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wp5851.25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5851 OF 2025

AND

CIVIL APPLICATION NO. 5342 OF 2025

IN WP/5851/2025

AND

CIVIL APPLICATION NO. 5341 OF 2025

IN WP/5851/2025

Smt. Surekha W/o Sanjay Lahane,
President of Jafrabad Municipal
Council and Nagar Panchayat,
Age: 48 years, Occu.: President,
R/o.: Aadarshnagar, Jafrabad,
Tq.: Jafrabad, Dist.: Jalna

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2. The Hon'ble Shri Eknath Shinde,
Deputy Chief Minister,
Maharashtra State Mantralaya,
Mumbai 400 032

3. The Hon'ble Minister,
Urban Development Department and
Chief Minister,
Maharashtra State,
Mantralaya, Mumbai – 400 032.

4. The District Collector,
Jalna.

5. The Nagar Panchayat, Jafrabad,
Through its Chief Officer,
Tq. Jafrabad & Dist. Jalna.

...Respondents

Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate,
Mr. R. N. Patil, Mr. S. T. Chalikwar, Advocate, Mr. Y. A. Jadhav,
Advocate for the petitioner

Mr. P. D. Patil, AGP for the respondents/State

Mr. Rajendra Deshmukh, Senior Advocate i/b Mr. S. V.
Deshmukh, Advocate, Adv. Ashwini Deshmukh, Advocate for the
respondent/applicant (in CA5341/2025)

Mr. S. B. Deshpande, Senior Advocate i/b Mr. N. S. Jaju,
Advocate for the respondent/applicant (in CA/5342/2025)

CORAM : KISHORE C. SANT, J.

RESERVED ON : 06th MAY, 2025

PRONOUNCED ON : 27th MAY, 2025

ORDER

1. This matter was heard on 06-05-2025 for final disposal by consent of the parties. However, the judgment could not be prepared till 09-05-2025 and thereafter vacation started. Thereafter, from 13-05-2025 till 25-05.2025, this court was out of station. The petitioner moved a precipe for pronouncement of judgment in the vacation. It was informed to the Senior

Private Secretary that pursuant to the impugned order now the learned Collector, Jalna has declared a program of election to the post of President, Nagar Panchayat on 30-05-2025. In view of this facts, the court is pronouncing the judgment in the vacation.

2. The petitioner has challenged an order whereby she is held to be disqualified as President under Section 55-A and 55-B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the said Act). Further she is held to be disqualified even as Councillor. She is further held not eligible even to contest election for 6 years to the post of Councillor. Respondent No.1 is the State of Maharashtra Through Secretary, Urban Development Department. Respondent No.4 is the District Collector, Jalna. Respondent No.5 is the Nagar Panchayat, Jafrabad through its Chief Officer. No notice is required to respondent No.5.

3. Civil Application No. 5341/2025 for intervention is filed by the caveator who is not a party to the petition. It is stated that this applicant is councillor and is instrumental in action under Section 55-A of the said Act. Civil Application No.5342/2025 is by another Councilor who supports the impugned order. This application is also for intervention in the writ petition by another Councillor.

4. The facts giving rise to the present petition, in short, are as under that the petitioner came to be elected as a Councilor in the Municipal Council, Jafrabad. The Council consists of 17 Councillors. On 27-02-2023, 12 Councillors moved an application to the Collector requesting him to convene a special meeting for holding no confidence motion or to initiate proceeding under section 55-A against the petitioner. The learned Collector however, did not convene any meeting and instead started an enquiry by framing charges and submitted a report to the Government. On the report the then Chief Minister holding portfolio conducted a hearing. The Hon'ble Minister

held the petitioner to be disqualified under Section 55-A of the said Act. The petitioner challenged the said order by filing a Writ Petition No.11792/2023. This court by its order quashed the order passed by the Hon'ble Minister and remanded the matter back by directing to initiate fresh proceeding by issuing notice under Section 55-A. This court recorded that no proper opportunity of hearing was given to the petitioner.

5. Pursuant to the order passed in the writ petition, again notice came to be issued by the Hon'ble Minister on 23-11-2023. Fresh notice was issued. However, on 30-11-2023 the Hon'ble Chief Minister issued fresh show cause notice under Section 55-A and 55-B cancelling notice dated 23-11-2023. As per allegations in the petition, on 20-03-2025 hearing was scheduled at 03.00 pm through video conference (VC). The petitioner and her advocate though were present from 02.30 to 04.40 pm no hearing took place. There was no proper intimation given as to whether and when hearing would be conducted as the assembly session was going on. The petitioner was not well

and therefore she left the V.C. hall at 4:40 pm giving request letter to communicate the next date of hearing. In stead of conducting the hearing, the petitioner was asked to give written submission within three days which the petitioner submitted alongwith written notes of argument. The Hon'ble Minister thereafter passed an order on 09.04.2025 and removed the petitioner from the post of President under Section 55A and 55B of the said Act. It is also held that the petitioner shall ineligible to contest the election for six years. The said order was communicated on 29.04.2025. The petitioner has thus immediately approached this Court challenging the impugned order.

6. Mr. V. D. Sapkal, the learned Senior Advocate vehemently argued that entire episode shows that the order is passed in undue haste without giving proper opportunity to the petitioner. In the earlier round of litigation, this court has set aside action under Section 55A. The matter was remanded directing to issue fresh notice under Section 55A. There was no

question of issuing notice under Section 55B of the Act. However, as there was no material under Section 55A deliberately fresh notice is issued under Section 55B and the impugned order is passed. The entire action is taken due to political enmity. The petitioner was a candidate of United Shiv-Sena. After split in the political party i.e. Shiv-Sena (UBT) and Shiv-Sena (Shinde), the petitioner went with Shiv-Sena (UBT). Shiv-Sena (Shinde) came in power. It is because of this present action is taken. The learned Collector without convening meeting for no confidence motion has sou-moto submitted report to the Government, on which the Government has acted. The learned Collector has acted beyond its power by submitting a report without any reason. He submits that complaints were made by 12 Councilors to the Collector for calling a meeting for no confidence motion. In the said notice, there are no specific allegations attracting the provisions of Section 55A. The learned Collector, however, directed those Councilors to attend the hearing under Sections 341B-5 of the Act which requires the Collector to start and complete the inquiry within one month. If

inquiry is not completed within three months, it can be extended only subject to prior sanction of the Government. He submits that inquiry report was thus required to be completed within one month. However, same was submitted on 10-04-2023. The learned CEO had submitted a report to the Collector on 23-03-2023. It is thereafter notice was given by the Government on 13.06.2023. He submits that after hearing, the Hon'ble Minister passed an order. In the order it is stated that no meeting was conducted as per Section 81(1) and Section 51 of the Act within one month.

7. So far as action under Section 55-B is concerned, he submits that there was no occasion for the Government to issue notice under Section 55-B, as no case was made out. On the question of authority, he submits that, Constitution does not recognize any authority as Deputy Chief Minister. The order passed by the Hon'ble Minister is passed without any such authority. He relies upon the circular dated 14.07.2023 which prescribes that notice of at least 5 days be issued on the basis of

judgment in writ petition No.3973 of 2023 (Devidas Ingle Vs. State) which requires that the person requires minimum notice of five working days be given to the parties.

8. The learned Senior advocate for the Petitioner relies on the judgment in the case of Ravi Yashwant Bhoir Vs District Collector, Raigad and others¹ and Savitri Chandrakesh Pal Vs State of Maharashtra and others². He also relied upon the judgment in the case of Surekha Vs. State of Maharashtra (of this petitioner)³

9. Mr. Rajendra Deshmukh, the learned Senior Advocate in Civil Application No.5341 of 2025 submits that the applicant is a Councillor and thus is interested party. On the point of locus, he submits that the applicant is one of the persons who moved the Collector to convene a meeting for no confidence motion. He submits that the petition deserves to be dismissed on the ground of non-joinder of necessary party at the

1 2012 (2) Bom CR 859

2 2010 (Supp) Bom CR 482

3 2023 SCC Online Bom 2335

threshold. He further submits that the concern of the applicant is that municipal council should run as per law. To continue disqualified person as President is against the public interest. One of the signatories of the letter to the Collector is made a party (Respondent No.6, now deleted) which shows that even the petitioner has knowledge that the signatories of the letter are necessary parties. He further submits that even if it is taken that locus is not material, still legal injury that will be caused needs to be seen. He further submits that the Hon'ble Minister has rightly passed the order by giving proper opportunity of hearing. The petitioner herself accepts that she was present in the VC room. By giving lame excuse, she left the VC hall at 04:40 pm. He submits that Section 341B-5 of the said Act came in statute book after the judgment in the case of Ravi Bhoir (Supra) . This judgment is therefore not applicable. He submits that the charge is now taken by the Vice-President. The Hon'ble Minister has rightly dealt with points those were crystallized. The Collector had clearly stated that the charges Nos. 3 and 4 are duly proved showing that the petitioner has behaved in

manner amounting to misconduct. The petitioner could not rebut all these by giving any material. It is the President who has control over the administration and therefore it was for her to give reason as to why meeting could not be held. In the meeting, some resolutions were passed on the subjects which were taken without publishing the main agenda. Special subjects were having financial implications. He thus submits that the petition deserves to be dismissed.

10. Mr. Sanjeev Deshpande, the learned Senior Advocate in Civil Application No.5342 of 2025 submits that the proposals more than worth of Rs.2,00,000/- were passed without there being any power vested in the President. The President could not act efficiently and this certainly can be said to be act of misconduct. When law requires the President to hold the meetings, still that not holding the meetings shows state of mind of the President. It is not a matter of desertion of the President to hold or not to hold the meetings. The judgment in the case of *Ravi Bhoir* (Supra) would not help the petitioner. So far as

giving an opportunity is concerned, he submits that time to time opportunities were given. Though the petitioner left VC hall still her Advocate was very much present on the date of hearing. Written notes of argument were also submitted thereafter and these are also considered by the Hon'ble Minsiter.

11. On merits, Mr. Deshmukh, the learned Senior Counsel adopted the arguments advanced by Mr. Deshpande, the learned Senior Counsel. He submits that this is fourth round of petition before this Court. In addition he submits that report of the learned Collector shows that bogus minutes were prepared by the petitioner. The resolutions were passed having financial implications without authority. The report of the learned Collector shows that the allegations made by the Councils were found to be correct. About authority of the Minister, he submits that though designation is shown as Deputy Chief Minister however, he is the Minister having port-folio of Urban Development Department.

12. He, thus, prays for rejection of the petition.
13. The learned AGP Mr. P. D. Patil, justifies the order. He submits that the Hon'ble Minister has rightly passed the order. He also prays for dismissal of the writ petition.
14. To appreciate the matter, it is necessary to see the relevant sections reproduced as below:

Section 55-A, 55-B and Sections 341B-5 reads as under:

“Section 55A. Removal of President and Vice-President by Government
Without prejudice to the provisions of section [55-1A] and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of, or incapacity to perform his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President, as the case may be, during the remainder of the term of office of the Councillors:

Provided that, no such President or Vice-President shall be removed from office, submitted by the Collector under section 55-1, within a period of six months from the date of receipt of the report.

[Provided further that, the Government shall take a decision on the report submitted by the Collector under section 55-1, within a period of six months from the date of receipt of the report.]

[Section 55B. Disqualification for continuing as Councillor or becoming Councillor on removal as President or Vice-President

Notwithstanding anything contained in section 55A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding or while he was holding the office of the President or Vice-President, as the case may be, the State Government may-

(a) *disqualify such Councillor to continue as a Councillor for the remainder of his term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification;*

(b) *disqualify such person for being elected as a Councillor till the period of six years has elapsed from the order of such disqualification.]*

Section 341B-5. Removal of President of Nagar Panchayat by Councillors

(1) The requisition for removal of the President elected under section 341B-1 shall be signed by not less than one – half of the total number of Councilors and shall contain the charges of misconduct against such president and shall be sent to the Collector:

Provided that, no such requisition shall be sent within a period of one year from the date of election of such President.

(2) Upon receipt of the requisition under sub-section (1), the Collector shall conduct the enquiry of such charges and complete such enquiry within a period of one month from the date of receipt of the requisition.

Provided that, in no case such period of enquiry shall be extended beyond three months and for such extended period, prior assent of the State Government shall be obtained by the Collector, if the enquiry proceeding is delayed due to unavoidable reasons.

(3) the Collector shall submit the findings of the enquiry to the Government for taking appropriate action under section 55-A as applicable therefor.”

15. In the case of Savitri (Supra), this court laid down the procedural guidelines for deciding the matters by quasi-judicial authorities. It is required that parties be given sufficient opportunity to put-forth their case. In the case of Ravi (Supra) the Hon’ble Apex Court has held that removal of elected persons is a serious things. It is further considered the misconduct and disgraceful conduct as stated under Section 55-A and 55-B. In the said case also the allegations were that the President of the

Municipal Council had not held the meetings. Statutory authority while reaching to the conclusion had not considered the explanation. It was held that not conducting oneself according to the procedure prescribed by law or omission to conduct the meeting without any corresponding loss to the corporate bodies would not be misconduct by itself. No such interference can be drawn unless positive intention is shown. The order of removal merely for not holding meetings was set aside. It was held that the appellant therein could not be held exclusively responsible for not conducting the meetings. The court held that the person in that case was removed in casual and cavalier manner. It is expected of the statutory authorities to scrupulously follow the statute. The orders passed by the Hon'ble Minister as well as High Court were set aside.

16. This court while deciding the matter of this petitioner, in the earlier round, had considered that the notice to the petitioner was issued only under Section 55-A of the Act while order was passed under Section 55-A and 55-B and

holding that final order of the statutory authority is without giving any notice. The court remanded the matter back for fresh consideration. Para Nos. 30 and 31 of the order dated 26-10-2023 reads as under:-

“30. In view of the same, the impugned order set aside. The matter is remitted to the statutory authority for fresh adjudication from the stage of issuance of fresh notice by the statutory authority under section 55A of the Act.

31. Observations made in this judgment are limited for the remand of the case and are not to influence the statutory authority in passing the final orders. The statutory authority to independently decide the proceedings before it.”

17. In the present case, first question is therefore, as to whether after remand, the authority has given sufficient opportunity of hearing. From the record it is seen that after remand, the notice was issued on 23-11-2023 only under Section 55-A asking the petitioner to show cause as to why she should not be removed. By another notice dated 30-11-2023, the notice dated 23-11-2023 came to be cancelled and corrected notice was issued wherein ten days time was granted to furnish written explanation. This notice was under Sections 55-A and 55-B. Basis of this notice was the same report which was furnished by the learned Collector. This court holds that notice

was issued under section 55-A as well as 55-B and the petitioner was made aware of the charges. Again this notice was challenged by filing the writ petition No.15181/2023. This court however held that it was only to challenge the notice at pre-mature stage. The writ petition came to be disposed off with liberty to the petitioner to raise all the contentions before the statutory authority. It was made clear that this court has not made any adjudication.

18. This court thus finds that sufficient notice was given to the petitioner. Reference of the circular that sufficient required filed is thus of no avail as notice of 10 days notice. The submission that when adjournment was sought, only three days time was given. This court finds that same also does not hold any water, as it was time granted for filing written submission. It was not first notice directing the petitioner to submit say within three days. It cannot be taken that even for every adjournment minimum time period need be granted. This court finds substance in the submissions of the learned advocate for the

respondents that though the petitioner herself left the VC room, her advocate was very much present and he was heard. So, on the point of giving proper opportunity, this court is not inclined to accept the submission of the petitioner. Coming to the next point that when this court had remitted the matter back for issuance of notice only under Section 55-A is concerned and still the notice was issued even under Section 55-B, this court finds that it is for the statutory authority to issue notice. Issuance of notice was the initiation of action. The court had directed to initiate fresh proceeding. The authority was therefore within its right even to issue notice under Section 55-B.

19. The next question material to be considered is, as to whether the case was made out to take action or to pass an order under Sections 55-A and 55-B. Section 55-B which is already re-produced provides for disqualification for continuing as councillor or becoming councillor or removal as President or Vice-President. It provides that if a person is found to be guilty of misconduct in the discharge of his official duties or being

guilty of any disgraceful conduct, while holding the office of the President or Vice-President be removed. From the case of Ravi (Supra) it is seen that the Hon'ble Apex Court has held that mere not conducting of meetings is not misconduct or disgraceful conduct. Something more is required to show that such misconduct or disgraceful conduct is an outcome of intention of such a person to deliberately not holding meetings. It further to be seen as to whether he has gained something out of said conduct. In the present case even if allegations are seen, those are mainly that meetings were not held, resolutions were passed by taking subjects having financial implication at the 11th hour. The petitioner has taken decision having financial implications of more than Rs.2 lakhs which is held to be violation.

20. From the conclusion of the statutory authority it is seen that there is violation of section 81(1) and Section 51. The petitioner failed to conduct the meeting within one month of the earlier meeting. It is further concluded that as per circular no

resolution could have been passed having financial implications of policy decision at 11th hours.

