

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 391 of 2020**

Ramkali Yadav W/o Mohanlal Yadav Aged About 50 Years Resident Of Ward No. 28, Durg Shamiyana, Bhagwati Bhawan, Pachri Para, Durg, Tahsil and District Durg Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Divisional Commissioner, Durg Division, District Durg Chhattisgarh.
2. Babita Yadav Councillor, Ward No. 29, Wife Of Kanhaiya Yadav, Resident Of House No. 120/1, Ward No. 29, Hospital Ward, Durg, Tahsil And District Durg Chhattisgarh.

**---- Respondents**

---

|                            |                                    |
|----------------------------|------------------------------------|
| For Petitioner             | : Shri Gautam Khetrapal, Advocate. |
| For the Respondents/ State | : Shri D.P. Singh, Dy. A.G.        |

---

**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**15-01-2021**

Heard.

1. This petition has been brought praying this Court to invoke the power under Article 227 of the Constitution of India for quashing the impugned order dated 9.7.2020 passed by the Court of Commissioner, Durg Division, dismissing the application filed by the petitioner under Section 19 of the Chhattisgarh Municipal Corporation Act, 1956 (for short Act, 1956).
2. Learned counsel appearing for the petitioner submits that Section 19 of the Act, 1956 empowers the Divisional Commissioner to remove any elected Councilor on grounds that in the opinion of Divisional Commissioner it is not desirable in the interests of the public or the Corporation that such Councilor should not continue or if it is found that he does not belong to the reserve category for which this seat was

reserved.

3. The petitioner has filed an application under Section 19 of the Act, 1956 challenging the income certificate, social status certificate and other grounds; and on that basis prayer was made for removal of respondent No.2 – Babita Yadav (the elected Councilor). Learned Commissioner, Durg has failed to exercise jurisdiction available under Section 19 of the Act, 1956 and held that the challenge in the application should be brought under Section 441 of the Act, 1956 as election petition, therefore, the order passed is erroneous and arbitrary.
4. Learned State counsel appearing for respondent No.1 submits that no error has been committed by the Commissioner, Durg in passing the impugned order. The petition of the petitioner is actually a petition challenging the election of respondent No.2 for which there is provision of Section 441 of the Act, 1956 for filing election petition. Hence, the petition be disposed off.
5. Considered the submissions. Section 19 of the Municipal Corporation Act, 1956 is as follows:

**‘Removal of Councillors.-** (1) The Divisional Commissioner may, at any time, remove any elected .... councillor :-

- (a) if his continuance as a councillor is not, in the opinion of the Divisional Commissioner, desirable in the interest of the public or the Corporation; or
- (a-1) if it is found that he does not belong to the reserved category for which the seat was reserved, or
- (b) if the Corporation has, by a resolution supported by at least two-third of the total number of councillors; recommend that a councillor is not fit to continue as a councillor on account of misconduct in the discharge of his duties or disgraceful conduct and should

therefore be removed.

(2) The Divisional Commissioner may, while ordering the removal under sub-section (3) of Section 23 or this section, also order that such councillor, shall not be eligible to become a councillor of a Corporation for a period which shall be specified in the order and which shall not exceed five years :

Provided that no resolution recommending the removal of any councillor shall be passed by the Corporation nor any such order of removal shall be passed by the Divisional Commissioner unless such councillor has been given a reasonably opportunity of showing cause why a recommendation should not be made for his removal or why he should not be removed from his office.

(3) An appeal against the order passed under sub-section (1) or sub-section (2) of this section or Section 18 shall lie to the State Government within 30 days of the date on which the order is conveyed to the aggrieved party. The State Government may after giving a reasonable opportunity of being heard, pass such order on the appeal as it may think fit.'

6. Section 441 of the Act, 1956 provides for the election petition which can be brought on the grounds provided under Section 441(b) of the Act, 1956. Section 441-B of the Act 1956 is reproduced as under:

**'441-B Grounds for declaring elections or nomination to be void.-**

(1) Subject to the provisions of sub-section (2), if the Court is of the opinion-

(a) that on the date of his election or nomination a returned candidate was not qualified or was disqualified, to be chosen as a Mayor or a Councillor;  
or

(b) that any corrupt practice has been committed by a returned candidate or his agent; or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, or nomination in so far as it concerns a returned candidate has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent; or

(iii) by the improper acceptance or refusal of any vote or rejection of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders-made there under save the rules framed under section 14 in so far as they relate to preparation and revision of list of voters;

the Court shall declare the election of the returned candidate to be void.

(2) If the opinion of the Court a returned candidate has been guilty by an agent of any corrupt practice, but the Court is satisfied-

(a) that no such corrupt practice was committed at the election or nomination by the candidate, and every such corrupt practice was committed contrary to the instructions, and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the

election or nomination; and

(c) that in all other respect the election or nomination was free from any corrupt practice on the part of the candidate or any of his agents;

then, the Court may decide that the election or nomination or the returned candidate is not void.'

7. The grounds on which the Councilor can be removed from his office under Section 19 of the Act, 1956 is different compared to the grounds under Section 441(b) of the Act, 1956 on which basis, the election of a Councilor can be challenged. The petitioner does not intend to challenge the election of respondent No.2 and the application has been filed strictly praying for invocation of the power of the Commissioner under Section 19 of the Act, 1956, which was indeed to be decided by the Commissioner in accordance with law. Instead of taking such approach, the Commissioner has dismissed the application directing the petitioner to file election petition under Section 441 of the Act, 1956. Hence, under these circumstances, I am of this view that the Commissioner, Durg has failed to exercise jurisdiction and has also failed to act within the parameters of the law enacted.
8. Hence, this petition is disposed off at the motion stage. The impugned order is set aside. The application filed by the petitioner is restored and the Divisional Commissioner of Durg Division is directed to give proper consideration to the application filed by the petitioner under Section 19 of the Act, 1956 and pass an appropriate order in accordance with law.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
Judge