



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



S.B. Civil Writ Petition No. 14381/2023

Devender Singh Shekhawat

-----Petitioner

Versus

1. State of Rajasthan, through its Secretary, Local Self Government, Government Secretariat, Jaipur.
2. Director and Special Secretary, Director Local Bodies, G-3, Rajmahal Residency Area, Civil Lines Phatak, C-Scheme, Jaipur.
3. Dy. Director (Regional), Director Local Bodies, Ajmer.
4. Municipal Corporation, Ajmer through its Commissioner, Prithviraj Marg, Ajmer.

-----Respondents

For Petitioner(s) : Mr.Rajendra Prasad, Senior Advocate assisted by Mr.Ashish Sharma, Advocate.

For Respondent(s) : Mr.Anil Mehta, Additional Advocate General assisted by Mr.Yashodhar Pandey & Mr.Anurag Sharma, Advocates.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 08/11/2023

PRONOUNCED ON : 21/11/2023

Order

REPORTABLE

1. By this petition, the petitioner seeks to challenge the impugned order dated 22.08.2023 whereby he has been placed under suspension under Section 39(6) of the Rajasthan Municipalities Act, 2009 (for short 'the Act of 2009') from the



office of Member, Ward No.38, Municipal Corporation, Ajmer (for short 'the Corporation').

2. The facts, in brief, of the case are that the petitioner was elected as Member from Ward No.38 of the Municipal Corporation, Ajmer on 31.01.2021. He has been placed under suspension vide order dated 22.08.2023 by the respondents with the charge that he filed a Civil Suit and power/vakalatnama against the Corporation before the Court of Civil Judge, North, Ajmer, against the mandate contained under Section 24(xvi) of the Act of 2009.

3. Learned counsel for the petitioner submitted that the petitioner has not filed any suit against the Corporation, he simply signed the power on behalf of the plaintiff in the capacity of an associate junior counsel. The suit was filed by the Counsel Mr.Abhishek Bhargava and only said Mr.Bhargava has appeared on behalf of the plaintiff. The petitioner has not contested and argued in any suit against the interest of the Corporation. Hence, the petitioner has not acted in a disgraceful manner against the interest of the Corporation.

4. Counsel submitted that after receipt of complaint against the petitioner, his explanation was called and looking to the averments and explanation of the petitioner, the matter was referred to the higher authorities and on 14.08.2023, the Department of Local Bodies recorded the note-sheet and indicated therein as follows:-

“The conduct of Shri Devendra Shekhawat is unbecoming of elected Parshad, he has acted against the interest of Nagar Nigam.

In view of this, he may be issued a show cause notice before proceeding further.”



5. Counsel submitted that without issuing any show cause notice of definite charges, the petitioner has been placed under suspension in violation of the provisions contained under Section 39 of the Act of 2009.

6. Mr. Rajendra Prasad, learned Senior Counsel submitted that as per the law laid down by this Court in the case of **Jan Mohd. Vs. The State of Rajasthan & Ors.** reported in **1992(2) WLC (Raj.) 463**, it was incumbent that only on the basis of the complaint made about working of a person, which may be covered by sub-section (1)(a) of the Section 39 of the Act, 2009, no suspension can take place. The complaint has to be inquired by the State Government and after the enquiry is held and a preliminary report is submitted and after that report is considered, the delinquent can be suspended. Counsel on the strength of the said judgment, submitted that suspension can only take place after due application of mind on the preliminary report where the authority comes to the conclusion that the matter requires further probe and the explanation has to be obtained from the delinquent concerned and after setting down the statement of allegation, the enquiry is required to be referred to a Judicial Officer.

7. Counsel also placed reliance on the judgment in the case of **Jagdish Narayan Sharma and Ors. Vs. State of Rajasthan and Ors.** reported in **1994(2) WLC (Raj.) 615** and on the strength of the said judgment submitted that if the preliminary enquiry is not conducted and report of the Enquiry Officer is not placed before the State Government, then it cannot be said that



“proceedings have been commenced” within the meaning of Section 39(6) of the Act, 2009 and as such, the impugned suspension order is vitiated.

8. Counsel has placed reliance on the following judgments:-

- (i) **Ugamsee Modi Vs. State of Rajasthan** reported in **1962 RLW 184.**
- (ii) **Mohanlal Vs. State of Rajasthan** reported in **1963 RLW 209.**
- (iii) **Bhura Lal Vs. State of Rajasthan** reported in **1988(1) RLR 945.**
- (iv) **Geeta Devi Narooka Vs. State of Rajasthan & Ors.** reported in **2008(2) WLC 261.**
- (v) **Pradeep Hinger Vs. State of Rajasthan & Ors.** reported in **2008(1) RLW Raj. 456.**

9. Counsel submits that overlooking the law laid down in the aforesaid judgments, on the issue of suspension, the coordinate Bench of this Court has taken a contrary view in the case of **Nirmal Kumar Pitaliya Vs. State of Rajasthan** reported in **2022 (1) RLW 494.** Counsel submitted that the view taken by the coordinate Bench of this Court in the case of Nirmal Kumar Pitaliya (supra) is also contrary to the judgment passed by the Apex Court in the **Official Liquidator Vs. Dayaram** reported in **2008 (10) SCC 1.**

10. Counsel submitted that in view of the submission made hereinabove, interference of this Court is warranted and the impugned suspension order dated 22.08.2022 is liable to be quashed and set aside.

11. Per contra, learned Additional Advocate General opposed the arguments, raised by the counsel for the petitioner and submitted



that being a Member of the Corporation, the petitioner has acted against the interest of the Corporation by way of filing Civil Suit and power against the Corporation and such conduct of the petitioner amounts to disqualification under Section 24(xvi) of the Act of 2009. Counsel submitted that a show cause notice with definite charges was served upon the petitioner on 04.11.2022 under Section 39(3) of the Act of 2009 and the same has not been challenged by him, hence, this petition is liable to be rejected only on this count alone. Counsel submitted that the petitioner is guilty of disgraceful conduct, as he has acted against his position as a Member and against the interest of the Corporation by way of filing Civil Suit and power, thus, he has abused his position as a Member of the Corporation, accordingly, the powers under Section 39(6) of the Act of 2009 have been rightly exercised to suspend him.

12. Mr. Anil Mehta, Additional Advocate General has placed reliance on the judgments passed by this Court in the case of **Bhanwar Lal Chhabra Vs. State of Rajasthan & Ors.** reported in **1992 (1) RLR 436**, **Chhagan Kanwar Rathore Vs. State of Rajasthan** reported in **AIR 2000 Raj. 238** and **Tararam Mali Vs. State of Rajasthan** reported in **AIR Online 2019 Raj. 861**.

13. Learned Additional Advocate General has submitted that as per Section 39(1)(d) of the Act, 2009, the State Government has power to remove a member of the municipality on the ground of he being guilty of misconduct in discharge of his duties or being guilty of any disgraceful conduct. Counsel submitted that under



Section 39(2) of the Act, 2009 power conferred of removal under sub-section (1) of Section 39 of the Act, 2009 may be exercised by the State Government on its own motion or upon the receipt of a report from the Municipality or upon the facts otherwise coming to the knowledge of the State Government.

14. Learned Additional Advocate General submitted that neither show cause notice is required to be given nor explanation is required to be called from the incumbent before placing him under suspension. The satisfaction of the competent authority is based on the material and after application of mind, the suspension order was passed on having complete inputs about disgraceful conduct of the petitioner and further the State has decided to hold a regular enquiry by issuing chargesheet on the same day when the impugned order of suspension was passed and as such the learned counsel defends the action of the State Government.

15. Counsel submitted that in view of the submissions made hereinabove, interference of this Court is not warranted and the petition is liable to be rejected.

16. Heard counsel for the parties and perused the material available on record.

17. Basic thrust of argument of the counsel for the petitioner is that no show cause notice or opportunity of explanation was given to the petitioner before placing him under suspension and before conducting the judicial proceedings as required under Section 39 of the Act of 2009. The whole case is based on the judgments passed by this Court in the case of Jan Mohd. (supra). This



judgment is based on the provision contained under Section 63 and 65 of the old repealed Rajasthan Municipalities Act, 1959 (for short 'the old Act of 1959') wherein it was mandatory to issue show cause notice before removing any Member.

18. The old Act of 1959 was repealed by the new Act of 2009. Section 39 of the Act of 2009 deals with the power of the State Government to suspend and remove any Member of Municipality on certain grounds. The provisions contained under Section 39 of the Act of 2009 reads as under:-

"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 fulfill 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(6) of the Act of 2009 shows that the State Government has power to place a Member under suspension against whom proceedings have been commenced until the conclusion of the inquiry and the passing of final order under sub-section (1) of Section 39 of the Act of 2009.

19. While interpreting the provision contained under Section 39(6) of the Act of 2009 and the judgment passed by this Court in the case of Jan Mohd. (supra), the coordinate Bench of this Court decided the similar controversy in the case of **Rajaram Gurjar Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.21332/2019]** on 14.02.2020 with the following observations:-

"23. This court finds that sub-section (6) of Section 39 of the Act, 2009 is a non-obstante clause and confers power in the State Government to place under suspension a member against whom proceedings have been commenced until conclusion of enquiry and passing of the final order of removal under sub-section (1) of Section 39 of the Act, 2009.

24. This court finds that the power of suspension can be invoked by the State Government if the "proceedings have been commenced" for removal of a member, as provided under sub-section (1) of Section 39 of the Act, 2009. The said provision under sub-section (6) of Section 39 of the Act, 2009 nowhere contemplates that any show cause notice is required to be given or further an explanation is required to





be called from the member of the municipality. The only requirement is with respect to the proceedings which are commenced for removal of a member on any of the grounds enumerated in sub-section (1) of Section 39 of the Act, 2009. The competent authority, if has received inputs, as per sub-section (2) of Section 39 of the Act, 2009, may exercise the power of removal and after application of mind, if it has decided to hold enquiry against the member of municipality and further the statements setting out distinct charges are issued to the member, it cannot be said that proceedings have not commenced under Section 39 of the Act, 2009.

25. This court finds that the reliance placed by learned Senior Counsel for the respondents on the judgment passed by this court in the case of Jan Mohd. (supra), the Division Bench of his court has clearly held that when any preliminary enquiry report is submitted to the Government and the same is considered by the Government by applying its mind and it comes to the conclusion that a further probe in the matter is essential and if the Government decides to issue a notice to the incumbent as why definite charges be not framed against him and be referred to a Judicial Officer, the State Government has power to suspend the member of the municipality simultaneously when it decides to issue him a show cause notice under earlier Section 63(2) of the Rajasthan Municipalities Act, 1959. Learned counsel has placed reliance on para-20 of the judgment which reads as follows:-

"29. As regards the reading down of the provisions of S.63(4) of the Act to include the principles of natural justice, our attention has been drawn to a decision of their Lordships of the Supreme Court in Jagdish Pandey v. Chancellor, Bihar University (AIR 1968 SC 353). The facts of that case are contained in para 6 of the judgment, wherein it has been noted that the order dated August 18, 1962 had worked itself out and, therefore, it could not have been reviewed or revised by the Chancellor under S.4 by issuing an order dated November 30, 1962, whereby promotion was granted to a particular person by the Chancellor as Principal and that order was executed and it was sought to be set aside by a later order. In those facts, it was held that although, the Chancellor has powers to revise that order but that should be done after affording an opportunity of being heard to the affected person. It was in this context that the provision as such was read down and in reading it down it was held that it includes the principle of audi alteram partem. Here, that is not the case. It is not a case of divesting rights, which revested. It is a case of temporary removal of a person pending proposed enquiry, which may be initiated against him for his removal. That enquiry in a regular manner has to be proceeded with only after obtaining





his explanation and after considering his explanation, if it is found that the charges are to be referred to the Judicial Officer then the regular enquiry starts. Prior to that, if any complaint is made as regards his working, which may be covered by clauses (c) and (d) of S.63(1) of the Act then on that complaint alone no suspension can take place. That complaint has to be enquired into by the State Govt. or by an officer deputed by it and after that enquiry is held and a preliminary report is submitted and after that report is considered, the delinquent can be suspended. Thus, it is clear that the suspension can only take place after due application of mind on such a report where the authorities comes to the conclusion that the matter requires further probe and if that is there then the explanation has to be obtained from the delinquent concerned and after setting down the statement of allegation that enquiry is referred to a Judicial Officer of the rank of District & Sessions Judge. Thus, the final enquiry is not held by the State Govt. It has to be held by a Judicial Officer and, therefore, the contention of Mr.Mridul, the learned counsel appearing for the petitioner Murlidhar that once a decision to suspend a particular person is taken, the State Govt. will always try to maintain its order has no legs to stand. In support of this contention, Mr.Mridul has placed reliance on a decision of their Lordships of the Supreme Court in H.L.Trehan v. U.O.I. (1989 (1) SLR 7), wherein it has been held that once a decision is taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose. As stated above, in this type of cases, it is not that authority who has suspended the petitioner can hold the enquiry. The regular enquiry is conducted by a Judicial Officer. Thus, this contention is devoid of any force."

26. This court finds the conclusion and the ratio of the judgment in paragraphs 61 and 62, which are quoted hereunder:-

"61. In view of the aforesaid discussion, we are firmly of the view that the proceedings against a Chairman or Member of the Municipal Board commence when the preliminary enquiry report submitted to the Government is considered by the Government and the Government applies its mind to it and comes to the conclusion that a further probe in the matter is essential. For the removal of the holder of an elected public office that is Chairman or Member of the Municipal Board, if the Govt. decides to issue a notice to the incumbent under S.63(2) of the Act to the delinquent Chairman or the Member of the Municipal Board to show cause why definite charges be not





framed against him and be referred to a Judicial Officer, that is the stage where the proceedings start against the Chairman or the Member of the Municipal Board and the State Govt. has power to suspend the Chairman or a member of a Municipal Board simultaneously when it decides to issue him a notice of show cause under S.63(2) of the Rajasthan Municipalities Act. The suspension of a Chairman or a Member of a Municipal Board pending enquiry being an interim measure the suspension does not result in civil or evil consequences and it is not penal in character. Enough safeguards have been provided in the Section so that no arbitrary, capricious or mala fide suspension may take place. However, we will like to add a word of caution that the holders of these elective public posts cannot be equated with Govt. servants and, therefore, before a holder of an elected post is suspended, the Government must have sufficient reasons to do so. Care should be taken that such suspensions should be arbitrary and the suspensions of such elected representatives should not be brought about for political motives or consideration.

62. We accordingly, hold that the Sub-S.(4) of S.63 of the Rajasthan Municipalities Act is neither unfair, unreasonable, nor unjust and it is not arbitrary or ultra vires of the Constitution i.e. Arts 14, 16 and 21 of the Constitution. We further hold that Ajmer Singh Yadav's case in which it has been held that obtaining of the explanation and its consideration is essential i.e. that it is a condition precedent for bringing about the suspension of the Chairman or Member of the Municipal Board does not lay down the correct law and hence, it is overruled. The relief of revocation of the suspension cannot be granted in favour of the petitioners."

27. In humble opinion of this court, the Division Bench has clearly laid down that obtaining explanation and its consideration before suspension is not a condition precedent for suspension of a member of the municipality and further the Division Bench had not granted relief of revocation of suspension, challenged in the said case.

28. This court accordingly finds little substance in the submission of the learned Senior Counsel for the petitioner that neither show cause notice was given to the petitioner nor preliminary enquiry was conducted against him and as such the impugned suspension order is vitiated.

29. This court finds little substance in the submission of learned Senior Counsel for the petitioner that suspension of the petitioner is due to political reasons. The facts, which have come on record, nowhere reflect that suspension is only due to initiative taken by any ward member or any





political party interfering in the entire incident. The facts, which have come on record, show that the petitioner has conducted himself in such a manner where the State Government had to keep in mind the purity of administration and working of democratic institution of municipality where the Chairperson is expected to discharge his duties with full responsibility and grace. The State Government found that the elected Chairman of the Municipal Council, Karauli, the petitioner, conducts himself in such a manner where he gives beating to the employees and exert undue influence/pressure on them to do illegal act or to commit financial irregularities, the State Government if has thought it proper to place the petitioner under suspension and to conduct a judicial enquiry, no fault can be found with such decision making process and as such no interference is required in the writ jurisdiction.

30. This court finds that in the present facts of the case, the State Government had obtained the report from Commissioner, Municipal Council, Karauli and further factual report, sent by Superintendent of Police, Karauli interalia mentioning that there were several other cases against the petitioner who had indulged himself in manhandling and ill-treating the government employees and exerting undue favour to get the illegal work done by putting pressure on the employees.

31. This court finds that elected representatives need to be dealt with different approach in the matter of suspension and they cannot be equated with the government servant. The State Government must have sufficient reasons to form an opinion for placing such elected representative under suspension and such suspension order should not be arbitrary and irrational or to settle the political motives or for political considerations."

20. It has been brought into notice of this Court that the judgment passed by the coordinate Bench of this Court in the case of **Rajaram Gurjar (supra)** has not been challenged before the Division Bench or before any Appellate Court, hence, the same has attained finality. It is worthy to note here that in the case of **Rajaram Gurjar (supra)**, the judgment of **Jan Mohd. (supra)** was considered and finally a view was taken that an elected representative can be placed under suspension, if proceedings have been commenced against him under Section 39 of the Act of





2009. The words "commencement of proceedings" have been interpreted by the coordinate Bench of this Court in the case of **Nirmal Kumar Pitliya (supra)** in paragraphs Nos.50 to 55, which read as follows:-



"(51) According to this Court, commencement of proceedings is the point of time, when the State Government decides to take action against an elected representative. Such decision to take action, naturally would entail a fact finding inquiry or preliminary inquiry, as contemplated under the first proviso to Section 39 of the Act of 2009, followed by a judicial inquiry to be conducted under sub-sections (3) and (4) of Section 39 of the Act of 2009.(51)But then, sub-section (6) of Section 39 of the Act of 2009,does not make any reference of any sort of inquiry, preliminary or judicial. The provision simply mentions that in case proceedings have been commenced under this Section, a member can be placed under suspension. This Court is firmly of the view that the expression "proceedings have been commenced" coupled with the expression "under this Section" is wide enough to include within its fold not only the issuance of notice for preliminary inquiry and service of charge-sheet, but even the situation and cases, when the State Government decides to get an inquiry conducted through any authorized officer. The moment, the State chooses to take action against an elected representative with or without simultaneously referring the matter to the competent authority for inquiry in terms of proviso to sub-section (1), the proceedings stand commenced.

(52) It is noteworthy that the expression used in sub-section (6) is "proceedings" and not "inquiry". The expression "proceedings" includes the decision to initiate inquiry, issuance of notice etc. and, therefore, in the opinion of this Court, in the present factual matrix, on 02.07.2021, when the State Government had decided to commence disciplinary proceedings against the petitioner and had made up its mind to do so, the proceedings had commenced.

