



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VISHAL MISHRA**

ON THE 20th OF JANUARY, 2026

WRIT PETITION No.34618 OF 2025

NEHA JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

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

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

Dr. Preeti Pathak Mishra – Advocate for the respondents No.4 and 6.

Shri Manikant Sharma – Advocate for the respondent No.5.

Shri Sanjay Ram Tamrakar – Senior Advocate with Shri Raman Choubey Advocate for the intervenor.

ORDER

This petition has been filed assailing the order dated 25.08.2025 passed by the respondent No.2 under Section 41-A of the M.P. Municipalities Act, 1961, whereby the petitioner has been arbitrarily removed from the post of President.

2. It is the case of the petitioner that the petitioner is the duly elected President of the Municipal Council, Deori, District Sagar. She has consistently been committed to work for the welfare of the public and the



betterment of the Municipal Council, Deori. Certain corporators of the municipality have persistently created obstructions in the functioning of the municipality with the intention of preventing her from discharging her duties. Such obstruction has been carried out in connivance with the respondent No.5, the sitting MLA of the Deori, Legislative Assembly. The Councillors went to draw a motion of no confidence against the petitioner. The Councillors have previously made attempt to harass the petitioner and obstruct the functioning of the Municipal Council. In pursuance to the no confidence motion moved by the Councillors an order dated 22.08.2024 was issued by the Additional Collector, District Sagar to all the Ward Councillors in accordance with Section 43-A of the M.P. Municipalities Act, 1961 and the meeting was proposed to be held on 04.09.2024 for voting on the motion of no confidence against the petitioner and in the meanwhile, an ordinance dated 27.08.2024 was issued by the Hon'ble Governor of the State of Madhya Pradesh whereby Section 43-A of the Municipalities Act, 1961 was amended, by which the minimum period for moving a motion of no confidence against the President after assuming office was extended from two years to three years. In pursuance to the amendment, the proposal sent for no confidence motion was recalled by the Additional Collector vide order dated 23.08.2024. One Sarita Jain who was Councillor of Ward No.11 approached this Court challenging the validity of the order dated 23.08.2024 in Writ Petition No.26077/2024 and vide order dated 09.09.2024, the petition was dismissed in the light of the order passed in Writ Petition No.25382/2024 decided on 06.09.2024 in which the issue has already been resolved. It was held by the Court that the ordinance



dated 27.08.2024 has retrospective effect. Thereafter, the petitioner continued to work on the post of President of the Council. The respondent No.4 issued notices for the special sessions of President-in-Council on 11.03.2024, 15.03.2024, 13.09.2024 and 21.11.2024 but the Councillors continuously refrained from accepting the notice of President-in-Council and tried to hinder the work of the Municipality. The letter dated 19.09.2024 issued by the respondent No.3 to the petitioner points out that five out of seven Councillors have refused to accept the position in PIC. This goes to show that they unnecessarily want to harass the petitioner. The Councillors refused to cooperate in the functioning of the Council as well as the General Body. Being aggrieved by the misconduct and non cooperation of the Council, the petitioner made a representation to the respondent No.3 pointing out misconduct and malicious act of the Councillors and made a special request to remove the Councillors under Section 41 of the M.P. Municipalities Act, 1961. However, no action was taken by the respondent No.3 which resulted in non-functioning of the Council. It is argued that in Rule 13 of the M.P. Municipalities (Procedure for Conduct of Business) Rules, 2005, it is specifically provided that any Councilor who disobeys the instructions of the Presiding Officer and causes hindrance in the conduct of business is liable for action under Section 41 of the M.P. Municipalities Act, 1961. Thereafter, the petitioner approached this Court by filing a Writ Petition No.1092/2025 (Neha Jain Vs. State of M.P. and Others) wherein notices were issued on 06.02.2025 and on 12.03.2025, the respondents sought time to file reply in the matter. However, no reply was filed till date. On one hand, the Councillors have



refused to participate in the President-In-Council meetings or to cooperate in passing any municipal bills and on the other hand in collusion with the respondent No.5 had made representations to the In-charge CMO on 07.05.2025 seeking organization of special session of the Council for the purpose of renaming Deori constituency to “Devpuri”. On 02.05.2025, by which Shri Manish Parte who was transferred as CMO of council, the respondent No.6 continued to exercise administrative authority without the consent and knowledge of the petitioner and convened a special session in absence of the petitioner and passed a resolution for changing the name of Deori to Devpuri vide resolution dated 14.05.2025. The petitioner was served with a notice dated 15.05.2025 issued under Section 41-A of the Municipalities Act, 1961 by the respondent No.2 for removal from the post. It is argued that powers under Section 41-A of the Act of 1961 are of extraordinary and exceptional nature and can be exercised sparingly in the rarest of rare circumstances. By show cause notice four charges were levelled against the petitioner. **First**, regarding role played by the petitioner in irregular appointments and unjustified payments made to the muster roll employees. **Second**, non-formation of the President-in-Council which has adversely affected the financial and administrative functioning of the Municipal Council which amounts to violation of Section 70 of the M.P. Municipalities Act, 1961. **Third**, in collusion with the Chief Municipal Officer has violated the prescribed procurement process of the Municipal Council for purchase of Articles and **fourth**, regarding discrepancies in procurement of Air Conditioners to be installed in the Sahitya Bhawan as well in the Municipality Office causing discrepancy of Rs.2,06,550/-.



3. The petitioner submitted a detailed and comprehensive reply to the show cause notice denying all the allegations and furnished proper explanation to demonstrate that none of the charges stand proved. Every charge levied against the petitioner has been dealt with by the petitioner and clarified in the reply. It is further alleged that looking to the reply submitted by the petitioner no case is made out for invoking drastic provisions of Section 41-A of the Municipalities Act, 1961. Although Shri Parte was transferred to the Municipal Council Deori as Chief Municipal Officer and joined services on 13.05.2025 but he went on leave and did not return to the office for a long time and during this period the in-charge that is respondent No.5 continued to discharge her duties. The petitioner has filed a representation dated 10.06.2025 before the District Collector seeking refrainment of respondent No.5 from illegal discharge of duties. The petitioner made a complaint to the Joint Director, Urban Administration Department, Sagar Division and to the Commissioner, Urban Administration Department requesting for placing a regular Chief Municipal Officer in the Municipal Council, Deori. The petitioner was summoned for physical hearing before the State Government on 06.08.2025. The petitioner not only appeared but answered to each and every allegations levied against her and submitted a detailed written reply to the charges but without considering the reply submitted by the petitioner in a pre-determined and with bias mindset, the respondent No.2 has proceeded to pass the order dated 28.05.2025 directing for removal of the petitioner from the post of elected President which is the order impugned in the writ petition.



4. Counsel appearing for the petitioner has filed an application being I.A.No.16928/2025 and brought on record the purchase registration regarding Air Conditioners through GEM portal and submits that the Air Conditioners were rightly purchased by the petitioner through a Government dealers.

5. It is argued that the provisions of Section 41-A can be invoked on formation of an opinion that continuance of such office bearer is not desirable in public interest or in the interest of the Council or he or she is incapable of performing his duties or is working against the provisions of the Act or any Rules made thereunder. The misconduct should be of such magnitude as to make their continued presence undesirable in the interest of the council or in public interest. The action in terms of Section 41-A of the Municipalities Act is to be taken in rarest of the rare cases and should not be taken as a matter of routine. He has relied upon the judgment passed in the case of **Rajiv Sharma Vs. State of M.P. and others** reported in **2003 (4) MPLJ 28** wherein it is held that removal of President can be only in public interest and irregularities alleged should be of such serious nature that continuance of such person as President is undesirable. The Court under Article 226 of the Constitution of India can look into the matter to find out whether conditions and circumstances extraneous to the main purpose of the statute are achieved by exercise of its powers under Section 41-A or not. The impugned order is unsustainable and the respondents have failed to take into consideration the detailed reply submitted by the petitioner, the resolution of the President-In-Council and the statutory provisions governing the functioning of the Municipal Council. The petitioner cannot be held



personally liable for the acts that statutorily fall within the domain of the PIC and the Chief Municipal Officer (CMO). The constitution of PIC and the procurement of articles/materials were done strictly in accordance with the resolution of PIC and as per the M.P. Municipalities Act, 1961 and Rules framed thereunder. The article that is the Air Conditioners were purchased from the GEM portal that is the Government portal after taking approval from the PIC. The charge of misappropriation of funds were found to be not proved against the petitioner. The respondents failed to consider the aspect that persistent obstruction and functioning of the council was created by the Councillors for which the petitioner has also filed an application seeking action against the Councillors but of no consequence, therefore, this petition was filed before this Court, wherein notices were issued and no reply is filed by the respondents. Alternative remedies were available to the erring councillors/officers under Section 41 and 43 of the Act. Removal of the President should be the last resort. The action of the authorities is in violation of the proportionality. It is argued that this Court on 03.09.2025 has considered the arguments and passed a detailed order granting interim relief to the petitioner. Against the said order, a writ appeals were filed by the respondents before the Division Bench of this Court and the Division Bench of this Court vide order dated 13.11.2025 had disposed off the writ appeal with certain directions.

6. Counsel appearing for the petitioner has further relied upon the judgments in the cases of **Preeti Swapnil Agarwal Vs. State of M.P. and others** reported in **ILR (2020) MP 364**, **Sharda Kailash Mittal Vs. State of M.P. and others** reported in **(2010) 2 SCC 319**, **Ravi**



Yashwant Bhoir Vs. District Collector, Raigad and others reported in **(2012) 4 SCC 407** and **Ajay Kumar Shukla Vs. State of M.P. and others** reported in **2019 (1) MPLJ 426**. He has prayed for quashment of the impugned order.

7. On notice being issued reply has been filed by the respondents/State and a separate reply has been filed by the respondents/intervenor – Sarita Jain. Counsel appearing for the State in the reply has denied the petitioner's averments and supported the impugned order. It is contended that a show cause notice was issued to the petitioner levying four charges against the petitioner. A detailed enquiry was held by the respondents and charges No.1, 2 and 4 were found to be proved against the petitioner and charge No.3 was not found proved. The learned Deputy Advocate General for the State has contended that there were serious allegations levied against the petitioner. The reply submitted by the petitioner to the show cause notice was considered in detail by the respondents. He has drawn attention of this Court to document Annexure P-20 which is the resolution passed by the Councillors and has argued that in terms of the said resolution the appointment should have been made. The petitioner without following the said resolution dated 31.05.2023. Thereafter, without approval from the competent authority no employee should be inducted on muster roll on daily rated employees and the order was passed but the petitioner has appointed 13 daily rated employees on muster roll and continued to work and make payments to them. The reply submitted by the petitioner was considered in detailed by the authorities and it was found that 13 muster roll employees were inducted by the petitioner without any due



permission and payments from April, 2023 till December, 2023 were made to them. Their verification were also not got done. The payments from June, 2023 till September, 2023 and thereafter November, 2023 their payments were released without taking permission from the Chief Municipal Officer which falls under the category of misconduct. The proposal was for inducting 10 people. However, by overwriting the same was made 13 and the said document is signed by the petitioner, therefore, Charge No.1 levied against the petitioner was found proved.

8. Charge No.2 was with respect to non-formation of the President in Council. Section 70 of the Act of the 1961 provides for President-in-Council within seven days from the date of election and taking charge to the post. At Nagar Parishad Deori for a period of last one year, there is no formation of President-in-Council. The petitioner failed to comply with the provisions of Section 70 of the Act of 1961. The said charge was also found proved against the petitioner. The entire reply submitted by the petitioner was taken into consideration.

9. Charge No.3 deals with embezzlement of amount of Rs.30,00,000/- was not found proved against the petitioner.

10. Charge No.4 deals with purchase of Air Conditioners which after due consideration of the reply submitted by the petitioners were found to be proved. Finding all these charges proved against the petitioner. The authorities have observed that continuation of the petitioner on the post of President in Nagar Palika Parishad, Deori is not in the interest of the State Government and, therefore, passed the order removing her from the post of President.



11. Counsel appearing for the respondents has drawn attention of this Court to the provisions of Section 41-A and submit that only opportunity of hearing is required to be granted to the petitioner. It is contended that there is no dispute with respect to the fact that ample opportunity was granted to the petitioner. She was issued notice to which she has submitted a reply and was also granted an opportunity of personal hearing prior to passing of the order. The charges levied against the petitioner were found to be proved. This is a petition under Article 226 of the Constitution of India. The Court cannot review the findings which have been recorded in the enquiry report which was duly considered while passing the impugned order and cannot re-appreciate the evidence available on record. The Court is only required to see that whether opportunity of hearing was granted to the petitioner and authorities were justified in passing the order impugned or not. He has relied upon the judgment passed in the case of **Smt. Satyaprakashi Parsedia Vs. State of M.P. and another (Writ Petition No.2943/2017)** decided on 06.07.2018. He has prayed for dismissal of the petition.

12. The order passed in the case of Smt. Satyaprakashi Parsedia was put to challenge in Writ Appeal No.261/2017 by the Nagar Palika Parishad Dabra and the writ appeal was allowed vide order dated 26.05.2017. Writ Appeal No.1129/2018 was filed by Smt. Satyaprakashi Parsedia and the writ appeal was dismissed by the Division Bench of this Court vide order dated 27.08.2018. Thereafter, review petition was filed being Review Petition No.302/2021 which was dismissed vide order dated 16.09.2021. Against which the matter travelled upto the Hon'ble Supreme Court in SLP (Civil) Diary No.1529/2022 and vide order dated



11.02.2022 the SLP was withdrawn by the petitioner. Meaning thereby the orders passed by the Writ Court in Writ Petition No.2943/2017 has attained finality.

13. Counsel appearing for the respondents/intervenor has filed a separate reply. He has virtually adopted the reply filed by the respondents/State. Apart from the aforesaid, it is contended that she has already been appointed after passing of the order dated 25.08.2025 by the State Government. She has been appointed vide order dated 29.08.2025 by the State Government in exercise of powers conferred under Section 37 of the Act of 1961. Therefore, she is entitled to continue as the President of Council until the vacancy is filled up as provided under Section 37 of the Act of 1961. She is also vested with the powers and duties of President provided under Section 51 of the Act of 1961. Therefore, it is not a stop gap arrangement rather it provides for filling of vacancies for the remainder of the term of the Council. The respondents have also constituted a valid PIC and convened a PIC meeting on 01.09.2025 to discuss various agendas and projects related to the development of the town. Until and unless appointment of the respondent is put to challenge by the petitioner, no relief can be extended to her. Therefore, he has prayed for dismissal of the petition.

14. Counsel appearing for the respondents submits that in terms of Section 37, the appointment of private respondent is only a stop gap arrangement until a regular incumbent is appointed. Therefore, the interim arrangement made by the respondents after passing of the order in terms of Section 41-A, the petitioner is not required to challenge the same. The petitioner has already obtained an interim order on



03.09.2025. In pursuance to which the petitioner is functioning as a President of the Municipal Council, Deori, District Sagar. Therefore, the contentions raised by the private respondents is of no help to her.

15. Learned Deputy Advocate General for the State has argued that the only requirement in terms of Section 41-A of the Municipalities Act, 1961 is that reasonable opportunity of hearing is granted to the candidate. It is contended that notices were duly issued to which he has submitted his reply and after providing an opportunity of personal hearing, the order impugned is passed. Therefore, there is no illegality in the order passed by the respondents. The Election Commissioner in its reply has submitted that in view of the directions given by the authorities, they have conducted the elections. It is contended that in view of Article 243-O of the Constitution of India, the writ petition against the holding of elections after issuance of a notification is not maintainable.

16. Heard the learned counsel for the parties and perused the record.

17. It is the case of the petitioner that after contesting elections she was duly elected as President of Municipal Council, Deori District Sagar. She was not permitted by the other Councillors to work and they were creating obstruction in the functioning of the Municipality with an intention to prevent her from discharging her duties. Earlier, no confidence motion was initiated against the petitioner but the same was withdrawn in view of the gazette notification dated 27.08.2024 which provides that no 'no confidence motion' can be moved against the elected President after assuming the office for a period of three years. Therefore, the said no confidence motion was recalled vide order dated 23.08.2024. The respondent/Sarita Jain a Councillor of Ward No.11



challenged the same by filing a writ petition before this Court being Writ Petition No.26077/2024 which was dismissed by this Court vide order dated 09.09.2024. Thereafter, the respondent No.5 who was having personal grudges against the petitioner has written a letter to the Chief of Bhartiya Janta Party alleging therein that the petitioner has acted against the own party during municipal elections, 2024 and requested for a strict action against the petitioner vide letter dated 08.12.2023. The respondent No.6 the In-charge C.M.O. under the dictates of the respondent No.5 has grossly disturbed the lawful functioning of the Municipality. It is the case of the petitioner that the Councillors have refused to participate in the President-in-Council meeting or to cooperate in passing of any municipal bills on one hand and on the other hand, they have made a representation to the In-charge CMO on 07.05.2025 seeking organization of a special session of a Council for the purpose of renaming Deori constituency to Devpuri. Despite transfer of one Manish Parte as CMO of council, he was not permitted to join and the respondent No.6 continued to exercise the administrative authority without consent and knowledge of the petitioner. He has also convened a special meeting in absence of the petitioner and passed the resolution of changing the name of Deori to Devpuri. The petitioner moved an application to the respondent No.3 pointing out the misconduct and malicious act of the Councillors and made a specific requests to remove the Councillors exercising powers under Section 41 of the M.P. Municipalities Act, 1961. However, no action was taken on the said representation submitted by the petitioner. He was forced to file a writ petition before this Court being Writ Petition No.1092/2025 in the name of Neha Jain Vs. State of M.P. and others,



wherein notices were issued on 06.02.2025, which is still pending adjudication before this Court. The reply was filed on 13.01.2026 by the respondents. Thereafter a notice has been issued to the petitioner in terms of Section 41-A dated 15.05.2025 for removal from the post levying four charges against the petitioner. The charges are as follows :-

आरोप क्रमांक 01 :-

यह कि आपकी उक्त पदावधि के दौरान नगरपालिका परिषद, देवरी में मुख्य नगरपालिका अधिकारी द्वारा कार्यालयीन आदेश क्रमांक/436/2023 दिनांक 27.03.2023 द्वारा 3. मार्च 2023 के बाद बिना सक्षम स्वीकृति के साप्ताहिक मस्टर पर दैनिक श्रमिक न लगाये जाने बाचत आदेश जारी किया गया था, जिसमें लेख किया गया था कि इस अवधि के उपरांत न इनसे कार्य कराया जावे और न ही इनको कार्य में लगाया जावे। इसके उपरांत भी अप्रैल 2023 से दिसम्बर 2023 तक की अवधि में 13 दैनिक गस्टर कर्मियों को कार्य पर रखा जाकर उन्हें भुगतान किया गया.

आरोप क्रमांक 02 :-

यह कि मध्यप्रदेश नगरपालिका अधिनियम 1961 की धारा 70 में प्रेसीडेंट इन-काउंसिल के गठन का प्रावधान है। आपके द्वारा उक्त धारा में उल्लेखित प्रावधान अनुसार गठित प्रेसीडेंट इन काउंसिल को अपने आदेश क्रमांक 251. दिनांक 23.02.2024 द्वारा अपरिहार्य कारण बताकर भंग कर दिया गया है। समिति भंग किए जाने की शिकायत पश्चात एवं मुख्य नगरपालिका अधिकारी, नगर पालिका परिषद, देवरी द्वारा जारी आदेश क्रमांक 868, दिनांक 10.06.2024 अनुसार पुनः प्रेसीडेंट-इन-काउंसिल का गठन किया गया किन्तु पुर्नगठित प्रेसीडेंट-इन-काउंसिल में मात्र तीन पार्षद श्रीमती गाया सुनील प्रजापति, श्रीमती अभिलाषा राकेश चौरसिया एवं श्री इन्द्रदेव विगल कुमार के द्वारा आदेश प्राप्त कर प्राप्ति पर हस्ताक्षर होना पाये गये है अन्य पार्षदों द्वारा गठित प्रेसीडेंट इन काउंसिल प्रस्ताव के संबंध में अपनी सहमति प्रदान नहीं की गई है। इससे प्रमाणित होता है कि प्रेसीडेंट-इन-काउंसिल का गठन पूर्ण नहीं हुआ है। प्रेसीडेंट-इन-काउंसिल का गठन नहीं होने से नगरपालिका परिषद के वित्तीय एवं प्रशासकीय कार्य प्रभावित हो रहे हैं।

आरोप क्रमांक 03 :-

यह कि प्रेसीडेंट इन काउंसिल की बैठक दिनांक 01.03.2023 को पारित प्रस्ताव क्रमांक 02, अनुसार खण्डेराव रोड से सहजपुर रोड पर सीसी रोड पर गुमटी स्ख जान के कार्य हेतु संकल्प पारित किया गया जिसमें उक्त कार्य हेतु राशि रूपये २०.०० लाख की विशीथ स्वीकृति प्रदान की गई एवं मुख्य नगर पालिका अधिकारी को उक्त कार्य हेतु अधिकृत किया गया।

आरोप क्रमांक 04 :-

यह कि आपकी उक्त पदावधि के दौरान निकाय में नवनिर्मित साहित्य भवन एवं नगरपालिका कार्यालय भवन में ए.सी लगाने हेतु संधारित गस्ती के परीक्षण में पाया गया कि एयर कन्डीशनर कय करने की कार्यवाही में निकाय की नस्ती में एवं नस्ती में सलान पारित प्रस्ताव अनुसार 05 नग एयर कन्डीशनर राशि रूपये 500 लाख के क्रय किये जाने की वित्तीय एवं प्रशासकीय स्वीकृति का उल्लेख है किन्तु पीआईसी पजी पर उल्लेखित प्रस्ताव पर 08 नग एयर कन्डीशनर क्रय किये जाने



एवं राशि रूपये 8.00 लाख की वित्तीय स्वीकृति का उल्लेख है जिस पर आपके हस्ताक्षर हैं। प्रस्ताव पर ओवर राईटिंग भी किया जाना पाया गया। साथ ही क्रय किये गये वोल्टाज 2 टन एयर कंडीशनर के मूल्य का मिलान ऑनलाइन बाजार मूल्य से किये जाने पर क्रय किये गये प्रक एयर कंडीशनर के लिये राशि रूपये 52,510.00 की दर का अंतर पाया गया है अर्थात् 57,510/- रूपये प्रति नग की दर से निकाय को कुल राशि रूपये 2,62,550/-को आर्थिक हानि हुई है। यही नहीं मूल प्रस्ताव में कूट रचनाकर 05 नग के स्थान पर 08 जग किया जाना भी परिलक्षित हुआ है। प्रसीडेंट इन काउंसिल के प्रस्ताव में सुधार कर ९७ नग ए.सी. क्रय किये जन की स्वीकृति दिये जाने का उल्लेख है। निकाय में उपलब्ध नस्ती अनुसार 5 नमः ए. जय किया जाकर भुगतान किया जाना पाया गया है स्टॉक पंजी अनुसार उक्त 05 नग ए.सी. दिनांक 7.7.2023 को राशि रूपये 99,000/ की दर से क्रय किये गये हैं। अभिलेख में पुनः 20 दिन के अंतराल में 02 नग एसी दिनांक 27.07.2023 को राशि रूपय 79,909.00 की दर से क्रय किया जाना पाया गया है। किन्तु उक्त 02 नम एसी निकाय द्वारा कहा कि किस स्थान पर लगाये गये हैं एवं क्रय संबंधी कोई दस्तावेज उपलब्ध होना नहीं पाये गये। असल य संदिग्ध प्रतीत होता है। क्रय किये गये उम्न 02 नग एसी के मूल्य की गणना ऑनलाइन बाजार मूल्य से मिलान करने पर राशि रूपये 33,500 २० की दर अधिक पाई गई है। जिससे निकाय को राशि रूपये 67,000/- की आर्थिक हानि संपादित है। यही नहीं 08 नग ए.सी क्रय करने में मध्यप्रदेश नगरपालिका (लेखा एवं कित्त) नियम, 2018 के नियम 91 में निर्धारित प्रक्रिया का भी पालन भी नहीं किया गया है। नियम विरुद्ध कार्यवाही से निकाय को उक्तानुसार आर्थिक हानि हुई है, जिसके लिये मुख्य नगरपालिका अधिकारी के साथ ही आप भी उत्तरदायी प्रतीत हुई है।"

