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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 11507 of 2025

Irfan Ahmad

.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Urban Development Deptt. and another
.....Respondent(s)

Counsel for Petitioner(s)	:	Lalta Prasad Misra, Abhyudaya Mishra, Prafulla Tiwari, Rajat Shukla
Counsel for Respondent(s)	:	C.S.C., Ravi Kumar Dwivedi

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE MANJIVE SHUKLA, J.

HON'BLE SHEKHAR B. SARAF, J. : The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of certiorari quashing the impugned order dated October 29, 2025 passed by State of U.P. through its Principal Secretary, Urban Development Department, U.P. Civil

Secretariat, Lucknow by means of which petitioner has been removed from the post of President, Nagar Palika Parishad, Bhinga, District Shravasti. The petitioner in furtherance prays for the issuance of a writ of mandamus commanding the opposite parties to allow the petitioner to continue discharging his duties.

FACTS

2. The factual matrix of the present writ petition is delineated below:
 - a. The petitioner was elected as the President of Nagar Palika Parishad, Bhinga, District Shravasti in the Local Bodies Election held in the year 2023 and took oath on May 26, 2023.
 - b. Three complaints dated August 22, 2024, December 11, 2024 and January 29, 2025 were lodged against the petitioner alleging charges of corruption and financial misuse of power.
 - c. State Government (hereinafter referred to as 'respondent no. 1') vide order dated November 5, 2024 directed District Magistrate (hereinafter referred to as 'respondent no. 2') to inquire into the allegation levelled in the complaint dated August 22, 2024 and accordingly constituted a two-member committee to inquire into the allegation and submit a report.
 - d. Moreover, in pursuance of complaint dated December 11, 2024, respondent no.1 vide order dated January 30, 2025 directed respondent no. 2 to inquire into the allegation levelled in the complaint and submit a report and respondent no. 2 consequently constituted a three-member committee to inquire into allegation levelled in the complaint.
 - e. After conducting inquiry, the two-member committee submitted its report on March 3, 2025 with regard to complaint dated August 22, 2024 and the three-member committee submitted its report on March 4, 2025 with

regard to complaint dated December 11, 2024 respectively wherein the petitioner was found guilty of misconduct as per Section 48 of the Uttar Pradesh Municipality Act, 1916 (hereinafter referred to as the 'Act, 1916').

- f. With regard to the complaint dated January 29, 2025 against the petitioner, alleging that the petitioner was awarding the contracts only to his known contractors for commissioning work in the local area. Respondent no. 2 constituted a three-member committee to inquire into the allegation. Thereafter, Additional District Magistrate wrote a letter dated January 29, 2025 to petitioner to submit his reply. Accordingly, the petitioner submitted his reply on February 7, 2025 through registered post, denying all allegations levelled in the complaint dated January 29, 2025.
- g. The three-member committee so constituted to inquire into the complaint dated January 29, 2025 submitted its report on February 13, 2025 wherein the allegations levelled against the petitioner was found to be veracious after the statement of the petitioner got recorded by Additional District Magistrate on February 10, 2025 and the said report was also forwarded to the State government.
- h. Respondent no. 2 submitted a report dated May 2, 2025 through which petitioner was found prime facie guilty in contravention of Section 48 of the Act, 1916.
- i. On the basis of three inquiry reports dated February 13, 2025, March 3, 2025 and March 4, 2025, a Show-cause notice dated May 21, 2025 was issued to the petitioner wherein 15 days' time was granted to the petitioner to submit his reply. It was alleged in the show cause notice that the petitioner had approved the tenders in favour of his close associates and supporters of the Municipal Council; that the bricks and interlocking used in the construction of

park were purchased from the brick kiln owned by petitioner's father; and that amount of Rs. 4,75,752 had been paid from the date of taking oath till date to a close relative of petitioner from municipal funds for servicing and repairing of tractor-trolley and garbage vehicles of Nagar Palika Parishad.

- j. Petitioner submitted his reply dated June 6, 2025 in response to the aforesaid show cause notice. Thereafter, respondent no.2 submitted a cross examination report dated July 9, 2025. Pursuant thereto, respondent no.1 issued a letter dated July 17, 2025 to the petitioner seeking his reply, and in furtherance of service thereof, respondent no. 2 served a letter dated July 22, 2025 calling upon the petitioner to appear on July 24, 2025 at 12:00 noon for personal hearing at the office. Subsequently, the date of appearance was rescheduled by respondent no. 1 vide letter dated July 23, 2025 to July 25, 2025 and in conveyance of the aforesaid letter, respondent no.2 also served the same upon the petitioner.
- k. Accordingly, petitioner appeared on July 25, 2025 and was afforded an oral hearing, during which he confined his submissions to the contents of the reply already submitted and did not produce any documentary evidence.
- l. Respondent no.1 thereafter passed the impugned order dated October 29, 2025 whereby the petitioner was removed from the post of President, Nagar Palika Parishad, Bhinga, District Shravasti on the basis of the following three allegations:
 - a) The Petitioner caused the tenders to be executed in favour of his close relatives and supporters and got the work done either by himself or through relatives.
 - b) The bricks and interlocking tiles used in the

construction of the park were purchased from RBF brick kiln which is owned by the petitioner's father.

c) An amount of Rs. 4,75,752 was paid under the heads of repairing and servicing of tractor, trolley and garbage vehicles to a close relative of the petitioner from the date of his swearing-till date.

- m. Being aggrieved by the impugned order dated October 29, 2025, the petitioner has approached this Court by way of the present writ petition.

ISSUE

3. Whether the inquiry conducted for the removal of the petitioner who is an elected representative of the people, which formed the basis of the impugned order for removal from the post, was a proper full-fledged inquiry in accordance with law?

CONTENTIONS OF PETITIONER

4. The learned counsel appearing on behalf of the petitioner has made the following submissions:

- a. The complaint which forms the basis of inquiry was false and frivolous, lodged due to political rivalry and animosity as the petitioner who belongs to Bahujan Samaj Party was elected as President by defeating the candidate of Bhartiya Janta Party in the local bodies election held in the year 2023.
- b. The preliminary inquiry conducted by two-member committee and three-member committee, passed an ex-parte order without issuance of show cause notice and without granting any opportunity of hearing to the petitioner.
- c. After submission of reply of the petitioner on June 6, 2025, an ex-parte cross examination report dated July 9, 2025 was submitted by respondent no.2 before respondent no. 1 but the said report was not supplied to the petitioner even

though the petitioner sought the same.

- d. Petitioner was neither provided with the copies of the chargesheet nor the signed statements dated February 4, 2025 and February 5, 2025. Moreover, at no point of time any chargesheet containing any specific allegations with supporting materials have been prepared by the State Government or any inquiry committee.
- e. A full-fledged inquiry involve various stages and steps as is required to be met in the case of a disciplinary inquiry against a government servant as contemplated under the law had never been carried out by the respondents before passing the dismissal order. Mere adherence to principles of natural justice before imposing a major penalty such as removal from the post of President of Nagar Palika Parishad does not suffice the purpose.
- f. With regard to the allegation no.1, it has been mentioned in the impugned order that the family tree of the petitioner was served upon the petitioner alongwith the order or even along with the show cause notice but no such family tree was annexed or served.
- g. An elected official in local self government has to be put on a higher pedestal as against a government servant in the matter of inquiry against the President under Section 48 of the Act, 1916.
- h. Section 48(2-A) of the Act, 1916 stipulates that upon denial of charge by the President, the State government, if not satisfied with the explanation submitted by him, had to hold a full fledged inquiry which has not been done in the present case. Moreover, respondent no. 1 is the competent authority to order for inquiry and constitution of the committee. However, in the present case respondent no. 2 has ordered an inquiry and constituted a committee without

jurisdiction. Furthermore, the exercise of consideration of explanation submitted by the petitioner was to be done by respondent no.1 and not respondent no.2 in view of the statutory prescription contained in Section 48(2-A) of the Act, 1916.

- i. The entire removal process is based on the inquiry report dated February 13, 2025 submitted by respondent no. 2 to respondent no.1 which apart from being illegal and arbitrary was also wholly without jurisdiction as the respondent no.1 at no point of time ordered respondent no.2 to conduct any inquiry on the complaint lodged by Pramod Nishad.
- j. The impugned order of removal did not record the reasons in writing, but it merely refers to the allegations and reply submitted by the petitioner then records the conclusion that the allegations stand proved.
- k. In reply to allegation no.1 it is stated that no favouritism had been done in awarding tender as State Government vide Government order dated June 30, 2021 laid down the Standard Operating Procedure (SOP) for implementation of construction/development work and provides for Tender Acceptance Process to be done by the Tender Committee.
- l. In reply to allegation no. 2, it is stated that RBF bricks were being used for a long time for government purposes throughout the District by Government contractors as well as Government departments and no orders have been issued to restrict any contractor to purchase the bricks from RBF kiln therefore they are free to purchase bricks from the open market. Moreover, interlocking tiles were not manufactured at RBF. Furthermore, the petitioner cannot be held responsible for the contractors who purchased the bricks from his father's kiln as father and son are two different and distinct legal entities as father has a fundamental right

granted under Article 19(1)(g) to carry out any profession.

- m. In reply to allegation no. 3, petitioner contends that the payments were made only after thorough investigation done by the Executive Office of Nagar Palika Parishad. Moreover, the work of services and repairing was being done by M/s Mubeen Auto Parts since before the petitioner was elected as the President and no fresh work orders were issued by the petitioner for the same
- n. Even otherwise the allegations made against the petitioner do not fall within the ambit of Section 48 of the Act, 1916 read with Section 82 of the Act, 1916 and there is no material against the petitioner to show that petitioner has acquired or continues to have directly and indirectly by himself or his partner, any share or interest either pecuniary or of any other nature in any contract or employment by or on behalf of the municipality.
- o. To buttress his arguments, counsel has placed reliance on the following judgments:
 - (i) **Nasimuddin v. State of U.P.** reported in 2000 SCC OnLine All 309; (para 8)
 - (ii) **R.S. Khan v. State of U.P.** reported in 2002 SCC OnLine All 994; (para 21 & 22)
 - (iii) **Shamim Ahmad (Dr.) v. State of U.P.** reported in 2004 SCC OnLine All 1262; (para 19 & 20)
 - (iv) **Hussein Ghadially v. State of Gujarat** reported in (2014) 8 SCC 425; (para 12,21,21.1,21.2,21.3,23 & 24)
 - (v) **Manohar Lal v. Ugrasen** reported in (2010) 11 SCC 557; (para 12 to 23)
 - (vi) **Coal India Ltd. v. Ananta Saha** reported in (2011) 5 SCC 142; (para 32 & 33)
 - (vii) **Kalabharati Advertising v. Hemant Vimalnath Narichania** reported in (2010) 9 SCC 437; (para 20 & 21)
 - (viii) **Union of India v. Mahendra Singh** reported in 2022 SCC OnLine SC 909; (para 14 to 17)

- (ix) **Mehrunnissa v. State of U.P.** reported in 2023 SCC OnLine All 1902; (para 2 to 16)
- (x) **Ravi Yashwant Bhoir v. Collector** reported in (2012) 4 SCC 407; (para 38 to 46 & 56)
- (xi) **Nasimuddin v. State of U.P.** reported in 2000 SCC OnLine All 309; (para 9 & 10)
- (xii) **R.S. Khan v. State of U.P.** reported in 2002 SCC OnLine All 994; (para 21)
- (xiii) **Mohan Sahu v. State of U.P.** (Allahabad High Court in Writ-C No. 32241 of 2022, decided on December 14, 2022); (para 31 to 34)

CONTENTIONS OF RESPONDENTS

5. The learned counsel appearing on behalf of the respondents has vehemently rebutted the arguments of petitioner and made following submissions:

- a. Respondent has conducted the full-fledged inquiry as per Section 48(2-A) in the following manner:
 - (i) Issuance of show cause notice explaining the allegations;
 - (ii) Calling for reply;
 - (iii) Conducted inquiry, and upon being not satisfied by reply;
 - (iv) Passed a reasoned order.
- b. The inquiry was carried out as contemplated under the law as the show cause notice itself mentions the charges and granted an opportunity of hearing to the petitioner to submit his reply and oral inquiry.
- c. Petitioner was supplied with a complete copy of the reports, show cause notice alongwith all the documents.
- d. It is incorrect to say that ex-parte cross examination report was ever called for by the petitioner or not supplied to the petitioner as the aforesaid is merely a comment of the respondent no. 2 on the reply of the petitioner and no such request was made by the petitioner either orally or in

writing.

- e. It is incorrect to say that respondent no.2 has suo moto conducted the inquiry without the order of respondent no. 1 as respondent no.1 was already having a complaint dated December 11, 2024 of Sri Saket Mishra, in furtherance of which respondent no. 2 was directed to conduct the inquiry proceedings.
- f. It is incorrect to contend that inquiry proceedings were conducted behind the back of the petitioner as it is admitted by the petitioner that he had submitted his reply and also got his statement recorded by Additional District Magistrate in his office.
- g. Petitioner has neither made any averments in the writ petition about the violation of principles of natural justice nor has stated about any prejudice being caused by not supplying of the comments of the respondent no. 2.
- h. Holding the post of President of Nagar Panchayat is not a vested right in strict legal sense and is subject to holding of office within the statutory provisions and any deviations from duty mentioned under the provisions, results in removal from the office following the procedures mentioned under Section 48 of the Act, 1916.
- i. To buttress his arguments counsel has placed reliance on the Division Bench Judgment of this Court in **Shankar Prasad v. State of Uttar Pradesh and others** (Writ Petition no. 32679 of 2019) wherein it has been held that full-fledged inquiry merely requires adherence to principle of natural justice and does not provide for a detailed inquiry involving various stages and steps to be met in disciplinary inquiry against a government servant.

ANALYSIS

6. I have given my thoughtful consideration to the submissions

canvassed by the learned counsel for the parties and have also perused the materials placed on record.

7. The crux of the arguments of petitioner is that the inquiry conducted against the petitioner was not a full-fledged inquiry and was in gross dereliction of Section 48(2-A) of the Act, 1916, conducted without following the principles of natural justice which is in violation of his fundamental rights enshrined under the Constitution of India. Moreover, it has been alleged by the petitioner that he was not provided with the cross examination report dated July 9, 2025 which forms the very basis of the final inquiry report for removal of the petitioner. Furthermore, the process of removal of an elected representative should be just and proper.

8. Per contra, respondents vehemently rebutted the arguments of the petitioner and contended that a full-fledged inquiry was conducted against the petitioner after granting opportunity to defend the charges levelled in the complaint. Ergo, the inquiry conducted and order passed for removal of petitioner was just and proper.

9. In light of the rival submissions on behalf of both the parties, the following admitted facts emerged which are as follows:

- a) The petitioner was elected as President of Nagar Palika Parishad, Bhinga District Shravasti in the year 2023.
- b) State Government directed District Magistrate to hold inquiry and submit a report in pursuance of complaints lodged with the State Government. Accordingly, preliminary inquiry report was submitted.
- c) Show-cause notice was issued to which the petitioner submitted his reply via registered post.
- d) Petitioner had been put to notice to appear for personal hearing whereafter he appeared and confined his submissions to the reply already given without providing any documentary evidence refuting the charges in the show cause.

10. From the above referred admitted facts, it is evident that an

inquiry was conducted before passing the impugned final order for removal of the President of Nagar Palika Parishad. However, whether such inquiry was a full-fledged inquiry as per Section 48 of the Act, 1916 is the question for determination that falls before us.

11. To answer the above referred question, it would be beneficial to refer to the relevant provisions of the Act, 1916 which reads thus:

“ 48. Removal of President

(2) Where the State Government has, at any time, reason to believe that —

(a) there has been a failure on the part of the President in performing his duties, or

(b) the President has —

(i) ..

(ii) within the meaning of section 82 knowingly acquired or continued to have, directly or indirectly, or by a partner, any share or interest, whether pecuniary or of any other nature, in any contract or employment with, by or on behalf of the Municipality ; or

(iii) knowingly acted as a President or as a member in a matter other than a matter referred to in clauses (a) to (g) of sub-section (2) of section 82, in which he has, directly or indirectly, or by a partner, any share or interest, whether pecuniary or of any other nature, or in which he was professionally interested on behalf of a client, principal or other person ; or

(iv) ...

(v) ...

(vi) been guilty of misconduct in the discharge of his duties ; or

(vii)

viii)

(ix) ...

(x) misappropriated or misused the Municipal fund ; or

(xi) acted against the interest of the Municipality ; or

(xii) contravened the provisions of this Act or the rules made thereunder ; or

....

....

[Provided that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is prima facie guilty on any of the grounds of this sub-section resulting in the issuance of the show cause notice and proceedings under this sub-section he shall, from the date of issuance of the show cause notice containing charges, cease to exercise, perform and discharged the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show cause notice issued to him under this sub-section and finalization of the

proceedings under sub-section (2-A) and the said power function and duties of the President during the period of such ceasing, shall be exercised, performed and discharged by the District magistrate or an officer nominated by him not below the rank of Deputy Collector ;]

(2-A) After considering any explanation that may be offered by the President and making such inquiry as it may consider necessary, the State Government may for reasons to be recorded in writing, remove the President from his office.

(2-B) An order passed by the State Government under subsection (2-A) shall be final and shall not be questioned in any court ”

12. From the bare reading of Section 48(2-A) of the Act, 1916 it may be inferred that the State Government may remove the President from his office after considering any explanation that may be given and conduct such inquiry as it may consider necessary. The above provision is vague as to the kind of inquiry to be conducted for removal of the President of a municipality who is an elected representative.

13. For interpreting Section 48(2-A), one may look to the Full Bench judgment of this Court in **Mehrunnissa** (Supra) which was in line with the law laid down by the Supreme Court in **Ravi Yashwant Bhoir v. District Collector, Raigad reported in (2012) 4 SCC 407**, wherein the issue for consideration was as to whether the phrase ‘such inquiry as it may consider necessary’ used in Section 48(2-A) of the Act of, 1916 envisaged a full-fledged inquiry or left it open to the Government to adopt a procedure to enquire into the charges ensuring a fair opportunity of hearing, which may be short of a full-fledged inquiry. The court concertedly held that a full-fledged inquiry must be conducted when the issue involved is of serious nature such as of removal of an elected representative. The relevant paragraphs of the judgment are as follows:

“5. The grounds, on which the action for removal of the President of a Municipality can be taken by the State Government, are spelt out by various clauses of Sub-Section (2) of Section 48 of the Act of 1916. The procedure to be adopted at the inquiry for the removal of the President of a Municipality is envisaged under Sub-Section (2-A) of Section 48. The issue that has made the Division Bench to make a reference to a Larger Bench in this case is the import of the words “making such inquiry as it may consider necessary”, occurring in Sub-Section (2-A) of Section 48 of the Act of 1916. While the Division Bench in Dr.

Shamim Ahmad (supra) construed the words to mean that where the State Government was not satisfied with the explanation submitted by the President, it was imperative upon the Government 'to inquire into the matter by holding a full-fledged inquiry'. The Division Bench in this case found that the words of the Statute were unambiguous and unequivocal. Those words did not make it imperative for the State Government to hold a full-fledged inquiry in every case, where it was not satisfied with the President's explanation. The Division Bench in this case thought that the Division Bench in Dr. Shamim Ahmad's case was not right in making a full-fledged inquiry imperative in every case. According to their Lordships, "We are unable to find any reason for such overriding of the express, clear, unambiguous and unequivocal words of the Statute". Now, in this Court, there has been an almost consistent view regarding the scope of the inquiry envisaged under Section 48(2-A) of the Act of 1916 and that view leans in favour of affording the President of a Municipality the benefit of a full-fledged inquiry before he is deprived of his elected office. In Dr. Shamim Ahmad's case, it was held:

"10. Thus, in our view, it is clear that once an explanation is submitted by the President denying the charges, it is incumbent upon the State Government to make "such inquiry as it may consider necessary" before passing an order of removal. The word "inquiry" contemplates investigation. Therefore, where the President denies the charges and offers his explanation, the State Government is required to consider his explanation. If the State Government is satisfied with the explanation offered by the President, in that case, nothing further is required to be done other than passing a consequential order dropping the proceedings. However, if the State Government is not satisfied with the explanation, in that case, the State Government is required to enquire into the matter by holding a full fledged inquiry."

7. Again, the question fell for consideration before a Division Bench of this Court in *Shaila Tahir v. State of U.P.*, (2022) 11 ADJ 621 (DB), where it was held:

"47. Once the petitioner had specifically denied the charges and prayed for proper inquiry being held, it was incumbent upon the respondents to provide all documentary evidence, hold oral inquiry giving full opportunity to the petitioner to cross-examine the complainant and other witnesses. However, that was not done. The respondents rather adopted a peculiar procedure. After receipt of explanation of the petitioner dated 17.7.2019, they called for comments from the District Magistrate. Thereafter when the petitioner submitted another

detailed reply dated 19.9.2019, once again comments are called from the District Magistrate. The State Government without holding any inquiry, merely on basis of comments submitted by the District Magistrate, proceeded to pass the impugned order for the reason that the petitioner had not submitted any reply in response to notice dated 14.5.2020 which was issued as a substitute to personal hearing on account of Covid 19 protocol being in force at the relevant time. The rebuttal of the petitioner to the charges was already there in shape of the reply dated 17.7.2019 and 9.9.2019 and therefore, there was no need of reiterating the stand once again in response to notice dated 14.5.2020. The issuance of repeated show-cause notices and calling for explanations cannot be a substitute to the oral inquiry which in the facts and circumstances of the instant case was necessary to comply with the principles of natural justice as well as the requirements of statute itself.”

