A.F.R.

Court No. - 21
Case :- WRIT - C No. - 21595 of 2022
Petitioner :- Shaila Tahir
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Udayan Nandan,Sr. Advocate
Counsel for Respondent :- C.S.C.,Ashwani Kumar Sachan,Saurabh Sachan,Vashishtha Dhar Shukla

Hon'ble Manoj Kumar Gupta,J.
Hon'ble Jayant Banerji,J.

1. The petitioner has challenged her removal from the post of President, Nagar Palika Parishad, Nawabganj, Bareilly by the order of respondent no. 1, i.e. Principal Secretary, Nagar Vikas, U.P. Lucknow dated 10.5.2022 and the report of District Magistrate, Bareilly dated 6.1.2022. She has also prayed for a writ of mandamus commanding the respondents to permit her to discharge her duties as President of the Nagar Palika Parishad, Nawabganj, Bareilly.

2. The petitioner was elected as President of Nagar Palika Parishad, Nawabganj, Bareilly on 1.12.2017. A show cause notice dated 17.7.2019 was issued to her by respondent no. 1, seeking her explanation in relation to alleged wrongful withdrawal of a sum of Rs. 47,31,035/-, out of Rs. 52,40,554/-, from the funds provided by the State Finance Commission Grants. It was alleged that at the relevant time, no Executive Officer was working in the Nagar Palika and therefore, the withdrawal of the amount, amounts to a financial irregularity. It was also alleged that as a result, the *safai karmees* could not get their salary during Holi festival. The petitioner was called upon to reply to the said notice within seven days, along with the

evidence, otherwise, proceedings for her removal would be initiated. The petitioner replied to the said notice on 27.07.2019 stating that the amount was used towards payment of arrears of salary to the employees of the Municipality and the development works executed by different firms. All the payments were made by account payee cheques. At the relevant time, Gulshan Kumar Suri was working as Executive Officer and the payments were made under the joint signatures of the petitioner and the said Executive Officer. The petitioner annexed the bank statements to prove her contention.

3. On 17.8.2019, the District Magistrate sent a communication to the State Government, mentioning various charges of misconduct on part of the petitioner and recommended for seizing her financial and administrative powers. On 18.8.2019, a show cause notice was issued to the petitioner by respondent no. 1, requiring her to submit her explanation within seven days, failing which, proceedings under Section 48(2) of the Act would be initiated against her. By same notice, respondent no. 1, exercising power under the proviso to sub-section (2) of Section 48 ceased the financial and administrative powers of the petitioner.

4. The petitioner challenged the show cause notice/order seizing her financial and administrative powers by filing a writ petition[1] before this Court. An interim order was passed in the said writ petition on 24.9.2019, staying the operation of the order dated 18.8.2019, seizing the administrative and financial powers of the petitioner, while permitting enquiry in relation to removal to be concluded without being influenced by the pendency of the

1 Writ – C No. 28121 of 2019

writ petition.

5. On 9.09.2019, the petitioner submitted a detailed reply to the show cause notice dated 18.08.2019 and categorically denied the charges levelled against her. The receipt of reply of the petitioner dated 9.09.2019 (19.09.2019) to the show cause notice dated 17.7.2019 is admitted. In reply to the first charge, the petitioner reiterated the stand taken by her in her reply dated 17.7.2019.

6. In respect of the second charge, the petitioner took a specific stand that keeping in mind the G.O. dated 12.7.2010, the payments were made on priority basis to the regular and contractual employees by issuing cheques on 31.12.2018. Cheques were encashed by the payee as per their convenience, in some case in the month of February, 2019. The petitioner stated that she had supplied salary details along with her previous reply. However, no enquiry was held on the said issue. The petitioner also specifically denied the charge that the salary of employees was diverted to contractors. She also stated that one regular employee Sant Ram retired on 31.12.2018 and an account payee cheque was issued to clear his back wages, etc. The said cheque was encashed in 2019 from the grant received from the State Finance Commission. The petitioner admitted that a payment of Rs. 6,03,540/- was made to the contractors under joint signatures on 31.12.2018, which were encashed in 2019. According to the petitioner, these payments were in respect of urgent works got done in the past through the contractors. It was also contended by the petitioner that had these payments not been made, the functioning of the Municipality would have become difficult.

