

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1626 of 2020**

Akash Sen, S/o Deepak Sen, Aged About 27 Years R/o Village - Nagpura,
Tahsil And District - Durg Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Raipur Chhattisgarh.
2. Director, Department Of Panchayat And Rural Development, Indrawati Bhawan, Nawa Raipur, Atal Nagar, Raipur Chhattisgarh.
3. Deputy Director, Department Of Panchayat And Rural Development, Durg Chhattisgarh
4. Sub - Divisional Officer (Revenue), Durg Chhattisgarh.
5. Bhupendra Rigari, S/o Late Darbari Rigari, Sarpancha, Gram Panchayat - Nagpura, Tahsil And District - Durg Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Somraj Shrivastava, Advocate
For State	:	Mr. Vivek Ranjan Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/08/2020**

1. The present writ petition has been filed by the petitioner assailing the order dated 30.05.2020, passed by the respondent No.4 in a proceeding initiated under Section 40(1) of the Panchayat Raj Adhiniyam, 1993. The challenge to the said order is not on its merit, but the challenge is to the extent that the respondent No.4 while on one hand holding the respondent No.5 guilty of the charges leveled against him, but the consequential order that was required to be passed under Section 40(2) of the said Adhiniyam has not been reflected.

2. According to the petitioner, in the absence of there being no mention to the implication of the order passed by the Sub-Divisional Officer, it is of no consequence and in the instant case the Respondent No.5 meanwhile has already been elected for a fresh term as a Sarpanch in December, 2019. According to the petitioner, if the respondent No.4 would have also reflected the implication also on the respondent no.5 being declared guilty as is required under Section 40(2), the subsequent election of the respondent No.5 on the post of Sarpanch itself could have been challenged or questioned in the light of the order of finding him guilty that was passed on 30.05.2020 and it is only for this limited purpose the present writ petition has been filed.
3. Mr. Vivek Ranjan Tiwari, Addl. A.G. on due consideration of the impugned order submits that perhaps the respondent No.4 has not passed an order under Section 40(2) for the reason that the earlier tenure of the respondent No.5 as a Panch in the previous election had already completed. Therefore there was no question of taking any disqualification proceedings against the respondent No.5 and further the State counsel submits that since his earlier tenure had already been concluded, much before the impugned order was passed, there was no restriction anywhere restricting the respondent No.5 from contesting the election again before being held guilty.
4. Be that as it may, taking into consideration the contentions that have been put forth and on perusal of the impugned order Annexure P/1 dated 30.05.2020 passed by the respondent No.4, it stands admitted that the proceedings for misappropriation was initiated against the respondent No.5 by the respondent No.4 under Section 40 of the

Adhiniyam of 1993. The said proceedings culminated vide the impugned order Annexure P/1 dated 30.05.2020. The order dated 30.05.2020 holds the respondent No.5 guilty of the charges, which were leveled against him. However since the tenure of previous election had already been concluded, the respondent No.4 seems to have not passed any further order as to the consequence or the implication of the respondent No.5 being found guilty except for initiation of recovery proceedings that have been advised.

5. It would be relevant at this juncture to refer to Section 40 (1) as well as Section 40(2) of the Adhiniyam, 1993, which for ready reference is being quoted hereinunder:

“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) gross negligence in the discharge of the duties under this Act;

- (c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

Explanation. - For the purpose of this clause, the expression 'relative' shall mean father, mother, brother, sister, husband,

wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law :

Provided that the final order in the inquiry shall as far as possible be passed within 90 days from the date of issue of show cause notice to the concerned office-bearer.

(2) A person who has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such person shall also be disqualified for a period of six years to be elected under this Act.”

6. So far as Sub-section (1) of Section 40 is concerned, the proceedings stands concluded and since the respondent No.5 has not challenged the same, the same has also attained finality. So far as Sub-section (2) of Section 40 is concerned, the said section stands in two parts. First part deals with ceasing of the delinquent to be a member of the Panchayat from where he was elected. Now since the tenure of his previous election has already concluded, this first part of Sub-section (2) also gets rendered inconsequential. However, the second part of Sub-section (2) clearly puts an embargo on such person who has been found guilty under Sub-section (1) of Section 40 of being disqualified for a period of 6 years to be elected. If this second part of Sub-section (2) is not given effect to in its letter and spirit, the findings given by the respondent No.4 under Sub-section (1) of Section 40 would prove to be an empty formality without having any implication or consequence.
7. Having not done so, this Court is of the opinion that at this juncture ends of justice would meet if the matter stands remitted back to the respondent No.4 for reconsidering his decision dated 30.05.2020 to the extent of mentioning the consequence of the order passed under Sub-section (1) of Section 40 keeping in view the provisions of the second part of the Sub-section (2) of Section 40. The respondent No.4 accordingly is directed to take appropriate decision in this regard

at the earliest preferably within a period of 60 days from the date of the furnishing of the certified copy of this order and any order so passed would be of course after giving an opportunity of hearing to the respondent No.5.

8. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved