

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1915 of 2017

1. Kanti Dhedhe, W/o Ratnashankar Dhedhe, aged about 38 years, Panch Ward No.3, Village Panchayat Bandora,
2. Padum Bai Sidar, W/o Sunderlal, aged about 39 years, Panch Ward No.4, Village Panchayat Bandora,

Both are R/o Village Bandora, Janpad Panchayat, Malkharouda, District Janjgir-Champa (C.G.)

(Non-applicants)  
---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Panchayat Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)  
(Applicant)
2. The Collector, Janjgir, District Janjgir-Champa (C.G.)
3. The Deputy Director, Panchayat, Janjgir, District Janjgir-Champa (C.G.)
4. Tahsildar, Malkharoda, District Janjgir-Champa (C.G.)  
---- Respondents

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| For Petitioners:         | Mr. Pushpendra Kumar Patel, Advocate. |
| For Respondents / State: | Mr. Dhiraj Kumar Wankhede, Govt. Adv. |

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/07/2017

1. The petitioners were elected as Panchas of Ward No.3 and 4, respectively, of Village Panchayat Bandora, Janpad Panchayat Malkharouda, District Janjgir-Champa on 7-2-2015. Some complaints were made by some persons against the petitioners that they have encroached upon the Government land and as such,

they have become disqualified under Section 36 (1) (q) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Adhiniyam, 1993'). On the said complaints, revenue case bearing Case No.15/A-89(23)/2015-16 (State of Chhattisgarh v. Kanti Dhedhe and others) was registered by the Collector, Janjgir-Champa and notices were issued. The petitioners appeared and filed reply saying that they have not encroached upon the Government land, the case of encroachment has not been proved against them, they came to the village after their marriage and according to the report of the Patwari, encroachment has been made 40-45 years back and as such, they have suffered no disqualification, therefore, the proceeding be closed. The petitioners filed application for recording of evidence also on 12-5-2017 that was not taken cognizance of and the order dated 23-6-2017 was passed that the petitioners have encroached upon the Government land which is disqualification under Section 36 (1) (q) of the Adhiniyam, 1993 against which this writ petition has been filed.

2. Learned counsel for the petitioners submits that only show cause notice was issued to the petitioners and thereafter, despite application filed by the petitioners, even evidence was not recorded and the encroachment alleged to have been made by the petitioners has not been proved in accordance with law and there is no finding of the competent authority that the petitioners have encroached upon the Government land and, therefore, they have been disqualified from holding their posts as Village Panchas,

therefore, the impugned order deserves to be set aside.

3. On the other hand, learned State counsel would submit that the impugned order is a quasi-judicial order, however, he would submit that fair procedure has been adopted by the Collector in passing the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions and also gone through the material available on record without utmost circumspection.
5. Section 36 (1) (q) and (2) of the Adhiniyam, 1993 provides as under: -

**“36. Disqualification for being office bearer of Panchayat.—**(1) No person shall be eligible to be an office-bearer of Panchayat who—

(a) to (p)      \*\*\*      \*\*\*      \*\*\*

(q) Has encroached upon any Land and Buildings of Panchayat or Government.

(2) If any person having been elected as an office bearer of Panchayat:—

(a) subsequently becomes subject to any of the disqualification mentioned in sub-section (1) and such disqualification is not removable or being removable is not removed ...

(b) and (c)      \*\*\*      \*\*\*      \*\*\*

he shall, subject to the provisions of sub-section (3), cease to be such office bearer and his office shall become vacant:

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6. Thus, in order to disqualify a person duly elected, it must be established that he/she, as the case may be, has encroached upon

land and buildings of Panchayat or Government.

7. 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**<sup>1</sup> 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.”

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

8. In the matter of **Tarlochan Dev Sharma v. State of Punjab and others**<sup>2</sup> the Supreme Court while considering 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

1 (2000) 8 SCC 82

2 (2001) 6 SCC 260

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](#).”

9. In the matter of **Delhi Transport Corporation v. DTC Mazdoor Congress**<sup>3</sup>, 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.
10. It is not in dispute that the petitioners are elected Panchas and they were holding the office as such. They were served with show cause notice to which they have filed reply refuting the allegation of encroachment on the Government land. It is also not in dispute that no proceeding for encroachment upon Government land has been initiated against the petitioners and it has not been held by the competent authority under the provisions of the Chhattisgarh Land Revenue Code, 1959 that the petitioners have encroached upon the Government land. The Patwari has submitted report and merely on the basis of the report of the Patwari, the petitioners have been held to be encroachers upon Government land.
11. It appears from the record that the petitioners filed an application for recording evidence so that they can prove that there is no

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<sup>3</sup> AIR 1991 SC 101

encroachment on their part, but the application was not taken cognizance of and they have been held to be disqualified only on the basis of report of the Patwari, on the ground that they have encroached upon the Government land as noticed herein-above. It is well settled that the provisions relating to disqualification have to be construed strictly, as disqualification once held has the effect of unseating the candidate elected on the post democratically. Therefore, strict construction has to be made while disqualifying a person on the post on which he/she has been democratically elected and the principles of natural justice have to be followed rigorously and scrupulously.

12. In the instant case, there was no total non-compliance of the provisions of law. Show cause notice was given to the petitioners and reply of the petitioners was obtained, but the petitioners were not permitted to adduce evidence to rebut that they have not encroached upon the Government land. Merely on the basis of the report of the Patwari, the order of disqualification has been passed. Report of the Patwari has no legal sanctity, it is subject to challenge by the other side. The said Patwari has not entered into the witness box and the petitioners did not have any opportunity to cross-examine the Patwari who has submitted the said report stating that the petitioners have encroached upon the Government land.

13. Thus, I am of the considered opinion that the petitioners, who are elected Panchas, have been directed to be unseated without following the due procedure of law and without considering the

provisions of disqualification strictly which is clearly impermissible under the law.

14. As a fallout and consequence of aforesaid discussion, the impugned order dated 23-6-2017 passed by the Collector, Janjgir-Champa in Case No.15/A-89(23)/2015-16 is hereby quashed. However, the respondents are at liberty to proceed in accordance with law.

15. The writ petition is allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge