

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1399 of 2018

Mahesh Agrawal, S/o Late Brijmohan Agrawal, aged about 42 years, R/o Near Punjab National Bank, Tilda Kharora Road, Tahsil Tilda, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Urban Administration and Development, Mantralaya, Naya Raipur, District Raipur.
2. The Chief Municipal Officer, Municipal Council Tilda Nevra, District Raipur.
3. The Under Secretary, Govt. of CG, Department of Urban Administration and Development, Mantralaya, Naya Raipur, District Raipur.
4. The Director / Joint Director, Urban Administration and Development Department, Indravati Bhawan, 4th Floor, 4th Block, Naya Raipur, District Raipur.

---- Respondents

For Petitioner:	Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.
For Respondent No.1, 3 and 4 / State: -	Mr. Anand Dadariya, Deputy Govt. Advocate.
For Respondent No.2:	Mr. Arun Sao, Advocate.
For Intervener:	Mr. Kishore Bhaduri and Ms. Swati Upadhyay, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/07/2018

1. The petitioner was elected as President of Municipal Council, Tilda Nevra in the election held in the month of January, 2015 by the electorate of said municipal constituency as independent candidate. On 28-3-2017, a show cause notice in exercise of power conferred under Section 41-A of the Chhattisgarh Municipalities Act, 1961 (for short, 'the Act of 1961') was issued and served to the petitioner stating inter alia that the petitioner has got a notice inviting tender

issued and published on 23-2-2015 for carrying out six different constructions works for which the aggregate amount was more than ₹ 51 lakhs and for that it was incumbent upon the petitioner to prepare separate-separate estimates for each of the works and accordingly, separate-separate technical approval ought to have been asked for which was not done. Secondly, as per applicable rules, NIT was required to be published in two largely circulated daily newspapers, whereas it has been published only in one newspaper namely Nav Bharat and the petitioner has paid an additional amount of ₹ 6,27,806-73 ps. and thereby caused loss to the municipality. The petitioner was issued show cause notice by the State Government as to why he be not removed from the post of President of the municipality under the Act of 1961 for his above-stated misconduct under Section 41-A of the Act of 1961.

2. The petitioner filed his reply stating inter alia that for all the different works, separate-separate estimates have been prepared and accordingly, separate-separate technical sanction has been obtained and the publication of notice inviting tender is the administrative job to be done within the power and authority of the Chief Municipal Officer – respondent No.2 herein and copy of enquiry report has neither been supplied to him nor any enquiry has been done to show that he is in any way responsible for making payment of additional amount of ₹ 6,27,806-73 ps. to the contractor. Even otherwise, by notification dated 31-3-2015 financial powers of the President of the municipality has been withdrawn by the State Government and since then all the authority to issue any cheque or making financial payment is vested only with the Chief Municipal

Officer – respondent No.2 herein. No payment has been made under the signature of the President i.e. the petitioner herein.

3. The State Government by its impugned order dated 3-5-2018 exercising power under Section 41-A of the Act of 1961 removed the petitioner in exercise of power under Section 41-A(1) and (2) of the Act of 1961 and further disqualified him for the next term stating inter alia that under the Chhattisgarh Municipalities (The Conduct of Business of the Mayor-in-Council/President-in-Council and the Powers and Functions of the Authorities) Rules, 1998 (for short, 'the Rules of 1998'), the petitioner had no power to grant administrative approval in anticipation and the power under Rule 6(3) of the said Rules of 1998 can be exercised only in case of emergency.

4. Questioning legality, validity and correctness of the order removing him from the post of President and further disqualifying him for the next full term, this writ petition has been preferred on the ground that the State Government has directed for his removal without specifying the condition precedent and without recording satisfaction as required under Section 41-A of the Act of 1961 that in the opinion of the State Government his continuance is not desirable in public interest or in the interest of the Council or he is incapable of performing his duties or he is working against the provisions of the Act or any rules made thereunder and as such, the technical approval was separately obtained for each of the works and that the publication of NIT is exclusive job of the Administrative Chief Municipal Officer of the municipality and the amount of ₹ 6,27,806-73 ps. has been held to be paid on the enquiry conducted beyond his back. Therefore, the order of removal is absolutely

illegal and unsustainable in law and is liable to be quashed.

