



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

**S.B. Civil Writ Petition No. 11706/2023**

Satish Kumar Duhariya

**-----Petitioner**

**Versus**

1. State of Rajasthan, through Secretary, Local Self Government Department, Government Secretariat, Jaipur
2. Director and Joint Secretary, Local Self Government, G-3, Rajmahal Residency Area, Near Civil Lines Railways Level Crossing, C-Scheme, Jaipur

**-----Respondents**

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For Petitioner(s) : Mr.R.K.Agarwal, Senior Advocate assisted by Mr. Jatin Agarwal

For Respondent(s) : Mr.Yashodhar Pandey, Advocate on behalf of Mr.Anil Mehta, Addl. Advocate General.  
Mr.Nitin Jain and Mr.Jagmeet Singh, Advocates for Intervenors.

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**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

RESERVED ON : 17/01/2024

PRONOUNCED ON : 23/01/2024

**Order**

**REPORTABLE**

1. By way of filing this petition, the petitioner has challenged the legality and validity of the suspension order dated 24.07.2023 passed by the respondents by which the petitioner has been placed under suspension from the post of Chairman of Municipal Board, Rajgarh.

**RIVAL CONTENTIONS:**

2. Counsel for the petitioner submits that the petitioner is an elected Chairman of the Municipal Board, Rajgarh (Alwar) and he was placed under suspension vide order dated 25.04.2022 and the said order was assailed by him by way of filing S.B.Civil Writ Petition No.6771/2022 and the same was allowed by this Court vide order dated 17.01.2023 and the suspension order dated 25.04.2022 was quashed and set aside. Counsel submits that on the ground of same allegations, the petitioner has again been placed under suspension vide impugned order dated 24.07.2023 with the allegation that certain discrimination was done by him in the encroachment removal drive. Counsel submits that a meeting was convened on 17.09.2021 wherein the Member of Legislative Assembly (for short "the MLA") of the concerned Constituency as well as the other office bearers including the Sub Divisional Officer, Rajgarh (Alwar) (for short "the SDO) and the Executive Officer (for short "the EO") were present in whose presence a decision was taken for removal of the encroachment from the public land. Counsel submits that as a consequence thereof, the encroachment removal drive was initiated and encroachments were removed. Counsel submits that now chargesheet has been served upon the petitioner as well as upon the other office bearers including the SDO and the EO and all of them were placed under suspension and enquiry has been initiated against them. Counsel submits that till date, neither enquiry has been concluded against the above two Officials nor against the petitioner, however their suspension



has been revoked but the suspension of the petitioner is still continuing. He submits that case of all the three is at par, hence the suspension order of the petitioner is liable to be revoked till completion of enquiry. In support of his contentions, he has placed

reliance upon the judgment passed by this Court in the case of **Kamli Vs. State of Rajasthan**, reported in **2023 (1) DNJ 299**.

Counsel further submits that the petitioner is a public representative and he has been placed under suspension in a casual way due to political reasons, hence interference of this Court is warranted.

3. Per contra, learned counsel for the State-respondents as well as counsel for the intervenor opposed the arguments raised by counsel for the petitioner and submitted that the petitioner being the Chairman of the Institution i.e. Municipal Board has acted in an illegal and arbitrary manner and took a decision for removal of certain encroachments, without affording the opportunity of hearing to the persons concerned. Counsel submits that some of the persons were having valid pattas and Court decrees in their favour but overlooking the same and without giving any opportunity of hearing to such persons and without awarding them adequate amount of compensation, the illegal action of their removal was taken against them. Counsel submits that as per Section 55 of the Rajasthan Municipalities Act, 2009 (for short, the Act of 2009) the petitioner was supposed to constitute a committee in this regard but without doing so, the illegal and arbitrary action has been taken by him. Counsel submits that after



following the due process of law as contained under Section 39 of the Act of 2009, the petitioner has been placed under suspension and now a judicial enquiry is pending against him. Counsel submits that under these circumstances, interference of this Court is not warranted. In support of their contentions, they have placed reliance upon the judgment passed by this Court in the case of **Devendra Singh Shekhawat Vs. State of Rajasthan and Ors.** in **S.B. Civil Writ Petition No. 14381/2023.**

4. Counsel for the State respondents further submits that under Section 48 of the Act of 2009, the duties and functions of the Chairperson have been defined and while removing such persons who were rightfully possessed over their land, he has acted in an arbitrary manner that too without seeking any approval for his action from the State Government. Counsel submits that in view of the submissions made hereinabove, this petition is liable to be rejected.

**ANALYSIS AND REASONING:**

5. Heard and considered the submissions made at Bar and perused the material available on record.

6. A general body meeting was conducted on 08.09.2021 by the Municipal Board, Rajgarh under the Chairmanship of the MLA of the concerned constituency and the SDO was the Deputy Chairman in the said meeting. In all 46 different persons participated in the meeting. The petitioner being Chairperson of the Board was also part of the meeting and a decision was taken



to initiate an encroachment removal drive to remove the unauthorized illegal constructions from certain areas including Gaurav Path. As a consequence thereof, the EO issued notices to the encroachers to remove their unauthorized constructions which was causing obstruction in the way and on the road and accordingly, an encroachment drive was initiated and some of the unauthorized constructions were removed.



7. It appears that certain persons made complaints to the Deputy Director (Regional), Department of Local Bodies against the aforesaid action of the Board and an explanation was called from the petitioner on 25.04.2022. The petitioner as well as the EO of the Board submitted detailed reply to the explanation on 25.04.2022 and justified the action of the Board. On the very same day i.e. on 25.04.2022 the petitioner was placed under suspension under Section 39 of the Act of 2009.

8. Aggrieved by the aforesaid order of suspension, the petitioner approached this Court by way of filing S.B.Civil Writ Petition No.6771/2022 and the same was allowed on 17.01.2023 with the following observations and directions.

“This writ petition filed by the petitioner deserves to be allowed for the reasons; firstly, as submitted by the learned senior counsel on behalf of the petitioner, prior to passing of the suspension order, the notice was given on the same day, reply was received on the same day and the order of suspension has been passed on very same day and during the period of three hours, the proceedings have been completed by the respondents and the order of suspension has been passed in a hurried manner; secondly, in my considered view, it is a case of complete non application of mind by the respondents while passing the suspension order.



In that view of the matter, this writ petition is allowed. The order dated 25.04.2022 passed by the respondents is quashed and set aside on the ground of non-application of mind. However, the respondents are at liberty to pass fresh order in accordance with law, if they so desire."

9. After passing of the order dated 17.01.2023 by this Court, the respondents again issued notice-cum-chargesheet to the petitioner on 04.07.2023 and the charges were prima facie found to be proved against the petitioner and in exercise of the powers under Section 39(6) of the Act of 2009, the petitioner was again placed under suspension vide impugned order dated 24.07.2023.

10. Perusal of the record indicates that for the same charges i.e. while removing the encroachments negligence was caused in the drive which caused inconvenience and damage to the general public, chargesheet was served upon the SDO as well as upon the EO of the Municipal Board, Rajgarh i.e. Keshav Kumar Meena as well as Banwari Lal Meena respectively. Accordingly, they were also placed under suspension on the same day i.e. on 25.04.2022 and enquiry proceedings were also initiated against them for the same charges which were levelled against the petitioner. But the enquiry proceedings have not been completed against any of them till date in spite of passing of considerable time. Later on, the suspension order of both the government officials i.e. the SDO as well as the EO has been revoked on 31.08.2022 and 19.09.2022 respectively and they have been posted at their working posting places. But the impugned suspension order of the petitioner is still



continuing till date. Neither the enquiry has been completed nor his suspension order has been revoked.

