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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 1st OF SEPTEMBER, 2022

WRIT PETITION No. 20861 of 2020

Between:-

SENA W/O MAHESH PATEL, AGED ABOUT 43
Y E A R S , OCCUPATION: AGRICULTURIST
BOARKHAD, PATEL PHALIYA ALIRAJPUR,
DISTT ALIRAJPUR (MADHYA PRADESH)

.....PETITIONER

*(SHRI. A.K. SETHI, SR. COUNSEL WITH SHRI AKSHAT PAHADIYA,
COUNSEL FOR PETITIONER)*

AND

1. **MINISTRY OF URBAN AND HOUSING
DEVELOPMENT THROUGH PRINCIPAL
SECRETARY, MINISTRY OF URBAN & HOUSING
DEVELOPMENT, VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
2. **COMMISSIONER URBAN ADMINISTRATION
AND DEVELOPMENT DEPARTMENT OFFICE OF
PALIKA BHAWAN NEAR 6 NO. BUS STOP
SHIVAJI NAGAR BHOPAL (MADHYA PRADESH)**
3. **JOINT DIRECTOR URBAN ADMINISTRATION
AND DEVELOPMENT DEPARTMENT 44 PALIKA
BHAWAN, JAORA COMPUND, INDORE
(MADHYA PRADESH)**
4. **CHIEF MUNICIPAL OFFICER AALIRAJPUR
MUNCIPALITY AALIRAJPUR MUNICIPALITY,
DISTT. ALIRAJPUR (MADHYA PRADESH)**

.....RESPONDENTS

*(SHRI. NITIN SINGH BHATI, G.A FOR RESP.NO.1 TO 3.
NONE FOR RESP.NO.4. THOUGH SERVED)*

*This petition coming on for orders this day, the court passed the
following:*

ORDER

The present petition is filed under Article 226 of the Constitution of India challenging the order dated 23.12.2020 passed by respondent No.1 u/S.41-A of M.P. Municipalities Act, 1961 (hereinafter referred as "Act of 1961") directing to remove the petitioner from the post of President of Alirajpur Municipality in respect of tenure between 2017-2022 on the ground that in her earlier tenure falling between 2012-2017 (6.8.2012 to 8.7.2017) there was an irregularity in an auction carried out by the Municipality, Alirajpur in respect of Shop No.2, Bus Stand near Buniyadi Shala, Alirajpur and it was the responsibility of the petitioner who was then President u/S.51 of the Act to watch over the financial and executive administration of the Council. The petitioner has been further disqualified from holding the office of President, Vice President or the Chairman as the case may be for the next term.

The facts of the case are that the petitioner had contested and won the election for the post of President, Alirajpur Municipality in the year 2012 for the tenure falling between 2012-2017. It is submitted that Alirajpur Municipality is the owner of shop situated at Shop No.2, Bus Stand near Buniyadi Shala, Alirajpur. The then Chief Municipal Officer, Alirajpur informed that the shop in question is lying vacant and in the year 2011 also the Municipality tried for auction but despite that there was no one to occupy the same and, therefore, the same was to be auctioned. The Chief Municipal Officer has put the shop in question to auction on right to occupancy (for business) basis and an auction notice was issued in the daily newspaper in the year 2016. Thereafter the Chief Municipal Officer had conducted an auction and the shop was allotted to the highest bidder for Rupees Nine lakhs. The tenure of the petitioner as the President of Alirajpur Municipality has concluded in the year 2017 and a fresh election was conducted in respect of the same Municipality by the State. The

petitioner had again contested the election for the post of President, Alirajpur Municipality held in the year 2017 and won the election and became the President of Alirajpur Municipality for the period falling between 2017-2022. The respondents had initiated a departmental enquiry against the then Chief Municipal Officer, Alirajpur for some alleged irregularities committed by him for auctioning the shop in question in the year 2016 and has issued a charge sheet to him. A departmental enquiry was conducted against him and he was held responsible for the aforesaid irregularities and has failed to discharge duties cast on him u/S.92 of the Act, 1961 and Rules made under the Act 1961 and has passed an order of punishment against the then Chief Municipal Officer and withheld two increments without cumulative effect and for the loss caused to the Municipality an amount of Rupees Ten lakh was ordered to be recovered from him. The said order was passed on 27.5.2020. After passing of the said order, the respondent No.1 issued a show cause notice on 29.7.2020 alleging the same charges against the petitioner and stated that the petitioner has acted in contravention of the provisions of Rule 7 of M.P. Nagar Palika (Achal Sampati Ke Antaran) Niyam, 1996 (hereinafter referred as "Niyam 1996") and Sec.51(b) of the Act, 1961 which is amounting to misconduct and, therefore, the State Government has taken a decision for initiating action against the petitioner u/S.41-A of the Act 1961. The petitioner filed detailed reply to the said show cause notice and categorically stated that the alleged charges levelled against the petitioner were the duties of the Chief Municipal Officer under the Act 1961 and the Rules made thereunder and the petitioner being President is not responsible for the alleged irregularities. It was further stated that the petitioner has not acted in contravention to the provisions of Rule 7 of Niyam,

1996 and Sec.51-B of the Act 1961 which would amount to misconduct and for which no action can be taken against the petitioner. Thereafter the respondent No.1 passed the impugned order dated 23.12.2020 and has thereby directed for removal of the petitioner from the post of President of Alirajpur Municipality in respect of tenure between 2017-2022 on the ground that on her earlier tenure between 2012-2017 (6.8.2012 to 8.7.2017) there was an irregularity in an auction carried out by the Municipality, Alirajpur in respect of Shop No.2 Bus Stand, near Buniyadi Shala, Alirajpur and, therefore, her continuance on the post of President, Alirajpur Municipality is not in public interest. It was further ordered to disqualify the petitioner from holding the post of President or Vice President or Chairman as the case may be for the next term.

The impugned order has been mainly challenged on the ground that the so called alleged lapse is in respect of her tenure which had already come to an end in the year 2017 and, therefore, her removal from the office after re-election for the said lapse is illegal. The petitioner could not have been removed for the lapse of earlier tenure because the removal u/S.41-A of the Act 1961 is on the ground when the continuation of the person holding the post of President or Chairman is in the opinion of the State government not desirable in public interest or in the interest of the Council or it is found that he is incapable of performing duties or is working against provisions of the Act or any Rules made thereunder or if it is found that he does not belong to reserved category for which the seat was reserved. Thus, the removal of the petitioner does not fall within the grounds enumerated u/S.41-A. The petitioner has successfully completed the first term and was re-elected in the second term and, therefore, if the petitioner would not have been re-elected for the second term then the respondents could not have removed the petitioner as President of the Council

for the lapse of the previous term. The misconduct is not a ground for removal of a President u/S.41-A of the Act, 1961. It is further submitted that Sec.41-A of the Act 1961 does not empower the State government to remove the present President of the Municipality on the ground that there were irregularities committed by the Chief Municipal Officer in an auction proceedings in respect of Shop No.2 Bus Stand near Buniyadi Shala, Alirajpur which has resulted into loss to the Council when the petitioner was the President of the Council for the period 2012-2017. The power u/S.41-A of the Act could not have been invoked for trivial/minor irregularities and more particularly the same cannot be invoked when the alleged irregularities where the duties cast on the Chief Municipal Officer. The power u/S.41-A of the Act 1961 can be invoked only under grave and exceptional circumstances and the provisions sought to be construed in a strict manner because holder of the office occupies it by election and is being deprived by an executive order in which the electorate has no chance of participation. It is further submitted that the allegation against the petitioner and the Chief Municipal Officer are same. As per the alleged charges, it was the duties and responsibilities of the Chief Municipal Officer u/S.92 of the Act 1961 and the Rules made thereunder for which the Chief Municipal Officer has already been punished in a departmental enquiry and the loss caused to the Municipal Council has already been recovered. There is no complaints or allegations or material available which demonstrates that petitioner is incapable of performing her duties on the post of President and the petitioner is undesirable for the public interest or she is acting against the interest of the Council.

Learned Sr.Counsel for petitioner while assailing the order submitted

that findings recorded by the respondent No.1 that it is the duty of the President of the Municipality to put an agenda of the meeting is for holding the charge No.1 proved against the petitioner is contrary to the provisions of Madhya Pradesh Nagarpalika (President in Council Ki Shaktiyan Tatha Uske Kamkaj Ke Sanchalan Hetu Prakriya) Niyam, 1997 and also to the findings recorded in his order of punishment passed against the Chief Municipal Officer. In respect of Charge No.2 also it is submitted that it is contrary to Sec.109 read with Niyam 1996 as it is the duty of the Chief Municipal Officer to obtain requisite approval from the State government. The findings recorded in respect of Charge No.3 is also contrary to the record that the petitioner has not recorded any reason for accepting the auction at a lower price than the offset price in the auction proceedings. It was the duty of the Chief Municipal Officer to record the reason in the auction proceedings for accepting a lower price and to bring it to the notice of the President. It is nowhere provided that the President has to draw the proceedings of the auction. In the findings in respect of Charge No.4 is that the Chief Municipal Officer is duty bound and responsible to comply with the allegations. The petitioner being the President of the Council cannot be held responsible for the same. The findings of Charge No.5 is also not sustainable. It is submitted that the order impugned is based on the charges for which the petitioner cannot be held responsible. Those charges are in the nature of irregularity committed by the Chief Municipal Officer and not by the petitioner and for the same the petitioner could not have been removed u/S.41-A of the Act 1961 with further disqualification for next term. The order is unsustainable and is liable to be quashed.

In support of his submissions, reliance has been placed on the judgment passed by the Apex Court in the case of *Tarlochan Dev Sharma*

Vs. State of Punjab and others (2001) 6 SCC 260, (2010) 2 SCC 319 Sharda Kailash Mittal Vs. State of MP & Ors, 1999(1) MPLJ 368 Kaushalyabai Vs. State of MP, 2003 (3) MPHT 225 Rajiv Sharma Vs. State of MP & Ors, 2009(4)MPLJ 186 Baleshwar Dayal Jailswal Vs. State of MP & Ors and 2019(1)MPLJ 426 Ajay Kumar Shukla Vs. State of MP & Ors.

Combating the aforesaid submissions, counsel for respondents supported the impugned order and submitted that the petitioner has failed to adopt due process of auction procedure as envisaged under Rule 4 of Niyam, 1996 and did not take approval of the Municipal Council for auction of property of the Municipality. There is no resolution passed by the Municipal Council for auction of such property. Under the provisions of Sec.51 of the Act, 1961 it was the duty of the petitioner being President of the Council to watch over the financial and executive administration of the Council and to perform such executive functions as may be allotted to him by order under the Act. The petitioner has committed grave financial irregularity in auction of the property of Municipality without any Resolution and without any approval from the State government under Rule 7 of M.P. Nagar Palika (Achal Sampati Antaran) Niyam 1996 according to which if the property having the value more than Rs.50,000/- then the auction proceedings for the property of the Municipality cannot be commenced without the prior approval of the State government. On 27.11.2017 a complaint was made against the petitioner to the Lokayukta office, after that an enquiry was conducted upon complaint against the petitioner with respect to illegal and arbitrary auction of the property of the Municipality conducted by the petitioner and caused financial loss to the

Municipality. A detailed enquiry was conducted in the matter and enquiry report dated 15.10.2018 was submitted. Upon receiving the report, the show cause notice was issued to the petitioner. The act and misdeeds of the petitioner has caused great financial loss to the Municipality which is not a trivial and minor irregularities and, therefore, the respondents have rightly exercised the powers u/S.41-A against the petitioner for removing her as President and disqualifying for next term. Her defence that it was duty of the Chief Municipal Officer to bring it to her notice about the procedure prescribed under the Act has no excuse. In support of his submissions he has placed reliance on a judgment passed by co-ordinate bench at Gwalior in ***WP No.2943/2017 Smt. Satyaprakashi Pardesia Vs. State of MP & another*** to contend that the public representatives cannot act on their whims and fancies. They held the chair of public office and same is founded on public trust and democratic accountability. In the said case, the removal of the President was upheld by co-ordinate bench. Against the said order WA No.1129/2018 was also dismissed. Against the said order SLP was also preferred which has been dismissed. He also placed reliance on the judgment passed by he full bench in the case of ***Rana Natvar Singh Vs. State of MP & Ors. 1980 MPLJ 729*** and also the judgment passed by the Apex Court in the case of ***Ravi Yeshwat Singh Bhoir Vs. District Collector, Raigarh & Ors. (2012) 4 SCC 407***. On the basis of aforesaid submissions he prayed for dismissal of the petition having no merit.

No other point has been pressed by the parties.

I have heard the learned counsel for parties at length and perused the record.

First this Court would like to survey the scope of judicial review in the

matter of removal of a President of Municipal Council on not desirable to continue in public interest or in the interest of the Council. In the case of ***Tarlochan Dev Sharma*** (supra) it has been held that in a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. A returned candidate must hold and enjoy the office and discharge duties related to therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constitutional or electoral college which he represents. Removal from such an office is a serious matter. A stigma is cast on the holder of the office in view of certain allegations. It was held that removal of a President on the ground of abuse of his powers or of habitual failure to perform his duties cannot be passed on the said ground on a singular or casual aberration or failure in exercise of power which is not sufficient to pass an order of removal of President. Erroneous exercise of power or indecision is not an abuse of power. In the case of ***Sharda Kailash Mittal*** (supra) it has been held that as per Sec.41-A that the removal from office of President is an extreme step which must be resorted to only in grave and exceptional circumstances and not for minor irregularities. Para 23 and 24 of the said judgment is reproduced as under:-

"23. 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 the 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 the 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?

24. In *Tarlochan Dev Sharma v. State of Punjab* [(2001) 6 SCC 260] this Court while dealing with the removal of a President of the Council under the Punjab Municipal Act of 1911, held in para 7 as under: (SCC pp. 268-69)

7. In a democracy governed by the rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. 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 para 11 this Court observed as under: (*Tarlochan Dev Sharma* case [(2001) 6 SCC 260], SCC pp. 270-71)

"11..... A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is----- . 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."

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."

In the matter of *Ajay Kumar Shukla* (supra) it has been held in para 20 and 21 as under:-

"20. This Court in the case reported in 1999 (1) *M.P.L.J.* 368, *Kaushlayabai v. State of M.P.* held that removal of President of Nagar Panchayat can be done when the charges of such serious nature as to warrant the grave action of removal. The power under section 41-A is an extraordinary power which can be invoked sparingly. This power cannot be invoked on a trivial irregularity. The relevant para reads as under:

"Section 41-A of the M.P. Municipalities Act, 1961 as introduced by Amendment Act No. 18 of 1997 w.e.f 21-4-1997 confers an extraordinary and overriding power on the State Government to remove an elected office bearer of a local authority or committee under it on formation of an opinion that continuance of such office bearer is "not desirable in public interest" or "in the interest of the counsel" or that "he is incapable of performing his duties or is working against the provisions of the Act or any Rules" made thereunder. For taking action under section 41-A of removal of President, Vice President or Chairman of any Committee, power is conferred on the State Government with no provision of any appeal. The action of removal casts a serious stigma on the personal and public life of the concerned office bearer and may result in his disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office bearer. The nature of power is such that it has to be exercised on an opinion objectively formed by the State Government. The misconduct or incapacity of the office bearer should be of such magnitude as to make his continuance undesirable

in the "interest of counsel" or "in public interest". There are no sufficient guidelines in the provisions of section 41-A as to the manner in which the power has to be exercised except that requires that reasonable opportunity of hearing has to be afforded to the office bearer proceeded against. Keeping in view the nature of the power and the consequences that flow on its exercise 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 some trivial or minor irregularities in discharge of duties by the holder of the elected post. The material or grounds on which the action is taken should be such as to justify the exercise of drastic power of removal of the office bearer with consequence of his disqualification for another term. The provision has to be construed in the strict manner because the holder of office occupies it by election and he is deprived of the office by an executive order in which the electorate has no chance of participation."

21. In *Rajeev Sharma* (supra), this Court again emphasized that removal of President can be only in public interest and irregularities alleged should be of such serious nature that continuance of such person as President is undesirable. It was held that power under section 41-A of the Act of 1961, is to be exercised by the State Government for removing an elected office bearer from his office. Meaning thereby that the State Government is acting against the wishes and mandate of the people who have elected the incumbent into office. Accordingly, the opinion with regard to feasibility of keeping such a person in office or the desirability of removing him in public interest has to be viewed objectively and the irregularities or allegations alleged should be of such serious nature and of such magnitude that continuation of such a person is undesirable. Court cannot sit over the decision of the State

Government as an appellate forum and scrutinise the action as if it is deciding an appeal against the order of the State Government, but in the backdrop of the legal principle enumerated hereinabove, in matters concerning removal of democratically elected people, this Court can very well look into the matter to find out whether the removal is based on cogent and compelling reasons, whether interest of the public, interest of the Council have been properly considered, whether material on the basis of which action has been taken is of such a nature that the persons can be held to be responsible for having misused his office to such an extent that retaining him in the office will have serious and far reaching consequences in the interest of the Council and ultimately the public at large. This Court can always look into the matter to find out whether conditions and circumstances extraneous to the main purpose of the statute are being achieved by exercise of its power. In case after appreciating the material on record, this Court comes to a conclusion that the irregularities or misconduct alleged are nothing but some discrepancies or irregularities which cannot be contemplated to and directly attributable to the persons certainly power of judicial review can be exercised. In view of the material available on record, it is clear that even if the entire factors are admitted, they can at best be said to be irregularities mainly procedural in matter and there is nothing on record to individually single out the petitioner to be responsible for having misused his office. The material on record does not disclose that the petitioner is guilty of charges so serious in nature so as to warrant taking action against him under section 41-A. Consequently, this Court finds that the material on record with regard to the allegations made against the petitioner are not of such a serious nature so as to warrant taking of drastic action in exercise of the extra-ordinary power for removing him from office under section 41-A of the Act of 1961. Prakash Shrivastav J. followed the said ratio in *Baleshwar* (supra) and held that it is the settled position in law that the action of the Government has to be

