

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13108-2023 (O&M)

Reserved on : 21.02.2024

Date of Decision: 13.03.2024

Vikas Deep

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. C.M.Munjal, Advocate,
Mr. Akshat Dalal, Advocate,
Ms.Sanjana, Advocate, for the petitioner.
Mr. Ferry Sofat, Addl. Advocate General, Punjab.
Mr. D.V.Sharma, Senior Advocate with
Mr. Manbir Singh, Advocate, for respondent No.4.

Mr. Shashank Shekhar Sharma, Advocate
for respondent No.5.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the order dated 30.05.2023 (Annexure P-20) whereby, the petitioner who is the elected President of Municipal Council, Jalalabad has been illegally and arbitrarily removed from the post of President and in complete violation of the provisions of the Punjab Municipal Act, 1911 (for short, 'the Act') as well as the settled law.

2. Adumbrated facts of the case are that the petitioner was firstly elected as Municipal Councilor from Ward No.2 of the Municipal Council, Jalalabad in the month of February, 2021 and thereafter, on 26.04.2021 he was elected as President of Municipal Council, Jalalabad unanimously. A complaint dated 02.06.2022 was filed against the petitioner by respondent No.3 i.e. Jagdeep Kamboj alias Goldy, MLA of Jalalabad Constituency to

the Hon'ble Chief Minister. It was alleged in the complaint filed that respectable persons of Vidhan Sabha Constituency, Jalalabad brought to his notice regarding bungling in the development works of the Municipal Council, Jalalabad as basic facilities had not been provided to the general public and request was made to hold an enquiry by the senior officer. On the basis of same, enquiry was conducted through Chief Vigilance Officer and then show cause notice dated 17.10.2022 alongwith the detail of charges was issued to the petitioner for taking action against him under Sections 22 and Section 50 of the Act. Petitioner submitted his reply (Annexure P-3) to the show cause notice issued to him explaining in detail all the allegations made against him and thereafter, he filed supplementary reply (Annexure P-4) in addition to the reply already filed. Thereafter, the petitioner was removed from the post of President by the respondent-State vide notification dated 17.02.2023. Aggrieved by the same, the petitioner approached this Court by way of filing CWP-3684-2023, wherein, the Hon'ble Division Bench after hearing both the sides, set aside the notification dated 17.02.2023 vide which the petitioner was removed from the post of President and remanded the case to the competent authority to decide the same afresh after complying with the specific directions given by the Hon'ble Division Bench in the order dated 20.04.2023. Respondent-State after hearing the petitioner again issued impugned notification dated 30.05.2023, whereby, the petitioner again has been removed from the post of President. Hence, aggrieved by the same the petitioner has again approached this Court by way of filing the present petition.

3. Learned Senior Counsel, Shri Gaurav Chopra representing the petitioner has vehemently contended that the petitioner has fallen victim to

the political rivalry initiated against him. It is submitted that the petitioner was elected as a Councilor on the Congress ticket and also opposed respondent No.3 tooth and nail in the election of MLA and thus, he earned the wrath of respondent No.3 who started exerting undue pressure on him after having been elected as MLA from Jalalabad Constituency. It is submitted that in order to settle the score with the petitioner, respondent No.3 filed a false and frivolous complaint on the basis of frivolous allegations and thus, a show cause notice dated 17.10.2022 under Sections 22 and 50 of the Act was issued to the petitioner. He has submitted that the petitioner duly replied each and every allegation levelled against him. He has submitted that the allegations against the petitioner are three fold. Firstly that during undertaking of the development work of P/L interlocking tiles in street Parmod to Arianwala the street was constructed on the private property of the petitioner and his brother and thus got the interlocking tiles laid from the Municipal funds on the said street. Secondly, it was alleged that during the checking of the record it was found that the petitioner had got the fuel filled in the Municipal vehicles from his personal petrol pump and thirdly, with regard to the work of P/L interlocking tiles in berms main road stadium to drain which work was not actually done but payment of Rs.4.34 lacs was made to the firm. He has submitted that detailed reply to these charges were given by the petitioner refuting the allegations levelled against him. It is submitted that Nirankari Bhawan is existing since 1990 and the said road is existing since then and the devotees are using the said road from the very beginning. It is submitted that the Municipal Council, Jalalabad passed a resolution No.509 dated 29.05.2006 and spent Rs.1,00,000/- on this road and the then Irrigation Minister, Punjab and

President, Municipal Council, Jalalabad inaugurated the said road in the year 2006. Thereafter, the said road was repaired and reconstructed by the Municipal Council on 23.09.2011 through PWD (B & R) by spending an amount of more than Rs.10 Lacs and further in the year 2013 the Member of Parliament, Ferozepur gave Rs.5 lacs from his M.P. fund for the development of the portion of the said road from Harkishan Public School to Arianwala road which is also known as Peere ki Road. He has submitted that Municipal Council, Jalalabad passed a resolution dated 07.05.2021 with the consent of entire house for repair of the said road after nine years and approval to spend Rs.23.35 lacs on the said road, was passed by the General House of Municipal Council, Jalalabad. He has submitted that the petitioner was not even present in the house meeting on 07.05.2021 when the said resolution was passed, as he was down with Covid-19. He has further submitted that this resolution was passed under the Chairmanship of Senior Vice President i.e. respondent No.5 and after passing the resolution, it was further approved by the Deputy Director, Local Government. Regarding the second charge of filling up of oil in the municipal vehicles from the petrol pump of the petitioner, he has submitted that no other petrol pump was ready to give fuel on credit basis and due to this reason, the Executive Officer started getting the fuel from the petrol pump of the petitioner. He has submitted that consumption for six months during the tenure of the petitioner w.e.f. 08.06.2021 to 21.10.2021 was of Rs.9,58,000/-, whereas, earlier to it, the consumption for six months was Rs.13,19,000/- and thereafter, w.e.f. 05.11.2021 to 30.05.2022, it was Rs.13,82,000/-. It is submitted that during the tenure of the petitioner filling up of fuel was of much lesser cost than others. It is submitted that fuel was sold on the market

price and there cannot be any alteration etc. in the rate of the petroleum products and thus, no financial loss whatsoever was caused to the MC in purchasing the fuel for about six months from the petrol pump of the petitioner. He has submitted that regarding the allegation of P/L interlocking tiles in drain, main road, stadium, the petitioner had no concern and the work was undertaken by the employees of Municipal Council as per rules and the entire work was got done by the Executive Officer, Municipal Engineer and Sectional Officer of Municipal Council, Jalalabad. It is submitted that the allegations against the petitioner regarding renovation of the road leading to school, without acquiring the land, is without any basis. He has submitted that the petitioner has specifically replied that development work on this road was being carried out since 2006 and it is not for the first time that Municipal Council has carried out the renovation of this road. He has submitted that even otherwise, the petitioner has specifically made a statement that he would never claim any compensation for his land used in development of this road whereby the width of the road has also been increased. It is submitted that show cause notice was issued to the petitioner under Sections 22 and 50 of the Act, but both Sections are not attracted in the light of the frivolous allegations made against him. It is submitted by learned Senior Counsel that Municipal Council, Jalalabad in its general meeting on 07.05.2021 under the Chairmanship of Vice President approved in all 51 various development works, wherein, agenda pertaining to the P/L interlocking tiles in street Parmod Chaudhary Araianwala road was at Sr. No.39. It is submitted that estimate amount for this agenda was Rs.23.35 lacs. He has submitted this meeting was held under the Chairmanship of the Vice President i.e. respondent No.5. He

further submitted that resolution No.15 was approved with unanimity and thereafter, the proceedings of this meeting was sent to the Deputy Commissioner and Deputy Director for its approval. He has invited the attention of this Court to the resolution No.15 wherein it was recorded that the resolution was for the benefit of the Municipal Council, Jalalabad.

4. Learned Senior counsel further contends that Section 3 (13) **(a)** and **(b)** of the Act define street and public street, which are as under:-

“Section 3 (13) (a) "street", shall mean any road, footway, square, court, alley, or passage, accessible, whether permanently or temporarily to the public, and whether a thoroughfare or not;

and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any person as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid :

and shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, verandah or other erection, up to the boundary of any abutting property not accessible to the public.

(b) "public street" shall mean any street-

(i) heretofore levelled, paved, metalled, channelled, swerved, or repaired out of municipal or other public funds, unless before such work was carried out there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor; or

(ii) which, under the provisions of section 171, as declared by

the committee to be, or under any other provision of this Act becomes, a public street.”

5. Learned Senior Counsel for the petitioner has further submitted that as per the statutory provisions of the aforesaid Section, street would include every vacant place notwithstanding that it may be private property. He submits that this road from Arianwala road to the school side was already inaugurated by the then Irrigation Minister and thereafter, funds were spent on this road from MP Funds as well. Not only this, PWD (B & R) had renovated this land from MC funds, thus, in view of the statutory provisions, this street falls under the category of public street and thus, charges levelled against the petitioner are totally unsustainable in the eyes of law. He has further submitted that as per provisions of Section 56(1)(g) of the Act, this road vests in the Municipal Council and hence, no charges as alleged against the petitioner are made out. It is submitted that the petitioner assailed his earlier removal order dated 17.02.2023 before this Court and Hon’ble the Division Bench of this Court had specifically observed that plea of the petitioner including the one that part of the road in question was in existence since 1970, 2006, 2011 and 2013 the same having been constructed out of the Municipal Council funds, had not been dealt with. It is submitted that in the meeting dated 07.05.2021, out of 51 total works, resolution was approved for various streets which were similarly situated to the agenda No.39 against which the allegations have been made against the petitioner. He has submitted that the respondents have not dealt with any of these issues despite there being a specific direction of this Court rather only in order to remove the petitioner from the post of President, a stereo type order has been passed, but no explanation has been given by the

State despite the observation given by this Court rather a new case has been made out against the petitioner in violation of the directions issued by this Court only to circumvent the order passed by the Hon'ble Division Bench. He has submitted that the impugned order is beyond the charges levelled against the petitioner. He has submitted that if at all there was any illegality in the proceedings of the General House dated 07.05.2021, action was required to be taken against the Councilors and Vice President who had presided over the meeting, however, the same was not done and the resolution was approved in due course of law. It is submitted that though show cause notice was issued for the charges under Sections 22 and 50 of the Act, however, the impugned order has been passed only for the charges under Section 22 of the Act and not under Section 50 of the Act.

6. Learned Senior counsel for the petitioner has also submitted that in view of the statutory provisions of the aforesaid Act, every member of the Committee shall be liable for the loss, waste, or misapplication of any money or other property belonging to the Committee, if such loss, waste or misapplication is reported by the Examiner of Local Fund Accounts or other audit authority empowered by the State Government. He has submitted that there is no report from the Examiner of the Local Fund Accounts or Audit Authority to substantiate any embezzlement or loss committed by the petitioner as alleged, rather respondent-State has intentionally avoided the applicability of Section 50 of the Act as they never wanted report from the Local Examiner Fund or Audit Department. He has relied upon the judgments of Hon'ble Supreme Court as well as this Court in Tarlochan Dev Sharma vs. State of Punjab, 2001(3) RCR (Civil) 809; Sharda Kailash Mittal vs. State of M.P. & others, 2010(2) SCC 319; M.V. Bijlani vs. Union

of India & others, 2006 AIR (Supreme Court) 3475; Roop Singh Negi vs. Punjab National Bank & others, 2009(2) SCC 570; Narinder Mohan Arya vs. United India Insurance Co. Ltd. & others, 2006 AIR (Supreme Court) 1748; Union of India and others vs. Dayanand Pandora and another, 2011(3) SLR 767; Smt. Rubina vs. State of Haryana & others, 2021(1) RCR (Civil) 168; Vijay Mahajan, President Nagar Council, Dina Nagar vs. State of Punjab, 2002(2) RCR (Civil) 144; and judgment of Jammu and Kashmir High Court in Laxman Dass vs. Union of India and others, Law Finder Doc Id # 2082780. He has submitted that as per law settled, no charges under Section 22 of the Act, have been made out and the respondent-State has miserably failed in proving the charges that the petitioner has abused his power in any manner. He has submitted that there are no set guidelines of MC regarding filling up of fuel in the MC vehicles. He submits that as per norms, fuel can be purchased from any petrol pump and reimbursement of the same is made by MC on the basis of production of bills. He has submitted that there is no evidence whatsoever produced by the State in support of the allegations made that by purchasing the fuel from the petrol pump of the petitioner any embezzlement of the MC fund was committed by the petitioner or by any employee at his behest, rather the figures given on record proves that the expenditure incurred on the fuel from the petrol pump of the petitioner was less than in costs than the amount spent during the period prior to the period when it was purchased from the petrol pump of the petitioner. It is submitted that in view of the law settled by Hon'ble Supreme Court which has been followed by this Court as well, a democratically elected president cannot be removed from his post on the basis of whims and fancies and thus, the impugned order being totally

malafide, illegal, and arbitrary, is unsustainable in the eyes of law and deserves to be set aside.

7. Per contra, learned Senior Counsel. Shri D.V. Sharma, appearing for respondent No.4 has vehemently opposed the submissions made by learned Senior Counsel for the petitioner. It has been submitted that on receiving complaints from various respectables of Vidhan Sabha Constituency of respondent No.3, he sent a complaint to the Hon'ble Chief Minister for conducting enquiry from some senior officer in the alleged bungling in the development works of the Municipal Council, Jalalabad and Nagar Panchayat, Arianwala. Thus, the enquiry was entrusted to Chief Vigilance Officer, Local Government Department who conducted enquiry on 04.08.2022 and 05.08.2022 and in pursuance to the same, show cause notice dated 17.10.2022 was issued to the petitioner for taking action under Sections 22 and 50 of the Act and charge-sheet was also issued to the petitioner. It is submitted that the petitioner filed his reply and supplementary reply to the charge-sheet issued to him. After considering the reply filed by the petitioner, the whole charge-sheet was duly appreciated, however, the reply was not found to be satisfactory to repel the charges levelled against him. On appreciation of the enquiry report submitted and the reply filed by the petitioner, it was found that the allegations of misusing the power and misusing the funds of MC by the petitioner, were proved for the charges levelled under Section 22 of the Act. Learned Senior counsel has drawn the attention of this Court to the site plan of the area where the majority of the land is owned by the petitioner and the development work was carried out by him out of the funds of the MC. He submits that the site for school was proposed in Khasra No.39//11, 12, 19,

20 and 353/1. It is submitted that as per the *Aksh Sajra*, there was no revenue rasta for the proposed school and the building plan of the proposed school signed by Parmod Chaudhary, through the land which belonged to the petitioner and Parmod Chaudhary, was submitted to the Municipal Council for approval in the year 2011. He submits that as per bye-laws, a 40 feet wide approach road was required for approach to the school and hence, the petitioner alongwith Parmod Chaudhary proposed 40 feet wide road from Arianwala road to the school, which was shown in the black colour in the site plan (Annexure R-4/2). He has submitted that the proposed 40 feet road passes through Khasra Nos.39//15, 14, 13, 18, 23/2 etc. He submits that the petitioner being the President of Municipal Council, Jalalabad gave verbal orders to the Section Officer for preparing the estimate for construction of P/L interlocking tiles in street Parmod Chaudhary to Arianwala. It is submitted that estimate amounting to Rs.23.35 lacs was duly approved by the petitioner as a President of Municipal Council, Jalalabad (West). He submits that perusal of the estimate of original work would show that it does not bear any date although the estimate of original work was not signed by the Junior Engineer, Assistant Municipal Engineer, Executive Officer and President of the Municipal Council, Jalalabad (West). Similarly, the estimate which has been prepared and approved also did not bear any date. He has submitted that the petitioner in his capacity as a President of the Municipal Council issued agenda dated 05.05.2021, which included proposal No.15 (item No.39), for a meeting scheduled to be held on 07.05.2021 by giving 48 hours notice. He submits that in agenda proposal No.15 one of the items i.e. item No.39 was proposed laying down of “P/L interlocking tiles in street Parmod Chaudhary Arianwala road” for

an estimated cost of Rs.23.35 lacs. It is submitted that in fact it was for a road on the private land of the petitioner and Parmod Chaudhary, who is his brother. He submits that despite having issued notice of 48 hours for the meeting to be held on 07.05.2021, the petitioner intentionally did not attend the meeting of the Council for which he issued the agenda which included item No.39 of proposal No.15. It is submitted that the objection was raised by the Deputy Director to the resolution No.15 (item No.39), but despite that work for item No.39 was executed. It is submitted that it is evident that the petitioner had abused his power as a President by getting the road constructed through the land owned by him and his brother at the expenses of the MC. He submits that the enquiry was conducted from the Chief Vigilance Officer, Department of Local Government in the development works executed by the MC. It was found that 40 feet wide proposed road was constructed through the land bearing Khewat No.604/570 in Khasra No.39/11, 39/15, 39/14, 39/13, 39/18 and 39/23 which belonged to the petitioner and his brother Parmod Chaudhary. He has submitted that during checking of the bills, it was found that 5th and final bill recorded on MB No.19, tiles were laid down on a stretch of 1085 feet in length, whereas, in the estimate, the length of the road was recorded as 1348 feet and, thus, the estimate was not prepared keeping in view the position at the spot. He has submitted that the technical staff of Municipal Council, Jalalabad could not show the execution of the work of P/L interlocking tiles on the berms of main stadium road to the drain whereas without execution of the work, payment was made out of the funds of the MC. He further submits that the petitioner owns a petrol pump in Jalalabad and fuel amounting to Rs.9,58,446/- was got filled up from his personal petrol pump known as

Shri Harkishan Filling Station, in the vehicles of the Municipal Council, Jalalabad. Thus, he misused his position for getting the fuel from his petrol pump. It is further submitted that notice under Section 22 of the Act was issued to the petitioner by the Competent Authority on 17.10.2022 asking him to show cause within 21 days as to why action should not be taken in accordance with the law and after considering his reply to the notice, the Competent Authority removed him from his post of President for abusing his powers vide Government notification dated 17.02.2023. He has further submitted that the petitioner challenged the notification dated 17.02.2023 by way of filing CWP-3684-2023, which was disposed of by this Court vide order dated 20.04.2023. He has submitted that in compliance of the order passed by this Court, memo dated 26.04.2023 was issued to the petitioner and he was provided the copy of the enquiry report of the Chief Vigilance Officer alongwith the documents relating to points No.12 and 13 of the enquiry report. He submits that the petitioner filed reply to the same on 03.05.2023. It is submitted that the petitioner was provided an opportunity of personal hearing by the Hon'ble Minister for Local Government, who is the Competent Authority, however, the contentions raised by the petitioner were not found tenable and thus, the previous orders passed by the Hon'ble Minister which were ratified by the Principal Secretary, Local Government in terms of the standing orders. He has submitted that the petitioner has not denied the allegations of laying down P/L interlocking tiles in the street from Arianwala road. The petitioner did not deny that no revenue rasta was passing through Khasra Nos.39//11(8-0), 15 (8-0), 14 (8-0), 13 (8-0), 18 (8-0), 23/2 (6-4) and 23/1 (1-16) according to the Jamabandi for the year 2013-14, thus, for access to the Harkishan Public School, 40 feet wide road was

proposed through these Khasra numbers in the site plan and these Khasra numbers belonged to the petitioner and his brother Parmod Chaudhary. He submits that it was found that the petitioner tried to mislead the Competent Authority by making reference to the road which leads from Ferozepur-Fazilka to Nirankari Bhawan and not from Arianwala road. He has submitted that report of the Chief Vigilance Officer revealed that 5th and final running bill entered on the pages 23-24 of MB No.19, interlocking tiles were laid down on 1085 feet road whereas in the estimate, the length of the road has been shown to be 1348 feet on 10 feet wide road, thus, it is evident that estimate was not made on conducting spot inspection first. He has submitted that as per record of the Municipal Council, Jalalabad (W), width of the road was found to be 30 feet instead of 10 feet, which is against the estimate. He has further submitted that the petitioner in his capacity of President of Municipal Council, Jalalabad sanctioned amount for the works and also signed the cheques for payment. He has submitted that petrol/diesel amounting to Rs.9,58,446/- was got filled up from the personal petrol pump of the petitioner in the vehicles of Municipal Council for about six months, which is in violation of Section 48 of the Act, as the petitioner is the owner of the petrol pump and he is liable for the penalty under Section 48 of the Act being an interested party and thus, the charge-sheet issued against him was legally justified. He has submitted that after the remand of the case by this Court, reply filed by the petitioner was not found to be satisfactory and thus, the petitioner was rightly removed from the post of President vide order dated 30.05.2023 and thus, there is no violation of principle of natural justice in any manner in passing the impugned order. He submits that the petitioner was duly supplied with the complete record of the case and

thereafter, charges under Section 22 of the Act were found to have been proved against him and thus, there being no merit in the petition filed by the petitioner, the same deserves to be dismissed. He has relied upon the judgments of Hon'ble Supreme Court and other High Courts in Lalaram and others vs. Jaipur Development Authority and another, 2015 AIR (SCW) 6849; State of Bihar vs. Bihar Rajya MSESCK Mahasangh, 2005 AIR SC 1605; Indumati Laxman Bhakare vs. The State of Maharashtra and others, 2004 (3) Mh.LJ 6; R. Kannimuthu vs. Rajendran and others; 2001(4) CTC 366; Deputy General Manager (Appellate Authority) and others vs. Ajai Kumar Srivastava, 2021(1) SCT 285; and Chairman-cum-Managing Director and others vs. Bharat Chandra Behera and another, 2013(16) SCC 623.

8. Learned State counsel has also vehemently opposed the submissions made by learned Senior Counsel for the petitioner. He has also argued on the same line as submitted by learned Senior Counsel for respondent No.4. However, in addition to the same, he has drawn the attention of this Court to the reply filed by way of affidavit of Er. Mukhtiar Singh, Executive Engineer, Construction Division No.1, Public Works Department (B&R), Ferozepur and has submitted that in the year 2011 development work of Fazilka road to Nirankari Bhawan street alongwith other streets was carried out by PWD (B&R) for providing and laying down interlocking tiles etc. On receiving the necessary sanctioned from Deputy Commissioner, Ferozepur, the said work was executed by the Department of PWD (B&R). He further invited the attention of this Court to the reply filed that development/repair/construction of the said road was undertaken by the PWD (B&R) Branch Ferozepur for construction of New Link Road

Jalalabad- Peere Ke Road, which is also known as Arianwala road to Harikishan Public School vide letter issued by Executive Engineer, PWD (B&R) dated 26.04.2013. It was submitted that only Katcha path that was running earlier was made Pucca (metaled) by the Department. He submits that the Department made this 10 feet wide Pucca road (metaled) under the MP Land Scheme, thereafter, Municipal Council, Jalalabad upgraded this road and interlock tiles were laid on this road by Municipal Council, Jalalabad and not by PWD (B&R).

9. Learned counsel for respondent No.5 has vehemently argued that the petitioner was rightly removed from the post of President on finding the charges under Section 22 of the Act having been proved against him. He has submitted that the petitioner misused his position by misutilising the public funds for the development of his private land. He also reiterated the arguments raised by learned Senior Counsel for respondent No.4-MC and learned State counsel that there is no illegality whatsoever in the impugned order passed against the petitioner. In addition to the same, he vehemently contends that on removal of the petitioner, respondent No.5 was appointed as the President of the Municipal Council, Jalalabad vide notification dated 28.02.2023 (Annexure R-5/1). He has submitted that the petitioner having not challenged the election of respondent No.5 as President, the present petition deserves to be dismissed. To substantiate his arguments, he relied upon the judgment of Hon'ble Supreme Court in Krishnadevi Malchand Kamathia and others vs. Bombay Environment Action Group and others, (2011) 3 SCC 636. He has further submitted that action taken by the petitioner in constructing the road leading to the school is violative of Section 171 of the Act as the necessary procedure for declaring the street as

public street has not been followed. Thus, it is contended by him that the present petition being devoid of any merit deserves to be dismissed.

10. Heard.

11. After hearing learned counsel for the parties and with their able assistance the Court has gone through the record of the case. It is apparent that the petitioner was elected as Municipal Councilor from ward No.2 in February, 2021 and thereafter, in April, 2021 got elected as President of the Municipal Council, Jalalabad unanimously. On the basis of complaint filed by respondent No.3, enquiry was conducted by the Chief Vigilance Officer on 04.08.2022 and 05.08.2022 and subsequent to that a show cause notice dated 17.10.2022 was issued to the petitioner under Sections 22 and 50 of the Act. Reply and supplementary reply to the same was filed by the petitioner. However, earlier notification dated 17.02.2023 passed for removal of the petitioner was challenged by the petitioner before this Court by way of filing CWP-3684-2023 before the Hon'ble Division Bench of this Court. Hon'ble Division Bench of this Court vide order dated 20.04.2023 disposed of the writ petition filed by the petitioner with specific directions and remanded the case for decision afresh to the Competent Authority. Thereafter, the respondent-State again on hearing the petitioner, passed a fresh impugned notification dated 30.05.2023 by virtue of which the petitioner was again removed from the post of President of Municipal Council, Jalalabad. Notification dated 30.05.2023 has been impugned by the petitioner before this Court. The observations made by the Hon'ble Division Bench, while remanding the case to the Competent Authority, are of utmost relevance. Para Nos.24 to 28 and 33 are reproduced as under:-

“24. At this stage, we deem it appropriate to refer to para

10 of the preliminary objections/ submissions of the written statement filed on behalf of respondent no.2-Executive Officer, Municipal Council, Jalalabad. It is stated therein that Chief Vigilance Officer of the Department of Local Government, Punjab, on conducting an enquiry found that 40 feet approved road has been constructed on the private land at the instance of Nagar Council, Jalalabad. However, as per the site plan, Annexure R-2/9 placed on record subsequently on 12.04.2023 by learned counsel for the State, width of the existing road is mentioned as 30 feet. It has further been stated in reply to para 9 of the writ petition that Rs. 23.35 Lakhs has been incurred on the road leading from Ferozepur-Fazilka Road to Nirankari Bhawan, whereas the expenditure was spent for construction of a private road which is shown in black colour in the site plan attached as Annexure R-2/3, width of the road being mentioned as 40 feet. (We reiterate that despite pointed query, exact dimensions of the road/parts of the road over the years are not forthcoming and neither is there any discussion in this regard in the impugned order).

