

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3284 of 2017**

Fatichar Lakda, S/o. Konda, aged about 30 years, R/o. Village Patora, Tahsil Lundra, District Surguja (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh through Collector, Ambikapur, District Surguja (C.G.)
2. Kishun Ram, S/o Bolo
3. Kedarnath, S/o Mukund

Respondents No. 2 & 3 are resident of Village Patora, Tahsil Lundra, District Surguja (C.G.)

---- Respondents

For Petitioner	:	Mr. Anurag Singh, Advocate.
For State	:	Mr. D.R. Minj, Dy. Govt. Advocate.
For Respondent No. 2 :		Mr. Sunil Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/01/2018

(1) The petitioner was elected as Panch of Ward No. 13 of Gram Panchayat, Patora. Thereafter, respondents No. 2 & 3 filed an application before the Collector stating that the petitioner has encroached upon the Government land bearing Khasra No.391/1, area 0.101 hectare, as such, he has become disqualified from continuing as Panch of the Gram Panchayat under the provisions of Section 36 (1)(q) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth "Adhiniyam, 1993"). On the

said application, revenue case being Case No. 19/B-121/2015-16 was registered by the Collector, Sarguja and notice was issued to the petitioner. He appeared and filed reply saying that he has not encroached upon the Government land and encroachment, if any, has been made by his father and brother and, therefore, the proceedings be dropped against him.

(2) Learned Collector, after filing of the reply by the petitioner, called report from the Revenue Inspector by order dated 02.03.2016 and after obtaining the report from the Revenue Inspector on 16.03.2016, passed an order dated 15.06.2016 declaring him disqualified holding that he has encroached upon the government land and the order of eviction has also been passed on 20.05.2015 by the Tahsildar against him and consequently disqualified him under Section 36(1)(q) of the Adhiniyam, 1993 from holding the post of Panch.

(3) The petitioner preferred appeal before the Commissioner thereagainst. Commissioner has dismissed the appeal by affirming the order of Collector. Questioning the order of Collector as well as Commissioner, this writ petition has been preferred by the petitioner.

(4) Shri Anurag Singh, learned counsel appearing for the petitioner would submit that the impugned order is bad and unsustainable in law as no reasonable opportunity of being heard was afforded to the petitioner under proviso to Section 36(3) of the Adhiniyam, 1993 before holding him disqualified for the post of Panch of Gram Panchayat and even copy of order of eviction and copy of report submitted by Revenue Inspector was

not supplied to him and, as such, the petitioner's disqualification from the post of Panch is without authority of law and this illegality has been perpetuated by the Commissioner by dismissing the petitioner's appeal.

(5) Per contra, Shri Minj, Dy. Govt. Advocate for the State would support the impugned order and submit that the petitioner himself has admitted his guilt that he has encroached upon the government land and, therefore, order of disqualification has rightly been passed against the petitioner, as such, the writ petition deserves to be dismissed.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(7) It is not in dispute that the private respondents No. 2 & 3 filed an application before the Collector that the petitioner had encroached upon the government land on or before the date of his election on the post of Panch, in which, the collector has issued notice to the petitioner and called the report from the Revenue Officer and immediately thereafter proceeded to declare him disqualified for the post of Panch.

(8) At this stage, it would be appropriate to notice Section 36(1)(q) and (2) & (3) of the Adhiniyam, 1993, which state 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) xxx xxx xxx

(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 [or becomes office bearer concealing his disqualification for it which has not been questioned and decided by any election petition under Section 122]:

(b) and (c) xxx xxx xxx

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

Xxx	xxx	xxx
Xxx	xxx	xxx

(3) In every case the authority competent to decide whether a vacancy has occurred under sub-section (2) shall be Collector in respect of Gram Panchayat and Janpad Panchayat and [Director, Panchayat] in respect of Zila Parishad who may give his decision either on an application made to him by any person or on his own motion. Until, the Collector or [Director, Panchayat], as the case may be, decides that the vacancy has occurred, the person shall not cease to be an office bearer:

Provided that no order shall be passed under this sub-section against any office bearer without giving him a reasonable opportunity of being heard."

(9) A focused glance of the aforesaid provisions would show that in order to hold that a person was disqualified for being appointed on the post of Panch under Section 36(2) of the Adhiniyam, 1993, the Collector is required to afford reasonable opportunity of being heard to the office bearer.

(10) Under Section 36(1)(a) of the Adhiniyam, 1993, 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.

(11) What would be the effect of disqualification of a returned candidate from the elected seat has been succinctly laid down by the Supreme Court in the matter of **Sadashiv H. Patil v. Vithal D. Teke and other**¹ 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.”

(12) 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.

(13) In the matter of **Tarlochan Dev Sharma v. State of Punjab and others**² the Supreme Court while considering removal of President of

1 (2000) 8 SCC 82

2 (2001) 6 SCC 260

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, 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.”

(14) Recently, in the matter of **Sagar Pandurang Dhundare v. Keshav Aaba Patil and others**³, their Lordships of the Supreme Court have clearly held that fact of encroachment by the office bearer must be firmly established and held as under:-

“15. From the Statements of Objects and Reasons for the amendment introduced in 2006, it is seen that the purpose was “to disqualify the person who has encroached upon the Government land or public property, from becoming member of the Panchayat or to continue as such.” The person, who has encroached upon the Government land or public property, as the law now stands, for the purpose of disqualification, can only be the person, who has actually, for the first time, made the encroachment. However, in view of Section 53(1) of the Act, in case a member has been punished for encroachment, he

shall be dismissed (sic disqualified). Similarly, a member against whom there is a final order of eviction under Section 53(2) or (2A), shall also not be entitled to continue as a member.”

(15) Now, in the instant case, no such reasonable opportunity was afforded to the petitioner before passing the impugned order and straightway Collector issued notice to the petitioner and after receipt of the reply from the petitioner, called report from the Revenue Inspector and after obtaining the report from the Collector, passed the impugned order disqualifying the petitioner for the post of Panch. Neither the petitioner was served with the copy of report of Revenue Officer nor he was given opportunity to produce the documents in support of his Case. Even copy of the order of Revenue Officer evicting the petitioner from the subject premises was not served to the petitioner. Thus, the order has been passed by the Collector in complete violation of the principle of natural justice envisaged in the proviso to Section 36(2) of the Adhiniyam, 1993.

(16) Thus, I am of the considered opinion that the petitioner, who is elected Panch, has been directed to be unseated without following the due procedure of law and without strictly considering the provisions relating to disqualification which is clearly impermissible in law.

(17) As a fallout and consequence of the aforesaid discussion, the writ petition is allowed. Impugned order dated 15.06.2016 passed by the Collector as affirmed by Commissioner by order dated 24.04.2017 are hereby quashed. However, the respondents are at liberty to proceed in

accordance with law.

(18) The writ petition is allowed to the extent indicated hereinabove.

No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

