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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 496 of 2018**

{Arising out of order dated 13.04.2018 passed in Writ Petition (C) No. 472 of 2018 by the learned Single Judge}

1. Anil Kumar Yadav S/o Late Panch Ram Yadav, Aged About 35 Years Ward Member 07, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur, District Bilaspur (Chhattisgarh)
2. Ram Kumar Kashyap S/o Shankar Lal Kashyap, Aged About 45 Years Ward Member 13, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur District Bilaspur Chhattisgarh.
3. Smt. Shukwara W/o Lavkush Kashyap Aged About 43 Years Ward Member 8, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur District Bilaspur Chhattisgarh.
4. Smt. Rukhsana W/o Rafique Baeg Aged About 44 Years Ward Member 14, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur, District Bilaspur Chhattisgarh.
5. Kanahya Yadav S/o Late Shyamlal Yadav, Aged About 45 Years Ward Member 03, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur, District Bilaspur Chhattisgarh.
6. Vishnu Prasad Induva S/o Chait Ram Induva Aged About 46 Years Ward Member 11, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur, District Bilaspur Chhattisgarh.
7. Dharmendra Kumar Tamrakar S/o Late Fagu Ram Tmrakar Aged About 44 Years Ward Member 5 Nagar Palika Parishad Ratanpur R/o Nutan Chowk Ratanpur, Thana And Tahsil Ratanpur, District Bilaspur Chhattisgarh.
8. Jai Prakash Kashyap S/o Laxmi Prasad Kashyap, Aged About 48 Years Ward Member 12, Nagar Palika Parishad Ratanpur R/o Kanahyapara Ratanpur, Thana And Tahsil Ratanpur, District Bilaspur Chhattisgarh.
9. Damodar Singh Shatriya S/o Shri Mohan Singh Shatriya, Aged About 50 Years Ward Member 2, Nagar Palika Parishad Ratanpur R/o Tahsil And Thana Ratanpur, District Bilaspur Chhattisgarh.

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Versus

1. State of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mantralaya, Raipur, District Raipur Chhattisgarh.
2. The State Election Commission Constituted Under Article 243-K Of The Constitution Of India, Election Commission Office Raipur District Raipur Chhattisgarh.

3. The Collector Cum Competant Authority Bilaspur, District Bilaspur Chhattisgarh.
4. The Chief Municipal Officer Nagar Palika Parishad, Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh.
5. Smt. Asha Suryavanshi W/o Narayan Suryavanshi Aged About 29 Years President Nagar Palika Parishad Ratanpur, District Bilaspur R/o Ward No. 3 Mahamayapara Ratanpur District Bilaspur Chhattisgarh.
6. Raju Shriwas S/o Malik Ram, Aged About 45 Years Ward Member, Ward No. 6, Ratanpur, District Bilaspur Chhattisgarh.
7. Smt. Dubasiya Bai Jagat W/o Bhan Singh, Aged About 40 Years Ward Member, Ward No. 15 Ratanpur District Bilaspur Chhattisgarh.
8. Harnarayan Porte S/o Shyamnath Gond Aged About 70 Years Ward Member 1 Ratanpur District Bilaspur Chhattisgarh.
9. Smt. Kunwara Ansari W/o Rafique Baeg Aged About 50 Years Ward Member 4 Ratanpur, District Bilaspur Chhattisgarh.
10. Suresh Kumar Suryavanshi Ward Member Ward No. 9
11. Rashilata Mathur Ward Member Ward No. 10

From Res. No. 6 to 11 are R/o Nagar Palika Parishad Ratanpur Thana and Tahsil Ratanpur District Bilaspur (Chhattisgarh)

---- Respondents

For Appellants	: Shri Neel Kanth Malviya, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.
For Respondent No. 2	: Shri Aman Tamboli, Advocate appears on behalf of Shri R.S.Marhas.
For Respondent No. 4	: Shri Manoj Paranjpe, Advocate.
For Respondent No. 5	: Shri Shakti Raj Sinha, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

06/10/2018

1. Appeal arises against the order dated 13.04.2018 passed by a learned Single Judge in Writ Petition (C) No. 472 of 2018. Since the learned Single Judge allowed the writ application in favour of the Petitioner/Respondent No. 5, set aside the decision of the Collector, Bilaspur recommending recall of the President of the Municipality to the State Government, so the appeal.

2. It may be clarified at the threshold that the whole controversy arose when 4 of the Councillors who were originally part of a group of 13 Councillors who had signed on a proposal for recall of the President to the District Collector, but decided to withdraw their signature almost at the stage when election was about to be held.
3. Since the whole case hinges on Section 47 of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act'), the Court reproduces the said section as part of this order, which reads as under:

"47 - Recalling of President - (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed:

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three fourth of the total number of the elected Councillors and presented to the Collector:

Provided further that no such process shall be initiated:

- (i) within a period of two years from the date on which such President is elected and enters his office;
- (ii) if half of the period of tenure of the President elected in a by-election has not expired:

Provided also that process for recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three fourth of the Councillors specified in sub-section (1) have signed the proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed."

(emphasis supplied)

4. From a reading of the above provision, the intent of the Legislatures is to provide for a situation for recalling the elected President through a secret ballot by simple majority of more than half of the voters of the Municipal area. However, before such process of recall, which is similar to the concept of a referendum is set into motion, certain ingredients have been provided for in the above section.
5. The first ingredient is that three-fourth of the total number of elected Councillors have to sign a proposal for recall and tender it to the Collector of the District. The Collector of the District thereafter will not initiate the process if the requisition or the proposal for recall has been moved within a period of two years from the date on which such President was elected and enters his office. The other requirement seems to be that such an elected President, if it is a case of by-election, then half of that tenure has to elapse and further that the process for recall of the President has to be initiated only once in his entire term.
6. Section 47(2) of the Act further enjoins upon the Collector of the duty of satisfying himself after verification that the three-fourth of the Councillors specified in sub-section (1) have signed the proposal of recall. Once that satisfaction is reached, he is bound to send the proposal to the State Government. The State Government thereafter shall make a reference to the State Election Commission, who have the obligation to make an arrangement for conduct of voting to complete the process of recall.
7. The above discussion broadly lays down the object behind Section 47 of the Act including the mode and modality which goes into the decision making on receipt of the proposal for initiation of process of recall.
8. Coming to the facts, on 31.08.2017, 13 of the elected Councillors out of 15, which surely makes it more than three-fourth, tendered their proposal to the

Collector, Bilaspur, to initiate the process of recall of the President of the Nagar Palika Parishad, Ratanpur.

9. The Collector, Bilaspur fixed 06.11.2017 as the date for verification wherein all the Councillors presented themselves and verified their signature. This fact can be borne out from Annexure P/8 to the writ petition. The Collector, being satisfied with the authenticity of the proposal for recall and being satisfied with regard to the other parameters mentioned and noted in the earlier part of the order, sent the proposal to the State Government on 23.12.2017. It will not be misplaced to highlight that none of the elected Councillors raised any objection against the recommendation of the Collector to the State Government.
10. On 22.01.2018 i.e. almost a month of the recommendation of Collector to the State Government, the State Government made its recommendation to the State Election Commission for holding of an election to complete the process of recall.
11. On 31.01.2018, the State Election Commission ordered revision of the electoral roll before holding of the election and the process began thereafter.
12. Once the election looked inevitable, then it can be very safely presumed that the back-room maneuvering and bargaining started between the President and the vulnerable elected Councillors because it is only on 05.02.2018 i.e. almost six months after the initial proposal for recall was signed by 13 of them, 4 of the Councillors filed application before the Collector, Bilaspur that they would like to withdraw from the proposal and this time, 2 of the fence sitters who did not join the initial requisition for recall, decided to side with the 4 signatories. Since the Collector refused to take notice of such proposal or request of withdrawal at such a belated stage, the legal battle

began.

13. The elected President filed the writ application under Article 226 of the Constitution of India calling in question the recommendation of the Collector dated 23.12.2017 *i.e.* forwarding of the proposal for recall to the State Government. Challenge was also thrown to the decision of the State Government to refer the matter to the Chhattisgarh State Election Commission to prepare the programme for holding of the election for recall. These two decisions of the State and the Election Commission are dated 22.01.2018 and 31.01.2018 respectively and were Annexure P/2 and P/3 to the writ application.
14. The argument thereafter came to be made before the learned Single Judge as to the ambit and scope of power of the Collector when he had already exercised his authority in terms of the requirements as well as the mandate laid down under Section 47 of the Act.
15. From perusal of the order of the learned Single Judge, the whole argument and thereafter the decision rendered by the learned Single Judge revolved around the power of the District Collector to initiate the process of recall and whether he was duty bound to take into consideration the subsequent request by some of the original requisitionist to withdraw from the proposal of recall, before the actual conduct of election.
16. Submissions made were that it was obligatory upon the District Collector to consider the subsequent application of the elected Councillors who wanted to withdraw their signatures from the original proposal and once such request was made to the Collector, the three-fourth signatures not being there in the requisition/proposal, the Collector was duty bound to recall his earlier proposal and frustrate the process of recall set into motion, on the basis of the three-fourth signatures whose authenticity was very much

verified and then only the recommendation was forwarded to the State Government on 23.12.2017.

17. The learned Single Judge has taken a view that since the recommendation made by the Collector in favour of the proposal for recall is only an administrative action and not administrative decision, therefore, he is free to review/recall or revisit his earlier decision. In this regard, he has drawn support from certain decisions which are not necessary to be taken note of as part of this order, at least at this stage.
18. On the above finding of law with the given facts, that 4 of the earlier signatories to the proposal for recall had tendered a request for recall of the earlier proposal to the Collector, the Collector was duty bound to re-verify and take a decision *de novo* as to whether there was a necessity thereafter to make a recommendation for recall of the President as envisaged under Section 47 of the Act.
19. Aggrieved by such a decision and direction, the appeal has been preferred by 9 of the Councillors under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.
20. The argument on behalf of the counsel for the Appellants is that the learned Single Judge has committed grave and serious error of law while interpreting the provisions and requirements of Section 47 of the Act, and in fact, if such an interpretation is allowed to prevail by way of judicial pronouncement, then the whole object and purpose behind the legislative intent of having section 47 of the Act is obliterated, if not, surely made non-workable.
21. Submission is that once a signature of three-fourth of the elected Councillors initiating a proposal for recall of the President is tendered to the

Collector, the Section and the statute itself lays down the parameters and the requirements which go into the decision making by the Collector. At the cost of repetition, it is urged that he has to first verify the authenticity of the signatures of the Councillors and whether the same has been voluntarily put on proposal for recall. He also has to make sure that this is the first proposal during the tenure of the President and that more than two years of his office from the date of his election or entering office has elapsed. If all the above parameters are in place which they were, then the Collector was duty bound to make a recommendation to the State Government and the State Government, in terms was again mandated to recommend the said proposal to the State Election Commission for conduct of the election. It is not to be missed that the verification of the signature of the signatories *i.e.* the Councillors was done by the Collector on 06.11.2017. The proposal was sent by the Collector to the State Government on 23.12.2017, almost one month and three weeks. The State Government, thereafter, made its recommendation to the Election Commission on 22.01.2018, *i.e.* almost a month, and thereafter, within a week, the preparation and revision of the electoral roll was ordered. After much water had flown down, the river or rivers of Chhattisgarh, 4 of the elected Councillors for obvious reasons decided to approach the Collector with a request to recall the earlier proposal in view of the change of mind which they had had at the last minute.

