SHARDA KAILASH MITTAL

v.

STATE OF M.P. & ORS.

(Civil Appeal No. 222 of 2010)

JANUARY 12, 2010

[K.G. BALAKRISHNAN, CJI. AND P. SATHASIVAM, J.]

Madhya Pradesh Municipalities Act, 1961 – s. 41-A – Power of State Government to remove the President, Vice-President or a Chairman of any Committee – Application of s. 41-A – Scope of – Held: Such person can be removed, if his continuance in the office is not found desirable in public interest or in the interest of Council or if he is incapable of performing his duties; or is working against the provisions of the Act/Rules – Resort to s. 41-A can be had only after such person is duly elected – Removal of such officer must be resorted to only in grave and exceptional circumstances and not for minor irregularities in discharge of duties – On facts, order of removal of the President of Nagar Palika by State Government as upheld by High Court not justified and is set aside – Actions of the President, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow State Government to invoke its extreme power u/s. 41-A – Municipalities.

Appellant was elected as the President of the Nagar Palika. She was issued show cause notice and certain charges were leveled against her. It was alleged that the appellant had caused monetary loss to the Panchayat by publishing advertisements; that she had struck off her signature from the minutes; and that she had shown undue haste in appointing HS as the Chief Municipal Officer. Appellant denied the charges. The Chief Secretary also found that she had violated the provisions of s. 51 of the Madhya Pradesh Municipalities Act, 1961.

A Thereafter, the State Government invoked Section 41-A of the Act and removed the appellant from the post of the President of the Nagar Palika. High Court upheld the removal of the appellant. Hence, the present appeal.

B Allowing the appeal, the Court

HELD: 1. The actions of the President-appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s. 41-A of the C Madhya Pradesh Municipalities Act, 1961. Thus, the order of the State Government removing the appellant as President of the Nagar Palika, u/s. 41-A of the Act and consequential orders passed by the Single Judge and Division Bench of High Court is set aside. In view of the D fact that her tenure has come to an end and fresh election was also conducted, the subsequent events are not disturbed. However, it is made clear that in view of the present order, the disqualification of the appellant is expunged and the appellant would be free to contest the E elections in future. [Paras 19 and 21] [464-G-H; 466-B-D]

2.1. Section 41-A of the Act vests the State Government with power to remove the President, Vice-President or a Chairman of any Committee, if his continuance in the office is not found desirable in public F 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 rules made thereunder. A conjoint reading of ss. 20, 22 and 41-A as also the Article 243-ZG of the Constitution of India would G make it amply clear that resort to s. 41-A can be had to remove a person from the office only after he/she is duly elected and his/her conduct in office is otherwise found prejudicial to public interest or in the interest of the Council. In addition, u/s. 41-A (2), the State Government

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at the time of removal from office may also pass an order disqualifying the person from holding the office of President, Vice-President or Chairman for the next term. [Paras 9 and 16] [459-D-E; 463-C]

2.2. The President under the Act 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. For taking action u/s. 41-A for 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/her disqualification to hold such office for the next term. Therefore, the exercise of power has serious civil consequences on the status of an office bearer. There are no sufficient guidelines in the provisions of s. 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, 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. [Paras 17 and 18] [464-B-G]

Tarlochan Dev Sharma v. State of Punjab and Ors. (2001) 6 SCC 260, referred to.

3.1. The analysis of the materials, particularly, the background shows that the State Government failed to

A appreciate that the decisions for publication of advertisements, calling for tenders and payment of salaries were made by the entire council and the President-appellant could not be singled out for those decisions taken by the Council. High Court failed to
B appreciate that removal u/s. 41-A of the Act could be resorted to only under grave and exceptional circumstances which were not present in the appellant's case. No charge of causing financial loss to the Nagar Palika could be established by the State Government.
C [Para 15] [462-G-H; 463-A]

3.2. It is clear that the advertisements, tenders calling for attending day-to-day work of the Municipality such as provision for drinking water, sanitation etc. were duly put out only after due deliberation by the Council of Nagar
D Palika and no decision was taken by the appellant herself. All works had been completed after satisfying the conditions prescribed therein. The appellant has also established that due to transfer of Chief Municipal Officer, the salaries of workers of the Nagar Palika remained
E upaid for the month of January, 2006 leading to possibility of unrest in the area, therefore, it was requested to the appellant by the Councilors that necessary arrangements be made for immediate payment of salaries in view of the ensuing festivals of Muharram
F and Basant Panchami. The appellant pointed out that out of the amount of Rs.8,12,783/-, an amount of Rs.5,08,890/- was disbursed towards salaries of the workers and other officers of the Nagar Palika and the remaining Rs. 3,03,890/- was paid to various contractors for payment of
G salaries to their daily wage workers. The vouchers of all the said payments were prepared and approved by the then Chief Municipal Officer and the appellant, and those accounts were duly audited and as such there is no valid reason to reject the stand taken by the appellant. Though

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the State Government erroneously mentioned the expenses on advertisement as Rs.2.46 lacs subsequently they themselves filed an application for amendment to correct the amount of Rs.2.46 lacs to be read as Rs.24,600/-. The Single Judge as well as the Division Bench of High Court not only failed to consider all the above circumstances and the exigencies under which the appellant was compelled to make the appointment of HS as Chief Municipal Officer and also ignored the fact that the appointment was actually made for payment of salaries and to make the payments to the contractors who pressed for disbursement of the same to their workers. In the light of the above conclusion and in the absence of a finding that any loss was caused, the decision of the State Government can not be sustained. [Para 20] [465-A-H; 466-A]

Case Law Reference:

(2001) 6 SCC 260 Referred to. Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 222 of 2010.

From the Judgment & Order dated 20.6.2008 of the High Court of Madhya Pradesh Bench at Gwalior in W.A. No. 253 of 2008.

Ravindra Kr. Srivastava, S.K. Dubey, Suryanarayana Singh, Pragati Neekhra, Anup Jain and Chhavi Batra for the Appellant.

T.S. Doabia, Sushil Kumar Jain, Puneet Jain, Eshita Barua, B.S. Banthia, Naveen Sharma and Samar Vijay Singh (for Jagjit Singh Chhabra) for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

A 2. This appeal is directed against the judgment rendered by a Division Bench of the High Court of Madhya Pradesh at Jabalpur dismissing W.A. No. 253 of 2008 filed by the appellant herein against the order of the learned single Judge dated 25.04.2008 in W.P. No. 4894 of 2007 whereby the learned B Judge dismissed the writ petition filed by the appellant challenging the order dated 04.10.2007 passed by the Principal Secretary, Department of Local Administration and Development, Government of Madhya Pradesh.

C 3. The facts giving rise to the filing of this appeal may be briefly stated as follows:

The appellant was elected as President of Nagar Palika, Jora, District Muraina in the year 2004. On 15.09.2006, a show cause notice was issued to the appellant under Section 41-A D of the Madhya Pradesh Municipalities Act, 1961 (hereinafter referred to as the "Act"). Charge No. 1 leveled by the respondent against the appellant was that she has caused monetary loss to the Panchayat by publishing advertisements for more than Rs.1500/-. In Charge No.2, it was alleged that E the appellant had struck off her signature from the minutes dated 27.12.2005 and the then Chief Municipal Officer signed the minutes, which has been accepted by the respondent. Charge No.3 against the appellant was that she had shown undue haste in appointing Shri Harishankar Sharma as the F Chief Municipal Officer and compelled him to make various payments to the tune of Rs. 8,12,783/-.

4. On 27.04.2007, Smt. Sharda Kailash Mittal, the appellant filed a detailed reply to the show cause notice refuting the charges leveled against her. In relation to charge No.1 while G denying the same she asserted that she had not issued any direction for publishing the advertisements or messages in the newspapers. The then Chief Municipal Officer, Shri A.K. Bansal, has given the advertisement. The matter was placed before the Council and by resolution No. 48 dated 23.07.2005, the

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permission was granted by the President-In-Council and upon the recommendation payments were made by the Chief Municipal Officer. She denied Charge No.2 stating that no alteration had been done in the proceedings register. According to her, on 21.12.2005, at the instance of the Chief Municipal Officer, Sh. A.K. Bansal, upon the disturbance being caused by the Vice-Chairman Shri Surya Narain Jain and some of the Councilors and upon their mis-behaviour she postponed the meeting till 26.12.2005. In the postponed meeting, after discussing proposal Nos. 103 to 112, the resolution was passed. The same was entered in the proceedings register and duly signed by the appellant and the Chief Municipal Officer. Again on 27.12.2005, after discussing proposal Nos. 113 to 150 the resolutions were passed. All those subjects were thoroughly discussed and resolutions were passed and recorded as resolution Nos. 100 to 135 in the proceedings register. In this way all the actions were approved by the Council. Regarding Charge No. 3, she asserted that she came to know that after the transfer of the In-charge CMO Shri A.K. Bansal to Muraina Shri A.K. Vashisht, Revenue Inspector was posted in the Municipality of Zora on interim basis. She heard that it would take 5 to 7 days to get the new C.M.O. In order to settle down the salary for the month of January to the employees of the Corporation and ensuing Moharam and Basant Panchami festival as well as the contractors were pressing for settlement since they had completed their work, the Council authorized Shri Hari Shankar Sharma, Revenue Inspector as the C.M.O.

5. By order dated 4.10.2007, the Chief Secretary, City Administration and Development Department, found that Smt. Mittal has violated the provisions of Section 51 of the Act. It is also stated that being the Chairman, it was her duty that she should supervise the financial and executive administration of the council and does not deserve to remain on the post of the Chairman. Basing such conclusion, the said authority under Section 41-A of the Act removed the appellant from the post

A of the Chairman of the Nagar Palika, Zora.

6. The said order of removal was challenged by the appellant before the High Court of M.P. Gwalior in W.P. No. 4894 of 2007. By order dated 25.4.2008, the learned single Judge, after finding no ground for interference with the order B passed by the State Government dismissed her writ petition.

7. Aggrieved by the dismissal of the writ petition, the appellant filed W.A. No. 253 of 2008 before the Division Bench of the High Court of M.P. at Jabalpur. By the impugned order C dated 20.6.2008, the Division Bench confirmed the order of the learned single Judge and dismissed the writ petition. Hence the present appeal before this Court by way of special leave petiton.

D 8. We have heard Mr. Ravindra Kr. Srivastava, learned senior counsel, appearing for the appellant and Mr. Sushil Kr. Jain, learned counsel, for respondent No.3 and Mr. B.S. Banthia, learned counsel for respondents 1 & 2.

9. It is not in dispute that election for Nagar Palika, Zora E was held and the appellant was elected as President of the Nagar Palika which is a reserved seat for woman under Section 29-B of the Act. Before considering the specific charges leveled against the appellant, it is useful to refer Section 41-A of the Act which refers the removal of President F or Vice-President or Chairman of a Committee:-

"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 G 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 H to the reserved category for which the seat was reserved.

(2) As a result of the order of removal of Vice-President or Chairman of any Committee, as the case may be, under sub-section (1) it shall be deemed that such Vice-President or a Chairman of any Committee, as the case may be, has been removed from the office of the Councilor also. At the time of passing order under sub-section (1), the State Government may also pass such order that the President or Vice-President or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman, as the case may be, for the next term:

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

The above Section 41-A vests the State Government with power to remove the President, Vice-President or a Chairman of any Committee, if his continuance in the office is not found desirable in public interest or in the interest of the Council. A conjoint reading of other provisions such as Sections 20, 22 and 41-A as also the Article 243-ZG of the Constitution of India would make it amply clear that resort to Section 41-A can be had to remove a person from the office only after he/she is duly elected and his/her conduct in office is otherwise found prejudicial to public interest or in the interest of the Council.

10. Let us consider the charges leveled against the appellant, procedure followed in her case and the ultimate decision by the State Government under Section 41-A of the Act. Though four charges have been pressed into service in the show cause notice dated 15.09.2006, admittedly Charge No.4 has not been established, hence we are concerned with Charge Nos. 1-3 only. They are as follows:

"Charge No.1

That by getting published advertisements/best wishes

A messages in various newspapers of more than Rs.1500/- each she has caused financial loss to the Municipality of Zora.

Charge No.2

B On 27.12.2005, after the meeting of the council in the end of the details of the proceedings Smt. Sharda Kailash Mittal had put her signatures which have been cut and after the signatures so cut, Smt. Mittal has herself signed it again alongwith this on the sea of the Chief of the Chief C Municipal Officer are the signatures of Sh. Hari Shankar Sharma who is not authorized to carry on any duty by the administration or senior officer of the Chief Municipal Officer.

D *Charge No.3*

In sequence to the order dated 06.02.2006 for the transfer of Sh. A.K. Bansal, the then Chief Municipal Officer, on the same day he was discharged and automatically on the same day irregularly Sh. Hari shankar Sharma was given E the charge of the Chief Municipal Officer and an irregular payment of Rs.3,12,783/- was made by him."

11. The substance of the Charge No.1 was that the appellant has caused monetary loss to the Municipality by F publishing advertisements for more than Rs.1500/-. We have already pointed out and it was also not in dispute that the appellant-the President had submitted her detailed explanation with reference to the same. According to her, the payment for such publications had been approved by the President-in-G Council, and the request for making the payment was expressed by the Chief Municipal Officer. However, the State pointed out that the appellant being the President of the Nagar Palika, ought to have proceeded on the basis of the prevalent Rules. It was further pointed out that by spending more than H Rs.1500/- the appellant has not followed the Rules laid down

in that regard and as such she is guilty of the said charge. In the explanation to the said charge, the appellant has pointed out that though the charge leveled against her relates to causing financial loss to the Nagar Palika, on the contrary, according to her, the order states that the appellant was guilty of not following the Rules while making the payment, which was never framed against her. It is also relevant to mention that the Rules filed by the respondent and heavily relied on by the State Government provides that the expenditure on "welcome" shall not be more than Rs.1500/-. In the present case, it was pointed out more than one place that the expenditure was with regard to the advertisement and not with regard to the "welcome" expenses alone. Though this was highlighted in the explanation to the charge, it was not properly considered by the Government. The materials placed, particularly, Annexures 1 & 2, show that the office of Nagar Palika, Zora, invited tenders for purchase of goods relating to water supply for various wards and asserted that those tenders were to be out only after due deliberation by the Nagar Palika Committee. In the light of the above factual details, the actual contents of charge and the relevant rules, we are satisfied that the conclusion arrived at by the State Government cannot be accepted.

12. Charge No.2 relates to the allegation that the appellant had struck off her signature from the minutes dated 27.12.2005 and the then Chief Municipal Officer had signed the minutes, which has been accepted by the respondent. It was pointed out by the appellant that absolutely there was nothing on record to show that either the appellant herself struck off her signature or that the appellant had permitted or compelled the then Chief Municipal Officer to affix his signatures on the said minutes. It was pointed out by her that even if assuming to be so, it was not so grave in nature so as to attract Section 41-A of the Act. On going through her specific explanation and assertion and the relevant records, there is no reason to reject her claim and the State Government took it seriously without any acceptable material in order to take action under Section 41-A of the Act

more particularly, she being the President of the opposite party.

13. Charge No.3 relates to the allegation that the appellant had shown undue haste in appointing one Harishankar Sharma as the Chief Municipal Officer and compelled him to make various payments to the tune of Rs.8,12,783/-. In the explanation, it was pointed out that out of the total amount of Rs.8,12,783/-, Rs.5,08,890/- was spent towards the disbursement of the salary of the workers and other officers of the Corporation and the remaining of Rs.3,03,890/- was disbursed to various contractors for payment and wages to their daily wage workers. It was highlighted that the said payment to the contractor was made in part keeping in view the ensuing two festivals of Muharram and Basant Panchami. It was further highlighted that the vouchers of all the said payment were prepared and approved by the then Chief Municipal Officer – Shri A.K. Bansal and the appellant and were duly and properly audited, as such, there was no illegality in such disbursement. Copy of the report of the Chief Municipal Officer, Zora dated 09.03.2006 has been placed as Annexure P-8. The appellant has also pointed out that her political opponents sent a complaint to the Chief Minister making bald allegations of corruption against her. A copy of the letter dated 12.05.2006 has been included as Annexure P-9.

14. Apart from the above complaint, the appellant has also highlighted certain communications between the local leaders and the State Government seeking the Government's intervention in taking action against her for one reason or the other.

15. The analysis of these materials, particularly, the background shows that the State Government failed to appreciate that the decisions for publication of advertisements, calling for tenders and payment of salaries were made by the entire council and the President-appellant could not be singled out for those decisions taken by the Council. The High Court failed to appreciate that removal under Section 41-A of the Act

could be resorted to only under grave and exceptional circumstances which were not present in the appellant's case. No charge of causing financial loss to the Nagar Palika could be established by the State Government.

16. As directed earlier, Section 41–A of the Act gives power to the State Government to remove the President, Vice – President or Chairman of a Committee on four broad grounds, namely, (a) Public interest; (b) Interest of the Council; (c) Incapability of performing his duties; and (d) Working against the provisions of the Act or rules made thereunder. In addition, under Section 41 – A (2), the State Government at the time of removal from office may also pass an order disqualifying the person from holding the office of President, Vice – President or Chairman for the next term. The question to be determined is what is the scope of the application of Section 41–A and what is the nature of power of the Government?

17. In *Tarlochan Dev Sharma v. State of Punjab and Ors.* (2001) 6 SCC 260, this Court while dealing with the removal of a President of the Council under Punjab Municipal Act of 1911, held in Paragraph 6 as under:

> "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 elections set aside by a prescribed procedure known to law... 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."

In Paragraph 11 this Court observed as under:

> "A singular or causal 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

A involving, dishonesty of intention is... 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."

B The same consideration must be taken into account while interpreting Section 41- A of the Act. 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.

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18. For taking action under Section 41-A for 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 D on the personal and public life of the concerned office bearer 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. There are no sufficient guidelines in the provisions of Section 41-A as to the E 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 F 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 G electorate has no chance of participation.

19. In the present case, the actions of the appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its H extreme power under Section 41 – A.

20. From the materials placed before us, we are satisfied that the advertisements, tenders calling for attending day-to-day work of the Municipality such as provision for drinking water, sanitation etc. were duly put out only after due deliberation by the Council of Nagar Palika and no decision was taken by the appellant herself. The appellant has also established that due to transfer of Chief Municipal Officer, the salaries of workers of the Nagar Palika remained upaid for the month of January, 2006 leading to possibility of unrest in the area, therefore, it was requested to the appellant by the Councilors that necessary arrangements be made for immediate payment of salaries in view of the ensuing festivals of Muharram and Basant Panchami. The materials placed by the appellant before the State Government as well as before the High Court show that the tender had been put out after due deliberation by the Council and all works had been completed after satisfying the conditions prescribed therein. The appellant had pointed out that out of the amount of Rs.8,12,783/-, an amount of Rs.5,08,890/- was disbursed towards salaries of the workers and other officers of the Nagar Palika and the remaining Rs. 3,03,890/- was paid to various contractors for payment of salaries to their daily wage workers. The vouchers of all the said payments were prepared and approved by the then Chief Municipal Officer-Shri A.K. Bansal and the appellant and those accounts were duly audited and as such there is no valid reason to reject the stand taken by the appellant. It is also relevant to point out that though the State Government erroneously mentioned the expenses on advertisement as Rs.2.46 lacs subsequently they themselves filed an application for amendment to correct the amount of Rs.2.46 lacs to be read as Rs.24,600/-. The learned single Judge as well as the Division Bench not only failed to consider all the above circumstances and the exigencies under which the appellant was compelled to make the appointment of one Shri Harishankar Sharma as Chief Municipal Officer and also ignored the fact that the appointment was actually made for payment of salaries and to make the payments to the

A contractors who pressed for disbursement of the same to their workers. In the light of the above conclusion and in the absence of a finding that any loss was caused, the decision of the State Government can not be sustained.

B 21. In the light of the above discussion, we set aside the order of the State Government removing the appellant as President of the Nagar Palika, Zora, District Muraina under Section 41-A of the Act and consequential orders dated 25.04.2008 passed by the learned single Judge in W.P. No. 4894 of 2007 and of the Division Bench dated 20.06.2008 in C W.A. No. 253 of 2008. In view of the fact that her tenure has come to an end and fresh election was also conducted, we are not disturbing the subsequent events. However, we make it clear that in view of the present order, the disqualification of the appellant is expunged and the appellant would be free to D contest the elections in future.

22. With the above conclusion and observation, the appeal is allowed. There shall be no order as to costs.

N.J. Appeal allowed.