11. Now, the issue for consideration is whether the words ‘such inquiry as it may consider necessary’ occurring in Section 48(2-A) of the Act of 1916 envisage a full-fledged inquiry or leave it open to the Government to adopt a procedure to enquire into the charges ensuring a fair opportunity of hearing, which may be short of a full-fledged inquiry. This question has fallen for consideration of the Supreme Court in the context of removal of the elected President of an Urban Municipal Council under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. This was in Ravi Yashwant Bhoir v. District Collector, Raigad, (2012) 4 SCC 407 that the issue came up before their Lordships of the Supreme Court and it was held on wider principle:

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

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee

cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office-bearer can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.

33. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in *Tarlochan Dev Sharma v. State of Punjab* [(2001) 6 SCC 260 : AIR 2001 SC 2524] and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him.

Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983], *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* [(1992) 4 SCC 80 : AIR 1993 SC 2042] and *Ram Beti v. District Panchayat Raj Adhikari* [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

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

13. There is no gainsaying the fact that the President of a Municipality in Uttar Pradesh is an elected representative of his constituency and his removal from office cannot be subject to a procedure that may be anything which the State Government may decide in the facts of a given case. Once the President of a Municipality denies the charge against him through an explanation, which is not found satisfactory by the State Government, a full-fledged inquiry must follow.

15. The aforesaid exposition of the law makes it explicit that in interpreting the provisions of a State Legislation, like the Act of 1916, the Court must bear in mind the provisions of Part IX-A of the Constitution, which confers a constitutional status upon the Municipalities in the State and also safeguards their autonomy as elected bodies of local self-government. It is from that vantage that the provisions of Section 48 (2-A) of the Act of 1916 have to be interpreted, in particular, the words ‘such inquiry as it may consider necessary’ employed therein, consistent with the scheme envisaged under Part IX-A of the Constitution.

16. In our opinion, therefore, the words in Section 48 (2-A) of the Act of 1916 ‘such inquiry as it may consider necessary’ cannot mean any kind of inquiry, which the State Government may consider feasible in the facts of a given case. Upon a denial of the charge/ charges by the President of a Municipality, the State Government, if not satisfied with the explanation submitted by the President, has to hold a full-fledged inquiry.

(Emphasis added)

14. In **Sur Enamel and Stamping Works Ltd. v. Workmen** reported in AIR 1963 SC 1914 while dealing with the dismissal of a government servant, the Court inter alia has observed as hereinbelow:

“4.....An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined — ordinarily in the presence of the employee — in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report....”

(Emphasis added)

15. In **Nirmala J. Jhala v. State of Gujarat** reported in (2013) 4 SCC 301, the Supreme Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity of cross-examination of persons examined in preliminary inquiry was not afforded to the delinquent. The relevant paragraphs of the judgment are quoted hereinbelow:

“42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely

for the satisfaction of the Government as to whether a regular inquiry must be held.

44. *In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:*

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

45. *In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”*

(Emphasis added)

16. Very recently, the Supreme Court in **State of U.P. v. Ram Prakash Singh** reported in 2025 INSC 555 while dealing with the dismissal of a government servant for embezzlement of funds had in great detail examined the procedure to be followed in departmental inquiry. The relevant paragraphs of the judgment are quoted hereinbelow:

“14. What follows from a conjoint reading of the above two decisions is and what applies here is that, ‘materials brought on record by the parties’ (to which consideration in the enquiry ought to be confined) mean only such materials can be considered which are brought on record in a manner known to law. Such materials can then be considered legal evidence, which can be acted upon. Though the Indian Evidence Act, 1872 is not strictly applicable to departmental enquiries, which are not judicial proceedings, nevertheless, the principles flowing therefrom can be applied in specific cases. Evidence tendered by witnesses must be recorded in the presence of the delinquent employee, he should be given opportunity to cross-examine the witnesses and no document should be relied on by the prosecution without giving copy thereof to the delinquent - all these basic principles of fair play have their root in such Act. In such light, the documents referred to in the list of documents forming part of the annexures to the chargesheet, on which the department seeks to rely in

the enquiry, cannot be treated as legal evidence worthy of forming the basis for a finding of guilt if the contents of such documents are not spoken to by persons competent to speak about them. A document does not prove itself. In the enquiry, therefore, the contents of the relied-on documents have to be proved by examining a witness having knowledge of the contents of such document and who can depose as regards its authenticity. In the present case, no such exercise was undertaken by producing any witness.

