

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2367 of 2017**

Manrakhan Dewangan son of G.L. Dewangan, aged about 37 years, resident of Ward No.17, Daucheera, Khairagarh, Tahsil & Police Station-Khairagarh, District Rajnandgaon (CG)

---- Petitioner

Versus

1. State of Chhattisgarh : Through the Special Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, New Raipur (CG)
2. The Collector, Rajnandgaon, District-Rajnandgaon (CG)
3. The Upper Collector, District Rajnandgaon (CG)

---- Respondents

For Petitioner	:	Mr.C.K.Kesharwani, Advocate
For Respondents	:	Mr.Shashank Thakur, Govt. Advocate
For Intervener	:	Mr.B.D.Guru, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/10/2017

1. This writ petition is directed against the order dated 25.7.2017 (Annexure P/1) passed by the State Government affirming the order dated 10.1.2017 (Annexure P/4) by which the petitioner was removed from the post of Councillor and further disqualified him from participating in the election on the post of Councillor.

2. Brief facts necessary for disposal of this writ petition are as under:-

2.1 The petitioner was served with a notice that being an elected Councillor of Nagar Panchayat, Khairagarh, he appeared as an Advocate (Counsel) in Appeal Case No.6206B/121/2014-15 (Smt. Jyoti Bhondekar Vs. Ku. Bhishm Kumari Bhondekar and others) before the Sub

Divisional Officer (Revenue), Khairagarh, thereby he has suffered disqualification under Section 41(2) of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as 'Act of 1961'). The petitioner filed his reply opposing the show-cause notice and stated that he has acted strictly in accordance with law and has not suffered any such disqualification.

2.2 The Additional Collector, Rajnandgaon by order dated 10.1.2017 (Annexure P/4) directed his removal and also held him disqualified to become a Councillor of Municipal Council or Nagar Panchayat for next term of five years.

2.3 Feeling aggrieved against the order dated 10.1.2017 he preferred an appeal before the State Government under Section 41(4) of the Act of 1961. By the impugned order, the State Government has dismissed his appeal finding no merit. Questioning the same, this writ petition under Article 226 of the Constitution of India has been filed by the petitioner herein.

3. Mr.C.K.Kesharwani, learned counsel appearing for the petitioner, would submit that order passed by the Additional Collector as affirmed by the State Government is wholly perverse and contrary to the provisions contained in Section 41 (2) of the Act of 1961. He would further submit that in revenue appeal case filed before the Sub Divisional Officer (R.), Khairagarh the Municipal Council, Khairagarh was not a

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party respondent, but the Chief Municipal Officer, Municipal Council, Khairagarh was a party respondent, therefore, Section 41 (2) of the Act of 1961 would not be attracted and therefore, order passed by the Additional Collector, Rajnandgaon as affirmed by the State Government is contrary to law and deserves to be set aside.

4. Mr.Shashank Thakur, learned Government Advocate appearing for the respondents/State, would submit that proceeding before the Sub Divisional Officer (R.), Khairagarh was against the interest of the Municipal Council, therefore, he has rightly been removed from the post of Councillor under Section 41(2) of the Act of 1961 and the State Government has rightly affirmed the impugned order.
5. Mr.B.D.Guru, learned counsel appearing for the intervener, would also support the impugned order.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
7. Submissions made by the parties would necessitate me to notice Section 41 (2) and (3) of the Act of 1961 which states as under:-

“41 (2) The Collector may at any time, remove any elected Councillor if he, being a legal practitioner, acts, or appears on behalf of any other person against the Council in any legal proceedings or against the State Government in any such proceeding relating to any matter in which the Council is or has been concerned, or acts or appears on behalf of any person in any criminal

proceedings instituted by or on behalf of the Council against such person.

(3) The Collector may, while ordering the removal under Section 40 or this section, also order that such Councillor shall not be eligible to become a Councillor of a Municipal Council or Nagar Panchayat, as the case may be, for its next term:

Provided that no resolution recommending the removal of any Councillor shall be passed by the Municipal Council or Nagar Panchayat, as the case may be, nor any such order of removal shall be passed by the Collector unless such Councillor has been given a reasonable opportunity of showing cause. ”

8. A focused glance of the aforesaid provision would show that

the Collector is empowered to remove any elected Councillor if the Councillor being a legal practitioner, acts or appears on behalf of any other person against the Council in any legal proceedings and also held him/her ineligible under Section 41(3) of the Act of 1961 for a period of next five years.

9. The word “Council” has been defined under Section 3(8) of the Act of 1961. “Council” means Municipal Council or Nagar Panchayat constituted by or under this Act. Section 18 of the Act of 1961 provides for incorporation of Municipalities which states as under:-

“18. Incorporation of Municipalities.-Every Municipality constituted under Section 5 of this Act, shall be a body corporate by the name of the Municipal Council or Nagar Panchayat, as the case may be, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable and subject to the provisions of this Act or any rules made thereunder, to transfer any property held by it and to contract and to do all other things necessary for the purposes of this Act and may sue and be sued in its corporate name.”

10. Composition of Municipal Council or Nagar Panchayat is provided under Section 19(1) of the Act of 1961 which reads as under:-

"19. Composition of Municipal Council or Nagar Panchayat.-(1) A Municipal Council or a Nagar Panchayat, shall consist of-

- (a) President, that is Chairperson, elected by direct election from the Municipal area;
- (b) Councillors elected by direct election from the wards;
- (c) Not more than four persons in the case of Municipal Councils and not more than two persons in the case of Nagar Panchayats having special knowledge or experience in Municipal Administration nominated by the State Government:

Provided that only a person residing within the Municipal area and being otherwise not ineligible for elected as a Councillor may be nominated.

- (d) Members of the House of the people and the Members of the Legislative Assembly of the State representing constituencies with comprise wholly or partly the municipal area;
- (e) Members of the Council of State registered as electors within the municipal area:

Provided that a member of the House of the People and a member of the State Legislative Assembly as mentioned in clause (d) or a member of Council of State, as mentioned in clause (e) may nominate his representative, who possesses such qualification as may be prescribed in this behalf to attend the meeting of the Council."

11. Thus, it appears that every Municipality constituted under Section 5 of the Act of 1961 shall be a body corporate by the name of the Municipal Council and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable. The Municipal Council shall consist of President, Councillors elected by direct

election from the wards and four persons nominated by the State Government.

12. In the matter of **Smt. Prabharani Vishwakarma Vs. State of Madhya Pradesh and others¹** the Division Bench of High Court of Madhya Pradesh has held that notice issued under Section 43(7) of the Act of 1961 to Chief Municipal Officer of Municipality is not a notice to the Municipal Council. It was observed as under:-

“11.....In view of the preceding analysis it is amply clear that the Municipality being a body corporate has its own juristic personality, and therefore the requirement of law that President intending to resign has to give a notice in writing to the Municipality, means, it has to be addressed to the Municipality. It may be delivered to the Chief Municipal Officer or any other person who has been authorised to receive it on behalf of the Municipality but the notice has to be addressed to the Municipality not to the Chief Municipal Officer. The Chief Municipal Officer may be the Chief Executive Officer of the Municipality and might have given authority to perform various functions but he cannot be substituted for the Municipality. It has been observed in the case of Laxmi Narayan Dubey (supra) that he has the duty to receive papers for or on behalf of the Municipality. In this regard we may say that the Chief Municipal Officer of the Council might have the authority to receive papers for or on behalf of the Municipal Council but when a notice is to be given in writing to the Municipality, though there is no explicit expression, it has to be addressed to the Municipality. It is inherent in the language employed as it has to be addressed to the Municipality which is a body corporate. In view of the analysis we are of the considered view that the decision rendered in the case of Amrit Chandra Rajpal (supra) and Laxmi Narayan Dubey (supra) do not lay down the correct law to the effect that notice on the Municipal Officer is notice to the Municipality. As the learned single Judge in the instant case has relied on the aforesaid

decisions and has arrived at the conclusion that notice on the Chief Municipal Officer has been properly served on the Municipality, we are not able to subscribe to the said view. Resultantly, our view is that the requirement of the statute is that the notice in writing has to be addressed to the Municipality and a notice to the Chief Municipal Officer does not meet the requirement of law."

- 13.** What would be the effect of disqualification of a returned candidate from the elected seat has been succinctly laid down by R.C. Lahoti, J, speaking for the Supreme Court in the matter of **Sadashiv H. Patil v. Vithal D. Teke and others**² which states as under: -

"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."

It was clearly held that a rigorous compliance with the provisions of the Act and the Rules must be followed while acting with disqualification provisions.

- 14.** In the matter of **Tarlochan Dev Sharma v. State of Punjab and others**³ the Supreme Court while considering

2 (2000) 8 SCC 82

3 (2001) 6 SCC 260

removal of President of Municipal Council under the Punjab Municipal Act, 1911, held that in removal proceeding principles of natural justice must be complied with and laid down as under: -

“7. In a democracy governed by rule of law, once elected to an office in a democratic institution, 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. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of “abuse of his powers” (of President), inter alia. This is the phrase with which we are concerned in the present case.

8. The proceedings for removal must also satisfy the requirements of natural justice. Second proviso to Section 22 requires that the reason for the proposed removal shall be communicated to the person proceeded against by means of a registered letter and he shall be allowed 21 days for putting up his explanation in writing. And thereafter alone, the State Government may proceed to notify his removal. In between, a duty to take decision by due application of mind to the allegations made and the explanation given is implicit and shall have to be read in the provision though not expressly stated therein. The appellant is not charged with habitual failure to perform the duties of President of the Municipal Council. He is charged with having abused his powers of President. The vires of the impugned order dated 1-10-1999 have to be tested on the touchstone of the availability of this ground.

12. One of the requirements of the principles of natural justice, as incorporated in second proviso to Section 22, is that the reasons for the proposed removal have to be communicated to the person proceeded against. The purpose of such communication is to enable him to furnish an explanation of his conduct or his act or omission which is likely to be construed as an abuse of power. It is clear that the facts constituting gravamen of the charge have to be communicated. It follows as a necessary corollary therefrom that what has not been communicated or not relied on in the show-cause notice as a ground providing reason for the proposed removal cannot be relied upon as furnishing basis for the order of removal. The person proceeded against under Section 22 of the Act has to be made aware of the precise charge which he is required to meet and therefore he must be apprised of the exact content of the abuse of power attributed to him. The authority taking decision must apply its mind also to the explanation furnished by the person proceeded against and this must appear from the order passed under Section 22."

15. In the matter of Delhi Transport Corporation v. DTC

Mazdoor Congress⁴, it has been held by Their Lordships of the Supreme Court that right to fair treatment is an essential inbuilt of natural justice which is an integral part of the guarantee of equality assured by Article 14 of the Constitution of India. The concept of reasonableness and non-arbitrariness pervades the entire Constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution.

16. In the matter of Sharda Kailash Mittal v. State of Madhya Pradesh and others⁵, Their Lordships of the Supreme Court have held as under:-

4 AIR 1991 SC 101

5 (2010) 2 SCC 319

"28. From the materials placed before us, we are satisfied that the advertisements, tenders calling for attending day-to-day work of the Municipality such as provision for drinking water, sanitation etc. were duly put out only after due deliberation by the Council of Nagar Palika and no decision was taken by the appellant herself....."

17. Further, Their Lordships of the Supreme Court in the matter of **Ravi Yashwant Bhoir v. District Collector, Raigad and others**⁶ have observed as under:-

"22. Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the institution.

28. In *State of Punjab v. Baldev Singh*⁷, this Court considered the issue of removal of an elected office-bearer and held that where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in *Mohinder Kumar v. State*⁸ and *Ali Mustaffa Abdul Rahman Moosa v. State of Kerala*⁹ held as under:

"28. ... It must be borne in mind that severer the punishment, greater has to be

6 (2012) 4 SCC 407

7 (1999) 6 SCC 172

8 (1998) 8 SCC 655

9 (1994) 6 SCC 569

the care taken to see that all the safeguards provided in a statute are scrupulously followed."

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*¹⁰.] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab*¹¹ and *Union of India v. H.C. Goel*¹². 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-bearer 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.

33. This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in *Tarlochan Dev Sharma v. State of Punjab* (supra) and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for

10 (2002) 5 SCC 685

11 AIR 1963 SC 395

12 AIR 1964 SC 364

the reason that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

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*¹³, *Mohan Lal Tripathi v. District Magistrate, Rae Bareily*¹⁴ and *Ram Beti v. District Panchayat Raj Adhikari*¹⁵).

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

13 (1982) 1 SCC 691

14 (1992) 4 SCC 80

15 (1998) 1 SCC 680

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 their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "no confidence motion", etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

18. Following the principles of law laid down by the Supreme Court and the High Court of Madhya Pradesh in the aforesaid judgments (supra), it is quite vivid that the petitioner appeared as Counsel in the appeal case before the Sub Divisional Officer (R.), Khairagarh in which the Municipal Council was not a party respondent and only the Chief Municipal Officer was a party respondent with other respondents. The action under Section 41(2) of the Act of 1961 can be taken only if the Councillor who is an Advocate has appeared against the interest of Municipal Council & when Municipal Council is a party in that case.

19. Admittedly, Municipal Council, Khairagrhh was not a party respondent in that appeal case, therefore, it cannot be held that his act of appearance in the said revenue appeal would attract the provisions contained in Section 41(2) of the Act of 1961. The presence of Chief Municipal Officer of Municipal Council cannot be equated with the presence of Municipal

Council, which is statutory requirement under Section 41(2) of the Act of 1961 as held by the Madhya Pradesh High Court in **Smt.Prabharani Vishwakarma** (supra), therefore, the Additional Collector, Rajnandgaon is absolutely unjustified in holding the petitioner disqualified under Section 41(2) of the Act of 1961 directing his removal from the post of Councillor. Not only this, the State Government is also unjustified in affirming the order passed by the Additional Collector, Rajnandgaon ignoring the mandatory requirement contained in Section 41(2) of the Act of 1961. Therefore, the order of the Additional Collector, Rajnandgaon as well as the State Government deserves to be quashed.

20. As a fallout and consequence of the above-stated discussion, the order passed by the Additional Collector, Rajnandgaon removing the petitioner from the post of Councillor and Appellate order passed by the State Government are hereby quashed.

21. The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No.2367 of 2017

Petitioner

Manrakhan Dewangan

Versus

Respondents

State of Chhattisgarh and others

Head-Note

(English)

Provisions under Section 41(2) of the Chhattisgarh Municipalities Act, 1961 relating to disqualification of an elected Councillor has to be construed strictly.

(हिन्दी)

किसी निर्वाचित पार्षद की निरहता के संबंध में, छत्तीसगढ़ नगर पालिका अधिनियम 1961 की धारा 41(2) के अधीन उपबन्धों का अर्थ कड़ाई से लगाया जाना है।