7. The petitioner also stated that salary of the employees in the month of March, 2019 on the occasion of Holi, could not be paid, as at that time, no executive officer was posted in the Municipality, under whose joint signature, payment of salaries was possible. The petitioner also specifically denied the charge that signatures on the cheques were ante-dated. She contended that the mere fact that in some cases, cheques were encashed by the payee in January and February, 2019 would not mean that the cheques were ante-dated.

8. In reply to Charge No.3, the petitioner stated that even before she took over charge as Chairman, the Government Scheme relating to disbursement of funds to the beneficiaries under the Swachh Bharat Mission was in the hands of Senior Clerk Achal Sharma and Computer Operator Anuj Kumar. They did not inform the petitioner that the second installment of Rs. 4,000/- was due and was to be transferred in the bank accounts of the beneficiaries. They also never presented the cheques for payment to the beneficiaries. The petitioner claimed that on the other hand, the town was reeling under the threat of communicable diseases and household wastes were dumped openly everywhere. To bring the conditions under control, the petitioner permitted purchase of cleaning equipments, chemical spray, tankers, dustbins, fogging machines, sewage cleaning machines, portable toilets, LED lights and the same was done according to established procedures. The petitioner was never made aware regarding the fund from which purchases and payments through cheques were made.

9. She also claimed that later when she was informed about the Swachh Bharat Scheme, she personally inspected the work got done through the contractor and found the same to be completely unsatisfactory and substandard and therefore, 50% of the bill amount was withheld with direction to the contractors to complete the work according to prescribed norms. She also alleged that she went to Lucknow and informed the Principal Secretary, Urban Development, about the said fact.

10. In respect of Charge No.4, that the husband of the petitioner misbehaved with Balbir Singh, Executive Officer, the petitioner specifically denied the same. She also refuted the allegation that he was ever pressurized to make any payment against Rules. She also specifically stated that all records of the Municipalities were kept in Nagar Palika Parishad and there was no hurdle in Government work. As regards issue relating to appointment of Mohammad Arshad, she submitted that the matter was pending before this court, as such, she was not in position to give any reply to the same. She also specifically denied the charge that her husband had any altercation with Mahinder Pal. She alleged that the charge in this regard is actuated by political vendetta. She requested for copies of documents and opportunity of hearing.

11. On 6.1.2020, a report was submitted by the District Magistrate to the State Government in respect of four charges levelled against her by means of show cause notice dated 18.8.2019. The petitioner was again issued a show cause notice by the State Government on 14.5.2020 in respect of four charges. The case of the petitioner is that she once again submitted detailed

reply to the show cause notice dated 14.5.2020 on 12.3.2021 and denied the allegations made therein, against her.

12. On 23.07.2020, the petitioner submitted an application before the State Government, stating that the report of District Magistrate dated 6.1.2020 was ex-parte and the procedure adopted by him was completely illegal and arbitrary. The petitioner prayed for an opportunity to cross examine the Additional City Magistrate, the then Executive Officer Balbir Singh, the observer, Swachh Bharat Mission, IVth Class Employee Mahender Pal, the complainant and certain other persons.

13. The case of the petitioner is that the State Government did not appoint any enquiry officer to hold oral enquiry. She requested the State Government to provide her with the relevant documents on which charges were based. However, without considering the application and the reply submitted by the petitioner and also without holding any enquiry, the Principal Secretary, Nagar Vikas, U.P. Lucknow, proceeded to pass the impugned order dated 10.5.2022, removing the petitioner from the post of President of the Municipality in purported exercise of powers conferred by Section 48(2) of the U.P. Municipalities Act, 1916. According to the impugned order, all four charges were found proved against the petitioner.

14. Sri Shashi Nandan, learned Senior Counsel for the petitioner submitted that the petitioner had been removed unceremoniously, without holding any proper enquiry. The petitioner is the Head of a Local Self-Government. She could not have been removed without holding a full-fledged enquiry. The alleged enquiry held in the instant case was a mere

eyewash. The petitioner was not provided with the documents and evidences on which charges were based, despite repeated requests. She was also not given proper opportunity of hearing. Request for cross-examination was ignored in a casual manner. In case of enquiry in relation to removal of an elected representative, it should be more elaborate and thorough than the one required to be held in case of removal of a government employee. Standard of proof has to be more stringent than in case of a departmental enquiry against a government servant. In support of his submission, he placed reliance on the judgment of the Supreme Court in **Ravi Yashwant Bhoir vs. District Collector, Raigad and Others**[2]**.**

15. He also submitted that the proceedings started with issuance of notice dated 17.7.2019. It contained only one charge in relation to alleged withdrawal of amount from the bank from the funds provided by the State Finance Commission. The said amount was alleged to have been withdrawn at a time when no executive officer was posted. However, the order of removal is based on four charges and this *ex facie* amounts to violation of the principles of natural justice.

