

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1864 of 2017**

Smt. Kowshilya Devi Bansal W/o Shri Ramesh Chandra Bansu,
Aged About 58 Years, Vice President, Municipal Council
Mahasamund, R/o Near Ram Talkies, Ganjpara, Tahsil & District
Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, (C.G.)
2. Collector, Mahasamund, Tahsil & District Mahasamund (C.G.)
3. Municipal Council Mahasamund, through its Chief Municipal Officer, Municipal Council Mahasamund, Tahsil and District Mahasamund, (C.G.).
4. Sub Divisional Officer (Revenue), Mahasamund, Tahsil & District Mahasamund, (C.G.)
5. Chief Municipal Officer, Municipal Council Mahasamund, Tahsil & District Mahasamund (C.G.)
6. Shri Pawan Patel, President, Municipal Council Mahasamund, Tahsil and District Mahasamund, (C.G.)
7. Smt. Devi Chand Rathi Vakil, Councillor Ward No. 1, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
8. Shakil Khan, Councillor Ward No. 2, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
9. Shri Dinesh Kumar Behara, Councillor Ward No. 3, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
10. Shri Khilawan Baghel, Councillor Ward No. 4, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
11. Smt. Dashoda Dhruv Councillor Ward No. 5, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
12. Shri Arvind Pahra, Councillor Ward No. 6, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.

13. Smt. Meena Verma, Councillor Ward No. 7, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
14. Smt. Durgeshwari Chandrakar, Councillor Ward No. 8, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
15. Smt. Vimla Ganna Councillor Ward No. 9, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
16. Smt. Shobha Sharma Councillor Ward No. 10, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
17. Shri Rajendra Chandrakar, Councillor Ward No. 11, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
18. Shri Damrudhar Manjhi, Councillor Ward No. 12, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
19. Shri Harbansh Singh Dhillon, Municipal Council Mahasamund, Tahsil And District Mahasamund, Councillor Ward No. 13, Chhattisgarh.
20. Smt. Sahrla Madancar, Councillor Ward No. 14, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
21. Shri Manoj Kumar Lunia, Councillor Ward No. 15, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
22. Shri Raju Sahu Councillor Ward No. 16, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
23. Shri Rakesh Patwa, Councillor Ward No. 17, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
24. Shri Girdhar Yadav, Councillor Ward No. 18, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
25. Shri Sanjay Sharma, Councillor Ward No. 20, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
26. Smt. Sushila Devi, Councillor Ward No. 21, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
27. Shri Vinod Ratra Councillor Ward No. 22, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.

28. Shri Vikram Singh Thakur, Councillor Ward No. 23, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
29. Lakhan Lal Chandrakar, Councillor Ward No. 24, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
30. Smt. Laxmi Bai Sahu Councillor Ward No. 25, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
31. Smt. Shubhra Sharma, Councillor Ward No. 26, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
32. Shri Chandrashakhar Jalkshatri Councillor Ward No. 27, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
33. Shri Vijay Sao, Councillor Ward No. 28, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
34. Shri Mahendra Lunia Councillor Ward No. 29, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
35. Shri Nehru Netam, Councillor Ward No. 30, Municipal Council Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.
36. Joint Collector, Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.

---- Respondents

For Petitioner : Shri Sourabh Sharma, Advocate.

For respondents No. 1, 2 & 4 : Shri Arun Sao, Dy. Advocate General.

For Respondents No. 3 & 5 : Shri Sunil Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/09/2017

- (1) Impugning legality, validity and correctness of the proceedings of 'no confidence motion' initiated against the petitioner by the Collector /

Prescribed Authority, this petition has been filed by the petitioner herein, who is Vice President of Municipal Council- Mahasamund on the sole ground that Presiding Officer appointed by the Collector is a Class II officer *whereas* in accordance with the provisions contained in Section 43-A (2) of the Chhattisgarh Municipalities Act, 1961, (henceforth 'Act, 1961') in case of Municipal Council, Presiding Officer can only be Class I officer.

(2) In the instant case, the Collector, Mahasamund/Prescribed Authority, by its order dated 03.07.2017, appointed Shri S.K. Tiwari, Joint Collector-Sub Divisional Officer (Revenue), Mahasamund as Presiding Officer in exercise of power conferred under Section 43-A (2) of the Act, 1961.

(3) Learned counsel for the petitioner would submit that petitioner is a Vice President of Municipal Council, Mahasamund and, therefore, meeting of No Confidence Motion cannot be presided over by Class-II Officer in view of the provisions contained in Section 43 –A(2) of the Act, 1961. He submits that since Shri S.K. Tiwari, Joint Collector-SDO (Revenue), who is appointed by the Collector, Mahasamund, as Presiding Officer, is a Class-II Officer, therefore, the impugned proceedings of appointment of Presiding Officer is liable to be set aside.

(4) On the other hand, Shri Sao, learned counsel for the State would submit that Shri S.K. Tiwari has been promoted on the post of Joint Collector and, he is entitled for higher pay scale of class I Officer and, therefore, there is no violation of Section 43-A of the Act of 1961 in appointing him as Presiding Officer to preside over the no confidence

motion.

(5) Shri Sunil Sahu, counsel for respondents No. 3 & 4 have supported the impugned order.

(6) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(7) Section 43 – A (2) of the Act, 1961 states as under:-

Section 43-A- No Confidence Motion against Vice-President-

(1)	xxx	xxx
xxx		

(2) For the purpose of sub-section (1), a meeting of the council shall be convened and presided over by the Collector or a Class 1 Officer, in case of Municipal Council and a Class II Office in case of Nagar Panchayat as nominated by him, in the following manner namely:-

(i) the meeting shall be convened forthwith on a requisition signed by not less than one-sixth of the total number of elected councilor constituting the Council for the time being;

(ii) the notice of such a meeting specifying the date, time and place shall be dispatched to the President and every councilor ten clear days before the meeting.

(iii) the no-confidence motion moved under this section shall be decided through secret ballot.”

(8) A focused glance of provisions contained in Section 43-A (2) of the Act, 1961 would show that in case of Municipal Council, meeting of the council has to be presided over by the Collector or a Class I officer.

(9) In the instant case, the Collector, Mahasamund has appointed Mr. S.K. Tiwari, Joint Collector to preside over the meeting. According to the petitioner, he is Class-II officer whereas according to the State Counsel he is Class –I officer but he should be Class-I officer as per Section 43-

A (2) of the Act, 1961.

(10) The petitioner has also annexed the Rules 8 & 24 of the C.G. Civil Services (Classification & Control) Appeal Rules, which provides the list of State Executive Services and their classes i.e. Deputy Collectors are Class II officers & Deputy Secretaries (Non I.A.S.) are the class I officer. In the said scheduled and Rules, there is no mention of post of Joint Collector.

(11) It is not the case of State Authorities that the Joint Collector is a Class I Officer, the State Authorities in its reply simply stated that since Shri S.K. Tiwari, Joint Collector is getting higher pay scale of Class I officer and, therefore, he will be treated as Class I Officer and, therefore, there is no violation of Section 43-A of the Act of 1961 in appointing him as Presiding Officer to preside over the no confidence motion.

(12) Since the legislature has consciously given responsibility to Class I Officer to preside over the meeting of no confidence motion in case of Municipal Council, therefore, in absence of clear material on record that the Joint Collector is Class I officer and merely on the basis of higher pay scale, it cannot be held that Joint Collector is Class I officer for the purpose of Section 43-A (2) of the Act, 1961.

(13) As a fallout and consequence of the aforesaid discussions, impugned proceedings of appointment of Shri S.K. Tiwari, Joint Collector as a Presiding Officer to preside over the meeting of "No Confidence Motion" initiated against the petitioner, who is working as Vice President of Municipal Council Mahasamund is hereby set aside.

(14) Accordingly, the writ petition is allowed to the extent indicated hereinabove. However, the respondent – Collector is directed to convene the meeting of no confidence motion after appointing Class -I Officer to preside over the meeting of the said “No Confidence Motion” initiated against the petitioner strictly in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-