11. The State counsel was asked to explain as to why suspension order of the SDO and the EO has been revoked and why the suspension order of the petitioner has been kept intact. The State counsel submitted that both the SDO and the EO were government servants, hence, keeping the enquiry pending against them, their suspension orders have been revoked, while the petitioner is an elected Chairman, therefore, his suspension order has not been revoked because judicial enquiry is pending against him for the charges levelled against him. When the charges against the SDO, the EO and the petitioner were similar and common and reason of their suspension was also same, then how the suspension orders of the SDO and EO were recalled and they were taken back in service to continue to work at their respective places of posting but the suspension order of the petitioner has not been revoked because judicial enquiry is pending against him. Such an act of the State amounts to discrimination between the two equals. It is settled proposition of law that equals should be treated equally and unequals should be treated unequally. Treating the equals as unequals would offend the doctrine of equality, enshrined under Article 14 of the Constitution of India.

12. The principle that two equals cannot be treated unequally is a fundamental principle of justice and fairness that is recognized by legal systems around the world. Many countries have enshrined this principle in their legal frameworks, either through specific



laws or through constitutional provisions. For example, the Universal Declaration of Human Rights, which is recognized by the United Nations as a foundational document for human rights, states in Article 7 that "All are equal before the law and are entitled without any discrimination to equal protection of the law". Similarly, many countries have anti-discrimination laws that prohibit discrimination on the basis of race, gender, religion, or other factors. These laws are designed to ensure that all individuals are treated equally, regardless of their background or personal characteristics.

13. There is no doubt that the State Government is the Authority and the discretion lies with it to act in accordance with law but such discretionary powers exercised by the government must be exercised in a manner that is not arbitrary, unreasonable, or discriminatory. In many countries, discretionary powers are granted to government officials and agencies to enable them to make decisions that are necessary for the effective administration of government policies and programs. However, the exercise of these powers must be subject to certain legal and constitutional limitations to prevent abuses of power. The principle of non-arbitrariness requires that government officials and agencies must act in good faith and in accordance with the law when exercising discretionary powers. This means that they must have a rational basis for their decisions and must not act in a manner that is capricious, whimsical, or discriminatory. Any exercise of discretionary power must be based on relevant and objective





criteria, rather than on personal preferences, biases, or prejudices.

14. According to the great philosopher and scholar Aristotle "Equals should be treated equally and unequals unequally". The most fundamental principle of justice which has been accepted worldwide since it was defined by Aristotle more than two thousand years ago. This principle says that "Individuals should be treated same, unless they differ in ways that are relevant to the situation in which they are involved.

15. Perusal of the suspension order of all the three persons i.e. the SDO, the EO and the petitioner indicates that similar charges have been levelled against them and for the same charges all of them were placed under suspension on the same day i.e. 25.04.2022 but later on the suspension orders of the SDO and the EO were recalled and they were taken back in service and till date they are allowed to work on their respective posting places. But the enquiry is pending against all of them and the suspension order of the petitioner alone is still continuing. Hence, under these circumstances such action of the respondents is quite arbitrary and discriminatory and the same is not legally sustainable in the eye of law and the same is liable to be quashed. The petitioner has been put to hostile discrimination qua the government officials i.e. the SDO and the EO. Such action of the respondents reflects that they have acted in colourable exercise of their powers.

16. The judgment relied upon by the counsel for the petitioner passed by this Court in the case of **Devendra Singh Shekhawat**



**(supra)** is not applicable in the instant case, as no such plea or argument has been raised by the counsel for the petitioner with regard to compliance or non-compliance of the provision, contained under Section 39 of the Act of 2009.

**CONCLUSION:**

17. The upshot of the aforesaid discussion is that the writ petition deserves to be allowed and the same is hereby allowed accordingly. The impugned order dated 24.07.2023 stands quashed and set aside. Consequences to follow.

18. The respondents are directed to conclude the pending enquiry against all the persons, to whom chargesheet has been given, expeditiously as early as possible, preferably within three months from the date of receipt of this order and proceed further with the matter in accordance with law without being influenced by any observation made by this Court.

19. The stay application and all other pending applications, if any, also stand disposed of.

20. The parties are left free to bear their own costs.

**(ANOOP KUMAR DHAND),J**

Solanki DS, PS