16. He further submitted that Section 48(2) of the Act itself contemplates that after considering the explanation of the President, the State Government should hold such enquiry as it would consider necessary. In the instant case, since the charges were specifically denied and the petitioner sought opportunity to cross examine various witnesses on whose version the charges were founded, it was incumbent upon the respondents to have held

2 (2012) 4 SCC 407

oral enquiry, but which was not done in the instant case. The respondents adopted a procedure which was completely inconsistent with the principles of natural justice and therefore, the entire proceedings stand vitiated. In this regard, reliance was placed on a Division Bench judgment of this Court in **Sanjeev Agrawal vs. State of U.P. and Others**[3].

17. It is also contended that the respondents merely relied on the report submitted by the District Magistrate dated 6.1.2020, in holding the petitioner guilty of the charges. The State Government did not apply its mind to the replies submitted by the petitioner, nor discussed any evidence. Therefore, the impugned order is a result of non-application of mind and in clear breach of principles of natural justice. The State Government had not given any independent findings. It is submitted that any conclusion arrived at without giving reasons is *ex facie* illegal and in derogation of the principles of natural justice.

18. Countering the submissions, Shri Neeraj Tripathi, learned Additional Advocate General, appearing for the State, submitted that the petitioner was given repeated show cause notices and fullest opportunity of hearing. The State Government also held proper enquiry through the District Magistrate. He submitted his reports from time to time and which were rightly relied upon in passing the impugned order. The impugned order itself reveals that several dates were fixed for personal hearing, but the petitioner did not avail the opportunity. The contention that the petitioner was charge sheeted only on basis of one charge while the impugned order is based on four charges is

3 2011 (6) AWC 5502

not correct. Initially, the show cause notice dated 17.7.2019 was based on a single charge. Another notice was issued on 18.8.2019, calling for the explanation of the petitioner. The said notice was based on all the four charges. The petitioner's financial and administrative powers were ceased thereby and she was given seven days time to submit her explanation to the charges mentioned in the said notice. By the said notice, the petitioner was clearly informed that in case she does not submit her reply within seven days, proceedings under Section 48(2) would be taken to its logical conclusion. He further submitted that the replies dated 12.3.2020, 14.8.2020 and 15.6.2021 were never received. According to him, the impugned order takes into consideration every aspect of the matter and as the charges against the petitioner relates to financial irregularities, this Court should decline to interfere in the matter.

19. Since a factual controversy relating to receipt of various replies said to have been submitted by the petitioner was raised, therefore, we required the respondents to produce the original records before us. In compliance of the same, the original records were placed before us and wherein we found that the replies of the petitioner dated 12.3.2021, 14.8.2020 and 15.6.2020 were missing. Consequently, we directed the State respondent to hold an enquiry in this regard, inasmuch as, those replies were allegedly sent by registered post/speed post on the correct address. The petitioner claimed benefit of Section 27 of the U.P. General Clause Act and Section 114 of the Evidence Act. In pursuance of our order dated 12.09.2022, respondent no. 1 held an enquiry and according to the enquiry report, the alleged replies were not

received. Although there is presumption of service when the document is sent by registered post/speed post at the correct address, but we find that apart from these replies, there are other detailed replies which were admittedly received by the respondents. These replies were also in relation to the same charges and cover the entire defence of the petitioner. Therefore, instead of going into the above factual dispute, we proceed in the matter by considering only the replies that were admittedly received by the respondents.

20. We first proceed to analyse the nature of the enquiry that was required to be held in the instant case. The petitioner was the elected President of Nagar Palika Parishad, Nawabganj, a 'Municipality' within the meaning of clause (e) of Article 243P of the Constitution. It is a unit of local self government. It has been accorded constitutional status with the insertion of Part IX-A in the Constitution by the Constitution (Seventy Fourth Amendment) Act, 1992 w.e.f. 01.06.1993. The Statement of Objects and Reasons as was published in the Gazette on 16.09.1991 when the Bill was introduced is as under:-

> 1. In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.
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> 2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

(a) the functions and taxation powers; and

(b) arrangements for revenue sharing;

(ii) Ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-

(a) constitution of three types of Municipalities:

