, submitted their detailed explanation along with numerous documents. The petitioners also raised thereby a preliminary objection to the validity of the show cause notice.

8. The Hon'ble Minister thereafter conducted a hearing and passed the impugned order dated 04/12/2020, removing the petitioners from their respective posts. Hence, this petition.

9. I have heard learned counsel for the respective parties and perused the record.

10. After giving due consideration to the submissions made by the rival parties and also on scrutiny of the record including the original record and proceedings produced by the learned Special Counsel appearing on behalf of the Government, I have reached to the conclusion that there is a complete non-application of mind to the preliminary objection raised by the petitioners as well as to their explanation, by the

Hon'ble Minister, and hence, the matter needs to be remanded back to the Hon'ble Minister for fresh consideration. Hence, the purpose would be served if the arguments made on merit by the rival parties are enumerated in brief.

11. Shri Bhangde, learned Senior Advocate makes the following submissions :

- a) The procedure contemplated under Section 55-1 and 55A of the Act of 1965 has not been followed;
- b) If the Hon'ble Minister initiated the proceeding in question *suo motu*, there is no such finding recorded or even no such intention was disclosed to the petitioners so as to give an opportunity to the petitioners to submit their say on it.
- c) The reasons recorded by the Hon'ble Minister are beyond the scope of the show cause notice issued to the petitioners.
- d) The petitioners while submitting the explanation to the show cause notice have justified the action of appointment of Shri Vishal Tadas as Project Management Consultant (P.M.C.) for preparation of Project Report for 'Pradhanmantri Aawas Yojana', vide resolution dated 17/02/2017, and also raised a preliminary objection to the show cause notice, which has not been considered and dealt with by the Hon'ble Minister.

e) The resolution No.71 to appoint Project Management Consultant was passed on 26/09/2016 i.e. even prior to the election of the petitioners on 08/01/2017. In pursuance to the said resolution No.71, dated 26/09/2016, tenders were called and the petitioners have only allotted the tender work to the lowest bidder. This fact has not been appreciated and considered by the Hon'ble Minister.

g) No sufficient opportunity of hearing was granted.

12. In support of his submissions, the learned Senior Advocate has relied upon the judgment of the Hon'ble Supreme Court of India in the case of *D.N.Roy and S.K. Bannerjee .vs. State of Bihar*, reported in **1970(3) SCC 119**, the judgments of this Court in the cases of *Smt. Savitri Chandrakesh Pal ..vs.. State of Maharashtra & Ors.*, reported in **2009(4) All M.R. 194**, *Girijashankar ..vs.. State of Mah.*, reported in **2018(1) Mh.L.J. 615** and *Dr. Gazala Yasmeeen ..vs.. State of Mah.*, reported in **2019(3) Mh.L.J. 325**.

13. On the other hand, the learned Special Counsel appearing on behalf of the State Government submits as under :

i) The Hon'ble Minister has rightly considered the report submitted by the Divisional Commissioner and also the other material available on record and reached to the

conclusion to remove the petitioners. Hence, the Hon'ble Minister has not committed any error.

- ii) Though the record does not show that the Hon'ble Minister had taken *suo motu* cognizance, however, in the reply to the writ petition it is specifically stated that the Hon'ble Minister has taken *suo motu* cognizance and initiated the action under the provisions of the Act of 1965.
- iii) Sufficient opportunity was granted to the petitioners to put their case in defence.

14. Shri Kaptan, learned Senior Advocate appearing on behalf of the respondent No.3 argues as under :

- a) Under Section 55-1 of the Act of 1965, an action can be taken only in respect of the misconduct, whereas, under Section 55A of the Act of 1965 the State Government can remove the President or Vice President on the ground of misconduct in the discharge of his duties, or for neglect or incapacity to perform his duties or for being guilty of any disgraceful conduct.
- b) The State has power to take action under Section 55A of the Act of 1965 even against the directly elected President.
- c) Since the Hon'ble Minister acted *suo motu* there is no need to follow the procedure as contemplated under Section 55-1 of the Act of 1965.

- d) The Hon'ble Minister has not committed any error in removing the petitioners.

To fortify his submissions, the learned Senior Advocate has relied upon the judgment of this Court in the cases of *Baburao ..vs.. State of Mah.*, reported in **1996(1) Mh.L.J. 366**, *Yojna ..vs.. State of Mah.*, reported in **2015(5) Mh.L.J. 469** and a judgment of the Karnataka High Court in the case of *Bangalore Grain Merchants Association ..vs.. The District Registrar for Societies and Anr.*, reported in **2001 SCC OnLine Kar 20**.

15. Shri Anand Jaiswal, learned Senior Advocate appearing for the respondents submits as under:

- i) The State has power under Section 55A of the Act of 1965 to remove the petitioners and the language of the order demonstrates that the suo motu action was taken.
- b) The report of the Divisional Commissioner speaks for itself and demonstrates that the petitioners have committed illegality and thereby caused loss to the Municipal Council.
- c) The record shows that the sufficient opportunity was granted to the petitioners for hearing.

16. In the above referred backdrop, on perusal of the record following facts emerged as admitted facts :

- i) The resolution No.71 to appoint an agency for preparation of Project Report for 'Pradhanmantri Aawas Yojana' was passed on 26/09/2016.
- ii) On the date of passing of such resolution the petitioner No.1 was not the President.
- iii) The General Elections of Municipal Council, Katol held on 08/01/2017;
- iv) The petitioner No.1 got directly elected as the President on 08/01/2017;
- v) The petitioner No.2 got elected as Vice President on 09/02/2017.
- vi) The petitioner No.3 got elected as Councilor on 08/01/2017.
- vii) The lowest bid received in pursuance to tender process initiated as per the resolution No.71 dated 26/09/2016 was accepted in a general body meeting of the Municipal Council dated 17/02/2017.

17. From the above referred admitted facts, it is evident that the resolution to appoint the agency was passed by the earlier body before

the election of the petitioner No.1 as President and the petitioner Nos. 2 and 3 as Councilor in the general elections of Municipal Council, Katol on 08/01/2017.

18. In the reply submitted by the petitioners to the show cause notice issued by the State of Maharashtra, the petitioners raised a preliminary objection to the validity of the show notice and also submitted explanation on allegations.

19. The Preliminary Objection was to the validity of the show cause notice which goes to the root of the matter for the reason that if the show cause notice itself is invalid for any reason, the subsequent action falls on the ground. Similarly, the explanation given by petitioner is to justify why they cannot be held guilty. The petitioners also submitted numerous documents on record in support of their explanation. It was also pointed out by the petitioners that, the resolution to issue tenders calling bids for appointment of the Project Management Consultant (PMC) for preparation of Project Report for '*Pradhanmantri Aawas Yojana*' was passed vide resolution No.71 on 26/09/2016 i.e. before the election of the petitioner No.1 as President. It is pointed out that the general elections of the Municipal Council, Katol was held on

08/01/2017 and thereafter the resolution to accept the lowest bid received in pursuance to the tender notice issued as per the resolution dated 26/09/2016 was accepted. It was further pointed out that, the Municipal Council, Katol is “B” Class Municipal Council and is having only two Junior Engineers having qualification of Diploma in Engineering and they do not have any expertise to prepare such project report. Therefore, it is stated that the Municipal Council, Katol had no other alternative than to appoint Project Management Consultant (PMC) for proper and effective implementation of the said scheme.

20. However, after going through the impugned order, it is evident that the Hon’ble Minister has not at all considered the case of the petitioners. There is no whisper about the preliminary objection or explanation submitted by the petitioners. The Hon’ble Minister has also not dealt with any of the points raised in the reply.

21. As far as the preliminary objection raised by the petitioners is concerned it goes to the root of the matter as it relates to the jurisdiction. Hence, the Hon’ble Minister ought to have decided the same before touching to the merits of the matter. However, there is even no mention in the impugned order about preliminary objection raised by

the petitioners. Therefore, it is evident that, there was a total non-application of mind in passing the impugned order of removal of the petitioners, which has a very serious repercussions.

22. The Hon'ble Supreme Court of India in the case of case of *Ravi Yashwant Bhoir ..vs.. Collector*, reported in (2012) 4 SCC 407 has held thus:

“34. 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.

35. 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 (Vide: *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly*, and *Ram Beti v. District Panchayat Raj Adhikari*.

36. *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 their choice.*

37. ...

46. *The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.” (Emphasis supplied)*

23. From the above referred observations it is evident that in a democratic institution the incumbent is entitled to hold the office for a 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. It is further evident that 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.

24. In the matter at hand, contrary to the above referred well settled principle of law, the Hon'ble Minister has not at all taken into consideration the preliminary objection raised to the show cause notice by the petitioner and also the explanation offered by them justifying the action of the appointment of Project Management Consultant and also to point out how they cannot be held guilty.

25. From the above referred judgment in the case of *Ravi Bhoir* (supra) it is also evident that the removal of any elected office bearer has serious repercussions and therefore, he 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. The reason for such strict compliance in such matter is that such removal of an elected person causes stigma upon him and takes away his valuable

statutory right. Not only the elected officer but his constituency / electoral college is also deprived of representation by the person of their choice.

26. Thus, considering the above referred well settled law, it is apparent on the face of the record that in the present matter the Hon'ble Minister has acted in most causal manner while removing the petitioners.

27. In the circumstances, since the impugned order suffers from complete non-application of mind to the Preliminary Objection and explanation furnished by the petitioners, undoubtedly it is contrary to the dictum of the Hon'ble Supreme Court of India in the case of *Ravi Bhoir* (supra). Hence, I do not wish to go into the merits of the matter. Accordingly, I pass the following order :

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 04/12/2020, passed by the respondent No.2-Hon'ble Minister, Urban Development Department in Case No.MUN-5517/762/C.No.166/UD-15, is hereby quashed and set aside.
- iii) The matter is remanded back to the respondent No.2-Hon'ble Minister, Urban Development Department for deciding the same afresh.

- iv) The parties shall appear before the respondent No.2-Hon'ble Minister, Urban Development Department on 13/02/2024 at 11:00 a.m.
- v) The respondent No.2-Hon'ble Minister, Urban Development Department shall decide the matter, after hearing both the parties, within three months from the date of appearance of the parties.
- vi) All the points are kept open.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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