

(2014) 11 CHH CK 0008
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1902 of 2014

Radhe Shyam Singh Rajput	Vs	APPELLANT
State of Chhattisgarh		RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 39, 39(1)(a), 39(1)(b), 40

Citation : (2015) 1 MPHT 11

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Vinay Pandey, Advocate for the Appellant; Adil Minhaz, Panel Lawyer, Advocate for the Respondent

Judgement

Prashant Kumar Mishra, J.

Heard learned counsel for the parties.

1. Petitioner has called in question the order dated 20-8-2014 (Annexure - P/1) passed by the Sub Divisional Officer (Revenue), Saja, District Bemetara, suspending him under the provisions of Section 39 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "the Adhiniyam, 1993").

2. It has been argued that the impugned order is palpably illegal and is contrary to the statutory scheme provided under Sections 39 & 40 of the Adhiniyam, 1993 inasmuch as an office bearer of a panchayat is suspended on occurrence of contingencies as provided under clauses (a)(b) of sub-section (1) of Section 39, when the criminal charge as mentioned therein or proceeding for his removal from his office is initiated and, therefore, before his suspension he should be issued a show cause notice along with a charge sheet under Section 40 of the Adhiniyam, 1993.

3. In the case in hand, the petitioner has not been suspended on account of registration of a criminal case against him for charges mentioned in Section 39(1) (a) of the Adhiniyam, 1993, but he has been suspended on the allegation of

certain misconduct, which may ultimately constitute the foundation for initiating proceeding under Section 40 of the Adhiniyam, 1993.

4. In *Sarita Mabre (Smt.) Vs. State of M.P. and Others*, , the Single Bench of the High Court of Madhya Pradesh held thus:

"4.....Under Section 39, the prescribed authority may suspend any office bearer from office against whom charges have been framed in criminal proceedings or who has been served with a notice alongwith the charge sheet to show cause under this Act for his removal from the office. A conjoint reading of Section 39 and 40 would show that a show cause notice along with a charge sheet is required to be served upon the delinquent before he is suspended or removed.

10. As no charge sheet has been supplied to the petitioner, they cannot assume any power under provisions of Section 39(1)(b). The requirement of law is service of a notice alongwith a charge sheet to show cause under the Act for removal of the office bearer from the office so that the jurisdiction is conferred upon the prescribed authority to suspend the said office bearer.

Annexure p/13 does not meet the requirements of law. Under these circumstances, the authority had no powers to suspend the petitioner."

5. In the case in hand also the impugned order does not refer to issuance of any show cause notice or any charge sheet to the petitioner proposing his removal under Section 40 of the Adhiniyam, 1993, therefore, relying on the law laid down in *Sarita Mabre (Smt.)* (supra), the impugned order dated 20-8-2014 is quashed. However, it will be open for the Sub Divisional Officer (Revenue), Saja, District Bemetara, to initiate fresh proceedings against the petitioner and pass necessary orders under Section 39 of the Adhiniyam, 1993, in accordance with law.

6. As a sequel, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.