(53) If the term 'proceedings' is to be interpreted as proposed by Mr. Rajesh Joshi then section 39(6) would be rendered redundant in case(s) when action is taken pursuant to any allegation under clauses (a) and (b) of sub-section (1) of Section 39, because unlike the procedure of removal of a member under clauses (c)and (d) of sub-section (1) of Section 39 where, after having conducted a preliminary inquiry and granting an opportunity of hearing, the State Government has to further refer the matter to a Judicial Officer, the procedure of removal of a member under clauses (a) and (b) of sub-section (1) of Section 39 only requires the State Government to decide removal/non-removal of the member after having conducted a preliminary inquiry and granting an opportunity of hearing to the accused member.



(54) Therefore, the State Government would be unable to suspend a member during pendency of its decision of removal when his case falls under clauses (a) and (b) of sub-section (1). Whereas sub-section (6) provides that suspension can take place if proceedings have been commenced under Section 39 of the Act of 2009. Unquestionably, sub-section (6) is applicable to all the nine contingencies mentioned in clauses (a) to (d) of sub-section (1). If the petitioner's argument is accepted then sub-section (4), which has been specifically made applicable to the entire Section 39 would be restricted to cases covered by clauses (c) and (d) of sub-section (1) only. Such interpretation would frustrate the very purpose of the provision and hence, the same cannot be accepted.

(55) Therefore, for the reasons discussed hereinabove and the law laid down in the case of Ugamsee Modi (supra), this Court holds that the 'proceeding' as envisaged under section 39(6) can be said to have commenced upon issuance of a preliminary inquiry/show cause notice based on the allegations levelled against the accused under section 39(1)."

21. Following the view expressed by this Court in the case of **Rajaram Gurjar (supra)** and **Nirmal Kumar Pitaliya (supra)**, the coordinate Bench of this Court refused to interfere in the case of suspension of a similarly placed person in the case of **Bharat Lal Saini Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.13062/2022]** decided on **16.02.2023**.

22. Since the controversy involved in this case has already been set at rest by the coordinate Benches of this Court in the case of **Rajaram Gurjar (supra)**, **Nirmal Kumar Pitaliya (supra)**, **Bharat Lal Saini (supra)** and **Mohanlal Vs. State of Rajasthan (supra)**, this Court finds no reason to take a different view to unsettle the settled view on the issue involved in all these matters.

23. Perusal of the note-sheets and material available on the record indicate that on a complaint received from the panel Advocate of the Corporation i.e. Rakesh Chauhan on 10.10.2022,





it was found that being an elected Member of the Corporation, the petitioner not only accepted a brief against the Corporation but also filed a Suit for Permanent Injunction against the Corporation by his own signatures on the plaint and power/vakalatnama. This fact is clear from the photocopy of the plaint annexed with the petition, marked as Annexure-2. Upon receipt of the above complaint, the matter was examined by the respondents and it was found that such act of the petitioner amounts to disgraceful misconduct and his suspension was proposed on 27.10.2022 and his explanation was called. A show cause notice with the above definite charges was issued to him on 29.11.2022 (Annexure R/5) and his explanation under Section 39(3) of the Act of 2009 was called and after considering his explanation dated 06.12.2022, an enquiry was commenced against him and the charges were found prima facie correct against the petitioner by the Deputy Director (Regional), Department of Local Self, Ajmer in its report dated 20.07.2023. Thereafter, the petitioner was placed under suspension vide order dated 22.08.2023.

24. Hence, it is clear that following the provisions contained under Section 39(6) of the Act of 2009, the impugned order has been passed.

25. As a follow-up and consequence of the above stated discussion, this Court finds no merit in this petition and the same is liable to be and is hereby dismissed.

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



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

27. Stay application and all applications (pending, if any) stand dismissed. The parties are left free to bear their own costs.

28. Before parting with this order, it is made clear that the respondents/authority 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.

(ANOOP KUMAR DHAND),J

Solanki DS, PS