

# RAJASTHAN HIGH COURT

Ishwar Parashar

Vs.

State of Rajasthan

C.W.P. No. 2818 of 2001

(V.S. Kokje, J.)

30.08.2001

## ORDER

**V.S. Kokje :**

1. Heard Mr. Himmat Singh, learned counsel for the petitioner and Shri Mohd. Rafiq, AAG for the State.
2. With the consent of the parties, the matter was finally heard. The petitioner is an elected member of Municipal Board, Pushkar, Ajmer. The petitioner's membership of the Municipal Board was suspended by the State Government by passing an order under Section 63(4) of the Rajasthan Municipalities Act, 1959. The petitioner has challenged that suspension in this petition.
3. The learned counsel for the petitioner pointed out that in the order suspending the membership of the petitioner, the only reason for such suspension given is that continuation of the petitioner as a member of the Municipal Board is likely to influence the enquiry pending against him. According to the learned counsel, discharging functions as a member of Municipal Board is in no case prejudicial to holding of a fair enquiry in the matter and that cannot be a ground on the basis of which an elected member can be stopped from performing his duties as a member of the Municipal Board.
4. The learned counsel for the State, Shri Mohd. Rafiq submits that serious charges of encroaching upon municipal property and abating encroachment on the municipal property are pending enquiry against the petitioner and in the circumstances of the case, it was necessary to suspend the membership of the petitioner to save the pending

enquiry from being adversely affected. According to the learned counsel, the witnesses to be examined in the enquiry would not be deposing with free mind and would be afraid of or influenced by the petitioner, if he is allowed to continue as member of the Municipal Board. The learned counsel for the State also cited decisions of this Court in the case of *Jan Mohd. v. State of Rajasthan reported in* <sup>1</sup> and *Chhagan Kanwar Rathore v. State of Rajasthan reported in* <sup>2</sup>

5. I have heard the learned counsel and perused the record. In the order of suspension (Annexure 4 to the writ petition) the only reason given for suspension is likelihood of the pending enquiry being influenced in the event the petitioner continues as a member of the Municipal Board. No other reason has been mentioned. As a specific reason has been mentioned for suspension, it cannot be said that there may be some other reasons also which have not been disclosed in the order of suspension. There are no details mentioned in the order as to how the enquiry is likely to be affected.

6. The learned counsel for the State submitted that even if it is taken that the Enquiry Officer is not likely to be influenced, but the witnesses to be examined would certainly not feel free to depose against a sitting member of the Municipal Board and that will affect to hold a fair enquiry.

7. I do not understand as to what difference does it make to an enquiry whether a person proceeded against continues to be an effective member of the Municipal Board or is suspended. So far as the enquiry into the charges against him is concerned, the membership of a Municipal Board is not an executive office, enabling the incumbent to wield certain powers by using which he can pressurise the witnesses or influence the Enquiry Officer. Continuance as a member of the Municipal Board is absolutely irrelevant to a fair and impartial enquiry in the circumstances of the case. It is to be remembered that a person gains influence first in the public and then only he gets elected to a municipal office. If he is influential, he remains to be influential even without the membership of Municipal Board as the post does not give him any additional powers. The reason stated for suspension, therefore, has no nexus with the purpose of suspension that is to save the enquiry from being influenced or affected by continuance of the petitioner as member of the Municipal Board. It should also be remembered that membership of a Municipal Board is an elective office and by barring a person from discharging his functions as a member of the Municipal Board, the entire municipal ward from which he is elected goes unrepresented and might

suffer. If a member of the Municipal Board commits some misconduct for which he can be removed, he may be removed after holding an enquiry into the misconduct expeditiously. But the citizens of the municipal ward cannot be made to go unrepresented in the municipal body only because the State Government institutes an enquiry against the member of the Municipal Board, keeps it pending and suspends the membership of the elected representative of the Municipal Board. Permitting such an action would be against the basic principles of democracy. It should be remembered that the representation in the Municipal bodies and the autonomy of Municipal bodies was considered so sacrosanct that safeguards for maintenance of basic democracy and autonomy of civic institutions are provided by amending the Constitution by inserting a separate chapter in it.

8. For the aforesaid reasons, I do not find that the suspension of the petitioner is legal or justifiable. I am, however, not suggesting that in no case a member of the Municipal Board can be suspended pending enquiry against him. In appropriate cases when the continuance in office has direct relation with the subject-matter of the enquiry, no doubt, a member can be put under suspension. For example, if the charge against a member is that he behaved in indisciplined manner in the Council or Board meetings and made it impossible to hold such meetings peacefully and to transact business at such meetings smoothly, a suspension from membership pending enquiry would be justified. No such thing is alleged in this case.

9. The petition is, therefore, allowed. The impugned order dated 27-2-2001 suspending the petitioner from membership of Municipal Board, Pushkar is quashed. The respondents shall permit the petitioner to discharge functions as member of Municipal Board, Pushkar till his tenure expires subject to result of the enquiry pending against him.

Petition allowed.

Cases Referred.

1. (1992) 2 WLC (Raj) 463
2. (2000) 2 WLC (Raj) 231