



1452.19wp

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1452 OF 2019

The President, Ausa Municipal Council ..PETITIONER

VERSUS

The State of Maharashtra & ors. ..RESPONDENTS

Mr T. Y. Sayyed, Advocate for petitioner;
Mr K. N. Lokhande, A.G.P. for respondent/State

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 11th February, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioner.

2. The petitioner is a President of Ausa Municipal Council. A challenge is raised to a Circular dated 4th June, 2018, issued by the Collector, Latur.

3. Learned Counsel for the petitioner submitted that a reference is made in the aforesaid Circular to the Ordinance dated 25th January, 2018 and to the Government Notification dated 14th August, 2015. He then invited our attention to the copy of the Notification dated 14th August, 2015 placed on record at Exh.'A'. He further submitted that this very Gazette Notification was a subject-matter in Writ Petition No.9217 of 2015 and Writ Petition No.9795 of 2015 before the principal seat of this Court at Bombay. It would

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be necessary to refer to certain observations made in the order dated 15th February, 2016, passed in these writ petitions by the Division Bench at principal seat, which read thus:

"2. By the impugned Notification the State of Maharashtra has amended Form No.64, which earlier conferred authority on the President of the Municipal Council and the Chief Officer of the Municipal Council to sign the cheques to make payment on behalf of the Municipal Council to third parties. Under the impugned Form No.64, the authority has been now conferred on the Chief Officer only. The President's power to sign the cheques has been withdrawn. The impugned Form No.64 has been issued under Rules 147 to 156, 181, 208, 270, 467 and 475 of the Maharashtra Municipal Accounts Code, 2013.

7. These provisions, inter alia, indicate that the President of a Council is authorized to watch over the financial and executive administration of the Council. The Chief Officer functions under control, direction and supervision of the President. The financial position and the credit of the Council is also to be looked after by the President. The President is directly elected by the people and reflects the will of the people while discharging his duties. Prima facie, we do not find any nexus behind amended Form No.64 and the object to be achieved. According to the learned Counsel appearing for the Petitioners, earlier system of both the President and the Chief Officer of signing cheques was said to be in operation since enactment of the Act 1965. We find that the Petitioners have made out a strong prima facie case for admission of the

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Petitions and grant of interim relief.

9. By way of interim relief, the effect and operation of the impugned Notification No.DNL-2015/441/PRAKRA13/NAVI-31 dated 14 August 2015 issued by the Urban Development Department, Government of Maharashtra is stayed till final disposal of the Writ Petitions.

(Emphasis supplied.)"

4. Learned Counsel for the petitioner invited our attention to the communication dated 21st March, 2016, forwarded on behalf of the Commissioner and Directorate of Municipal Administration to all the Presidents and the Chief Officers of the Municipal Councils. By way of this communication, the subject-matter in aforesaid writ petitions as well as the interim order of granting stay was brought to the notice of the Presidents and the Chief Officers.

5. The submission of learned Counsel for the petitioner is, by way of an interim order granted by the principal seat, earlier position prior to the Gazette Notification dated 14th August, 2015 was restored and the insistence of the Collector, Latur, by the Circular dated 4th June, 2018, is unjustified and unsustainable. He then submitted that even a reference to the Ordinance dated 25th January, 2018 would be immaterial as there is an amendment to the Act and this amendment would also not come in a way in the position as reflected by an order dated 15th February, 2016 of the

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principal seat. On these submissions, learned Counsel for the petitioner prays for an interim order.

6. Issue notice to respondents, returnable on 25th March, 2019.
7. Ad interim relief in terms of prayer clause (C), till returnable date.
8. Learned Counsel for the petitioner orally prays for an amendment to the petition by placing on record an amendment dated 31st March, 2018. The oral prayer is allowed. Amendment be carried out till 15th February, 2019.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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