

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.14925/2017

MAKARAND ALIAS NANDU

APPELLANT

VERSUS

STATE OF MAHARASHTRA & ORS.

RESPONDENTS

WITH

CIVIL APPEAL NO.19834/2017

NITIN

APPELLANT

VERSUS

STATE OF MAHARASHTRA & ORS.

RESPONDENTS

O R D E R

1. These two Civil Appeals lay challenge to the orders dated 19.10.2016 and 21.10.2016 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No.11795/2015 and W.P. No.6065/2016, respectively. Since both the appeals involve a common issue regarding the manner and extent of powers exercisable by the Minister-In-Charge, Urban Development in disqualifying the elected Councilors/Office Bearers of the Municipalities, the same have been clubbed and heard together. For the sake of clarity, the facts are being noted separately.

2. The appellant in Civil Appeal No.14925/2017

(Makarand @ Nandu) was elected the Councilor of the Municipal Council, Osmanabad. He was further elected in 2006 as Vice-President of the said Council. Respondent no.5 filed an application on 07.01.2011 before the Collector, Osmanabad, under Sections 44(1)(e), 55A and 55B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (in short, the "Act") alleging violation of provisions of that Act and misuse of powers by the appellant, on account of the illegal construction of the house in excess of the permission granted.

3. The Collector held an enquiry and determined that the allegation was correct. A show-cause notice was thereafter issued to the appellant. It seems that while the show-cause proceedings were pending, the State Government, *suo moto*, took action in the matter, and the Minister-In-Charge vide an order dated 02.12.2015 disqualified the appellant from the post of Vice-President of the Municipal Council. Further, the appellant was also debarred from contesting election of the Council for six years.

4. The appellant in Civil Appeal No.19834/2017 (Nitin) was elected President of the Municipal Council, Naldurga in 2011. In March 2012, a tender for garbage collection and disposal was invited by the Municipality. The tender of one Sevalal Institution was accepted after

negotiation, overlooking the lowest bid. This led to a complaint before the Collector against the appellant, which was eventually referred to the Minister-In-Charge. After serving a show-cause notice for the alleged irregularity in allotting work to Sevalal Institution, the appellant was removed from the Office of President of the Municipal Council vide order dated 10.05.2016. In this instance, too, the appellant was debarred from contesting the election of the Municipality for a period of six years.

5. Both the appellants unsuccessfully challenged the orders passed by the Minister-In-Charge and their writ petitions came to be dismissed vide the impugned orders referred to in the opening paragraph of this order.

6. It may be noticed here that this Court passed interim orders in both the appeals, permitting the appellants to continue to hold their respective offices during the pendency of these proceedings.

7. We have heard learned counsel for the appellants and learned State counsel at a considerable length and perused the material placed on record.

8. It may be true that the tenure of the appellants as elected Councilor/Vice-President of the Municipal Council as well as President of Municipal Council, respectively, has come to an end during the pendency of these

proceedings and even the period of debarring them from contesting elections for six years has also expired. However, learned counsels for the appellants have rightly contended that so long as the allegations of misconduct, attributed to them are not annulled, it will continue to impact their eligibility to contest the elections in future. We have, thus, heard learned counsels for the parties on merits and perused the entire record.

9. In Makarand's case, it is undeniable that the house alleged to have been illegally constructed, was actually built by his father. There is no specific finding that the appellant was in any manner associated as a co-owner or had otherwise made any contribution in the construction of the house. The Municipal Authorities never took any action alleging the construction of the said house to be illegal either during the life time of the appellant's father or thereafter, until respondent no.5 made a complaint in 2011. It does not seem to be a mere coincidence that the complaint was made after the appellant had been elected as Councilor and Vice-President of the Municipal Council.

10. As the facts speak for themselves, the complaint filed by respondent no.5 was an afterthought; a device set up in order to take punitive action against the appellant and to punish him for an act which he never committed. The manner in which the proceedings, while

pending before the Collector at the stage of show-cause notice, were *suo moto* transferred to the State Government and the Minister-In-Charge coming forward to hastily pass an order of removal, are sufficient for us to infer that the action was unfair, unjust and founded upon irrelevant considerations. In any case, the impugned action does not satisfy the doctrine of proportionality. The removal of the appellant from the office of Councilor/Vice-President with a further ban on him to contest election for six years is highly excessive and disproportionate to the nature of the so-called misconduct attributed to him.

11. Learned State counsel, however, vehemently urges that the action was taken after holding a fact-finding enquiry in which it was held that the appellant had actively joined hands with his father in raising the unauthorized construction. We are, however, not impressed with this contention. This was only a hearsay allegation without any supporting material. We hasten to add that the appellant was an elected representative. The Municipality is an institution of grass-root level democracy. The elected members cannot be removed at the whims and fancies of the civil servants or their political masters only because some of such elected members are found to be inconvenient within the system.

12. It requires no special emphasis that the elected representatives of public offices like a Municipality

deserve due respect and autonomy in their day-to-day functioning, of course, subject to such limitations and restrictions as may be prescribed in law. When question of determining a misconduct committed by an elected member arises, ordinarily such misconduct would relate to his functioning after he has been elected to the office. However, in a given case, the misconduct committed before the election can also be taken cognizance provided that such misconduct is directly attributable to the elected representative and it went unnoticed and could not be scrutinized at the time when he filed his nomination papers. That is not the fact situation here. We are thus satisfied that the action taken against the appellant was totally unwarranted and it exceeded the jurisdictional limits.

13. In the second case of Nitin, it is not in dispute that the tender of Sevalal Institution was accepted after due negotiation and after ensuring that no financial loss caused to the Municipality. The tender was accepted only on the basis of a resolution passed in the General Body Meeting. It is, therefore, difficult to hold that it was an act solely to be attributed to the appellant. It seems to us that the action taken against the appellant (Nitin) for wholly insufficient reasons and as a ploy to remove him from the elected office. We hasten to add that if such an act leads to financial loss to the Municipality and if an elected representative, most importantly the

President himself, fails to protect the interest of the Municipality, in that event, the misconduct of causing financial loss or misappropriation etc., would undoubtedly be an act of gross misconduct justifying severe penal action, including that of removal from public office. We do not find any such allegation levelled or proved against the appellant.

14. For the reasons afore-stated, both the appeals are allowed. The impugned orders of the High Court dated 19.10.2016 and 21.10.2016 are set aside. The orders dated 02.12.2015 and 10.05.2016 of the Minister-In-Charge are hereby quashed.

.....J.
(SURYA KANT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi;
April 25, 2024

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).14925/2017

MAKARAND ALIAS NANDU

Appellant(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(IA No. 130898/2019 - APPROPRIATE ORDERS/DIRECTIONS)

WITH

C.A. No.19834/2017 (III)

Date : 25-04-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. Sachin Patil, Adv.
Mr. Kailas Avtade, Adv.
Mr. Sunil Kumar Sethi, Adv.
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For Respondent(s)

Mr. Aaditya Aniruddha Pande, AOR
Mr. Siddharth Dharmadhikari, Adv.
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Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.
Ms. Preet S. Phanse, Adv.
Mr. Adarsh Dubey, Adv.Mr. Sudhanshu S. Choudhari, AOR
Mr. Amol Nirmalkumar Suryawanshi, AORMr. Dilip Annasaheb Taur, AOR
Mr. Amol V Deshmukh, Adv.UPON hearing the counsel the Court made the following
O R D E R

1. The appeals are allowed in terms of the signed order.
2. All pending applications, if any, also stand disposed of.

(ARJUN BISHT)

ASTT. REGISTRAR-cum-PS

(signed order is placed on the file)

(MALEKAR NAGARAJ)

COURT MASTER (NSH)