25. During the course of arguments, we had asked learned counsel for the respondent-State and Municipal Council to submit details to inform as to (whether other streets, the repair and restructuring of which has been approved as mentioned in Proposal No. 15 of Resolution dated 07.05.2021, are situated on private land or on Municipal Land). This question was raised as Proposal No. 15 deals with as many as 51 works including repair etc., of about 36 streets/ roads which are referred to by name/s, the work at serial no. 50 and 51 i.e., laying interlocking tiles F.F. Road on berms From Hariale Shop to House of Ex.M.P and laying interlocking tiles F.F Road on berms from BSF Sector to Nr. Bhamma Chakki, for an estimate of 98.46 lakhs each, being approved additionally on 07.05.2021.

26. At the time of arguments, learned counsel for the petitioner orally stated that all the streets mentioned under Proposal No. 15 are located on private land. However, learned counsel for the State or Municipal Council neither verify nor deny the same. It is stated by learned counsel for the State that he is not in possession of necessary information in this respect.

27. The issue of other streets of which the repair has been undertaken being on private or Municipal Council land, has not been touched and there is not a whisper in the order about the impact or otherwise thereof or action which has been taken against other persons.

28. Perusal of order dated 17.02.2023, indeed reveals that there is copious narration of facts by the authority. Reference has been made to the report of Chief Vigilance Officer, Local Government, Punjab. Reference is also made to comments of the Chief Vigilance Officer, which were called for by the authority, besides reply to show cause notice issued to the petitioner. (Thereafter, while referring to comments of the Chief Vigilance Officer, it is simply observed that allegations of misuse of power and misuse of funds of M.C Jalalabad are proved. Non application of mind by the authority in question is reflected clearly as there is not a shred of reasoning available).

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33. In the present case, it is an indisputable position that impugned order has been passed with a bare narration of the facts and simple observation that the order is being passed on the basis of the enquiry by the Vigilance. None of the points, issues and contentions as raised have even been considered, deliberated upon and thereafter decided with attendant reasoning. There is nothing on record to indicate that the relevant record was looked into, examined and considered by the competent authority. Pleas of the

petitioner including the one that part of the road in question has been in existence since 1970, 2006, 2011 and 2013 with the same being constructed out of the Municipal Council funds since then has not been dealt with. Discrepancies as narrated in the foregoing paras have also not been considered, neither their impact or otherwise discussed. It was indeed incumbent upon the authority to have looked into all these aspects.

12. From abovesaid directions given by Hon'ble Division Bench, it is evident that mandate of the Court was to the State to pass a fresh order after the compliance of the directions given therein. A perusal of the proceedings taken in the present case shows that the notification/order under challenge has been issued without application of mind and without taking care of the directions issued by the Hon'ble Division Bench reproduced above. For the adjudication of the issue involved, perusal of Section 22 of the Act is essential, which reads as under:-

“22. Resignation [or removal] of President and Vice-President. - Whenever a President or Vice-President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any president or vice-president may be removed from office by the [State] Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee:

[Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two-thirds of the members of the committee, the President or, as the case may be, the Vice- President shall be deemed to be under suspension immediately after such resolution is passed] :

Provided further that before the [State] Government notifies his removal, the reason for his proposed removal shall

be communicated to him by means of a registered letter in which he shall be [called upon] to tender within twenty-one days an explanation in writing, and, if no such explanation is received in the office of the [appropriate Secretary to Government] within twenty one days of the despatch of the said registered letter, the [State] Government may proceed to notify his removal.]

13. Precise grounds taken for removal of the petitioner from the post of President, are on the basis of three fold allegations as enumerated in the charge-sheet. Firstly, renovation of the street from Ferozepur-Fazilka road i.e. Arianwala road going upto Shri Harkishan School. Secondly, laying down the interlocking tiles at the berms on both sides of the road and thirdly, filling up of fuel from petrol pump of the petitioner in the MC vehicles for about six months. From the record, it is evident that on the basis of complaint, enquiry was conducted by the Chief Vigilance Officer on 04.08.2022 and 05.08.2022 i.e. within two days. General House meeting had taken place on 07.05.2021 under the Chairmanship of Vice President i.e. respondent No.5, wherein approval for total 51 development works was granted which was lateron approved by the Director as well. The precise contention raised by learned Senior Counsel for respondent No.4-MC is that the petitioner got approved the agenda No.39 primarily for the development of his own land, however, learned Senior Counsel for the petitioner in emphatic terms argued that this road existed since long and time and again in the years 2006, 2011 and 2013 renovation of this road was carried out at the expenses of PWD (B&R). It is evident from the record that school is also functioning since 2013 and the same has not been denied by the respondents as well. Once an institute like school is running in the area, it does not lie in the mouth of respondent-State that it is not its duty to provide

