AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.472 of 2018

Order reserved on: 4-4-2018

Order delivered on: 13-4-2018

Smt. Asha Suryavanshi, W/o Narayan Suryavanshi, aged about 29 years, President, Nagar Palika Parishad, Ratanpur, District Bilaspur (C.G.), R/o Ward No.3, Mahamaya Para, Ratanpur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Urban Administration and Development, Mantralaya, Raipur, District Raipur (C.G.)

2. The State Election Commission constituted under Article 243-K of the Constitution of India, Election Commission Office, Raipur, District Raipur (C.G.)

3. The Collector cum Competent Authority, Bilaspur, District Bilaspur (C.G.)

4. The Chief Municipal Officer, Nagar Palika Parishad, Ratanpur, Teh. Kota, District Bilaspur (C.G.)

5. Anil Kumar Yadav, S/o Late Panchram Yadav, aged about 35 years, Ward Member 7.

6. Ramkumar Kashyap, S/o Shanker Lal Kashyap, aged about 45 years, Ward Member 13.

7. Smt. Sukwara, W/o Lavkush Kashyap, aged about 43 years, Ward Member 8.

8. Smt. Ruksana, W/o Rafiq Beag, aged about 44 years, Ward Member 14.

9. Kanhaiya Yadav, S/o Late Shyam Lal Yadav, aged about 45 years, Ward Member 3.

10. Vishnu Prasad Induva, S/o Chaitram Induva, aged about 46 years, Ward Member 11.

11. Dharmendra Kumar Tamrakar, S/o Late Faguram Tamrakar, aged about 44 years, Ward Member 5.

12. Jaiprakash Kashyap, S/o Laxmi Prasad Kashyap, aged about 48

years, Ward Member 12.

13. Damodar Singh Kashtriya, S/o Mohan Singh, aged about 50 years, Ward Member 2.

14. Raju Shrivas, S/o Malik Ram, aged about 45 years, Ward Member 6.

15. Smt. Dubasiya Bai Jagat, W/o Bhan Singh, aged about 40 years, Ward Member 15.

16. Harnarayan Porte, S/o Shyamnath Gond, aged about 70 years, Ward Member 1.

17. Smt. Kunwara Ansari, W/o Rafiq Beag, aged about 50 years, Ward Member 4.

18. Suresh Kumar Suryavanshi, Ward Member 9.

19. Rashilata Mathur, Ward Member 10.

5 to 19 All R/o Nagar Palika Parishad, Ratanpur, Tahsil and Police Station Ratanpur, District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. Shakti Raj Sinha, Advocate.
For State/Respondents No.1 and 3: -
Mr. Arun Sao, Deputy Advocate General.
For Respondent No.2: Mr. R.S. Marhas and Mr. Aman Tamboli, Advocates.
For Respondent No.4: Mr. Manoj Paranjpe, Advocate.
For Respondents No.5 to 12: -
Mr. Neelkanth Malaviya, Advocate.
For Respondent No.13: Mr. Amrito Das and Mr. Abhyuday Singh, Advocates.
For Respondents No.14 to 19: -
Mr. Yogendra Pandey, Advocate.
Amicus: Mr. Anurag Dayal Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. R.M. Sahai, J, speaking for the Supreme Court in the matter of **Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and others**[1] defined recall of elected representative as under: -

> "... Recall of elected representative is advancement of political democracy ensuring true, fair, honest and just

1 AIR 1993 SC 2042

> representation of the electorate. Therefore, a provision in a statute for recall of an elected representative has to be tested not on general or vague notions but on practical possibility and electoral feasibility of entrusting the power of recall to a body which is representative in character and is capable of projecting views of the electorate. ..."

2. The petitioner herein, who is elected President of Municipal Council, Ratanpur, District Bilaspur, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India calling in question the memo dated 23-12-2017 (Annexure P-1) issued by the Collector, Bilaspur and the memo dated 22-1-2018 (Annexure P-2) issued by the State of Chhattisgarh forwarding the memo dated 23-12-2017 to the Secretary, Chhattisgarh State Election Commission, and also eventually seeks to challenge the order dated 31-1-2018 (Annexure P-3) passed by the Chhattisgarh State Election Commission, by which the programme for preparation of voter list has been published by the State Election Commission.

3. The aforesaid challenge has been made by the petitioner herein on the following factual backdrop: -

4. Municipal Council, Ratanpur is a body corporate constituted under Section 18 of the Chhattisgarh Municipalities Act, 1961 (for short, 'the Act of 1961') and consists of 15 Councillors. The petitioner was elected as President of Municipal Council, Ratanpur directly from among the voters of Ratanpur Municipal Constituency on 4-1-2015 under the provisions of the Act of 1961. The Councillors (with requisite number) of the said Municipal Council moved a proposal for no confidence motion against the petitioner herein on 17-7-2017 which she challenged by way of W.P.(C)No.2319/2017 before this

Court by filing writ petition which was disposed of on 28-8-2017, as on behalf of the State it was submitted that the notice dated 17-8-2017 has already been withdrawn and there is no proceeding of no confidence motion pending against the petitioner. Thereafter, on 31-8-2017, a proposal for recall of President was moved by respondents No.5 to 17 herein before the Collector under Section 47 of the Act of 1961. On 26-9-2017, the Collector called information from the Chief Municipal Officer, Municipal Council, Ratanpur, as to whether the petitioner herein has completed two years of her tenure from the date of assuming the office and other information as required under Section 47(1) of the Act of 1961. Again, on 1-11-2017, on receipt of information from the Chief Municipal Officer, the Collector fixed the date of appearance of the said Councillors of the Municipal Council moving the process of recall, on 6-11-2017 and on the said date, the Councillors appeared and their signatures were verified and same have been taken in the note sheet dated 6-11-2017, and the Collector has directed the matter to be placed for further consideration on 23-12-2017. In the meanwhile, on 30-10-2017, all the 13 Councillors repeated their prayer for taking action for recall of the petitioner herein. On 23-12-2017, the Collector after verification and satisfaction sent the matter to the State Government with his recommendation as required under Section 47 of the Act of 1961 and the State Government, in turn, sent the matter to the State Election Commission vide Annexure P-2 and on 31-1-2018, on receipt of the said information, the State Election Commission has issued the programme for voter list. According to the petitioner, on 1-2-2018, a news regarding

recall of President and voting on the proposal for recall was published in the daily newspaper and thereafter, on 5-2-2018, out of 13 Councillors, respondents No.14 to 17 herein (four Councillors) made an application to the Collector vide Annexure P-12 to withdraw their names submitted in support of the proposal for recall, but it appears that no action has been taken on the said application and thereafter, on 13-2-2018, this writ petition has been preferred stating inter alia that Annexures P-1, P-2 and P-3 issued respectively by the Collector, the State of Chhattisgarh and the State Election Commission are unsustainable and bad in law, as the Collector has not satisfied himself as required under Section 47(2) of the Act of 1961 and the four Councillors had already withdrawn their candidature from the process of recall and as such, ¾th majority for initiating the process of recall is not available as on day and therefore the proposal sent cannot be put to vote under Section 47(1) of the Act of 1961.

5. On notices being issued, the official as well as the private respondents have filed their return.

6. The State of Chhattisgarh/respondents No.1 and 3 has stated in its return that respondents No.7 to 13 have submitted proposal for recalling of President and on 6-11-2017 and they have candidly accepted their signatures on the said proposal and after recording satisfaction about the admissibility of the proposal for recalling of President as required under Section 47(1) of the Act of 1961, the Collector has forwarded the same to the State Government on 23-12-2017 and the State Government, in turn, forwarded the same to

the State Election Commission as required under Section 47(2) of the Act of 1961 and accordingly, under sub-section (3) of Section 47 of the Act of 1961, the State Election Commission has initiated proceeding for preparation of voter list vide Annexure P-3. It has been further stated in the return that the entire process of recall has been initiated strictly in accordance with law, particularly under Section 47 of the Act of 1961 and there is no illegality and therefore the writ petition is not maintainable and is liable to be dismissed.

7. Return has also been filed on behalf of respondents No.5 to 13 opposing the writ petition filed by the petitioner stating inter alia that since election has already been notified vide Annexure P-3 and fresh election programme has already been declared, no interference is required. It has further been stated that the proposal has been initiated strictly in accordance with law and as such no interference is required to be made in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Return has been filed by respondents No.14 to 19 supporting the writ petition.

9. No rejoinder has been filed.

10. Mr. Shakti Raj Sinha, learned counsel for the petitioner, would submit as under: -

    1. On the submission of proposal for recall by the respondents/Councillors, the Collector did not record any satisfaction as required under Section 47(2) of the Act of 1961 and therefore all the subsequent proceedings initiated on the basis of said proposal are vitiated and deserve to be

quashed.

2. Out of 15 Councillors who have moved the process of recall, 4 Councillors have already withdrawn their consent, as they have given their consent on the basis of misunderstanding under pressure and duress and, therefore, the recommendation already sent by the Collector without recording satisfaction becomes invalid and it cannot be put to vote before the Municipal Constituency for voting to recall the petitioner. Therefore, the memos Annexures P-1 and P-2 and the preparation of voter list – Annexure P-3 deserve to be quashed.

11. Mr. Arun Sao, learned Deputy Advocate General appearing for the State of Chhattisgarh/respondents No.1 and 3, would support the action of the Collector and submit that the Collector has not only verified the signatures and also satisfied himself about the admissibility of the proposal for recall, and after fully satisfying with regard to the contents of the proposal and the condition precedent for exercise of power, has rightly forwarded the proposal to the State Government and the State Government, in turn, has forwarded the same to the State Election Commission for making arrangement for recall, strictly in accordance with law. He would further submit that it is not only the case that respondents No.14 to 17 also on 30-10-2017 along with other Councillors repeated their request for pressing the proposal of recall with the Collector and subsequent withdrawal on alleged ground, if any, would not nullify the already verified and satisfied proposal of recall submitted to the

State Government which has already been acted upon by the State Election Commission by issuing programme Annexure P-3 for preparation of voter list, as such, the Collector has become *functus officio* and propriety demands that verified and satisfied proposal duly recommended by the Collector be acted upon in accordance with law and no interference is warranted in exercise of jurisdiction vested under Article 226 of the Constitution of India.

12. Mr. Manoj Paranjpe, learned counsel appearing for respondent No.4, has made submission with regard to the scheme of the Section 47 of the Act of 1961.

13. Mr. Neelkanth Malaviya, learned counsel appearing for respondents No.5 to 12, would submit that once the proposal has been verified and after satisfaction, the Collector has forwarded the same to the State Government and the State Government, in turn, to the State Election Commission which has commenced the work of preparation of voter list by issuing notification, it cannot be put to challenge and the writ petition as framed and filed is not maintainable. Even repeated request has been made by respondents No.14 to 17 for expediting the process of recall earlier submitted which clearly states that the proposal of withdrawal submitted by respondents No.14 to 17 is only the result of an afterthought and it is not liable to be accepted and the writ petition deserves to be dismissed. Mr. Malaviya would rely upon a judgment of the Supreme Court in the matter of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and**

others[2] to buttress his submission.

14. Mr. Amrito Das and Mr. Abhyuday Singh, learned counsel appearing for respondent No.13, would also submit that the act of the Collector is strictly in accordance with law.

15. In rejoinder submission, Mr. Sinha, replying to the preliminary objection raised with regard to maintainability of the writ petition, would submit that the writ petition is maintainable, as the question raised by Mr. Malaviya would stand covered by the Full Bench decision of the M.P. High Court in the matter of **Naravadi Bai Choudhary and others v. State of M.P. and others**[3] to say forwarding of proposal by the Collector to the State Government cannot be termed as election process. Mr. Sinha would also rely upon another Division Bench judgment of the M.P. High Court in the matter of **Gopal Yadav v. State of M.P. and others**[4] to canvass his view point.

16. Mr. Anurag Dayal Shrivastava, learned *amicus*, would submit that Section 47 of the Act of 1961 is divided in two parts, the first part relates to sub-section (1) which is the substantive provision providing the condition precedent for recall of President, whereas the second part i.e. sub-sections (2) and (3) is the procedural provision. He would further submit that the Legislature has consciously employed in all the three provisos appended to sub-section (1) of Section 47 of the Act of 1961, the word “initiated” and therefore that is suggestive of the fact that no such process of recall

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2 (2001) 8 SCC 509
3 2005(2) M.P.L.J. 306
4 (2002) 4 MPLJ 369

shall be initiated unless the proposal for recall, which is the condition precedent mentioned in sub-section (1) of Section 47, is moved by ¾th majority of the members after the period of two years from the date on which such President is elected and entered his/her office and it should only be the first recall and final process of recall, and once that is validly moved and the recall process is put to motion before the electorate of the municipal constituency, then only the process cannot be turned back. He would also submit that in some exceptional contingencies such as undue pressure, misrepresentation or fraud on the Councillors, moving of recall process is on account of signature campaign, as such signature campaign is impermissible and counter campaign for electoral offices are not unknown in our country. He would contend that action of the Collector in satisfying and verifying under Section 47(2) of the Act of 1961 is not only statutory, but ministerial in character and therefore in some exceptional eventualities like signatures having been obtained by fraud or misrepresentation on undue pressure and by coercion or some other similar exceptional circumstances shown by the Councillors, the Collector has power and jurisdiction to reconsider his recommendations sent to the State Government as such till his ministerial act in shape of recommendation is finally accepted and it is put to vote by the electorate of the constituency.

17. I have heard learned counsel for the parties and gave my thoughtful consideration to the submissions made herein-above and also went through the records critically and carefully as well.

18. Upon consideration, following issues arise for decision making: -

1. Whether the writ petition as framed and filed challenging the process of recall initiated by the Collector under Section 47(1) of the Act of 1961 is barred by Article 243-ZG(b) of the Constitution of India?

2. Whether the Collector has failed to satisfy himself about the admissibility of the proposal of recall submitted by the respondents / Councillors as provided in Section 47(2) of the Act of 1961?

3. Whether the Collector acting under Section 47(2) of the Act of 1961 has power and jurisdiction to review its recommendation on exceptional circumstances, before his recommendation on proposal of recall is finally put to vote under Section 47(1) of the Act of 1961 before the electorate of the Municipal Constituency?

Answer to question No.1: -

19. The petitioner has mainly called in question the recommendation of the Collector dated 23-12-2017 by which the Collector has verified and satisfied himself about the admissibility of the proposal of recall submitted by the respondents/Councillors under Section 47(2) of the Act of 1961 and made his recommendation to the State Government under Section 47(2) and eventually also seeks to challenge the programme of preparation of electoral voter list issued by the Chhattisgarh State Election Commission as envisaged under Section 47(3) of the Act of 1961. The challenge is on the ground that the Collector has not satisfied himself about the genuineness of the proposal of recall under Section 47(2) of the Act

of 1961, therefore, it stands vitiated. Apart from that, the challenge is also to the said recommendation of the Collector on the ground that subsequently respondents No.14 to 17 citing some exceptional circumstances sought to withdraw their consent already given, that has not been considered by the Collector and therefore the recommendation of the Collector on the said proposal deemed to have ceased to be a valid proposal which is required to be put to vote before the electorate under Section 47(1) of the Act of 1961 for recall of the President. Thus, what is challenged is the process of recall made by the private respondents and its recommendation by the Collector to be the valid proposal of recall and further, forwarding of the same by the Collector to the State Government, which in turn has forwarded it to the State Election Commission.

20. Article 243-ZG of the Constitution of India provides as under: -

> "**243-ZG. Bar to interfere by Courts in electoral matters.**—Notwithstanding anything in this Constitution, —
>
> (a) "the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any Court;
>
> (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as it provided for by or under any law made by the Legislature of a State."

21. Clause (b) of Article 243-ZG of the Constitution of India clearly provides that no election to any municipality can be called in question except by an election petition. The process of recall may not be in stricto senso termed as election process, but it can be called as the process of recall to the election. Forwarding of

proposal by the Collector to the State Government cannot by itself be termed as election process. The election process will begin when the Election Commission declares schedule for election. Simply because the Election Commission directed finalisation of voter list, it cannot be said that the election process has begun.

22. The aforesaid question also came up for consideration before a Full Bench of the M.P. High Court in **Naravadi Bai Choudhary** (supra) in which the Full Bench negativing the similar argument has held that forwarding of proposal by the Collector to State Government cannot be termed as election process and Article 243-ZG of the Constitution of India would not be applicable. Their Lordships of the Full Bench observed as under: -

> "18. It is true that aforesaid Clause (b) provides that no election to any municipality can be called in question except by an election petition. True it is that the process of recall is also election. But the election process commences only when the Election Commission notifies the election. Forwarding of proposal by the Collector to the State Government cannot by itself be termed as election process. Even if we give a liberal meaning to the word 'election process' the same will begin when the Election Commission declares schedule for election. Simply because the Election Commission directed finalisation of voter list, it cannot be said that the election process had begun.
>
> 19. What was challenged in the writ petition was not the election but the initiation of process of recall, on the grounds that the proposal was not presented by the requisite number of Councillors, that there was no proper verification and that ¾th of the elected members did not sign the proposal out of their free will. These questions do not pertain to the election."

23. Following the principle of law laid down in **Naravadi Bai Choudhary** (supra) and in view of the above-stated analysis, it cannot be held that forwarding of memo by the Collector, recalling

the proposal by the Collector to be the valid proposal and further forwarding of same by the State Government to the State Election Commission and even the preparation of voter list cannot be termed to be election covered by Article 243-ZG of the Constitution of India and said challenge is not covered by Article 243-ZG(b) of the Constitution of India. Therefore, the argument raised in this behalf deserves to be rejected and the decision cited by Mr. Malaviya – **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha** (supra) is clearly distinguishable on facts. Thus, question No.1 is answered accordingly.

Answer to question No.2: -

24. Section 47 of the Act of 1961 provides 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 a 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."

25. Section 47(2) of the Act of 1961 has conferred duty upon the Collector to verify that three fourth of the Councillors specified in sub-section (1) have moved the proposal of recall, then his further duty is to send the proposal to the State Government after his satisfaction. The Collector has only to specify that the process of recall is moved by three fourth of the total number of elected Councillors and presented to the Collector and further satisfy that two years period has expired form the date of election of President and he is entering the office on the date on which the proposal for recall is moved, and he is further to ensure that the proposal of recall is initiated once in the whole tenure of the elected President and in case of by election, half of his or her tenure is expired.

26. In another Full Bench decision in **Naravadi Bai Choudhary** (supra), Their Lordships of the M.P. High Court have further held that the two requirements i.e. signing and presenting the proposal as provided in the proviso are different and there is no requirement that presentation should also be by not less than ¾th of the total number of the elected Councillors, and observed as under: -

"10. In view of the aforesaid, reconstruction of the proviso to sub-section (1) of section 47 we are of the firm view that the two requirements of signing and presenting the proposal as provided in the proviso are different and it is not the requirement that presentation should also be by not less than ¾th of the total number of the elected

Councillors.

12. Again we have to refer to the language used in Section 47 of the Act. Sub-section (2) of this section requires that the Collector, after satisfying himself and verifying that the ¾th of the Councillors specified in sub-section (1) have signed the proposal of recall, shall send the proposal to the State Government. The provision nowhere mandates that the verification shall be made in the presence of signatories. Need not to say that verification of signatures of signatories after procuring their presence may be one of the modes for such verification but it is not the only or exclusively provided mode, because nothing can be read in the proviso itself to this effect, therefore, to put fetters on the discretion of the Collector in selecting the mode of verification by making the personal presence of signatories mandatory while the law is framed to give him more elbow room in the matter would be clearly against the legislative intent.

13. The authorities, entrusted with the task of verification of signatures, being responsible, are expected to conduct themselves in an independent and unbiased manner. The process of verification may be akin to the one adopted by the bank authorities regarding genuineness of signatures of the drawer on a cheque.

14. If the physical presence of the Councillor concerned is made a sine qua non for verification of the signatures, at times it may defeat the purpose. There may be a situation where a Councillor may not be able to appear before the authority concerned due to old age, infirmity, serious illness etc., though he/she was certainly in a position to put his/her signatures on the proposal. In such a situation if the authority cannot forward the proposal to the State Government for want of personal appearance though sufficient material is placed before the authority for his satisfaction regarding the genuineness of the signatures, such as filing of the affidavit or submission of specimen signature of the Councillor duly attested then the same will defeat the proposal itself and in turn the democratic process."

27. I am in respectful agreement with the view expressed by the Full Bench judgment in the afore-stated case {**Naravadi Bai Choudhary** (supra)}.

28. Reverting to the facts of the present case, it would appear that in the present case, on 17-7-2017, the proposal for recall of President

was moved by 13 Councillors out of 15 Councillors of that Municipal Council in which the Collector on that day directed to seek certain information from the Municipal Council as to whether she has completed three years from the date of election and entering her office and sought some other information which was furnished by the Municipal Council. Thereafter, on 6-11-2017, signatures of the Councillors who have moved the proposal for recall of President were verified by the Collector as all the Councillors appeared before the Collector in presence of the Chief Municipal Officer, Municipal Council, Ratanpur and he satisfied himself under Section 47(2) of the Act of 1961. The Collector again on 23-12-2017 directed the matter to be considered and on that day, he has satisfied himself that the signatures have been verified and ¾th of the Councillors have moved the proposal of recall and this is for the first time, in the entire process for recall when the proposal has been moved, he made recommendation to the State Government under second part of Section 47(2) of the Act of 1961. Thus, the Collector has performed his job of verifying the proposal and satisfying himself about the admissibility of the proposal of recall in the manner envisaged under Section 47(2) of the Act of 1961 in which it cannot held that the Collector has not satisfied himself about the admissibility of the proposal of recall recommended by the Collector and the argument raised on behalf of the petitioner in this behalf deserves to be rejected.

Answer to question No.3: -

29. Finally, this takes me to the last question to be considered about the

power and jurisdiction of the Collector to review its recommendation on the proposal of recall on exceptional circumstance before his recommendation on the said proposal is put to vote before the electorate for exercising their right under sub-section (1) of Section 47 of the Act of 1961 for recall of the elected President.

30. In order to consider this question, it would be appropriate to take into account the legislative history of Section 47 of the Act of 1961. Initially, before Section 47 was amended with effect from 21-4-1997. Originally, Section 47(1) stood as under: -

> "**47. No-confidence motion against the President.**— (1) A motion of no confidence may be moved against the President at a meeting specially convened for the purpose under sub-section (2) and if the motion is carried by a majority of more than three fourths of the elected Councillors present and voting in the meeting and if such majority is more than two third of the total number of elected Councillors constituting the Council, the copy of such motion shall be sent by the Collector to the State Government forthwith and the President shall cease to hold office from a date to be notified by the State Government within a period of 15 days from the date of receipt of motion and if the State Government fails to issue the notification within the stipulated time, the President shall be deemed to have vacated the seat on the expiry of the said period:
>
> Provided that no such motion shall lie against the President:—
>
> (i) within a period of two years from the date on which the enters upon his office;
>
> (ii) within a period of one year from the date on which previous motion of no-confidence was rejected;
>
> (iii) if the remaining period of the Council is less tan six months."

31. The aforesaid provision of removing the President through no confidence was substituted as recalling of President by by M.P. Act

18 of 1997, with effect from 21-4-1997.

32. The Legislature in its wisdom has earlier conferred the power of removing the elected President by no confidence motion to a smaller representative body called as the Councillors who are directly elected from the municipal constituency being a body which is representative in character, but later on, finding that the arrangement to be not satisfactory, the Legislature has in its wisdom thought it expedient to take away that power from that smaller body and has decided to confer it to the voters of the municipal constituency who had elected the President to recall him or her, but the authority of moving the motion of recall remains with the elected Councillors/smaller body which have had earlier the power to remove the President and on their recommendation, on ¾th majority, the motion of recall can be maintained for recalling the President.

33. A focused glance on the scheme of Section 47 of the Act of 1961 quoted herein-above in paragraph 24 would show that Section 47 is in two parts. First part is a substantive provision by which the President of Municipal Council can be recalled through a secret ballot of more than ¼th casting the vote in accordance with the procedure as may be prescribed, however, initiation can be made by the Councillors by not less than ¾th of the total number of the elected Councillors if it is moved after a period of two years from the date on which the President is elected and he or she has entered in office and it is moved only if he is not removed earlier from the date on which it is moved. Second part in shape of sub-sections (2) and (3) of Section 47 of the Act of 1961 is the procedural provision by

which the Collector of the District is required to verify and satisfy that the three fourth of the Councillors specified in sub-section (1) have signed the proposal of recall and thereby he has to send the proposal to the State Government recommending that the proposal has been moved by not less than three fourth of the elected Councillors presented to him and it is moved within two years from the date on which the President is elected and entered the office and further, it is moved for the first time in his whole tenure meaning thereby that it has not been moved earlier successfully. Again sub-section (3) of Section 47 casts a duty on the part of the State Election Commission to arrange for voting on the proposal of recall in such manner as may be prescribed.

34. Now, the question is whether the duty of the Collector to verify himself about the admissibility of the proposal of recall is such that it cannot be reviewed / reconsidered in any circumstance after making its recommendation and before his recommendation is finally accepted and put to vote before the electorate.

35. The submission of Mr. Sao, learned Deputy Advocate General appearing for the State/ respondents No.1 and 3; Mr. Malaviya, learned counsel appearing for respondents No.5 to 12; and Mr. Das, learned counsel appearing for respondent No.13, is that once the proposal is recommended to be the valid proposal in terms of Section 47(2) of the Act of 1961 and further it is forwarded by the State Government to the State Election Commission for arrangement of voting for recall, the Collector becomes functus officio and it cannot be reviewed/reconsidered by the Collector in

any circumstance relying upon the Full Bench decision of the M.P. High Court in the matter of **State of M.P. and another v. Mahendra Kumar Saraf and others**[5]. Implicit reliance and great stress has been laid upon the following observations made by Their Lordships of the Full Bench in **Mahendra Kumar Saraf's** case (supra): -

> "46. Propriety demands that there must be an end to every proceedings. When the Collector after satisfying himself that the proposal is in accordance with the requirement of section 47 of the Municipalities Act has forwarded the same to the State Government, then thereafter the proceedings cannot be allowed to be reopened by the Collector.
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> 47. Therefore, we are in complete agreement with the learned Single Judge that after having sent the proposal to the State Government, Collector becomes functus officio.
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> 48. Section 47 of the Act does not give any authority to the State Government to entertain any objection to the proposal sent by the Collector to it. Therefore, the State Government cannot entertain any objection to the proposal duly forwarded by the Collector. In the absence of any express provision to that effect in section 47 of the Act, State Government cannot sit over the finding of the Collector.
>
> 49. If the State Government entertain such objections and hold a roving enquiry in the matter, it may delay the process and the very purpose of incorporating section 47 shall stand frustrated. Therefore, we are in complete agreement with the finding recorded by the learned Single Judge in this regard. For the same reason the State Government cannot be allowed to remit the matter to the Collector for the purpose of entertaining the objections and decide the same.
>
> 50. When the law requires the satisfaction of the Collector, the same cannot be interpreted in a manner so as to substitute it by the satisfaction of the State Government. Once the proposal has been sent by the Collector after verification and satisfaction the State Government has no role but to forward the same to the State Election Commission.

5 2005(3) M.P.L.J. 578

> 51. Keeping in view the laudable object behind the provisions of section 47, the matter must proceed expeditiously and therefore, the State Government is under an obligation to forward the proposal to the State Election Commission post haste. The State Government has no authority to defeat the proposal simply by delaying the matter in the garb of considering or entertaining the objections and deciding the same leisurely or by remanding the matter to the Collector for entertaining the objections and giving decision thereon after a long drawn enquiry. It is, therefore, obligatory for the State Government to send the proposal to the State Election Commission expeditiously without any delay."

36. The question is, what is the nature of duty performed by the Collector under Section 47(2) of the Act of 1961 while recommending the proposal of recall to be valid proposal for putting it to vote before the electorate of the municipal constituency, whether it is a pure and simple ministerial act / administrative act or whether it is an administrative decision requiring exercise of discretion on the part of the Collector making him functus officio after recommending it and sending it to the State Government and the State Government further, forwarding it to the State Election Commission for arranging voting to the electorate.

37. At this stage, it would be appropriate to examine the distinction between administrative action and administrative decision. A Full Bench of the Delhi High Court in the matter of **Shri K.R. Raghavan, Commissioner of Income Tax, Delhi V and others v. Union of India and others**[6] posed two questions for consideration defining (i) the distinction between administrative action, on the one hand and administrative decision, on the other; and (ii) with regard to reviewability of administrative action and/or administrative decision, on the one hand, and a judicial or quasi-

6 1979(2) SLR 478

judicial decision, on the other, which state as under:-

> "1. What is the true distinction between administrative action, on the one hand, and the administrative decision, on the other?
>
> 2. What is the distinction between the reviewability of administrative action and/or administrative decision, on the one hand, and a judicial or quasi-judicial decision, on the other?"

38. While answering question No.1, the Full Bench answered the question as under: -

> "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."

39. While answering question No.2, the Full Bench answered the question as under: -

> "10. Curiously enough the distinction drawn above is one of the least investigated areas of administrative law. Only Dr. Rubinstein has studied the question of conclusiveness from various angles in Chapter II of his book "Jurisdiction and illegality". We are here concerned with the conclusiveness of an administrative act or decision as against the authority doing the act or arriving at the decision. From general principles and scattered decisions, the following Rules have been enunciated by Dr. Rubinstein :
>
> > "If the statute giving the power of action or decision itself says that the act or the decision shall be final, the power to revoke or review the same is thereby negatived. Conversely, any provision which explicitly or impliedly allows the authority to alter, revoke or rescind its act reserves the power to review."

11. The exercise of a ministerial or discretionary power is not final in any sense. Firstly, the power can be exercised not only once and for all, but as often as it is required according to change in circumstances. Secondly, the very fact that the exercise of the power does not exhaust the power of the authority to exercise it again means that the power is revocable. The result of the exercise of the power on the second occasion may be different from the result of its exercise on the first occasion. This is the general principle governing all administrative acts in the Indian as also in the English law. The principle is embodied in section 14 of our General Clauses Act, 1897, which is as below :

> "(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.
>
> (2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January 1887."

This is analogous to section 32(1) of the English Interpretation Act, 1889, which is as below :

> "32. *Construction of provisions as to Exercise of Powers and Duties*:—
>
> (1) where an Act passed after the commencement of this Act confers a power or imposes a duty, then unless the contrary intention appears, the power may be exercised and the duty shall be exercised and the duty shall be performed from time to time as occasion requires."

Relying on section 32 of the English Interpretation Act, Professor H.W.R. Wade in his book "Administrative Law, 4th Edition, page 214", states the law as follows :

> "In the interpretation of statutory powers and duties there is a rule that unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires."

He recognises that there may nevertheless be special circumstances which may make an administrative action or decision irrevocable, but none of these are present here.

12. Another distinction is between the essential

revocability of an administrative act or a decision and the finality or conclusiveness of a judicial decision. A judicial decision is *res judicata* between the parties. This is one reason why not only the parties cannot reopen it, but even the judicial authority which made the decision is prevented from reviewing it on merits. On the contrary, an administrative decision which is not based on a dispute between the two parties and which is not given after hearing the parties does not operate as *res judicata*. Indeed, one of the tests applied by prof. Smith in identifying a judicial function is the test of conclusiveness which includes *res judicata* and finality attending a judicial decision, but not an administrative decision (S.A. De Smith, Judicial Review of Administrative Action, 3rd Edn. pp. 68 to 70). The party affected by it as also the authority making the decision are both able to reopen and review the same. Since the administrative decision as also a judicial decision are not mere administrative or legislative action, the General Clauses Act does not expressly deal with them. But there is some analogy between an administrative act or decision and a legislative act or decision inasmuch as none of them are made on the existence of a dispute and after hearing the parties to the dispute. It is well known that the exercise of a power to make subordinate legislation includes the power to rescind the same. This is made clear by section 21 of our General Clauses Act and section 32 (3) of the English Interpretation Act. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances."

40. Thereafter, the Supreme Court in the matter of **State of Maharashtra and others etc. v. Saeed Sohail Sheikh etc.**[7] defining the expressions 'ministerial', 'ministerial office', 'ministerial act', and 'ministerial duty', as illustrated by Black's Law Dictionary, held as under: -

> "28. The expressions 'ministerial', 'ministerial office', 'ministerial act', and 'ministerial duty' have been defined by Black's Law Dictionary as under :
>
> > "Ministerial, Adj. (16c) of our relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill the Court clerk's ministerial duties include recording judgments on the docket.

7 AIR 2013 SC 168

> Ministerial office. An office that does not include authority to exercise judgment, only to carry out orders given by a superior office, or to perform duties or acts required by rules, statutes, or regulations.
>
> Ministerial Act. An act performed without the independent exercise of discretion or judgment. If the act is mandatory, it is also termed a ministerial duty.
>
> Ministerial duty. A duty that requires neither the exercise of official discretion nor judgment." "

41. Prof. De Smith in his book on **'Judicial Review' (Thomson Sweet and Maxwell, 6th Edn. 2007)** refers to the meaning given by Courts to the terms 'judicial', 'quasi-judicial', 'administrative', 'legislative' and 'ministerial' for administrative law purposes and found them to be inconsistent. According to the author 'ministerial' as a technical legal terms has no single fixed meaning. It may describe any duty the discharge whereof requires no element of discretion or independent judgment. It may often be used more narrowly to describe the issue of a formal instruction, in consequence of a prior determination which may or may not be of a judicial character. Execution of any such instructions by an inferior officer sometimes called ministerial officer may also be treated as a ministerial function. It is sometimes loosely used to describe an act that is neither judicial nor legislative. In that sense the term is used interchangeably with 'executive' or 'administrative'. The tests which, according to Prof. De Smith delineate 'judicial functions', could be varied some of which may lead to the conclusion that certain functions discharged by the Courts are not judicial such as award of costs, award of sentence to prisoners, removal of trustees and arbitrators, grant of divorce to petitioners who are themselves guilty

of adultery etc..

42. In the matter of **Province of Bombay v. Khusaldas Advani**[8], the Supreme Court examined the difference between a quasi-judicial order and an administrative or ministerial order. Chief Justice Kania, in his opinion, quoted with approval an old Irish case on the issue in the following passage

> "… the point for determination is whether the order in question is a quasi-judicial order or an administrative or ministerial order. In Regina (John M' Evoy) v. Dublin Corporation, (1978) 2 LR Irish 371, 376, May C.J. in dealing with this point observed as follows :
>
> > "It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection, the term 'judicial' does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others."
>
> This definition was approved by Lord Atkinson in Frome United Breweries Co. v. Bath Justices, (1926) AC 586, 602, as the best definition of a judicial act as distinguished from an administrative act."

