

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/LETTERS PATENT APPEAL NO. 383 of 2023****In R/SPECIAL CIVIL APPLICATION NO. 822 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL****- sd/-****and****HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE - sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No
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**BHAVESH KAMLESHBHAI PATEL****Versus****COMMISSIONER, MUNICIPALITY ADMINISTRATION****Appearance:**

MR NIRAV C THAKKAR(2206) for the Appellant(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 1

MR DEEPAK P SANCHELA(2696) for the Respondent(s) No. 2

**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL****and****HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE****Date : 08/09/2023**

**CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE)**

1. The present Letters Patent Appeal impugns the judgment and order dated 02.03.2023 in Special Civil Application No.822 of 2022, whereby the learned Single Judge has dismissed the Special Civil Application.
  
2. The brief facts leading to filing the present appeal are as follows:-
  - 2.1 The appellant was elected as a Councillor to the Unjha Nagarpalika. It is alleged that on 26.04.2021, the Chief Sanitary Inspector of the Nagarpalika – Mr. Jasminbhai Patel was insisting that the shop-keepers close their shops in the local market in the wake of the second wave of Covid-19. It is alleged that the shop-keepers objected to shutdown of the shops and handing over of the keys to him. In addition, the said Inspector was also imposing fine of Rs.1,000/- on the said shop keepers for violation of Covid-19 norms. The local market being in the constituency of the appellant, he received complaints from the shop-keepers about the high-handed

action of said Mr. Jashwinbhai Patel and, therefore, he went to the local market. It is further alleged that the appellant there met the Chief Sanitary Inspector and questioned his actions. He asked the Chief Sanitary Inspector to stop from forcing the shop-keepers to shutdown the shops. It is the case of the appellant that initially, he had politely requested to stop the forcible shutdown of the shops. However, when the Chief Sanitary Inspector did not desist from his actions, the appellant herein raised his voice and forcibly tried to stop the Chief Sanitary Inspector from shutting the shops. This incident of confrontation with the Chief Sanitary Inspector came to recorded on a mobile phone which shows the appellant arguing and misbehaving with the Chief Sanitary Inspector in disgraceful manner. The said video became viral when posted on the Facebook wherein the appellant was also tagged and the same was also visible on the Facebook page of the appellant.

2.2 The appellant herein complained about the incident of forcible shutdown to the respondent no.2 - the Chief Officer, Unjha Nagarpalika and requested him to take

immediate action against the Chief Sanitary Inspector. It is a case of the appellant that the Chief Sanitary Inspector was called for explanation on the complaint made by the appellant and that, after two days of incident, Mr. Jaswinbhai Patel – the Chief Sanitary Inspector also alleged counter allegations against the appellant herein stating that he was merely doing his job to save the public from Covid-19 in the second wave, by directing closure of shops as was unanimously decided by the Nagarpalika.

2.3 That, on the complaint of Chief Sanitary Inspector and taking note of the behaviour of the appellant herein, the respondent no.2 – the Chief Officer, Unjha Nagarpalika recommended to the respondent no.1 – the Commissioner of Municipalities to initiate appropriate action against the appellant herein under Section 37(1) of the Gujarat Municipalities Act, 1963 (for short “the Act, 1963”).

2.4 That, on 20.09.2021, the respondent no.1, the Commissioner of Municipalities issued a show-cause notice to the appellant calling upon him as to why action under Section

37(1) of the Act, 1963 may not be initiated against him. Upon receipt of such show-cause notice, the appellant vide letters dated 23.09.2021 and 27.09.2021 asked for certain information so as to enable him to submit his reply to the show-cause notice. That the first hearing came to be kept on 07.10.2021 and some of the documents as sought for by the appellant were supplied to him. The appellant, thereafter, submitted his reply to the show-cause notice. After taking into consideration the submissions and material on record, the respondent no.1 - the Commissioner of Municipalities passed an order dated 28.12.2021 directing removal of the appellant as a Councillor of Unjha Nagarpalika.

3. Aggrieved, the appellant herein preferred Special Civil Application No.822 of 2022 in this Court. By the impugned judgment and order dated 02.03.2023, learned Single Judge upheld the order dated 28.12.2021 passed by the respondent no.1 – the Commissioner of Municipalities and dismissed the Special Civil Application.

4. Aggrieved, the petitioner has preferred the present

## Letters Patent Appeal.

5. Learned counsel for the appellant Mr. Nirav C. Thakkar submits that the appellant is an elected Municipal Councillor. Since there was no official directive from the Nagarpalika with respect of the closure of local market, when the Chief Sanitary Inspector was forcing the shop-keepers of the local market in his constituency, some shop-keepers had called him to intervene and to stop such illegal closure of the shops and illegal imposition of fine. He submits that the appellant being a Councillor of the area was duty bound to address such grievances of shop-keepers of the local market and therefore, he rushed to the market where the Chief Sanitary Inspector – Mr. Jasminbhai Patel was forcing the shop-keepers to shutdown their shops and asking them to hand over their keys and further imposing fine of Rs.1,000/- to each shop-keeper who had opened the shop. He submits that though Covid guidelines were in-force, there was no official directive from the Unjha Nagarpalika that the local market should be shutdown. He submits that in absence of such directive, the Chief Sanitary Inspector was illegally

imposing fine. He submits that it was duty of the appellant to stop such illegal action on the part of the Chief Sanitary Inspector. Therefore, the appellant had initially politely requested the Chief Sanitary Inspector to stop such illegal action and when the said Chief Sanitary Inspector did not pay heed to the request, there was verbal confrontation between them which came to be recorded in viral video which was also posted on the Facebook.

5.1 The learned counsel submits that the conduct of the appellant was not abusive in any manner nor there was use of any disgraceful words. He further submits that the appellant had also called upon the Chief Sanitary Inspector to show his authorisation for such shutting down of shops in the local market and imposing fine. Even during the inquiry or in response of his complaint to the respondent no.2 – the Chief Officer, no authorisation had been placed on record with respect of closing of shops and imposing fine by the Chief Sanitary Inspector. Thus, in absence of such authorisation, actions of the Chief Sanitary Inspector were illegal.

5.2 It was further submitted by the learned counsel for the appellant that though the show-cause notice dated 20.09.2021 states about his disgraceful conduct, his unbecoming behaviour as a Councillor and preventing the Chief Sanitary Officer from discharging his duties, but while deciding the proceedings under Section 37(1) of the Act, 1963, the Commissioner has recorded that the appellant had used abusive language and behaved in a disgraceful manner. The contention, thus, is that such allegations were never mentioned in the show-cause notice and therefore, the same cannot be considered to disqualify him as a Councillor.

6. Learned counsel for the appellant has relied upon the judgment rendered in the case of **Dwarka Das Bhatia vs. The State of J. and K.** reported in AIR 1957 Supreme Court 164, wherein it has been held that “*where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together and if some out of them are found to be non-existent or irrelevant the very exercise*

*of that power is bad".*

7. Learned counsel for the appellant further submits that the decision of the Commissioner of Municipalities is primarily based on the video clip which had gone viral. Even the authenticity of the said video clip has not been verified and in absence thereof, the same could not have been relied upon.

7.1 Further, even going by the video clip, the action on the part of the appellant could not be said to be misconduct as the appellant was seeking a clarification about the powers of the Chief Sanitary Inspector to close down the shops and impose fine. No satisfactory reply could be given by the Chief Sanitary Inspector for his action. In view thereof, the appellant was only performing his duty as a Municipal Councillor of the area so that no injustice is caused in absence of any authorisation.

7.2 Learned counsel for the appellant has further submitted that removal of the appellant was politically

motivated. He would submit that Unjha Municipality constituted of 36 Councillors. Out of whom, 19 Councillors are from ruling party in the State and 17 Councillors are from the opposition party. Since the appellant belongs to the opposition party in the municipality, the action to remove him is deliberate. Relying upon the averments made in the additional affidavit in the writ petition, it is contended that another false complaint has been filed against the appellant which has resulted in initiation of the proceedings but the complainant therein has withdrawn his complaint stating that the same was filed under pressure. He, therefore, submits that the Letters Patent Appeal be allowed.

8. *Per contra*, learned Government Pleader Ms. Manisha Luvkumar Shah opposing the appeal submits that the misbehaviour of the appellant was disgraceful and unbecoming of a Councillor. It was contended that on 25.04.2021, a meeting of the Merchants Association of Unjha took place under the Chairmanship of the President of Municipality. The said meeting was also attended by the Chief Officer, Police In-charge and the Mamlatdar. In the said

meeting, it was unanimously decided to close down the market in Unjha till 02.05.2021 with an exception of emergency and essential services. It is submitted that this decision and its implementation was necessitated in the wake of the second wave of Covid-19 Pandemic. The only way to come out of the situation was to curb the spread of Covid-19 by maintaining social distance. In the said exceptional situation, an unanimous decision was taken by the Merchants Association along with municipality and other Government officials to keep the market closed for one week. She would further submit that this decision was also given wide publicity in every local news-paper and through other means. The appellant was well aware of the said decision. The municipality officials were instructed to follow the decision and the Chief Sanitary Inspector was acting in accordance with the said unanimous resolution to ensure that there is no violation of Covid-19 protocol.

8.1 Learned Government Pleader submits that instead of co-operating with the municipal officials to curb the spread of Covid, the appellant herein has opposed the same and

prevented the Chief Sanitary Inspector from discharging his duties.

8.2 Not only that the appellant had used absolutely disgraceful language while preventing the Chief Sanitary Inspector from discharging his duty. The said confrontation was made with an intention to restrain the officer from discharging his official duties. The appellant could have very well verified such action from the Chief Officer of the Municipality, but he chose to indulge in abusive behaviour in the public view leading to an unpleasant situation.

8.3 It was argued that the behaviour of the appellant has rightly been considered as misconduct by the respondent no.1, the Commissioner of Municipalities and the same should not be interfered with. The order impugned of removal of the appellant from the post of Councillor has rightly been passed in the facts and circumstances of the present case. No interference as such, is called for in the orders passed by the respondent no.1, the Commissioner of Municipalities. No infirmity can be found in the order of the learned Single

Judge.

8.4 Learned Government Pleader has relied upon the judgment of the Full Bench of this Hon'ble Court rendered in the case of **Mustaq Ahmed Hasanbhai Mansuri vs. V. C. Trivedi** reported in (2003) 1 GLR 745 to substantiate her submissions.

9. Mr. Dipak Sanchela appearing for the respondent no.2 has supported the decision of the respondent no.1 and has adopted the arguments as advanced by the learned Government Pleader.

10. Heard learned counsel for the parties and perused the documents on record including the judgments cited by the learned advocates for the parties.

11. The facts which are not in dispute are as follows:-

(i) That, on 26.04.2021, Mr. Jaswinbhai Patel, the Chief Sanitary Inspector, Unjha Nagarpalika was moving in the local market

and asking the shop keepers to shutdown their shops. He was also collecting fine of Rs.1,000/- from erring shop keepers who had opened their shops.

(ii) That, the appellant herein had gone to the local market to look into the issues on complaints made by some of the shop keepers to him.

(iii) That, the appellant questioned the authority of the Chief Sanitary Inspector and on not getting satisfactory reply, entered into confrontation with the Chief Sanitary Inspector and stopped the said official from discharging his duties during the Covid period.

(iv) The said confrontation between the appellant and the Chief Sanitary Inspector came to be recorded in one mobile phone and video clip of such incident was posted on the Facebook platform wherein the appellant was also tagged and the said video clip was also

available on the Facebook page of the appellant.

12. What is sought to be asserted before this Court is that the appellant herein during the course of his duty as a Councillor had tried to help his assembly constituents and that if during such transaction, there is verbal confrontation with the Chief Sanitary Inspector, the appellant cannot be said to have misconducted himself and if at all there is some misbehaviour with the Chief Sanitary Inspector, whether such an action can be termed as misconduct under Section 37(1) of the Act, 1963.

13. Section 37(1) of the Gujarat Municipalities Act, 1963, reads as under:-

*37. (1) The State Government may remove from office-*

*(a) any councillor of a municipality, 37/on its own motion or on receipt of a recommendation of the municipality in that behalf supported by a majority of the total number of the then councillors of the municipality, or ;*

*(b) any president or vice-president of a*

*municipality,*

*If, after giving the councillor, president or, as the case may be, vice-president an opportunity of being heard and giving due notice in that behalf to the municipality and after making such inquiry as it deems necessary, the State Government is of the opinion that the councillor, president or, as the case may be, vice-president has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act.*

*(2) A president or vice-president removed under subsection (1) shall not be eligible for re-election as a president or vice-president during the remainder of the term of the municipality.*

14. The Hon'ble Full Bench of this Court in the case of ***Mustaq Ahmed Hasanbhai Mansuri vs. V. C. Trivedi*** reported in (2003) 1 GLR 745 has held thus:-

*“A bare reading of the Section would indicate that on the recommendation of the Municipality, by resolution duly passed for the removal of the Councillor, the State Government may order removal if it is satisfied that the*

*Councillor or President or Vice-President of a Municipality is guilty of misconduct in the discharge of his duties, or guilty of any disgraceful conduct, or has become incapable of performing his duties as a Councillor and the explanation furnished by him, if any, is not satisfactory and after making inquiry as is necessary.*

*We notice that after the phrase "has been guilty of misconduct in the discharge of his duties", the legislature has used the words "or of any". The word "or" is a disjunctive part used to express an alternative or to give a choice of one among two or more things. It is well settled that the reading of "or" as "and" is not to be resorted to unless some other part of the same statute or the clear intention of it requires that to be done. If the word "or" occurring in [Section 37\(1\)](#) of the Act is read as "and", it does not convey any intelligible meaning, but renders the said provision absurd and mutilated. The word "or" is used in [Section 37\(1\)](#) of the Act as a function word to indicate an alternative between different or unlike things. As the phrase "of any disgraceful conduct" is preceded by the word "or", it will have to be interpreted that the words "the Councillor, President or Vice-President, has been guilty of any disgraceful conduct", have no relation to the discharge of duties of the Councillor, President or Vice-President as the case may be. It is relevant to note that if the phrase "of any disgraceful conduct" is interpreted to mean that the disgraceful conduct must have relation to the discharge of duties, the words "of any" occurring in the phrase "of any disgraceful conduct" would be rendered nugatory*

*and such a construction of a statutory provision must be avoided. Moreover, the word "misconduct" is specified by the phrase "in the discharge of his duties"; whereas, no such qualification is prescribed by the legislature, so far as expression "disgraceful conduct" is concerned. By reading the Section to mean that the words "or of any disgraceful conduct" have reference to the "discharge of his official duties", the Court will have to rewrite the provision which is not permissible.*

4.2 *In order to understand the object and purpose of the legislature in enacting Section 37, it will be worthwhile to notice legislative history because it is settled principle of interpretation of statute that the Court is entitled to take into account such external or historical facts as may be necessary to understand the subject-matter of the statute or have regard to the surrounding circumstances which existed at the time of passing of the statute. By Section 279 of the Gujarat Municipalities Act, 1963, the Bombay District Municipal Act, 1901 and Bombay Municipal Boroughs Act, 1925 have been repealed. Section 16 of the Bombay District Municipal Act, 1901 was as under :*

*"16. The State Government in the case of City Municipalities, and the Commissioner in other cases, if it or he thinks fit, on the recommendation of the Municipality, may remove any Councillor elected or appointed under this Act, if such Councillor has been guilty of misconduct in the discharge of his duties or of any disgraceful*

*conduct, or has become incapable of performing his duties as a Councillor."*

*Whereas Section 23, Sub-section (7) of the said Act, which dealt with office of President and Vice-President inter alia was as under :*

*"...Every President and every Vice-President shall be removable from his office as such President or Vice-President by the State Government for misconduct, or neglect of or incapacity to perform, his duty..."*

