

(2024) 01 MP CK 0021
In the Madhya Pradesh High Court
Case No : Writ Petition No. 379 Of 2024

Satyam Sharma

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 09-01-2024

Acts Referred:

Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 — Section 39, 39(1), 40
Indian Penal Code, 1860 — Section 406, 409, 420

Citation : (2024) 01 MP CK 0021

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Gaurav Mishra, Ravindra Dixit

Judgement

Anand Pathak, J

Heard on admission/stay.

1. The present petition has been preferred by the petitioner being crestfallen by the order dated 20.12.2023 (Annexure P/1) passed by Additional Collector and CEO, Zila Panchayat, Datia, whereby petitioner has been removed from the post of Sarpanch, Gram Panchayat Kheri Devta, Tahsil Indergarh, District Guna.

2. It is the submission of learned counsel for the petitioner that no opportunity of hearing was provided to the petitioner before his removal. From the impugned order, it appears that initially case proceeded in respect of suspension of petitioner purportedly under Section 39 of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, but matter turned towards Section 40 regarding removal and petitioner has been removed without following due process as prescribed in Section 39 and 40 of the Act, 1993. It is the specific submission of learned counsel for the petitioner that no opportunity of hearing was provided to the petitioner before passing such order.

3 . Even otherwise, no charge has been framed against the petitioner for offence

under Sections 406, 409, 420 of the IPC vide Crime No.264/2023 at Police Station Tharet, District Datia. Framing of charge is mandatory for suspension of Sarpanch. Here no charge has been framed against the petitioner for offence as prescribed in Section 39 (1) of the Act, 1993. Even otherwise, contingencies as provided in Section 40 of the Act, 1993 are not fulfilled. Approach of authority is arbitrary and illegal and aimed to topple the petitioner from the post of Sarpanch. Soon notification is likely to be issued for fresh election. This would render the case as infructuous.

4. Issue notice to the respondents on payment of process fee within seven working days through registered A.D. mode, returnable within four weeks.

5. Since it is the case where petitioner has not been afforded any opportunity of hearing before his removal and contingencies as contained in Section 39 of the Act, 1993 are not available and peculiarly impugned order started with allegations under Section 39 of the Act, 1993 which converted into case under Section 40 of the Act, 1993, therefore, proceedings of impugned order dated 20.12.2023 (Annexure P/1) shall remain stayed, till next date of hearing. Petitioner shall be allowed to continue as Sarpanch, Gram Panchayat Kheri Devta, Tahsil Indergarh, District Guna.

6. List this case in the week commencing 12.02.2024.

7. Respondents are at liberty to file reply.