

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2675 of 2017

(Arising out of order dated 24-8-2017 in Case No.60 A-89 Year 2016-17 of the learned Commissioner, Durg Division, Durg)

Smt. Kamti Bai, W/o Manglu Ram, aged about 45 years, Sarpanch, R/o Village Gram Panchayat Khapridarbar, Block Chhuikhadan, District Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Panchayat Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
2. Commissioner, Durg Division, Durg, Distt. Durg (C.G.)
3. The Collector, Rajnandgaon, District Rajnandgaon (C.G.)
4. Sub Divisional Officer, Khairagarh, District Rajnandgaon (C.G.)
5. Tahsildar, Chhuikhadan, District Rajnandgaon (C.G.)
6. Navalram Sahu and all villagers & Gram Panchayat Khapridarbar, Block Chhuikhadan, District Rajnandgaon (C.G.)

---- Respondents

For Petitioner: Mr. C.K. Kesharwani, Advocate.

For Respondents No.1 to 5 / State: -

Mr. Prasun Kumar Bhaduri, Govt. Advocate.

For Respondent No.6: Mr. R.K. Gomasta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

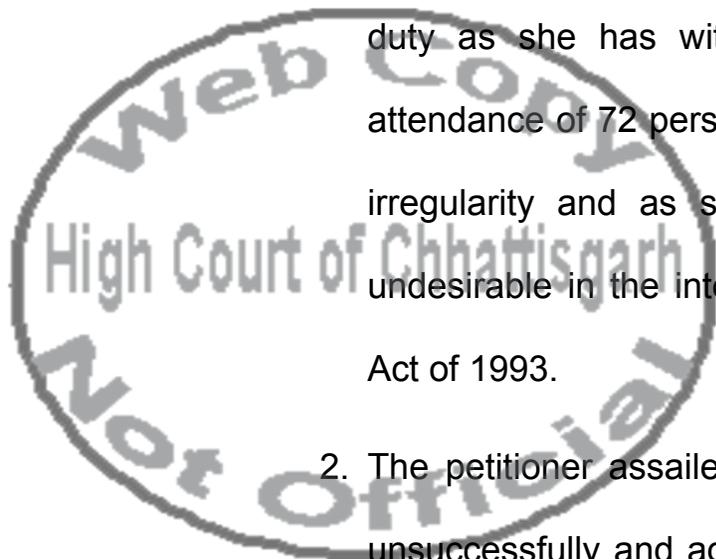
Order On Board

11/12/2017

1. The petitioner was elected as Sarpanch of Gram Panchayat Khapridarbar. A complaint was made that on the basis of forged muster roll, the petitioner as Sarpanch has withdrawn certain amount. That complaint was got enquired into by the Sub Divisional Officer (Revenue), Khairagarh through the Tahsildar,

Chhuikhadan and report was asked for which was submitted by the Tahsildar on 16-6-2016 and based upon the said report, a regular revenue case was registered by the Sub Divisional Officer (Revenue) under Section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Act of 1993'). Thereafter, a show cause notice was issued to the petitioner which was replied and after reply is filed, the case was heard and order for removal of the petitioner from the post of Sarpanch was passed on 15-12-2016 holding that she has committed misconduct in performance of her duty as she has withdrawn amount giving forged names and attendance of 72 persons and thereby she has committed financial irregularity and as such, her continuance on the said post is undesirable in the interest of public under Section 40(1)(b) of the Act of 1993.

2. The petitioner assailed the order of removal before the Collector unsuccessfully and again in second challenge, she also remained unsuccessful leading to filing of this writ petition under Article 227 of the Constitution of India.
3. Mr. C.K. Kesharwani, learned counsel appearing for the petitioner, would submit that the learned Sub Divisional Officer committed grave illegality in relying upon the ex parte enquiry conducted by the Tahsildar in which the petitioner has been held to be guilty of committing financial irregularity without making any enquiry as contemplated under Section 40(1) of the Act of 1993 and unless enquiry is made by giving a reasonable opportunity of being heard



as provided in proviso to Section 40(1) of the Act of 1993, she cannot be removed from service as such, the order passed by the Sub Divisional Officer affirmed by the Collector and the Commissioner deserves to be set aside.

4. Mr. Prasun Kumar Bhaduri, learned Government Advocate appearing on behalf of the State/respondents No.1 to 5, would submit that sufficient and ample opportunity has been given to the petitioner to show cause and to lead evidence, but the petitioner herself was guilty in not leading evidence and complaining against the Sub Divisional Officer (Revenue) that she has not been given adequate and reasonable opportunity of hearing to place her case before the Court and as such, the order passed by the Sub Divisional Officer (Revenue) as affirmed by the two authorities is required to be maintained and the writ petition deserves to be dismissed.

5. Learned counsel appearing for the complainant/respondent No.6 would support the impugned order.

6. Section 40 (1) of the Act of 1993 provides as under: -

“40. Removal of office bearers of Panchayat.—(1)
The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer—

(a) if he has been guilty of misconduct in the discharge of his duties; or

.....”

7. A studied glance of the aforesaid provision would show that the prescribed authority in a proceeding under Section 40 of the Act of 1993 is required to make enquiry as it may deem fit to make at any

time and as such, before passing an order of removal, enquiry is necessary.

8. A Division Bench of the M.P. High Court in the matter of **Bansmani v. State of MP and others**¹, while dealing with removal of President of Panchayat under Section 116 of the Madhya Pradesh Panchayats Act, 1962, emphasised the need for supplying the charges and material to provide real opportunity of hearing to person concerned and observed as under: -

“While taking action under section 116 of the Panchayats Act, the State Government should not only disclose the charges but also the entire material on which the charges are based to the person concerned so as to afford him real opportunity to show cause against the charges.”

9. In the matter of **Kailashkumar v. State of M.P.**², the petitioner was Sarpanch of a Gram Panchayat. A show cause notice was issued to him with certain charges. He submitted his reply to the show notice giving his explanation on each charge. He also requested for time to produce some more documents and adduce oral evidence. But no witness was examined by the Sub Divisional Officer in support of the charges nor the petitioner (therein) was permitted to examine any witness and the impugned order of removal was passed. The M.P. High Court, following the decision in **Bansmani** (supra), set aside the order of removal finding that no reasonable opportunity of hearing was granted to the petitioner therein in support of the charges applying the celebrated rule of *audi alteram partem* holding that enquiry ought to have been made,

1 1980 JLJ 60

2 2000(1) MPHT 143

as the preliminary report submitted by the Block Development Officer has been relied upon and order of removal has been passed. In the aforesaid case (supra) it has also been held that the words employed in sub-section (1) of Section 40 of the Act of 1993, “after such enquiry as it may deem fit to make” would mean an enquiry which is held in the presence of the office-bearer and not behind his back. He should be allowed to inspect the documents which are to be relied upon against him and he should have the right to adduce his own evidence. These are the important facets of an enquiry to be held in conformity with the principles of natural justice. It has further been held that it is not the subjective choice of the prescribed authority to get an enquiry held of any kind. It does not envisage a secret enquiry or a preliminary enquiry alone. That is made only for collection of evidence and at that stage there is no participation of the person against whom the action is sought to be taken. The words “as it may deem fit” have to be construed objectively and would mean an enquiry depending upon the facts and circumstances of each case.

10. It is well settled law that removal of elected office-bearer from his office is a serious matter, as disqualification or removal not only affects the particular office-bearer but it affects the entire constituency as well. Therefore, the law relating to disqualification or removal has to be construed strictly. (See **Ravi Yashwant Bhoir v. District Collector, Raigad and others**³ and **Sadashiv H. Patil v. Vithal D. Teke and others**⁴.)

³ (2012) 4 SCC 407

⁴ (2000) 8 SCC 82

11. In **Ravi Yashwant Bhoir** (supra), Their Lordships of the Supreme Court have considered that removal of elected office-bearer from office on the basis of proved misconduct is a quasi judicial proceeding in nature and therefore the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same and observed as under in paragraphs 30, 31 and 32: -

“30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide *Indian National Congress (I) v. Institute of Social Welfare*⁵.] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab*⁶ and *Union of India v. H.C. Goel*⁷. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of **Article 311** of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required.”

5 (2002) 5 SCC 685 : AIR 2002 SC 2158

6 AIR 1963 SC 395

7 AIR 1964 SC 364

12. Likewise in paragraphs 34, 35 and 36 of the judgment rendered in

Ravi Yashwant Bhoir (supra), Their Lordships of the Supreme

Court further held as under: -

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal*⁸, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly*⁹ and *Ram Beti v. District Panchayat Raj Adhikari*¹⁰).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of his choice.”

13. In **Sadashiv H. Patil** (supra), the Supreme Court in para-14 held

thus:--

8 (1982) 1 SCC 691 : AIR 1982 SC 983

9 (1992) 4 SCC 80 : AIR 1993 SC 2042

10 (1998) 1 SCC 680 : AIR 1998 SC 1222

“14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.”

14. Though proviso to sub-section (1) of Section 40 of the Act of 1993 only provides that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office, but it is implicit in this provision that the office-bearer who is sought to be removed will be given a fair hearing and real opportunity to meet the charges levelled against him.

15. Reverting back to the facts of the case in hand, it is quite apparent that upon receipt of preliminary enquiry report which the Sub Divisional Officer (Revenue) got conducted beyond the back of the petitioner and which was submitted on 16-6-2016, the show cause notice was issued to the petitioner and after getting reply from the petitioner, straightway, the order of removal was passed. In fact, this is a case where no enquiry was done and mainly relying upon the report of ex parte preliminary enquiry, the Sub Divisional Officer (Revenue) has removed the petitioner from the post of Sarpanch. In order to establish the charge alleged against the petitioner, the Sub Divisional Officer (Reveue) has examined none and thus, no

opportunity of hearing much less reasonable opportunity of hearing was granted to the petitioner to refute the said charges. Thus, the order of removal has been passed without following the mandate of Section 40(1) of the Act of 1993 and therefore it suffers from illegality as well as the principles of natural have been followed in its full breach and such illegality and non-compliance of *audi alteram partem* remain unnoticed by the learned Collector and the learned Commissioner as well.

16. As a fallout and consequence of aforesaid discussion, I am of the opinion that the order passed by the Sub Divisional Officer (Revenue) as affirmed by the Collector and the Commissioner deserve to be quashed and are hereby quashed. However, this will not bar the Sub Divisional Officer (Revenue) to proceed further in accordance with law.

17. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2675 of 2017

Smt. Kamti Bai

Versus

State of Chhattisgarh and others

Head Note

Elected Sarpanch cannot be removed under Section 40(1) of the Chhattisgarh Panchayat Raj Adhinyam, 1993 without giving him a reasonable opportunity of being heard.

शीर्ष टिप्पण

छत्तीसगढ़ पंचायत राज अधिनियम, 1993 की धारा 40(1) के अन्तर्गत, निर्वाचित सरपंच को सुने जाने का युक्तियुक्त अवसर प्रदान किए बिना हटाया नहीं जा सकता।