43. In the matter of **A.K. Kraipak v. Union of India**[9], the Supreme Court recognised that the dividing line between an administrative power and a quasi-judicial power was fast vanishing. What was important, declared the Court, was the duty to act justly which implies nothing but a duty to act justly and fairly and not arbitrarily or capriciously. Their Lordships observed as under: -

> "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power

8 AIR 1950 SC 222
9 (1969) 2 SCC 262

is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

44. In the matter of **Jamal Uddin Ahmad v. Abu Saleh Najmuddin**[10], the Supreme Court has dealt with the nature of distinction between judicial or ministerial functions in the following words: -

"14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be delegated or performance whereof may be secured through authorization. "The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges." (See Constitutional and Administrative Law, Phillips and Jackson, 6th Edn., P. 13.) P. Ramanatha Aiyar's Law Lexicon defines judicial function as the doing of something in the nature of or in the course of an action in court. (P. 1015) The distinction between "judicial" and

10 (2003) 4 SCC 257

> "ministerial acts" is: If a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially. (pp. 1013-14). Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, may be after making an enquiry, and the decision affects the rights and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts presented for the determination of the controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done. (Law Lexicon, ibid, p. 1234). In ministerial duty nothing is left to discretion; it is a simple, definite duty."

45. Applying the principles of law laid down by Their Lordships of the Supreme Court in above-stated judgments and the Full Bench judgment of the Delhi High Court in **Shri K.R. Raghavan** (supra), it is quite vivid that the Collector in the instant case is required to perform the ministerial function of verifying the proposal as to whether what is the total number of elected Councillors in that municipality and as to whether ¾th of the members of the elected Councillors have moved the process of recall and upon such verification if it comes to his knowledge or he is of the opinion that ¾th of the members of the elected Councillors have moved, then he has to further satisfy that two years has expired from the date on which such President is elected and enters his office and also further satisfy himself that no such recall has been moved successfully prior to moving of the instant proposal for recall. Thus, satisfaction to be recorded by the Collector under Section 47(2) of the Act of 1961 is purely ministerial in nature and no such duty to act judicially or the exercise of discretion has been conferred to the

Collector by the Legislature while exercising the job under Section 47(2) of the Act of 1961 as such, his duty is absolutely administrative in character. In Section 47(2) of the Act of 1961, there is nothing to say that the decision of the Collector under Section 47(2) is final by which it can be held that there is no such power of review on his recommendation qua the process of recall and it is open to reconsideration/review on change in circumstances / exceptional circumstances.

46. At this stage, "**Treatise on Parliamentary Practice**" by Erskine May, Twenty-second edition, 1997 (p. 339) – Withdrawal of Motions may be noticed herein profitably: -

> "Withdrawal of Motions "A member who has made a motion can withdraw it only by leave of the House, granted without any negative voice. This leave is signified, not upon question but by the Speaker taking the pleasure of the House. He asked, 'Is it your pleasure that the motion be withdrawn?' If no one desists, the Speaker says 'Motion by leave withdrawn'. However, if there is any objection or if a Member rises to continue the debate, the Speaker must put the question at the end of the debate as, even if a dissentient Member no longer objects, the motion can no longer be withdrawn. An amendment can be withdrawn in the same way, but neither a motion nor an amendment can be withdrawn except by the Member who moved it. It is, however, the practice for a member of the Government to withdraw a motion in the absence of the Member (also a member of the Government), who moved it. Occasionally a motion or amendment is, by leave, withdrawn, and another motion, or amendment substituted, in order to meet the views of the House, as expressed in debate. This course can be taken only with the general assent of the House. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to withdrawn or negatived since the question on the amendment stands before the main question." "

47. May in his book "**Parliamentary Practice**" (page 407) has observed that "A member who has proposed a motion cannot be

allowed to withdraw it except by the leave of the House and that too will be permissible if there is no dissent found against the withdrawal of the motion".

48. Apart from this, in a judgment of the M.P. High Court in the matter of **Prabhakar Narayan Kelkar and others v. State of M.P. and others**[11], the M.P. High Court while dealing with the situation on withdrawal of no-confidence motion against Deputy Mayor under the transitory provisions of the M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 1997, it has been held that the existence of a valid requisition is a condition precedent for holding the meeting for the consideration of no-confidence motion and it has further been held that once the requisition ceases to be a requisition before the meeting could take place the Commissioner has no jurisdiction to proceed further acting upon a requisition which ceases to exist in the eye of law. It has been observed as under: -

> "9. I am of the considered opinion that the existence of a valid requisition is a condition precedent for holding the meeting for the consideration of no-confidence motion and the legislative intent is that the requisition must be of that number of the councillors which constitutes atleast 1/6th of the total number of the councillors. The expression 'signed by not less than one-sixth of the total number of councillors constituting the Corporation' signifies that the required number of the councillors should themselves be the requisitionists. Once the requisition ceases to be a requisition before the meeting could take place the Commissioner has no jurisdiction to proceed further acting upon a requisition which ceases to exist in the eye of law. I must, however, hasten to add that the situation would be otherwise in case the meeting is actually held pursuant to the valid requisition as in that event the jurisdiction to hold the meeting consequent upon receiving a valid requisition would be taken to be exhausted and any subsequent withdrawal of the

11 1999(2) M.P.L.J. 608

requisition cannot nullify the effect of the meeting or its validity in any manner whatsoever.

10. It must further be not lost sight of that a requisition validly constituted cannot be deemed to have been withdrawn at the instance of any number of Parshads or councillors over and above the minimum required number that is 1/6th of the total number of the councillors constituting the Corporation. The decision in regard to the motion of no-confidence has to be taken in the manner prescribed under the act under section 24(1) thereof. In this view of the matter the withdrawal of support of the requisition by one or more councillors over and above the minimum of the 1/6th indicated above will not have any effect on the requisition which continues to be valid at the time of its presentation. The motion of no-confidence could fall or could be taken to have been carried only in accordance with the decision reached in the meeting for consideration of the no-confidence motion strictly adhering to the statutory provision referred to hereinabove. But, in a case where the requisition is withdrawn by the councillors who had initiated it and ceased to be a requisition by the minimum requisite number of councillors, before the holding of the actual meeting, there will be left nothing to be considered and the meeting even if called will have to be cancelled."

