

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
WP No. 34618 of 2025  
(NEHA JAIN Vs THE STATE OF MADHYA PRADESH AND OTHERS )**

**Dated : 03-09-2025**

Shri Anshuman Singh - Advocate with Shri Aditya Awasthi - Advocate for the petitioner.

Shri Swapnil Ganguly - Deputy Advocate General for the respondents/State.

Shri S.R. Tamrakar - Senior Advocate with Shri Raman Choubey, Shri Ankit Chopra - Advocates for the proposed intervenor.

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Issue notice to the remaining respondents on payment of process fee within seven working days by RAD mode, failing which this petition shall stand dismissed without further reference to the Court.

Heard on the question of interim relief.

Counsel appearing for the petitioner has drawn attention of this Court to the impugned order dated 25.08.2025 (Annexure P-25) and pointed out that there were four charges levied against the petitioner.

Charge No.1 is with regard to the appointment of 13 daily rated employees on muster roll without approval from the competent authority from April, 2023 to December, 2023 causing loss to the public exchequer.

Charge No.2 is regarding non-confirmation of the President in Council thus showing less interest in the working causing financial as well as administrative loss to the Nagar Palika Parishad as President-in-Council could not be formed.

Charge No.3 was with respect to financial irregularities committed by the petitioner but the said charge was not found proved during the preliminary enquiry.

Charge No.4 is with respect to purchase of Air Conditioner. It is alleged that there was a manipulation in the resolution passed by the President-in-Council. The resolution was for purchase of 5 ACs. The same was manipulated to purchase of 8 ACs. 5 ACs were purchased at the rate of Rs.99,000/- on 07.07.2023 and thereafter 2 ACs were purchased at

the rate of Rs.79,999/- on 27.07.2023, thus causing financial loss to the Institution.

It is argued by the counsel for the petitioner that three charges : Charge No.1, Charge No.2 and Charge No.4 were said to be proved against the petitioner.

With respect to Charge No.1 it is pointed out that the appointment of 13 candidates were with the permission of the President-in-Council, therefore, the petitioner cannot be solely held responsible for the same. Second charge is with respect to non-constitution of President-in-Council. Counsel appearing for the petitioner has drawn attention of this Court to various letters pointing out the fact that the Members are not cooperating with him for smooth functioning in the Nagar Parishad. Time and again, he has written to the authorities, however, no action was taken by them, therefore, the petitioner cannot be held responsible for the same.

With respect to Charge No.4, it is pointed out that enquiry report reflects that Charge No.4 was found proved against the petitioner and there is an apprehension that the petitioner had committed manipulation of funds. It is argued that all the 7 ACs were purchased from the Government portal i.e. GEM portal. There is no possibility of doing any financial irregularity while purchasing through GEM portal. It is argued that for the purpose of removal of the petitioner from the post of President, Municipal Council, the authorities have invoked the provisions of Section 41-A of the Municipalities Act. The President cannot be removed in the manner in which the respondents have acted and invoked provisions of Section 41-A of the Municipalities Act. He has placed reliance upon the judgment passed by this Court in the case of **Ajay Kumar Shukla Vs. State of M.P. and others** reported in 2019 (1) MPLJ 426, wherein it is considered that Section 41-A does not give arbitrary, unbridled and discretionary power to the State to remove the elected President on trumped up charges which are not adequately proved or unreasonably accepted. The State is required to form an opinion in respect of the misconduct and incapacity objectively. Since the exercise of power under Section 41-A has serious consequences, therefore, it can be invoked only for a very strong and weighty reasons and the material on the basis of which such action taken must justify such a serious action. However, Section 41-A of the Act is an extraordinary power which can be invoked sparingly. He has also relied upon the judgment passed by the

Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in (2012) 4 SCC 407 wherein it was considered that the misconduct should be construed with reference to the subject matter, context, scope and object of the statute. The Court should examine whether misconduct has been detrimental to public interest. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. Failure on part of the President of Municipal Council to call general body meeting inadvertently, unintentionally and in ignorance of statutory requirement, without any corresponding loss to the Municipal Council would not amount to any misconduct. The removal of duly elected President of the Municipal Council by the competent authority unceremoniously in a casual manner without strictly adhering to the safeguards provided under the statute was found to be illegal. The Hon'ble Supreme Court further considered that under the democratic set up of the country which is basic feature of the Constitution, the Municipal bodies having been conferred constitutional status by the Constitution are constitutional institutions, therefore, removal of a President in a casual manner without following the procedure prescribed under law was found to be unsustainable. The Hon'ble Supreme Court while disposing of the matter has further observed that elected officials stand on the higher pedestals than Government servants. Their removal has serious repercussions as it casts stigma and takes away their valuable rights as well as rights of people of their respective constituencies to be represented by them. Hence, they can be removed only in exceptional circumstances, by following stringent procedures and standard of proof. He has further drawn attention of this Court to the judgment passed by this Court in the case of **Preeti Swapnil Agarwal Vs. State of M.P. and others** reported in ILR (2020) MP 364 and also to the judgment passed by the Hon'ble Supreme Court in the case of **Sharda Kailash Mittal Vs. State of M.P. and others** reported in (2010) 2 SCC 319, wherein the Hon'ble Supreme Court has considered the similar aspect of the matter dealing with Section 41-A of the Municipalities Act, 1961.

It is further argued that if the aforesaid principles are applied to the facts and circumstances of the present case, first of all, there is no allegation of financial irregularities being committed by the petitioner. Charge No.4 dealing with purchase of Air Conditioners.

All 7 ACs were purchased from GEM portal and their entireties were made in the purchase log book. Relevant extract of the log book is filed before this Court which shows that all 7 Air Conditioners were purchased from the Government portal. Thus, there cannot be any possibility of financial embezzlement by the petitioner. Even otherwise, the enquiry officer has found it to be suspicious. However, no finding holding the petitioner guilty of the same could be given as only a suspicion is drawn by the enquiry officer. The suspicion however strong it may be, cannot take place of strict proof and under such circumstances, the removal of the petitioner on the ground of committing financial irregularities is unsustainable.

Counsel appearing for the petitioner has argued that while conducting a preliminary enquiry into the matter, no opportunity of hearing was granted to the petitioner. It is only after the conclusion of the preliminary enquiry, a show cause notice was issued to the petitioner asking him to file response to all the four charges. Therefore, principles of natural justice and fair play are not being followed in the matter. The authorities considered the reply of the petitioner and has held that the Charges No.1, 2 and 4 are found to be proved against the petitioner. No detailed enquiry was carried out in the matter by the authorities. Therefore, he has prayed for grant of interim relief and staying the operation of the impugned order dated 25.08.2025 (Annexure P-25).

Learned Deputy Advocate General submits that he is arguing only for opposing the interim relief in the matter. He may be permitted to file a detailed reply to the writ petition.

Learned Deputy Advocate General appearing for the State has vehemently opposed the contentions and pointed out that grant of interim relief to the petitioner by staying the effect and operation of the order impugned will amount to grant of final relief to the petitioner which is not permissible. The preliminary enquiry was conducted against the petitioner in which it was found that the allegations levelled against the petitioner were proved, therefore, notice was issued to the petitioner to which she has duly filed her reply and after considering the reply filed by the petitioner and after granting her opportunity of hearing, the enquiry officer found that the Charges No.1, 2 and 4 are found to be proved against the petitioner. He has heavily argued with respect to Charge No.4 i.e. purchase of

Air Conditioner and has pointed out that there was only recommendation for purchase of 5 Air Conditioners, however, the documents were manipulated and purchase of 5 Air Conditioners were converted into 8 and only 7 Air Conditioners were purchased, which cannot be explained by the petitioner. Apart from it, physical inspection was carried out by the authorities wherein it was found that some of the purchased ACs were not even available. The log book entries were also seen and there were no entries found regarding purchase of the said Air Conditioners. However, he does not dispute the fact that all the 7 Air Conditioners were purchased from Government portal i.e. GEM portal, therefore, the allegation of financial irregularities were found proved against the petitioner. Therefore, provisions of Section 41-A of Municipalities Act, has rightly been invoked. It is further pointed out that after removal of the petitioner as a stop gap arrangement, another incumbent has been granted charge to perform duties. Therefore, now in such circumstances, interim relief cannot be granted to the petitioner. He has produced the original records pertaining to the enquiry conducted against the petitioner. He has also argued that the Division Bench of this Court in the case of **Nagar Palika Parishad Dabra Vs. Smt. Satyaprakashshi Parsedia and another** (Writ Appeal No.261/2017) decided on 26.05.2017 has dealt with the proposition and has held that "the effect of staying the operation of the order of removal is that the person who was found to be unfit to hold the elective office for having committed misconduct involving financial irregularities shall be reinstated and allowed to occupy the same office, misuse of which resulted in removal. The said scenario which may arise owing to the impugned interim order may not be desirable in public interest." Therefore, the Division Bench of this Court has refused to grant any interim relief to the petitioner. If the aforesaid principles are applied to the facts and circumstances of the present case, no interim relief can be granted to the petitioner. He has also relied upon the final judgment passed in the case of **Smt. Satyaprakashshi Parsedia Vs. State of M.P. and another** (Writ Petition No.2943/2017) decided on 06.07.2018 and has argued that the President of Municipal Council or Head of any Local Self Body cannot appoint any employee in the Council circumventing the procedure and rules provided for appointments. Such appointments are anti thesis to rule of law. Therefore, on both counts as the charges levied to the aforesaid

aspect were found proved against the petitioner, no case for grant of interim relief is made out.

Learned counsel appearing for the intervenor submits that he has been granted the charge of performing duties of the President of the Municipal Council till the new President is appointed, therefore, now interim relief cannot be extended.

The application for intervention will be considered at the time of final arguments.

Heard the learned counsel for the parties on the question of interim relief.

After hearing the arguments of the parties as well as the fact and going through the settled legal proposition of law passed by the Hon'ble Supreme Court in the aforesaid cases, it is clear that the petitioner who is the President of Nagar Palika Parishad, Deori District Sagar cannot be removed in a casual manner. The charges levied against the petitioner should be proved to its guilt in strict sense. The enquiry report only reflects that the charges of financial irregularities embezzlement committed by the petitioner are found to be suspicious. It is not found to be proved by the enquiry officer. The enquiry officer has pointed out that purchase of Air Conditioners is found to be suspicion. Therefore, how strong the suspicion may be, it cannot take place of proof. Even otherwise, the purchase of 7 Air Conditioners were made from the GEM portal for which the purchase log book has been produced by the petitioner showing entries regarding purchase of 7 Air Conditioners on two different dates. 5 ACs on one occasion and 2 ACs on other occasion. Therefore, it cannot be said that there was no purchase of 7 Air Conditioners.

As far as Charge No.1 the appointment of 13 muster roll employees by the President, i.e. the petitioner, the same was after approval of the President-in-Council. Therefore, petitioner alone cannot be held responsible for this. Considering the proposition made in the judgment passed by the Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir (supra)** as well as by the High Court in the case of **Ajay Kumar Shukla (supra)**, coupled with the fact that the allegation of financial irregularities was not found to be fully proved and it was found to be suspicious, therefore, this Court finds it a fit case for grant of interim relief to the petitioner.

Under these circumstances, the effect and operation of the order impugned dated

25.08.2025 (Annexure P-25) is stayed, till the next date of hearing.

The respondents are directed to permit the petitioner to work as President of Municipal Council, Deori, District Sagar till the next date of hearing.

State counsel is granted four weeks' time to file a detailed reply to the writ petition.

List the matter after four weeks for consideration.

Certified copy as per rules.

**(VISHAL MISHRA)**  
**JUDGE**

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