

**(1997) 03 MP CK 0054**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 3721 of 1996**

Sarita Mabre (Smt.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision : 17-03-1997**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Madhya Pradesh Panchayat Act, 1993 — Section 116, 116(1), 39, 39(1), 40

Penal Code, 1860 (IPC) — Section 302, 303, 304B, 305, 306

**Citation : (1998) 1 LJ 420**

**Hon'ble Judges : R.S. Garg, J**

**Bench : Single Bench**

**Advocate : K.K. Trivedi, for the Appellant; Vijay Shukla, Government Advocate for Respondent No. 1 to 4 and Anil Khare, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

R.S. Garg, J.—By this petition under Article 226 of the Constitution of India, the Petitioner challenges the correctness, validity and propriety of the order dated 22.6.96 (Annexure P/15), under which the Petitioner has been placed under suspension.

2. According to the Petitioner show cause notice dated 23.11.95 (Annexure p/13) was served upon the Petitioner. In the said show cause notice, certain allegations were made against the Petitioner and she was informed that the Petitioner should show cause as to why proceedings u/s 39 and 40 of M.P. Panchayat Raj Adhiniyam, 1993 be not taken against her. According to the Petitioner, she filed her reply on 5.12.95. During the pendency of the proceedings before the Sub-Divisional Officer, order dated 22.6.96 (Annexure p/15) was passed by the S.D.O. The Petitioner submits that the order Annexure p/15 is per se illegal because there was no compliance of the provisions of Section 39 of the Act and unless a show cause notice alongwith the charge-sheet under the Act for removal of the Petitioner is not served, the Petitioner could not be suspended. She also

submits that the order Annexure p/15 falls short of the legal requirements and does not meet the standard of Section 39. She submits that the order of suspension Annexure p/15 deserved to be quashed.

3. Shri V. Shukla, learned Govt. Advocate and Shri Anil Khare, learned Counsel for Respondent No. 5, on the other hand, have contended that document Annexure p/13 confirms the standard and meets the necessary requirements as laid down u/s 39, therefore, the Sub-Divisional Officer was absolutely justified in passing the order on 2.6.96.

4. Section 40 of the Act provides as under:

40 Removal of office bearers of Panchayat:

(1) The State Govt. or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer:

(a) If he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show cause why he, should not be removed from his office.

Explanation : For the purpose of this Sub-section (Misconduct) shall include:

(a) any action adversely affecting:

(i) the sovereignty, unity and integrity of India or

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, Linguistic regional caste or sectional diversities, or

(iii) the dignity of women, or

(b) gross negligence in the discharge of the duties under this Act.

(2) A person who has been removed under Sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such person shall also be dis-qualified for a period of six years to be elected under this Act.

A perusal of Section 40 would show that the State Govt. or the prescribed authority has power to remove any office bearer, if he has been guilty of misconduct in discharge of his duties or if his continuance in office is undesirable in the interest of the public. According to Section 40, no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

5. Section 39 of the Act reads as under:.

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, CI, IX-A, X, XII, Section 302, 303, 304B, 305, 306, 312 -318, 366A, 366B, 373 - 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XIV 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 and protection of civil rights; or

(b) who has been served with a notice with a charge sheet to show cause under this Act, for this removal from the office.

(2) The order of suspension under Sub-section (1) shall be reported to the State Govt. within a period of ten days and shall be subject to such orders as the State Govt. may deem fit to pass. If the order of suspension is not confirmed by the State Govt. within 90 days from the date of receipt of such report, it shall be deemed to have vacated.

(3) In the event of both the Sarpanch and Up-Sarpanch of Gram Panchayat, President or Vice-President of Janapad Panchayat or Zila Panchayat being suspended under Sub-section (1), the Gram Panchayat, Janapad Panchayat or Zila Panchayat shall elect an office bearer qualified to hold the office of Sarpanch or President as the case may be, such person shall perform all the duties and exercise all the powers of Sarpanch or President or as the case may be, during the period for which such suspension continues.

(4) A person, who has been suspended under Sub-section (1) shall also forthwith stand suspended from the office of member or office bearer of any other Panchayat of which he is a member or office bearer. Such person shall also be disqualified for being elected under the Act during his suspension.

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 alongwith a charge sheet is required to be served upon the delinquent before he is suspended or removed.

According to Shri Trivedi, Annexure p/13 is merely a show cause notice which contains certain allegations against the Petitioner. According to him by no stretch of imagination p/13 can be considered to be a charge sheet. On the other hand, Shri Shukla and Shri Khare submit that there is no bar under the law if the show cause notice in itself contains the material allegations and provides a proper opportunity of hearing to the party.

6. Placing reliance upon State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, , it was contended by the learned Counsel for the Respondents that even if the show cause notice does not answer the description of a formal charge sheet, then too, the proceedings can be continued. The judgment relied upon is clearly distinguishable. In the said case, show cause notice did mention the

allegations or accusations and it was served with the details of the charges. If disclosed the charge levelled against him and also supplied the material on which the charges were levelled. The Supreme Court, in the said case found that alongwith show cause letter copy of the complaint was annexed, therefore, it satisfied the requirement of statement of allegations. The Supreme Court found that the delinquent was fully apprised of the accusation levelled against him to enable him to effectively reply thereto. It was further found that the provisions of the regulation have been substantially complied with though not formally. In the instant case, it is not in dispute that annexure p/13 which contains the allegations was not supported with the details of the charges. The material on which the charges were required to be proved, the documents which provide the charge sheet clearly would include the details of the allegations, the material on which the allegation are substantiated, the documents which provide the foundation and the list of the enquiry. Service of the show cause notice and charge sheet are not empty formalities. They go to the very root of the enquiry. If the charge sheet has bad information, enquiry conducted upon the basis of the same may reach to the positive results, but as the trial would be vitiated, any order passed on such illegal enquiry cannot be enforced by law.

7. In the matter of *Bansmani Prasad v. State of M.P.* and Ors. 1980 J.L.J. 60 : 1980 M.P.L.J. 34 a similar question has been considered by this Court while appreciating the provisions of Section 116(1), proviso of M.P. Panchayats Act (7 of 1962). The Division Bench observed as under:

It cannot be disputed that opportunity to show cause must be real opportunity. The person proceeded against must not only be told the allegations of misconduct, but he must also be informed of the material which is sought to be used against him in support of the charges so that he may offer his explanation in respect of that material. A person who holds office as a member or as President has a right to continue in the office until the expiry of the term. The order of removal which is passed u/s 116 affects this valuable right and the finding of mis-conduct on which such an order is based casts a stigma on the public life of the person. Having regard to these consequences, we are of the opinion that the power of removal is quasi-judicial in nature. In *Bhagat Ram v. State of Punjab* a provision in the Punjab Municipal Act relating to the removal of the member was considered by the Supreme Court. It was held in that case that the order contemplated by the provision removing a member was quasi-judicial in nature and that it was not only desirable but also essential that the authority passing the order should give reasons. It was further pointed out that all the material should be disclosed to the person concerned so that he may give an effective answer not only to the averments contained in the show cause notice but also to the materials on the basis of which the show cause notice was issued. The principles laid down in *Bhagat Ram v. State of Punjab* (supra) equally apply to the exercise of power u/s 116 of Panchayat Act. The State Govt. while taking action under this provision should not only disclose the charges but also the entire material on which the charges are based to the person concerned so as to

afford him real opportunity to show cause against the charges.

8. From the observation made by this Court, it is clear that the person proceeded against, must not only be told the allegations of mis-conduct, but he must also be informed of the material which is sought to be used against him in support of the charges so that he may offer his explanation in respect of that material. The material which substantiate the allegations is required to be supplied to the person who has committed mis-conduct, beforehand and not during the course of the enquiry. The opportunity must be a real one and not a farce.

9. In the instant case, it is clear that p/13 was a show cause notice simpliciter which detailed some of the allegations against the Petitioner. It is nobody's case that alongwith the letter dated 23.11.95 the details of the allegation were supplied to the Petitioner with other material which under the law the Respondents No. 1 to 2 were bound to supply.

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.

11. Shri Trivedi, on basis of Annexure R/2 dated 29.8.96, submits that the S.D.O. had informed the Petitioner that the interim order granted by him putting the Petitioner under suspension has been confirmed by the State, therefore, "she should submit her reply as to why she should not be removed from the office of Sarpanch, according to Shri Trivedi letter dated 29.8.96 would show that prior to it, there were no proceedings against her for her removal. Be that as it may". but one thing is clear from letter dated 29.8.96 that even on that date the S.D.O. had asked the Petitioner as to why she should not be removed from the office of the Sarpanch. If the letter dated 29.8.96 (Annexure R/2) is taken into its true spirit, it would show that after confirmation of the interim order, the S.D.O. thought that a show cause notice is required again. Assuming that letter dated 29.8.96 is merely to inform the Petitioner about the confirmation order passed by the State, then too, it would not save order Annexure p/15 which is patently illegal, in view of non-compliance of the provisions of Section 39(1)(b) read with Section 40 of the Panchayat Raj Adhiniyam, 1993.

12. The petition deserves to and is accordingly allowed, the order Annexure p/15 is quashed. There shall be no order as to costs.