(i) Nagar Panchayats for areas in transition from a rural area to urban area;

(ii) Municipal Councils for smaller urban areas;

(iii) Municipal Corporations for larger urban areas. The broad criteria for specifying the said areas is being provided in the proposed article 243-0;

(b) composition of Municipalities, which will be decided by the Legislature of a State, having the following features:

(i) persons to be chosen by direct election;

(ii) representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;

(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);

(c) election of Chairpersons of a Municipality in the manner specified in the State law;

(d) constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law;

(e) reservation of seats in every Municipality-

(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;

(ii) for women which shall not less than one-third of the total number of seats;

(iii) in favour of backward class of citizens if so provided by the Legislature of the State;

(iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;

(f) fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution;

(g) devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;

(h) levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law;

(i) xx xx xx

21. In **Ravi Yashwant Bhoir (supra)**, the Supreme Court held that removal of a duly elected member/president of Municipal Council on basis of proved misconduct, is a proceeding quasi-judicial in nature. Therefore, the principles of natural justice are required to be given full play and a proper opportunity of placing the defence is a must. It was also held that an elected official of a local self government holds a much higher pedestal as compared to a government servant. If a government servant cannot be removed without a full-fledged enquiry, there is no gainsaying that in case of an elected representative, holding of full-fledged enquiry is imperative in law. A more stringent procedure and standard of proof is required-

> *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 & Ors., AIR 2002 SC 2158). This view stands further fortified by the Constitution Bench judgments of this Court in Bachhitar Singh v. State of Punjab & Anr., AIR 1963 SC 395 and Union of India v. H.C. Goel, AIR 1964 SC 364. 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.*
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> *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 bearer can be removed without holding a full fledged inquiry.*
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> *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.*

22. The Supreme Court also held that removal of elected person casts stigma upon him and takes away his valuable statutory rights. The result of his removal is that not only he, but his electoral college is also deprived of the representation by him. Moreover, he also stands disqualified to contest the election for a stipulated period.

23. In the instant case, the petitioner, who is President of Municipality, would stand disqualified from contesting a re-election as President or Member for a period of five years from the date of her removal in view of Section 48 (4) of the U.P. Municipalities Act, 1916 [the removal being under clause (a) and sub-clause (vi), (vii) and clause (b) of sub-section (2) of Section 48].

24. Sub-section (2-A) of Section 48 contemplates making of such inquiry as may be considered necessary by the State Government after considering the explanation that may be offered by the President. An order of removal should be in writing and contain reasons for removal of the President from office. The said provision is quoted below for convenience of reference:-

> *(2-A) After considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, remove the President from his office.*

25. In **Sanjeev Agrawal Vs. State of U.P. and others**[4] it was contended that sub-section (2-A) of Section 48 was deleted by subsequent amendments and is no more part of the statute. Therefore, no inquiry as per the said

4 2011 (6) AWC 5502

provision is required to be held. The argument was repelled after considering the amendments made to Section 48 from time to time. The Court relied on another Division Bench judgement of this Court in **Girish Chandra Srivastava vs. State of U.P. and others**[5] in holding that the said provision continue to exist and that there was error in numbering the sections while making subsequent amendments. It was concluded that the inquiry under Section 48 (2-A) is mandatory, although its nature and scope will depend on fact of each case. The relevant part of the said judgement is quoted in extenso:-

> *Section 48(2-A) of the U.P. Municipalities Act, 1916 contemplates that after considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, remove the President from his office.*
> *By U.P. Act No.VI of 2004 another sub-section (2-A) was added, which is to the following effect:-*
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> *"In Section 48 of the Uttar Pradesh Municipalities Act, 1916, after sub-section (2) the following sub-section shall be inserted namely: "(2A) where in an inquiry held by such person and in such manner as may be prescribed, if a President or a Vice President is prima-facie found to be guilty on any of the grounds referred to in sub-section (2), he shall cease to exercise, perform and discharge the financial and administrative powers, function and duties of the President or the Vice-President, as the case may be, which shall, until he is exonerated of the charges mentioned in the show cause notice issued to him under sub-section (2), be exercised and performed by the District Magistrate or by any other nominated by him not below the rank of the Deputy Collector."*
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> *By U.P. Act No.II of 2005, Section 48 was again amended which amendment was deemed to have come into force with effect from 27th February, 2004 which was the date on which U.P. Act No.VI of 2004 was published in the gazette. In sub-section (2) of Section 48, a proviso was inserted, which is to the following effect:-*
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> *"Provided that where the State Government has reason to*

5 2007 AWC (6) 6051

believe that the allegations do not appear to be groundless and the President is prima facie guilty on any of the grounds of this sub-section resulting in the issuance of the show cause notice and proceedings under this sub-section he shall, from the date of issuance of the show cause notice containing charges, cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show cause notice issued to him under this sub-section and finalization of the proceedings under sub-section (2A) and the said powers, functions and duties of the President during the period of such ceasing, shall be exercised, performed and discharged by the District Magistrate or an officer nominated by him not below the rank of Deputy Collector."

Sub-section (2-A) of Section 48 as inserted on 27th February, 2004 by the Uttar Pradesh Municipalities (Amendment) Act, 2004 (U.P. Act No.VI of 2004) was omitted.

11. The submission of Sri Shashi Nandan, learned Senior Advocate, that after deletion of Section 48(2-A) now there is no provision for holding an inquiry by the State Government needs to be considered first.

12. Sub-Section (2-A) of Section 48 which was inserted by U.P. Act No.XXVI of 1964 was to the following effect, "After considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, remove the President from his office.". The above sub-section (2-A) of Section 48 has not been deleted by any subsequent amendment. What has been deleted by U.P. Act No.II of 2005 was sub-section (2-A) which was inserted by U.P. Act No.VI of 2004 wherein it was provided that where in an inquiry held, if a President or a Vice-President is prima-facie found to be guilty, he shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President or a Vice-President until he is exonerated of the charges. Sub-Section (2-A), which was inserted by U.P. Act No.XXVI of 1964 was an entirely different provision from one which has been inserted by U.P. Act No.VI of 2004. Sub-section (2-A) of Section 48 which was inserted by U.P. Act No.VI of 2004 was with regard to cessation of financial and administrative powers of the President. The State legislature being not satisfied with the scheme of sub-section (2-A) of Section 48 as introduced by U.P. Act No.VI of 2004 came up to the same effect regarding cessation of financial and

administrative powers by inserting a proviso after Section 48(2) which proviso contains more drastic provision regarding cessation of financial and administrative powers and when proviso was inserted by U.P. Act No.II of 2005, the earlier sub-section (2-A) providing for cessation of financial and administrative powers was omitted. Thus Section 48(2-A) as was inserted by U.P. Act No.XXVI of 1964 still continues in the statute which obliges the State Government to consider the explanation and to hold an inquiry in the matter.

13. A Division Bench of this Court in the case of Girish Chandra Srivastava vs. State of U.P. and others reported in 2007 AWC-6-6051, after considering the provisions of Section 48 as amended from time to time, has taken the same view which we have taken above. Following was laid down by the Division Bench in paragraph 20 of the said judgment:-

> *"20. In view of the aforesaid decisions, we are of the considered opinion that insertion of sub-section (2A) in Section 48 of the Act after sub-section (2) by U.P. Act No.6 of 2004, does not, in any manner, either omit or substitute the earlier sub-section (2A) of Section 48 of the Act which was inserted by U.P. Act No.27 of 1964 and the State Legislature appears to have committed a mistake in numbering the sub-section that was added by U.P. Act No.6 of 2004. However, the mistake that had occurred stood removed by the subsequent amendment made by the State Legislature in Section 48 by U.P. Act No.2 of 2005 as sub-section (2A) that was inserted in Section 48 of the Act by U.P. Act No.6 of 2004 was omitted with effect from 27.2.2004."*

Thus according to scheme of Section 48 of the U.P. Municipalities Act, 1916 after issuance of show cause notice under Section 48(2), the State Government is obliged to consider the explanation and also to hold such inquiry as it may deem necessary.

26. What is nature and scope of inquiry which is required to be held under Section 48 was considered by this Court in **Umesh Baijal and others Vs. State of U.P. and another**[6]. It has been held that there could be cases where the charges are admitted and in which event, it would not be necessary to hold a regular inquiry and examine witnesses etc. There may be cases where

6 (2004) 2 UPLBEC 1235

the allegations are based on complaint made by certain persons. In such cases, if the State intends to rely on affidavit filed by the complainant, it has to give opportunity of hearing to the Chairperson to cross-examine the complainant. In a given case, the allegations may be of a very serious nature and which have to be proved by documentary as well as oral evidence and in such cases, full fledged inquiry would be required, as merely calling for explanation and considering the same would not meet the requirements of law. The relevant paragraphs from the said judgment are as follows:-

> *"13. Thus, it is evident that if a Chairman is removed under these provisions, it would have a very serious repercussion and consequence not only on the Chairman but also on the constituency, which he represented because he is being removed from the membership also, therefore, it cannot be permissible in law to remove him without complying with the requirement of law, as required under the facts and circumstances of a particular case. Sub-section (2A) of Section 48 of the Act, 1916 provides for a procedure of removal stipulating that after considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may, for reasons to be recorded in writing, remove him. The law does not permit or give unfettered powers to the State Government for passing an order of removal of the Chairman merely after considering his explanation to the show cause. It would depend upon the facts of each case as to whether an enquiry is required. There may be a case of admission by the President himself or the case against him is of such a nature for which he can furnish no explanation or the facts of a case are so admitted or admittedly such that no explanation is required at all, in such eventuality, it will not be necessary to hold a regular enquiry and examine the witnesses etc. giving an opportunity of cross-examination of the witness. There may be a case where the State is considering the affidavits filed by certain persons complaining against the misconduct of the Chairman, if State wants to take into consideration the said affidavits and in his explanation the Chairman denies the allegations, the affidavit cannot be relied upon without giving an opportunity to the Chairman to cross-examine the deponents, as required under the provisions of Order XIX, Rule 2 of the Code of Civil Procedure, for the reason that the Code itself is nothing but codification of the*

> *principles of natural justice. The provisions of Order XIX, Rule 2 of the Code become mandatory.*
>
> *39. Thus, in view of the above, it cannot be held that in each and every case, non-observance of principles of natural justice would vitiate the order. It has to be understood in the context and facts-situation of each case and requirement of statutory Rules applicable therein. However, in a given case, if the allegations are of a, serious nature and has to be proved on a documentary as well as on oral evidence, it is desirable to have a fulfledged enquiry for the reason that removal only on asking the explanation and consideration thereof, would not be sufficient to meet the requirement of law unless the facts are admitted or undeniable. It is not possible to lay down any strait-jacket formula as in what cases the fulfledged enquiry is to be held and in what cases removal is permissible on asking office bearers to furnish the explanation to the charges. It will depend on the facts of an individual case."*

27. In **Sanjeev Agrawal (supra)**, after considering the Division Bench judgment in **Umesh Baijal** and another Division Bench judgement in **Shamim Ahmad (Dr.) Vs. State of U.P. and another**[7], it was concluded as follows:-

> *10. Thus, in our view, it is clear that once an explanation is submitted by the President denying the charges, it is incumbent upon the State Government to make "such enquiry as it may consider necessary" before passing an order of removal. The word "inquiry" contemplates investigation. Therefore, where the President denies the charges and offers his explanation, the State Government is required to consider his explanation. If the State Government is satisfied with the explanation offered by the President, in that case, nothing further is required to be done other than passing a consequential order dropping the proceedings. However, if the State Government is not satisfied with the explanation, in that case, the State Government is required to enquire into the matter by holding a full-fledged enquiry.*

28. In **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others**, the Supreme Court also considered the issue as to whether recording of reasons is mandatory while passing an order of removal. The Supreme Court

7 (2005) 1 UPLBEC 171

placed reliance on its previous judgements in case of **Krishna Swami Vs. Union of India**[8], **Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd**[9] and thereafter concluded by holding as follows:-

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

29. The quotation from **Krishna Swami (supra)** relied upon in the said judgment reads thus:-

> *"Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."*

30. In **Sant Lal Gupta (supra)**, it was held as follows:-

> *"27. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.*

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8 (1992) 4 SCC 605
9 (2010) 13 SCC 336

> *“3. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."*
>
> *The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."*

31. The consistent judicial opinion thus is that recording of reasons in writing is not merely an attribute of the principles of natural justice but also essence of transparency and fairness in decision making process. It has been held to be a hallmark of sound and objective exercise of power. An order bereft of reasons violates Article 14 and 21 of the Constitution.

32. We now proceed to examine the contention of learned counsel for the parties in the light of the law discussed above.

33. In the instant case, the respondents initially issued a notice dated 17.07.2019 mentioning that it is in receipt of report of District Magistrate and Commissioner, Bareilly Region, Bareilly that the petitioner had misused funds under the head 'State Finance Commission'. To be precise, it was alleged that the petitioner had distributed Rs.47,31,035/- out of Rs.52,40,544/- from the State Finance Commission head. At the relevant time, no Executive Officer was posted in the Municipality. As a result thereof, the cleaning staff of the Municipality could not be paid their salary

during the Holi festival. The petitioner was called upon to submit her explanation within seven days, failing which, proceedings under Section 48 would be initiated against her. The petitioner responded to the said notice by submitting her explanation on 17/27.7.2019 in which she categorically refuted the allegations and specifically raised the issue that the show cause notice was issued to her on basis of false complaint made by the candidate who had lost the election i.e. Smt. Prem Lata Rathor. She emphatically denied the charge and pleaded that the amount was spent in payment of salary/stipend of daily-wagers and safai karmis. All the payments were made by account payee cheques under joint signatures of the petitioner and Gulshan Kumar Suri, the Executive Officer posted at the relevant time. She also pleaded that all the aforesaid cheques were drawn on 31.12.2018, but were encashed by the payees in the months of January and February, 2019 as per their convenience. It was followed by another show cause notice dated 18.08.2019 which contained three more charges, as noted in foregoing part of the instant order. The petitioner was called upon to offer her explanation within seven days, failing which, further proceedings on merits will be undertaken under Section 48 (2) of the Act. Simultaneously, the financial and administrative powers of the petitioner were also ceased in exercise of powers under the proviso to Section 48 (2). The petitioner feeling aggrieved thereby filed a writ petition before this Court wherein this Court vide its order dated 24.09.2019 stayed part of the order ceasing administrative and financial powers, but permitted the respondents to conclude the inquiry in accordance with law.

34. The petitioner submitted a detailed reply on 09.09.2019 (19.09.2019). Therein, she specifically refuted all the four charges and offered detailed explanation to each charge. Therein, she also raised a specific plea that she was not provided with the report of A.D.M. dated 17.8.2019 which formed the basis for issuing show cause notice dated 18.08.2019. She further pleaded that the respondents had illegally relied on the report of the A.D.M., Bareilly dated 17.08.2019 in issuing the notice dated 18.08.2019 without first seeking her explanation in response thereto. The petitioner sought to impress upon the respondents that they were proceeding in violation of principles of natural justice and the adverse material which formed the basis for issuing show cause notice (inquiry report and documentary evidence) was not provided to her. She again requested for the same being made available to her.

35. It seems that the explanation of the petitioner was forwarded by the State Government by its covering letter dated 18.08.2019 to the District Magistrate for submitting his comments. As a follow up, the District Magistrate submitted his comments dated 6.01.2020 to the State Government.

36. On 14.05.2020 the State Government issued another show cause notice to the petitioner in context of the comments submitted by the District Magistrate on 6.01.2020. The petitioner was asked to submit her explanation once again within seven days.

37. On 15.06.2020 the petitioner submitted an application and requested for oral hearing. On 27.07.2020 the petitioner submitted an application

specifying therein the documents to be provided to her in respect of each charge.

38. On 10.5.2022 the respondents passed the impugned order. It recites that on 14.05.2020 the petitioner was issued a notice stating that on account of lock-down as a result of Covid 19 protocol in place at the relevant time, personal hearing was not possible, therefore, she was directed to submit her written reply within seven days, but the petitioner did not submit any written reply. The order further mentions various dates fixed for personal hearing subsequently and that the petitioner did not avail the said opportunity. Para 2 of the order mentions that the report submitted by the District Magistrate dated 6.01.2020, after examining the response of the petitioner, holds the petitioner guilty of various charges and thereafter the extract from the report of the District Magistrate is quoted in the impugned order. Para 3 of the order mentions that all the charges levelled against the petitioner are found proved and established in view of the report of the District Magistrate and the Additional Report (comments submitted after examining the reply of the petitioner). She has been found guilty of the grounds mentioned in clause (a) and sub-clauses (vi), (vii), (x) and (xi) of clause (b) of sub-section (2) of Section 48 of the Act and accordingly, her removal has been ordered.

39. It is clear from the facts noted above that initially the notice dated 17.07.2019 issued to the petitioner seeking her explanation contained only one charge. However, notice dated 18.08.2019 contained three more charges and the explanation of the petitioner was duly called for in response to the said notice. As such, we find no force in the submission of learned counsel

for the petitioner that the order of removal is based on additional charges, in relation to which the petitioner was not called upon to show cause.

40. We now proceed to examine the plea as to whether the impugned order is violative of principles of natural justice, as proper enquiry was not held and also bad in law, as the State Government had failed to record any independent finding of its own in relation to the charges framed against the petitioner.