reasonable and it cannot be held that section 41-A gives arbitrary unbridled and discretionary power to the State to remove the elected president on trumpety charges not adequately proved or unreasonably accepted. The State is required to form an opinion in respect of the misconduct or incapacity objectively. Since the exercise of power under section 41-A has serious consequence, therefore, it can be invoked only for very strong and weighty reasons and the material on the basis of which such action taken must justify such a serious action. It cannot be ignored that by exercising this power, the State removes a democratically elected President, therefore, such a power cannot be exercised for trivial reasons or the material which is inadequate for taking the action. Reliance was also placed on *1991 (1) M.P.L.J. 368 and Municipal Committee, Kareli v. State of M.P., 1958 M.P.L.J. (F.B.) 531.*"

In the aforesaid judgments it has been held that the action of removal cast a serious stigma on the personal and public life of the office bearer of concerned and may result in his/her disqualification to hold such office from the next term. The exercise of such power, therefore, has serious civil consequences on the status of an office bearer.

In the case of *Ajay Kumar Shukla* (supra) it is held that the removal u/S.41-A of the Act could be resorted to only under grave and exceptional circumstances.

In the light of aforesaid enunciation of law, the validity of impugned order is being examined in the facts of the present case.

During the course of arguments, learned counsel for the parties fairly submitted that removal order of petitioner is passed by invoking section 41-A of the Municipalities Act by the State Government. Section 51(b) and 51(c) are referred to in the impugned order to show its alleged violation by the present petitioner. Before dealing with the rival contentions, it is apposite to refer to the

relevant provisions.

Section 41 A reads as under:

"41-A. Removal of President or Vice-President or Chairman of a Committee. (1) The State Government may, at any time, remove a President or Vice-President or a Chairman of any Committee, if his continuance as such is not in the opinion of the State Government desirable in public interest or in the interest of the Council or if it is found that he is incapable of performing his duties or working against the provisions of the Act or any rules made there under or if it is found that he does not belong 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 Councillor 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 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.

Section 51(1)(b)(c) reads as under:

"51. Powers and duties of President. (1) It shall be the duty

of the President of the Council"

(a) xxxx;

(b) to watch over the financial and executive administration of the Council and perform such executive functions as may be allotted to him by or under this Act;

(c) to exercise supervision and control over the acts and proceedings of all officers and servants of the Council in matters of executive administration and in matters concerning the accounts and records of the Council;

(d) xxxxx.

The charges against the Chief Municipal Officer and the petitioner are same which reads as under:-

(a) That, the CMO and President have failed to obtain requisite permission from the Municipal Council for auction of the shop bearing no.2 situated at Bus Stand, Near Buniyadi Shala, Alirajpur and for which CMO and President are responsible under section 92 of the Madhya Pradesh Municipality Act, 1961.

(b) That, the CMO and President have not obtained any approval from the State Government in terms of the proviso of the sub-section 3 of section 109 of the Municipality Act, 1961 for which CMO and President are responsible under section 92 of the Madhya Pradesh Municipality Act, 1961.

(c) That, the CMO and President has approved the auction of the shop in question for Rs.9,00,000/- whereas the offset price was Rs.15,00,000/- and there is no reason assigned by CMO and President for accepting the auction at a lower price in the proceedings for which CMO and President are responsible under section 92 of the Municipality Act, 1961.

(d) That, the CMO and President have only deposited Rs.5,00,000/- and has failed to recover the balance of Rs.4,00,000/- from the allottee and has thereby caused loss of Rs.4,00,000/- to the Municipality for which CMO and

President are responsible under section 92 of the Municipality Act, 1961.

(f) That, the CMO and President are responsible for the loss of Rs.6,00,000/- i.e. for the difference between the offset price and the auction price & Rs.4,00,000/- which CMO and President failed to recover i.e. total Rs.10,00,000/- under section 92 of the Municipality Act, 1961.

A plain reading of the aforesaid charges alleged against the petitioner is in respect of committing the irregularity in the matter of conducting auction of Shop No.2, Bus Stand near Buniyadi Shala, Alirajpur. The same allegations were made against the Chief Municipal Officer with the allegation that his misconduct caused financial loss to the Municipality. The allegations against the petitioner are that the petitioner had failed to obtain permission/sanction either from the President in Council or from the competent authority. As per the provisions of Sec.51 of the Act, 1961 it is the duty of the petitioner to watch over the financial and executive administration of the Council and perform such executive functions as may be allotted to him by or under the Act.

Counsel for respondents failed to show any provision or law or Rules or Regulations to show that it was the duty of the petitioner to obtain sanction from the competent authority or from the President in Council. They have also failed to show any provision of law to show that it was the duty of the President to put an agenda of the meeting for approval and, therefore, the Charge No.1 cannot be held to be proved against the petitioner. The Charge No.2 is also contrary to the provisions of Sec.109 read with the provisions of Rules 1996 wherein it is provided that it is the duty of the Chief Municipal Officer to obtain requisite approval from the State government and not by the President of the Council. The findings recorded in respect of charge No.2 is also contrary to the record. The petitioner being President of the Council has

not recorded any reason for accepting the auction at a lower price than the offset price in the auction proceedings. It was the duty of Chief Municipal Officer to record the reason for accepting the auction at lower price and bring it to the notice of the President. It is nowhere provided that the President has drawn the proceedings of the auction. The Charge No.4 and 5 also do not establish that it was the duty of the President of Council but on the contrary it was the duty of the Chief Municipal Officer in respect of the charges mentioned in Charge No.4 and 5. The impugned order merely shows that the allegation of irregularities have been made against the petitioner and those charges do not establish any charge of misconduct or misappropriation or mis-utilisation of the amount. On the basis of the aforesaid reason, no opinion could have been formed that continuance of the petitioner as President was not desirable/permmissible in public interest or in the cost of Council.

The question that whether the respondents could have taken action in respect of a lapse which had taken place in tenure which had already come to an end. I do not find any merit in the aforesaid submissions because there is nothing in the language of the provisions of Sec.41-A of the Act which provides that the lapse must relate to the period during which the office bearer is removed. The continuation of a public representative may not be desirable in public interest or in the interest of the Council even if the lapse has occurred in earlier tenure. The co-ordinate bench has taken the view in the case of *Laxmi Narayan Vs. State of MP 2013 SCC Online MP 32* that the allegations pertaining to petitioner's misconduct in respect of his tenure which had come to an end and, therefore, removal from the said office after re-election is illegal. The said submission was not accepted and the same was repelled

holding that the provisions of the Act do not provide that the lapse must relate to the period during which office is removed.

Though counsel for State vehemently supported the impugned order of removal and disqualification but could not show any provision of the Act or the Rules that it was incumbent on the petitioner being President of the Municipal Council to prepare an agenda and to obtain permission/approval from the competent authority. The judgments pressed into service by the counsel for respondents would not apply to the facts of the present case. In the case of *Smt. Satyaprakashi* (supra) the charge was different. In the said case the charge was against the petitioner that he had issued appointment orders himself being aware that the power is vested with the President-in-Council and was also instrumental in getting administrative and financial permission to appoint 24 extra persons without authority of law.

The respondents have further failed to show any proceedings which were drawn by the petitioner himself. On the contrary the record shows that the Chief Municipal Officer has been held guilty for not preparing an agenda and getting approval from the competent authority before putting the Shop No.2, Bus Stand Near Buniyadi Shala, Alirajpur for auction and accepting the auction amount on lesser side. The petitioner cannot be held for the charges levelled against the petitioner in absence of cogent and sufficient material. The charges only prima facie alleges irregularity on the part of the petitioner but not any illegality or misconduct. On the contrary in the impugned order of removal, the respondents themselves have stated that it was the duty of the Chief Municipal Officer to prepare agenda and to draw the proceedings for approval. However, the petitioner has also been held responsible for the same in absence of any provision of law or rule. The respondents have failed to

show any strong cogent and weighty ground for exercising of powers of removal u/S.41-A of the Act and also for declaring the petitioner disqualified for next election.

In view of the aforesaid analysis, the impugned order dated 23.12.2020 (Annexure P/5) cannot sustain judicial scrutiny. The impugned order is set aside. **The petition is allowed.** No order as to costs.

(VIJAY KUMAR SHUKLA)
JUDGE

VM

