

# RAJASTHAN HIGH COURT

Vimla Vyas

Vs.

State of Rajasthan

S.B.C.W.P. No. 99 of 2008

(Dinesh Maheshwari, J.)

03.03.2009

## ORDER

**Dinesh Maheshwari, J.**

1. The petitioner Smt. Vimla Vyas, having been elected as Member of the Municipal Board, Merta City and then as Chairperson of the said Municipal Board; but having been removed from the Office of Chairperson and as Member of the Board after a judicial enquiry and having also been debarred from contesting the elections for next six years, challenges such action of the State Government by way of this writ petition.

2. Briefly put, the background facts and aspects of the matter are that the petitioner Smt. Vimla Vyas, after being elected as a Member of the Municipal Board, Merta City, came to be elected to the office of the Chairperson of the said Municipal Board. The petitioner was, however, put under suspension by an order made by the State Government on 15-11-2006 (Annex. 1) in contemplation of enquiry under Section 63 of the Rajasthan Municipalities Act 1959 ('the Act of 1959'). Aggrieved of such suspension order, the petitioner preferred a writ petition to this Court, being CWP No. 6647/2006, wherein an interim was passed on 29-11-2006 (Annex. 3) staying the operation of the impugned order. Thereafter, the petitioner was served with a charge-sheet (Annex. 4) leveling the allegation that she failed to call for a requisite meeting and in the meeting as convened on 27-2-2006, failed to incorporate in the agenda items a representation made by certain councilors. It is the case of the petitioner that the enquiry pursuant to the said charge-sheet is still pending.

3. However, the State Government again placed the petitioner under suspension by the order dated 11-6-2007 (Annex. 5) with the observations that in view of the preliminary enquiry on other allegations, it was decided to put the matter to judicial enquiry, and

for the likelihood of interference with the enquiry proceedings, she was required to be placed under suspension.

4. It appears that the petitioner was served with another charge-sheet with 7 charges, essentially on the allegations of financial irregularities and causing substantial loss to the funds of the Board in the matters relating to : (1) purchase of road-lights; (2) purchase of timer-switches; (3) contract for maintenance of road-lights; (4) contract for erection of welcome boards, (5) purchase of garbage boxes; (6) purchase of iron tree-guards; and (7) publication Of various advertisements in newspapers.

5. So far the suspension order as passed by the State Government on 11-6-2007 was concerned, the same was put to challenge by the petitioner by way of another writ petition, being CWP No. 3729/2007, that came to be allowed on 17-8-2007 (Annex. 6). This Court disapproved the suspension of the petitioner, the respondents were directed to conclude the enquiry expeditiously, and the Government was also required to pass appropriate orders on the enquiry report expeditiously; and the entire process of enquiry including consideration of enquiry report and action thereon was to be completed within a period of four months. This Court said, -

"Accordingly, this petition for writ is allowed. The order impugned dated 11-6-2007 is quashed to the extent it relates to suspension of the petitioner from the office of Chairperson, Municipal Board, Merta City. Consequent thereto the petitioner stands restored as Chairperson of the Municipal Board, Merta City. The respondents as well as the inquiry officer are directed to conclude the inquiry expeditiously, as far as possible within a period of three months from today. The petitioner is directed to cooperate with the respondents and the inquiry officer for expeditious conclusion of the inquiry. In the event, the petitioner do not co-operate with the inquiry, the inquiry officer may record the reasons and proceed *ex parte* strictly in accordance with law and submit his report to the Government. The Government shall also pass appropriate order on the said report expeditiously. The entire process of inquiry including the consideration of inquiry report and action thereon is expected to be concluded within a period of four months from today."

6. The petitioner has pointed out that after the decision of this Court, she was asked to and did appear before the Enquiry Officer wherein the record was called and statements of three witnesses, Bhagwati Prasad, Member of the Municipal Board; Jassa Ram, Executive Officer of the Municipal Board; and Abdul Aziz Pathan, an Independent Member of the Municipal Board were recorded as P.W. 1, P.W. 2 and

P.W. 3 respectively. It is pointed out that in order to controvert the charges leveled, the petitioner got examined herself and further examined the witness Moti Lal as D.W. 2. The learned Enquiry Officer proceeded to record his findings on the charges leveled against the petitioner in the enquiry report dated 4-12-2007, a copy whereof has been placed on record as Annexure-10.

7. In view of the grounds urged and to be considered in this writ petition, dilatation on all the findings on the charges aforesaid does not appear necessary; and suffice is to notice that the Enquiry Officer found that the department had been able to substantiate charges Nos. 1 to 4 against the delinquent but had failed to establish charges Nos. 5 to 7.

8. It is the case of the petitioner that after conclusion of the enquiry and preparation of the enquiry report, she was not supplied with a copy of the enquiry report by the Enquiry Officer and in those circumstances, she submitted an application under the provisions of Right to Information Act while depositing a fees of Rs. 10/- under the receipt dated 7-12-2007 (Annex. 11). It is further the case of the petitioner that she neither received the copy of the enquiry report nor any notice from the Government seeking her explanation on the findings recorded by the Enquiry Officer; and directly an order came to be issued on 26-12-2007 (Annex. 12) removing her from the office of Chairperson, *Municipal Board, Merta City*. In fact, by the order dated 26-12-2007 (Annex. 12), the petitioner was not only removed from the office of the Chairperson but was also removed as a Member of the Municipal Board and was further declared disqualified to contest elections for next six years. The impugned order dated 26-12-2007 (Annex. 12) reads as under:-

(Vernacular matter omitted..... Ed.)

9. The petitioner has averred that in the aforesaid circumstances, she approached the office of the Joint Legal Remembrancer, Drafting and Enquiry Officer, Law Department, *Jaipur* again, seeking a copy of the enquiry report and then, a copy of the enquiry report was made available to her on 28-12-2007 upon payment of fees of Rs. 58/- under the receipt dated 28-12-2007 (Annex. 13). Noteworthy it is that the photo copy of the enquiry report (placed on the record of this writ petition as Annexure-10) was indeed certified to by a true copy only on 27-12-2007.

10. In continuity of the order dated 26-12-2007 (Annex. 12) removing the petitioner from the office of the Chairperson and as a Member of the said Municipal Board, the State Government proceeded to issue another order (Annex. 14) of the even date, i.e.

26-12-2007, in exercise of its powers under Section 69-A of the Act of 1959 directing the charge of the office of Chairperson to be held for a period of one month by Smt. Shakuntala wife of Navratan Mal, Member of the said Municipal Board from Ward No. 19.

11. Stating herself aggrieved of the charge-sheet (Annex. 4), of the findings recorded by the Enquiry Officer in the report (Annex. 10), and of the orders passed by the State Government on 26-12-2007 ((Annex. 12 and 14), removing her and appointing Smt. Shakuntala Singhvi as Officiating Chairperson, the petitioner filed this writ petition on 3-1-2008. It was essentially been contended in this writ petition that the impugned order as passed by the State Government removing the petitioner from the office remain highly arbitrary and illegal; that before taking any action on the report submitted by the Enquiry Officer, neither the copy of the enquiry report was supplied to the petitioner nor was she given the opportunity to make a representation against such report, that the Government failed to pass a speaking order after due application of mind on the enquiry report, that the findings and the conclusions as reached by the Enquiry Officer remain baseless where the relevant provisions of the Rules and the fact situation of the case have not been considered. However, in view of the limited submissions made during the course of arguments, the grounds as urged in relation to the merits of the charges and the findings thereupon are not being dilated in this order.

12. This writ petition was considered on 7-1 -2008; and a caveat having been entered by the Additional Advocate General, this Court directed a copy of the petition to be supplied and ordered the matter to be placed on 14-1 -2008. After a few adjournments, on 15-2-2008, an application (I.A. No. 1821/2008) was considered by this Court as made by the applicants Bhagwati Prasad Pareek and Shahid Akhtar seeking their impalement in this writ petition essentially on the grounds that they had been the complainants and the enquiry was held and the petitioner was removed from the office upon their complaint; and that the respondents may not bring all the facts before the Court. This Court expressed the opinion that the said applicants were not to be impleaded but could be allowed to intervene in the matter and the application was accordingly disposed of.

13. After a few more adjournment, when the matter came up before the Court on 24-4-2008, yet another application (IA No. 3988/2008) was considered wherein two applicants, Motilal Mali and Motiram Meghwal, said to be the Members of the said Municipal Board from Ward No. 4 and Ward No. 1 respectively sought impalement in this writ petition while again leveling the allegations that there had been serious

charges of misuse of public funds against the petitioner and that the applicants entertained an apprehension that due to pressure and approach, the officers-in-charge would not bring true and correct facts to the notice of the Court. The said application came to be rejected by this Court on 24-4-2008 while finding that the Members of the Municipal Board have no right to intermeddle. After a few further adjournments, the matter was considered on 12-11-2008 and this Court proceeded to admit this writ petition after hearing the counsel for the petitioner and the learned Additional Advocate General appearing for the respondents Nos. 1 to 3. However, the prayer for interim relief was declined particularly after noticing the fact that the impugned order was passed as back as on 26-12-2007 and there had not been in operation any interim order until then; but looking to the subject- matter, it was directed that the matter be placed for final hearing at orders stage after the respondent No. 4 was served and the Additional Advocate General was required to keep available before the Court the entire record relating to the enquiry proceedings against the petitioner at the time of final hearing.

14. Thereafter, another application (IA No. 15552/2008), as moved on 11-11- 2008, was dealt with by the office, and when placed for consideration on 15-1-2009, this Court directed that the same be kept pending to be heard at the time of final hearing of the writ petition. Thereafter, learned counsel for the parties were heard on 26-2-2009 on the merits of the writ petition and so also on the said application (IA No. 15552/2008).

15. After narrating the factual background, learned counsel Mr. P. S. Bhati appearing for the petitioner has essentially put forward the contentions that the impugned order dated 26-12-2007 removing the petitioner from the office remains entirely illegal and deserves to be quashed particularly for being contrary to the requirements of law and being in denial of adequate opportunity of hearing. Learned counsel elaborated on the submissions that by the decision of this Court as rendered in the case of *Rameshwari Devi v. State of Rajasthan*, <sup>1</sup>*Ram Niwas Saini v. State of Rajasthan*, <sup>2</sup> and the recent one in the case of *Mahendra Kumar v. State of Rajasthan* <sup>3</sup> the law is settled that in such matters, the copy of the enquiry report is mandatorily required to be supplied to the delinquent before passing of any order by the State Government; and the delinquent is required to be afforded an opportunity to make representation against such enquiry report. Learned counsel submitted that requirement of supplying a copy of the enquiry report is not only inbuilt in the scheme of the proceedings to be undertaken by the Enquiry Officer and the orders to be passed by the State

Government but remains settled as a mandatory requirement as per decisions of this Court and so also under the Notification dated 11-11-1959 as amended by the other Notification dated 30-9-2000 whereby the State Government has prescribed a Procedure for enquiry under Section 63(2) and (3) of the Act of 1959. Learned counsel particularly referred to the second paragraph of Clause (8) of the said Notification dated 11- 1-1959 to point out that not only the Enquiry Officer is required to give a reasoned and speaking order upon conclusion of the enquiry but is required to serve upon the delinquent Member/Councilor, a copy of the enquiry report simultaneously while sending it to the State Government.

16. Learned counsel further submitted with reference to the decisions of this Court in the case of *Ramesh Kumar Tibra v. State of Rajasthan*, <sup>4</sup> *Chimna Ram v. State of Rajasthan and others*, <sup>5</sup> and *Nathulal Jangid v. State of Rajasthan*, <sup>6</sup> that the order under Section 63(3) of the Act of 1959 has to be a reasoned and speaking order as the Government cannot pass the order of removal of elected representative in a mechanical manner.

17. Learned counsel contended that the impugned order dated 26-12-2007 (Annex. 12) being a totally non-speaking and unreasoned one; and having been passed without supplying a copy of the enquiry report to the petitioner remains illegal for being squarely contrary to the statutory requirements as contained in Section 63 of the Act of 1959, for being contrary to the requirements of the Notification issued by the State Government prescribing a procedure for such enquiry, and for being contrary to the principles of law enunciated and settled by this Court in repeated pronouncements.

18. Learned counsel, however, submitted that the petitioner has a strong case to contest the charges as leveled against her and so also the findings of the Enquiry Officer but then, the impugned order deserves to be quashed for the reasons aforesaid and thus, for the present purpose, the petitioner stands advised not to raise the issues relating to the charges and the findings of the Enquiry Officer thereupon.

19. The learned Additional Advocate General Mr. R. L. Jangid has contended that the submissions as made on behalf of the petitioner remain more of the matter of form rather than of substance; that there was no mandatory statutory requirement of supplying the copy of enquiry report particularly when the entire enquiry was conducted in the presence of the petitioner, that, in any case, the petitioner had indeed obtained a copy of the enquiry report by making an application and it cannot be said that any prejudice has been caused to her; that even if the copy of enquiry report was

supplied later, it does not affect the enquiry proceedings or the order of the Government. The learned Additional Advocate General further submitted that there was no such statutory requirement of passing a detailed reasoned order by the State Government; and more particularly when the Government agreed with the findings of the Enquiry Officer and passed the order only in conformity with such findings, no further detailed order was required to be passed. The learned Additional Advocate General urged that the petitioner has been found guilty on serious charges of misuse of public funds and is not entitled to continue in the office.

20. The learned counsel Mr. M. R. Singhvi appearing for the applicant Smt. Shankuntala Singhvi was also heard on the application for impalement (LA No. 15552/2008) as moved in the case. The learned counsel for the applicant referred to relief clause (iv) in this petition wherein the petitioner has sought quashing of the order dated 26-12-2007 (Annex. 14) as made in favor of the applicant whereby the applicant was nominated as the Chairperson of the Municipal Board and submitted that such a relief cannot be granted without hearing the applicant. The learned counsel emphasized that in view of the subject-matter of this litigation, the applicant has got a direct interest in the questions involved. Along with the application aforesaid, a resolution dated 24-1-2008 as adopted by the Members of the Municipal Board has also been placed on record as Annexure-A wherein, according to the applicant, majority of the Members have reposed confidence in her. Upon this Court expressing reservations that the dispute in the writ petition essentially seems to be between the petitioner and the State Government wherein and whereto the applicant does not appear to be a necessary or proper party particularly when the impugned order of removal of the petitioner is sought to be questioned for violation of mandatory requirements, the learned counsel for the applicant responded with the contentions that the applicant could definitely make submissions in relation to the writ petition and make out a case before the Court that the impugned orders call for no interference and that could be done by the applicant only on being permitted to join the writ petition and to file her reply. The learned counsel for the petitioner opposed the application so moved on behalf of the said applicant and submitted that the matter essentially relates to the petitioner and the State Government; that looking to the nature of dispute, even a complainant is not considered having a right to join the petition and so far the applicant is concerned, she was not even a complainant nor participated in the enquiry proceedings in any manner and, therefore, she has no *locus standi* whatsoever to join this litigation.

21. Submissions of the learned counsel for the parties have been given a thoughtful consideration and the record has been examined with reference to the law applicable.

22. Appropriate it shall be to deal at the first with the application (IA No. 15552/2008) as moved in this case on behalf of the applicant Smt. Shakuntala Singhvi. A comprehension of the fact situation of the case and the grounds urged on behalf of the petitioner makes it clear that the essential and substantial issue in this writ petition remains about the legality and validity of the order dated 26-12-2007 (Annex. 12) as passed by the State Government under Section 63(3) of the Act of 1959 removing the petitioner from the office of Chairperson and so also from the Membership of the Municipal Board. Merta City and debarring her from participating in the elections for next six years. The order aforesaid has been passed on the basis of the enquiry conducted against the petitioner wherein, after recording evidence, the learned Enquiry Officer made his report dated 4-12-2007 (Annex. 10).

23. Noticeable it is that per Section 69-A of the Act of 1959, whenever a Chairperson resigns or ceases to be so or is removed from the office or is placed under suspension, or his election, whether as a Member or as the Chairperson, is declared void, such Chairperson is required to hand over the charge of the office including all the papers and properties pertaining to such office in the prescribed manner to such Member as the State Government may direct; and such Member to whom charge is handed over, would hold such charge for not more than a period of one month or until taking over charge by the Chairperson whichever be the earlier. The order dated 26-12-2007 (Annex. 14) as passed by the State Government under Section 69-A(1)(iv)(a) and proviso thereto had been nothing but a consequential order that was passed in view of the principal order dated 26-12-2007 (Annex. 12) whereby the petitioner was removed from the office of Chairperson. Such an order was required to be made so as to adhere to the requirements of law that upon removal of the petitioner from the office of Chairperson, the charge was to be handed over to a Member as directed by the State Government. The applicant has otherwise no direct lis against the petitioner nor the order dated 26-12-2007 (Annex. 14) came to be issued because of any vested right of the applicant or because of pronouncement on any of her rights vis-a-vis, or corresponding to, the rights of the petitioner.

24. The charge of the office of the Chairperson of the said Municipal Board came in the hands of the applicant Smt. Shakuntala Singhvi for the fortuitous circumstances that the State Government chose to remove the petitioner from such office and then, chose to nominate the applicant as the person to hold such charge as per the

requirements of Section 69-A of the Act of 1959. There was no legal right otherwise existing in the applicants to hold the charge of the office of the Chairperson of the said Municipal Board nor any additional right came vesting in her because of being nominated by the State Government to hold the charge. The said applicant, not having any direct right so as to litigate against the petitioner so far subject-matter of this writ petition is concerned cannot be acceded a right to join this writ petition.

25. The prayer for quashing of the order dated 26-12-2007 (Annex. 14), whereby the applicant was nominated to hold the charge, is only a consequential relief that seems to have been incorporated so as to complete the frame of the petition and else, this Court is clearly of opinion that even if the said order Annexure-4 is not challenged nor anything is pronounced thereupon, the petitioner is very much entitled yet to question the legality of the order Annexure-12 as passed against her.

26. The basic and the core questions in this writ petition are related to the validity and legality of the order of removal of the petitioner; and that is essentially a matter between the petitioner and the State Government. The presence of the applicant does not appear necessary for effectual and complete adjudication of the questions involved in this writ petition and she cannot be said to be a necessary party at all. As pointed out above, the applicant came to be handed over the charge only for the reason that the petitioner was ordered to be removed from the office and the applicant was nominated by the State Government to be the person to whom the charge was to be handed over. However, for these reasons and circumstances, the applicant does not become even a proper party in this writ petition because the matter directly and substantially in issue is to be determined only with reference to the submissions of the petitioner and the State Government.

27. As noticed above, even on the application as earlier made in this writ petition by the complainants, this Court did not find them necessary parties but by way of indulgence permitted them to intervene. However, no submissions have been made on their behalf. Thereafter, when other Members of the Municipal Board came forward to join this writ petition, this Court specifically declined their application by the order dated 24-4-2008. The position of the applicant is no better than a Member of the Municipal Board concerned and she could least be held having a direct interest in the subject matter of this writ petition so as to be joined as a party herein.

28. A suggestion has been made in the application about the resolution adopted by the majority of the Members of the Municipal Board on 24-1-2008 reposing confidence in

the applicant. This Court is unable to find such resolution investing the applicant with any additional right so as to join this litigation. The order as made by the State Government for handing over the charge to the applicant (Annex. 14) was itself consequential to the removal of the petitioner and such resolution, even if adopted within such period of one month when the applicant was holding the charge, the same cannot be taken to be that of election of the applicant as chairperson. All such proceedings would obviously remain subject to the question as to whether the impugned order dated 26-12-2007 (Annex 12) as passed against the petitioner could at all be maintained.

29. Having regard to the facts and circumstances of the case, this Court does not find a wee bit of justification that the applicant be allowed to join this writ petition or even to intervene in the matter. The application (IA No. 15552/2008) stands rejected.

30. So far the merits of the case are concerned; this Court is clearly of opinion that the impugned order dated 26-12-2007 (Annex. 12) cannot be sustained.

31. The relevant portions of Section 63 of the Act of 1959 read as under:-

"63. Removal of Members (1) The State Government may, subject to the provisions of sub-section (2) and (3), remove a member of a board on any of the following grounds, namely

(a) To (c) .....

(d) That he has

(i) Been guilty of misconduct in the discharge of his duties, or

(ii) Been guilty of any disgraceful conduct, or

(iii) Become incapable of performing his duties as a member, or

(iv) 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.

(1-A) .....

(2) 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 inquiry and findings by judicial officer of the rank of a District Judge to be appointed by the State Government for the purpose.

(3) The Judicial Officer so appointed shall proceed to inquiry into the Charge in the prescribed manner, 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 alongwith such findings to State Government, which shall thereupon pass final orders or order for re-enquiry by any such other officer as may be deemed proper.

(4) and (5)....."

32. For the purpose of the grounds urged in this writ petition, it may at once be pointed out that for true and lawful proceedings under Section 63 of the Act of 1959 and validity of an order of removal, the provision itself is clear that such removal, particularly in relation to the charges of misconduct or abuse cannot be brought about without sending the matter for inquiry by a Judicial Officer and without affording an opportunity of explanation to the member concerned. It inheres in the scheme of the said provisions that not only a copy of enquiry report is required to be supplied to the member concerned, she has further to be afforded an opportunity to meet with such enquiry report and then, as a necessary corollary, the order to be passed by the State Government under sub-section (3) of Section 63 has to be a reasoned and speaking order after the State Government has applied its mind to the enquiry report and to the submissions of the delinquent. This aspect of the matter has been repeatedly clarified and law has been laid down in explicit terms by this Court in consistent decisions as referred by learned counsel for the petitioner. In the case Rameshwari Devi ( AIR 1999 Rajasthan 47) (supra), this Court, while emphasizing on the need of supplying the copy of enquiry report said :

"20. If the submission of Mr. Jasmatiya is accepted that there is no need to furnish the enquiry report to the delinquent official and give her opportunity to explain, it would make the proviso to Section 63(1)(d) redundant as it provides for passing an order after the Member concerned has been afforded an opportunity of explanation."

33. Further, this Court emphasized the need of passing of a reasoned order by the State Government and rather deprecated the practice of passing of mechanical order in strong terms thus:

"24. In the instant case, the respondents have not passed a speaking/reasoned order. It is astonishing to note and what can be more disgraceful for the State that in a democratic setup it removed the duly elected official of the Municipal Board by issuing the order on a cyclostyled paper by filling the blanks as is evident from the impugned order dated 7-10-98 (Annexure P-18). The submissions made by Mr. Jasmatia that the State Government can neither apply its mind nor pass a reasoned order as in view of the provisions of sub-section (3) of Section 63, which provides that after conclusion of enquiry, the Enquiry Officer shall send the record to the State Government and the State Government shall pass the orders in "conformity of those findings" for the reason that if the State Government is not required to apply its mind and pass the speaking/reasoned order, what was the occasion for sending the record along with the enquiry report. The Enquiry Officer would have been authorized to pass the order of removal and disqualification or could have simply communicated the findings. The statutory provisions have to be interpreted in view of the purposive construction. Moreover in passing the reasoned and speaking order, after application of mind and application of principles of natural justice are in-built and mandatorily required to be complied with to avoid any kind of arbitrariness and for compelling the authorities to have strict adherence to the procedural fairness.

(Underlining supplied for emphasis)

34. While disapproving a non-reasoned and mechanical order passed by the State Government under Section 63 of the Act of 1959, in the case of Ramesh Kumar Tibra (*supra*), this Court again said.

"From perusal of the provisions of sub-section (3) of Section 63 of the Act of 1959, it is crystal clear that the State Government is required to apply its mind on the basis of available record and the inquiry report submitted by the inquiry Officer before passing final order. It is wrong to say that the State Government is having no power but to pass an order in conformity with the findings given by the Inquiry Officer. This Court while examining the powers of the State Government under sub-section (3) of the Section 63 of the Act of 1959, in the case of *Chimna Ram v. State of Rajasthan. Reported* <sup>7</sup> *in* observed as under :-

"The State Government has not applied its mind at all to the inquiry report submitted by the Judicial Officer. The statutory provision of Section 63 of the Act imposes an obligation on the State Government to consider the report

thoroughly and not to pass an order mechanically for the reason that report may be based on no evidence or the Enquiry Officer might have made the report in flagrant violation of the principles of natural justice or statutory provision."

13. In view of above there is no doubt that the Government is required to pass a reasoned order while exercising the powers under sub-section (3) of Section 63 of the Act of 1959. It is also well-settled that the proceedings under Section 63 are quasi-judicial by nature, therefore, an order with reasons is essential."

(Underlining supplied for emphasis)

35. In *Ramesh Kumar (supra)*, this Court also relied on *Rameshwari Devi (supra)* and said.-

"16. This Court had an occasion to deal with the argument of the counsel for the respondents that the State Government is required to pass an order in conformity with the findings given by the Inquiry Officer, therefore, the State Government is not required to give reasons, in the case of *Rameshwari Devi v. State of Rajasthan, reported* <sup>8</sup> in This Court held that the passing of speaking and reasoned order after application of mind and application of principles of natural justice are inbuilt."

36. Recently, in the case of *Mahendra Kumar (supra)* this Court has again, while following the decision in *Rameshwari Devi (supra)*, disapproved such an order passed without supplying the copy of enquiry report and said.-

"In this case also, the contention of the learned counsel for the respondents that what prejudice has been caused is not explained by the petitioner cannot be a ground for denial of an opportunity of hearing by the competent authority before passing the order for disqualifying the petitioner. It is the duty of the competent authority to pass order after providing opportunity of hearing, but in this case, although the Enquiry Officer has provided opportunity to prove the innocence but, before passing the order by the competent authority, at least, the incumbent is required to be heard. But in this case, without supplying the copy of the enquiry report, straight away, the order impugned has been passed which is not proper. More so, it is against the principles of natural justice. The petitioner is only claiming opportunity of being heard before passing of the adverse order against him which cannot be denied because the order impugned casts stigma upon the petitioner's career. Therefore, in my opinion, although the facts of *Rameshwari Devi's case (AIR 1999 Rajasthan 47) (supra)* are slightly different than the present case, but the fact remains that it was held in that case after

considering the judgments of the Hon'ble Apex Court that before passing the order against the incumbent on the basis of enquiry report, at least, he is required to be given opportunity of hearing. Therefore, while accepting the adjudication made in Rameshwari Devi's case, impugned order is held contrary to law having not been passed after providing copy of the enquiry report and giving opportunity of hearing to the incumbent."

(Underlining supplied for emphasis)

37. Learned counsel for the petitioner has referred to the relevant clause No. (8) of the Notification dated 11-11-1959 as amended by the Notification dated 30-9-2000 that reads as under :-

"8. The Judicial Officer after completing the enquiry shall send the record along with his findings to the State Government for passing necessary orders.

The Judicial Enquiry Officer shall give a reasoned and speaking report and record his finding on each matter embodied in the statement of charges. The Judicial Enquiry Officer upon conclusion of enquiry shall serve upon the delinquent member/Councilor copy of enquiry report simultaneously while it is sent to the State Government."

(Underlining supplied for emphasis)

38. The statutory requirement is clear that removal of a member on the grounds as contained in clause (d) of sub-section (1) of Section 63 could only be ordered after due inquiry and after the member concerned has been afforded opportunity of explanation. The statutory requirement is also clear that after the Enquiry Officer records his finding on each relevant matter and sends the record along with findings, the State Government is to pass thereupon final order or the order for re-enquiry and it inheres in such requirements that it has to the objective consideration of the matter by the State Government and that could happen only when the delinquent is permitted to make submissions in relation to the enquiry report and a speaking order is made thereafter.

Then, the procedure of enquiry as laid down by the State Government itself in clear terms requires that upon conclusion of the inquiry, the Enquiry Officer has to serve upon the delinquent a copy of the enquiry report simultaneously while sending it to the State Government. Moreover, for repeated pronouncements of this Court in no uncertain terms, supplying of copy of the enquiry report to the delinquent in these matters before passing of the final order by the State Government is a requirement

unexceptionable. In the present case, the State Government chose to pass the impugned order Annexure-12 against the petitioner on 26-12-2007 despite the fact that the copy of the enquiry report had not been supplied to the petitioner.

The petitioner has categorically stated in the writ petition that the copy of the enquiry report was not supplied by the Enquiry Officer and she could obtain a copy thereof only on 28-12-2007. The respondents could dare not deny such averments and rather submitted that the procedure as per law was followed; and that the petitioner herself admittedly obtained the copy of the enquiry report after making payment of copying charges. The submissions as made on behalf of the respondents that the petitioner obtained a copy of the enquiry report stand directly at conflict with the requirements of law and even contrary to the law explained by this Court in no uncertain terms in repeated pronouncements. The copy of the enquiry report was required to be supplied to the petitioner while the same was forwarded to the State Government.

39. It is noticed that the enquiry report was drawn on 4-12-2007 and the Government proceeded to pass the impugned order on 28-12-2007. It is not the case of the respondents that before passing of the impugned order, copy of the enquiry report was supplied to the petitioner. The State Government has never bothered to extend an opportunity to the petitioner to make submissions in relation to the enquiry report before drawing its order dated 26-12-2007. Merely because the petitioner applied for and obtained the copy of the enquiry report on 28-12-2007, the fundamental flaw in the order dated 26-12-2007 is not wiped out and rather, on the admitted fact situation, the impugned order could only be set aside.