49. Similarly, a Division Bench of the Rajasthan High Court in the matter of **Kedar Nath Saini v. State**[12] held as under: -

"16. Even when there is no specific provision in the Act which empowers the Collector to reject the applications for withdrawal of motion if the application for withdrawal of the motion has been submitted before issue of notice of meeting nor there is any provision which empowers the Collector to accept that application for withdrawal of motion if that has been moved before issue of notice of meeting for considering the motion. In absence of both, the Court has no option but to take a reasonable view in the facts and circumstances of the case and in conformity with the object of the Act that the person who has majority with him should rule. …"

50. On the basis of aforesaid legal analysis, I am unhesitatingly of the opinion that the recommendation made by the Collector under Section 47(2) of the Act of 1961 is re-viewable / re-considerable on demonstrating exceptional circumstances such as fraud,

12 AIR 2004 Rajasthan 86

misrepresentation, coercion or undue influence by the person/ persons concerned before the proposal for recall is finally put to vote before the electorate of the municipal constituency under Section 47(1) of the Act of 1961 for recall of the elected President and I am in respectful disagreement with the view expressed by the Full Bench judgment of the M.P. High Court in **Mahendra Kumar Saraf's** case (supra) in paragraph 47 to the extent of holding that the Collector becomes functus officio after sending the recommendation to the State Government.

51. Fraud and Justice never dwell together : *fraus et jus nunquam cohabitant.*

52. Chief Justice Edward Coke proclaimed that “fraud avoids all judicial acts, ecclesiastical or temporal”. In the leading case of **Lazarus Estates Ltd. v. Beasley**[13], Lord Denning observed as under: -

> “No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud.”

It was concluded :

> “The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.”

53. In the matter of **Bhaurao Dagdu Paralkar v. State of Maharashtra and others**[14], it has been held that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud and it was observed as under: -

> “18. In Lazarus Estate Ltd. v. Beasley, (1956) 1 QB 702, Lord Denning observed at pages 712 and 713, "No judgment of a Court, no order of a Minister can be

13 (1956) 1 All ER 341
14 AIR 2005 SC 3330

> allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722).
>
> 19. These aspects were recently highlighted in the State of Andhra Pradesh and another v. T. Suryachandra Rao, (2005 (5) SCALE 21)."

54. In the matter of **Indian Bank v. Satyam Fibres (India) Pvt. Ltd.**[15], the Supreme Court referring to **Lazarus Estates Ltd.** (supra) and **Smith v. East Elloe Rural Distt. Council**[16], stated as follows: -

> "22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business."

55. In the matter of **United India Insurance Co. Ltd. v. Rajendra Singh and others**[17], Their Lordships of the Supreme Court have held that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high decree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

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15 (1996) 5 SCC 550
16 (1956) 1 All ER 855
17 (2000) 3 SCC 581

56. In the matter of **Ram Chandra Singh v. Savitri Devi and others**[18], the Supreme Court held thus:

> "15. … Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.
>
> 16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.
>
> 17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud."

57. In view of the above-stated settled principles, it is quite pellucid that fraud vitiates any act or order passed by any judicial, quasi-judicial or administrative authority and, therefore, even if no express power of review is conferred upon them, the said order can be reviewed by such authority. Therefore, on these limited grounds such as fraud, misrepresentation, coercion or undue influence, the Collector is empowered to record a further satisfaction on the said fact and to send revised recommendation to the State Government modifying / rectifying / maintaining its earlier recommendation for necessary action and thereafter, the State Government may proceed further in accordance with Section 47(2) of the Act of 1961. Thus, in my considered opinion, to that extent, the Collector has power and jurisdiction to reconsider / review its earlier recommendation if it is subsequently brought to his notice before the proposal of recall is put to vote under Section 47(1) of the Act of 1961.

58. Reverting to the facts of the present case, it is on record that respondents No.14 to 17 have moved the application on 5-2-2018 before the Collector during the pendency of recall proceeding

18 (2003) 8 SCC 319

before the official respondents that they have given their consent for proposal of recall under duress and on misunderstanding, but the Collector till this date has not taken cognizance of the said application. Though the recommendation of the Collector has further been forwarded by the State Government to the State Election Commission, but the proposal of recall has not been put to vote finally before the electorate of the municipal constituency till date. Presumably, as it is the stand of the State that the Collector has become functus officio after sending the recommendation on the process of recall to the State Government, which is not correct in view of the finding recorded herein-above, it would be appropriate to direct the Collector to take appropriate action on the said application preferred by respondents No.14 to 17 expeditiously.

59. In the light of aforesaid discussion, it is held as under: -

1. The writ petition as framed and filed questioning the process of recall is maintainable.

2. Non-consideration of the subsequently moved application on behalf of respondents No.14 to 17 on the part of the Collector is contrary to law. Accordingly, the Collector is directed to consider the said application in the light of the discussion made herein-above by making further / additional satisfaction to find out whether the consent of respondents No.14 to 17 was obtained by inducing pressure / duress or misrepresentation and thereafter to send further recommendation on the proposal of recall to the State

Government. Such further satisfaction should be recorded by the Collector within four weeks from the date of receipt of a copy of this order in presence of parties. Thereafter, the State Government / State Election Commission would proceed strictly in accordance with law depending on the receipt of further recommendation of the Collector.

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

61. Before parting with record, I must place on record the appreciation for the assistance rendered by Mr. Anurag Dayal Shrivastava, learned *amicus,* to the Court, who in short notice submitted written note and made oral submission on the issue involved in the matter.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.472 of 2018

Smt. Asha Suryavanshi

Versus

State of Chhattisgarh and others

Head Note

Collector has power and jurisdiction to review his recommendation sent under Section 47(2) of the Chhattisgarh Municipalities Act, 1961.

जिलाधीश (कलक्टर) के पास छत्तीसगढ नगरपालिका अधिनियम, 1961 की धारा 47(2) के अन्तर्गत भेजे गए अपने अनुमोदन का पुनर्विलोकन करने की शक्ति तथा क्षेत्राधिकार है।