



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

Writ Petition No. 6123 of 2019

Premnath S/o Atmaram Zhade,
Aged about 49 years, Occu : Business,
R/o Plot No. 1, Ward No. 7,
Shreekrupa Palace, Shahu Layout,
Wadi, Tq. & Distt. Nagpur.

.... Petitioner

VERSUS

(1) The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.

(2) The Collector, Nagpur,
having its office at
Ravindra Nath Tagore Marg,
Civil Lines, Nagpur 440001.

(3) The Municipal Council, Wadi,
Through its Chief Officer,
Having its office at Wadi,
Tq. & Distt. Nagpur.

.... Respondents

Mr. Firdos Mirza, Advocate for the petitioner
Mr. A. J. Gohokar, A.G.P for respondent nos. 1 and 2
Mr. M. I. Dhattrak, Advocate for respondent no. 3

CORAM : ANIL L. PANSARE J.

DATED : 09-07-2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with
consent of learned counsel appearing for the parties.

2. The challenge is to order dated 19-8-2019 passed by the Hon'ble Minister of State (Urban Development Department), Mantralaya, Mumbai thereby removing the petitioner from the post of President of respondent no. 3 – Municipal Council and further disqualifying him from becoming a Councillor and Member of any local authority for a period of six years.

3. Having heard both sides and having gone through the record, it appears that the Hon'ble Minister has exercised powers under Section 55A and 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short 'the Act of 1965'). Section 55A empowers State Government to remove President on the ground, *inter alia*, of disgraceful conduct.

4. The disgraceful conduct alleged against the petitioner is that he has demanded bribe of Rs. 20,000/- for clearing the bills of man power supply. Complainant, namely, Sanjay Krishnarao Khode, President of Ascent Bahuudeshiya Seva Sahakari Sanstha was supplying man power viz. civil engineers. On 17-5-2019, the petitioner was caught red handed while accepting alleged bribe. He was remanded to police custody and thereafter to judicial custody.

5. Learned counsel for the petitioner has invited my attention to first proviso to Section 55A of the Act of 1965 which provides that the President or Vice-President shall not be removed from the office unless he has been given a reasonable opportunity to furnish an explanation. The petitioner, in the present case, has furnished explanation stating various reasons as to why allegations levelled against him are unbelievable. One of the reasons is that he had given hand-loan of Rs. 65,000/- to the complainant. The complainant, on 17-5-2019, has paid Rs. 20,000/- as part amount of hand-loan taken by him. According to the petitioner, the complaint under question is nothing but an episode arising out of political rivalry.

6. Learned counsel for the petitioner submits that the Hon'ble Minister has not considered his explanation at all. According to him, the order of removal is *sans* any reason, much less, valid reason.

7. I have gone through the order impugned. The Hon'ble Minister has recorded the facts of the complaint. He then refers to the report submitted by the Collector. He then refers to police papers. He then records the oral and written argument put forth by the petitioner and, thereafter without dealing with the submissions so made by the petitioner, proceeds to record the facts again.

8. The Hon'ble Minister under the head of reasoning has recorded that the petitioner has demanded Rs. 20,000/- to clear the bills against supply of man power. First Information Report has been registered against the petitioner under Section 7 of the Prevention of Corruption Act. The petitioner was arrested on 17-5-2019 and was in police custody and in judicial custody up till 21-5-2019. The Hon'ble Minister then jumps to the conclusion that the aforesaid conduct of the petitioner is a disgraceful conduct and his conduct calls for action of removal under Section 55A of the Act of 1965 and also the action of disqualification for continuing as Councillor and becoming the Councillor for six years.

9. As could be seen, the Hon'ble Minister has not uttered a word as regards the defence put forth by the petitioner that he has extended financial assistance to the tune of Rs. 65,000/- to the complainant. The necessary entry to that effect was taken in his accounts book which were annexed along with reply. The another important defence taken by the petitioner was that the President do not have financial powers with effect from 25-1-2018 in view of amendment to Section 77 of the Act of 1965. The outstanding bills of the complainant were cleared in April, 2019 and, therefore, nothing was pending in the month of May.

10. The defence raised by the petitioner that he does not have financial powers has been not considered. At the same time, the issue that all the dues were paid to the complainant in April, 2019 and nothing was pending with the Municipal Council has been also not considered. In that sense, learned counsel for the petitioner is right in contending that the order passed by the Hon'ble Minister is *sans* any reason, much less, valid reason.

11. Learned Assistant Government Pleader (AGP), though made an attempt to support the order passed by the Hon'ble Minister, could not point out to me that the explanation given by the petitioner, which runs into almost ten pages, has been considered by the Hon'ble Minister.

12. The order of removal from the post of President and to disqualify the elected councillor from contesting election for next six years is a punitive order. The order has far reaching effects and, in a way, it goes against the people's mandate for their representation in the house through the elected person of their choice. The order of removal or of disqualification ought to be passed considering the seriousness and consequences of the order. Therefore, while passing such order, one would expect the authorities below to look for cogent evidence having high degree of acceptance. In the present case, the evidence placed

against the petitioner has been not tested in the light of explanation given by him and, therefore, the impugned order suffers from non compliance of Section 55A of the Act of 1965, particularly first proviso thereof. Further the action under Section 55B could be passed only upon making out a case under Section 55A of the Act of 1965, which evidently is not made out here.

13. The petitioner therefore, succeeds. Accordingly, the order dated 19-8-2019 passed by the Hon'ble Minister of State, Urban Development Department, Mantralaya, Mumbai is quashed and set aside.

14. Before parting with the judgment, I intend to highlight an important issue. I am informed that till date, the Investigating Agency has not even filed charge-sheet against the petitioner. Learned AGP submits that the Division Bench of this Court has in Criminal Application (APL) No. 725/2019 ordered 'no charge-sheet be filed without obtaining leave of the Court'. When asked whether leave of the Court was sought, the learned AGP sought time to take instructions. Learned counsel for the petitioner, however, submits that the charge-sheet has been not filed till date.

15. I do not find any reason why should not investigating agency seek leave to file charge-sheet if otherwise the evidence collected indicate sufficient material against the accused.

16. I have come across many cases where an order 'no charge-sheet be filed without obtaining leave of the Court' is passed and where the Investigating Agency do not even make an attempt to seek leave to file the charge-sheet.

17. The learned AGP shall accordingly instruct the Investigating Agency to take appropriate steps in this regard.

18. The copy of this part of order be served upon the Inspector General, Maharashtra, who shall issue appropriate directions to all concerned to take appropriate steps in this regard.

19. Petition is disposed of in terms of above.

(Anil L. Pansare, J.)