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Court : Mumbai Nagpur

Decided On : May-06-2016

Judge : S.B. Shukre

Appeal No. : Writ Petition No. 1442 of 2016

Appellant : Rahul and Others

Respondent : State of Maharashtra, through its Secretary, Urban Development Department and Others

Advocate for Def. : Shri. Anoop Gilda, Shri. Gilda

Judgement :

1. By this petition, the petitioners have challenged the legality and correctness of the order dated 20.2.2016 passed by the respondent no. 2, the Hon'ble Minister, thereby disqualifying the petitioners under the provisions of Sections 55B and 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the Act, 1965).

2. The petitioners, when the impugned order was passed, were or had been the part of the Municipal Council, Katol, in such capacities as petitioner no. 1 being the President; petitioner no. 2 being the Ex-President and the Councillor and petitioner nos. 3 to 10 being the councillors and petitioner no. 10 being a co-opted councillor.

They were disqualified by respondent no.2 for the reason that they were found to have indulged in misconduct and disgraceful conduct. The alleged controversial conduct of the petitioners related to the allotment of some minor works to one contractor, Shri Bambal.

3. Some councillors belonging to the opposition parties filed a complaint before the respondent no. 2 alleging that the petitioners committed illegality in allotting the work to said Shri Bambal in the meeting held on 7.5.2013. The respondent no. 2 took its cognizance and directed respondent no. 3 to make an inquiry into the allegations made in the complaint under the provisions of Section 311 of the Act, 1965. The respondent no. 3, on his part, directed the Sub Divisional Officer to make an enquiry and submit his report, which he did on 31.12.2013. It is the grievance of the petitioners that in the inquiry that was conducted, statements of petitioners were not recorded and the relevant documents were not properly considered. This report was forwarded by respondent no.3 to the respondent no. 2.

4. On receipt of the report, respondent no. 2 issued a show cause notice on 02.8.2014 to the petitioners framing therein charges of misconduct. The first charge was about dividing the work relating to carrying out repairs to the existing works, roads etc. in violation of clause 18 of the Standing Order No. 36 and the provision of Section 72 of the Act, 1965. It is the submission of the petitioners that in fact provisions of Section 72 of the Act 1965 were not applicable to the present case and the Standing Order No. 36 having been issued by the Director, Municipal Administration, an authority not having any power to issue such instructions as contained in the Standing Order, did not have any force of law and the instructions were, at the most, administrative in nature, and, therefore, only had recommendatory effect. The petitioners' case thus has been that there has been no violation of any direction of law when the repair work was divided by them. The second charge was in respect of non-compliance with the instructions contained in the Standing Order No. 36, in particular clause no. 27 thereof, which prescribed qualifications of a contractor, and the contractor Shri Bambal, to whom the work was allotted, surrendered it to one Shri Surendra Lohi for its being carried out by the latter. According to the petitioners, clause 27 related to qualification of an

agency to be appointed under clause (ii) of Section 49A and not to a rate contractor appointed under clause 19 of Standing Order No. 36 and, therefore, there was no violation of the said clause. It was also the case of the petitioners that there was no evidence to show that the work was actually surrendered to Shri Surendra Lohi. Charge no. 3 was about illegally passing the resolution on 07.5.2013 and committing dereliction of duty by not accepting the lowest tender submitted by one Shri S.L. Bhakte. Charge no. 4 was about recovery of excess payment made to the contractor. It was the contention of the petitioners that even the third and fourth charges were baseless as Shri Bhakte was appointed as a contractor for a different period than the period for which Shri Bambal was appointed. According to them, Shri Bhakte was appointed for the period 2013-14 whereas Shri Bambal was appointed for the period 2012-13. It was also pointed out that Shri Bambal did not receive payment for most of the works he executed and, therefore, there was no question of causing any loss to the Municipal Council and, as such, there was no further question of any recovery of the loss to be made.

5. According to the petitioners, all these points of defence raised in the preliminary submissions as well as affidavit-in-reply and the affidavits filed by them were not considered by the respondent no. 2 in any manner. They also submit that the impugned order has been passed belatedly, almost after a period of eight months from the date of closure of the case and is cryptic, from which non-application of mind on the part of respondent no. 2 in passing it is very much visible. It is thus submitted that the impugned order is illegal and deserves to be quashed and set aside and further consequential relief deserves to be given to the petitioners.

6. I have heard Shri Sunil Manohar, learned senior counsel, for the petitioners, Shri Anil Kilor, learned special counsel for respondents 1 to 3, Shri Anoop Gilda, learned counsel for respondent no. 4-the newly elected President and Shri Mohit Khajanchi, learned counsel for the intervener. With their assistance, I have carefully gone through the paper-book of the petition including the impugned order.

7. Shri Manohar, learned senior counsel, has submitted that the impugned order is illegal and arbitrary for several reasons. He submits that the impugned order passed by the Hon'ble Minister on the face of it discloses non-application of mind to the facts of the case and legal submissions made by the petitioners. He submits that respondent no.2 has relied upon the standing order no.38 which had no force of law and has illegally held that the conclusion of Inquiry Officer regarding violation of certain clauses of the standing order and also Section 72 of the Act, 1965 is correct. He further submits that the impugned order does not take into account the fact that Shri Shashikant Bambal, the contractor to whom the works in question, in all 29 works, were allotted were to be executed in the year 2012-13 and not in the year 2013-14 and Shri Bambal was appointed as a rate contractor and not as an agent to whom neither the provisions of Section 49A(ii) applied, nor did the clause 18 of the Standing Order No. 36. He also submits that the Hon'ble Minister failed to take into consideration that to a rate contractor like Shri Shashikant Bambal, if at all the Standing Order no. 36 applied, clause 19 was relevant for which purpose neither any qualification as prescribed under clause 27 of the standing order was necessary nor did any prohibition against division of work as provided under clause 18 of the standing order apply.

8. Learned Senior Counsel further submits that the other contractor, Shri Bhakte, was appointed for carrying out various works of repairs of the Municipal Council for the year 2013-14 and not for the year 2012-13. He submits that Shri Bhakte was the contractor appointed by the Municipal Council for carrying out various works during the period of one year starting from 1.6.2013 as per the work order dated 15.5.2013 and Shri Bambal was appointed as a contractor for carrying out various works of Municipal Council during the period of one year starting from 01.6.2012. Therefore, learned senior counsel further submits, there was no question of applying same rate of payment that was approved for Shri Bhakte to the works carried out by Shri Bambal. He further submits that in any case there was hardly any difference of amount between the rates quoted by Shri Bambal and the rates quoted by Shri Bhakte and this difference was of approximately Rs.38,000/-.

He further submits that out of 29 works completed by Shri Bambal, full payment was made to him in respect of only two works, part payment was made to him in

respect of one work and payment for the remaining works was withheld by the Municipal Council. He also submits that Shri Bambal, even then, had on affidavit submitted to the Municipal Council that he was ready to accept the payment for the works done by him at the rate quoted by and approved for Shri Bhakte. According to him, there was no financial loss ultimately caused to the Municipal Council and, in any case, there was no allegation made against any of the petitioners that they acted in this case dishonestly and with *mala fide* intention to cause wrongful gain to some body and wrongful loss to the Municipal Council.

9. Shri Manohar, learned senior counsel, further submits that there has been no violation of any provisions of the Act, 1965, much less Section 72 of the said Act. He submits that the provision of Section 72, as it existed in the original Act, came to be substituted by the amending Act No. 15 of 2012 and the substituted Section 72 came into force with effect from 4.8.2012. He submits that now in the newly substituted Section 72, no limits on the financial powers of the standing committee are fixed and the issue of placing of limits on the financial powers has been left to be determined by the rules to be framed by the State Government. He points out that so far no rules in this behalf have been framed by the State Government and, therefore, respondent no. 2 could not have accepted the conclusions drawn by the Inquiry Officer that apart from standing order no. 36, Section 72 of the Act, 1965 has also been violated in allotting the works by the petitioners to the contractor Shri Bambal.

10. Learned senior counsel further submits that although it has been alleged that the petitioners, in allotting the contracts of 29 works to the contractor, disregarded the requirement of clause 27 of the Standing Order, a bare perusal of which would disclose that it applies to an agency to be appointed under Section 49A(ii) of the Act, 1965 and not to a rate contractor, like Shri Bambal. Therefore, the finding recorded by the Hon'ble Minister on this count is completely erroneous and is in disregard of the statutory provisions. He points out that even the complainants were present in the general body meeting held on 16.5.2012 and the decision to appoint Shri Bambal as the rate contractor for carrying out various works on behalf of the municipal council was taken unanimously when Resolution No. 37/3 was adopted by the general body of the municipal council. He further submits that for

the year 2011-12 some of the works of the Municipal Council were given to another rate contractor, Sk. Nasir, who was just like Shri Bambal, an unregistered contractor, and that was done when the complainants were in power. He submits that now if any fault is to be found with the decision of the Municipal Council to appoint Shri Bambal as a rate contractor, the complainants would also be adversely affected and that they would also have to resign.

11. Learned senior counsel further submits that even though there was a charge that Shri Bambal, a rate contractor, to whom 29 works were allotted, did not execute those works by himself and got them done through one Surendra Lohi, no evidence was placed on record and, therefore, this charge would have to be held as not proved. He further submits that when there has been no evidence of causing of any financial loss to the Municipal Council and nothing on record to show that any statutory provision has been violated by the petitioners, there would be no question of directing recovery of excess payment allegedly made to the contractor. As a matter of fact, learned senior counsel further submits, the payment in respect of 26 works has been completely withheld, and there is a willingness shown by the rate contractor to accept the payment for the works completed at the rate quoted by Shri Bhakte, who was appointed as the rate contractor for carrying out the works arising in the subsequent year.

12. Learned senior counsel further submits that although inquiry was conducted as per Section 311 of the Act, 1965 and this section clothed the Inquiry Officer with the power of a civil Court for recording evidence and enforcing attendance of witnesses, the Inquiry Officer did not record the statements of the petitioners for the reasons best known to him and simply relied upon the official record. He also submits that in a case like the present one, it is not necessary to give any hearing to the interveners/complainants. Learned senior counsel further submits that the elected councillors cannot be disqualified casually and the standard of proof required for proving the charge of misconduct against them is much stricter than that would be required in disciplinary proceedings conducted against an employee. He submits that for the charge of misconduct to be proved, it must be shown that the councillors acted without any *bona fides* and willfully committed misdemeanor or were grossly negligent in performing their duties. He also submits that there

was no charge of corruption made against the petitioners nor any evidence showing causing of wrongful gain or loss to anybody. According to him, discharge of duty negligently, if it is there, is not enough to say that misconduct as contemplated under Sections 55B or 42 of the Act, 1965 has been committed by the elected representative and something more taking the negligence towards boundaries of criminality is required. He submits that at the most the conduct could be considered to be in the nature of financial or some irregularity not amounting to misconduct.

13. Learned senior counsel further submits that the impugned order does not give any reason and on this ground alone the order is liable to be quashed and set aside. He also submits that the arguments were heard by respondent no. 2 on 9.6.2015 and the impugned order has been passed on 20.2.2016, i.e. after expiry of about eight months from the date of hearing and the impugned order does not disclose that the submissions made by the petitioners were considered and conclusions were properly drawn. Learned senior counsel submits that such failure on the part of respondent no. 2 has caused serious prejudice to the petitioners. Thus, learned senior counsel submits that the impugned order is illegal, perverse and arbitrary warranting interference with it.

14. Shri Kilor, learned special counsel for respondents 1 to 3, submits that there is a fundamental flaw in this writ petition. It only challenges the order of the Hon'ble Minister and does not seek quashing of the inquiry report submitted by the Sub Divisional Officer on 31.12.2013. He submits that the inquiry has been conducted under the provisions of Section 311 of the Act, 1965 and such inquiry, being statutory, would have its binding effect on the persons named in the report and if any adverse conclusions are drawn in the inquiry, which in fact is the case here as against the petitioners, the adverse findings would still remain on record and would lead to further necessary consequences. Therefore, he submits that it was essential for the petitioners to challenge the inquiry report dated 31.12.2013, which they have not done, and therefore, he submits that this writ petition has only academic value and nothing more. He further submits that had the petitioners challenged the inquiry report, this writ petition would have been required to be placed before the Division Bench of this Court.

15. Shri Kilor, learned special counsel, further submits that the inquiry conducted by the Sub Divisional Officer was in detail and minute examination of the relevant record by the Inquiry Officer revealed that in passing the resolution of awarding works to rate contractor, Shri Bambal by the standing committee, there was violation of certain clauses of the standing order No.36 and also the spirit of Section 72 of the Act, 1965 and therefore, the Inquiry Officer did not think it necessary to record the statements of the petitioners. He submits that the Inquiry Officer has not imputed any motive to the petitioners and what he has found in his inquiry is only clear-cut violation of the established financial norms in allotting the works to the rate contractor Shri Bambal and since this could not have been considered as mere financial irregularity, the Inquiry Officer found that the petitioners, while being the President or the Ex-President or the Councillors of the Municipal Council, Katol, committed misconduct. Therefore, the Inquiry Officer has rightly not recorded statements of the petitioners.

16. Shri Kilor further submits that a bare perusal of the works allotted to Shri Bambal, as stated in the inquiry report, would be enough for reaching the conclusion that these works were intentionally and artificially divided in different parts so as to bring estimated cost of each of these works within the limit of Rs.40,000/-, which limit was earlier prescribed in Section 72 for exercising of financial powers by a standing committee without seeking any prior technical sanction from an engineer designated or recognized by the State Government as per the proviso to Section 72, as it stood prior to 2012 amendment. He submits that this act on the part of the petitioners, apart from being violative of Section 72, was also violative of clause 18 of the Standing Order No.36. According to him, clause 19 of the standing order did not apply to the works in question as the works allotted to Shri Bambal were not only in respect of carrying out repairs to roads or other structures but also original works, may be minor in nature if taken part wise and not so if taken in consolidated manner, as for example, the construction of RCC cement pipe drains.

17. Learned Special Counsel further submits that clause 27 of the Standing Order No. 36 prescribing requirement of qualification, experience etc. for a contractor to be eligible to be appointed for carrying out works on behalf of the Municipal

Council applies to all contractors who are nothing but agencies of the Municipal Council. He submits that if in the general body meeting held on 16.5.2012 some of the complainants had not resisted passing of the resolution for appointing Shri Bambal as rate contractor for various works of the Municipal Council for the year 2012-13, later on when it came to confirming the decision of the standing committee to allot particular works to the same contractor, the complainants resisted the same and this is evident from the minutes of the General Body Meeting held on 16.7.2013. At that time, the complainants had taken an objection to the allotment of these works to the said contractor. He further submits that since the Municipal Council, as per the provision of Section 73 of the Act, 1965, is a superior body over the standing committee, it was the duty of the councillors to ensure that all the relevant clauses of Standing Order No. 36, in particular clause no. 27, prescribing qualification etc. for the contractors, were duly complied with and this duty was attempted to be performed by the complainants, but was willfully not discharged by the petitioners. He submits that it is not necessary that any decision taken regarding allotment of some works to a contractor by the standing committee must be accepted by the Municipal Council and the Municipal Council must ensure that the Council's funds are spent prudently and in the best interest of public.

18. Learned Special Counsel further submits that if the argument of learned senior counsel for the petitioners regarding financial powers of the standing committee being unlimited under the provision of Section 72, there being no rules framed in that regard by the State Government, is to be accepted, the result would be, every Municipal Council in the State of Maharashtra would be exercising its powers in an infinite manner without any restriction whatsoever and this would lead to arbitrary exercise of power, which is anathema to the principle of rule of law running through Articles 14 and 21 of the Constitution of India. He submits that if no rules have been framed by the State Government, the Municipal Council would be under an obligation to respect the guidelines issued by an administrative authority appointed under the provisions of the Act, 1965 regulating the exercise of contractural powers and providing a safeguard against their arbitrary exercise by the councillors.

19. Learned special counsel further submits that the impugned order records reasons, although briefly, and since the copy of the inquiry report was furnished to each of the petitioners along with the show cause notice, no prejudice could be said to be caused to the petitioners by recording of such brief reasons. He submits that a bare perusal of the impugned order would show that the Hon'ble Minister has applied his mind to the facts of the case as well as legal submissions and reached his conclusions properly, legally and reasonably. He submits that it is not the requirement of law that when a quasi judicial authority like respondent no. 2 exercises statutory powers regarding disqualification of the councillors, he must always record reasons in details and when he is in agreement with the report of the Inquiry Officer, it is enough for him to express so by briefly recording the reasons, which is what, learned special counsel further submits, the respondent no. 2 has done in this case. He also submits that the law that the judgment must be given within three months from the date on which the arguments are heard by and large applies to judicial authorities and not the executive authorities like respondent no. 2, the Hon'ble Minister, exercising quasi judicial powers conferred upon them under the statutory provisions. He also submits that the word 'misconduct' takes within its fold all types of acts which are acts of misdemeanor, acts done in violation of rules or established procedure or those acts which amount to dereliction of duty and which could be termed as improper behaviour. According to him, violation of the established procedure by the petitioners is nothing but misconduct as contemplated under Sections 55B and Section 42 of the Act, 1965.

20. Shri Gilda, learned counsel for respondent no. 4, submits that it is well settled law that when the Government does not frame rules in exercise of rule framing power, it is permissible for the administrative authorities to issue executive instructions and when such executive instructions are issued in the absence of rules framed by the State Government, they would have a force of law. This way, he submits that Standing Order No. 36 has a force of law and all it's clauses were binding upon the petitioners, which they have disregarded thereby committing misconduct within the meaning of Sections 55B and 42 of the Act, 1965.

21. Shri Khajanchi, learned counsel for the interveners, has submitted that the newly amended Section 72 is a conditional legislation as it depends for it's existence on framing of the rules and if the rules have not been framed, the settled law would indicate to us that the earlier provision did not get repealed. He also submits that the interveners, who were the complainants, had opposed the decision of the standing committee regarding allotment of works to Shri Bambal, he being not a qualified rate contractor. He also submits that the show cause notice issued to each of the petitioners was accompanied by the inquiry report and the inquiry report being in great details, the petitioners could be said to have had enough opportunity of defending themselves and, therefore, brief recording of reasons by respondent no. 2 cannot be said to have caused any prejudice to the respondents. He submits that by illegally allotting the works to the rate contractor in violation of the established norms, the petitioners have committed breach of the doctrine of public trust. Therefore, according to him, the impugned order cannot be said to be illegal or arbitrary.

22. The impugned order is based upon the inquiry report submitted under Section 311 of the Act, 1965. Perusal of the impugned order would show that the respondent no. 2 has accepted the conclusions along with the reasons given therefor by the Inquiry Officer in his inquiry report dated 31.12.2013. Therefore, reference to the inquiry report becomes essential for dealing with the arguments canvassed before me by the rival sides. The conclusions reached in the inquiry report in essence are to the effect that while performing their official duties, the petitioners violated the provision of Section 72 of the Act, 1965 and also the relevant clauses of the standing order No. 36. It is the contention of learned senior counsel for the petitioners that the grounds of the conclusions reached by the Inquiry Officer and so by the respondent no. 2 are misconceived as Section 72, as amended with effect from 04.8.2012, does not place any limits on the financial powers of the standing committee, that the rules prescribing such limits, in view of Section 2(35) read with Section 321, have not been framed so far by the State Government and the standing order No.36 does not have the force of law as it has not been issued under any authority given to the Director, Municipal Administration, nor does the standing order make any specific reference to any such authority having been given to the Director. On the other hand, it is the

contention of learned counsel for the respondents that the amended provision of Section 72 is yet to take effect and it would take effect only when the rules regulating exercise of financial powers by the standing committee or the Council would be framed by the State Government and till the time such rules are framed, the standing committee or the Council would continue to be governed by the old provision which prescribes the limit of Rs.40,000/- for sanctioning execution of works relating to construction of road, bridge, building or water supply or drainage without obtaining any prior technical sanction from an engineer designated or recognized by the State Government. It is also their contention that when no rules are framed, Government can issue administrative instructions regulating exercise of power by the standing committee or the Council and, in any case, the standing order No. 36 which is nothing but an executive direction is binding upon the elected councillors till the time a declaration from a Court of law that it is not binding is sought and granted.

23. In order to ascertain the correctness of these arguments, it would be necessary to briefly consider the unamended provision of Section 72 of the said Act and also it's amended version. In the unamended provision of Section 72, there was a proviso which specifically put a cap of Rs.40,000/- in the case of C class municipalities, here we are concerned with C class municipality, with Katol Nagar Parishad falling in C class, for exercising financial powers regarding sanction of any work of construction relating to roads, bridges, buildings, water supplies or drainages etc. without obtaining prior technical sanction from the designated or recognized engineer. The proviso to unamended Section 72 being relevant is reproduced as follows

Provided that the (Standing Committee or the Council) shall not sanction any project or scheme involving construction such as a road, bridge, building or water supply or drainage scheme costing over Rs.75,000/- in the case of A or B Class Municipal area and Rs.40,000/- in the case of C Class Municipal area, unless prior technical sanction therefor is obtained from such officer of State Engineering Service as the State Government may designate; or where the Council has appointed a Municipal Engineer or a Water Works Engineer referred to in Subsection (2) of Section 75 and such engineer is recognized by the State

Government in this behalf unless prior technical approval therefor is obtained from such engineer who may be concerned with the scheme.

In place of the said old provision of Section 72, new Section 72 has been brought in force by the method of substitution of the earlier provision by the Maharashtra Act No. 15 of 2012 with effect from 4.8.2012. The new Section 72 reads thus :

72. Limits of powers of Committees and Council in respect of financial sanction

The powers of financial sanction of the Standing Committees and the Subject Committees of different classes of municipal councils shall not exceed such limits as may be prescribed;

Provided that, the Standing Committee or the Council shall not sanction any project or scheme involving construction such as a road, bridge, building or water supply or drainage scheme costing over such amount as may be prescribed, unless prior technical sanction therefor is obtained from such officer of the State Engineering Service, as the State Government may designate, or where the Council has appointed a Municipal Engineer or a Water Works Engineer referred to in sub-section (2) of Section 75 and such Engineer is recognized by the State Government in this behalf, unless prior technical approval therefor is obtained from such Engineer.

It is clear from the amended Section 72 that now limits on the financial powers are not embedded in the Section and they are left to be prescribed by the State Government by framing rules therefor in exercise of its rule making power under Section 321 of the Act 1965. This provision lays down that the standing committee or the Council shall not exercise powers of financial sanction exceeding such limits as may be prescribed. In Section 2(35) the word prescribed has been defined to mean prescribed by the rules , and that would mean the rules to be framed by the State Government by notification in the official gazette, as provided under Section 321 of the Act, 1965. Admittedly, no rules have been framed by the State Government so far prescribing any financial cap on the powers of the standing committee under Section 72. If no rules have been framed by the State

Government, apparently, there cannot be any violation of the amended provision of Section 72 by the petitioners.

24. Shri Khajanchi, learned counsel for the interveners would submit that even though rules have not been framed, it would not change the position drastically so far as the limits on financial powers of standing committee or the council are concerned and old provision prescribing limit of Rs.40,000/- would continue to hold the field. This is because of the fact, he submits, that the law is, as held in the case of **The Central Provinces Manganese Ore Co. Ltd. vs. State of Maharashtra (1977) 1 SCC 643)**, when an amended provision is brought on the statute book by substitution of the old provision and is made dependent upon framing of the rules, it does not result in automatic repeal of the old provision till the time the rules are framed and the substituted provision would become legally effective only upon framing of the rules. This argument, however, cannot be accepted for the reason that in *C.P. Manganese Ore Co. Ltd., supra,* the amended provision substituting the old provision had not received the assent of the Governor General under Section 107 of the Government of India Act and that was the reason why the Hon'ble Apex Court found that the amended provision substituting the old one had not become legally effective and, as such, the substitution did not have the effect of repealing the old provision. Such is not the case here. The amended provision of Section 72 has arrived on the statute book in substitution of the old provision of Section 72 and it has been brought into force with effect from 04.8.2012. Once a substituted provision is brought into force, it would be legally effective for all purposes. This would result in repeal of the old provision of Section 72. Therefore, I find that the new provision of Section 72 brought into force with effect from 04.8.2012 has resulted in repealing of old provision of Section 72.

25. In the case of **Zile Singh vs. State of Haryana and ors. (2004) 8 SCC 1**, referred to me by the learned senior counsel for the petitioners, it has been held that substitution of a provision results in repealing of earlier provision. In the instant case, the substitution of the old provision by the new provision has become complete when the substituted section 72 was brought into effect on 04.8.2012. It would then follow that such substitution has resulted in repeal of the earlier

provision of Section 72 of Act, 1965.

26. Shri Khajanchi, learned counsel for the interveners, has also relied upon the case of **P.C. Agarwala vs. Payment of Wages Inspector, M.P. and ors. (2005) 8 SCC 104.** However, with due respect, I do not find that this case provides any assistance to the argument made in this regard by him. This case deals with the rules of interpretation applicable to legislation by incorporation or by reference and lays down the test for ascertaining the effect of incorporation of some provision of an existing Act into a later Act. In the instant case, the newly amended Section 72 has been brought into existence by substitution and not by incorporation and, therefore, in my respectful submission the said case of *P.C. Agarwala* would have no application to the facts of the present case.

27. Thus, it could be seen that the newly amended Section 72 having been brought into force with effect from 04.8.2012, would be the section which would have relevance for the exercise of financial powers by the standing committee or the municipal council and not the old provision of Section 72. This provision leaves the matter of fixation of financial limits on the powers of the standing committee or the council to the rules to be framed in that regard by the State Government. The position, as it stands today, is that no such rules have been framed by the State Government. So, it has to be said that apparently there has been no violation of the provision of Section 72 by the petitioners in the instant case.

28. What does that mean is it that the financial powers of the petitioners, under the provisions of the Act, 1965 are unrestricted, uncanalised and unfettered? The answer has to be no. Reasons are to be seen in the framework of Indian polity governed by a written Constitution. India is a democratically governed Republic, where ultimate power resides in it's citizens and the elected representatives exercise power for and on behalf of the citizens. This makes all its democratic institutions as well as functionaries of the democratic institutions, whether elected or appointed, accountable to people of India. The accountability of public functionaries to people of India is well defined by the principle of rule of law, a principle on which the scheme of Indian Constitution is based. In several judgments of Hon'ble Apex Court, it has been held to be part of Articles 14 and 21

pervading them like brooding omnipresence (*See: Maneka Gandhi Vs. Union of India A.I.R. 1978 SC 597)* and striking at non-arbitrariness (*Ramana Dayaram Shetty Vs. The International Airport Authority of India and others A.I.R. 1979 SC 1628*). The principle of rule of law provides a safeguard against the arbitrary exercise of power and requires every public functionary and public authority to act fairly, reasonably and prudently in the public interest and for the public good. In the case of **Natural Resources Allocation, In Re, Special Reference No.1 of 2012, (2012) 10 SCC 1**, the Hon'ble Apex Court has elucidated the scope of Article 14 of the Constitution of India in its applicability to the public authorities engaged in contractual obligations. The Hon'ble Apex Court has held that while exercising the executive powers in the matters of trade or business, public authorities must be mindful of public interest, public purpose and public good. The observations of the Hon'ble Apex Court, as they appear in paragraphs 183 and 184, are reproduced thus :

183. The parameters laid down by this Court on the scope of applicability of Article 14 of the Constitution of India, in matters where the State, its instrumentalities, and their functionaries, are engaged in contractual obligations (as they emerge from the judgments extracted in paras 159 to 182, above) are being briefly paraphrased. For an action to be able to withstand the test of Article 14 of the Constitution of India, it has already been expressed in the main opinion that it has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. The judgments referred to, endorse all those requirements where the State, its instrumentalities, and their functionaries, are engaged in contractual transactions. Therefore, all government policy drawn with reference to contractual matters, it has been held, must conform to the aforesaid parameters. While Article 14 of the Constitution of India permits a reasonable classification having a rational nexus to the object sought to be achieved, it does not permit the power of pick and choose arbitrarily out of several persons falling in the same category. Therefore, criteria or procedure have to be adopted so that the choice among those falling in the same category is based on reason, fair play and non-arbitrariness. Even if there are only two contenders falling in the zone of consideration, there should be a clear, transparent and objective criteria or

procedure to indicate which out of the two is to be preferred. It is thus, which would ensure transparency.

184. Another aspect which emerges from the judgments (extracted in paras 159 to 182, above) is that, the State, its instrumentalities and their functionaries, while exercising their executive power in matters of trade of business, etc. including making of contracts, should be mindful of public interest, public purpose and public good. This is so, because every holder of public office by virtue of which he acts on behalf of the State, or its instrumentalities, is ultimately accountable to the people in whom sovereignty vests. As such, all powers vested in the State are meant to be exercised for public good and in public interest. Therefore, the question of unfettered discretion in an executive authority, just does not arise. The fetters on discretion are clear, transparent and objective criteria or procedure which promotes public interest, public purpose and public good. A public authority is ordained, therefore to act, reasonably and in good faith and upon lawful and relevant grounds of public interest.

29. In the case of **Noida Enterpreneurs Association vs. Noidaand ors. (2011) 6 SCC 508**, the Hon'ble Apex Court has held that the State or the public authority which holds the property for the public acts as a trustee and, therefore, has to act fairly and reasonably. The Hon'ble Apex Court has held that the public trust doctrine is a part of the law of the land. The relevant observations of the Hon'ble Apex Court, as they appear in paragraphs 38, 40 and 41, are reproduced thus:

38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc. acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State of public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.

40. The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only

be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide Erusian Equipment and Chemicals Lstd. v. State of W.B. (1975) 1 SCC 70; Ramana Dayaram Shetty v. Intentional Airport Authority of India (1979) 3 SCC 489, Haji T.M. Hassan Rawther v. Kerala Financial Corpn. (1988) 1 SCC 166, Shrilekha Vidyarthi v. State of U.P. (1991) 1 SCC 212 and M.I. Builders (P) Ltd. v. Radhey Shyam Sahu (1999) 6 SCC 464.]

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. Public authorities cannot play fast and loose with the powers vested in them. A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood, conferred. In this context, in good faith means for legitimate reasons . It must be exercised bona fide for the purpose and for none other. [Vide Commr. of Police v. Gordhandas Bhanji AIR 1952 SC 16, Sirsi Municipality v. Cecelia Kom Francis Tellis (1973) 1 SCC 409, State of Punjab v. Gurdial Singh (1980) 2 SCC 471, Collector (District Magistrate) v. Raja Ram Jaiswal (1985) 3 SCC 1, Delhi Admn. v. Manohar Lal (2002) 7 SCC 222and N.D Jayal v. Union of India (2004) 9 SCC 362.]

30. The above authorities clearly lay down a proposition of law that all the public functionaries holding the property, by application of principle of rule of law, must hold the same as trustees and, therefore, while allocating or distributing the same, must act in a fair and reasonable manner and in the interest of public largesse and for public good and for public purpose. Therefore, in spite of there being no apparent violation of Section 72 of the Act, 1965, in this case, the petitioners, being the trustees of the public property, cannot be held to be having unrestricted and unfettered powers while allocating public works on behalf of the municipal council to any contractor. There has to be some limit, some restriction, some fetter on the powers of the council or the petitioners in contractual matters or otherwise it would be antithetic to concept of rule of law, the very foundation of Indian Constitution. Such fetters and restrictions could be found in the Standing Order No. 36. But, then the question would arise, keeping in view the argument of

learned senior counsel for the petitioners, whether various instructions or guidelines stated in the Standing Order No. 36 [page 84 of paper-book] would bind the elected representatives of the Municipal Council of Katol like the petitioners or not. According to the learned senior counsel for the petitioners, these instructions having been issued by the Director, Municipal Administration, without any authority either under the statute or rules framed by the State Government do not bind the elected councilors like the petitioners. He also submits that in any case the instructions in the Standing Order No. 36, particularly those contained clauses 18 and 27 thereof, would have application to only those cases where the contractual work has to be carried out by some agency appointed by the Municipal Council and would not be applicable to a person who is appointed as a rate contractor, as in the present case. On the other hand, it is the contention of learned special counsel for respondents 1 to 3 and learned counsel for respondent no. 4 that even though these instructions are in the nature of executive directions, they would certainly bind the elected representatives when it comes to performance of their executive functions, like awarding of contracts and so on, as long as these directions are not inconsistent with any express provision of the statute or rules made thereunder and particularly when they provide safeguards against the arbitrary exercise of powers by the elected councilors.

31. So, first it will have to be found out whether the instructions stated in the Standing Order No. 36 would bind the petitioners or not. For this purpose, a reference to Section 49A of Act 1965 would be useful. **Section 49A** reads as under:

49A. Performance of functions by agencies

Where any duty has been imposed on, or any function has been assigned to a Council under this Act or any other law for the time being in force, or the Council has been entrusted with the implementation of a scheme (i) the Council may either discharge such duties or perform such functions or implement such schemes by itself; or (ii) subject to such directions as may be issued and the terms and conditions as may be determined by the State Government, cause them to be discharged, performed, or implemented by any agency;

Provided that the Council may also specify terms and conditions, not inconsistent with the terms and conditions determined by the State Government for such agency arrangement.

It is thus clear from the above provision of law that a Council may either discharge its duties or perform its functions or implement its schemes either by itself or by any agency. This would mean that execution of various public works which a Municipal Council must do in the interest of it's denizens, can be done by the Council by itself or through an agency. It is also clear that whenever the Council decides to get its works executed by an agency, it must abide by all such directions as may be issued and such terms and conditions as may be determined by the State Government. The proviso to Section 49A gives some freedom to a Council to specify its own terms and conditions for getting various works executed through an agency, however, subject to the limitation that the terms and conditions specified by the Council are not inconsistent with the directions and/or the terms and conditions issued and determined by the State Government. Thus, the purpose this Section seeks to achieve is that in contractual matters, the powers of a Municipal Council must not be unrestricted and uncanalised and must be regulated some way or the other so as to answer the test of fairness, reasonableness and transparency implicit in the concept of rule of law. This provision of law, it is note worthy to mention, does not refer to any rules framed by the State Government and only lays down that the allotment of works or handing over of its duties by a Council to an agency for being performed or discharged by it shall be subject to such directions and such terms and conditions, as may be issued and determined by the State Government. Use of the expression such directions as may be issued and such terms and conditions as may be determined by the State Government is sufficient indicator of the fact that the State Government need not necessarily resort to it's rule making power under Section 321, though it can and may issue directions or prescribe terms and conditions through executive fiats issued as Government resolutions. This would lead to a further conclusion that the Government resolutions issued by the State Government in pursuance of or with a view to achieve the purpose of the said provision of law would be binding upon a Municipal Council and the only liberty given to a Municipal Council is to specify such terms and conditions, as are not

inconsistent with the terms and conditions determined by the State Government. In the present case, it is not the case of the petitioners or even the respondents 1 to 4 that the Municipal Council, Katol, had specified its own terms and conditions for execution of various works of the Council through an agency, as per its power under proviso to Section 49A. Therefore, if the Inquiry Officer has placed reliance upon particular terms and conditions determined by the State Government, and which reliance has been found to be correct by the respondent no. 2, it cannot be said that the petitioners would not be bound by those terms and conditions and would be having absolute freedom while exercising their powers in terms of Section 72 of the Act, 1965. Ultimately, principle of rule of law which is embodied in Section 49A of the Act, 1965, would necessarily make all powers including financial powers of public functionaries like the petitioners subject to some limitations and reasonable restrictions not inconsistent with other statutory provisions or rules framed by the Government.

32. With this background, let us now examine the Standing order No. 36. Upon its close perusal one would find that what has been stated therein is in the nature of guidelines to be followed by the Municipal Councils while discharging their duties or performing their functions through some agency. These guidelines are consistent with the provisions of Section 49A. It is further seen that these guidelines have been issued on the basis of executive directions already issued in this regard by the State Government vide its resolutions dated 2.1.1992 and 4.2.2003. These guidelines, broadly speaking, clarify and elaborate what is already there in the Government resolutions dated 2.1.1992 and 4.2.2003. This can be seen from clauses 4 and 5 of the Standing Order. It is also not the case of the petitioners that these guidelines are inconsistent with the Government resolutions dated 2.1.1992 and 4.2.2003. If this is the nature of the guidelines issued vide Standing Order No.36, there is no reason why they should not be considered as part and parcel of the Government resolutions dated 2.1.1992 and 4.2.2003. Consequently, it would have to be held that the guidelines issued vide Standing Order No. 36 would also be binding upon the Municipal Councils in addition to the directions issued under Government resolutions dated 2.1.1992 and 4.2.2003, and accordingly I find so.

33. It is significant to state here that clause 53 of the Standing Order No. 36 affords some limited freedom to Municipal Councils in getting executed their works through any agency by laying down that the Municipal Councils may make some changes in the terms and conditions as per the demand of local conditions subject, however, to the condition that these changes and amendments shall not run contrary to the Standing Order, rules and regulations framed by various departments. This is in line with Section 49A of the Act 1965 conferring some liberty upon the Municipal Councils in contractual matters. Under the proviso to it, a Municipal Council has the freedom to specify its own terms and conditions not inconsistent with the terms and conditions determined by the State Government for an agency agreement. The whole purpose of Section 49A, or for that matter the Standing Order No.36, I must say at the cost of repetition, is that powers of the councillors in relation to an agency agreement should not be unrestricted and uncanalised and there should be some fetters on them. That is the reason why sub-section (ii) to Section 49A makes exercise of powers in contractual matters dependent upon the directions as may be issued and terms and conditions as may be determined by the State Government from time to time. However, having regard to the fact that local conditions may vary, the proviso to sub-section (ii) of Section 49A gives some liberty to a Municipal Council to prescribe its own terms and conditions not consistent with the terms and conditions laid down by the State Government so as to enable it to satisfy the local needs. But ultimately what matters is regulation of contractual powers of a Council by Government directions or by prescription of certain terms and conditions, whether by the State Government or by the Municipal Council and that is the essence of Section 49A of the Act, 1965. This would only emphasize what is already said and which is to the effect that discharge of duties or performance of functions or implementation of various schemes by the Municipal Council through some agency is something which is not unrestricted, uncanalised and unregulated. This is also consistent with what has been held by the Hon'ble Apex Court in the case of *Noida Enterpreneurs Association, supra,* wherein the Hon'ble Apex Court has held that the State or public authority holding property for the public or which has been assigned the duty of grant of largesse acts as a trustee and that public trust doctrine is a part of the law of the land and this doctrine has grown from Article 21 of the Constitution

of India and ultimately makes accountable the State and all the public functionaries to the people in whom the sovereignty vests. This doctrine makes all the public functionaries to act reasonably and fairly promoting all the while public interest, public purpose and public good. The relevant observations of the Hon'ble Apex Court in this regard are already reproduced in the previous paragraphs.

