HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 6485/2021

Smt. Somya Gurjar Wife Of Shri Rajaram Gurjar, Aged About 37 Years, Resident Of 289, Taruchhaya Nagar, Tonk Road, Jaipur.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary To The Government Of Rajasthan, Department Of Local Self Government, Administrative Secretariat, Jaipur.
2. The Director Cum Special Secretary, Local Bodies, Government Of Rajasthan, Department Of Local Self Government, Near Civil Lines Railway Crossing, Jaipur.
3. Commissioner, Municipal Corporation, Jaipur Greater, Lal Kothi, Tonk Road, Jaipur.
4. Deputy Director (Regional), Local Self Government Department, New Colony Near Hotel Welcome, Panch Batti, Jaipur.
5. Smt. Sheel Dhabhai, Member Ward No. 60 (Holding Charge Of Mayor), Municipal Corporation Jaipur Greater, Lal Kothi, Tonk Road, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Rajendra Prasad, Sr. Adv. assisted by Mr. Aashish Sharma through VC
For Respondents No.1 to 4	:	Mr. M.S. Singhvi (Sr. Adv.), AG, assisted by Mr. Sheetanshu Sharma, Mr. Anil Mehta, AAG with Mr. Yashodhar Pandey through VC
For Respondent No.5	:	Mr. Nahar Singh Maheshwari, through VC
	:	Mr. K.A. Khan through VC
	:	Mr. S.C. Gupta, through VC

HON'BLE MR. JUSTICE PANKAJ BHANDARI (V.J.)
HON'BLE MR. JUSTICE CHANDRA KUMAR SONGARA (V.J.)

Order

ORDER RESERVED ON :: 14/06/2021

ORDER PRONOUNCED ON :: 28/06/2021

(Per HON. PANKAJ BHANDARI, J.)

REPORTABLE

1. Defects, pointed out by the Registry, are waived.

2. The petitioner has preferred the instant writ petition challenging the vires of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Rajasthan Municipalities Act, 2009 (hereinafter referred to as "the Act of 2009") and against the order dated 06.06.2021 whereby the petitioner has been placed under suspension from the Office of Mayor, Municipal Corporation Jaipur Greater as well as from her membership of Ward No.87 of the said Municipal Corporation.

3. Succinctly stated the facts of the case are that Municipal Corporation Jaipur was dissolved and instead, two Municipal Corporations were established in its place i.e. Municipal Corporation Jaipur Heritage and Municipal Corporation Jaipur Greater. The petitioner was elected as a Member of the Municipal Corporation Jaipur Greater from Ward No.87 and thereafter, as a Mayor of the said Municipal Corporation. In the year 2017, BVG India Limited (hereinafter referred to as "the Company") was granted the work by the earlier Corporation with regard to door to door collection, segregation and transportation of municipal waste. In view of the dissolution of the earlier Corporation, the Director Local Bodies vide order dated 18.01.2021 informed both the Corporations to enter into supplementary agreements with the said Company.

4. In the first general meeting of the Board, it was decided that the Commissioner must take appropriate legal action against the said Company within 30 days and a new arrangement in this regard should be made. In compliance thereof, process for issuance of new tenders was initiated, and in the meanwhile, the said Company filed a writ petition bearing S.B. Civil Writ Petition

No.5253/2021 and an interim order dated 06.05.2021 was passed in favour of the said Company. Due to non-payment of the amount, the Company stopped garbage collection resulting into problem of sanitation.

5. The petitioner called the respondent–Commissioner for discussing the issue and some untoward incident took place in the meeting room of the Mayor. The Commissioner filed a complaint and also lodged an FIR of the incident pleading therein that action should be taken against the Corporators. The Government appointed an Officer of the rank of State level service to conduct the Preliminary Enquiry and after conclusion of the said enquiry, the Officer submitted his report on 06.06.2021. On the same day, Government took a decision to hold judicial inquiry against the petitioner under Section 39(3) of the Act of 2009 and suspended the petitioner from the post of Mayor as well as Member of Ward No.87, aggrieved by which, the present writ petition has been preferred by the petitioner. The relief claimed by the petitioner in the writ petition is for declaring Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009 as *ultra-vires* the Constitution of India and for quashing and setting aside the order dated 06.06.2021 whereby petitioner has been suspended.

6. The Constitutional validity of the provisions of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009 are under challenge, hence, we would first deal with the issue of Constitutional validity of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009. Section 39 deals with removal of a member and the same reads as under:

> "**39. Removal of member**- (1) The State Government may, subject to the provisions of sub-

Sections (3) and (4), remove a member of a Municipality on any of the following grounds, namely: -

(a) that he has absented himself for more than three consecutive general meetings, without leave of the Municipality:

Provided that the period during which such member was a jail as an under trial prisoner or as a detenue or as a political prisoner shall not be taken into account,

(b) that he has failed to comply with the provisions of Section 37,

(c) that after his election he has incurred any of the disqualification mentioned in Section 14 or Section 24 or has ceased to fulfil the requirements of Section 21,

(d) that he has:-

(i) deliberately neglected or avoided performance of his duties as a member, or

(ii) been guilty of misconduct in the discharge of his duties, or

(iii) been guilty of any disgraceful conduct, or

(iv) become incapable of performing his duties as a member, or

(v) been disqualified for being chosen as member under the provisions of this Act, or

(vi) otherwise abused in any manner his position as such member:

Provided that an order of removal shall be passed by the State Government after such inquiry as it considers necessary to make either itself or through such existing or retired officer not below the rank of State level services or authority as it may direct and after the member concerned has been afforded an opportunity of explanation.

