

(2012) 09 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Petition C No. 1570 of 2012

Neelam Kaushal Chandrakar

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 39, 40, 88
Constitution of India, 1950 — Article 226
Madhya Pradesh Municipalities Act, 1961 — Section 41A

Citation : (2012) 09 CHH CK 0036

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prateek Sharma, for the Appellant; Pankaj Shrivastava Panel Lawyer for the respondent No 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.

Writ Petition Under Article 226 of the Constitution of India

1. Notice to the respondents is dispensed with as Shri Shrivastava, learned Panel Lawyer appears on behalf of State/respondents and consents for hearing. By this petition, the petitioner seeks setting aside the notice dated 21.09.2011 (Annexure P/1) with all consequential orders/proceedings/ actions taken in pursuance of the said notice and to set aside the order dated 25.07.2012 (Annexure P/2) to the extent of keeping the case No. 60-A/89-2010-2011 pending and direct to send proposal before the respondent Collector for constituting Enquiry Committee and submit report within a stipulated period for deciding the matter u/s 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short `the Act, 1993) at the earliest.

2. Learned counsel appearing for the petitioner submits that pursuant to the observations made by this Court on 08.11.2011, in W.P.(C) No. 6190/2011

(Neelam Kaushal Chandrakar v. State of Chhattisgarh & Others), filed by the petitioner herein, the Sub Divisional Officer, Patan, District Durg, was directed to examine the issue as to whether the Enquiry Committee was properly constituted as required u/s 88 of the Adhiniyam, 1993, and take decision thereafter. In the said order, the petitioner was further granted liberty to raise all other issues, if so advised and in the event, it was found that the Enquiry Committee was properly constituted, the petitioner would be granted further two weeks time to file response to the impugned show cause notice dated 21.09.2011, and thereafter, appropriate orders may be passed.

3. The SDO, Patan, pursuant to the order passed by this Court, came to the conclusion that the Enquiry Committee was not properly constituted and as such, the matter was referred to the Collector with a request to constitute a proper Enquiry Committee under the provisions of law, and thereafter, other steps as required u/s 40 of the Adhiniyam, 1993, may be taken. Shri Sharma further submits that if the Enquiry Committee was not properly constituted, the provisions of section 40 of the Adhiniyam, 1993, for removal of the office bearers, may not be invoked. In support of his contention, Shri Sharma relies on a decision of the Supreme Court in Ravi Yashwant Bhoir v. District Collector, Raigad & Others¹ and Sharda Kailash Mittal v. State of M.P. & Others².

4. On the other hand, Shri Shrivastava, learned Panel Lawyer appearing for the State/respondents submits that no order under the provisions of section 40 of the Adhiniyam, 1993 has been passed and as such, there is no question of revocation of registration u/s 40 of the Adhiniyam, 1993. Even otherwise, necessarily, no order can be passed u/s 40 of the Adhiyam, 1993 unless enquiry is conducted under provision of section 39 of the Adhiniyam, 1993 and the report is submitted, thereon. In view of that, at this stage, no action has been taken against the petitioner, thus, it may not be directed that even the registration be quashed at once.

5. The case of Ravi Yashwant Bhoir (supra), deals with the procedure before removal of the Panchayat Office bearer observing that the exercise of any power having effect of destroying the constitutional institution is dangerous to the democratic set-up of this country. The ratio laid down in the case is well settled that removal of any office bearer cannot be done without following the procedure, strictly in accordance with law.

6. In the case on hand, only the steps have been initiated and removal order has not been passed. In taking steps for removal, if any, the process are being followed in accordance with the provisions of section 39 and 40 of the Adhiniyam, 1993. Thus, the case of Ravi Yashwant Bhoir (supra), is of no assistance in the matter in dispute.

7. The Supreme Court in Sharda Kailash Mittal (Supra) was dealing with the provisions of section 41A of the Madhya Pradesh Municipalities Act, 1961 (for short 'the Act, 1961'), which reads as under:

41A. Removal of President or Vice-President or Chairman of a Committee-(1) The State Government may, at any time, remove a President or Vice- President or a Chairman of any Committee, if his continuance as such is not in the opinion of the State Government desirable in public interest or in the interest of the Council or if it is found that he is incapable of performing his duties or is working against the provisions of the Act or any rules made thereunder or if it is found that he does not belong to the reserved category for which the seat was reserved.

(2) As a result of the order of removal of Vice- President or Chairman of any Committee, as the case may be, under sub-section (1) it shall be deemed that such Vice- President or a Chairman of any Committee, as the case may be, has been removed from the office of the Councilor also.

At the time of passing order under sub-section (1), the State Government may also pass such order that the President or Vice-President or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice- President or Chairman, as the case may be, for the next term:

Provided that no such order under this section shall be passed unless a reasonable opportunity of being heard is given.

After analyzing, the Supreme Court held as under:

18. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

19. In the present case, the actions of the appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s 41A.

8. In the case on hand, Section 40 of the Adhiniyam, 1993 provides for removal of office bearers of Panchayats after holding a proper enquiry on the allegation or complaint made by a person. There is no such provision of Section 41A in the Adhiniyam, 1993. Section 40 of the Adhiniyam, 1993 clearly provides that all the procedures wherein compliance of principle of natural justice is also inherent, be followed. At the stage, when the enquiry committee is yet to submit the report and final order u/s 40 of the Adhiniyam, 1993 has not been passed, no interference is warranted. In view of the above and for the reasons stated hereinabove, this petition, being premature and bereft of merit, is accordingly dismissed.