

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 745 of 2017**

Umashankar Porte S/o Late Shri Chhedi Lal Porte, Aged About 52 Years  
Sarpanch, Gram Panchayat Bitkula, Janpad Panchayat Masturi, District  
Bilaspur R/o Village Bitkula Tahsil Masturi, District Bilaspur (Chhattisgarh).

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through, The Secretary, Department Panchayat & Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, P O & P. S. Rakhi, District Raipur (Chhattisgarh).
2. Collector Bilaspur, District Bilaspur (Chhattisgarh).
3. Sub Divisional Officer (Revenue), Masturi, District Bilaspur (Chhattisgarh).
4. Chief Executive Officer, Zila Panchayat Bilaspur, District Bilaspur (Chhattisgarh).
5. Chief Executive Officer, Janpad Panchayat Masturi, District Bilaspur (Chhattisgarh).
6. The Secretary, Gram Panchayat Bitkula, Janpad Panchayat Masturi, District Bilaspur (Chhattisgarh).

---- **Respondents**


---

|                |   |                                           |
|----------------|---|-------------------------------------------|
| For Petitioner | : | Mr. Mateen Siddiqui, Advocate             |
| For State      | : | Mr. Dheeraj Wankhede, Government Advocate |

---

**Hon'ble Shri Justice Manindra Mohan Shrivastava****Order On Board****29/03/2017**

Heard.

1. Looking to the legal issue involved in the matter, the State counsel agreed that the matter, itself, may be disposed off, at this stage.

2. The legality and validity of impugned order (Annexure P/1) by which, the petitioner has been placed under suspension, is assailed on the ground that the order is in excess of jurisdiction in as much as there is no notice for removal along with the charge-sheet served upon the petitioner as contemplated under Section 39 (2) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short “the Act of 1993”).

3. Learned counsel for the petitioner submits that the show cause notice dated 08.03.2017 is merely a notice to show cause as to why the petitioner be not suspended. He submits that there is no charge-sheet served upon the petitioner requiring him to show cause against his removal from office as contemplated under Section 40 of the Act of 1993, therefore, the suspension order is illegal being the teeth of provision contained in Section 39 of the Act of 1993. In support of submission, learned counsel for the petitioner has placed reliance upon the decision of the Madhya Pradesh High Court in the case of **Sarita Mabre (Smt.) Vs. State of M.P. and Ors**<sup>1</sup>.

4. On the other hand, learned State counsel submits that the notice dated 08.03.2017, in substance, is a notice of removal from office and not a notice merely confined to show cause against suspension. He submits that when complaint against the petitioner were made, a preliminary inquiry was conducted and prima facie, irregularity was found against the petitioner. Thereafter, a notice dated 08.03.2017 was issued to the petitioner informing him that on a preliminary inquiry made, the complaint was found true and the petitioner was, therefore, liable for appropriate penalty under Section 39 of the Act of 1993. This notice, it is submitted, may be treated as notice contemplated under Section 39(2) of the Act of 1993. He further submits that the petitioner had submitted a reply to show cause notice dated 08.03.2017, therefore, the petitioner cannot raise grievance that he has not been given any notice along with charge-sheet as contemplated under Section 39(2) of the Act of 1993. Reliance has been placed on a Division Bench judgment of the Madhya Pradesh High Court in the case of **Harishankar Patel Vs. State of M.P. and others**<sup>2</sup>.

---

1 1998 (1) J.L.J. 420

2 1999(1) M.P.L.J.

5. The power of the prescribed authority to place an officer bearer of Panchayat under suspension is provided under Section 39 of the Act of 1993, which reads thus :

**“S.39.** Suspension of office bearer of Panchayat: (1) The prescribed authority may suspend from office any office bearer:

(a) against whom charges have been framed in any criminal proceedings under Chapter V-A, VI, [IX], IX-A, X, XII, [Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460](#) of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, [suppression of immoral traffic in women and children and protection of civil rights and Prevention of Corruption] ; or

[(b) On whom, show cause notice along with charge sheet under this Act, has been served for removal from office].

(2) The order of suspension under Sub-section (1) shall be reported to the State Govt. within a period of ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report, it shall be deemed to have vacated.

[(3) In the event that the Sarpanch of Gram Panchayat, President of Janpad Panchayat or Zila Panchayat, as the case may be is suspended under Sub-section (1), the Secretary or the Chief Executive Officer of the concerned Panchayat shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from prescribed authority and the members shall elect from amongst themselves, a person to hold the office of Sarpanch or President temporarily, as the case may be, and such officiating Sarpanch or President shall perform all the duties and exercise all the powers of Sarpanch or President as the case may be, during the period for which such suspension continues:

Provided that if the office of the Sarpanch or President is reserved for the member of Scheduled Castes or Scheduled Tribes or other Backward Classes or for a woman, the officiating Sarpanch or President shall be elected from amongst the members belonging to the same category:

Provided further that where the office of Sarpanch or President is reserved for a woman belong to Scheduled Castes or Scheduled Tribes or other Backward Classes and there is no other woman member of the Panchayat belonging

to that category who can be elected to officiate as Sarpanch or President, as the case may be, any other woman member belonging to the other reserved categories, may be elected to officiate as Sarpanch or President as the case may be].