5. The State Government has filed detailed return stating inter alia that pursuant to the complaint made against the petitioner and the office-bearers of the municipality about huge embezzlement of public fund, a committee was constituted for conducting inquiry and the said committee has thoroughly enquired the complaint by examining the original records as well as the spot inspection and submitted report to the Director, Urban Administration and Development, Raipur on 19-1-2017. After receipt of the said inquiry report, the Director, Urban Administration and Development forwarded the same to the Department of Urban Administration and Development, and the said Department in turn, issued show cause notice to the petitioner under Section 41-A of the Act of 1961 for his removal from the post of President, Municipal Council, Tilda Nevra. The petitioner filed reply to the show cause notice on 17-4-2017. The reply submitted by the petitioner and the inquiry report submitted by the committee have been minutely examined by the Department and after due examination and consideration, it has been found that the petitioner has committed serious misconduct as well as has caused huge financial loss to the public exchequer and when the State Government found that his continuance is not desirable in the public interest and in the interest of the Council as he is working against the provisions of the Act and the rules made thereunder, in the light of the aforesaid finding, the order removing him from the post of President as provided under Section 41-A(1) of the Act of 1961 has been passed and he has also been disqualified for the next term which is strictly in accordance with law, after

affording opportunity of hearing to the petitioner.

6. Mr. B.P. Sharma, learned counsel appearing for the petitioner, would vehemently submit that the order of the State Government removing and disqualifying the petitioner is contrary to the provisions contained in Section 41-A of the Act of 1961 and violative of the principles of natural justice, therefore, it is liable to be set aside.

7. Mr. Anand Dadariya, learned State counsel and Mr. Arun Sao, learned counsel appearing for the municipality, would support the impugned order and Mr. Kishore Bhaduri, learned counsel appearing for the objector/complainant, would also support the impugned order holding that the order passed by the State Government is strictly in accordance with law and no interference is warranted in the impugned order and the writ petition deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.

9. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 41-A(1) of the Act of 1961 which states as under: -

“41-A. Removal of President or Vice-President or Chairman of a Committee.—(1) The State Government may, at any time, remove a President or Vice-President or a Chairman of any Committee, if his continuance as such is not in the opinion of the State Government desirable in public interest or in the interest of the Council or if it is found that he is incapable of performing his duties or is working against the provisions of the Act or any rules made thereunder or if it is found that he does not belong to the reserved category for which the seat was reserved.

(2) xxx xxx xxx

Provided that no such order under this section shall be passed unless a reasonable opportunity of being heard is given.”

10. Under Section 41-A of the Act of 1961 extraordinary power has been conferred to the State Government to remove a President who is directly elected from amongst the electorate of a municipal constituency subject to recording a specific finding based on the material available on record holding that his continuance as such in the opinion of the State Government is not desirable in public interest, and further, or he can be removed also in the interest of the Council or if it is found that he is incapable of performing his duties or is working against the provisions of the Act or any rules made thereunder. Therefore, recording of either of the findings as mentioned herein-above is a condition precedent to exercise the power under Section 41-A of the Act of 1961. This is further subject to the fact that the principles of natural justice have to be observed as provided in the shape of proviso to Section 41-A of the Act of 1961 that no such order under the Section shall be passed unless a reasonable opportunity of being heard is given.

11. Exercise of power under Section 41-A of the Act of 1961 has serious civil consequences on the status of an elected President and same has to be exercised objectively keeping in view the nature of power and consequences that flow on its exercise and also considering that removal of a democratically elected office-bearer is an extreme step which must be resorted to only in grave and exceptional circumstances, as the consequences would not only affect the Council, but also the electorate of the municipal constituency. The said power has to be exercised with due care

and caution only in very strong and weighty reasons and same cannot be exercised without affording opportunity of hearing and the provisions have to be strictly construed.

12. The provisions contained in Section 41-A of the Act of 1961 came up for consideration before the High Court of Madhya Pradesh in the matter of **Kaushalya Bai v. State of M.P.**¹ in which D.M. Dharmadhikari, J (as then His Lordship was), has clearly and unmistakably held that such extraordinary power can be invoked only sparingly and on very strong, cogent and weighty grounds and not for some trivial irregularities, and observed as under: -

“4. From the provision quoted above it is noteworthy that it confers an extra ordinary and overriding power on the State Government to remove an elected office bearer of a local authority or committee under it on formation of an opinion that continuance of such office bearer is “not desirable in public interest” or “in the interest of the council” or that “he is incapable of performing his duties or is working against the provisions of the Act or any Rules” made thereunder. Similar power of removal of a councillor is vested in the Collector under section 41 of the Act against which there is an appeal provided. For taking action under section 41-A of removal of President, Vice-President or Chairman of any Committee, power is conferred on the State Government with no provision of any appeal. The action of removal casts a serious stigma on the personal and public life of the concerned office bearer and may result in his disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office bearer. The nature of power is such that it has to be exercised on an opinion objectively formed by the State Government. The misconduct or incapacity of the office bearer should be of such magnitude as to make his continuance undesirable in the “interest of council” or “in public interest”. There are no sufficient guidelines in the provisions of section 41-A as to the manner in which the power has to be exercised except that it requires that reasonable opportunity of hearing has to be afforded to the office bearer proceeded against. Keeping in view the nature of the power and the consequences that flow on its exercise it has to be held that such power can be invoked by the State Government only for very strong

¹ 1999(1) M.P.L.J. 368

and weighty reason. Such a power is not to be exercised for some trivial or minor irregularities in discharge of duties by the holder of the elected post. The material or grounds on which the action is taken should be such as to justify the exercise of drastic power of removal of the office bearer with consequence of his disqualification for another term. The provision has to be construed in a strict manner because the holder of office occupies it by election and he is deprived of the office by an executive order in which the electoral has no chance of participation.”

13. The principle of law laid down in the aforesaid judgment has substantially been followed by the M.P. High Court in the matter of **Daulat Ram Gupta v. State of M.P. and another**².

14. Apart from this, in a decision of the Supreme Court in the matter of **Ravi Yashwant Bhoir v. District Collector, Raigad and others**³,

Their Lordships of the Supreme Court have considered that removal of elected office-bearer from office on the basis of proved misconduct is a quasi judicial proceeding in nature and therefore the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same and observed as under in paragraphs 30, 31 and 32: -

“30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide *Indian National Congress (I) v. Institute of Social Welfare*⁴.] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab*⁵ and *Union of India v. H.C. Goel*⁶. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.

2 2003(3) M.P.L.J. 264

3 (2012) 4 SCC 407

4 (2002) 5 SCC 685 : AIR 2002 SC 2158

5 AIR 1963 SC 395

6 AIR 1964 SC 364

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of [Article 311](#) of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.”

15. Likewise, in paragraphs 34, 35 and 36 of the judgment rendered in

Ravi Yashwant Bhoir (supra), Their Lordships of the Supreme Court pertinently held as under: -

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal*⁷, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly*⁸ and *Ram Beti v. District Panchayat Raj Adhikar*⁹).

36. In view of the above, the law on the issue stands

7 (1982) 1 SCC 691 : AIR 1982 SC 983

8 (1992) 4 SCC 80 : AIR 1993 SC 2042

9 (1998) 1 SCC 680 : AIR 1998 SC 1222

crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of his choice.”

16. In the matter of Sadashiv H. Patil v. Vithal D. Teke and others¹⁰, the Supreme Court in para-14 held that the provision relating to disqualification has to be construed strictly. It has been observed as under:--

“14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.”

17. In the matter of Tarlochan Dev Sharma v. State of Punjab and others¹¹, the Supreme Court has categorically held that a democratically elected person is entitled to continue the office for full term unless the election is set aside by a procedure known to law. Paragraphs 7 and 11 of the report read as follows: -

“7. 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

¹⁰ (2000) 8 SCC 82

¹¹ (2001) 6 SCC 260

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.

11. ... 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.”

18. Likewise, in the matter of **Sharda Kailash Mittal v. State of Madhya Pradesh and others**¹², the Supreme Court while dealing with removal of President under the Madhya Pradesh Municipalities Act, 1961 has held that removal of a democratically elected officer from office is an extreme step which must be resorted to only in grave and exceptional circumstances and not for minor irregularities. Paragraphs 24, 25 and 26 of the report read as under: -

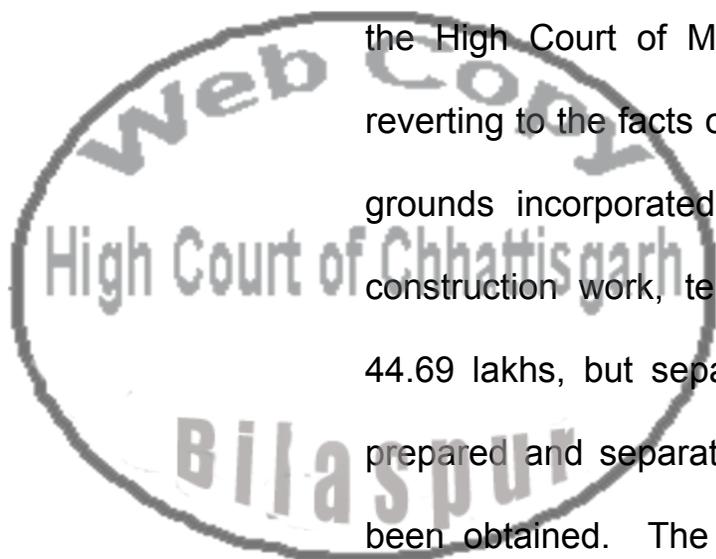
“24. ... The President under the M.P. Municipalities Act, 1961 is a democratically elected officer, and the removal of such an officer is an extreme step which must be resorted to only in grave and exceptional circumstances.

25. ... The action of removal casts a serious stigma on the personal and public life of the office-bearer concerned and may result in his/her disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office-bearer.

26. There are no sufficient guidelines in the provisions

of [Section 41-A](#) as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.”

19. After having noticed the principles of law flowing from the judgments of Their Lordships of the Supreme Court in the above-stated judgments particularly Sharda Kailash Mittal (supra) and the High Court of Madhya Pradesh in Kaushalya Bai (supra), reverting to the facts of the present case, it appears that one of the grounds incorporated in the show cause notice is that for the construction work, tender notice was published amounting to ₹ 44.69 lakhs, but separate-separate estimates were sought to be prepared and separate-separate technical sanction ought to have been obtained. The petitioner has brought to the notice of the Court that the Chief Municipal Officer of the municipality sent proposal for three different works separately to the Chief Engineer, Urban Administration, Raipur on 25-2-2015 for technical sanction vide Annexure P/5 filed along with the writ petition and the Executive Engineer of the said office has granted technical sanction separately for three works amounting to ₹ 14.97 lakhs, ₹ 15.00 lakhs and ₹ 14.06 lakhs and thereafter, administrative approval for all the three works has been granted separately in a meeting of the President-in-Council on 6-4-2015 vide resolution No.1. Though the respondents have been noticed and they have filed detailed



counter-affidavit, but the correctness of these documents have not been questioned by the respondents and the only argument is that technical and administrative sanction has been obtained by the petitioner after the publication of NIT on 23-2-2015, whereas it ought to have been obtained prior to the publication of NIT by the Municipal Council relying upon the memo dated 5-11-2014 filed as Annexure R/6 with the return of the State Government which is addressed to all the Commissioners of Municipal Corporations and all the Chief Municipal Officers of the municipalities and Nagar Panchayats. It has not been demonstrated that the work in question was got executed prior to obtaining administrative and technical sanction, therefore, merely because the NIT was issued prior to grant of technical and administrative approval by the Executive Engineer and the President-in-Council respectively, it cannot be held that the petitioner is found to have worked against the Act of 1961 and the rules made thereunder. Even otherwise, Annexure R/6 has only been addressed to all the Commissioners of Municipal Corporations and all the Chief Municipal Officers of the municipalities and Nagar Panchayats. It is also not demonstrated that at any point of time, the petitioner as President of the Council directed publication of NIT without awaiting grant of technical and administrative sanction by the competent authority. Therefore, this charge levied against the petitioner is not at all established in light of the well settled law in this regard noticed herein-above.

20. The second charge levied and found proved against the petitioner is that against the technical and administrative sanction of ₹ 14.97 lakhs for construction of CC road, work amounting to ₹ 31,14,698/-

was shown to have been executed without obtaining necessary sanction and without proper estimate, and further on measurement, work to the tune of ₹ 24,86,891-30 ps. was only found done at the spot and payment of ₹ 31,14,698/- was made to the contractor and thereby, the petitioner has caused loss to the municipality to the extent of ₹ 6,27,806-73 ps. by making excess payment. It is the clear stand of the petitioner and it is also apparent on return filed by the State that upon the complaint made by the objector / intervener herein, ex parte enquiry was got conducted by the State Government and report has been submitted to the Department of Urban Administration in which the petitioner has not been given opportunity to appear and present his stand and that report of the committee, as per the return filed by the State Government, has been relied upon to come to a conclusion that the petitioner has caused loss to the municipality to the extent of ₹ 6,27,806-73 ps..

The question would be whether such a document, copy of which has admittedly not been served to the petitioner, can be relied upon to hold him responsible in light of the proviso to Section 41-A contained in the Act of 1961 which clearly provides that no such order under the Section shall be passed unless a reasonable opportunity of being heard is given. My answer would be emphatic "NO" for the reasons elaborated herein-below.

21. The Supreme Court in the matter of **Natwar Singh v. Director of Enforcement and another**¹³ has clearly held that the doctrine of principle of fairness requires the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice for initiation of action. It was

13 (2010) 13 SCC 255

observed by Their Lordships as under: -

“30. The right to fair hearing is a guaranteed right. Every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognised by this Court in *Dhakeswari Cotton Mills Ltd. v. CIT*¹⁴. However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not brought to his notice. If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The law is fairly well settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future (See *R. v. Secy. of State for Home Deptt., ex p H*¹⁵).

31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under [Section 16](#) of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.”

14 AIR 1955 SC 65

15 1995 QB 43 : (1994) 3 WLR 1110 : (1995) 1 All ER 479 (CA)

22. Following the principle of fairness laid down in the above-stated judgment to the facts of the present case, it is quite vivid that though enquiry was conducted in order to find out the guilt of the petitioner and other officers and to find out the loss caused to the municipality, but the principles of natural justice statutorily incorporated in Section 41-A of the Act of 1961 have been given a complete go by, which is apparent from the fact that even along with the show cause notice dated 28-3-2017, copy of the said enquiry report was not annexed, nor during the course of enquiry it was supplied to the petitioner while proceeding under Section 41-A of the Act of 1961 against the petitioner. Even otherwise, no enquiry is said to have been held by the State Government before removing the petitioner though the proceeding for removal under Section 41-A of the Act of 1961 is quasi-judicial in nature and only on the basis of show cause notice dated 28-3-2017, the order causing loss by the petitioner to the municipality has been recorded, which has been made the basis of exercising the power to remove an elected President from the post under Section 41-A of the Act of 1961. So this ground is also not available to the State Government to remove the petitioner from the post of President being in violation of the principles of natural justice.

23. The third ground on which the State Government has found to have established against the petitioner is that the work in question is of more than ₹ 20 lakhs, but it has not been got published in two daily newspapers and only published in one daily newspaper. Note-sheet Annexure R/3 has been filed by the State in which the Sub-Engineer has proposed the draft of NIT and same has been

approved by the CMO and it has been countersigned by the petitioner as President of the municipality. Thus, it appears that publication in one newspaper was approved by the CMO that was accepted by the petitioner, otherwise also, it was the responsibility of the CMO to publish it in two daily newspapers, as the State Government on 17-5-2013 (Annexure R/5) has informed all the Commissioners and Chief Municipal Officers to publish it in one largely circulated State level daily and one national daily as per the memorandum, if the amount in question is more than ₹ 20 lakhs, but it appears that the CMO of the municipality has failed to comply the ministerial job of publishing the NIT in two papers as stated by the State Government for which the petitioner cannot be held responsible. It is not the case where the petitioner has directed not to publish the NIT as stated by the memo of the State Government dated 17-5-2013 and only directed for publication of NIT in one newspaper and that too of his own choice. The proposal as proposed by the office was duly approved firstly by the CMO and thereafter by the petitioner in the capacity of President of the municipality. Thus, this cannot be a ground to remove the petitioner from the post of President especially when the allegation came to be made only after two years from the date of publication of the NIT and work in question has already been executed in course of time.