18. In pursuance to the charges levied against the petitioner a detailed reply has been filed by the petitioner, clarifying and explaining the charges levied against her. The reply submitted by the petitioner to the show cause notice clearly reflects that with respect to charge No.1 the decision to induct the employees as well as to make payments to them was taken in pursuance to the approval from the P.I.C. Once there is an approval from the P.I.C. then the petitioner alone cannot be held responsible for the same for inducting 13 employees and making payments to them. Charge No.2 relates to non-constitution of President-in-Council by the petitioner. The petitioner has submitted a detailed reply to the aforesaid charge and has submitted that other councillors are not permitting the petitioner to constitute President-in-Council. She has



already issued notices for constitution of President-in-Council, however, Councillors are not attending the meetings. She has also made a representation to the respondent No.3 pointing out the malicious act of the Councillors and making a specific request to remove the Councillors by taking action in terms of Section 41-A of the M.P. Municipalities Act, 1961. However, no action has been taken by the respondent No.3, therefore, she preferred a writ petition before this Court which is Writ Petition No.1092/2025 in which notices were issued on 06.02.2025 which is pending adjudication. Therefore, the charge No.2 which has been levied against the petitioner is also not made out. Charge No.3 is not found proved by the Enquiry Committee, therefore, the allegation of misappropriation of funds could not be levied against the petitioner. As far as Charge No.4 is concerned, that relates to purchase of Air Conditioners, counsel appearing for the petitioner has pointed out that in the reply, it is clearly mentioned that all the Air Conditioners are purchased from the GEM portal that is the Government portal, therefore, there is no possibility of any misappropriation of funds. He has also produced the records of the purchase book to point out that all the Air Conditioners were purchased and now the allegation is levied that the Air Conditioners are not found fit on verification. Once there was a purchase of Air Conditioners by the petitioner, the Charge No.4 levied against the petitioner is not made out. There may be a difference in prices of Air Conditioners but it is not disputed that the Air Conditioners are purchased from online portal of the Government that is GEM portal, therefore, there cannot be any possibility of misappropriation of funds on the part of the petitioner. It is not a case of the Government that the



prices which are quoted on the online portal are on a very higher side which are available in the open market. The GEM portal is being established just to create transparency regarding purchasing of the articles by the Government authorities. Therefore, charge No.4 levied against the petitioner is also not established. The report submitted by the authorities is considered while passing the impugned order does not reflect proper application of mind by the authorities. The authorities have merely quoted the charges levied against the petitioner as well as the complete reply submitted by the petitioner and while carrying out the analysis of the charges levied against the petitioner as well as consideration of the reply submitted by the petitioner, the authorities with respect to charge No.1, in the enquiry it was observed that 13 employees were kept with the permission of the President-in-Council. However, later, it was submitted that a note sheet was circulated under the signature of the petitioner in the capacity of the President, wherein a note sheet was with respect to 10 employees and two Computer operators and one additional employee. By overwriting 10 has been converted into 13 employees. The petitioner has duly signed that note sheet. However, the fact remains that there is a permission to keep 13 Safaikarmi employees on muster roll as well as two computer operators duly approved by the President-in-Council. The said analysis carried out by the authorities is incorrect. Similarly for other charges, the analysis were not properly carried out by the authorities. All the contentions raised in the reply submitted by the petitioner has not been taken note of. There is no application of mind by the authorities. A full fledged inquiry was required to be conducted in the case, but that has not been done.



19. Section 41-A deals with removal of President or Vice President or Chairman of a Committee is required to be seen. The same reads as under:-

“41-A. Removal of President or Vice-President or Chairman of a Committee.”-(1) The State Government may, at any time, remove a President or Vice-President or a Chairman of any Committee, if his continuance as such is not in the opinion of the State Government desirable in public interest or in the interest of the Council or if it is found that he is incapable of performing his duties or working against the provisions of the Act or any rules made there under or if it is found that he does not belong to the reserved category for which the seat was reserved. (2) As a result of the order of removal of Vice-President or Chairman of any Committee, as the case may be, under sub-section (1) it shall be deemed that such Vice-President or a Chairman of any Committee, as the case may be, has been removed from the office of Councillor also. At the time of passing order under sub-section (1), the State Government may also pass such order that the President or Vice-President or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman, as the case may be for the next term: Provided that no such order under this Section shall be passed unless a reasonable opportunity of being heard is given.”

