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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 24-08-2021

Order delivered on 27-09-2021

WPC No. 3551 of 2019

- Smt. Pushpa Sahu W/o Jageshwar Sahu Aged About 32 Years Sarpanch Village Panchayat Kirvai Janpad Panchayat Simga District Balodabazar - Bhatapara Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya Mahanadi Bhawan, Naya Raipur District - Raipur Chhattisgarh.
2. State Of Chhattisgarh Through The Secretary, Law And Justice Department Mantralaya Naya Raipur District Raipur Chhattisgarh.
3. Collector Balodabazar District Balodabazar Bhatapara Chhattisgarh.
4. Sub - Divisional Officer Revenue And Prescrid Authority Panchayat Simga, District Baloda Bazar Bhatapara Chhattisgarh.

---- Respondents

For Petitioner :- Mr. Anand Mohan Tiwari, Advocate
For Respondent-State :- Mr. Vikram Sharma, Dy.G.A.

Hon'ble Shri Prashant Kumar Mishra, Ag.CJ
Hon'ble Smt. Rajani Dubey, J

C A V Order

1. Petitioner has assailed the constitutional validity of Section 39(1)(b) of the C.G. Panchayat Raj Adhiniyam, 1993 (for

short 'the Act, 1993'). The subject provision of the Act,1993 confers power on the prescribed authority to suspend an officer bearer of the Panchayat who has been served with a notice along with a charge-sheet to show cause under this Act for his removal from the office.

2. Shri Anand Mohan Tiwari, learned counsel appearing for the petitioner, raised two fold submissions. *Firstly*; he would submit that the power to suspend an officer bearer of the Panchayat for an indefinite period is arbitrary; and *secondly;* in absence of any provision conferring right of prior opportunity of hearing before passing order of suspension, the provision is violative of principles of natural justice. One more supportive argument raised by the learned counsel for the petitioner is that in similar enactments of other States an office-bearer of a Panchayat of Gram Panchayat can be suspended for a definite period, therefore, the C.G. Act is arbitrary.

3. Shri Vikram Sharma, learned Dy.G.A. appearing for the State, *per contra*, has opposed the submission made by the petitioner's counsel. According to him, power of suspension is not akin to power to impose punishment, therefore, principles of natural justice are not attracted at this stage. He submits that the order of suspension is required to be confirmed by the State Government under Section 39(2) within 90 days failing which it shall be deemed to have vacated, therefore, there is sufficient check and balance on

the power exercised by the prescribed authority. It is also argued that the entire petition is vague; based on unclear pleadings; lacking sufficient material demonstrating as to how the provision is ultra vires, therefore, the petition deserves to be dismissed.

4. Section 39 (1)(2) of the Act, 1993 with which we are concerned in this petition is reproduced hereunder for ready reference:

> **"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, Sections 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Sections 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, I860 (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
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> [(b) On whom, show cause notice along with charge-sheet under this Act, has been served for removal from office.]
>
> (2) The order of suspension under sub-section (1) shall be reported to the State Government within a period of ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the dale of receipt of such report it shall be deemed to have vacated."

5. The above quoted provision of Section 39(1)(b) confers power on the prescribed authority to suspend an office-bearer against whom a show cause notice has been issued along with charge-sheet for his removal from office. This prerequisite is the first rider on exercise of power of suspension because suspension simpliciter is not contemplated under the Act, 1993. Suspension would ensue only when a show cause notice for removal from office has been issued to the office-bearer. Needless to say, the show cause notice along with charge-sheet for removal from office has to contain the charges on which the office-bearer is sought to be removed. If the charges call for removal of office-bearer of the Panchayat, the same would furnish sufficient ground for suspension of office-bearer. An office-bearer who needs to be removed from office should ordinarily not be allowed to function during pendency of the enquiry for the same reason for which Rule 9 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 has been enacted in respect of suspension of a Government servant when a departmental enquiry is contemplated against him.

6. It is the settled law that suspension is not a punishment. {See: **P.L. Shah v Union of India and Another [(1989) 1 SCC 546]**}. It is also the trite law that the Court cannot interfere in suspension as it is within the exclusive domain of the competent authority {See: **Union Of India And**

Another v Ashok Kumar Agrawal [(2013) 16 SCC 147]}

7. Thus, when suspension of an officer-bearer is not a punishment, issuance of prior show cause notice is not at all necessary and the provision cannot be declared unconstitutional or ultra vires on this count. It is also to be seen that Section 39 (2) requires that the order of suspension is reported to the State Government within 10 days which shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report it shall be deemed to have vacated.

8. Here again, sufficient checks and balances on exercise of power by the prescribed authority has been ingrained in the statue itself. The first requirement is of reporting the matter to the State Government within 10 days and thereafter for passing an order of confirmation by the State Government within 90 days. If the order of suspension is not reported to the State Government it is sure that there would be no order of confirmation within 90 days. In the second situation, if the matter is reported to the State Government within 10 days, and the State Government fails to pass any order of confirmation of order of suspension within 90 days, it is deemed to have vacated. The order of confirmation passed by the State Government would definitely be based on some material and with due application of mind and once it is

done, there should be no complaint that the power of suspension has been exercised only to harass the office-bearer.

9. The third ground for challenge is based on a comparison of similar statues enacted by other State legislations. On this count, suffice it would be to mention that statute enacted by a competent state legislature cannot be declared unconstitutional by comparing it with the enactment made by other State legislations.

10. The Supreme Court in **M/s Babu Ram Gopal and Others v. Mathra Dass [(1990) 2 SCC 279]** held thus, at para 7:

> "7. So far as the language of some rent Acts, specifically indicating that the period of non-occupation should be one immediately preceding the suit, is concerned, the learned counsel is right that a comparison of the language of the present Act lends some support to his stand, but this alone does not outweigh the other relevant circumstances. On the other hand, if the provisions of several other Acts are examined, it will be seen that the section has been phrased in a way which avoids the use of present perfect tense. As an illustration, the provisions of the Bihar Rent Act may be seen, which forbids the eviction of a tenant "except in execution of a decree passed" for **subletting** (or for other grounds mentioned therein). Besides, as pointed out

in Nathia Agarwalla v. Musst. Jahanara Begum comparing statutes of different States is not to be commended because similarity or variation in the laws of different States is not necessarily indicative of a kindered or a different intention. The reason for this view was expressed in the following language: (SCR p. 929)

> "Enactments drafted by different hands, at different times and to satisfy different requirements of a local character, seldom afford tangible or sure aid in construction. We would, therefore, put aside the Rent Control Acts of Madras, Bihar, Delhi and other States because in these States the problem of accommodation in relation to the availability of lands and houses and the prior legislative history and experience, cannot be same as in Assam." (emphasis supplied)

11. Each legislation is to be considered on its own constitutional strength and weakness to test its constitutionality. In the case at hand, we have found that the subject provision contained in Section 39 (1)(b) does not suffer from any constitutional infirmity. Moreover, the petitioner has not pleaded in clear terms with supporting material as to how the subject provision is offending any particular constitutional provision. The provision contained in Section 39 (1)(b) of the Act, 1993 has now remained in the statute book for last more than 28 years and no data has been produced before us

showing rampant misuse of the provision only on account of lack of provision relating to prior hearing or the order of suspension being in force for an indefinite period.

12. The Supreme Court in **PGF Limited and Others v Union of India and Another** (2015) 13 SCC 50 held thus, at para 37:

> "37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time gap exist as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ Court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the

writ Court and the same is not exhaustive. In other words, the Writ Court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a Statute or provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the above stated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time bound basis, so that the legal position is settled one way or the other."

13. For the reasons discussed herein above, the writ petition, being bereft of merit, is liable to be and is hereby dismissed.

SD/- SD/-

(**Prashant Kumar Mishra**) (**Rajani Dubey**)
Acting Chief Justice Judge

Gowri

Head-note

Power to suspend an officer-bearer of a Panchayat provided under Section 39 (1)(b) of the C.G, Panchayat Raj Adhiniyam, 1993 is a valid piece of legislation. Provision of a State Act cannot be declared as *ultra vires* by comparing it with similar legislation of another State.