*A glance at the above-referred to provisions makes it more than clear that under Section 16 of the Bombay District Municipal Act, 1901 a Councillor could have been removed from his office if he had been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or had become incapable of performing his duties as a Councillor; whereas a President or Vice-President could have been removed from his office for misconduct, or neglect of, or incapacity to perform, his duty under the provisions of the Bombay District Municipal Act, 1901. Therefore, under the provisions of the Bombay District Municipal Act, 1901 a President or Vice-President could not have been removed from his office on the ground that he had been guilty of any disgraceful conduct. So far as the Bombay Municipal Boroughs Act, 1925 is concerned, it is to be noticed that under Section 21(2) of the said Act a President or Vice-President could have been removed from his office for misconduct, or negligent of, or incapacity to perform his*

duty, whereas as per Section 27 of the said Act a Councillor could have been removed if he had been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or had become incapable of performing his duties as a Councillor. Thus, even under the Bombay Municipal Boroughs Act, 1925, it was never provided that a President or Vice-President could have been removed from office if he had been guilty of any disgraceful conduct. The Gujarat Municipalities Act, 1963 was enacted to consolidate and amend the law regarding the Municipalities in the State of Gujarat so as to give them wider powers in the management of Municipal affairs. For the first time, it has been provided in the Act of 1963 that a President or Vice-President of a Municipality can be removed from his office if he is guilty of any disgraceful conduct. This legislative history would indicate that disgraceful conduct has been treated as a separate class from misconduct committed by the Councillor in the discharge of his duties and the disgraceful conduct may be in the discharge of duty or otherwise. Therefore, the legislative history also makes it abundantly clear that the words "of any disgraceful conduct" have no reference to the words "in the discharge of his duties" following the words "has been guilty of misconduct" and by no reason of interpretation can be read to mean that the disgraceful conduct must have reference to the discharge of duty and not otherwise.

4.3        *Further, the word "misconduct" used in the phrase "has been guilty of misconduct in the discharge of his duties" means misconduct in office. As explained in Black's Law Dictionary, Sixth Edition by the Publisher's Editorial Staff, "misconduct" is any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour; whereas the word "disgrace" means ignominy; shame; dishonour. Disgraceful conduct need not be circumscribed to something done in the course of one's duty as holder of the office. The word "disgrace" is frequently used with an odious implication and as a term of general disparagement and equally discreditable as applied to all persons. In this sense the term may imply disfavour, shame, contumely or even dishonour and is defined as meaning a cause of shame or reproach. The term "disgraceful" is synonymous with infamous. Therefore, a President or Vice-President or the Councillor of a Municipality may be guilty of any disgraceful conduct in the discharge of his duties or otherwise also and it cannot be interpreted to mean that the disgraceful conduct must be in the discharge of duties and not otherwise. At this stage, we may refer to well settled canon of interpretation that where it is necessary to give*

*a provision a particular construction which is at variance with the way in which the Section is punctuated, it may be read as though there were in fact punctuation where none appears on the face of the Act. In Re : Naranjan Singh, 1962 (1) QB 211 Section 10 of the Fugitive Offenders Act, 1881 was considered. The said Section conferred on a superior Court power to discharge a fugitive where "by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise ... it would be unjust or oppressive or too severe a punishment to return" him. It was held that, apart from cases of a trivial nature, the Court's discretion to discharge a fugitive could be exercised in any case in which the return of the man would be unjust or oppressive or too severe, and was not confined to cases in which the application appeared not to have been made in good faith. In other words, the Section was given a wide construction, as though a comma had been inserted before "or otherwise". Applying the same principle to the provisions of Section 37 of the Act, we find that the provision will have to be read as if comma had been inserted after the words "has been guilty of misconduct in the discharge of his duties". So read, it becomes evident at once that the subsequently following phrase "or of any disgraceful conduct" has no reference to the discharge of his duties and that disgraceful conduct can be committed otherwise also.*

#### 4.4            *The scheme of Section 37 of the Act is clear*

and unambiguous. As observed earlier, Sub-section (1) thereof empowers the State Government to remove any Councillor or President or the Vice-President of a Municipality from the office (a) if he is guilty of misconduct in the discharge of his duties, (b) or if he has been guilty of any disgraceful conduct or (c) if he has become incapable of performing his duties under the Act. A disgraceful conduct is much more grave than a mere misconduct. A disgraceful conduct brings disrepute not only to the Councillor who is guilty of such conduct, but would also cast a stigma upon the institution, namely, the Municipality. Webster gives the word "disgraceful" meaning as synonymous of "infamous", "detestable", "odious", "scandalous", "base", "vile", "shameful", "ignominious". Acts sanctioned by law are not disgraceful. The natural consequence of disgraceful conduct is that it brings the person committing the same into contempt among honourable persons. If the legislative intention had been to confine the power of removal in case of disgraceful conduct committed in the discharge of the duties, an express provision could have been made or the words "in the discharge of his duties" would have followed the second contingency also. Such being not the language employed by the Legislature, we are of the opinion that the words "in the discharge of his duties" do not qualify the words "disgraceful conduct" also. Disgraceful conduct has a reference to his behaviour as a citizen and not necessarily as a Councillor. If a person behaves disgracefully in the public or in the office of Municipal Council, he is liable to be removed from his

*office of Councillor notwithstanding the fact that the misconduct was not with reference to the discharge of his duties. Thus, the first question which is referred to the Larger Bench is answered by holding that the phrase "or of any disgraceful conduct" occurring in the Section cannot be construed to mean that the disgraceful conduct must have been committed in the discharge of duties only and not otherwise. The President, Vice-President or Councillor, as the case may be, can be removed from office if he is guilty of any disgraceful conduct which is committed in the discharge of duties or otherwise because the President, Vice-President or Councillor of a Municipality, as the case may be, is a public figure holding public post and is supposed to conduct himself in such a manner whether in the discharge of his duties or otherwise, that his conduct does not bring shame or dishonour or ignominy to himself or the institution. The decisions taking contrary view on this point stand overruled."*

15. If we examine the conduct of the appellant herein in the context of Section 37(1) of the Act, 1963 what is to be seen is whether the conduct of the appellant of stopping the Chief Sanitary Inspector from discharging his duty including verbal confrontation can be said to be a "*misconduct*" or not ?

16. It is not in dispute that the incident took place

during the second wave of Covid – 19 when it was in full swing and all the hospitals were flooded with patients and there was extreme shortage of oxygen, beds, medicines and the health infrastructure in the entire country was crumbling. In this background, an unanimous decision was taken in consultation with the Merchants Association of Unjha and other Government officials to observe complete shutdown of the markets in the city for one week so as to prevent the spread of Covid-19 virus, an air borne disease and as it was the only way to curb spread amongst to public at large. A large number of people had succumbed to the second wave of the Corona virus and there was an undeclared medical emergency and curfew like situation prevailing in the Unjha City also.

17. Learned counsel for the appellant could not dispute the fact that an unanimous decision had been taken by the Municipality for lock-down of the markets and the same was given wide publicity through news papers and hand-bills circulated amongst the public on the next day. He only submitted that the Chief Sanitary Inspector could not show any written order directing him to ensure closure of shops in

the local market other then essential services shops. The conduct of the appellant which has come on record shows that he had tried to interrupt the Chief Sanitary Inspector by preventing him to perform his duty and by stopping him from closing shops which had been opened for business. The evidence on record also shows that while preventing the Chief Sanitary Inspector, verbal confrontation had taken place between the appellant and the officer and there was hot exchange of words with the said officer since the said officer had refused to stop discharging his duty and insisted to close the shops which had been opened and which were to be fined for violating Covid - 19 guidelines.

18. The appellant, an elected Municipal Councillor was required to ensure that the Covid norms were followed strictly in his constituency. He was obligated to ensure that in the larger public interest the shops in the local market remained shutdown so as to curb the spread of Corona virus. The act of the appellant in the facts and circumstances was detrimental to the public interest in the time of undeclared medical emergency prevailing every where in the country as

well as in the town of Unjha. The appellant had tried to support a wrong cause which could have led to undesired situation in his constituency as well as in the Unjha town during the outbreak of Corona virus in the second wave. It can be said that the conduct of the appellant in shouting at the Chief Sanitary Inspector forcing the officer to obey him also had the potency of instigating the other shop keepers and the local public of the market area to defy the Covid - 19 norms, following the unanimous decision taken by the Unjha Municipality. The said action of the appellant could have resulted in an explosive situation as already the public had endured a total ban during the first wave of Covid - 19 and there were disruptions of all kinds with the on-going Covid - 19 curbs issued by the Disaster Management Authority. In such times of crisis, it was expected that the elected leaders of the public had extended all cooperation to the executive authorities to ensure the strict compliance of Covid norms by the public in the larger public interest, as it is their obligation to ensure that the rule of law is followed. In the present case, the appellant's behaviour was subversive to the rule of law and general public interest. We are, therefore, of the opinion

that the misconduct as proved against the appellant herein has been rightly held to be a "*misconduct*" incurring disqualification within the meaning of the provisions of Section 37(1) of the Act.

19. Learned counsel for the appellant raised contentions that while passing the impugned order, the respondent no.1, the Commissioner of Municipalities has noted that the appellant had used filthy and abusive language in verbal confrontation with the Chief Sanitary Inspector though the show-cause notice did not indicate the use of any filthy and abusive language by the appellant. The contention is that the appellant did not get an opportunity to deal with such findings in absence of such allegations in the show-cause notice. The respondent no.1 thus had considered extraneous material which was not a part of the show-cause notice depriving the appellant of opportunity to explain or deal with the material, if any, the said finding, therefore, cannot be sustained in the eye of law and is required to quash and set aside.

20. The provision of Section 37(1) of the Act, 1963, uses the words "*guilty of misconduct in discharge of his duty or of any disgraceful conduct or has become incapable in performing his duty under this Act*". In the present case, even if, for the sake of argument, it is accepted that the use of abusive language cannot be taking into account, even then the misconduct on behalf of the appellant is proved. What is required to be examined is that the misconduct has been detrimental to the public interest and has to be understood as a transgression of some established and defined rule of action, a forbidden act, unlawful behaviour or willful in character. The misconduct has to be measured in terms of the nature of misconduct and has to be viewed in respect to its consequences as to whether it is detrimental to the public interest. In the present case, it is not the utterance of words which is the sole misconduct as alleged against the appellant herein. The misconduct is more grave in the present case as the appellant had tried to stop the municipality official from discharging his duty for ensuring enforcement of Covid - 19 curbs which was enforced in public interest. The act of the appellant in going to the local market and stopping the official

from discharging his functions was definitely not in public interest and against the Covid - 19 curbs, especially in the back ground when the death rate was at all time high during the second wave of Covid - 19. The misconduct of the appellant had the potentiality of increasing causalities amongst the public to Covid - 19 pandemic as also undesirable situation of disturbance of law and order and public peace on the spot. The contention of the learned counsel that the show-cause notice has no reference about any use of filthy and abusive language by the appellant, therefore, is no relevance and is, accordingly rejected. The judgment relied upon by the learned advocate for the appellant as reported in *AIR 1957 SC 164* is not applicable in the facts and circumstances of the present case and is of no help to the appellant.

21. It is expected from the elected members that they must ensure that no conflict arises between the public duties and their electoral interest. Moreover, they must not ask the officials to act in any way which would create a conflict between their duties and responsibilities. It is further expected

that the elected member should not do anything that brings disrepute to the institution to which he is elected or affect its credibility. The elected members should utilise their position to advance general well being of the people who have elected them. In the present case, it was expected that the appellant herein ought to have tried to resolve the conflict in a manner that the public interest was not jeopardized. Instead the appellant herein has interfered with the discharge of the official duties by the Chief Sanitary Inspector.

22. Learned counsel for the appellant could not show any material infirmity in the order passed by the respondent no.1 dated 28.12.2021 and the impugned judgment and order dated 02.03.2023 passed by the learned Single Judge. We find that the learned Single Judge has dealt with each and every argument as raised by the learned counsel for the appellant herein and the findings are based on cogent reasons. The removal of the appellant is based on misconduct which had been duly proved in the course of the proceedings against him.

22. In view of the aforesaid discussion, we find that

there is no merit in the present Letters Patent Appeal. The same is accordingly, dismissed. No order as to costs.

**(SUNITA AGARWAL, CJ )**

NABILA

**(ANIRUDDHA P. MAYEE, J.)**