20. From the perusal of the aforesaid, it is reflected that no such order under the Section shall be passed unless a reasonable opportunity of being heard is given to the concerned. In the present case, notice has been issued by the respondents to which a detailed reply has been filed by the petitioner and opportunity of personal hearing was also granted to the petitioner but the fact remains that whether the contents of the reply were properly appreciated by the authorities or not. The argument advanced before this Court is that the only requirement is to grant a



reasonable opportunity of hearing, as the authorities have permitted the petitioner to file a detailed reply and he was also granted personal hearing, therefore, they have followed the entire procedure. However, the fact remains that the petitioner is an elected President of the Council and the removal of the President from the Council should be in public interest or in the interest of Council on two grounds; that he is incapable of performing his duties or he is working against the provisions of the Act or any Rules made thereunder. There is no such opinion that could be arrived at from the charges levied against the petitioner. Charge of misappropriation of funds were not found proved against him. Charge No.2 which deals with non formation of President-in-Council could not be levied against the petitioner as the petitioner herself is pursuing the matter as the other Councillors are not cooperating for constitution of President-in-Council and he has also filed a writ petition before this Court to the aforesaid effect. Even a representation is submitted to the respondent No.3 to take action against the Councillors for non-cooperation in terms of Section 41 of the Act has not been taken note of by the respondents/ authorities. The entire action has been taken against the petitioner in view of the recommendation made by the MLA pursuant to which a show cause notice was issued to the petitioner.

21. The law with respect to removal of President is apparently clear and considered in series of judgments. The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir** (supra) has held as under :-

“22. Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional institution besides being outrageous is dangerous



to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the institution.

30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide *Indian National Congress (I) v. Institute of Social Welfare* [(2002) 5 SCC 685 : AIR 2002 SC 2158] .] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab* [AIR 1963 SC 395] and *Union of India v. H.C. Goel* [AIR 1964 SC 364] . Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office-bearer can be removed without holding a full-fledged inquiry.

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.”

22. The Hon’ble Supreme Court in the case of **Tarlochan Dev Sharma Vs. State of Punjab and others** reported in (2001) 6 SCC 260 has held as under :-



“7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of “abuse of his powers” (of President), inter alia. This is the phrase with which we are concerned in the present case.

16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In *Anirudhsinhji Jadeja* [*Anirudhsinhji Karansinhji Jadeja v. State of Gujarat*, (1995) 5 SCC 302 : 1995 SCC (Cri) 902] this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in *Purtabpore Co. Ltd.* [*Purtabpore Co. Ltd. v. Cane Commr., Bihar*, (1969) 1 SCC 308 : AIR 1970 SC 1896] are instructive and apposite. Executive Officers may in exercise of their statutory discretions take into account



considerations of public policy and in some context, policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated, we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under Section 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under Section 22 of the Act. To say the least, what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave it at that and say no more on this issue.”

23. This Court in the case of **Ajay Kumar Shukla** (supra) has held as under :-

“14. A plain reading of the show cause notice shows that allegations against the petitioner are confined to committing the alleged irregularity in the matter of purchase of hand pump and water supply material and purchase of sanitary material. The allegations are made that petitioner has purchased these materials beyond his financial competence. He has not obtained permission/sanction from the competent authority.

16. On the basis of aforesaid reasons, the conclusions are drawn in the last paragraph of this order. A careful reading of the reasons assigned shows that the finding of government is that the petitioner has wrongly interpreted the account rules. If the said reasons are carefully examined, it will be clear that there is no finding against the petitioner that he has misappropriated or misutilised the amount. The only finding is that petitioner has wrongly interpreted the provisions.”

24. The Hon’ble Supreme Court in the case of **Sharda Kailash Mittal** (supra) has held as under :-



“26. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

27. In the present case, the actions of the appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power under Section 41-A.”

25. If the aforesaid judgments passed by the Hon’ble Supreme Court as well as by this Court and the said principles are applied to the facts and circumstances of the present case, then it is seen that the allegations which are levied against the President regarding irregularities cannot be taken into consideration for invoking Section 41-A for removal of President.

26. The question which comes up for consideration before this Court whether in the facts and circumstances of the present case, the continuation of the petitioner as President is not desirable or permissible in public interest or in the interest of the Council. None of the conclusions made in the enquiry report shows that such an act of the petitioner has caused any severe loss to the public interest because of which the interest of the Council is badly hampered.

27. The Hon’ble Court in the case of **Union of India and others Vs. J. Ahmed** reported in (1979) 2 SCC 286 has observed that “However



lack of efficiency, failure to attain the highest standards of administrative ability while holding the high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to the negligence and would be such as to be irreparable or resultant damage would be so heavy that the degree of culpability would be very high.”

28. In the case of **Kaushaliya Bai Vs. State of M.P.** reported in **(1999) 1 MPLJ 368**, it was held that the removal of President of Nagar Panchayat can be done when the charges of such serious nature as to warrant of grave action of removal is levied against him. The power under Section 41-A is an extraordinary power which can be invoked sparingly and cannot be invoked on trivial irregularities.

29. In the case of **Rajeev Sharma Vs. State of M.P. and others** reported in **2003 (4) MPLJ 28**, this Court had an occasion to deal with the aspect of removal of President of Municipal Council exercising power under Section 41-A and it was held that decision of the State Government is open to judicial review. The review before the State Government will not be an alternative and efficacious remedy. Removal of President of Municipal Council must be in public interest and irregularity alleged should be of such serious nature that continuation of such person as President is undesirable.

30. In the case of **Sharda Mittal** (supra), the Court has already considered the aspect that the appointment of muster roll employees was made after the approval of the P.I.C., therefore, the petitioner cannot be



held solely responsible for the same as the same is a joint decision taken by P.I.C. and the petitioner cannot be singularly punished for the same. The Court in the case of **Sharda Mittal** (supra) has considered the aforesaid aspect. Even the Hon'ble Supreme Court in the case of **Punjab State Civil Supplies Corporation Limited Vs. Sikandar Soni** reported in **(2006) 3 SCC 736** has considered the aspect that the single act of omission or error of judgment would not attract penal action unless such error or omission results in serious or atrocious consequences. While passing the judgment, the Hon'ble Supreme Court has taken note of the judgment passed in the case of **P.H.Kalyani Vs. Air France Calcutta** reported in **AIR 1963 SC 1756**. This Court under Article 226 of the Constitution of India can take a judicial review of the order passed by the administrative authority as well as the State Government. The legal principles enumerated in the aforesaid cases is that in matters concerning removal of democratically elected people, this Court can very well look into the matter to point out whether the removal is based upon cogent and compelling reasons. Whether interest of public, interest of council have been properly considered and whether material on the basis of which action has been taken is of such a nature that person can be held to be responsible for having misuse his/her office to such an extent that retaining him in the office will have serious and far reaching consequences. The holder of an office (President) being a democratically elected office, his removal from the office, which is an extreme step, must be resorted to only in grave and exceptional circumstances and not for a minor irregularities. The action of removal cast a serious stigma on



the person and public life of the office bearer concern and may even result in disqualification to hold the office for the next time.

31. If the aforesaid principles are applied to the facts and circumstances of the present case, it can safely be said that the authorities have not applied its mind and has held the petitioner responsible for the Charges No.1, 2 and 4 proved against the petitioner and action for removal is taken based upon the said charges, but the fact remains that charges are not of so grave nature warranting removal of petitioner from the post of President-in-Council. Even otherwise, there is no application of mind by the authorities and non-consideration of the complete reply by the authorities.

32. Even otherwise, it is pointed out that during the pendency of this petition, the respondents have passed another order dated 26.12.2025 which is passed by the M.P. Election Commissioner whereby directions has been issued to the Collector regarding proceeding for recall of petitioner from the post of President of Municipal Council, Deori by framing an election programme for holding a fresh election purportedly in exercise of powers under Section 47 of the Madhya Pradesh of Municipalities Act, 1961. Against the said order a writ petition was filed being Writ Petition No.779 of 2026. Prior to the disposal of the petition, it has been informed by the counsel for the State that the election has been conducted and in total 13367 votes were casted for which result was declared. The result was declared by the Returning Officer on 21.01.2026 which reflects as under:-

"नगरपालिका परिषद् देवरी के अध्यक्ष श्रीमति नेहा अलकेश जैन को वापस बुलाने के संबंध में दिनांक 19.01.2026 को हुए मतदान में कुल 13367 मत



पड़े, जिनमें से 6085 मत वापस बुलाने के पक्ष में तथा 7282 मत वापस बुलाने के विरुद्ध थे, तथा निरंक मत अवैध पाये गये थे।
अतएव, मैं मुनौवर खॉन रिटर्निंग आफिसर, एतद् द्वारा, यह घोषणा करता हूं कि मतदान करने वाले मतदाताओं की कुल संख्या के आधे से कम मतदाताओं ने अध्यक्ष को वापस बुलाने के पक्ष में मतदान किया है जिसके परिणामस्वरूप अध्यक्ष पद पूर्ववत् धारण करता रहेगा।"

33. In view of the result declared on 21.01.2026, the petitioner was permitted to continue on the post of President and the Writ Petition No.779/2026 was disposed off. This goes to show that almost 50% of the votes were casted in favour of the petitioner. Under these circumstances, the impugned order passed by the authorities directing removal of the petitioner from the post of President is unsustainable. It is hereby quashed.

34. Accordingly, the petition stands allowed. No order as to costs.

(VISHAL MISHRA)
JUDGE

AM.