The learned Additional Advocate General submitted that the statute does not require passing of a reasoned order by the State Government while agreeing with the enquiry report and while passing an order in conformity thereof. Such an argument has repeatedly been made before this Court and negatived in the earlier decisions as referred hereinabove while this Court clearly stated the law that the State Government upon receiving a copy of the enquiry report has to pass a reasoned and speaking order. The submissions as made on behalf of the respondents despite consistent decisions of this Court to the contrary, are difficult to be appreciated. It is needless to reiterate that passing of mechanical order of the present nature has been pronounced by this Court as rather disgraceful in Rameshwari Devi's case ( AIR 1999 Rajasthan 47) (supra). It beats imagination that a particular illegality that has been held to be rather of disgrace to the democratic system has yet been repeated by the State Government in this case. The submission that for passing an order in conformity with the finding of the Enquiry

Officer, the Government was not required to pass a speaking order remains baseless and is required to be rejected.

Noteworthy it is that in the scheme of the provisions of Section 63 of the Act of 1959, the Enquiry Officer merely makes an inquiry on behalf of the State Government and sends his findings to the State Government. It inheres in the said provision that after the report is received by the State Government, an opportunity is given to the delinquent to contest the findings as recorded by the Enquiry Officer and it is ultimately for the State Government to pass a reasoned speaking order in the matter. Passing of reasoned speaking order is not a matter of form but is directly of substance for the purpose of Section 63(3) of the Act of 1959. It cannot be forgotten that such an order has the serious consequences of removing an elected representative from the office. Moreover, the order of the present nature, debarring the petitioner from participating in the elections for next six years, has a direct effect on all her democratic rights; and such an order cannot be passed without due and complete adherence to the requirements of law and following the fundamental principles of natural justice.

40. It was definitely required of the State Government to have ensured that a copy of the enquiry report was supplied to the petitioner; it was further required of the State Government to have extended adequate opportunity to the petitioner of making submissions against the findings of the Enquiry Officer; and it was yet further required of the State Government to have thereafter passed a considered and reasoned speaking order. None of these requirements having been met, the impugned order could only be quashed and set aside.

41. It has been noticed that for about a decade, this Court has repeatedly passed several of the orders in no uncertain terms that supplying of the enquiry report of the delinquent and passing of reasoned speaking order in such matters is necessary. The State Government having yet chosen to ignore its own Notification laying down the procedure; and having chosen to ignore the repeated pronouncements of this Court, and having passed an entirely illegal order dated 26-12-2007 that had resulted in removal of the petitioner, an elected representative, this Court is clearly of opinion that the writ petition deserves to be allowed with costs to the petitioner.

42. However, having regard to the overall facts and circumstances, it need to make clear that this Court has otherwise not dealt with the merits of the case relating to the charges against the petitioner and otherwise to leave the matter open for appropriate

proceedings in accordance with law subject to the observations herein.

43. In view of the aforesaid, this writ petition succeeds and is allowed to the extent indicated above; the impugned order dated 26-12-2007 (Annex. 12) is quashed and set aside. However, if at all the State Government proposes to pass an order against the petitioner in terms of Section 63(3) of the Act of 1959, it shall notify its intention of doing so by serving a specific notice on the petitioner within 15 days from today. If any such notice is served, it shall be permissible for the petitioner to make submission/representation in relation to the enquiry report within 30 days of the receipt of the notice. There shall now be no need to supply a copy of the enquiry report as the same has been obtained by the petitioner. After receiving the representation of the petitioner, it shall be open for the State Government to pass appropriate order but strictly in accordance with law.

44. To avoid any ambiguity, it is also clarified that with quashing of the order dated 26-12-2007 (Annex. 12), the position of the petitioner shall stand restored as the Member of the Municipal Board, Merta City and so also as the Chairperson of the said Municipal Board.

45. The petitioner shall also be entitled to costs of this writ petition quantified at Rs. 11,000/- (Eleven thousand).

Petition allowed.

Cases Referred.

1. AIR 1999 Raj 47
2. 2000 (2) RLR 10: (AIR 2000 Raj 318)
3. S. B. Civil Writ Petition No. 6067/2008, decided on 4-2-2009
4. 2005 (3) WLC (Raj) 644
5. 2000 (3) WLC (Raj) 619: (AIR 2000 Raj 371)
6. 2000 (3) RLR 66: (AIR 2001 Raj 119)
7. 2000 (3) WLC 619 (Raj): (AIR 2000 Raj 371)
8. AIR 1999 Raj 47