

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 16206/2024

Mamta Choudhary W/o Shri Rakesh Choudhary, aged about 53 Years, Resident of Manganj, Dausa, District Dausa, Chairman, Nagar Parishad Dausa, District Dausa.

-----Petitioner

Versus

1. State of Rajasthan, through Principal Secretary, Local Self Government, Secretariat, Rajasthan, Jaipur
2. Director and Joint Secretary, Local Bodies, Rajasthan, Jaipur
3. Commissioner, Nagar Parishad, Dausa, District Dausa
4. District Collector, Collectorate, Dausa, District Dausa

-----Respondents

For Petitioner(s)	:	Mr. R.B. Mathur-Sr. Advocate with Mr. Falak Mathur Mr. Nikhil Simlot
For Respondent(s)	:	Mr. G.S.Gill-AAG with Mr. S.P.S. Rajawat

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on	16/04/2025
Pronounced on	25/04/2025
Reportable	

1. The instant writ petition has been filed against the impugned order dated 07.10.2024 passed by the respondents in exercise of the powers contained under Section 39(6) of the Rajasthan Municipalities Act, 2009 (for short, 'the Act of 2009') by which the petitioner, elected Chairperson, Municipal Council, Dausa has been placed under suspension.

2. Learned counsel for the petitioner submits that the petitioner was elected as Chairperson, Municipal Council, Dausa on 13.12.2020. Thereafter, a show cause notice along with charge-sheet was served upon her with regard to certain irregularities found in her functioning. Counsel submits that vide show cause notice dated 10.09.2024, five charges were levelled against the petitioner. Counsel for the petitioner submits that none of the charges, levelled against the petitioner, refer to any functional irregularities or financial loss caused by the petitioner to the respondents. Counsel submits that the charges are not such, which require suspension of a public representative. Counsel submits that the enquiry was initiated on the basis of some complaints made against the petitioner, wherein charges were levelled but the preliminary enquiry report was not taken into account and the petitioner has been placed under suspension. Counsel submits that the charge No. 4 relates to the failure to conduct 6 executive meetings of the Board in a year. Counsel submits that the Co-ordinate Bench of this Court directed the State Counsel to provide details with regard to other Municipal Councils/Boards wherein six consecutive meetings were not conducted in a particular year. Counsel submits that in response to the aforesaid, a query was raised by the respondents and they have placed on record, a chart of 282 Municipal Council/Board which indicate that in 52 Municipal Councils/ Boards, no meeting was conducted in a year and in 110 Municipal Councils/Boards meeting was conducted once in a year and in 76 Municipal Councils /Boards two meetings were conducted in a year. Likewise

in all other Boards, four meetings were conducted in a year. Counsel submits that except the petitioner, action has not been taken against any of the Chairperson of the concerned Boards/ Municipal Councils. Counsel submits that the aforesaid exercise has been done against the petitioner with malafide intentions and ulterior motives. Counsel submits that meeting of the Municipal Council could not be conducted due to imposition of Model Code of Conduct of elections. Counsel submits that the petitioner is ready and willing to participate in the judicial proceedings being conducted against her but her suspension is not warranted for such charges, hence, interference of this Court is warranted. Counsel for the petitioner has placed reliance upon the following judgments.

1. **Pradeep Hinger Vs. State of Rajasthan and Ors.** , reported in **RLW 2008(1) Raj. 456**
2. **Geeta Devi Narooka Vs. State of Rajathan and Ors.** , reported in **2008(2) WLC 561**
3. **Soniya Soni Vs. State of Rajasthan and Ors.** :S.B. Civil Writ Petition No. 6927/2022
4. **Munesh Gurjar Vs.The State of Rajasthan and Ors.:** S.B. Civil Writ Petition No. 15551/2023
5. **Vimla Devi Vs. State of Rajasthan and Ors.** : S.B. Civil Writ Petition No. 3729/2007
6. **Nandlal Vs. The State of Rajasthan**, reported in **1996(2) WLC Raj. 497**

7. The judgment passed by Hon'ble Apex Court in the case of **Sonam Lakra Vs. State of Chhatisgarh and Ors.** (Civil Appeal No. 12326/2024).

3. Per contra, counsel for the respondents opposed the arguments raised by counsel for the petitioner and submits that the petitioner has acted in a disgraceful manner by misusing her power and position as Chairperson of the Municipal Council. Counsel submits that lakhs and crores of rupees were utilized by the Municipal Council in construction of a community hall, funeral ground, etc. whereon the name plates (plaque) of her father-in-law was affixed by the petitioner. Counsel submits that when the enquiry was conducted against the petitioner, it was found that crores of rupees were misused by her and even pattas were issued in her tenure in the name of her family members and various files were found to be misplaced. Counsel submits that everything has happened at the instance of the petitioner. Counsel submits that though, as per the provisions contained under Section 51 of the Act of 2009, the Chairperson/Municipal Council/Board is required to conduct minimum six consecutive meetings, in a particular year but there is no mechanism available with the State to manage the same and it is the business of the concerned Municipal Council/Board to comply with the provisions of law, but whenever complaints are received in this regard, actions are taken against the concerned personnel. Counsel submits that in all, four complaints were received pertaining to this charge, where in the Municipal Board, Indregarh and Ladun, the matters are in process and in the case of Municipal Board, Ajmer, the enquiry is in

process and appropriate action would be taken against all those personnel, at the appropriate stage, after following the due procedure contained under the law. Counsel submits that the judgment cited by the counsel for the petitioner in the case of **Sonam Lakra** (supra) is not applicable in the facts and circumstances of the present case as the said matter relates to Panchayat and removal of the Sarpanch, while in the instant matter, suspension of Chairperson, Municipal Council is under challenge. Counsel submits that even in the case of **Nandlal** (Supra) the scope of interference with regard to suspension of Chairperson of Municipal Board has been considered and the same is found to be very narrow and limited, which cannot be exercised in a routine manner. Counsel submits that looking to the misconduct and disgraceful conduct of the petitioner and with regard to the complaint received, a detailed enquiry was conducted and on the basis of the same, charge-sheet has been served on her and now judicial proceedings are initiated. Hence, under these circumstances, order under Section 39 (6) of the Act of 2009 was passed whereby the petitioner has been placed under suspension. Counsel submits that in view of the arguments made hereinabove, interference of this Court is not warranted. Counsel for the respondent has placed reliance upon the judgment passed by this Court in the case of **Devender Singh Shekhawat Vs. State of Rajasthan and Ors.** while deciding S.B. Civil Writ Petition No. 14381/2023 on 21.11.2023.

4. The petitioner is aggrieved by the order of suspension passed against her under Section 39(6) of the Act of 2009. Thus,

before dealing with the matter on its merits, it would be relevant to quote Section 39 of the Act as follows:-

Section 39 Removal of member -

(1) The State Government may, subject to the provisions of sub Sections (3) and (4), remove a member of a Municipality on any of the following grounds, namely: -

(a) that he has absented himself for more than three consecutive general meetings, without leave of the Municipality:

Provided that the period during which such member was in jail as an under trial prisoner or as a detainee or as a political prisoner shall not be taken into account,

(b) that he has failed to comply with the provisions of Section 37,

(c) that after his election he has incurred any of the disqualification mentioned in Section 14 or Section 24 or has ceased to fulfil the requirements of Section 21,

(d) that he has

(i) deliberately neglected or avoided performance of his duties as a member, or

(ii) been guilty of misconduct in the discharge of his duties, or

(iii) been guilty of any disgraceful conduct, or

(iv) become incapable of performing his duties as a member, or

(v) been disqualified for being chosen as member under the provisions of this Act,

or

(vi) otherwise abused in any manner his position as such member:

Provided that an order of removal shall be passed by the State Government after such inquiry as it considers necessary to make either itself or through such existing or retired officer not below the rank of State level services or authority as it may direct and after the member concerned has been afforded an opportunity of explanation.

(2) The power conferred by sub-Section (1) may be exercised by the State Government of its own motion or upon the receipt of a report from the Municipality in that behalf or upon the facts otherwise coming to the knowledge of the State Government:

Provided that, until a member is removed from office by an order of the State Government under this Section, he shall not vacate his office and shall, subject to the provisions contained in sub-Section (6), continue to act as, and exercise all the powers and

perform all the duties of, a member and shall as such be entitled to all the rights and be subject to all the liabilities, of a member under this Act.

(3) Notwithstanding anything contained in sub-Section (1) where it is proposed to remove a member on any of the grounds specified in clause (c) or clause (d) of sub-Section (1), as a result of the inquiry referred to in the proviso to that sub-Section and after hearing the explanation of the member concerned, the State Government shall draw up a statement setting out distinctly the charge against the member and shall send the same for enquiry and findings by Judicial Officer of the rank of a District Judge to be appointed by the State Government for the purpose.

(4) The Judicial Officer so appointed shall proceed to inquire into the charge, hear the member concerned, if he makes appearance, record his findings on each matter embodied in the statement as well as on every other matter he considers relevant to the charge and send the record along with such findings to the State Government, which shall thereupon either order for re-inquiry, for reasons to be recorded in writing, or pass final order.

(5) While hearing an inquiry under sub-Section (4), the Judicial Officer shall observe such rules of procedure as may be prescribed by the State Government and shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) while trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any such document or any other material as may be predicable in evidence;
- (c) requisitioning any public record; and
- (d) any other matter which may be prescribed.

