

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1234 of 2017**

Manrakhan Dewangan S/o G. L. Dewangan, Aged About 37 Years R/o.
Ward No. 17, Daucheera, Khairagarh, Tahsil And P. S. Khairagarh,
District Rajnandgaon (Chhattisgarh) ----- **Petitioner**

Versus

1. State Of Chhattisgarh Through : Special Secretary, Urban
Administrative & Development, Department, Mantralaya, Mahanadi
Bhawan, New Raipur, District Raipur (Chhattisgarh)
2. Collector, Rajnandgaon, District Rajnandgaon, Chhattisgarh

----- **Respondents**

For Petitioner	:	Mr. C.K. Kesharwani, Advocate
For State	:	Mr. D.R. Minj, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/05/2017**

Heard.

1. There is a caveat lodged by one Ramadhar Rajak, in which, it has been stated that he had made certain complaint against the petitioner. Therefore, he may be heard before passing any interim order.
2. It is found that the caveator was not party to the proceeding before the State Government. Therefore, he cannot be appear as caveat but he has allowed to intervene in opposition of the petition.
3. The petitioner was an elected councilor. On certain allegations against the petitioner, while functioning as an elected councilor, proceeding for removal were initiated and the Collector being the competent authority held an inquiry and passed an order of removal of the petitioner. Aggrieved by the order of removal, the petitioner availed the remedy of statutory appeal as provided under Section 41 of the Chhattisgarh Nagar Palika Adhiniyam, 1961. The appeal of the petitioner was dismissed without recording any reason whatsoever.

4. Though number of grounds have been urged by learned counsel for the petitioner to assail the legality and validity of the order by which the Collector passed the order of removal of the petitioner, it is found that the remedy of appeal availed by the petitioner has proved to be only illusory.

5. A perusal of impugned order dated 18.04.2017 (Annexure P/1) shows that the appellate authority has not applied its mind nor has decided anything. The order only contains a recital of the facts and the grounds raised by the petitioner. In the order, all that has been stated is that the petitioner was afforded an opportunity of hearing and that the order passed by the Collector is in accordance with law. Except this, there is nothing in the order to show as to how grounds raised by the petitioner were examined on the facts and circumstances and evidence available on record nor any reason assigned for accepting or rejecting the same. The order only reflects that the appellate authority has not at all exercised his power as appellate authority as mandated under the law. Hearing of an appeal against the order of removal is a quasi judicial function and not administrative function. The petitioner was an elected councilor and was removed under an order of the Collector. That by itself, without anything more, was sufficient for the authority to deal with the appeal seriously by due application of mind. It is not the ultimate result but the manner in which the power has been exercised which is required to be examined. The impugned order does not stand the scrutiny of law.

6. The requirement of law that such kind of exercise must be preceded by reasons was highlighted by the Supreme Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya V. Jagdish Sharan Varshney and others, (2009) 4 SCC 240** , wherein it was held thus :

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case(supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in [Divisional Forest Officer vs. Madhusudan Rao](#), JT 2008 (2) SC 253 (vide para 19), and in [Madhya Pradesh Industries Ltd. vs. Union of India](#), AIR 1966 SC 671, [Siemens Engineering & Manufacturing Co. Ltd. vs. Union of India](#), AIR 1976 SC 1785 (vide para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of [S.N.Mukherjee vs. Union of India](#) reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

7. It is not a case where law excludes the authority from the obligation of recording reasons.

8. In the case of **Baisakhu Bareth vs. State of Chhattisgarh and others**, order passed by this Court on 20.04.2017 in WPC No.1018 of 2017, this Court observed that the Commissioner while exercising revisional jurisdiction under the Land Revenue Code is acting in quasi judicial capacity, the order has to be speaking one even in interim matter. Therefore, the impugned order passed by the appellate authority, cannot be sustained and is set aside. The matter is remanded to the appellate authority for due consideration of the appeal and decision of the same in accordance with law.

9. The petition is allowed.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E