34. In the instant case, no terms and conditions in pursuance of Section 49A have been prescribed by the Municipal Council, Katol, or at least my attention has not been invited to any such terms and conditions. It is also not the case of the petitioners that the Municipal Council, Katol has prescribed its own terms and conditions for allotting its works for execution to an agency. Since the performance of its functions by the Municipal Council of the petitioners, the earlier discussion has shown, must be regulated one way or the other and since no such regulation by prescribing the suitable terms and conditions has been put in place by the Municipal Council, Katol, the principle of rule of law would demand that the Municipal Council abides by the executive directions of the State Government and the guidelines contained in such instruments as the Standing Order No. 36, which tend to clarify and elaborate the directions given in the Government resolutions, so long as they are not contrary to any statutory provisions or directions having the force of law. Therefore, even though the Standing Order no.36 has been issued by only a Director, Municipal Administration, an authority appointed under Section 74 of the Act, 1965, and does not show which power it utilizes for it's issuance, it would be binding upon the councillors of the Municipal Council, Katol. Sans these guidelines and absent it's own terms and conditions, powers of the Municipal Council, Katol in contractual matters would be absolute with no restrictions whatsoever which may give rise to a situation of arbitrariness succinctly described by Locke in the 17th Century in the words, *wherever law ends, tyranny begins* (*See: Principles of Administrative Law by M.P. Jain and S. N. Jain, page-7, 6th Enlarged edition, Reprint 2010, Lexis Nexis*). In this scenario, these guidelines serve the purpose of rule of law by declaring, in the words of Sir William Wade, *The powerful engines of authority must be prevented from running amok* (*See: Wade Administrative Law, 8th Edn. p.5, Oxford University Press*).

35. In the case of **Veerendra Kumar Dubey v. Chief of Army Staff and ors. (2016) 2 SCC 627**, the Hon'ble Apex Court has held that though administrative instructions cannot make inroad into statutory rights of an individual, these instructions, when they prescribe a certain procedural safeguard against arbitrary exercise of power, will not fall foul of the rule or be utra vires the statute. The observations of the Hon'ble Apex Court appearing in paragraph 15 are relevant in this regard and they are reproduced as under:

15. *It may have been possible to assail the Circular instructions if the same had taken away something that was granted to the individual by the rule. That is because administrative instructions cannot make inroad into statutory rights of an individual. But if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule or be dubbed ultra vires of the statute*.

36. The guidelines issued vide Standing Order No.36 are nothing but safeguards against the arbitrary exercise of powers by the standing committee or the Council in contractual matters and, as such, as held in the aforesaid case of Veerendra Kumar Dubey, the Standing Order cannot be called as beyond the scope of the authority of Director of Municipal Administration and thus it would bind the petitioners. Even otherwise, if it is the case of the petitioners that the guidelines stated in Standing Order No. 36 are not binding upon them as they have been issued beyond the scope of the authority of the Director, Municipal Administration, the petitioners cannot by themselves decide that they are not so binding while performing their executive functions. These guidelines in the nature of executive instructions would still bind them as long as they are not challenged in a Court of law and declared to be ultra vires the authority of the Director, Municipal Administration, as held in the case of **Krishnadevi Malchand Kamathia and ors. vs. Bombay Environmental Action Group and ors. (2011) 3 SCC 363**. This is also because of the fact that these executive instructions have been issued on the basis of the Government resolutions having a binding effect in terms of Section 49A of the Act, 1965 and, therefore, just as an order of a competent authority would have to be followed, these guidelines would also have to be treated the

same way and that would necessitate the affected person to approach the Court of law and seek a declaration that they do not have the force of law. That has not been done by the petitioners and, therefore, the Standing Order No.36 would also have the binding effect in this case.

37. Shri Gilda, learned counsel for respondent no. 4 has placed his reliance upon the cases of **(i) Ram Sunder Ram v. Union of India and ors. (2007) 13 SCC 255, (ii) State of Orissa and ors. v. Mamtarani Sahoo and anr. (1998) 8 SCC 753, (iii) K.H. Siraj v. High Court of Kerala and ors. (2006) 6 SCC 395**, and **Surinder Singh v. Central Government and ors. (1986) 4 SCC 667** to support his argument that executive instructions with binding effect can be issued whether the power to issue such instructions exists or not and that wrong reference made to a provision of law/rule, would not adversely affect the executive instructions issued by an authority. All these cases, in my respectful submission, would be of not much assistance to the facts of the present case, as what has been found in the instant case is that the Standing Order has been issued on the basis of Government Resolutions issued from time to time by the State Government to serve the purpose of Section 49A of the Act, 1965 and they only provide safeguards against the arbitrary exercise of power. It has also been found that providing of such safeguards is the essence of Section 49A and it does not matter who keeps them in place, whether the State Government or the Municipal Council and when such safeguards are not a strapon feature of Katol Municipal Council for exercise of its powers in contractual matters, those safeguards would have to be found out elsewhere, like the Government Resolutions and/or executive instructions or guidelines like the Standing Order no.36. Thus, the facts of the instant case distinguish themselves from the facts of the said cases where the central feature had been either absence of rules or presence of rules with wrong reference or no reference to source of power or presence of rules not providing for every aspect of the matter.

38. Learned counsel for the interveners has referred to me the case of **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and ors.** reported in **(1999) 6 SCC 464** wherein it has been held that when a statute provides that certain acts should be done in a particular manner prescribed in the provision, it must be done in the

same manner. While there cannot be any dispute about the principle of law so laid down, in the instant matter, there being no direct issue involved about departing from the procedure laid down in the statutory provision, in my humble opinion, I do not see any direct application of the said ratio to the facts of the present case.

39. The next limb of argument of learned senior counsel for the petitioners is that Standing Order No. 36, particularly its clauses 18 and 27 are not applicable to a rate contractor, like Shri Bambal and are applicable to the agencies to whom the work contracts are awarded. Learned special counsel for respondents 1 to 3 and learned counsel for respondent no. 4 as well as learned counsel for interveners in unison disagree with the said submission of learned senior counsel for the petitioners. In my view, the said submission of learned senior counsel is not consistent with the concept of agency. While the term 'agency' has not been defined any where in the Act 1965, the concept of agency originates from and receives its regulation from Chapter X of the Indian Contract Act, 1872. Under Section 182 of the Indian Contract Act, which will have to be taken recourse to in the absence of any definition of the said term having been given in the Act of 1965, the expression agent has been defined to mean a person employed to do any act for another or to represent another in dealing with third persons. It is obvious that a rate contractor appointed by the Municipal Council would squarely fall within the said definition of agent , as given in Section 182 of the Indian Contract Act. He is a person who is different from the person called under Section 182 the principal for whom he performs some act or whom he represents in dealing with the third person. Therefore, a rate contractor who is a person appointed by the Municipal Council to do acts on behalf of the Municipal Council would also be an agent and would be in the connotation of the expression agency employed in Section 49A of the Act 1965 and the Standing Order No.36.

40. Having seen that the guidelines contained in the Standing Order No.36 were equally binding upon the petitioners, the next question arising would be, whether there has been any breach of the terms and conditions of the Standing Order No. 36 and if so, whether it amounted to misconduct on the part of the petitioners, as contemplated under Sections 55B and 42 of the Act of 1965. The answer to both these questions, in view of the material available on record, especially the Inquiry

report of the Sub Divisional Officer dated 31.12.2013, has to be given as in the affirmative. The reasons for this conclusion are stated in the foregoing paragraphs.

41. Clause 18 of the Standing Order No.36 lays down that when any contractual work is to be allotted, it should not be allotted by sub-dividing it into smaller works, as for example, when there is a work relating to a road passing through one ward, then that work should be considered as one work or such work be considered as one work for one ward. This would indicate that for doing similar works in one ward, the contract should be allotted by consolidating all such works into one work for one ward. Clause 27 of Standing Order No.36 deals with qualifications and experience of the agents through whom the Municipal Council gets its contractual works done. It prescribes that before an agent is appointed for performing contractual works, the Municipal Council must determine the qualification of such agent and the criteria for prescribing the qualification should be determined on the basis of technical capability, resources, availability of financial means, technical experience, availability of qualified manpower, and registration with concerned departments of the State Government. It particularly prescribes that the agent or the contractor should be registered with the Public Works Department and if he has been allotted any contractual work relating to water supply, he should also be registered with the Maharashtra Jeeven Pradhikaran.

42. It is the contention of learned senior counsel for the petitioners that Clause 27 is applicable to only agents and not to rate contractors like Shri Bambal, and that even clause 18 is not applicable to him. According to him, only clause 19 is applicable to him. This is refuted by the learned special counsel for respondents 1 to 3 and learned counsel for interveners. I have already found that the concept of agency as contemplated under Section 49A as well as Standing Order No.36 cannot be distinguished from the idea of rate contractorship. A person who performs the functions of the Municipal Council and acts on it's behalf, whether one calls him an agent or a rate contractor, fundamentally stands in relationship with the Municipal Council as it's agent. Therefore, the argument that these clauses are not applicable to a rate contractor and are applicable to only an agent is fallacious.

43. Now, taking a look at the inquiry report dated 31.12.2013 is essential as it spells out in details the number and kind of works allotted and the manner in which they were allotted to the rate contractor, Shri Bambal. This report shows that basically there were five types of contractual works; such as (i) repairs of cement concrete roads, (ii) construction of a drain made up of RCC cement pipes, (iii) painting of buildings and compound walls, (iv) construction of RCC cause way (jiVk) over a water stream or nullah, and (v) repair of drains. Out of these five works, two works-namely construction of a drain with RCC cement pipes and construction of RCC cause way over a water stream were the works relating to construction proper or original works and not of the kind of repairs to the existing works and thus were squarely covered by clause 18 and not the clause 19. Therefore, the argument of learned senior counsel for the petitioners that what was applicable, if at all it was applicable, to the allotment of works to Shri Bambal was clause 19 and not clause 18 of Standing Order No. 36 is misconceived. While clause 18 applies to all kinds of works, original or repairs, clause 19 applies to works which are purely in the nature of repairs to the existing construction and it says that such works as filling of pits and potholes on the roads, tarring of roads, carrying out of repairs to pipelines supplying water, motors/pumps and so on and so forth should be got done through rate contractors to be appointed by inviting tenders. Two of the works out of the five works, stated earlier, could not have been allotted to a rate contractor like Shashikant Bambal in this case by the petitioners. The purpose of clause 19 is convenience and time saving. This is seen from the reason stated therein. It is that such kind of repair works are required to be done quite frequently and it is not possible to invite tenders every time and frequently. However, this is not the case with the contractual works relating to making of original construction like laying of a drain in RCC (reinforced cement concrete) pipes or construction of a cement cause way over a water stream. For these works, tenders must be invited, as per clause 18 of Standing Order No.36, by treating all similar works in one ward as one work for that ward and that there should be no dividing of same work in one ward.

