



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 15215/2024

Narendra Kumar Khodaniya S/o Shri Ratanlal Khodaniya, Aged About 66 Years, Resident Of Ward No. 23, Sanghvi Ji Ki Pol, Upla Chowk, Sagwara, District Dungarpur.

-----Petitioner

Versus

1. State Of Rajasthan, Through Its Director Cum Joint Secretary, Local Self Department, Secretariat, Jaipur.
2. The Assistant Director (Vigilance), Local Self Department, Secretariat, Jaipur
3. The Deputy Director (Zonal), Local Self Department, Udaipur.

-----Respondents

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For Petitioner(s) : Mr. Vikas Balia, Sr. Advocate assisted by Mr. Vishan Das

For Respondent(s) : Mr. Rajesh Panwar, Sr. Advocate-cum-AAG assisted by Mr. Ayush Gehlot  
Mr. Monal Chug  
Ms. Meenal Singhvi

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**JUSTICE DINESH MEHTA**

**Order**

**Reportable**

**23/09/2024**

1. The petitioner, elected as Chairman of Municipal Board, Sagwara in the year 2021, has challenged the action of the respondents, more particularly, the order dated 05.06.2024 whereby the respondent No.3 has constituted a committee to inquire.

2. The facts germane are that on the basis of the complaint filed by one Shankarlal Decha, alleging that old building has been illegally demolished, an inquiry was conducted by the respondent



No.2-Assistant Director (Vigilance) and by way of U.O. Note dated 23.08.2022, the same was dropped.

3. Another complaint is made in which it was alleged that the Members of Municipal Board have committed various irregularities. Acting upon said complaint, the respondent No.2-Assistant Director (Vigilance) asked the respondent No.3-Deputy Director (Regional), Udaipur to inquire into the matter and furnish a report within a period of seven days.

4. The respondent No.3-Deputy Director in turn constituted a committee of 4 persons by his order dated 05.06.2024, and asked them to look into the complaint and furnish report within 3 days.

5. The committee sent its report vide letter dated 23.08.2024 to the respondent No.3-Deputy Director, who in turn not only forwarded the same but also sent a memorandum of charges and Articles of charges to the respondent No.2.

6. On receiving the report so sent by the respondent No.3, the Director-cum-Joint Secretary, Local Self Department sent a show cause notice dated 05.09.2024 to the petitioner and sought his explanation about the findings in the report.

7. Impugning the notice dated 05.09.2024, Mr. Vikas Balia, learned Senior Counsel firstly contended that the proceedings against the petitioner are malafide inasmuch as the State has proceeded on the basis of very same allegation for which a similar complaint after being found incorrect was dropped by way of U.O. Note dated 23.08.2022.

8. The basic plank for challenging the notice/proceedings in question has been that since the inquiry was ordered by respondent No.2-Assistant Director (Vigilance) to be conducted by



the respondent No.3-Deputy Director, he could not have further delegated his power to conduct inquiry and constitute a committee of four persons. It was vehemently argued that constitution of committee by order dated 05.06.2024 was impermissible in the eye of law.

9. While relying upon the maxim-*Delegatus Non Potest Delegare*, learned Senior Counsel argued that the inquiry as required by the State Government was to be conducted by none other than the respondent No.3 himself and therefore, not only the inquiry report prepared by the committee and forwarded by the respondent No.3 by the communication dated 28.08.2024 but also action of the State taken in furtherance thereof (notice dated 05.09.2024), is illegal and contrary to law.

10. Learned Senior Counsel argued that there is only one inquiry provided under sub-section (1) of section 39 of Rajasthan Municipalities Act, 2009 (hereinafter referred to as the 'Act of 2009'), which is to be conducted by the State Government and thus, inquiry conducted by the committee constituted by the respondent No.3-Deputy Director is illegal and contrary to law. He argued that the inquiry report sent with the communication dated 28.08.2024 cannot be relied upon as the same was without authority of law.

11. In support of this argument, learned Senior Counsel relied upon the judgment dated 21.01.2022 passed by this Court in the case of ***Manzoor Ali vs. State of Rajasthan and Ors. in S.B. Civil Writ Petition No.17283/2021*** and prayed that the present writ petition be allowed and notice dated 05.09.2024 based on an illegal report be quashed.



12. Mr. Rajesh Panwar, learned Senior Counsel-cum-Additional Advocate General on the other hand submitted that what was directed by the Assistant Director (Vigilance) vide communication dated 08.02.2024, was not an inquiry contemplated under subsection (1) of section 39 of the Act of 2009 but the same was only a fact finding exercise that has been undertaken by the State Government, before proceeding against the petitioner.

13. He argued that since it was only a fact finding exercise, the action of constituting a committee of four persons cannot be faulted with as the same was done for ascertaining the facts, as elicited by the State Government. He made a categorical statement that the preliminary inquiry as contemplated in subsection(1) of section 39 of the Act of 2009 has been initiated now, by the notice dated 05.09.2024. He added that the same is being conducted by the competent authority and before that any inquiry got done by the State cannot be termed as inquiry.

14. He read the communication dated 08.02.2024 (Annexure-6) so also the notice dated 05.09.2024 (Annexure-9) and argued that not only the subject even the tenor of the notice dated 05.09.2024 makes it abundantly clear that the inquiry under section 39(1) of the Act of 2009 has been initiated by such notice and not by the earlier notice dated 08.02.2024 which was sent by the respondent No.3.

15. He argued that there is nothing illegal or contrary to law on the part of the State Government or respondent No.3. He submitted that if the State thought it proper to first ascertain the facts of the complaint, no illegality can be alleged. He argued that



no prejudice has been caused to the petitioner by the fact finding exercise.

16. Learned Additional Advocate General submitted that sub-section (1) contemplates preliminary inquiry by the State or its delegatee so that action as required under sub-section (1) or sub-section (3) of section 39 of the Act of 2009 can be initiated.

17. He argued that the case of the petitioner cannot be equated by the case of Manzoor Ali (S.B. Civil Writ Petition No.17283/2021). Manzoor Ali's case was under sub-section(3) of section 39 the Act of 2009, which separately provides an inquiry under sub-section (1) of section 39 of the Act of 2009 whereas, the proceedings in the present case are under section 39(1) of the Act of 2009. He argued that since there is a clear distinction in the facts of both the cases, the inquiry done by the committee constituted by the respondent No.3-Deputy Director, being the fact finding exercise, cannot be alleged to be illegal.

18. Heard learned counsel for the parties.

19. Before dilating upon the submissions made by rival counsel, it would be apposite to go through the provisions contained in sub-section (1) and (3) of section 39 of the Act of 2009, which are reproduced hereinfra:-

*"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 a jail as an under trial prisoner or as a detenue or as a political prisoner shall not be taken into account,



- (b) that he has failed to comply with the provisions of Section 37,
- (c) that after his election he has incurred any of the disqualification mentioned in Section 14 or Section 24 or has ceased to fulfil the requirements of Section 21,
- (d) that he has
- (i) deliberately neglected or avoided performance of his duties as a member, or
- (ii) been guilty of misconduct in the discharge of his duties, or
- (iii) been guilty of any disgraceful conduct, or
- (iv) become incapable of performing his duties as a member, or
- (v) been disqualified for being chosen as member under the provisions of this Act, or
- (vi) otherwise abused in any manner his position as such member:

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

(2) ... ..

(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) ... ..

(5) ... ..

(6) ... ..

(7) ... ..”

20. On a first flush, Mr. Balia's argument sounds attractive, as the facts involved in the present case vis-a-vis facts involved in the case of Manzoor Ali (supra), appear to be identical, but upon





careful appraisal of the facts of the case of Manzoor Ali, vis-a-vis the facts of the extant case, this Court finds that there is subtle yet significant difference.

21. The case of Manzoor Ali (supra), was a case of sub-section (3) of section 39 of the Act of 2009 and the inquiry in question in clear terms was mentioned as 'preliminary inquiry' and it was not the stand of the State Government that another inquiry as contemplated under section 39(1) of the Act of 2009 will be undertaken, as is the position in the instant case.