15. We may further refer to the decision of this Court in *State of Uttar Pradesh v. Saroj Kumar Sinha* where disciplinary proceedings were drawn up against the respondent, Saroj Kumar Sinha, under the 1999 Rules itself with which we are concerned. Paragraphs 26 to 30 and 33 of the said decision being relevant are quoted below:

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

‘7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.’”

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold

that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."

33. Resting on the aforesaid reasoning, the answer to the basic question (majority view) in B. Karunakar (supra) is found in paragraph 29 reading as follows:

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the

employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

52. We now sum up our understanding of the law declared in *B. Karunakar (supra)* and answer the four questions delineated in paragraph 26 (*supra*) compositely. Reading the declaration of law by the Constitution Bench regarding the imperative need to furnish the report of enquiry to the delinquent employee even when : (i) the relevant statutory rules are silent or against it, (ii) the punishment to be imposed is other than the punishment referred to in clause (2) of Article 311 of the Constitution, (iii) the employee does not ask for it, and (iv) the burden is cast on a private employer too, and the law requiring furnishing of the report being made to operate prospectively from the date the decision in *Mohd. Ramzan Khan (supra)* was rendered, thereby reinforcing the legal position that prevailed after the GoI Act was enacted but became unsettled later, there can be no two opinions that on and from 20th November, 1990 [i.e., when *Mohd. Ramzan Khan (supra)* was decided] it is the mandatory requirement of law that the report of enquiry has to be furnished to the delinquent employee. Taking a cue from *S.K. Sharma (supra)*, we are inclined to the view that the requirement of furnishing the report of enquiry, though procedural, is of a mandatory character and the bogey argument of the employer to apply the test of 'prejudice' when the report of enquiry is not furnished cannot be of any avail to thwart the challenge of the delinquent employee. Such test could call for application, if from the facts and circumstances, it can be established that the delinquent employee waived his right to have the report furnished. Should satisfactory explanation be not proffered by the employer for its failure/omission/neglect to furnish the enquiry report, that ought to be sufficient for invalidating the proceedings and directing resumption from the stage of furnishing the report. No proof of prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved, unless there is a waiver, either express or by conduct, to of the right to receive the report. And, it is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon."

(Emphasis added)

17. The Supreme Court in **Makarand Alias Nandu v. State of Maharashtra** (Civil Appeal No. 14925/2017) while dealing with the issue as to the manner and extent of powers exercisable by the State Government in disqualifying the elected councilors/office bearers of the

Municipalities had held that elected members of Municipality cannot be removed at the whims and fancies of civil servants or their political masters. The relevant paragraphs of the judgment are quoted hereinbelow:

“11. We hasten to add that the appellant was an elected representative. 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.

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 would etc., misappropriation or 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.”

18. The Rajasthan High Court in **Puranmal Verma v. State of Rajasthan** reported in 2025 SCC OnLine Raj 3526 while dealing with the removal of Sarpanch of Gram Panchayat after furnishing his reply against the chargesheet had held that removal of elected representative without following mandatory procedure is unsustainable. The relevant paragraphs of the judgment are quoted hereinbelow:

“9. Perusal of the aforesaid Rule indicates that before taking any action under Section 38 of the Act of 1994, the State Government is required to follow the mandate contained under Rule 22 of the Rules of

1996. As per Sub Clause 3 of the Rule 22 of the Rules of 1996, an Enquiry Officer is required to be appointed, who shall consider the documentary and oral evidence as well as all relevant material with regard to the charge into consideration and thereafter, opportunity of cross-examination with the witnesses is required to be given to the other side and thereafter, a report is required to be prepared for coming to the conclusion 'whether any representative is found to be involved in any financial irregularity for the charges levelled against him'.

11. This Court has gone through the entire record of the preliminary as well as the final enquiry report conducted by the Block Development Officer, which reveals that only on the basis of the reply submitted by the petitioner and without recording the evidence of witnesses and without considering the other evidence available on the record, straightaway, the order impugned has been passed simply on the basis of the charge-sheet and reply submitted by the petitioner.