(6) Notwithstanding the foregoing provisions of this Section, the State Government may place under suspension a member against whom proceedings have been commenced under this Section until the conclusion of the inquiry and the passing of the final order and the member so suspended shall not be entitled to take part in any proceedings of the Municipality or otherwise perform the duties of a member thereof.

(7) Every final order of the State Government passed under this section shall be published in the Official Gazette and shall be final and no such order shall be liable to be called in question in any Court.”

Perusal of Section 39 of the Act of 2009 indicates that a member of Municipality may be removed if he has absented himself/herself for more than three consecutive general meetings, without leave of Municipality or he/she has been found guilty of any misconduct, in discharge of his/her duties or has been guilty of any disgraceful conduct. A judicial enquiry can be conducted against him/her and such person can be placed under suspension against whom proceedings have been initiated under this Section, until conclusion of the enquiry and passing of the final order.

5. Here in the instant case, three different complaints were submitted against the petitioner with several allegations that she misused her power and position as Chairperson, Municipal Council, Dausa and also misused crores of rupees of the Council and issued pattas to her kith and kin and thereafter the patta files were misplaced and sign board (plaque) in the name of her father-in-law was affixed on the premises constructed by the Council. Several decisions were taken by her, contrary to the interest of the Council without getting the proposal passed and approved by the Council through proper procedure and six meetings of Council were not conducted in a year. For various other allegations a committee of seven members was constituted and after issuing show cause notice to the petitioner and after taking into account her stand, the report was submitted on 02.07.2024, on the basis of which, a notice under Section 39 (1) of the Act of 2009 along-

with memorandum of five charges was issued against her. In the enquiry report, it was prima facie found that the act of the petitioner was disgraceful and she misused her power and position while functioning on the post of Chairperson.

6. Various versions and cross versions have been made by the counsel appearing from the rival sides about the correctness of the charges. This Court is not going into the correctness of the charges and the reply submitted by the petitioner, since it is the subject matter of judicial enquiry hence this Court refrains from commenting on it. This Court further desires to clarify that the Enquiry Officer shall not be influenced by the observations and expression of opinion herein passed by this court that may prejudice the pending enquiry. The Enquiry Officer shall on the completion of enquiry will be at liberty to draw his conclusions on the basis of material placed before him.

7. Though in view of the settled principles of law this Court would not interfere in suspension orders lightly since suspension is only a deprivation of one's status and that too temporarily, it does not amount to penalty and is normally ordered when the truth of the allegations of misconduct or corruption is under scrutiny, it neither effects the status of the person holding the office nor effects in any other form, but that is in the case of the persons where the rules of master and servant apply. The office held by the elected representative of the public cannot be equated with that of the Government employees since these offices are held by the incumbent for a fixed period of time and the court would not shirk its responsibility to intervene in the matter as and when a

glaring case of the kind is brought before it. Power even in such like cases should be used very sparingly and that too with utmost care and caution.

8. In the case of **Durga Ram Mali Vs. State of Rajasthan and Ors.** reported in **(2011) 4 RLW 3552**, it has been held that the issue of suspension is not to be gone into by the Court and the same should be left to the objective satisfaction of the Government. It has been held as under:-

“I am of the opinion that when the matter of suspension is left to the objective satisfaction of the Government, the normal rule is that it is not unnecessarily justiciable before the High Court and the Court cannot look into the question as to whether the materials are adequate or inadequate from its point of view nor the Court should substitute its own satisfaction for that of the authority.”

9. In the case of **Tararam Mali Vs. State of Rajasthan and Ors.**, [S.B. Civil Writ Petition No. 11814/2019, decided on 30.09.2019], it has been held by the Co-ordinate Bench at Principal Seat at Jodhpur in para 51 as under:-

“The charges levelled against the petitioner and the material available, show that a judicial inquiry in the matter is imperative. In case the petitioner continues to hold the office, not only the inquiry officer would be under a moral pressure, the petitioner himself will be in a position to influence the witnesses and may try to withheld, if not temper the record.”

10. The facts which have come on record reflect that several irregularities have been committed by the petitioner during her tenure as Chairperson and various files have been misplaced and she has failed to conduct six meetings in a year, in terms of Section 51 of the Act of 2009, which is mandatory in nature. The



State found the act of the petitioner disgraceful and several charges were levelled upon her and placed her under suspension and orders have been passed to conduct judicial enquiry against her, hence no interference in the decision of the State is required.

11. This Court finds no substance in the arguments of the counsel for the petitioner that in 282 Municipal Councils/Boards of the State of Rajasthan six meetings were not conducted and no action has been taken against any of the Chairman of these institutions. The additional affidavit submitted by counsel for the State indicates that the proceedings have been initiated against three Chairpersons of Municipal Councils, Indergarh; Ladnu; and Ajmer and their matters are lying pending under consideration at appropriate stage and action would be taken against them in accordance with law. As per the mandate contained under Section 51 of the Act of 2009, there shall be an ordinary general meeting of the Municipality, once within sixty days and minimum six meetings in a calendar year and the business of the meeting shall be conducted in accordance with the procedure prescribed under the Act of 2009. The Chairperson shall call a special meeting as per Section 51(2) and if he/she fails to do so, then the Chief Municipal Officer shall call such meeting, as per Section 51(3) of the Act of 2009.

It is an admitted case of both the sides that six general meetings were not conducted by the petitioner in a calendar year. This Court does not find substance in the arguments of the petitioner that due to imposition of Code of Conduct of elections, these meetings could not be called. These meetings could have



been conducted before or after lifting of the code of conduct of elections. This Court does not find any substance in the arguments of the petitioner that no action has been taken against the defaulting Chairpersons of other Municipal Boards/Councils where six meetings, as mandated under Section 51 of the Act of 2009, were also not conducted. The petitioner cannot seek any relief, based on negative parity.

12. At the same time, this Court finds no substance in the arguments of the counsel for the State that convening of meetings by Municipality is a sole business of the concerned Municipality and such type of meetings are not monitored and supervised at the State level. However, if any complaint regarding violation of law is received, action as per law may be taken by the competent authority.

13. The judgments relied upon by the counsel for the petitioner are not applicable under the facts and circumstances of this case.

14. In view of the aforesaid and upon overall appraisal of the facts obtained and perusing the material available on record, this Court does not find it to be a fit case to interfere with the State's action, placing the petitioner under suspension.

15. As a consequence of the discussions made hereinabove, this Court finds no merit and substance in this writ petition and the same is liable to be and is hereby rejected.

16. Stay application and all pending application (s) if any also stand dismissed.

17. The respondents are expected to complete the enquiry proceedings against the petitioner expeditiously, as early as



possible, not beyond a period of three months from the date of receipt of the certified copy of this order, as the elected public representative is under suspension and she cannot be allowed to remain under suspension for an indefinite period.

18. Before parting with this order, it is made clear that respondents/authorities shall conclude the enquiry, on its merits, after affording due opportunity of hearing to the petitioner, without being influenced by any of the observations made by this Court herein above.

19. This Court feels astonished that out of total 282 Municipal Councils/Boards, in several Municipal Councils/Boards, regular six meetings, as per Section 51 of the Act of 2009 have not been conducted for last so many years and no action has been taken against the defaulters.

20. Each and every Municipal Councils/Boards and its members are supposed to follow and comply with the mandatory provisions, contained under Section 51 of the Act of 2009 and if any of the member remains absent in more than three consecutive general meetings without leave, then proceedings can be initiated against him/her, as per Section 39 of the Act of 2009. The State Government cannot remain a passive observer or justify its inaction by claiming that responsibility lies solely with the concerned Municipal Council/Board and such meetings are not monitored or supervised by the State-level Administrative Department. Any violation of statutory provisions amounts to a violation of the law, which cannot be permitted. If the State lacks a mechanism to monitor and supervise the functioning of its

Municipal Council/Board it must establish one. A High-Powered Committee should be constituted at the Division level to oversee the activities of each Municipal Council/Board lying within its jurisdiction and ensure compliance of the mandatory legal provisions.

21. Taking a serious note of the above stand of the State, this Court issues a mandamus to the department of Local Self Government of Rajasthan State to constitute a committee or evolve a mechanism at Division Level for monitoring the functioning of each Municipal Council/Board of the said Division and ensure compliance of the mandatory provision of the law. Because the members of the Municipal Council/Board are elected by the people for their welfare, hence, such elected representatives of the people are supposed to discharge their duties and functions, as per the provisions contained under the Act of 2009 by calling and attending the general meetings in the interest of public, who has elected them as their representative.

22. The Chief Secretary, Government of Rajasthan as well as the Principal Secretary, Department of Local Bodies are directed to look into the matter and constitute a monitoring and supervisory committee of the Senior IAS Officer at every Division Headquarters to check the functioning of all the Municipal Council/Board falling under their jurisdiction. Further, he is directed to submit the report to this Court about the steps being taken in this regard.



23. Let a copy of this order be sent to the Chief Secretary, Government of Rajasthan and Principal Secretary, Department of Local Bodies for taking necessary action and ensuring compliance of the directions given in para 20, 21 and 22 of this order.

(ANOOP KUMAR DHAND),J

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