

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.564 of 2018

Ajay Jaiswal, S/o Shri K.L. Jaiswal, aged about 42 years, R/o
Lalunagar Colony, T.P. Nagar, Korba, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Director Panchayat, Directorate of Panchayat, Naya Raipur (C.G.)
2. Collector, Korba, District Korba (C.G.)
3. Jila Panchayat, Korba, Through its Chief Executive Officer (CEO)/ Secretary, Near Collector Office, ITI Chowk, Korba, District Korba (C.G.)
4. The President, Zila Panchayat, Near Collector Office, ITI Chowk, Korba, District Korba, Korba (C.G.)

---- Respondents

For Petitioner: Mr. Abhijeet Shrivastava and Mr. Soumya Rai,
Advocates.

For Respondents No.1 and 2 / State: -

Mr. Arun Sao, Deputy Advocate General and Mr. Ashish
Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/04/2018

1. The petitioner was elected as a member of Zila Panchayat, Korba and eventually also elected as Vice President of the Zila Panchayat, Korba. Police Station Pali registered a case in crime number 102/2015 for offence under Sections 354-A, 186, 174 & 448 of the IPC; Sections 7 and 8 of the Protection of Children from Sexual Offences Act; and 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and he was arrested also pursuant to which the Collector, Korba issued a

notice under Section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Act of 1993') on 28-8-2015. The petitioner sought time and ultimately, the Collector being prescribed authority for suspension under Section 39(1)(b) of the Act of 1993, placed the petitioner under suspension on 10-9-2015 and also continued with recording of evidence, but later on, the matter remained pending till 27-11-2017. In the meanwhile, the petitioner was convicted on 29-8-2017 for offence under Sections 147, 448 and 451 of the IPC and sentenced to imprisonment and fine as well. The Collector submitted a report on 22-12-2017 to the Director (Panchayat) for removing the petitioner from the post of Member, Zila Panchayat / Vice President under Section 40(1)(a) & (b) of the Act of 1993. The Director (Panchayat) immediately thereafter, on 4-1-2018, in exercise of power conferred under Section 40(1)(a), Explanation (a)(iii), of the Act of 1993, declared the election of the petitioner to be void and removed him from the post of Member, Zila Panchayat. Feeling aggrieved against the said order, this writ petition has been filed by the petitioner herein questioning the said order stating inter alia that under Section 40(1) of the Act of 1993, the prescribed authority to remove the petitioner is the Director (Panchayat), but the Director (Panchayat) has neither initiated any proceeding for removal of the petitioner after his conviction nor made any enquiry for his removal, nor given opportunity to show cause as provided under the proviso to Section 40(1) of the Act of 1993 and straightway directed for his removal accepting the report of the Collector which is per se illegal and without jurisdiction and without authority of law.

2. This writ petition was entertained on 15-3-2018 stating that the question of alternative remedy will be considered after receipt of reply by respondents No.1 and 2.
3. Return has been filed by the State on 23-4-2018 stating inter alia that the petitioner was suspended from the post of Vice President and Member of Zila Panchayat, Korba after registration of FIR against him and after conviction of the petitioner for the aforesaid offences, report was submitted by the Collector on 22-12-2017 before the Director (Panchayat) proposing his removal from the post of Vice President and Member of Zila Panchayat, Korba, which was considered by the Director (Panchayat) – prescribed authority and the order of removal has been passed which is appealable under Rule 3 of the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995, as such, alternative remedy is available to the petitioner.
4. Mr. Abhijeet Shrivastava, learned counsel appearing for the petitioner, would submit that proceeding for removal of the petitioner has even not been initiated by the prescribed authority (Director, Panchayat) under Section 40 of the Act of 1993, as such, the order impugned is without jurisdiction and without authority of law. No enquiry has been conducted after affording an opportunity of hearing to the petitioner. Apart from this during the pendency of writ petition, the State Election Commission has initiated proceeding for holding election on the post of Member, Zila Panchayat, Korba, serial No.6, Area Katghora and started preparation of voter list and, therefore, the question of alternative

remedy cannot be pressed into service and is not available to the petitioner, as no useful purpose will be served by resorting to alternative remedy before the State Government.

5. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/respondents No.1 and 2, would press the plea of alternative remedy and would support the impugned order.
6. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
7. First, I will take up the plea of alternative remedy. As on today, the State Election Commission has initiated proceeding for filling up of the post of Member, Zila Panchayat, Korba for which the petitioner was elected and preparation of electoral roll has already started which is apparent from the order dated 7-4-2018 passed by the District Election Officer (Panchayat), Korba. Therefore, at this stage, when the process for filling the post is in progress, no useful purpose will be served by relegating the petitioner to the alternative remedy. Apart from this, it is the plea of the petitioner that the order impugned is without jurisdiction and without authority of law.
8. This will bring me to the merits of the matter and to consider the plea raised at the Bar, it would be appropriate to notice Section 40 of the Act of 1993. Section 40 (1) of the Act of 1993 provides as under: -

“40. Removal of office bearers of Panchayat.-(1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer—

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public;

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation.-For the purpose of this sub-section "Misconduct" shall include—

(a) any action adversely affecting—

(i) the sovereignty, unity and integrity of India; or

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or

(b) xxx xxx xxx

(c) xxx xxx xxx

xxx xxx xxx

xxx xxx xxx”

9. Section 40(1) of the Act of 1993 empowers the State Government or the prescribed authority to remove an office bearer of the Panchayat after holding an enquiry. The prescribed authority has been indicated by the notification dated 13-5-2003 in exercise of the powers conferred by clause (xxi) of Section 2 read with sub-section (3) of Section 93 of the Act of 1993, whereby the State Government has directed that the officer or authority mentioned in column (2) of the Table shall discharge the functions of the prescribed authority for the purpose of Sections of the said Act mentioned in corresponding entry in column (3) thereof.

10. Thus, there is no iota of doubt that the prescribed authority to

initiate proceeding and to remove the Member of the Zila Panchayat is the Director Panchayat, whereas for suspending the President, Vice President and Member of Zila Panchayat, prescribed authority is Collector. Relevant portion of the Table issued under the notification dated 13-5-2003 reads as follows: -

S.No. (1)	Officer or Authority (2)	Section (3)
25.	(1) xxx xxx xxx	
	(2) xxx xxx xxx	39(1)
	(3) For President, Vice President & Member of Zila Panchayat – Collector	
26.	(1) For Gram Panchayat – Sub Divisional Officer (Revenue)	
	(2) For Janpad Panchayat – Collector / Additional Collector	40 (1)
	(3) For Zila Panchayat – Director, Panchayat	

11. Thus, the State Government has consciously in exercise of power conferred by clause (xxi) of Section 2 read with sub-section (3) of Section 93 of the Act of 1993 has conferred the power of removal to the Director (Panchayat), whereas the power of suspension of Member of Zila Panchayat has been conferred to the Collector by making him prescribed authority for obvious reason, as for Gram Panchayat – Sub Divisional Officer (Revenue), for Janpad Panchayat – Collector / Additional Collector and for Zila Panchayat – Director, Panchayat have been empowered.

12. Apart from this, under Section 40 of the Act of 1993, enquiry has to be made by the prescribed authority / prescribed officer for

removing the office bearer (Member, Zila Panchayat) that too after giving show cause why he should not be removed from his office, as such, initiation of proceeding by the prescribed authority followed by opportunity to show cause is prescribed and then after making enquiry an office bearer of the Panchayat namely, the Member of Zila Panchayat can be removed.

13. A Division Bench of the M.P. High Court in the matter of **Bansmani v. State of MP and others**¹, while dealing with removal of President of Panchayat under Section 116 of the Madhya Pradesh Panchayats Act, 1962, emphasized the need for supplying the charges and material to provide real opportunity of hearing to person concerned and observed as under: -

“While taking action under section 116 of the Panchayats Act, the State Government should not only disclose the charges but also the entire material on which the charges are based to the person concerned so as to afford him real opportunity to show cause against the charges.”

14. In the matter of **Kailashkumar v. State of M.P.**², the petitioner was Sarpanch of a Gram Panchayat. A show cause notice was issued to him with certain charges. He submitted his reply to the show notice giving his explanation on each charge. He also requested for time to produce some more documents and adduce oral evidence. But no witness was examined by the Sub Divisional Officer in support of the charges nor the petitioner (therein) was permitted to examine any witness and the impugned order of removal was passed. The M.P. High Court, following the decision in **Bansmani** (supra), set aside the order of removal finding that no

1 1980 JLJ 60

2 2000(1) MPHT 143

reasonable opportunity of hearing was granted to the petitioner therein in support of the charges applying the celebrated rule of *audi alteram partem* holding that enquiry ought to have been made, as the preliminary report submitted by the Block Development Officer has been relied upon and order of removal has been passed. In the aforesaid case (supra) it has also been held that the words employed in sub-section (1) of Section 40 of the Act of 1993, “after such enquiry as it may deem fit to make” would mean an enquiry which is held in the presence of the office-bearer and not behind his back. He should be allowed to inspect the documents which are to be relied upon against him and he should have the right to adduce his own evidence. These are the important facets of an enquiry to be held in conformity with the principles of natural justice. It has further been held that it is not the subjective choice of the prescribed authority to get an enquiry held of any kind. It does not envisage a secret enquiry or a preliminary enquiry alone. That is made only for collection of evidence and at that stage there is no participation of the person against whom the action is sought to be taken. The words “as it may deem fit” have to be construed objectively and would mean an enquiry depending upon the facts and circumstances of each case.

15. It is well settled law that removal of elected office-bearer from his office is a serious matter, as disqualification or removal not only affects the particular office-bearer but it affects the entire constituency as well. Therefore, the law relating to disqualification or removal has to be construed strictly. (See Ravi Yashwant

Bhoir v. District Collector, Raigad and others³ and Sadashiv H. Patil v. Vithal D. Teke and others⁴.)

16. In Ravi Yashwant Bhoir (supra), Their Lordships of the Supreme Court have considered that removal of elected office-bearer from office on the basis of proved misconduct is a quasi judicial proceeding in nature and therefore the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same and observed as under in paragraphs 30, 31 and 32: -

“30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide *Indian National Congress (I) v. Institute of Social Welfare*⁵.] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab*⁶ and *Union of India v. H.C. Goel*⁷. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.

31. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office can be removed without holding a full-fledged inquiry.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of [Article 311](#) of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for

3 (2012) 4 SCC 407

4 (2000) 8 SCC 82

5 (2002) 5 SCC 685 : AIR 2002 SC 2158

6 AIR 1963 SC 395

7 AIR 1964 SC 364

the removal of the elected officials, a more stringent procedure and standard of proof is required.”

17. Likewise, in paragraphs 34, 35 and 36 of the judgment rendered in

Ravi Yashwant Bhoir (supra), Their Lordships of the Supreme

Court further held as under: -

“34. In a democratic institution, like ours, 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 or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosa*⁸, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly*⁹ and *Ram Beti v. District Panchayat Raj Adhikari*¹⁰).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of his choice.”

18. In **Sadashiv H. Patil** (supra), the Supreme Court in para-14 held

thus:--

8 (1982) 1 SCC 691 : AIR 1982 SC 983

9 (1992) 4 SCC 80 : AIR 1993 SC 2042

10 (1998) 1 SCC 680 : AIR 1998 SC 1222

“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.”

19. Though proviso to sub-section (1) of Section 40 of the Act of 1993 only provides that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office, but it is implicit in this provision that the office-bearer who is sought to be removed will be given a fair hearing and real opportunity to meet the charges levelled against him.
20. Reverting to the facts of the present case, it is quite apparent and vivid that though the petitioner was rightly placed under suspension by the Collector in exercise of power conferred under Section 39(1) of the Act of 1993 being the prescribed authority for suspension of member of Zila Panchayat, but thereafter, the Collector continued the removal proceeding even without authority of law, as the prescribed authority for removal of office bearer like Member of Zila Panchayat vests with the Director (Panchayat).
21. It is not in dispute that the petitioner was convicted for offence under Sections 147, 448 and 451 of the IPC, but thereafter, the Collector on its own submitted a report on 22-12-2017 to the Director (Panchayat) and the Director (Panchayat) without initiating

any proceeding for removal being the prescribed authority under Section 40(1) of the Act of 1993 and without holding any enquiry and without even giving opportunity to show cause as provided under the proviso to Section 40(1) of the Act of 1993, straightway declared the election of the petitioner as Member of Zila Panchayat, as null and void. The procedure adopted by the learned Director (Panchayat) is absolutely contrary to law, rather no procedure was followed except removal of the petitioner from elected post. Neither the prescribed authority initiated proceeding for removal under Section 40(1) of the Act of 1993 nor issued notice of show cause as provided under the proviso to Section 40(1) and even did not thought it expedient to make enquiry under Section 40(1) which makes the order of the Director (Panchayat) absolutely vulnerable. The petitioner being the elected representative though he was convicted, but without following the mandate of Section 40(1) of the Act of 1993, he has been removed which cannot be sustained being contrary to the provisions contained in the Act of 1993.

22. As a fallout and consequence of the aforesaid discussion, I am of the considered opinion that the order passed by the Director (Panchayat) is in teeth of the provisions contained in Section 40(1) of the Act of 1993 and deserves to be and is hereby quashed. However, this will not bar the competent authority to proceed further in accordance with law. Since the order has already been set aside, there is no need to pass order on the application for amendment questioning the proposed filling of vacancy of Member,

Zila Panchayat by the District Returning Officer, Korba.

23. The writ petition is allowed to the extent outlined herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.564 of 2018

Ajay Jaiswal

Versus

State of Chhattisgarh and others

Head Note

Member of Zila Panchayat cannot be removed by the Director of Panchayat without initiating proceedings for removal and without affording opportunity of hearing.

जिला पंचायत सदस्य को हटाने की प्रक्रिया शुरू किए बिना तथा सुने जाने का अवसर प्रदान किए बिना पंचायत के निदेशक द्वारा हटाया नहीं जा सकता है।