21. So far as applications for interventions are concerned it is seen that section 55-A and 55-B contemplates the report from the learned Collector. The action to be taken on the basis report by the Collector. It nowhere prescribes that any other person should be given hearing. The councillors may have moved the learned Collector & on the basis of such representation/complaints the learned Collector has taken action. However, still there is nothing in the act to give any locus to such complainants before the authority. Even if report is accepted and decision is taken either way no rights of this applicants are affected. It is also not the case that if any decision is taken these applicants may benefit or there is legal injury to the applicants. The submissions that even if legal injury is likely to be caused to the applicants, they are necessary parties. This court is not convinced by this argument as no such legal injury is shown. The intervenors relied upon the judgment in the case of

Prashant Amrutrao Tayde Vs The Hon'ble Minister for Cooperation and Textile and ors⁴. This judgment in respect of rights of the members of the co-operative societies. It is held that every member of the society have rights to see that persons not qualified are removed from the management. In the said case, it is held that, every member of the society has personal interest in the society, considering the provisions of Section 73(EA) of the MCS Act. This Court does not find the said judgment is relevant for the purpose of these applications as it cannot be said to be personal interest of the intervenor involved in the present proceeding. Further argument that decision affects public at large. This court finds that there is no merit in the applications for intervention. Hence the applications deserve to be dismissed.

22. The Hon'ble Minister has considered the charges Nos. 3 and 4 which are proved. Both the charges shows that there is violation of section 81 & 51-A of the Act. Section 81 makes provision as regards meeting of the council. However, there is nothing in section 81(1) giving power to the State

Government to hold the President disqualified for violation of Section 81(1). What it gives the procedure and the manner in which meetings are to be conducted, notices are to be issued, agenda is to be prepared etc. In such circumstances, this court finds it difficult to declare a person disqualified for not adhering to the said procedure. In the impugned judgment there is no discussion as to how the Minister came to a conclusion that under section 81 it is sufficient to hold the person disqualified.

23. Sections 51 & 81 reads as under:-

“Section 51-A Election of Vice-President

(1) Every council shall have a Vice-President, who shall be elected by the elected Councillors from amongst themselves in the special meeting convened under the sub-section 2 of section 51.

(2) The meeting to elect the Vice-President shall be presided over by the Collector or such officer as the Collector may nominate specifically in this behalf, but the Collector or such other officer shall have no right to vote.

Provided that notwithstanding anything contained in this Act or the rules made thereunder, for regulating the procedure at meetings (including the quorum thereat) the President or, as the case may be, the officer, presiding over such meeting may, for sufficient reasons to be recorded in writing, refuse to adjourn such meeting.

Section 81- Provisions in regard to meeting of Council.

The following provisions shall be observed with respect to the meeting of a council:

(1) For the disposal of general business, which shall be restricted to matters relating to the powers, duties and functions of the council as specified in this Act or any other law for the time being in force, and any welcome address to a distinguished visitor; proposal for giving Manpatra to a distinguished person or resolution of condolence (where all or any

these are duly proposed) an ordinary meeting shall be held once in every month. The first such meeting shall be held within one month, from the date on which the meeting of the council under section 51 is held, and each succeeding ordinary meeting shall be held within one month from the date on which the last preceding ordinary meeting is held. The President may also call additional ordinary meetings as he deems necessary. It shall be the duty of the President to fix the dates for all ordinary meetings and to call such meetings in time.

(1A) If the President fails to call an ordinary meeting within the period specified in clause (1), the Chief Officer shall forthwith report such failure to the Collector. The Collector shall, within seven days from receipt of the Chief Officer's report or may, suo motu, call the ordinary meeting. The agenda for such meeting shall be drawn up by the Collector, in consultation with the Chief Officer.

***Provided** that any such meeting called by the Collector shall not disturb the sequence of the ordinary meeting as specified in clause (1) and the next ordinary meeting shall be called by the President as if the last preceding meeting was held on the last permissible day of the period specified in clause (1)."*

24. Section 51 speaks of election to the Vice-President. It also provides for meeting to be held to elect the President by the Councillors. Even this is not relevant for the purpose of considering this matter. Section 72 is in respect of the powers of the committees and the council in respect of the financial sanction. Section 73 provides for subordination of the committees to council. None of sections prescribes that violation of section shall be considered as misconduct or disgraceful conduct on the part of the councillor or the President or Vice-

President. The charges which are taken to have been proved i.e. 3 and 4 are in respect of the violation of the sections 81 and 72. As already discussed, this court does not find anything to give power to the Government to disqualify the person on that ground. For the reasons above, this court finds that the Hon'ble Minister has committed mistake in holding the petitioner disqualified by passing the impugned order. The petition, therefore allowed in terms of prayer clause-B.

25. The Civil Application Nos. 5341/2025 and 5342/2025 stand dismissed.

[KISHORE C. SANT, J.]

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