44. In addition to original works, Shri Bambal was allotted repair works also. Repair works can be allotted as per clause 19, to a rate contractor. But, to say that clause 18 mandate against sub-dividing one work or similar works in one ward

does not operate against repair works is to defeat it's object, the object of transparency and accountability in contractual matters. It is clearly laid down in clause 18 that as it was noticed by the Directorate that some of the Municipal Councils were allotting contractual works by sub-dividing them in different works, it was found necessary to direct that the same work should not be divided. Contingent situations that may arise in such matters are also dealt with therein. It is stated that when works relating to roads in one ward are to be carried out, these works should be treated as one work and the tender should be invited only for such one work instead of inviting tenders for different works and that if any work is going to arise again in next three months, a consolidated tender for all these works be invited. In other words, clause 18 mandates that there should be no sub-dividing of same work or similar works in one ward and when same kind of work is going to arise again in next three months, tenders should be invited not for just one work but all works that are going to arise in next three months. This clause does not discriminate between original works and repair works and equally applies to all works. So, for this reason also, I find no substance in the argument of learned Senior Counsel in this regard.

45. On perusal of the inquiry report dated 31.12.2013 it can be clearly seen that while allotting various contractual works to the rate contractor, Shri Bambal, similar works in the same ward, as for example, works relating to repairs to concrete road and, RCC cement pipe drain construction work, though falling in the same ward, were sub-divided so as to have the estimated cost of each of these works to be between Rs.35,000/- to Rs.40,000/-. The painting work at Sr.Nos. 10 and 11, though related to same premises, was sub-divided into two different works one relating to the building and the other relating to the compound wall, with cost estimates at Rs.40,000/- each. The other items disclose that the works relating to the repairs to cement concrete road in one ward were sub-divided into different works costing either Rs.40,000/- or Rs.35,000/- or Rs.34,000/-. Same has been done in respect of the work relating to construction of drain in RCC cement pipes. Such division of works and their subsequent allotment made separately to Shri Bambal is against the mandate of clause 18 of the Standing Order no.36, which applies equally, as we have seen earlier, to original construction works as well as repair works done to existing structures or roads under clause 19. In addition to

violation of mandate against sub-division of same work or similar works in the ward, there has been a breach of other mandate of clause 18 requiring allotment of original work by inviting a separate tender and not on rate contract basis. As said earlier, the work of construction of RCC cause way over water stream was the original work and so it could not have been allotted to a rate contractor. Under clause 19, the rate contractor exists for carrying out not the original works but only repair works or the works which by their nature are required to be done again and again. Construction of a drain in RCC cement pipes and construction of RCC cause way are not the kind of works which are required to carried out again and again. They have a considerable long life, although repairs to them may be required. But, that is a different aspect.

46. As regards clause 27, I find that there is a violation of this clause also when the contractual works were allotted by the petitioners to a rate contractor like Shri Bambal. It is not in dispute that he was not a contractor registered with the Public Works Department. There is no material on record showing that he was registered also with the Maharashtra Jeevan Pradhikaran, at least for the purpose of works relating to water supply. Therefore, there has been a breach of even this clause in allotting the contractual works to Shri Bambal.

47. From the above discussion, it becomes clear that while awarding contractual works to the rate contractor the mandate of clauses 18 and 27 of the Standing Order No.36 has been violated, but it has been done by the petitioner nos. 1 to 9 and not the petitioner no.10 as the petitioner nos. 1 to 9 were parties to the decision taken in that regard, while petitioner no.10 did not seem to be so, the reasons for which are recorded in subsequent part of the judgment. These clauses constituted together an effective safeguard against the arbitrary exercise of power and in the absence of any other terms and conditions having been prescribed by the Municipal Council, Katol, governing the aspect of allotment of works to contractors, ought to have been followed by the petitioners. It is true that there has been neither any allegation of corruption nor any proof of obtaining of wrongful gain or causing of wrongful loss to anybody. It may also be true that in the past one contractor viz. Sheikh Nasir, though unregistered contractor, was similarly awarded with works. But, whether allegation of corruption and proof of wrongful

gain, etc. or not, a violation of sage-guard against arbitrary exercise of public power as contained in clause 18 and 27 is serious. Similarly, a violation blinked away and a sin buried in the conspiracies of the past, are no worthy precedents to emulate the unworthy. In law, precedents are the role models which espouse what is right and denounce what is wrong. They do not operate in a reverse way, even for a moment. Fairness, reasonableness, accountability and transparency on the part of public functionaries like the petitioners engaged in performing public functions are the shining attributes of the rule of law. In this case they required that the safeguard as provided under Standing Order No. 36 was duly respected and followed by the petitioners in discharge of their official duties. This is also a part of public trust doctrine. If the public functionaries do not adhere to these laid down norms, then who else will? If their such disregard for established norms is viewed leniently or as mere irregularity on the ground that there is no allegation of corruption or no evidence of causing of any loss or in the past it was ignored, it would open floodgates for further violations by many giving same justification. As a matter of fact, the aspect of obtaining of wrongful gain or causing of wrongful loss is something which could not have been effectively enquired into in an inquiry conducted under Section 311 of the Act, 1965. The reason being that for unearthing evidence in that regard an Inquiry Officer would require much wider powers of inquiry, akin to an Investigating Officer making investigation under the provisions of Code of Criminal Procedure, such as power to visit premises and take search and so on and so forth, which powers are not to be seen under Section 311. Be that as it may, fact remains that public functionaries like the petitioners must discharge their duties in accordance with the established procedures and norms, which is a requirement of doctrine of public trust and principle of rule of law. If they do not do so, their such conduct would turn into a misconduct, it being reflective of violation of the instructions and guidelines issued in accordance with or under the authority of law. When such violation occurs in allotting contracts where spending of public funds is involved, it becomes all the more serious and cannot be treated as a mere irregularity. The question involved here is not of motive or causing of loss, but essentially of the example that it presents to all the subordinate authorities and the public at large whose interest and welfare are expected to be promoted by the public functionaries. If such

conduct is not taken as a misconduct and only a financial irregularity on the ground that there has been no wrongful loss or there has been meager loss of just about Rs.38,000/-, as submitted by the learned senior counsel for the petitioners, any officer of the Municipal Council or a public functionary of the Council would be free to do an act the way he thinks fit, may be on his own fancies and yet get away from it saying that no loss has been actually caused or difference in amounts paid and amounts ought to have been paid is marginal. There will not be any respect for rule of law, there will not be any certainty about the decisions taken and there will not be any credibility left in the decisions taken and the public works executed on the basis of such decisions. This would be the birth of arbitrariness, a sworn enemy of principle of rule of law. Therefore, in my view, the violation of the aforestated clauses of Standing Order No. 36 by the petitioners is a misconduct which is serious in nature and which is not the commission of mere financial irregularity or error in judgment.

48. Learned senior counsel for the petitioners relying upon the cases of **Sharda Kailash Mittal vs. State of Madhya Pradesh and ors. (2010) 2 SCC 319** and **Baburao Vishwanath Mathpati v. State of Maharashtra and ors. 1996(1) Mh.L.J. 366**, has submitted that a holder of a democratically elected office-bearer can be removed only when there are grave and exceptional circumstances and not when there are only minor irregularities, that the misconduct must be grave or willful or intentional and should not be a wrong behaviour or unlawful behaviour not amounting to mere negligence or error of judgment. He also submits that standard of proof of misconduct is much stricter. There can be no dispute about these principles of law. But, I have already found that the violations committed by the petitioners in this case cannot be dismissed as mere irregularities. I have also found that if public functionaries start justifying violations of established norms and procedures in contractual matters involving distribution or allotment of public money on the ground that no financial loss or a little loss has been caused and that no gain has been proved to have occurred to the petitioners, there would be breach of doctrine of public trust as well as creation of a chaotic and free for all situation allowing the public functionaries or elected representatives to conduct themselves in a capricious manner. The argument that for an act to be adjudged a misconduct stricter proof is required also holds no water as the violations found to

have been committed here themselves speak for their seriousness fitting into the latin principle, *res ipsa loquitur* .

49. In the case of **Ravi Yashwant Bhoir v. District Collector, Raigad and ors. (2012) 4 SCC 407** the Hon'ble Apex Court has particularly observed in paragraph 12 that the word misconduct , though not capable of precise definition, gets its meaning from the context, the degree of deviance and its effect on the discipline and the nature of the duty. These observations extracted from paragraph 12 which have been quoted from P. Ramanatha Aiyar's *Law Lexicon*, Reprint Edn. 1987 p. 821, are reproduced thus:

12. . Thus, it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality of character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve ..

{See also State of Punjab v. Ram Singh {2(1992) 4 SCC 54}

It is clear from these observations that the expression misconduct has to be understood in the context of the facts and circumstances of each case and whether a particular act would amount to misconduct or not would depend upon its context, intensity of the deviance, nature of the delinquency and its over all effect on the discipline of the institution and also the nature of duty during the performance of which the alleged misconduct has occurred. The duty to be performed by the councillors while spending public money is of high standard and it must fit into the parameters of fairness, reasonableness, accountability and transparency so that the public trust in the councillors is preserved. Any violation of an administrative instruction or guidelines of binding nature, though not resulting

in any proved loss to the Municipal Council, would be viewed with great suspicion by the public and would have adverse impact on the discipline of a Municipal Council. It would also be a transgression of established and definite rule of action. Therefore, following the law laid down in the cases of *Sharada Kailash Mittal, Baburao Vishwanath Mathpati and Ravi Yashwant Bhoir, supra,* I find that breach of clauses 18 and 27 committed by the petitioner nos. 1 to 9 in allotting the contractual works in the instant case is a misconduct of serious nature, as contemplated by Sections 55B and 42 of the Act, 1965.

50. Learned senior counsel for the petitioners has submitted that the impugned order does not disclose any reasons and shows lack of non-application of mind, though it is the requirement of law, as held in the cases of Sharada Kailash Mittal, Ravi Yashwant Bhoir, *supra*, and **Lalita Malhari Barve v. State of Maharashtra and ors. 2002 (5) Mh.L.J. 401.** Countering the argument, Shri Kilor, learned special counsel has submitted that the impugned order discloses reasons as well as application of mind, although in a brief manner. He submits that this is because of the fact that respondent no. 2, upon considering the inquiry report in the light of the arguments canvassed on behalf of the petitioners, found that the conclusions made in the inquiry report are based upon evidence and are proper, and therefore, the respondent no. 2 passed the impugned order by recording only brief reasons. He submits that in matters like this, whenever the decision making authority decides to concur with the findings recorded in the inquiry report, all that is required in law for such an authority is to record its own conclusions with brief reasons and it is only when such authority differs with the inquiry officer that the authority would be required to consider each of the findings and state detailed reasons. For this submission, he relies upon the case of **Tara Chand Khatri v. Municipal Corporation of Delhi and ors. AIR 1977 SC 567.**

51. So far as concerned the argument relating to absence of application of mind on the part of respondent no. 2 and absence of any reasons in the impugned order, I must say that the argument is not completely correct. Reasons are indeed recorded, although very briefly. The impugned order also shows application of mind to the facts of the case. It is also stated in the impugned order that the Hon'ble Minister-respondent no. 2, had even considered the legal submissions

made on behalf of the petitioners. What is, however, not seen in the impugned order is dealing by the Hon'ble Minister with the detailed factual aspects and also legal submissions point by point. In the authorities relied upon by the learned senior counsel for the petitioners and referred to earlier, the principle of law enunciated is that the order of a quasi judicial authority, like respondent no. 2, must reflect application of mind as well as reasons and that it is not enough to just make conclusions without giving any reasons. The reason being, as held by the Hon'ble Apex Court in the case of *Ravi Yashwant Bhoir*, *supra*, that if such a decision reveals inscrutable face of the sphinx it would become virtually impossible for the Courts to perform their appellate function or exercise power of judicial review in adjudging validity of the reasons. The affected party will also know as to why the decision has gone against him. It is also the cardinal requirement of principles of natural justice. The observations of the Hon'ble Apex Court in this regard appearing in paragraph 46 are reproduced thus:

46. The emphasis on recording reason is that if the decision reveals the inscrutable face of the sphinx , it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out of the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.

It is clear that the rationale behind the principles of giving of reasons and application of mind is that the courts should be able to properly perform their function of judicially reviewing the order and the affected party should know as to why did the decision go against him. In the instant case, as stated earlier, the impugned order discloses application of mind but the reasons given are cryptic. What is not notably seen in it is point by point dealing with the submissions that may have been made on behalf of the petitioners. So, the flaws in the impugned order relate to cryptic reasons and absence of point by point consideration of

submissions. As regards short reasons, I must say, the deficiency is made up by the reasons recorded in the inquiry report which has been accepted by respondent no.2 and copy of which has been furnished to each of the petitioners. About absence of reflection on submissions that may have been made, I must say, it would have to be examined in the light of the prejudice thereby caused to the petitioners. If any prejudice has been caused to the petitioners, they would stand on a solid ground and the impugned order would be liable to be quashed and set aside for this reason alone. If the case is otherwise, and the court is still able to perform its function of judicial review properly, and the detailed reasons are also to be found, if not in the impugned order but in the inquiry report, I do not think that the petitioners would have any case in this regard.

52. It is seen from the impugned order that it is entirely based upon the inquiry report dated 31.12.2013 and the inquiry report is in great details dealing with all relevant aspects of the matter. It also explains as to how there has been violation of the guidelines contained in the Standing Order No. 36 by each of the petitioners. Some of the conclusions recorded in the inquiry report are to the effect that the works allotted to the rate contractor Shri Bambal were not carried out by himself, but were actually executed by another person Shri Surendra Lohi and that though the tender submitted by one contractor Shri Bhakte was much lower than the tender submitted by the rate contractor Shri Bambal latter's tender was accepted. These conclusions, although upheld in the impugned order, are wrong and not based upon the facts established on record. There has been no evidence whatsoever to show that Shri Bambal got executed the works allotted to him through Shri Surendra Lohi. As regards the tender of Shri Bhakte being lowest, it must be stated, his tender being for the year 2013-14 had no nexus whatsoever with the tender of Shri Bambal, which was accepted for the year 2012-13. But, except for these two wrong findings, there has been no other finding recorded in the impugned order which could be said to be not based on the evidence available on record. The violation committed by the petitioner nos. 1 to 9 is writ large from the face of the record, for which these petitioners do not have any answer and could not have any in view of the facts borne out from the inquiry made in this matter and law applicable to these facts, as discussed earlier. Had it been the case of these petitioners that the Municipal Council, Katol, had determined its own

terms and conditions for inviting tenders and allotting contractual works to various contractors, the argument of causing of prejudice to them could have been accepted as in that case it could have been said that the inquiry report as well as the impugned order are one sided and that they do not take into account the other side of the story. But, there has been no other side of the story put-forth by these petitioners. If they say that the guidelines in Standing Order did not bind them then they would also have to say that allotment of works was done in accordance with other norms, as powers pertaining to them cannot be exercised arbitrarily, which they have not said. So, there is no question of prejudice having been caused to them. That apart, the impugned order has been passed on the basis of inquiry report and as the inquiry report records findings giving reasons in details, it cannot be said that this is a case wherein ultimately no reasons are given or there has been absence of application of mind or that any prejudice has been caused to the petitioners. So far as the ratio of the case of Tarachand, relied upon by the learned special counsel for the respondents 1 to 3, regarding sufficiency of brief reasons is concerned, I do not think that it could be straightway made applicable to the facts of the present case as it related to a service matter involving dismissal of the appellant from service as an assistant teacher, which are not the facts of the present case.

53. Learned senior counsel for the petitioners has also submitted that the statements of the petitioners were not recorded by the Inquiry Officer who conducted the inquiry under the provisions of Section 311 of the Act, 1965, even though he was vested with the powers of civil court to record the evidence. This argument cannot be accepted for the reason that there is no provision of recording of statements of the person against whom inquiry is made either in Section 42 or Section 55B or Section 311 of the Act, 1965. Under Section 311, discretion has been given to the Inquiry Officer to summon and examine any person whose evidence appears to him to be material. If the Inquiry Officer does not think it fit and proper in his discretion to record statements of the persons against whom complaint has been made, same cannot be assailed just for the sake of it. It has to be shown that such exercise of discretion was wrong and caused prejudice to the concerned persons. It is not the case of the petitioners that if their statements had been recorded by the Inquiry Officer they would have been able to put-forth a

particular defence. I have also found that in this case there has been no other side of the story, there being no guidelines and no terms and conditions fixed or determined by the Municipal Council on its own for exercise of powers under Section 49A of the Act of 1965 and, therefore, no prejudice has been caused to the petitioners. The argument is therefore rejected.

54. Learned senior counsel for the petitioners has submitted, by relying upon the cases of **(i) Devang Rasiklal Vora v. Union of India and ors. 2004 (2) Mh.L.J. 208, (ii) Savitri Chandrakesh Pal v. State of Maharashtra and ors. 2009 (4) Mh.L.J. 406; (iii) Pradeep K.R. Sangodkar v. State of Maharashtra and anr. 2007 (Supp.) Bom. C.R. 544; (iv) Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries Ltd. (2010) 6 SCC 384** and **(v) Anil Rai vs. State of Bihar (2001) 7 SCC 318**, that endeavour should be made not only by the courts but also by the quasi-judicial authorities, like respondent no. 2, to deliver the judgment or order as early as possible and in any case within three months of the date on which the matter was closed for judgment/order and that the order should be reasoned and be communicated to the parties immediately. He submits that in this case the impugned order has been passed after expiry of eight months from the date on which the arguments were heard and the matter was closed for orders and on this ground alone the impugned order is liable to be quashed and set aside.

55. Shri Kilor, learned special counsel for respondents 1 to 3, submits that the law laid down by the Hon'ble Apex Court in this regard, which is the basis for issuing guidelines by this Court in the cases of *Devang Rasiklal Vora, Savitri Chandrakesh Pal* and *Pradeep Sangodker*, referred to above, applies to only judicial authorities and not to the authorities like respondent no. 2 performing statutory functions under Section 55B or section 42 of the Act, 1965.

56. The argument of learned special counsel that these guidelines cannot be made applicable to the authorities like respondent no. 2 is against the view taken in the cases of *Devang Rasiklal Vora, Savitri Chandrakesh Pal and Pradeep Sangodker*, referred to above. Respondent no.2, the Hon'ble Minister, when he passed the order of disqualification of the petitioners under Sections 55B and 42 of

the Act, 1965, discharged his duties as quasi-judicial authority and, therefore, it was expected to render the order as early as possible, which he has not done in this case. But not passing of the order within the time frame of three months is not be all and an end of all affair. In the case of *Saheli Leasing and Industries Ltd.*, *supra*, the Hon'ble Apex Court has issued some guidelines in this behalf. One of the guidelines is to the effect that after the arguments are concluded, an endeavour should be made to pass the order at the earliest and it be passed not beyond the period of three months. This guideline came to be issued in a case where the judgment of Division Bench of Gujarat High Court was under challenge. The Hon'ble Apex Court made it clear that the guidelines laid down in paragraph 5 of the judgment are only some of the guidelines which are required to be kept in mind while writing the judgment and that it was only reiterating what had already been said in several judgments of the Hon'ble Apex Court.

57. The aspect of early delivery of judgment order has been particularly dealt with in details by the Hon'ble Apex Court in the case of *Anil Rai*, supra. In paragraph 10 of the judgment, the Hon'ble Apex Court has dealt with a situation when the judgment is not pronounced within three months from the date of reserving it. The Hon'ble Apex Court held that where a judgment is not pronounced within three months, any of the parties to the case would be permitted to file an application in the High Court with a prayer for early judgment and as and when such an application is filed, it shall be listed before the same Bench by which the judgment is reserved for fixing the date of the judgment or passing of appropriate orders. It has also been held that if the judgment, for any reason, is not pronounced within a period of six months thereafter, any of the parties to the *lis* shall be entitled to move an application before the Hon'ble Chief Justice of the High Court with a prayer to withdraw the case and make it over to any other Bench for fresh arguments. The ratio of this case has also been followed by the learned Division Bench of this Court in the case of *Devang Vora* and by the learned Single Judge of this Court in the case of *Pradeep Sangodker, supra*. Though the directions of the Hon'ble Apex Court in the case of *Anil Rai, supra*, were in the context of a judgment reserved by a judicial authority and not by a quasi-judicial authority, in view of the fact that this Court has already taken a view that these directions would also be applicable to quasi-judicial authorities and Tribunals respectively would

have their application to the instant matter. So, the directions given in the case of *Anil Rai, supra*, would have to be followed even by the quasi-judicial authorities and parties before the quasi-judicial authorities. Therefore, the procedure, as laid down in clauses (iv) and (v) of paragraph 10, regarding filing of applications with a prayer for early judgment and prayer for making over the matter to some other bench, in this case, to some other authority, was required to be followed by the petitioners. That has not been shown to be done by them. Then the question of causing of prejudice to the petitioners by belated delivery of the judgment would also have to be considered. According to the learned senior counsel for the petitioners, non consideration of the legal submissions by the respondent no. 2 is a prejudice caused to the petitioners. I am not inclined to accept the argument for the reason that the violation of guidelines contained in Standing Order No. 36 having a binding effect upon the petitioners has been established in the inquiry conducted under Section 311 of the Act, 1965 and it has never been the case of the petitioners that they had followed the guidelines and terms and conditions determined by the Municipal Council for exercise of powers by them in contractual matters. As such, there was no question of disregarding the instructions in the Standing Order No.36. There is thus no prejudice caused to the petitioners by belated passing of the impugned order in as much the petitioners have not shown that they had followed the procedure prescribed in *Anil Rai*, supra. Therefore, the petitioners, in my humble opinion, would not get any assistance from the aforestated cases referred to me on their behalf by the learned Senior Counsel.

58. It is also the contention of the learned senior counsel for the petitioners that the two contractors-Shashikant Bambal and Shri Bhakte, oth submitted affidavits to the effect that the latter would have no objection if the works allotted to him were carried out by the former and the former would have no objection in accepting the payments for the works done by him at the rate quoted by the latter which were some what lower than the rates quoted by the former. These affidavits have not been considered by the respondent no. 2 and rightly so. These affidavits are of 14.8.2014, much after the allotted works were completed by the rate contractor and, therefore, could not have had any bearing upon allotment of works already done in violation of clauses 18 and 27 of the Standing Order No.36 by the petitioner nos.1 to 9.

59. It is also the contention of learned senior counsel for the petitioners that the appointment of the rate contractor Shri Shashikant Bambal in the General Body Meeting held on 16.5.2012 was by unanimous resolution and, therefore, allotting of works to him later on for the same year, i.e. year 2012-13, for which he was appointed as a rate contractor by the standing committee or by the petitioners cannot be seen as illegal. He also submits that the Standing Committee, while passing the various resolutions on 07.5.2013, had only accepted the recommendations of the Junior Engineer and did not do anything on its own like sub-dividing the works, allotting the works to an unregistered contractor and so on. He further submits that if the petitioners are to be held guilty of misconduct of allotting contractual works to an unregistered contractor, and by subdividing the various works, all the councillors who were party to the resolutions passed unanimously to appoint Shri Bambal as the rate contractor would also have to face the action of disqualification and the concerned Junior Engineer is required to be subjected to a disciplinary enquiry. The said arguments cannot be accepted for more than one reason.

What has been done in the General Body Meeting held on 16.5.2012 is only appointment of Shri Bambal as the rate contractor by accepting his tender and nothing more. By the Resolution bearing No. 37/3, only rate contractorship of Shri Shashikant Bambal has been fixed and it was so fixed, as seen from the letter of Chief Officer dated 15.5.2013, for a period of one year with effect from 01.6.2012 and no specific works were allotted to him then. Therefore, only because Resolution No. 37/3 has been passed unanimously by all the councillors, the complainants, some of whom were also the councillors at that time, could not be blamed. It were the Standing Committee which approved the allotment of specific works, which were subdivided by the Junior Engineer into small works with estimated cost of Rs.40,000/- or below for each of the works and when it came to confirmation of such allotment of works in the General Body Meeting held on 16.7.2013, the complainants had raised objections, whereas, the petitioner nos. 1 to 9 brushed aside those objections and confirmed those allotment of contractual works and that was done through unanimous vote, as at least nine councillors had left the house in protest by that time. This can be seen from the copy of the minutes of the General Body Meeting dated 16.7.2013 available on record at page

175. Then, if the Junior Engineer had submitted his note-sheets seeking sanction of the Standing Committee by sub-dividing several works into different works so as to bring them within the limit of Rs.40,000/- for each of the works, a separate action can be considered to be taken against him. But, if that action has not been taken, the holders of elected office cannot escape from their responsibility as elected councillors under the law. They cannot say that the violation was basically committed by the Junior Engineer and the same should have been brought to their notice, which was not done by anybody. In fact, the Standing Order No. 36 makes it clear that the guidelines contained therein are applicable to all the Municipal Councils and in clause 53, it is specifically stated that all the guidelines contained in the Standing Order should be read over in the General Body Meeting. Therefore, the argument made in this regard is rejected.

60. As regards the argument of learned Special Counsel for respondent nos. 1 to 3 about this petition having only academic value and no practical utility, I would say that in view of the conclusions reached earlier, no need has remained there to consider it in any way. However, before parting with the judgment, it would be necessary for me to refer to a few more judgments cited by the learned senior counsel and learned counsel for the interveners. Learned senior counsel for the petitioners has relied upon the following cases -

(I) **Parmeshwar Prasad v. Union of India and ors. (2002) 1 SCC 145**

(ii) **City of Nagpur Corporation v. Khemchand Khushaldas and sons (1996) 10 SCC 24.**

In the case of *Parmeshwar Prasad*, *supra*, it has been held by the Hon'ble Apex Court that it is only that authority which is having power to make rules which, by issuing instructions can fill up the gaps. Here, there is no question of filling up of gaps in the rules framed by the authority, there being no rules framed, and, therefore, this case would be of no help to the petitioners. In the second case, the Hon'ble Apex Court held, in the context of notification sanctioning octroi rates, that the power to make rules prescribing maximum rates of taxes could be independently exercised by the State Government but there was nothing in the section which would make it obligatory to first specify the maximum amount of

rates of tax before it exercised its independent power of making rules for imposition of a tax. Here, there have been no rules framed as envisaged in Section 72, and, therefore, this case law too would not be applicable to the facts of the present case.

61. The cases relied on additionally by the learned counsel for the interveners are as follows :

(i) **(2010) 13 SCC 586 Mehar Singh Saini, Chairman, Haryana Public Service Commission and ors., In Re**

(ii) **2001(1) Mh.L.J. 901 Sureshkumar s/o Kanhaiyalal Jethlia vs. State of Maharashtra and ors.**

(iii) **2015(3) ALL MR 831 Sau. Yojna Bharat Mali vs. The State of Maharashtra and ors.**

62. In the case of *Meharsingh*, *supra,* the Hon'ble Apex Court has observed that when the term 'misconduct' is not defined it has to be understood and explained in its common parlance, keeping in view the object sought to be achieved. In the case of *Sureshkumar*, *supra*, the Division Bench of this Court held that in order to hold a particular conduct to be misconduct, what matters is seriousness of the act complained of. In the case of *Sau. Yojna Bharat Mali*, *supra,* the learned Single Judge of this Court held in the facts and circumstances of that case that even though the petitioner in that case was not heard when the Collector submitted his report it had no consequence whatsoever on the case at hand as it was seen on the basis of admitted facts that misconduct was writ large on the face of the record. Following the ratio of the cases of *Meharsingh and Sureshkumar* and going by the view taken by the learned Single Judge in the aforesaid cases respectively, I have made my conclusions in this case.

63. In the circumstances, I find that so far as the petitioners 1 to 9 are concerned, the misconduct as contemplated under Sections 55B and 42 of the Act, 1965 has been proved against them, they being party to the decision in question and nothing wrong or illegal about the impugned order could be seen. As regards petitioner no.

10, it is the contention of learned senior counsel that he is a co-opted councillor having no right to vote. This contention has not been specifically traversed by the respondents. So, if the petitioner no. 10 did not have any right to vote there would be no question of supporting the misconduct of the other councillors, like the remaining petitioners. Therefore, so far as petitioner no. 10 is concerned, this petition deserves to be allowed and for the remaining petitioners it needs to be dismissed.

64. In the result, the writ petition is partly allowed and the impugned order dated 20.2.2016 disqualifying the petitioner no. 10 Girish Dhanrajji Paliwal and debarring him to be a Member of the Council or any Local Body for a period of five years is quashed and set aside and all consequential benefits as a Member of the Council stand restored to him.

65. Writ petition of rest of the petitioners stands dismissed.

66. Rule is partly made absolute and partly discharged in the above terms. No order as to cost.

67. At this stage, learned counsel for the petitioners makes a request that direction should be issued not to hold bye-elections for filling up the posts of Members of the Council for a period of six weeks. Learned special counsel for respondents 1 to 3, learned counsel for respondent no. 4 and learned counsel for interveners do not have any objection. The prayer is granted.

68. It is directed that the elections for filling of the posts of the Members of the Council shall not be held for a period of six weeks from the date of this order.

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