22. True it is, that similar argument was advanced by the learned Additional Advocate General in the case of Manzoor Ali (supra) that it is only a fact finding inquiry, as has been advanced in the present case, but contra-distinguished from the Manzoor Ali's case, in the present case on 05.09.2024, the State Government has issued a notice under section 39 (1) of the Act of 2009. Moreso, not only the subject even the substance of the notice makes it clear that the statutory inquiry has commenced from 05.09.2024.

23. A careful reading of the judgment in the case of Manzoor Ali shows that a notice dated 08.12.2021 was under challenge therein, which was issued under section 39(3) of the Act of 2009 and the said notice was issued by the Director asking the petitioner as to why judicial inquiry be not conducted against him and prior to seeking such explanation he had directed the District Collector to conduct inquiry, who in turn had sent it to the Commissioner, Municipal Corporation who in turn appointed one Deputy Commissioner to be an inquiry officer and straightway on the basis of report sent by said Deputy Commissioner, the Director



in that case had asked as to why case be not referred to judicial inquiry. As against this, in the instant case the Director has issued notice dated 05.09.2024 for the first time, eliciting petitioner's response during holding an inquiry - it is a notice under section 39(1) of the Act of 2009, during the process of inquiry.

24. According to this Court, in the present day scenario, when a host of complaints are being filed against elected representatives, State cannot be expected to straightaway launch an inquiry under section 39(1) of the Act of 2009 and engage its officers for conducting the inquiry without first ascertaining the facts. In order to avert unnecessary exercise and to ward off frivolous complaints, if the State Government has got done a fact finding exercise through the respondent No.3-Deputy Director, it cannot be said that the same is void or without authority of law.

25. As such exercise is for ascertainment of facts, this Court does not find any infirmity, if the respondent No.3-Deputy Director constituted a committee and assigned or delegated the task of looking into the allegations levelled in the complaint.

26. Most important aspect of the matter is, that the respondent No.3 was not undertaking any statutory inquiry as contemplated under sub-section (1) of section 39 of the Act of 2009, and the communication dated 08.02.2024 was meant to assimilate facts.

27. The principle 'delegatus non potest delegare' cannot be applied to administrative actions or ministerial acts. This principle applies to statutory judicial and quasi-judicial functions. If the statute confers a power or delegates upon an authority a duty to perform certain act, such authority cannot ask someone else or delegate such power to another person, is the underlying





principle. In absence of the inquiry being a statutory inquiry under sub-section (1) of section 39 of the Act of 2009, the fact that the job of inquiry has further been delegated and that the report of such delegatee has been sent by respondent No.3-Deputy Director by communication dated 28.08.2024, and acted upon, the process cannot be held to be vitiated.

28. This Court is of the considered view that practical necessity or exigency of the administration requires that the decision making authority who has been conferred with statutory power, be able to ascertain the foundational facts first, before initiating the actual proceedings or inquiry. Such exercise would as a matter of fact, avoid unnecessary harassment to none other than the elected representatives. Delegation to some extent becomes inevitable and an administrative necessity.

29. There is yet another aspect of the matter – by way of the communication dated 08.02.2024, the respondent No.2 (the Assistant Director) had asked the respondent No.3 (the Deputy Director), who is higher in the official hierarchy, hence, it cannot be said that the respondent No.2 had delegated his power to respondent No.3.

30. In the facts of the case in hands it cannot be said that there is an abdication of power by the State Government, when the inquiry has been initiated by the notice dated 05.09.2024, issued by the Director-cum-Joint Secretary of the Government.

31. As a consequence of the foregoing discussion, the present writ petition is dismissed.

32. Needless to observe that the petitioner shall be free to put forth his defense qua all the allegations levelled against him,



before the competent authority by filing a reply, including contention that similar inquiry was dropped vide U.O. Note dated 23.08.2022.

33. In case the petitioner files his reply/response to the notice dated 05.09.2024, within a period of 15 days from today, the Director-cum-Joint Secretary shall consider the same in accordance with law, before passing any final order.

34. Stay application also stands dismissed accordingly.

**(DINESH MEHTA),J**

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