necessary infrastructure for the children and the public at large. While granting the sanction for running a school, the safety, hygiene etc. of the children is the primary incumbent duty of the State. Learned Senior counsel for the petitioner has also undertaken before this Court that the petitioner would never claim any compensation for the necessary land which has been used for widening of this road. It is also an admitted fact that the necessary approval of Rs.23.35 lacs was granted by passing the resolution dated 11.05.2021 in accordance with law. From the agenda passed, it is evident that in all 51 development works were approved and approval for some of other streets of the private nature, was also granted vide this resolution. Once work has been carried out by the technical experts in pursuance to the agenda passed, simply because the majority of the land in the area belongs to the petitioner and his brother, is not a sufficient ground to hold the petitioner guilty for the abuse of power. This Court had given specific directions while disposing of the earlier petition as mentioned above, but the respondents had again failed to comply with the directions given by this Court that whether the development work was carried out regarding other private streets as well. Besides this, the road was renovated on the earlier occasions as well, as is evident from the record. Thus, simply because the interlocking tiles were laid and the road was further widened, is not sufficient to prove the charges against the petitioner. Next charge regarding the interlocking tiles on the berms of the road was also under the supervision of the technical experts. If at all there was any negligence in the execution of this work, the technical team was responsible for executing the necessary work but there is nothing on record to show that any action has been taken against any technical staff. Regarding third allegations of filling

up the fuel from the petrol pump of the petitioner for about six months, the prime allegation is that petrol pump belonged to the petitioner and thus, he becomes an interested party. However, on the query raised by the Court whether there are any set guidelines framed by the respondent-MC for purchasing the fuel, it was answered that there are no written guidelines and as per norms fuel can be purchased for the vehicles from any petrol pump and on presentation of bills, the same is reimbursed by the respondent-MC. Thus, except saying that the petitioner is owner of the petrol pump, there is no substance regarding any embezzlement or bungling made in purchasing the fuel from his petrol pump. Even otherwise statistics produced on record would show that the expenditure incurred on the fuel during the period when it was purchased from the petrol pump of the petitioner is less than the amount spent in purchasing the fuel from another filling stations. From the fresh impugned order, it is apparent that the respondent-State has not answered the directions given by this Court while remanding the case on 20.04.2023 as reproduced above. Thus, the moot question to be answered by this Court is that on the basis of the allegations made against the petitioner as produced on record in the light of the law settled whether the impugned order passed is legally sustainable.

14. At this stage, it is pertinent to mention that the Hon'ble Supreme Court in case of Tarlochan Dev Sharma's case (supra), has observed as under:-

“6. In a democracy governed by rule of law, once elected to an office in a democratic institution, 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. That a returned candidate must hold and enjoy the

office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of "abuse of his powers" (of President), inter alia. This is the phrase with which we are concerned in the present case.

7. The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The appellant is not charged with habitual failure to perform the duties of President of Municipal Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1.10.1999 have to be tested on the touchstone of the availability of this ground.

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10. The expression 'abuse of powers' in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though

erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councilor unworthy of holding the office of President, Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is 'abuse of his powers or habitual failure to perform his duties'. The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase 'abuse of powers" must take colour from the next following expression - 'or habitual failure to perform duties'. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is 'abuse of powers' within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

11. One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a necessary corollary therefrom that what has not been communicated or not relied on in the show cause notice as a ground providing reason for the proposal removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet

and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to be explanation furnished by the person proceeded against and this must appear from the order passed under Section 22.”

15. Hon’ble Supreme Court **M.V. Bijlani’s** case (supra) has held as under:-

“9. Evidently, the evidences recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

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12. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

16. Further this Court in **Rubina’s** case (supra) dealing with same

issue, held as under:-

“19. The ground which has been taken in the impugned order dated 20.07.2020 (Annexure P-18) to conclude that the work, which has been carried out by the petitioner is with a mala fide intention to help the owners of the property of a particular locality/area, is also without any basis or evidence on record. Merely because, complainant has alleged that by constructing this passage, the value of the property abutting the said passage would result in escalation giving undue advantage to the owners of the properties out of the Municipal funds, the allegations could not be said to be proved. If this reason, which has been given by respondent No.2, is accepted and that too, without any evidence being on record showing/establishing the benefit being given to a particular person(s) in this manner then, no development work would and could be carried out anywhere. It is known to one and all and it is not a secret that wherever public amenities improve, escalation of the value of the properties of the said area and abutting thereto, takes place. Being a representative of the public, President of the Municipal Committee, is mandated and required to act for the benefit of the public at large and as stated above, construction of this passage has been found to be for the benefit of the public and not merely the residents of the particular locality. Therefore, the allegation that the petitioner had acted with a mala fide intention, is without any justification and basis.”

17. From the conjoint reading of the law settled by Hon’ble Supreme Court, which has been followed thereafter in various cases, it is a settled position of law that the term abuse of power is to be such which would render a Councilor unworthy of holding the office of President. A single instance where a petitioner was alleged to have acted without due caution and care, neither would be a ground for holding him guilty of abuse of power nor would fall within the term of habitual failure to perform duties

as it would require multiple failure to perform the duties for invoking this power.

18. Respondent-State despite the directions not only failed to answer the above query but rather concealed the same. Charge-sheet was issued for the offences under Sections 22 and 50 of the Act, whereas, lateron Section 50 of the Act was dropped and the petitioner was removed only for the charges under Section 22 of the Act. Section 50 of the Act reads as follows:-

50. Liability of members of the committee. - (1) Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a committee, if such loss, waste or misapplication is reported by the Examiner of Local Fund Accounts, or other audit authority empowered by the State Government in this behalf to be a direct consequence of his neglect or misconduct in the performance of his duties while a member of the committee; and he may after being given an opportunity, by notice served in the manner provided for the service of summonses in the Civil Procedure Code, to show cause by written or oral representation why he should not be required to make good the loss, be surcharged with the value of such property or the amount of such money by the Deputy Commissioner, and if the amount is not paid within fourteen days from the expiry of the period of appeal prescribed by subsection (2) the Collector at the request of the Deputy Commissioner shall proceed forthwith to recover the amount as if it were an arrear of land revenue, and have it credited to the municipal fund.

(2) The person against whom an order under sub-section (1) is made, may, within thirty days of the notification of such order, appeal to the State Government who shall appoint an officer to hear the appeal; and the appellate authority shall have the power of confirming, modifying or disallowing the surcharge :

Provided that no person shall under this section be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of one year from the time of his ceasing to be a member:

Provided further that nothing in this section shall be deemed to debar the aggrieved party from seeking a remedy in a civil court against an order made under sub-section (1).

(3) Nothing in this section shall apply to an associate member.”

19. From the reading of the statutory provisions of Section 50 of the Act, it is apparent that the legislature in the best of its wisdom had laid down that for the loss, waste or misapplication of any money etc. the Examiner of the Local Fund Accounts or other audit authority is empowered to assess the same, but no such procedure has been adopted to substantiate the allegations against the petitioner. Rather respondent-State has time and again made efforts to remove the petitioner from his democratically elected post on the basis of conjunctures and surmises.

20. Hon’ble Supreme Court of India in Narinder Mohan Arya’s (supra) has held as under:-

“19. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See **State of Assam & Anr. V. Mahendra Kumar Das & Ors.**] (1970) 1

SCC 709 : AIR 1970 SC 1255] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See **Khem Chand V. Union of India & Ors.**, AIR 1958 SC 300 and **State of Uttar Pradesh v. Om Prakash Gupta**, (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See **K.L. Tripathi V. State of Bank of India & Ors.** [(1984) 1 SCC 43 : AIR 1984 SC 273]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See **Sawai Singh V. State of Rajasthan** [AIR 1986 SC 995] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See **Director (Inspection & quality Control) Export Inspection Council of India & Ors. Vs. Kalyan Kumar Mitra & Ors.** [1987 (2) CLJ 344]. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See **Central Bank of India Ltd. V. Prakash Chand Jain**, AIR 1969 SC 983, **Kuldeep Singh v. Commissioner of Police and Others**, (1999) 2 SCC 10].

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21. Yet again in **Sher Bahadur V. Union of India & Ors.** [2002 (7) SCC 142] this Court observed:
"It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in

law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

21. Hon'ble Division Bench of this Court in **Union of India and others vs. Dayanand Pandora and another's** case (supra) has held observed as under:-

17. Reliance has been placed by the learned counsel for the applicant- respondent No. 1 on the judgment of Hon'ble the Supreme Court rendered in the case of ***M.V. Bijlani v. Union***

of India, 2006(2) S.C.T. 454 : JT 2006 (4) SC 469 : [2006 (3) SLR 105 (SC)], wherein it has been held that allegations in respect of which the delinquent officer had not been charged with, no punishment could be imposed on such an allegation. In para 23 of the judgment, Hon'ble the Supreme Court has observed thus:

"Evidently, the evidence recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges."

18. Therefore, in the present case when there was neither any allegation of monetary loss in the charge-sheet nor was there any finding by the disciplinary authority that the applicant-respondent No. 1 had misappropriated, then the punishment imposing recovery is unsustainable in the eyes of law."

22. Thus, as per law settled, it is evident that the evidence collected should link the delinquent with the charges he has been prosecuted with. The guilt of the delinquent cannot be based on conjunctures and surmises. A fair and impartial enquiry/investigation is the backbone for the pursuit of the truth in the allegations levelled against the delinquent. However, in the present case, the enquiry has been conducted by the Chief Vigilance Officer in a hasty manner within two days. The respondent-State without answering the directions given by the Hon'ble Division Bench has made futile attempt in justifying the charge-sheet issued against the petitioner on the basis of vague probabilities. However, Hon'ble Supreme Court in the judgments as cited above has held that sufficiency of evidence would be met if the same links the delinquent with the charges he has been charged with.

23. This Court on weighing the facts and circumstances of the present case finds that the evidence produced during the enquiry is not

sufficient to prove the allegations against the petitioner.

24. So far as contentions raised by learned counsel for respondent No.5 that respondent No.5 was subsequently elected as the President of Municipal Jalalabad, however, it was argued before this Court that though respondent No.5 was elected as President but she is not working as President of Municipal Council, Jalalabad. Even otherwise her appointment was subject to the outcome of the litigation initiated by the petitioner. Thus, this Court does not find any merit in the submissions made by respondents No.5.

25. There is no dispute regarding the judgments relied upon by learned Senior Counsel for respondent-MC and respondent No.5, but the same are distinguishable in the facts and circumstances of the present case.

26. Testing the impugned action taken by the respondents on the anvil of the law settled, this Court finds the impugned notification dated 30.05.2023 (Annexure P-20) to be unsustainable in the eyes of law and hence, the same is set aside.

27. The present petition is allowed.

13.03.2024
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No