24. In the impugned order removing the petitioner from the post of President, Section 51(1)(c) of the Act of 1961 has been relied upon which provides for exercising supervision and control over the acts and proceedings of all officers and servants of the Council in matters of executing administration and in matters concerning the

accounts and records of the Council and further more, Rule 6(3) of the Rules of 1998 has been relied upon.

25. Section 51 of the Act of 1961 deals with powers and duties of President, whereas Rule 6(3) of the Rules of 1998 deals with powers of municipality and Nagar Panchayat to carry out works without calling tenders on previously sanctioned rates during emergency situations to meet the problems like natural calamity, water supply etc., which is not attracted in the facts of the present case. As such, there is no statutory bar contained in the Act of 1961 and the Rules of 1998 that notice inviting tenders cannot be published without awaiting administrative and technical sanction and such a sanction cannot be granted ex-post facto. Even otherwise, issuance of tender and obtaining technical and administrative approval is purely an administrative job of the principal executive officer of the municipality. Apart from this, the State Government has simply held that the petitioner is guilty of financial irregularity. No finding has been recorded specifically that the petitioner's continuance as President of the Municipal Council is undesirable in public interest or in the interest of the municipality or that he is found working against the provisions of the Act and the rules made thereunder. No provision of the Act of 1961 has been pointed out specifically against which the petitioner is found to have acted against the Act or rules made thereunder and merely on the trivial charges, elected President of a municipality cannot be removed from his post.

26. The further question would be whether every mistake, error of judgment, lack of efficiency can be a reason to punish the person.

In the matter of Union of India and others v. J. Ahmed¹⁶, the Supreme Court succinctly held as under: -

“However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.”

27. The principle of law laid down in J. Ahmed's case (supra) was followed with approval by Their Lordships of the Supreme Court in the matter of Punjab State Civil Supplies Corpn. Ltd. v. Sikander Singh¹⁷ holding that single act or omission or error of judgment would not attract penal action unless such error or omission results in serious or atrocious consequences.

28. Thus, following the principles of law flowing from the judgments of the Supreme Court noticed herein-above, particularly Sharda Kailash Mittal (supra), Tarlochan Dev Sharma (supra), J. Ahmed's case (supra) and Sikander Singh's case (supra) and the judgment of the M.P. High Court in Kaushalya Bai (supra), and in light of the legal analysis made herein-above; and considering the nature of charges and material placed on record, it cannot be held that the State Government has exercised the extraordinary power of removal under Section 41-A of the Act of 1961 strictly in accordance with law, more particularly the act of removal is also in breach of the proviso to the said provision, as no requisite copy of enquiry report was supplied to the petitioner. In this view, the

¹⁶ (1979) 2 SCC 286

¹⁷ (2006) 3 SCC 736

unreported decision of the M.P. High Court cited by Mr. Bhaduri, learned counsel for the intervener, in the matter of Narender Sharma v. The State of Madhya Pradesh (W.A.No.477/2016), decided on 8-12-2016, is clearly distinguishable to the facts of the present case.

29. On the basis of above-stated discussion, this Court is of the considered opinion that the State Government is absolutely unjustified in removing the petitioner from the post of President, Municipal Council, Tilda Nevra and further unjustified in disqualifying him for the next term without satisfying the condition precedent for exercise of stringent provision contained in Section 41-A of the Act of 1961.

30. As a fallout and consequence of the aforesaid discussion, the impugned order passed by the State Government removing the petitioner from the post of President, Municipal Council, Tilda Nevra and disqualifying him for further term is hereby quashed. The State Government is directed to allow the petitioner to assume the office and function as President of Municipal Council, Tilda Nevra, forthwith.

31. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1399 of 2018

Mahesh Agrawal

Versus

State of Chhattisgarh and others

Head Note

Democratically elected President of a municipality cannot be removed by the State Government on trivial charge and that too in violation of the provisions relating to the principles of natural justice.

लोकतन्त्रात्मक रीति से निर्वाचित नगर पालिका के अध्यक्ष को मामूली आरोप में, वह भी प्राकृतिक न्याय के सिद्धान्तों से संबद्ध प्रावधानों का उल्लंघन करते हुए, राज्य शासन द्वारा हटाया नहीं जा सकता।