41. The impugned order, as noted above, merely relies on the report of the District Magistrate and the Additional Report submitted in response to the reply of the petitioner to the show cause notice. The State Government in the entire order has not recorded any independent reasoning in arriving at the conclusion that the grounds stipulated under Section 48 (2) are made out against the petitioner. As discussed above, giving of reasons was imperative as reasons are link between the material, the foundation for their erection and the actual conclusion. Sans reasons, this Court is unable to uphold the decision as well as the decision making process.

42. The receipt of application dated 23.7.2020 to cross-examine the witnesses is admitted to the respondents. Therein, the petitioner after giving detailed explanation to different charges and specifying reasons, requested for opportunity to cross examine various persons in relation to whom, or on basis of whose version, the charges were being pressed against her. She reiterated the request made by her in her previous reply for being provided with complete set of documents and evidences in support of the charges and for being provided proper opportunity of hearing and for setting aside the

ex-parte report of the District Magistrate dated 6.1.2020.

43. The petitioner by her application dated 10.8.2020, receipt of which is admitted to the respondents, demanded large number of documents.

44. It is evident from the stand taken in the counter affidavit that after receipt of replies from the petitioner, respondent no. 1 called for comments from the District Magistrate. The specific case of the petitioner is that the District Magistrate never held any enquiry, nor gave her any opportunity of hearing and submitted his report behind the back of the petitioner.

45. The report of the District Magistrate and the Additional Report submitted after examining the reply of the petitioner were only in form of an opinion which could have been considered by the State Government alongwith the defence of the petitioner and the evidence submitted by her. It was not a gospel truth nor final word. The same is not a substitute to the statutory requirement of recordal of reasons in writing by the State Government while passing an order of removal of the President in view of Section 48 (2-A) of the Act. On this ground alone, the impugned order is rendered vulnerable and is liable to be quashed.

46. We have already noted that the petitioner denied all the four charges. It is noteworthy that charge no.4 particularly related to the letters written on 8.08.2019 and 13.8.2019 by the then Executive Officer Balveer Singh in relation to pressure allegedly exerted upon him by the petitioner and her husband to facilitate certain payments. The said charge also related to certain other complaints received against the petitioner from different quarters in relation to alleged mis-behavour on part of her husband. The petitioner in

general and particularly in reference to charge no.4 requested for opportunity to cross-examine the then Executive Officer Balveer Singh Yadav and certain other persons. On 27.07.2020 she demanded various documents which formed basis for levelling the charges. The charges related to alleged misuse of funds; ante dating of cheques; alleged illegal payments to certain contractors in violation of the provisions of certain Government instructions; alleged diversion of funds.

47. Once the petitioner had specifically denied the charges and prayed for proper inquiry being held, it was incumbent upon the respondents to provide all documentary evidence, hold oral inquiry giving full opportunity to the petitioner to cross-examine the complainant and other witnesses. However, that was not done. The respondents rather adopted a peculiar procedure. After receipt of explanation of the petitioner dated 17.07.2019, they called for comments from the District Magistrate. Thereafter when the petitioner submitted another detailed reply dated 19.09.2019, once again comments are called from the District Magistrate. The State Government without holding any enquiry, merely on basis of comments submitted by the District Magistrate, proceeded to pass the impugned order for the reason that the petitioner had not submitted any reply in response to notice dated 14.05.2020 which was issued as a substitute to personal hearing on account of Covid 19 protocol being in force at the relevant time. The rebuttal of the petitioner to the charges was already there in shape of the reply dated 17.07.2019 and 9.09.2019 and therefore, there was no need of reiterating the stand once again in response to notice dated 14.05.2020. The issuance of

repeated show cause notices and calling for explanations cannot be a substitute to the oral inquiry which in the facts and circumstances of the instant case was necessary to comply with the principles of natural justice as well as the requirements of statute itself.

48. We find considerable force in the submission of learned counsel for the petitioner that the petitioner, who was head of a Municipality, has been removed in a casual manner, without holding proper inquiry, which could pass the test of fairness.

49. In consequence, the writ petition succeeds and is allowed in part. The impugned order is quashed leaving it open to the State respondents to proceed in the matter afresh in the light of the observations made in the foregoing paragraphs of this order.

50. No order as to costs.

(Jayant Banerji, J.) (Manoj Kumar Gupta, J.)

Order Date :- 13.10.2022
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