(2) The power conferred by sub-Section (1) may be exercised by the State Government of its own motion or upon the receipt of a report from the Municipality in that behalf or upon the facts otherwise coming to the knowledge of the State Government:

Provided that, until a member is removed from office by an order of the State Government under this Section, he shall not vacate his office and shall, subject to the provisions contained in sub-Section (6), continue to act

as, and exercise all the powers and perform all the duties of, a member and shall as such be entitled to all the rights and be subject to all the liabilities, of a member under this Act.

(3) Notwithstanding anything contained in sub-Section (1) where it is proposed to remove a member on any of the grounds specified in clause (c) or clause (d) of sub-Section (1), as a result of the inquiry referred to in the proviso to that sub-Section and after hearing the explanation of the member concerned, the State Government shall draw up a statement setting out distinctly the charge against the member and shall send the same for enquiry and findings by Judicial Officer of the rank of a District Judge to be appointed by the State Government for the purpose.

(4) The Judicial Officer so appointed shall proceed to inquire into the charge, hear the member concerned, if he makes appearance, record his findings on each matter embodied in the statement as well as on every other matter he considers relevant to the charge and send the record along with such findings to the State Government, which shall thereupon either order for re-inquiry, for reasons to be recorded in writing, or pass final order.

(5) While hearing an inquiry under sub-Section (4), the Judicial Officer shall observe such rules of procedure as may be prescribed by the State Government and shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) while trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any such document or any other material as may be predicable in evidence;

(c) requisitioning any public record; and

(d) any other matter which may be prescribed.

(6) Notwithstanding the foregoing provisions of this Section, the State Government may place under suspension a member against whom proceedings have been commenced under this Section until the conclusion of the inquiry and the passing of the final order and the member so suspended shall not be entitled to take part in any proceedings of the Municipality or otherwise perform the duties of a member thereof.

> (7) Every final order of the State Government passed under this Section shall be published in the Official Gazette and shall be final and no such order shall be liable to be called in question in any Court.

7. It is contended by learned counsel for the petitioner that in Section 39(1)(d)(ii) of the Act of 2009, the term "misconduct in the discharge of his duties" has been used and similarly, in Section 39(1)(d)(iii) of the Act of 2009, the term "any disgraceful conduct" has been used, both the terms are not defined. It is argued that the Corporator or Mayor is not aware as to what would fall within the ambit of "misconduct in the discharge of his duties" or "any disgraceful conduct" and therefore, these provisions are vague and should be struck down, being violative of Articles 14, 20 and 21 of the Constitution of India. The terms being of generic nature having no bounds of their applicability and since these clauses attract punitive action also, they can be used against anyone based on individual perception of a conduct, its degree and on whims and fancy of the authority.

8. It is also contended that because the meaning of these terms depends upon what is thought by the authority with regard to the action at the time of their application, such undefined conduct attracting punitive action is violative of Article 20 of the Constitution of India. In this regard reliance has been placed on *Pyare Lal Sharma Versus Managing Director and Ors.*: **1989 (3) SCC 448**.

9. It is further contended that Articles 14 and 21 of the Constitution of India pre-supposes just, fair and reasonable law for punishing any citizen. Counsel in this regard has placed reliance on *Shri Ram krishna Dalmia and Ors. Versus Justice S.R.*

Tendolkar and Ors.: **AIR 1958 SC 538** wherein the Apex Court laid down certain principles to be borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attached as discriminatory and violative of the equal protection of the laws. The principles enunciated read as under:

> "(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
>
> (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
>
> (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
>
> (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
>
> (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
>
> (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

10. Learned counsel for the petitioner has further placed reliance on *Shreya Singhal Versus Union of India*: **AIR 2015 SC 1523** wherein Section 66A of the Information Technology Act, 2000 was

struck down by the Apex Court treating the provisions as vague. It was observed by the Apex Court that a penal law is void for vagueness if it fails to define the criminal offence with sufficient definiteness. It was further observed that ordinary people should be able to understand what conduct is prohibited and what is permitted. Also, those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of law does not take place. Reliance has also been placed on *The State of Madhya Pradesh & Anr. Versus Baldeo Prasad***: AIR 1961 SC 293** wherein the term "Goonda" used in the Central Provinces and Berar Goondas Act, 1946 was found to be vague and was struck down.

11. It is contended by learned Advocate General that provisions of Section 63(1)(d) of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Act of 1959") are *para-materia* with the provisions of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009. It is also contended that the provisions of the Act of 1959 held ground for a period of six decades and therefore, veracity of the same cannot be challenged at this stage. In this regard, reliance has been placed on *PGF Limited & Ors. Versus Union of India & Anr.***: (2015) 13 SCC 50** wherein the Apex Court has held as under:

> "32. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time gap exist as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the

> implication of provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-à-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ Court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ Court and the same is not exhaustive. In other words, the Writ Court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a Statute or provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the above stated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time bound basis, so that the legal position is settled one way or the other."