(4) A person, who has been suspended under Sub-section (1) shall also forthwith stand suspended from the office of member or office bearer of any other Panchayat of which he is a member or office bearer. Such person shall also be disqualified for being elected under the Act during his suspension.”

6. The provision contained in Section 39 (1) of the Act of 1993 exhaustively provides for circumstances, the manner and the condition under which, the office bearer of Panchayat can be placed under suspension. The first eventuality under which the office bearers could be placed under suspension is that the charges have been framed in any criminal proceedings under Chapter V-A, VI, [IX], IX-A, X, XII, Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, [suppression of immoral traffic in women and children protection of civil rights and Prevention of Corruption]. The other contingency under which the office bearer of Panchayat could be placed under suspension is that a show cause notice along with charge-sheet under the Act, has been served for removal from office.

7. The aforesaid provision unmistakably reflects the statutory scheme of the Act of 1993, placing fetter upon the exercise of power of suspension of an office bearer of Panchayat. The legislature does not allow the prescribed authority to place an office bearer of Panchayat, unless one of the two preconditions are fulfilled. The office bearers of Panchayat namely *Sarpanch and Panchs* are elected by a democratic process. Keeping in view the above status as elected representative of the people, the Act of 1993 makes special provision in the matter of removal or suspension. While an office bearer could be removed from his office by the State Government or the Prescribed Authority, as provided under Section 40 of the Act of 1993, in appropriate cases, he could also be placed under suspension but the exercise of power of suspension is circumscribed by the precondition engrafted in Section 39 of the Act of 1993.

8. In the present case, there is no allegation of framing of charges for alleged commission of any of the offences as prescribed under Section 39(1)(a) of the Act of 1993. In order to invoke power of suspension under Section 39(1)(b), the Prescribed Authority is required to give a show cause notice along with the charge-sheet for removal from office. The law further provides that it should be served. The show cause notice as contemplated under Section 39(1)(b), must be one requiring the office bearer to show cause why he should not be removed from the office. Further, the other statutory requirement, which is mandatory in nature is that the show cause notice must be served along with the charge-sheet. The legal requirement of giving notice along with the charge-sheet is clearly indicative of the legislative mandate that the office bearer, against whom, removal is proposed, must clearly know as to what are the allegation along with the material on which those allegations are based as also the witnesses and documentary evidence by which those allegations are proposed to be proved against him. The word 'charge-sheet' would not mean that only allegation are leveled and the office bearer is expected to file his reply. The requirement of giving show cause notice along with charge-sheet, therefore, it is a necessary precondition of exercise of power of suspension.

9. If the notice dated 08.03.2017 is examined in the light of aforesaid statutory requirement, there is no iota of doubt that it does not fulfill the requirement of law of giving a show cause notice along with charge-sheet. The show cause notice, read as it is, requires the petitioner to show cause as to why action should not be taken under Section 39 of the Act of 1993.

10. Curiously enough, the Prescribed Authority under the misconceived notion of law, thinks that the petitioner could be punished under Section 39 of the Act of 1993, which is patent misleading of the provision of law. Section 39 of the Act of 1993 does not provide for any penalty but only provides for suspension. The only other provision under the Act of 1993 under which an office bearer could be removed is the provision contained in Section 40 of the Act of 1993. The notice does not even mention Section 40 of the Act of 1993, much less requiring the petitioner to show cause against removal. It appears that the Prescribed Authority has completely misconstrued the provision of law and the precondition for exercise of power of suspension.

11. The submission of State counsel that the details given in the order of suspension by itself should be treated as charge-sheet, cannot be accepted. The impugned order of suspension shows that the allegations against the petitioner were inquired into and impugned order shows that the authority got some inquiry made and has also prejudged the whole issue.

12. Reliance placed on the decision of the Division Bench of the Madhya Pradesh High Court in the case of **Harishankar Patel (supra)** is not well placed. In that case, the High Court, on facts, found that the notice given to the office bearer, was the notice requiring office bearer to show cause against removal and in substance, contained the allegation of charges leveled against office bearer. The case is, therefore, distinguishable on facts, there being no quarrel with the proposition of law laid down in the said case.

13. In view of the above, I am of the considered opinion that the impugned order is completely illegal and in violation of provision contained in Section 39(2) of the Act of 1993, therefore, it cannot be sustained and set aside.

14. The petition is allowed.

15. This order shall leave the competent authority with the liberty to proceed in accordance with the law.

**Sd/-**

**(Manindra Mohan Shrivastava)**

**J U D G E**