13. In a democratic set up, an elected representative is the voice of the people to whom he represents, hence, much care and caution is required to be taken while removing him from the post he is holding. In a democracy governed by the Rule of Law, once an incumbent is elected to an office in a democratic institution, he is entitled to hold the office for the term for which he has been elected unless his conduct is found to be disgraceful or he has misused his power and position involving any kind of activities, which warrant his removal from his post in terms of Section 38 of the Act of 1994. But before removing him from his post for any of the charges levelled against him, the provisions contained under Rule 22 of the Rules of 1996, are required to be followed. But, here in the instant case, the above procedure has not been followed. Only a charge-sheet was served upon the petitioner and after considering his reply to be non-satisfactory, his removal order has been passed. Whereas, the respondents were supposed to conduct an enquiry against the petitioner, in terms of Rule 22 of the Rules of 1996.

Hence, it is clear that before passing the impugned removal order against the petitioner while exercising the powers contained under Section 38(1) of the Act of 1994, the procedure contained under Rule 22 of the Rules of 1996 has not been followed.

14. In view of the above, facts and circumstances of the case, the impugned order dated 18.03.2025 is not liable to be sustained and is liable to be and is hereby quashed and set-aside.”

(Emphasis added)

19. In light of the umpteen precedents cited above and upon sifting through the ratios laid down therein, the following principles may be culled out to be followed while removing an elected representative of the people by conducting a full-fledged inquiry:

A. When the Government initiates proceedings against an elected representative, an Inquiry Officer is required to be appointed, who is required to frame a charge-sheet based on the preliminary report mentioning all the charges along with evidence relied upon for framing charges and shall deliver a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained.

B. On receipt of articles of charge, the delinquent shall be afforded with an opportunity to submit his written statement to specifically deny the charges by pleading not guilty. It is incumbent upon the respondents to provide all the documentary evidence relied by the prosecution.

C. The Inquiry Officers shall fix a date for the appearance of the delinquent to answer the charges and defend his case.

D. The Evidence tendered by witnesses must be recorded in the presence of the delinquent and he shall be afforded an opportunity of examination and cross-examination of the prosecution witnesses. Opportunity should also be provided to lead evidence in defence including examination of defence witnesses.

E. Before closing the case on behalf the Inquiry Officer, the delinquent may be allowed to produce new evidence or he may himself call for new evidence or recall and re-examine any witness.

F. Upon completion of the inquiry, a report shall be prepared by the Inquiry Officer to arrive at a conclusion as to whether the elected representative is found to be involved in any financial irregularity for the charges levelled against him. The said report

must be mandatorily furnished to delinquent and a copy thereof shall be forwarded to the Government to impose penalty.

20. The law prescribes a detailed and mandatory procedure for the removal of a government servant under the Civil Services (Classification, Control and Appeal) Rules 1956, as well as the Public Servant Inquiries Act, 1850, for the imposition of both major as well as minor penalties. An elected representative is the embodiment of the democratic will of the people as aptly reflected in Abraham Lincoln's dictum that 'democracy is of the people, by the people and for the people'. Ergo, elected representative occupies a higher constitutional pedestal than a government servant. Even if a government servant cannot be removed on the allegations of misconduct perfunctorily without holding a full-fledged inquiry, it is inconceivable that an elected office-bearer may be removed without adherence to an equally rigorous procedure. The procedural safeguards governing the removal of a government servant therefore shall, *mutatis mutandis* apply to the removal of an elected representative.

21. Upon a careful examination of the order impugned in the present writ petition, it is evident that the said order has been passed solely on the basis of a preliminary inquiry report and the reply submitted by the petitioner. Moreover, the petitioner was not supplied with the relied-upon documents despite a specific demand. In the present case, no Inquiry Officer was appointed to conduct a final inquiry; no charge-sheet was framed; no opportunity was afforded for examination, cross-examination, or re-examination of witnesses; and no procedure for leading evidence was followed.

22. In light of the catena of judgments cited above and principles enunciated, we are of the considered view that all the crossroads for conducting a full-fledged inquiry were not followed. Consequently, the inquiry conducted by the respondents cannot be termed to be a full-fledged inquiry prior to passing the order of removal against the petitioner and is not in consonance with the provision of Section 48(2-A)

of the Act, 1916.

23. Accordingly, the impugned order dated October 29, 2025 is hereby quashed and set aside with a direction to the competent authority to conduct a full-fledged inquiry by recording all the evidence and granting due opportunity to the petitioner to defend himself, and thereafter, proceed in accordance with the law.

24. In light of the above, the writ petition is **allowed**.

(Shekhar B. Saraf, J.)

I agree

(Manjive Shukla, J)

January 9, 2026
cks/-