12. It is contended that the term "misbehavior" has been used in Articles 124(4) and 317 of the Constitution of India. Article 124(4) deals with removal of Judge of Supreme Court on the ground of proved misbehavior or incapacity and Article 317 of the Constitution of India deals with removal and suspension of a member of a Public Service Commission on the ground of misbehavior. It is contended that the term "misbehavior" is not defined in the Constitution of India. It is also argued that the terms "misconduct" and "disgraceful conduct" also find place in various enactments across the country. Some of the enactments which use the terms are: Rajasthan Panchayati Raj Act, 1994;

Rajasthan Agricultural Produce Markets Act, 1961; Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965; Madhya Pradesh Municipalities Act, 1961; Karnataka Panchayat Raj Act, 1993; U.P. Municipal Corporation Act, 1959; Bihar Municipal Act, 2007; Punjab Municipal Corporation Act, 1976; Gujarat Municipalities Act, 1963 and Maharashtra Zila Parishads and Panchayat Samitis Act, 1961.

13. It is contended that the Legislature in its own wisdom has not defined the terms "misconduct" and "disgraceful misconduct" as the same would depend upon the facts and circumstances of each case. Learned Advocate General has placed reliance on *Ravi Yashwant Bhoir Versus District Collector, Raigad & Ors.*:**(2012) 4 SCC 407** wherein the Apex Court has dealt with the terms "misconduct" and "disgraceful conduct" while dealing with a case pertaining to Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It was observed that the term "misconduct" is a relative term and has to be construed in accordance with the facts before the authorities. Any act, which is detrimental to the prestige of the institution, is misconduct. Reliance has also been placed on *NandKumar Versus State of Mah.*: **2016 (6) Mh.L.J. 87** wherein the petitioner, who was a councilor of Municipal Council, threatened the Chief Officer and the same was held to be a "disgraceful conduct" by the Division Bench of the Bombay High Court and the term "disgraceful conduct" was described as a shameful behavior. In that case, threatening the Chief Officer by showing footwear was held to be as shameful misbehavior and shockingly unacceptable.

14. It is contended that since the framers of the Constitution in their wisdom have used the term "misbehavior" in the Constitution of India without defining the same, the use of the terms "misconduct" and "disgraceful conduct" by the State Legislature in the Municipality Act cannot be said to be vague and *ultra-vires* the Constitution.

15. It is contended that because a provision has remained in the statute for long, it gives validity to the entire statute. In this regard reliance has been placed on *Dharam Das & Ors. Versus The State of Punjab & Ors.***: 1975 (1) SCC 343** wherein the enactment was in force for more than half of the century, the Apex Court held that provisions being in the statute for more than half of the century, the Court would lean in favour of upholding the validity.

16. Contra to the above argument, it is contended by learned counsel for the petitioner that merely because a provision has remained in the statute for long, it does not give validity to the entire statute and the same can be challenged if the provision appears to be *ultra-vires* to the Constitution. In the case of *Navtej Singh Johar & Ors. Versus Union of India***: AIR 2018 SC 4321,** the provisions of Section 377 of Indian Penal Code, which was introduced way back in 1817 and the validity of which was upheld by the Delhi High Court, was struck down by the Apex Court, declaring it unconstitutional. Similarly, it is also contended that the validity of Section 124-A of Indian Penal Code was upheld by the Court in 1962, but the challenge to its validity has been entertained by the Apex Court observing that lapse of time cannot be the sole consideration to uphold the validity of the provisions.

Reliance in this regard has been placed on *Kishorechand Wangkhemcha & Anr. Versus Union of India*: **Writ Petition (Criminal) No.106/2021** and on *Motor General Traders & Anr. Versus State of Andhra Pradesh***: AIR 1984 SC 121** wherein it was held that time itself does not give validity to a statute.

17. We have considered the contentions.

18. As far as challenge at a belated stage is concerned, we are in agreement with the argument of the counsel for the petitioner that merely because a provision has remained in the statute for long, it does not give validity to the entire statute and the same can be challenged if the provision appears to be *ultra-vires* the Constitution. However, the judgments *Shreya Singhal Shreya Singhal Versus Union of India* (supra) and *State of Madhya Pradesh & Anr. Versus Baldeo Prasad* (supra) deal with striking down of penal laws being vague, the present provisions do not have penal consequences, hence, the judgments referred to by the counsel for the petitioner do not have any applicability to the facts of this case. *Pyare Lal Sharma Versus Managing Director and Ors. (supra)* was a case where regulations were amended and ground of unauthorized absence from duty was added w.e.f. 20.4.1983. The petitioner therein was removed for unauthorized absence for period prior to 20.04.1983. The Apex Court held that absence period being prior to the date of amendment, termination cannot be sustained. The above judgment has no applicability to the facts of this case and non-defining of the terms “misconduct” and “disgraceful conduct” cannot be equated with an *ex-post facto law*.

19. As far as the Constitutional validity of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009 is concerned, the terms "misconduct in the discharge of his duties" and "any disgraceful conduct" cannot be termed to be vague in view of the fact that the terms "misconduct" and "disgraceful conduct" find place in various enactments across the country and the use of terms "misconduct" and "disgraceful conduct" are not having any penal consequences. It is evident that in the Constitution of India also, the term "misbehavior" has not been defined and therefore, the Legislature was well within its powers to not define the terms "misconduct" and "disgraceful conduct". It is also evident that the terms "misconduct in the discharge of duties" and "any disgraceful conduct" has to be assigned a meaning depending on the facts and circumstances of a particular case and the Legislature in its own wisdom has purposely not defined these words. We are of the considered view that the use of terms such as "misconduct in the discharge of his duties" and "any disgraceful conduct" are not vague, so as to render them *ultra-vires* the Constitution. We, therefore, uphold the validity of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009.

20. It was submitted by learned counsel for the petitioner as well as by learned Advocate General that since hearing has lasted for two days, the writ petition may be decided by the Division Bench on merits. In support, they have placed reliance on *Jan Mohd. Versus The State of Rajasthan & Ors.***: AIR 1993 Raj 86** wherein the validity of Section 63(4) of the Rajasthan Municipalities Act, 1959 was challenged and the Court upheld the validity of the provision and at the same time, disposed of the case on merits.

We would thus be dealing with the grounds for challenge of the suspension order dated 06.06.2021.

21. The foremost ground on which the order is challenged is that the suspension order has been passed without affording an opportunity of hearing and without seeking explanation from the petitioner. Whether a person is required to be heard before he is suspended under the provisions of Section 39(6) of the Act of 2009 is the other question, which arises for consideration by this Court.

22. It is contended by learned counsel for the petitioner that Section 39 of the Act of 2009 deals with removal of a member and Section 39(1) deals with the grounds on which a member can be removed. It is contended that proviso to Section 39(1) provides that an order of removal shall be passed by the State Government after such inquiry as it considers to make either itself or through such existing or retired officer not below the rank of State level services or authority as it may direct and after the member considered has been afforded an opportunity of explanation. It is argued that before suspending any Member or Mayor, the concerned person is required to be afforded an opportunity of explanation.

23. With regard to the above, learned Advocate General, placing reliance on *Jan Mohd. Case* (supra), contends that the validity of Section 63(4) of the Act of 1959 was upheld by the Division Bench of this Court and Section 63(4) of the Act of 1959 is *para-materia* to Section 39(6) of the Act of 2009. The Division Bench in Jan Mohd. case (supra) has overruled the judgment of the Single Judge in the case of *Ajmer Singh Yadav Versus State of Raj.*:

1986 RLR 16 wherein it was held that obtaining of the explanation and its consideration is essential i.e. it is a condition precedent for passing the order of suspension of the Chairman or Member of the Municipal Board.

24. The Court in *Jan Mohd's* case (supra) further held that suspension of a Chairman or a Member of a Municipal Board pending inquiry being an interim measure, the suspension does not result in civil and evil consequences and it is not penal in character. Enough safeguards have been provided in the Section so that no arbitrary, capricious or *mala fide* suspension may take place. The Court also observed that Government must have sufficient reasons to do so and care should be taken that such suspensions should not be arbitrary and the suspensions of such elected representatives should not be brought about for political motives or consideration.

25. Learned Advocate General has also placed reliance on Full Bench decision of this Court in *Bhuralal v. State of Raj.***: 1988 (1) RLR 945 (FB),** *Radhey Shyam v. State***: AIR 1985 Raj 65** and *Liberty Oil Mills v. Union of India***: AIR 1984 SC 1271**.

26. In *Bhuralal v. State of Raj. (supra)*, the question before the Full Bench was whether before suspending from the post of Sarpanch, an opportunity of hearing is required to be given to the Sarpanch or not. The Full Bench of this Court held as under:

> "As pointed out by us above, the order of suspension under Section 17(4A) is an order of interim nature and it could be passed only after an active application of mind by the State Government to the question as to whether an emergent or immediate action is called for on the basis of the preliminary enquiry report and its decision to send a charge sheet and show cause notice to the Panch or Sarpanch concerned. Moreover, it is envisaged in rule 21(3) that

> an opportunity of hearing shall be afforded to the person concerned in the sense that after a show cause notice along with a statement of charges is served upon him, he will have an opportunity to submit his representation in answer to the charges. At that stage he could also seek a review of the order and ask the authority to rescind or modify the same. As held by their Lordships of the Supreme Court in *Liberty Oil Mills's case(8)* the principles of natural justice would be satisfied is a post decisional hearing is given in such matters and the aggrieved party is afforded an opportunity at his request. If an urgent or emergent action is required to be taken as a result of the consideration of the preliminary enquiry report made by the Collector to be the State Government, then there could be no doubt that the order of suspension of the Panch of Sarpanch could be passed at the stage of giving the show cause notice along with a copy of the order of sheet as a review or reconsideration of the order of suspension is naturally envisaged after the Panch of Sarpanch submits its representation in reply to the show cause notice, as on consideration of the same, the State Government may drop the charges or proceed to appoint an Enquiry officer to hold the enquiry into the charges, It needs to be emphasised that an order of suspension of an elected office holder should only be passed by the State Government when the charges leveled against him involve misconduct of serious magnitude and are of such a nature as to warrant immediate or emergent action."

27. In *Radhey Shyam v. State (supra)***,** while interpreting the provisions of Sections 17(4) and 17(4-A) of the Rajasthan Panchayat Act, it was held that a pre-decisional hearing cannot be afforded to a Sarpanch, Upsarpanch or a Panch before his suspension is ordered. It has been further held that the principles of natural justice will be attracted to an order of suspension passed by way of punishment and it will be necessary to afford an opportunity to the person sought to be suspended before passing the order of suspension. But, if the order of suspension is by way of an interim measure pending an inquiry into the charges, it is not necessary to afford an opportunity to the person sought to be suspended before passing the order of suspension.

28. In *Liberty Oil Mills v. Union of India (supra)*, the Supreme Court has dealt with the question of applicability of principles of natural justice to cases where an interim order is passed pending a final adjudication. In the said case, it has been observed as under:

> "Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay."

It was further held that ad interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless always the eights to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request.

29. The Full Bench in *Bhuralal's case* (supra) has held that it is no doubt true that a Panch or Sarpanch could not be allowed to be suspended in the same manner as an employee. In the matter of passing of an order of suspension, requisite safeguards have been provided to protect the interest of the elected representatives of the people and that is why the holding of a preliminary enquiry, in accordance with the procedure laid down in Rule 20 and then the consideration of the report of the preliminary enquiry by the State Government so as to find out as to whether a prima facie case has

been made out against the elected representative concerned or not, have been made conditions precedent before an order of suspension can be passed. It was further observed by the Full Bench that a preliminary enquiry by the Collector is undoubtedly a safeguard against whimsical, capricious or mala fide exercise of power of suspension by the State Government.

30. The Division Bench in *Jan Mohd. case* (supra) while dealing with Section 63(4) of the Act of 1959 held that suspension of a Chairman or a Member of a Municipal Board pending enquiry being an interim measure, the suspension does not result in civil or evil consequences and it is not penal in character. Enough safeguards have been provided in the Section so that no arbitrary, capricious or mala fide suspension may take place. The Division Bench while upholding sub-section (4) of Section 63 of the Act of 1959 set aside the judgment passed in *Ajmer Singh Yadav's* case (supra) wherein learned Single Judge had held that before suspension, obtaining of the explanation and its consideration is essential. Section 63(4) of the Act of 1959 is para materia with Section 39(6) of the Act of 2009.

31. It is contended by learned counsel for the petitioner that proviso to sub-section (1) of Section 39 of the Act of 2009 provides that an order of removal shall be passed by the State Government after enquiry and after member concerned has been afforded an opportunity of explanation. It is argued that the proviso would by implication apply to a preliminary enquiry and opportunity of explanation is required to be given to the member concerned.

32. We would like to clarify that proviso to sub-section (1) of Section 39 of the Act of 2009 does not apply to a removal on the grounds mentioned under sub-clauses (c) or (d) of sub-section (1) of Section 39 of the Act of 2009. As it is evident from the plain reading of sub-section (3) of Section 39, which provides that a member may be removed on the grounds under clauses (c) or (d) and it is only after conducting an enquiry by an Enquiry Officer of the rank of District Judge whereas, under proviso to sub-section (1), after conducting enquiry and affording an opportunity of explanation to the member concerned, the State Government can pass an order of removal. Sub-section (6) of Section 39 does not provide for any explanation before passing an order of suspension. In *Rajaram Gurjar Versus State of Rajasthan & Ors.*: **2020 SCC OnLine Raj 268**, Single Judge of this Court has held that Section 39(6) of the Act of 2009 does not contemplate that any show cause notice is required to be given or an explanation is required to be called from the member of municipality.

33. On plain reading of Section 39(6) of the Act of 2009, it is evident that it does not provide for considering any explanation before passing an order of suspension. It merely empowers the State Government to place a Member under suspension against whom proceedings have been commenced under this Section until conclusion of the enquiry and passing of the final order.

34. Since the Division Bench and the Full Bench have held that the order of suspension is an interim measure and it has never been the intention of the Legislature to provide two opportunities for providing explanation i.e. one before passing the order of suspension and the other before framing of the charges, we feel

inclined to accept the submissions of learned Advocate General that it has not been the intention of the Legislature to grant pre-decisional hearing to the Corporators before he/she is suspended and that it is not the requirement of the Act of 2009 to afford hearing or explanation before passing the order of suspension. We accordingly hold that a person is not required to be heard before passing of suspension order.

35. The next ground for challenge to the suspension order is that the order was passed in hot haste and that no enquiry was initiated against the petitioner.

36. It is contended by learned counsel for the petitioner that the Enquiry Officer issued notices on 05.06.2021 and asked the petitioner to appear on the same day at 3.00 p.m. The said notice was received at 3.08 p.m. and therefore, the petitioner requested for the next working day i.e. 07.06.2021 to file her reply. The Enquiry Officer instead of giving a reasonable time asked the petitioner to appear in the office by 2.00 p.m. on 06.06.2021, which happened to be Sunday. It is contended that 'reasonable time' was not given to the petitioner, which is in violation of the principles of natural justice. Reliance in this regard has been placed on *State of Jammu & Kashmir Versus Haji Wali Mohammad*: **AIR 1972 SC 2538**; *Punambhai P. Barot Versus Chairman and Managing Director*: **MANU/GJ/0645/2001**. The Gujarat High Court in *Punambhai P. Barot* (supra) has held as under:

> "It may also be mentioned that the show cause notice (Annexure : E) dated 9.9.1991 against proposed punishment has also violated the principles of natural justice. At least reasonable time and opportunity should have been afforded to the petitioner to represent against

> the proposed punishment. In this notice only two days time was given to the petitioner from the date of receipt of notice to make his statement. Two days time can hardly be said to be reasonable time for submitting reply to the second show cause notice."

37. It is argued that in hot haste without waiting for the reply, the Enquiry Officer submitted the report. It is argued that the Enquiry Officer was appointed to conduct the enquiry against the three Municipal Corporators and therefore, the report submitted by the Enquiry Officer cannot be treated as a report against the petitioner and no action could have been taken on the basis of the said report.

38. Learned Advocate General submits that "undue haste" cannot be made a ground for exercising the power of the judicial review. To buttress his submissions, he has placed reliance on *Chairman & MD, BPL Ltd. Versus S.P. Gururaja & Ors.***: (2003) 8 SCC 567** wherein it was held as under:

> "Undue haste also is a matter which by itself would not have been a ground for exercise of power of judicial review unless it is held to be malafide. What is necessary in such matters is not the time taken for allotment but the manner in which the action had been taken. The court, it is trite, is not concerned with the merit of the decision but the decision making process. In absence of any finding that any legal malice was committed, the Impugned allotment of land could not have been interfered with. What was only necessary to, be seen was as to whether there had been a fair play in action.
>
> The question as to whether any undue haste has been shown in taking an administrative decision is essentially a question of fact. The States had devolved a policy of Single Window System with a view to get rid of red-tapism generally prevailing in the bureaucracy. A decision which has been taken after due deliberations and upon due application of mind cannot be held to be suffering from malice in law on

> the ground that there had been undue haste on the part of the State and the Board."

39. The judgment of *State of Jammu & Kashmir (supra)* relied upon by the learned counsel for the petitioner was a case where 24 hours notice was given for dismantling the structure. The said notice was held to be bad in law. In *Punambhai P. Barot (supra)* two days time was given to submit reply to the second show cause notice. It was held that reasonable time was not given. On facts of the present case, the above citations do not have any applicability as only preliminary enquiry was being conducted and petitioner was only asked to submit her response.

40. The contention of learned counsel for the petitioner that the entire enquiry was conducted in hot haste on Saturday and Sunday during Pandemic and that the enquiry was not initiated against her, cannot be made a ground for setting aside the order of suspension more particularly because in the complaint also, there is a specific allegation against the petitioner of using indecent language against the Commissioner and the same is reflected in the FIR filed by the Commissioner. In the evidence given before the Enquiry Officer, the Commissioner has stated that the petitioner has called the Corporators and that he informed the petitioner that he has to attend a meeting with regard to Pandemic, summoned by the Additional Chief Secretary but, he was not permitted to leave the chamber. He has levelled specific allegation against the petitioner and has also alleged that his personal staff and gunman were also not permitted to enter into the chamber to save him and that it was all pre-planned by the petitioner. The order of suspension has been passed after

considering the preliminary enquiry report and after due application of mind, hence, the same cannot be held to be suffering from malice in law on the ground that there has been undue haste on the part of the State. The judgment *Chairman & MD, BPL Ltd. (supra)* would apply to the facts of this case, hence, the objection with regard to undue haste in passing of the suspension order cannot be sustained.

41. The next ground for challenge is that the Enquiry Officer was of a rank, which was lower to the rank of the complainant.

42. It is contended by learned counsel for the petitioner that an Enquiry Officer was appointed by the Director and Special Secretary, General Administrative Department, Government of Rajasthan, on 04.06.2021. The Enquiry Officer, who happens to be a State Service Officer of the Rajasthan Administrative Services and junior in the rank to the complainant, could not conduct the enquiry. In this regard, reliance has been placed on *V. Abusali Versus The Commandant and Ors*.**: MANU/KE/0178/1993** and also on *M.L.L. Kumar versus The Divisional Manager, A.P.S.R.T.C. Cuddappah and Ors.***: MANU/AP/0079/1989**, wherein it was held by the High Court of Andhra Pradesh that when a person who gave complaint and evidence before him was an officer immediately superior to him then enquiry should not have been conducted by officer who was subordinate to complainant himself particularly when superior officer is also witness in the case.

43. With regard to the above, learned Advocate General contended that it was only a 'fact finding enquiry' and has placed on record Annexure-R/14, a notification issued by the Local Self Government dated 19.03.2020 wherein for the post other than

Assistant Accounts Officer Grade-II for every Municipality Deputy Director Regional concerned is the Chairperson and the Chairperson of the Municipality is the Member. It is argued that as per Section 39 of the Act of 2009, enquiry can be conducted by Officer of State level services.

44. We are of the considered view that judgments *V. Abusali (supra)* and *M.L.L. Kumar (supra)* have no applicability to the facts of this case. Those were cases where enquiry was conducted by the Subordinate Officer and in pursuance thereof, the delinquent was removed whereas in the present case, enquiry is yet to be conducted by an Officer of the level of District Judge. The preliminary enquiry was conducted by State level service officer, which is the requirement of Section 39 of the Act of 2009. The challenge on the ground of Enquiry Officer being of a lower rank than the rank of the complainant, cannot thus be sustained.

45. Yet another ground for challenging the suspension order is that the suspension of the petitioner from the post of Mayor has affected her reputation. It is contended by learned counsel for the petitioner that right to reputation is a personal right guaranteed under Article 21 of the Constitution of India as held by the Apex court in *Umesh Kumar Versus State of Andhra Pradesh & Ors.***: (2013) 10 SCC 591**. We are not inclined to accept the said argument as there is specific allegation against the petitioner that she used indecent language against the Commissioner, who happens to be an IAS Officer. He was manhandled in her presence. Since his reputation was affected, plea of petitioner that her reputation has been affected by the suspension order, cannot be taken note of.

46. Yet another ground for challenge is that Government has unbridled powers and in exercise of the same, Government has discriminated with the petitioner.

47. It is contended by learned counsel of the petitioner that Alwar Chairperson who slapped the C.O., was not suspended, which goes to show that the State Government has discriminated with the petitioner. To which, learned Advocate General contends that in the complaint filed by the Alwar Chairperson, the police has submitted a negative final report. We are not inclined to entertain the said objection, as each case has to be tested on its own facts and circumstances. The entire facts of that case are not before us, hence, we are not in a position to hold that discrimination has been done with the petitioner.

48. Last but not the least ground pertains to the facts of the case. It is contended by learned counsel for the petitioner that the complaint was filed against the members and also the FIR was lodged against the members, and there was not enough material to suspend the petitioner. It is contended that many persons were transferred on the same day to prevent truth to surface and Personal Security Guards were also sent back to the department on the same day. It is also contended that the Enquiry Officer has wrongly inducted the petitioner even when in none of the statements, presence of the petitioner was mentioned.

49. Learned counsel for the petitioner argued that the facts of the case ought to be looked into to ascertain whether the same would fall within the definition of "misconduct in the discharge of duties" and "any disgraceful conduct". It is contended that the complainant in this case happens to be Commissioner of the

Municipal Corporation Jaipur Greater, who lodged a complaint against three Corporators. It was only mentioned in the complaint that the petitioner used indecent language at a high pitch and levelled personal allegations on the Commissioner and the Corporators also used the same language, on which he tried to leave the chamber and the Corporators stopped the Commissioner from leaving the meeting room and forced him to agree for an alternative arrangement to be made for sanitation, collection and disposal of the municipal waste. It is further contended that the Commissioner also lodged an FIR for the same incident wherein also he has sought an action to be taken against the three Corporators, namely, Mr. Ajay Singh, Mr. Shankar Sharma and Mr. Paras Jain. It is contended that in the FIR also, there was no request for any action to be taken against the Mayor.

50. It is also contended that the said provisions results in retaining of unbridled powers in the State Government for picking and choosing persons at its whims and fancy for punishing and thus, resulting in political abuse and misuse of power against the members of opposite political parties. In this regard, reliance has been placed on *Geeta Devi Narooka Versus State of Rajasthan & Ors.*: **2008 (1) WLC 261**, *Pradeep Hinger Versus State of Rajasthan & Ors.*: **RLW 2008 (1) Raj. 456**, *Jagdish Narayan Sharma & Ors. Versus State of Rajasthan & Ors.*: **AIR 1995 Raj. 155**, *Baldev Singh Gandhi Versus State of Punjab & Ors.*: **AIR 2002 SC 1124** and *Tarlochan Dev Sharma Versus State of Punjab*: **AIR 2001 SC 2524.**

51. Learned Advocate General appearing for the State has contended that in the statement given by the Commissioner, who

happens to be a Senior IAS Officer, has mentioned that the petitioner used indecent language and also levelled personal allegations against him. It is contended that the Company was allotted the work of collection of garbage from the houses and its disposal. The stay order was obtained by the Company from the High court and for that reason, it was not possible to delegate the said work to someone else. It is also contended that the petitioner and the Corporators at their own behest were forcing the Commissioner to agree for an alternative arrangement, which in fact tantamount to contempt of the order of the High Court. It is also contended that the objective satisfaction of the State will have to be taken into consideration and the Court cannot impose its discretion. The Court can only examine whether such satisfaction has been arrived at objectively or arbitrarily. Learned Advocate General has placed reliance on *State of Tamil Nadu v. P. M. Belliappa (supra)*.

52. It is also contended that the Commissioner in his statement before the Enquiry Officer has stated that the petitioner shouted at him and used indecent language and levelled personal allegations against him. It was alleged that in presence of the petitioner, he was manhandled and his security staff was not permitted to enter the Mayor's chamber. He has also stated that there was an interim order passed by the High Court in favour of the Company and that he was to attend the meeting with regard to Pandemic at 5:00 p.m., but was restrained from leaving the chamber and was put under undue pressure to sign the document for an alternative arrangement. From the statement, it is evident that manhandling was done in the presence of the petitioner and

the petitioner also used indecent language at a high pitch and the Commissioner has specifically alleged that the same was done at her behest. Considering the facts and circumstances of the case and after having perused the preliminary enquiry report & the statement of the Commissioner, the State Government was well within its authority to initiate judicial inquiry and at the same time, suspend the petitioner.

53. The judgment cited by learned counsel for the petitioner *Geeta Devi Narooka (supra)* was a case where nothing adverse was found against the petitioner in the preliminary enquiry and proceedings were ordered to be dropped by the Minister. The High Court has held that on the face value of the charges, same were not of such nature which warrants suspension during pendency of the enquiry. It was also held that when a qualified Executive Officer, well acquainted with municipal law is posted in the municipality and who is under obligation to put a note of dissent under Section 68 of the Act of 1959 where the proceeding or order of any Committee, Chairman and Vice Chairman or any member is inconsistent with the provisions of this Act and Rules made thereunder or detrimental to interest of the Board, and send the same to the District Collector to prevent the aforesaid illegalities and irregularities. In that case, no note of dissent was put up. In *Pradeep Hinger (supra)*, the Court held that there is no reason available for suspending the petitioner from the post of Chairman. The order of suspension was quashed and set aside. In *Jagdish Narayan Sharma & Ors. (supra)*, no preliminary enquiry was conducted, hence, the order of suspension was set aside. In *Baldev Singh Gandhi (supra)*, the Apex Court held that criticism of

the house tax assessment list by the member cannot be termed as misconduct. We are of the considered view that the facts of each case has to be adjudged on the merit of that case alone.

54. In *Tarlochan Dev Sharma (supra),* the Apex Court held that grounds of removal of President of Municipality must be clearly made out. The said judgment cannot be applied on facts as it is not a case of removal and is merely a case of suspension of the petitioner.

55. The Division Bench of Madras High Court in *State of Tamil Nadu v. P. M. Belliappa***: 1985 LIC 51** has held as under:

> "when a matter of suspension is left to the objective satisfaction of the Govt., the normal rule is that it is not necessarily justiciable before the High Court and the Court cannot look into the question as to whether the materials are adequate or inadequate from its point of view. But, the factum of satisfaction can always be questioned before the Court and the party challenging the order of suspension can always show before the Court that the professed satisfaction is no satisfaction at all either because it was formed on extraneous or irrelevant circumstances or that there was a total lock of application of mind to the question as to whether it is necessary or desirable to suspend the Officer. The facts and circumstances to be considered must be those which existed on the date of the conclusion of the opinion or arriving at the satisfaction and actually weighed with the authority while passing the impugned order and facts which have come to transpire subsequently or which have been subsequently unearthed as existing even at the time of the conclusion or formation of opinion, though not considered and taken into account, cannot at all be relied on to support the impugned order. While the Court can examine as to whether the opinion or satisfaction was formed at all, Court cannot substitute its own satisfaction for that of the authority. Though the materials placed may not satisfy the Court, the task of the Court is only limited to an investigation as to whether there was any foundation of fact at all or whether irrelevant and extraneous circumstances have weighed with the authority while passing the impugned order. The fact that different formation of opinion or satisfaction is possible for the Court on the very same facts and circumstances is not a ground to quash the order in question. May be, the reason, given are in general terms. Yet the Court should

> not exclude reasons which may fairly fall within them, allowance being made for difficulties in expression."

It is, therefore, clear that so far as the facts are concerned, objective satisfaction of the State will have to be taken into consideration and the Court cannot impose its discretion. However, it should always be examined whether the satisfaction has been arrived at objectively or arbitrarily.

56. We are of the considered view that the decision has been taken after due deliberation and application of mind and after considering the preliminary enquiry report, the same cannot be said to have been passed arbitrarily. The suspension order cannot be said to be passed in malice to oust the BJP Corporator as BJP Corporator, has been replaced by the BJP Corporator on the post of Mayor. On facts also, we do not find any ground for setting aside the suspension order.

57. In view of the foregoing conclusion, we do not find any force in the instant writ petition and the same is dismissed. While upholding the validity of Sections 39(1)(d)(ii) and 39(1)(d)(iii) of the Act of 2009, we do not find any ground to set aside the order of suspension passed by the appropriate authority. However, taking note of the facts and circumstances of the case that the petitioner was elected as a Mayor, we deem it proper to direct the State Government to expedite the judicial enquiry initiated against her and the same be completed as far as possible within a period of six months from the date of receipt of a certified copy of this order.

58. It is further made clear that any observations made herein above will not have any bearing on the judicial enquiry to be conducted against the petitioner.

(CHANDRA KUMAR SONGARA (V.J.)),J (PANKAJ BHANDARI (V.J.)),J

Sunil Solanki/PS