- 22.** A plain reading of Section 47 of the Act would clearly indicate that the learned Single Judge is patently wrong in taking a view that the decision of the Collector to make a recommendation to initiate the process of recall was an administrative or ministerial action and this was capable of being revisited at any point of time before the actual election was held. The Court is surprised to note that even though the learned Single Judge has quoted

from a Full Bench decision of the Delhi High Court in case of ***Shri K.R.Raghavan, Commissioner of Income Tax, Delhi & Others v. Union of India & Others*** {1979 (2) SLR 478}; which reads as under, he misread the significance of the two.

"8. Administrative action is divisible into two broad classes. On the one hand is ministerial action where the reasoning process is minimum and almost routine. Along with this may also be grouped exercise of discretionary power where the administrative authorities are able to choose alternative courses of action. On the other hand is the administrative decision. The process of decision involved an objective standard on the determination of which opinions may differ. The reasoning process takes into account the pros and cons and then comes to a decision. This distinction is important because administrative action is always reviewable while administrative decision is reviewable in special circumstances."

(emphasis supplied)

Despite relying on the ratio of the above decision, he held the decision of the Collector of forwarding the proposal for recall to be an 'administrative action' instead of an 'administrative decision'. The ingredients required under Section 47 of the Act and the four parameters which have been highlighted as essential requirements for the decision making by the Collector, by no stretch of imagination can be called a mere ministerial action. The Collector has a duty cast upon him to verify the authenticity of the signature of the Councillors by summoning them, satisfying himself that those signatures have been obtained not under any inducement, duress or coercion and that the proposal for recall does not suffer from any other shortfalls like it is not before two years of the term of the elected President or that it is not a second proposal for recall *etc.* These ingredients leave no doubt in our mind that the decision taken by the Collector after all the exercise as above, is an 'administrative decision' and therefore, once taken it is not amenable to review by the Collector, though its correctness can be tested in a judicial proceeding. In fact, the Collector becomes *functus officio* after sending of the proposal to the State.

- 23.** We have noticed that none of these Councillors raised any objection before any forum *i.e.* either the State Government or the Election Commission, much less any Court including the constitutional Court finding any kind of error in the recommendation so made. If that be so, then merely because some of the Councillors, for reasons best known to them, decide to derail the process of recall at a much later date, then in the garb of or interpretation having been given that the power to initiate the process of recall by making recommendation to the State Government is mere ministerial, is doing violence to the settled principle of administrative decision making. The decision to forward the proposal for recall under Section 47 of the Act, in fact can also be called a kind of quasi judicial decision because such decision obviously has consequences for the elected President whose recall was put in motion and that recommendation was made after due deliberations. Once the proposal moved from the level of the Collector to the State Government, unless there is a power of judicial review specifically provided under the statute, the said authority *i.e.* the Collector cannot be allowed to have the power of review or recall. Such decision could be amenable otherwise, which it was not, till the Court intervened at the stage when the election was about to be held in furtherance to the proposal for recall.
- 24.** If such an interpretation given by the learned Single Judge is accepted or allowed to stand, then the proposal for recall as provided under Section 47 of the Act will be actually made unworkable, if not redundant. Not only this, it will lead to horse trading, bargaining and all kinds of illegal inducement which may be offered by the elected President to compel the signatories of the original proposal to withdraw their signatures, before the actual election is held.

- 25.** In our opinion, the purity of the election and the purity of will of the elected majority as well as the people can never be maintained if we allow any kind of leeway to the Collector to revisit his decision on the basis of subsequent developments after the proposal was found to be in order and recommendation made thereafter to the State authorities.
- 26.** The decision of the learned Single Judge, therefore, giving a direction to the Collector, Bilaspur to take into consideration the signature of the 4 Councillors as the basis for withdrawing his earlier proposal for recall as part of the duty cast upon him under Section 47 of the Act, is a misplaced kind of direction. Such interpretation is unacceptable and laboured since most of the decisions relied upon are in different set of facts or out of context.
- 27.** The impugned order dated 13.04.2018 therefore is quashed. The State Election Commission is directed to notify a date for election of recall of the President of Ratanpur Nagar Palika Parishad forthwith, preferably within a period of 15 days from today.
- 28.** The appeal is allowed in the above terms.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE