

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.471 of 2018

Santosh Chandrakar, son of Sidhwaram Chandrakar, aged about 33 years, resident of Village Baiji, Tehsil Kawardha, District Kabirdham (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh Through the Secretary, Department of Panchayat and Rural Development Department, Mahanadi Bhavan Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. Collector, Collectorate Kawardha, District : Kabirdham, Chhattisgarh
3. Deputy Director, Panchayat And Rural Development, Kawardha, District Kabirdham, Chhattisgarh
4. Chief Executive Officer, Zila Panchayat Kawardha, District Kabirdham, Chhattisgarh
5. Sub Divisional Officer (Revenue), Kawardha, District Kabirdham, Chhattisgarh
6. Chief Executive Officer, Janpad Panchayat Kawardha, District Kabirdham, Chhattisgarh
7. Gram Panchayat Dudhiya, Through Its Secretary, Tehsil Kawardha, District Kabirdham, Chhattisgarh
8. Dilip Chandrawanshi, Assistant Internal Audit Taxation Officer, Janpad Panchayat Kawardha, District Kabirdham, Chhattisgarh
9. Laxman Chandrakar, Kejuram Chandrakar, Resident Of Village Baiji, Tehsil Kawardha, District Kabirdham, Chhattisgarh

---- Respondents

For Petitioner	:	Mr.R.S.Baghel, Advocate
For Res.No.1 to 3 and 5	:	Mr.R.N.Pusty, Govt.Advocate
For Respondent No.9	:	Mr.P.P.Sahu, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/03/2018

1. The petitioner was elected Sarpanch of Gram Panchayat Dudhiya, Tahsil and District Kabirdham. By order dated 22.9.2017 (Annexure P/1) he has been placed under suspension by the Sub Divisional Officer (Revenue), Kawardha in exercise of power conferred under Section 39 (1) (b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as "the Act of 1993"). He

preferred an appeal against his order of suspension before the Collector, Kabirdham. The Collector/Appellate Authority by order dated 29.1.2018 (Annexure P/2) dismissed the appeal leading to filing of this writ petition.

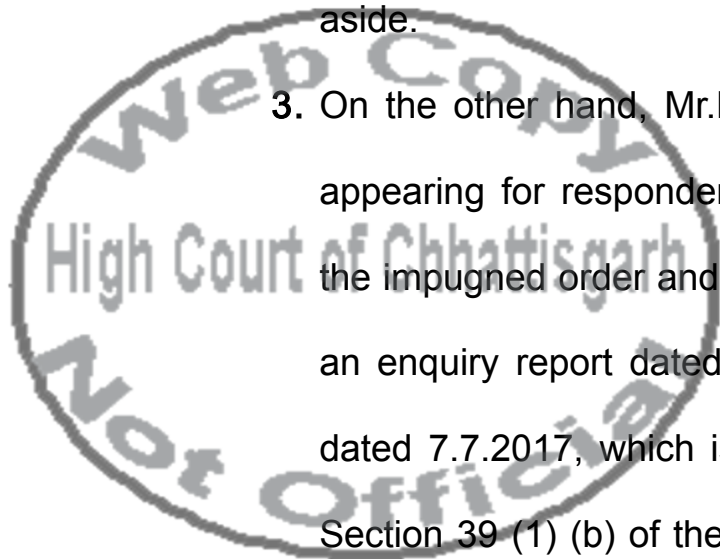
2. Mr.R.S.Baghel, learned counsel appearing for the petitioner, would submit that the petitioner has been placed under suspension in violation of the provisions contained in Section 39 (1) (b) of the Act of 1993, therefore, the order of suspension passed by the Sub Divisional Officer as affirmed by the Collector is liable to be set aside.

3. On the other hand, Mr.R.N.Pusty, learned Government Advocate appearing for respondents No.1 to 3 and 5/State, would support the impugned order and submit that the petitioner was served with an enquiry report dated 11.4.2017 along with show-cause notice dated 7.7.2017, which is sufficient and substantial compliance of Section 39 (1) (b) of the Act of 1993, therefore, the writ petition is liable to be dismissed.

4. Mr.P.P.Sahu, learned counsel appearing for respondent No.9/complainant would also support the impugned order.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. In order to decide the dispute raised at the Bar, it would be appropriate to notice Section 39 (1) of the Act of 1993 which reads as under:-



“39. Suspension of office bearer of Panchayat.- (1)

The prescribed authority may suspend from office any office bearer-

(a) against whom charges have been framed in any criminal proceedings under Chapter V-A, VI, IX, IX-A, X, XII, Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, suppression of immoral traffic in women and children, protection of civil rights and Prevention of Corruption :
or

(b) On whom, show cause notice along with charge sheet under this Act, has been served for removal from office. ”

7. A careful perusal of the aforesaid provision would show that show-cause notice along with charge-sheet for removal is necessary to be served before suspending the elected Sarpanch from the office, as such, serving of show-cause notice along with charge-sheet for removal is *sine qua non* for placing the elected Sarpanch under suspension.

8. The aforesaid provision also came up for consideration before a Division Bench of the Madhya Pradesh High Court in the matter of **Harishankar Patel v. State of M.P. and others**¹ in which it was held as under:-

“8. Section 39(1)(b) of the Act confers the power of suspension only when the office bearer has been served with a notice along with the charge sheet, for his removal from the office. Section 40 of the Act does not prescribe any form but only contemplates of giving opportunity to show cause against removal from office. Section 39 of the Act does not provide for show-cause notice before passing the order of suspension, but condition precedent for passing an order of suspension has been prescribed under Section 39(1)

¹ 1999 (1) M.P.L.j. 16

of the Act and one of the conditions is that the office bearer has been served with a notice along with a charge sheet for his removal. To me, it appears to be plain that for placing an office bearer under suspension under Section 39 of the Act, the prescribed authority gets the jurisdiction to pass such order only when an office bearer has been served with a notice along with a charge sheet to show cause against his removal from the office. Section 39 in terms does not provide for giving any show cause notice before passing an order of suspension. However, the prescribed authority gets the power of suspension only when notice of removal has been served.

9. Section 40 of the Act *inter alia* provides for removal of office bearer in case he is found guilty of misconduct in the discharge of his duties or his continuance in office is undesirable, in the interest of the public. However, before the removal, an office bearer is required to be given an opportunity to show cause against his removal from office. Further, Section 40 of the Act, in term does not indicate as to whether the show cause notice itself will contain the misconduct committed by the office bearer in the discharge of his duties or that which makes his continuance in office undesirable in the interest of the public or the same shall be given in a separate document. According to me, mandate of proviso to Section 40(1) is that an opportunity to show cause is to be given before passing the order of removal from office. In my opinion, no particular form or mode having been prescribed under Section 40 of the Act, it is left to the discretion of the State Government or the prescribed authority, either to indicate the act of misconduct or undesirability of continuance in office in the show cause notice itself or separately. Underlying principle under the proviso to Section 40(1) of the Act is that an office bearer, before he is removed from office must know the misconduct committed by him and is given an opportunity to show cause before his removal. It is providing an opportunity to show cause which is relevant and not its form.

10. In my opinion, word "along with" in Section 39(l)(b) of the Act cannot be read to mean that notice to show cause for removal and charge sheet have to be separately given. Even at the cost of repetition, I may state that Section 40 of the Act does not prescribe any particular form in which show cause notice is to be

given or the misconduct has to be enumerated. I am of the considered opinion that the mode followed for taking action under Section 40 of the Act if held to be valid, it cannot be said to be invalid for action of suspension under Section 39(l)(b) of the Act only on the ground that the charge sheet and notice to show cause are composite. In my opinion what is required under Section 39(l)(b) of the Act is that the office bearer is given a show cause notice for removal and he is served the charge-sheet. Once those twin conditions are fulfilled, the prescribed authority gets the jurisdiction to suspend the office bearer. As stated earlier, in the present case, notice to show cause for removal and charge sheet have been served on the appellant and that fulfil the requirements for exercise of power of suspension under Section 39 of the Act.

10. In my opinion, the case is squarely covered by the principle laid down in Karan Singh's case (supra). In the present case, show cause notice against removal contained articles of charges. This according to the Karan Singh (supra) is substantial compliance of provision of Section 39(l)(b) of the Act. In fact, I go a step further and hold that show cause notice itself containing article of charges satisfies the requirement of Section 39(1)(b) of the Act and it is not only substantial compliance but full adherence to the aforesaid provision. In my opinion, the expression substantial compliance presupposes some omission, but as held earlier, no form having been prescribed, show cause notice containing the article of charges shall tantamount to compliance of the provision of Section 39(1)(b) of the Act in word and spirit. Thus the purported conflict between the two decisions of this Court in the case of Ratan Singh and Karan Singh is more imaginary than real. I negative this submission of the learned counsel.”

9. Following the principle of law laid down by the High Court of Madhya Pradesh in the aforesaid judgment (supra), if the facts of the present case are examined, it is quite vivid that undisputedly the petitioner was not served with a show-cause notice along with charge-sheet for removal before passing the impugned order dated 22.9.2017, which is *sine qua non* for placing the elected

Sarpanch under suspension under the provisions contained in Section 39(1) (b) of the Act of 1993. The service of enquiry report with notice cannot be said to be sufficient/substantial compliance of Section 39 (1) (b) of the Act of 1993.

10. As a fallout and consequence of the above-stated discussion, the impugned order dated 22.9.2017 (Annexure P/1) passed by the Sub Divisional Officer (Revenue), Kawardha and order dated 29.1.2018 (Annexure P/2) passed by the Collector, Kabirdham are hereby set aside. However, the Sub Divisional Officer (Revenue), Kawardha is at liberty to proceed in accordance with law.

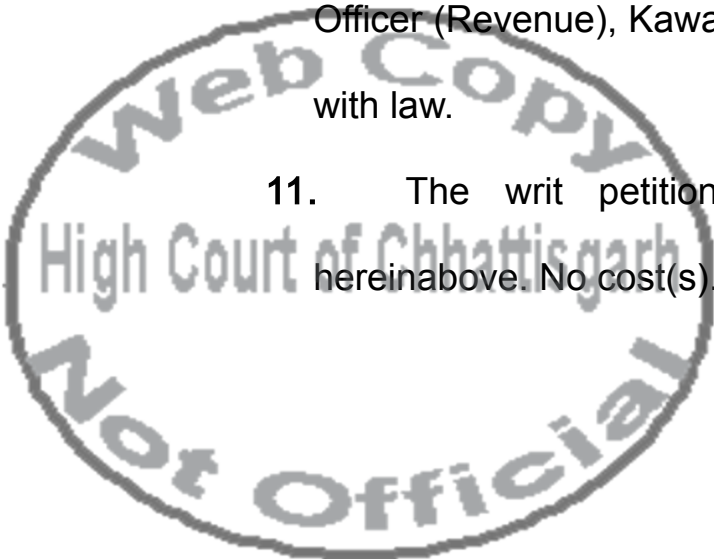
11. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-



HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB: Hon'ble Shri Justice Sanjay K. Agrawal)

WPC No.471 of 2018

Petitioner

Santosh Chandrakar

Versus

Respondents

State of Chhattisgarh and others

(Head-note)

(English)

Elected Sarpanch cannot be placed under suspension under Section 39 (1) (b) of the Chhattisgarh Panchayat Raj Adhinyam, 1993 unless served with a show-cause notice along with charge-sheet for removal.

(हिन्दी)

पदच्युत किये जाने हेतु आरोप-पत्र के साथ ही कारण बताओ नोटिस तामीली के बिना छत्तीसगढ़ पंचायत राज अधिनियम, 1993 की धारा 39 (1) (b) के अन्तर्गत निर्वाचित सरपंच को निलंबित नहीं किया जा सकता।