

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 503 of 2017***(Arising out of Order dated 13.10.2017 passed in W.P.(C) No. 2367 of 2017 by the learned Single Judge)*

- Ramadhar Rajak S/o Late Shankar Lal Rajak Aged About 49 Years Vice President Municipal Council Khairagarh District Rajnandgaon (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh Through Special Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Raipur Chhattisgarh.
2. The Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh.
3. The Upper Collector, District Rajnandgaon Chhattisgarh.
4. Manrakhan Dewangan S/o G.L. Dewangan Aged About 37 Years R./o Ward No. 17, Daugheera, Khairagarh, Tahsil And Police Station Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Rajesh Kumar Kesharwani, Advocate
For Respondents/State	:	Shri U.N.S. Deo, Government Advocate
For Respondent No.4	:	Shri Anukul Biswas, 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****05.10.2018**

1. Respondent No. 4 in the present appeal was the Petitioner before the writ Court. He assailed the order dated 25.07.2017 passed by the State Government as it had affirmed the order dated 10.01.2017 which was issued under the signature of Additional Collector, whereby he was removed from the post of Councillor and debarred from participating in future election for a period of five years.
2. The background facts which led to the decision to remove the private Respondents arose from an allegation made that while he was elected

Councillor, he appeared as an Advocate in Appeal Case No. 6206B/121/2014-15 before the Sub Divisional Officer (Revenue), Khairagarh. This conduct of the private Respondent was enough to disqualify him under Section 41(2) of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act').

3. Notices were issued, replies were given. One aspect which was pointed out was that whatever allegations which were made related to his earlier period as a Councillor and not in relation to his present term as a Councillor after his re-election. The authorities, however, not being satisfied with such explanation decided to invoke the power under Section 41(2) of the Act and recommended his removal.
4. Section 41 of the Act reads as under:

“41 - Removal of Councillor.-(1) The Collector may, at any time remove an elected Councillor-

(a) if his continuance as a Councillor, is not, in the opinion of the Collector, desirable in the interest of the Public or of the Council; or if it is found that he does not belong to the reserved category for which the seat was reserved; or

(b) if the Council has, by a resolution supported by atleast two-third of the total number of Councillors, recommended that the Councillor is not fit to continue as a Councillor on account of misconduct in the discharge of his duties or disgraceful conduct.

(2) The Collector may at any time, remove any elected Councillor if he, being a legal practitioner, acts or appears on behalf of any other person against the Council in any legal proceedings or against the State Government in any such proceeding relating to any matter in which the Council is or has been concerned, or acts or appears on behalf of any person in any criminal proceedings instituted by or on behalf of the Council against such person. (emphasis supplied)

(3) The Collector may, while ordering the removal under Section 40 or this Section, also order that such Councillor shall not be eligible to become a Councillor of a Municipal Council or Nagar Panchayat, as the case may be, for its next term:

Provided that no resolution recommending the removal of any Councillor shall be passed by the Municipal Council or Nagar Panchayat, as the case may be, nor any such order of removal shall be passed by the Collector unless such Councillor has been given a reasonable opportunity of showing cause.

(4) An appeal against the order passed under sub-sections (1), (2) or (3) of this Section or Section 40 shall lie to the State Government within thirty days of the date on which the order is conveyed to the aggrieved party:

Provided that the State Government may after giving a reasonable opportunity of being heard, pass such order on the appeal as it may think fit.”

5. No doubt, violation of Section 41(2) of the Act will beget disqualification for a Councillor but such disqualification has to relate to the period he was holding the term as a Councillor and will not spill over to his next term if the person is re-elected on successful completion of his earlier term.
6. Since the rigours of the law are rather serious under Section 41 of the Act, therefore, a strict interpretation would be required to be given to the provision to mean that “the Collector may, at any time” does not mean the time beyond the term of office of the elected representative. If an allegation is made and found to be correct, that cannot be applied in relation to the re-elected term, to disqualify him even if the allegation was made or could have been made for his earlier term.
7. The learned Single Judge, however, taking the various facets of law came to an opinion that the decision to disqualify the private Respondent under Section 41(2) of the Act was not in accordance with law and one of the reason so provided is that his appearance as a counsel in which the Chief Municipal Officer of the Municipal Council was a party-Respondent cannot be equated with Municipal Council itself.

8. We are not willing to go into that controversy for the reason that from the facts, it is evident that the case for which the private Respondent appeared admittedly relates to his earlier term as a Councillor from 24.12.2010 till December, 2015. The private Respondent thereafter came to be re-elected on 31.12.2015 and it is during the subsistence of the re-elected period that the order of removal for violation of Section 41(2) of the Act was passed disqualifying him from continuing as a Councillor but also debarring him from future election for next five years.
9. In our opinion, the facts not being a matter of dispute and also taking note of the fact that even though the private Respondent had appeared for a private party against the Municipality, that appearance would be treated to have come to an end on the date of the final argument and the order having been reserved which was 14.09.2015. Merely because there was delay in pronouncement of final order which came to be made on 14.6.2016, it cannot be said that the private Respondent appeared in a case after his re-election.
10. The appeal which has been preferred by the intervenor against an order of the learned Single Judge, therefore, is required to be dismissed keeping in view the legal position and the manner in which Section 41 and rigours of Section 41(2) of the Act is required to be understood and enforced.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge