Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors on 2 March, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1339, 2012 AIR SCW 1877, 2012 (3) AIR BOM R 552, (2012) 4 MAD LJ 109, 2012 (4) SCC 407, (2012) 3 SERVLR 727, (2012) 2 ALLMR 962 (SC), AIR 2012 SC (CIV) 1152, (2012) 3 SCALE 303, (2012) 2 SERVLJ 353, 2012 (2) KLT SN 1 (SC), (2012) 2 BOM CR 393

Bench: J.S. Khehar, B.S. Chauhan

Reporta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2085 of 2012

Ravi Yashwant Bhoir ....Appellant

Versus

District Collector, Raigad & Ors. ....Respondents

J U D G M E N T

D r. B. S. CHAUHAN, J .

1. This appeal has been preferred against the impugned judgment and order dated 18.6.2009 passed by the High Court of Bombay in Writ Petition No. 4665 of 2009 by which the High Court has

affirmed and upheld the judgment of the Hon'ble Chief Minister of Maharashtra declaring that the conduct of the appellant was unbecoming of the President of Uran Municipal Council and declared him to be disqualified for remaining tenure of municipal councilorship under Section 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter called as the `Act 1965) and further declared him disqualified for a period of six years from the date of the order i.e. 21.3.2009.

2. Facts and circumstances giving rise to this appeal are:

> A. That the appellant was elected as member of Uran Municipal Council and, subsequently, elected as a President of the Municipal Council. The appellant was served with a show cause notice dated 3.12.2008 by the State of Maharashtra calling upon him to explain why action under Section 55B of the Act 1965 be not taken against him. The chargesheet contained the following six charges:
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> Charge No.1 Uran Charitable Medical Trust has built up unauthorized construction on Survey Nos. 8 + 9 + 10 + 11 situated at Mouje Mhatawali to the extent of 1140 square meters for their hospital and you are the Trustee of the said Trust. Municipal Council had issued notice dated 17.10.2006 for demolishing the said unauthorized construction on its own. Shri Dosu Ardesar Bhiwandiwala had filed Regular Civil Suit No.95/07 against the said notice in the court of Civil Judge, Junior Division, Uran and the same was decided on 19.12.2007 in which plaintiff's application was rejected.
>
> Junior Engineer of Uran Municipal Council lodged a complaint with Uran police Station under Sections 53 and 54 of the Maharashtra Regional and Town Planning Act, 1966 against the said unauthorized construction on 24.7.2007. Shri Jayant Gosal and three others filed Public Interest Litigation No. 57 of 2008 concerning the said unauthorized construction of the said Trust in the Bombay High Court and the same is presently subjudice. You are the Trustee of the said Trust and as President of the Municipal Council, you are duty bound to oppose the unauthorized construction. However, you did not take any action to oppose the same and it appears that you have supported the unauthorized construction. You have, therefore, violated Sections 44, 45, 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966.
>
> Charge No.2 The Municipal Council had called the General Body Meeting on 22.3.2007 by way of Resolution No. 2 Survey Nos. 8 + 9 + 10 + 11 at Mouje Mhatawali area admeasuring about 4000 square meters was proposed for reservation of garden.

However, instead of that, the resolution was passed for reserving the same for hospital, nursing home and medical college. At that time, you were presiding over the meeting. By this illegal Act, you have violated Sections 44(1)(e) and 42(1), (2) and (3) of Maharashtra Municipal Councils, Panchayat Samiti and Industrial Township Act, 1965.

Charge No.3 After you were elected as the President on 20.12.2006, a General Body Meeting was held on 9.1.2007. Although it is required under Section 80(1) of the Maharashtra Municipal Councils, Panchayat Samiti and Industrial Township Act, 1965 to hold the General Body Meeting once in two months, no such meeting was held for a period of three months between 28.2.2007 and 28.5.2007. By the said act, you have violated Section 81 (1) of the Maharashtra Municipal Councils, Panchayat Samiti and Industrial Township Act, 1965. Charge No.4 In the meeting held on 9.1.2007, the suggestion to the Agenda No.4 made by Members Shri Chintaman Gharat and Shri Shekhar Mhatre that a rented car be provided for the use of the President was rejected by you. Similarly, the Members Shri Chintaman Gharat and Shri Shekhar Mhatrehad made suggestion to the Agenda No.ll of the same meeting that new Nalla be constructed near Ughadi at Bhavara Phanaswadi. The said suggestion was rejected after being read over. Similarly, Members Shri Chintaman Gharat and Shri Shekhar Mhatre had made suggestion to the Agenda No.20 in the same meeting that new Nalla be constructed in front of the house of Shri Kailash Patail at Bhavara Phanaswadi. The said suggestion was rejected. Similarly, suggestion was made by Shri Chintaman Gharat and Shri Shekhar Mhatre to Agenda No.23 that the Standing Committee be authorized to open the tender/approvals and give sanctions for diverse works of the Municipal Council. The said suggestion was rejected. Similarly, suggestion was made by Shri Chintaman Gharat and Shri Shekhar Mhatre to Agenda No. 27 of the same meeting regarding allotment of contract for spraying insecticides in Ward Nos. 1 to 17 of the Municipal Council. It appears from the minutes of the meeting dated 9.1.2007 that even said suggestion was rejected. You have, therefore, violated rules 30, 32(1) and (2) of the Maharashtra Municipal Councils (Conduct of Business) Rules, 1966 by frequently rejecting the suggestions of the Members of the Municipal Council.

Charge No.5 Tenders were invited on 5.10.2006 for installing CI Pipeline of 300 mm. diameter for outlet and inlet of GSR Tank at Sarvodayawadi within Uran Municipal Council by the construction department of Maharashtra Jeevan Pradhikaran, Panvel by its Outward No.MJPBV /MC/MS/Uran /311/3/06 dated 7.12.2006 at the Town Hall of the Uran Municipal Council. Pursuant to the same three tenders were invited, details whereof are as follows :

	Name & Address of the Contractor	Tender Amount
1.	M/s Shailesh Construction Ulhasnagar	9,11,351.50
2.	M/s Padmavati Enterprise, Ambernath	8,92,375.00
3.	M/s Kiran B.	8.47,462.98

Jadhav,

Ulhasnagar

Out of the aforesaid three tenders, the lowest tender of M/s Kiran B. Jadhav, Ulhasnagar was accepted as per Clause 171 of the Maharashtra Accounts Code, 1971. However, the estimate was prepared as per the DSR of 2005-2006. As a result when the tenders were invited, there was a difference of more than 10% in the tender amount. Therefore, by citing Item No.44 of the Standing Order No.36 of the Commissioner and Director, Directorate of Municipal Administration, the Municipal Council called for the current market rates from the concerned commercial dealers. M/ s Nazmi Electrical & Hardware Limited, Kalyan and M/s Sanjay Steel Tube Corporation Limited on 5.1.2007 to compare the difference in the rates of the tenderers/ contractors and the market rates and decided that the rates of the tenderers were less than the market rates on the basis of the comparison and sanctioned the tenders and the bills of the tenderers were paid thereby you have violated paragraphs Nos. 44 to 47 of Standing Order No.36 regarding inviting tenders and approvals dated 29.12.2005 bearing No. NPS/Inviting Tenders/2005/Case No.151/05and Rule No.171 of the Maharashtra Accounts Code, 1971.

Charge No.6 Tenders were invited on 5.10.2006 for installing CI Pipeline of 300 mm. diameter for outlet and inlet of GSR Tank at Sarvodayawadi within Uran Municipal Council by the construction department of Maharashtra Jeevan Pradhikaran, Panvel by its Outward No.MJPBV/MC/MS/Uran /311/3/06 dated 7.12.2006 at the Town Hall of the Uran Municipal Council. Pursuant to the same three tenders were invited, details whereof are as follows:

	Name & Address of the Contractor	Tender Amount
1.	M/s Shailesh Construction Ulhasnagar	4,21,165.00
2.	M/s Padmavati Enterprise, Ambernath	4,18,889.28
	M/s Kiran B.	3,78,507.78

3. Jadhav,

Ulhasnagar

Out of the aforesaid three tenders, the lowest tender of M/s Kiran B. Jadhav, Ulhasnagar was accepted as per Clause 171 of the Maharashtra Accounts Code, 1971. However, the estimate was prepared as per the DSR of 2005-2006. As a result when the tenders were invited, there was a difference of more than 10% in the tender amount. Therefore, by citing Item No.44 of the Standing Order No.36 of the Commissioner and Director, Directorate of Municipal Administration, the Municipal Council called for the current market rates from the concerned commercial dealers. M/s Nazmi Electrical & Hardware Limited, Kalyan and M/s Sanjay Steel Tube Corporation Limited on 5.1.2007 to compare the difference in the rates of the tenderers / contractors and the market rates and decided that the rates of the tenderers were less than the market rates on the basis of the comparison and sanctioned the tenders and the bills of the tenderers were paid thereby you have violated paragraphs Nos. 44 to 47 of Standing Order No.36 regarding inviting tenders and approvals dated 29.12.2005 bearing No. NPS/lnviting Tenders/2005/Case No.151/05 and Rule No.171 of the Maharashtra Accounts Code, 1971.

B. The appellant submitted his explanation dated 18.12.2008 in writing. After considering the same, the appellant was issued a notice for hearing on 23.1.2009. The appellant remained present alongwith his advocate before the competent authority i.e. Hon'ble Chief Minister holding the portfolio of Department. However, vide impugned order dated 21.3.2009, the appellant was declared disqualified for his remaining tenure and further declaring him disqualified for a period of six years even as member of the Council.

C. Being aggrieved, the appellant filed the writ petition challenging the order dated 21.3.2009. The writ petition stood dismissed vide impugned judgment and order dated 18.6.2009.

Hence, this appeal.

3. Shri Vinay Navare, learned counsel appearing for the appellant, has submitted that only three charges i.e. charge nos.3, 5 and 6 have been held proved against the appellant. One charge is that the appellant did not call for a meeting for a period of three months i.e. from 28.2.2007 to 28.5.2007 as required under Section 81(1) of the Act 1965, for which the appellant had furnished explanation which was worth acceptance. The officer concerned of the municipal council did not inform the appellant, nor the members asked to hold such meeting as required under Section 81(1) of the Act

1965, so it was merely an inadvertent act and could not be intentional. Therefore, the question of committing any misconduct could not arise.

4. Other charges which stood proved are regarding the acceptance of fresh tenders at high rates for incomplete work of laying down 300 mm. CI pipeline for water supply. The tender for lower estimated cost was not accepted rather there was a difference of more than 10 per cent in tender amount. The explanation was furnished by the appellant that there was a resolution by the council itself accepting the said tenders and, therefore, the appellant exclusively could not be held responsible for acceptance of tenders on the high rate of CI pipes. Even the rate of C.I. pipe purchased by Maharashtra Jivan Pradhikaran were also considered and after considering all these factors, the lowest bid was accepted by the Uran Municipal Council. The Chief Officer, the Junior Engineer has also considered the technical aspect, and, then the recommendation was forwarded under the signature of President, Chief Officer and Jr. Engineer and thereafter, the Municipal Council passed resolution and accepted the said tender. Therefore, it cannot be said that by doing this the appellant has breached any of the statutory provisions.

5. It is further submitted that at the time of hearing on 21.3.2009, the complainant wanted to rely upon some new grounds, and, therefore, the appellant raised the objection. The Hon'ble Chief Minister directed the Secretary to fix up a date of hearing, however, no date of hearing was fixed and impugned order dated 21.3.2009 had been passed without affording any opportunity of hearing to the appellant. Therefore, the said order was passed in utter disregard of the principles of natural justice and cannot be sustained in the eyes of law.

The Competent/Statutory authority has not recorded reasons for conclusions arrived, by which, at least the three charges stood proved against the appellant. The expression `misconduct' has not been understood in correct perspective. Even if the three charges stood proved, the punishment imposed is totally disproportionate, more so, was not warranted in the facts and circumstances of the case. The High Court erred in not appreciating the facts in correct perspective, therefore, the impugned judgment and order is liable to be set aside.

6. Shri Mike Prakash Desai and Shri Sudhansu Choudhary, learned counsel appearing on behalf of the respondents, have vehemently opposed the appeal contending that charges proved against the appellant constituted grave misconduct on his part and was liable to be removed and has rightly been declared disqualified for further period of six years. The appellant had been given full opportunity to defend himself. The period of disqualification has lapsed, thus this Court is dealing with an academic issue. The impugned order does not warrant any interference in the facts and circumstances of the case. The appeal lacks merit and, accordingly, is liable to be dismissed.

7. We have considered the rival submissions made by the learned counsel of the parties and perused the record. Before considering the case on merits, it is pertinent to deal with certain legal issues.

MISCONDUCT:

8. Misconduct has been defined in Black's Law Dictionary, Sixth Edition as:

> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency,impropriety,mismanagement offense, but not negligence or carelessness."

Misconduct in office has been defined as:

> "Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821 defines `misconduct' thus:

> "The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

Thus it could be seen that the word `misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve....".

(See also: State of Punjab & Ors. v. Ram Singh Ex. Constable, AIR 1992 SC 2188).

9. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting

beyond authority may be a misconduct. When the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. (Vide:

> Disciplinary Authority-cum-Regional Manager & Ors. v. Nikunja Bihari Patnaik, (1996) 9 SCC 69; Government of Tamil Nadu v. K.N. Ramamurthy, AIR 1997 SC 3571; Inspector Prem Chand v. Govt. of NCT of Delhi & Ors., (2007) 4 SCC 566; and State Bank of India & Ors. v. S.N. Goyal, AIR 2008 SC 2594).

10. In Government of A.P. v. P. Posetty, (2000) 2 SCC 220, this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

11. In M.M. Malhotra v. Union of India & Ors., AIR 2006 SC 80, this Court explained as under:

> ".....It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

A similar view has been reiterated in Baldev Singh Gandhi v. State of Punjab & Ors., AIR 2002 SC 1124.

12. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment.

(See: Union of India & Ors. v. J. Ahmed, AIR 1979 SC 1022).

13. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and the court must examine as to whether misconduct has been detrimental to the public interest. (Vide: General Manager, Appellate Authority, Bank of India & Anr. v. Mohd. Nizamuddin AIR 2006 SC 3290).

14. The expression `misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as mis-demeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces. Further, the

expression `misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest.

DISGRACEFUL CONDUCT :

15. The expression `disgraceful conduct' is not defined in the statute. Therefore, the same has to be understood in given dictionary meaning. The term `disgrace' signifies loss of honor, respect, or reputation, shame or bring disfavour or discredit. Disgraceful means giving offence to moral sensibilities and injurious to reputation or conduct or character deserving or bringing disgrace or shame. Disgraceful conduct is also to be examined from the context in which the term has been employed under the statute. Disgraceful conduct need not necessarily be connected with the official of the office bearer. Therefore, it may be outside the ambit of discharge of his official duty.

REMOVAL OF AN ELECTED OFFICE BEARER :

16. The municipalities have been conferred Constitutional status by amending the Constitution vide 74th Amendment Act, 1992 w.e.f. 1.6.1993. The municipalities have also been conferred various powers under Article 243B of the Constitution.

17. Amendment in the Constitution by adding Parts IX and IX- A confers upon the local self Government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional Institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the Institution.

The democratic set-up of the country has always been recognized as a basic feature of the Constitution, like other features e.g. Supremacy of the Constitution, Rule of law, Principle of separation of powers, Power of judicial review under Articles 32, 226 and 227 of the Constitution etc. (Vide: His Holiness Keshwananda Bharti Sripadagalvaru & Ors. v. State of Kerala & Anr., AIR 1973 SC 1461; Minerva Mills Ltd. & Ors. v. Union of India & Ors., AIR 1980 SC 1789; Union of India v. Association for Democratic Reforms & Anr., AIR 2002 SC 2112; Special Reference No. 1 of 2002 (Gujarat Assembly Election Matter), AIR 2003 SC 87; and Kuldip Nayar v. Union of India & Ors., AIR 2006 SC 3127).

18. It is not permissible to destroy any of the basic features of the Constitution even by any form of amendment, and therefore, it is beyond imagination that it can be eroded by the executive on its whims without any reason. The Constitution accords full faith and credit to the act done by the executive in exercise of its statutory powers, but they have a primary responsibility to serve the

nation and enlighten the citizens to further strengthen a democratic State. Public administration is responsible for the effective implication of the rule of law and constitutional commands which effectuate fairly the objective standard set for adjudicating good administrative decisions. However, wherever the executive fails, the Courts come forward to strike down an order passed by them passionately and to remove arbitrariness and unreasonableness, for the reason, that the State by its illegal action becomes liable for forfeiting the full faith and credit trusted with it. (Vide: Scheduled Castes and Scheduled Tribes officers Welfare Council v. State of U.P. & Ors., AIR 1997 SC 1451; and State of Punjab & Ors. v. G.S. Gill & Anr., AIR 1997 SC 2324).

19. Basic means the basis of a thing on which it stands, and on the failure of which it falls. In democracy all citizens have equal political rights. Democracy means actual, active and effective exercise of power by the people in this regard. It means political participation of the people in running the administration of the Government. It conveys the State of affair in which each citizen is assured of the right of equal participation in the polity. (See: R.C. Poudyal v. Union of India & Ors., AIR 1993 SC 1804).

20. In Peoples Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr., AIR 2003 SC 2363, this Court held as under:-

> "The trite saying that "democracy is for the people, of the people and by the people" has to be remembered for ever. In a democratic republic, it is the will of the people that is paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage held by means of secret ballot. It is through the ballot that the voter expresses his choice or preference for a candidate "Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue", as observed by the Court in Lily Thomas v. Speaker, Lok Sabha, (1993) 4 SCC 234 quoting from Black's Law Dictionary. The citizens of the country are enabled to take part in the Government through their chosen representatives. In a parliamentary democracy like ours, the Government of the day is responsible to the people through their elected representatives. The elected representative acts or is supposed to act as a live link between the people and the Government. The people's representatives fill the role of law-makers and custodians of the Government. People look to them for ventilation and redressal of their grievances."

21. In State of Punjab v. Baldev Singh etc. etc., AIR 1999 SC 2378, this Court considered the issue of removal of an elected office bearer and held that where the statutory provision has a very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in Mohinder Kumar v. State, Panaji, Goa (1998) 8 SCC 655; and Ali Mustafa Abdul Rehman Moosa v. State of Kerala, AIR 1995 SC 244, held as under:-

> "It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."

22. The Constitution Bench of this Court in G. Sadanandan v. State of Kerala & Anr., AIR 1966 SC 1925, held that if all the safeguards provided under the Statute are not observed, an order having serious consequences is passed without proper application of mind, having a casual approach to the matter, the same can be characterised as having been passed mala fide, and thus, is liable to be quashed.

23. 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.

24. 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. 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.

25. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in Tarlochan Dev Sharma v. State of Punjab & Ors., AIR 2001 SC 2524 and observed that removal of an elected office bearer is a serious matter. The elected office bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

26. 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.

27. 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 & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Barelly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).

28. In view of the above, the law on the issue stands crystallized 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. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like `No Confidence Motion' etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

R ECORD I NG OF REASONS:

29. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors., AIR 1991 SC 537, this Court has observed as under:-

> "Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always."

30. In L.I.C. of India & Anr. v. Consumer Education and Research Centre & Ors., AIR 1995 SC 1811, this Court observed that the State or its instrumentality must not take any irrelevant or irrational

factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India v. M.L. Capoor & Ors., AIR 1974 SC 87; and Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors., AIR 1993 SC 935.

31. In State of West Bengal v. Atul Krishna Shaw & Anr., AIR 1990 SC 2205, this Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

32. In S.N. Mukherjee v. Union of India, AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

33. In Krishna Swami v. Union of India & Ors., AIR 1993 SC 1407, this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed:

> "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."

34. This Court while deciding the issue in Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, placing reliance on its various earlier judgments held as under:

> "28. 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. "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."

35. In Institute of Chartered Accountants of India v. L.K. Ratna & Ors., AIR 1987 SC 71, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held:

> "In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under S. 22 A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding".

36. 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. MA LICE IN LAW :

37. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, AIR 1976 SC

1207; Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors., (2005) 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745).

38. Section 55 of the Act 1965 provides for removal of the President of the Council by No Confidence Motion. Sections 55A and 55B provide a mode of removal of duly elected President on proved misconduct or negligence etc., which read as under:

> Section 55A.- Removal of President and Vice-President by Government:-
>
> Without prejudice to the provisions of Section 55-1A and 55, a President or a Vice-President may be removed from office by the State Government for misconduct in the discharge of his duties, or for neglect of or incapacity to perform, his duties or for being guilty of any disgraceful conduct, and the President or Vice-President so removed shall not be eligible for re-election or re-appointment as President or Vice-President as the case may be, during the remainder of the term of office of the Councillors:
>
> Provided that, no such President or Vice- President shall be removed from office, unless he has been given a reasonable opportunity to furnish an explanation. 55B.- Disqualification for continuing as Councillor or becoming Councillor on removal as President or Vice- President :
>
> Notwithstanding anything contained in Section 55A, if a Councillor or a person is found to be guilty of misconduct in the discharge of his official duties or being guilty of any disgraceful conduct while holding or while he was holding the office of the President or Vice-President, as the case may be, the State Government may,-
>
> (a) disqualify such Councillor to continue as a Councillor for the remainder of his term of office as a Councillor and also for being elected as a Councillor, till the period of six years has elapsed from the order of such disqualification;
>
> (b) Disqualify such person for being elected as a Councillor till the period of six years has elapsed from the order of such disqualification.

39. It is also pertinent to refer to the provisions of Section 81 of the Act 1965 which reads as under:

> "Section 81- Provisions in regard to meetings of Council:
>
> The following provisions shall be observed with respect to the meetings of a Council:
>
> (1) For the disposal of general business, which shall be restricted to matters relating to the powers, duties and functions of the Council as specified in this Act or any other law for the time being in force, and any welcome address to a distinguished visitor, proposal for giving Manpatra to a distinguished person or resolution of condolence

(where all or any of these are duly proposed), an ordinary meeting shall be held once in two months. The first such meeting, shall be held within two months, from the date on which the meeting of the Council under Section 51 is held, and each succeeding ordinary meeting shall be held within two months from the date on which the last preceding ordinary meeting is held. The President may also call additional ordinary meetings as he deems necessary. It shall be the duty of the President to fix the dates for all ordinary meetings and, to call such meetings in time.

(1A) If the President fails to call an ordinary meeting within the period specified in clause (1), the Chief Officer shall forthwith report such failure to the Collector. The Collector shall, within seven days from receipt of the Chief Officer's report or may, suo motu, call the ordinary meeting. The agenda for such meeting shall be drawn up by the Collector, in consultation with the Chief Officer: (2) The President may, whenever he thinks fit, and shall upon the written request of not less than one-fourth of the total number of Councillors and on a date not later than fifteen days after the receipt of such request by the President, call a special meeting. The business to be transacted at any such meeting shall also be restricted to matters specified in clause (1).

(3) If the President fails to call a meeting within the period specified in clause (2), the Councillors who had made a request for the special meeting being called, may request the Collector to call a special meeting. On receipt of such request, the Collector, or any officer whom he may designate in this behalf, shall call the special meeting on a date within fifteen days from the date of receipt of such request by the Collector. Such meeting shall be presided over by the Collector or the Officer designated, but he shall have no right to vote."

40. The instant case requires to be examined in the light of aforesaid settled legal propositions and the statutory provisions.

41. The case has initially originated because of the complaint filed by Shri Chintaman Raghunath Gharat, Ex-President and the then sitting Municipal Councillor, Uran Municipal Council (Respondent No.5) dated 3.5.2007 regarding the misconduct of the appellant. The preliminary inquiry was conducted through Collector, Raigad. The Collector, Raigad made an inquiry through Deputy Collector and submitted the inquiry report dated 25.8.2008 and as no action was taken by the Statutory Authority against the appellant, Shri Gharat filed a Writ Petition No. 2309 of 2008 before the High Court which was disposed of vide order dated 3.4.2008 directing the respondent no. 2 (Hon'ble Minister of State, Urban Development, the then Hon'ble Chief Minister) to take a decision on the application/complaint submitted by Shri Gharat within a period of 8 weeks. As the decision could not be taken within that stipulated time, Shri Gharat filed Contempt Petition No. 379 of 2008 which was disposed of by the High Court directing the statutory authority to take up the decision expeditiously.

It was, in fact, in view of the High Court's order, the chargesheet/showcause notice dated 3.12.2008 containing 6 charges was served upon the appellant. In response to the said chargesheet dated 3.12.2008, the appellant furnished explanation dated 18.12.2008 denying all the charges framed against him and furnished a detailed explanation. In this respect, hearing was held on 23.1.2009 wherein the appellant as well as the complainant appeared alongwith their advocates and made their submissions before the Hon'ble Minister. The impugned order was passed on 21.3.2009 holding the appellant guilty of three charges imposing the punishment as referred to hereinabove.

The impugned order dated 21.3.2009 runs from pages 28 to 52 of the appeal paper-book. The facts and the charges run from pages 28 to 36. Explanation furnished by the appellant runs from pages 36 to 47. The order of the Hon'ble Minister runs only to 5 pages. It is evident from the said order that the Hon'ble Minister did not make any reference to the pleadings taken by the appellant either in his reply to show cause or during the course of hearing. The order simply reveals that the Hon'ble Minister noticed certain things. Two paragraphs at page 48 are not relevant at all for our consideration. The admission of the appellant that meeting was not held for a period of 3 months between 28.2.2007 to 28.5.2007 has been relied upon. In other paragraphs reference has been made to Standing Order 36 issued by the Director and Commissioner, Directorate of Municipal Administration, providing for the procedure for inviting tenders and then straightaway without giving any reason, finding is recorded as under:

> "Out of the 3 tenders received for installation of 300 mm diameter pipeline for outlet and inlet of GSR tank at Sarvodayawadi and Town Hall of Uran Municipal Council, lowest tender is accepted as per clause 171 of the Maharashtra Municipal Council Accounts Code, 1971. However, the tenders were invited as per the DSR rates for the year 2005-2006. The lowest tender received at that time and was more than 10% of the rates of the estimate (approximately 31% and 37%). Despite this, the said tender was accepted."

Then, a very cryptic order of punishment has been passed.

42. The explanation furnished by the appellant for not holding the meeting and acceptance of tender by the council itself and not by the appellant, has not been considered at all. No reasoning has been given by the Statutory Authority for reaching the conclusions. We fail to understand as on what basis such a cryptic order imposing such a severe punishment can be sustained in the eyes of law.

43. The High Court has also erred in not dealing with any of the issues raised by the appellant while furnishing his explanation rather relied upon the findings recorded by the Hon'ble Minister. There is nothing in the judgment of the High Court wherein the grievance of the appellant has been considered or any reasoning has been given to uphold the findings recorded by the Statutory Authority imposing such a severe punishment.

44. Shri Chintaman Raghunath Gharat, Ex-President was the complainant, thus, at the most, he could lead the evidence as a witness. He could not claim the status of an adversial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of

law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eyes of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione valuntas reasons i.e. a claim devoid of reasons. Under the garb of being necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party. (Vide:

> Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, AIR 1971 SC 385; Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors., AIR 1976 SC 578; Maharaj Singh v. State of Uttar Pradesh & Ors., AIR 1976 SC 2602; Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33; and Kabushiki Kaisha Toshiba v. Tosiba Appliances Company & Ors., (2008) 10 SCC 766). The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in correct perspective at all.

45. In such a fact-situation, the complaint filed by the respondent No. 5 could at the most be pressed into service as a material exhibit in order to collect the evidence to find out the truth.

In the instant case, as all the charges proved against the appellant have been dealt with exclusively on the basis of documentary evidence, there is nothing on record by which the complainant could show that the General Body meeting was not called, as statutorily required, by the appellant intentionally.

46. Not calling the meeting of the General Body of the House may be merely a technical misconduct committed inadvertently in ignorance of statutory requirements. It is nobody's case that the appellant had done it intentionally/purposely in order to avoid some unpleasant resolution/demand of the council. No finding of fact has been recorded either by the competent authority or by the High Court that some urgent/important work could not be carried out for want of General Body meeting of the council. Merely not to conduct oneself according to the procedure prescribed or omission to conduct a meeting without any corresponding loss to the corporate body, would not be an automatic misconduct by inference, unless some positive intentional misconduct is shown. It was an admitted fact that the meeting had not been called. However, in the absence of any imputation of motive, not calling the meeting by the appellant could not in itself, be enough to prove the charge.

Section 81 of the Act 1965 requires that for the disposal of the general business, the President should call the meeting of the Council within a period of two months from the date on which the last preceding ordinary meeting was held. The statutory provisions further provided that in case the President fails to call the ordinary meeting within the said stipulated period, the Chief Officer may report such failure to the Collector and the Collector can call the ordinary meeting of the Council following the procedure prescribed therein. The President can also call the meeting on the request of the members not less than one-fourth of the total number of councils. Therefore, the cogent reading of all the provisions makes it clear that in case the President fails to call the meeting, there are other modes of calling the meeting and in such an eventuality where reasonable explanation has been furnished by the appellant to the show cause notice on this count, the competent authority could not have passed such a harsh order.

47. So far as the other charges regarding laying down the pipelines at a much higher rate are concerned, it has been a positive case of the appellant that as earlier contractor had abandoned the work in between and there was a scarcity of water in the city, the Chief Officer, the Junior Engineer considered the technical aspect and then recommendations were forwarded under the signatures of the appellant, the Chief Officer and Junior Engineer to the council, which ultimately passed the resolution accepting the said tenders. In such a fact-situation, it was a collective consensus decision of the house after due deliberations. Admittedly, it was not even the ratification of contract awarded by the appellant himself. Thus, even by any stretch of imagination it cannot be held to be an individual decision of the appellant and the competent authority failed to appreciate that the tenders were accepted by the Council itself and not by the appellant alone. Therefore, he could not be held responsible for acceptance of tenders.

We have gone through the counter affidavit filed by respondent No.5, complainant before this court and he has not stated anywhere that the tenders were not accepted by the council, rather allegations have been made that the tenders had been accepted at a higher rate so that the contractor could get the financial gain. Similarly, technical issue has been raised for not calling the meeting, committing serious irregularities sufficiently warranting dis-qualification of the appellant on his omission to call the meeting, but it is not his case that he did it intentionally. The counter affidavit filed by the State does not reveal anything in relation to the issues involved herein and it appears that the deponent/officer has merely completed the formalities without any purpose.

48. To conclude, we are of the considered opinion and that too after appreciation of the entire evidence on record that the first charge proved against the appellant for not calling the meeting of Council, did not warrant the order of removal and the explanation furnished by appellant could have been accepted. Other charges could not be proved against the appellant, in view of the fact, that the tenders at a higher rate were accepted by the Council itself and the appellant could not be held exclusively responsible for it. The Respondent no. 5, being a political rival, could not have been entertained as a party to the lis. The charge of not calling the meeting of the Council had been admitted by the appellant himself, thus, no further evidence was required, for the reason, that the admission is the best evidence. The competent authority could have considered his explanation alone and proceeded to take a final decision. So far as the other charges are concerned, as has been observed hereinabove, it had been a consensus collective decision of the Council to accept the tender

at higher rate and the appellant could not have been held guilty of the said charges. Thus, the instant case has been a crystal clear cut case of legal malice and therefore, the impugned orders are liable to be quashed. The duly elected member/chairman of the council could not have been removed in such a casual and cavalier manner without giving strict adherence to the safeguards provided under the statute which had to be scrupulously followed.

49. The appellant has raised a question of fact before the High Court as well as before this Court submitting that at the time of hearing before the Hon'ble Chief Minister, respondent No.5 has raised new grounds and the appellant raised serious objections as he had no opportunity to meet the same. Thus, in order to give the appellant an opportunity to rebut the same the competent authority had adjourned the case and directed the Secretary to fix a date so that the appellant may meet those new objections/grounds. However, the order impugned removing the appellant from the post and declaring him further disqualified for a period of six years had been passed. It is not evident from the order impugned as what could be those new grounds which had not been disclosed to the appellant. Thus, to ascertain as to whether in order to give an opportunity to the appellant to meet the alleged new grounds, the competent authority had adjourned the case, this Court while reserving the judgment vide order dated 13.2.2012 asked the learned Standing Counsel for the State Shri Mike Prakash Desai to produce the original record before this Court within a period of two weeks. For the reasons best known to the State Authorities neither the record has been produced before us, nor any application has been filed to extend the time to produce the same.

In fact, this Court has been deprived of seeing the original record and to examine the grievance of the appellant. We express our grave concern and shock the way the State Authorities has treated the highest court of the land. In such a fact-situation, the court has no option except to draw the adverse inference against the State.

50. In view of the above, the appeal succeeds and is allowed. The judgment and order of the High Court dated 18.6.2009 as well as the order passed by the Hon'ble Chief Minister dated 21.3.2009 are hereby set aside.

This Court while entertaining the petition had granted interim protection to the appellant vide order dated 17.7.2009, which was extended till further orders vide order dated 13.8.2009 and, thus, the orders impugned remained inoperative. Thus, it will be deemed as no order had ever been passed against the appellant.

In the facts and circumstances of the case, there will be no order as to costs.

A copy of the order be sent directly to the Chief Secretary, State of Maharashtra, Bombay, who may conduct an enquiry and send his personal affidavit as under what circumstances the State Authorities could decide not to ensure compliance of the order of this Court dated 13.2.2012, within a period of four week from the date of receipt of this order, to the Registrar General of this Court who may place it alongwith the file before the Bench.

.....J. (Dr. B.S. CHAUHAN) .....J. (J.S. KHEHAR) New Delhi, March 2, 2012