



2024:CGHC:39737

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for Order on : 04.09.2024

Order Passed on : 07/10/2024

WPC No. 63 of 2023

1 - Santulal Sonkar S/o Late Shri Taturam Sonkar Aged About 58 Years R/o Sonkar Plaza, Golbazar, Gandhi, Ward, Mungeli District Mungeli Chhattisgarh.

---- Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.

2 - Deputy Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.

3 - Collector Mungeli District Mungeli Chhattisgarh.

4 - Municipal Council Mungeli Through Chief Municipal Officer, Mungeli District Mungeli Chhattisgarh.

---- Respondents

For Petitioner : Mr. Harshal Chauhan, Advocate

For Respondents-State No.1 to 3 : Mr. Praveen Das, Dy.A.G.

For Respondent No.4 : Mr. Pankaj Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV ORDER

1. Petitioner by way of this petition has questioned the legality and sustainability of the order dated 30.11.2021, whereby petitioner an elected President of Municipal Council, Mungeli has been removed from the post of President under Section 41-A of the Chhattisgarh Municipalities Act, 1961 (In short 'the Act, 1961') and has been further held disqualified to hold such post for the next term.

2. Learned counsel for petitioner submits that a tender for construction work including the construction of drainage in Ward No.-8 was awarded to private contractor namely M/s. Sofia Construction in the year 2019. Chief Municipal Officer thereafter presented note-sheet before petitioner of which petitioner directed for putting the file before him after 100% physical verification. Thereafter, again file was placed before petitioner by the Chief Municipal Officer and petitioner was informed that physical verification has been done. Petitioner in good faith signed on the note-sheet on or about 19.02.2021. It is further contended that Rule 81 of the C.G. Municipal Accounts Rules, 1971 (In short 'the Rules, 1971') puts liability upon the Chief Municipal Officer to verify that work and bills are properly presented and it is personal liability of the Chief Municipal Officer to verify the work and bills presented. Due to political vendetta, false and fabricated complaint was made against petitioner before the Collector that payment of Rs.13,21,818/- has been made to the contractor Sofia Construction without actual construction of drainage in Ward No.8. The complaint was directed to be inquired through Sub-Divisional Officer (R). Enquiry which was conducted by SDO (R) was in utter haste manner and based

on interim report, show cause notice was issued to other officials of the council by the SDO (R). SDO(R) prepared report behind the back of petitioner only on the basis of the reply submitted by one of the clerk. It is only after objection made, statement of petitioner was taken on 03.07.2021, in which, he categorically stated that physical verification was done by the Chief Municipal Officer as per prescribed procedure. SDO(R) thereafter submitted third report to the Collector reiterating same facts that payment was made without execution of construction work. He submits that according to the Rules, 1971, it is the Chief Municipal Officer, who is personally liable for verification of work and payments. Respondents issued notice under Section 41-A of the Act, 1961 to petitioner for his removal without complying with the provisions of Section 41-A of the Act, 1961. Petitioner replied to the show cause notice issued defending his action requesting for full fledged fact finding enquiry. Enquiry report of the SDO(R), which was basis for issuing notice under Section 41-A of the Act, 1961 was not supplied to petitioner along with show cause notice. Even after objection being raised by petitioner in his reply to the show cause notice dated 19.07.2021, the order impugned is passed in violation of the principles of natural justice. At the time of issuance of show cause notice, petitioner was managing to protect himself from arrest and awaiting the order in the application filed for grant of anticipatory bail in M.Cr.C.(A) No. 978 of 2021. Due opportunity of hearing was not given to petitioner and was not permitted to defend his case in appropriate manner. On the date of passing of order on 30.11.2021, petitioner was in jail.

It is also contention of learned counsel for petitioner that order of removal is issued under signature of Deputy Secretary and hence it cannot be said that the order has been passed by the State Government. In support of his contention, he placed reliance upon the judgment of Hon'ble Supreme Court in case of **Sharda Kailash Mittal Vs. State of Madhya Pradesh**, reported in **(2010) 2 SCC 319**, in case of **Ravi Yashwant Bhoir v. District Collector, Raigad & Ors**, reported in **(2012) 4 SCC 407**. He also placed reliance upon the decision of this Court in case of **Mahesh Agrawal Vs. State of Chhattisgarh** in **W.P.(C) No.1399 of 2018**, decided on **12.07.2018**.

3. Learned State counsel opposes the submission of learned counsel for petitioner and would submit that petitioner was an elected President of Municipal Council, Mungeli. He has to perform his duties and function in accordance with law. When a authority is vested with him, the same is to be expected to be performed with due diligence. He submits that President is the competent authority to issue payment order authentication certificate of every bills wherein amount is over and above Rs.50,000/-. He contended that amount of Rs.13,21,828/- has been paid without execution of the work. Proceedings of payment also bears signature of petitioner. Payments of bills of more than Rs.50,000/- is to be under signature of Chief Municipal Officer and President, therefore, petitioner cannot run away from his liability and responsibility merely saying that he signed note-sheet in good-faith. Submission of learned counsel for petitioner that proper opportunity was not afforded to

defend the case and to make his submission, is contrary to the record. Petitioner was issued show cause notice clearly mentioning as to why the action be not taken under Section 41-A of the Act, 1961 and should not be removed from the post of President as he is ineligible to hold the post of President. Petitioner submitted reply to the show cause notice, also prayed for personal hearing. Petitioner was issued notice to appear in the office for personal hearing, he appeared on the date fixed, made his submission and thereafter order was passed after. There is no violation of principles of natural justice. He further contended that submission of learned counsel for petitioner that order was not passed by the competent authority, is not correct. Decision taken by the State Government has been communicated to petitioner vide order dated 13.11.2021. Order is issued in the name of Governor. The order is issued under the Rules of business framed under Article 166 of the Constitution of India. He submits that when there is compliance of the requirements of Article 166 of the Constitution of India it gives an immunity to the order to the extent that it cannot be challenged on the ground that it is not an order made by the Governor. The impugned order is passed following due process of law, following principles of natural justice providing full opportunity of hearing, hence, it does not call for any interference.

4. Learned counsel for respondent No.4 submits that action has been taken by respondents-State. The impugned order is passed by the State Government, therefore, respondent No.4 is a formal party. No relief has been sought from respondent No.4.

5. I have heard learned counsel for parties and perused the documents placed on record.
6. So far as the grounds raised by learned counsel for petitioner with respect to proper opportunity of hearing was not granted is concerned, after receipt of enquiry report, Collector issued show cause notice to petitioner on 12.07.2021, it was replied by petitioner. Document also shows that Collector has issued show cause notice to other officials and they also submitted reply. Finding the reply submitted by petitioner and other officials of municipal council to be contradictory, direction was issued for registering the FIR against erring officers and persons. The State Government thereafter issued a show cause notice under Section 41-A of the Act, 1961 on 24.07.2021, which was replied by petitioner on 16.08.2021. In reply, petitioner has requested for personal hearing for which respondent State has issued notice and after last notice, petitioner appeared before the Competent Authority, after hearing petitioner, impugned order was passed.
7. Provisions of Section 41-A of the Act, 1961 provides for removal of President or Chairman of a Committee, which reads as under :-

“41-A. Removal of President or Chairman of a Committee -- (1) The State Government may, at any time, remove a President, 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) The State Government may, while ordering the removal under subsection (1), also order that such President, Vice President or Chairman of any Committee shall be disqualified to hold such post for the next term :

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

8. Perusal of the aforementioned provisions would show that State Government may, at any time, remove a President, 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.
9. In the reply submitted to show cause notice under Section 41-A of the Act, 1961, petitioner has pleaded that it is not his role to inspect the work and according the Rules, 1971, it is the Chief Municipal Officer is personally responsible to ensure that authentication certificate is completed and there exists enough information regarding payment and the claimant indeed received the amount. Petitioner has not disputed his signature on the bill approved infact admitted that he signed and approved the bill for payment. In the proceedings he mentioned that the amount should be paid in accordance with the rules.

10. Upon consideration on the entire facts and circumstances of the case and in particular the show cause notice, reply submitted as also the order passed it is not in dispute that under Rule 81 of the Rules, 1971, the bill is to be first placed before the Accountant who will verify the mathematical calculations made therein based on the bills prepared, measurement book and other documents and after signing the same it will be presented before the Chief Municipal Officer for orders. Under the proviso, Chief Municipal Officer has been made the person responsible that all the information are available for payment and authentication is completed. Rule 148 of the Rules, 1971 provides for contractors bills, the bill is to be submitted through Chief Municipal Officer and it is the Chief Municipal Officer, who has to pass an order on the bills. If he is competent to pass orders otherwise submit the bill with his recommendations. It is not the case that petitioner without any approval of the Accountant and recommendation of the Chief Municipal Officer on the bills has endorsed his signature approving for payment. There is no evidence to suggest that the other officials, who checked the bills i.e. Accountant or the Chief Municipal Officer, submitted information and authenticated for payment was, due to any force or compulsion put by petitioner.
11. Petitioner has signed the bills only when bill has been sent by the concerned engineer that the work has been done, the accountant has verified the mathematical calculations based on the measurement book etc., Chief Municipal Officer after satisfying that the bills submitted is authenticated and all the information are

available for payment has signed the bills and recommended for its payment and placed before petitioner (President).

12. In case of **Tarlochan Dev Sharma Vs. State of Punjab and Ors.**, reported in **(2001) 6 SCC 260**, the Hon'ble Supreme Court has observed in para -7 as under :-

“7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of “abuse of his powers” (of President), inter alia. This is the phrase with which we are concerned in the present case.”

13. The Hon'ble Supreme Court in case of **Tarlochan Dev Sharma (supra)** further observed in para-11, which reads as under :-

“11. The expression “abuse of powers” in the context and setting in which it has been used cannot mean use of

power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is “abuse of his powers or of habitual failure to perform his duties”. The use of plural — powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase “abuse of powers” must take colour from the next following expression — “or habitual failure to perform duties”. A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is “abuse of powers” within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.”

14. The Hon'ble Supreme Court in case **Sharda Kailash Mittal (supra)** has observed that the President under the M.P. Municipalities Act, 1961 is a democratically elected officer, and the removal of such an officer is an extreme step which must be resorted to only in grave and exceptional circumstances. The Hon'ble Supreme Court has observed in para 25 and 26, which reads as under :-

“25. For taking action under Section 41-A for removal of the President, Vice-President or Chairman of any Committee, power is conferred on the State Government with no provision of any appeal. The action of removal casts a serious stigma on the personal and public life of the office-bearer concerned and may result in his/her disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office-bearer.

26. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. 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.”

15. The Hon'ble Supreme Court in case of **Ravi Yashwant Bhoir (supra)** has observed in para 28, 29, 30 thus :

“28. In State of Punjab v. Baldev Singh [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080 : AIR 1999 SC 2378] , this Court considered the issue of removal of an elected office-bearer and held that where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards

and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in *Mohinder Kumar v. State* [(1998) 8 SCC 655 : 1999 SCC (Cri) 79] and *Ali Mustaffa Abdul Rahman Moosa v. State of Kerala* [(1994) 6 SCC 569 : 1995 SCC (Cri) 32 : AIR 1995 SC 244] held as under : (*Baldev Singh case* [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080 : AIR 1999 SC 2378] , SCC p. 199, para 28)

“28. ... It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed.”

29. The Constitution Bench of this Court in *G. Sadanandan v. State of Kerala* [AIR 1966 SC 1925 : 1966 Cri LJ 1533] held that if all the safeguards provided under the statute are not observed, an order having serious consequences is passed without proper application of mind, having a casual approach to the matter, the same can be characterised as having been passed mala fide, and thus, is liable to be quashed.

30. There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide *Indian National Congress (I) v. Institute of Social Welfare* [(2002) 5 SCC 685 : AIR 2002 SC 2158] .] This view stands further fortified by the Constitution Bench judgments of this Court in *Bachhitar Singh v. State of Punjab* [AIR 1963 SC 395] and *Union of India v. H.C. Goel* [AIR 1964 SC 364] . Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same.

Principles of natural justice require a fair opportunity of defence to such an elected office-bearer.”

16. In case at hand, petitioner has pleaded in the writ petition that copy of enquiry report conducted by the SDO (R) has not been supplied. Perusal of the show cause notice would show that it does not mention that along with show cause notice, enquiry report which is formed the basis for taking action against petitioner was enclosed.
17. As observed by Hon'ble Supreme Court severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed.
18. Provisions under Section 41A of the Act, 1961 provides for opportunity of hearing. Word opportunity of hearing used under the statute is to be understood with proper and full opportunity to defend the allegation/charges which can be only when the entire material on which the action is taken against petitioner is provided.
19. Hon'ble Supreme Court in case of **Ravi Yashwant Bhoir (supra)** has further observed in para 33, 34, 35 and 36 which reads as under :-

“**33.** This Court examined the provisions of the Punjab Municipal Act, 1911, providing for the procedure of removal of the President of the Municipal Council on similar grounds in *Tarlochan Dev Sharma v. State of Punjab* [(2001) 6 SCC 260 : AIR 2001 SC 2524] and observed that removal of an elected office-bearer is a serious matter. The elected office-bearer must not be removed unless a clear-cut case is made out, for the reason that holding and enjoying an office, discharging related duties is a valuable

statutory right of not only the elected member but also of his constituency or electoral college. His removal may curtail the term of the office-bearer and also cast stigma upon him. Therefore, the procedure prescribed under a statute for removal must be strictly adhered to and unless a clear case is made out, there can be no justification for his removal. While taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure.

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983] , *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* [(1992) 4 SCC 80 : AIR 1993 SC 2042] and *Ram Beti v. District*

Panchayat Raj Adhikari [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.”

20. In the case at hand based on some compliant, Collector got it enquired from Sub-Divisional Officer (R), Mungeli. After receipt of report, show cause notice was issued and reply was sought from petitioner and others. In reply, petitioner has taken specific plea that according to Rule 81 of the Rules, 1971, Chief Municipal Officer is responsible for complete authentication of the proceedings of the bill for payment. In the reply of the accountant, there is no averment that accountant has processed the bills on the directions or pressure of petitioner.
21. Perusal of show cause notice issued by State Government under Section 41-A of the Act, 1961 it would show that it mentions notice inviting tender for construction of drain from house of Horilal Sharma to stadium through boundary wall of garden of 300 meters. On spot new drain was not found to be constructed and existing drain was old one. Payment has been made to contractor without

construction of drain and thereby has extended benefit to the contractor of Rs.13,21,818/- for which petitioner is liable. Notice under Section 41-A of the Act, 1961 was issued mentioning that why he should not be removed being incapable to hold post of President Municipal Council.

22. Reply to the show cause notice was submitted pleading therein that under Rule 81 of the Rules, 1971, it is the Chief Municipal Officer personally responsible to ensure that authentication certificate is complete. Under Rule 146 of the Rules, 1971 it is not the role of President to inspect spot but it is for the Municipal Engineer, incharge of the public works establishment to inspect the spot and the work done, it is not the duty of the President Municipal Council to verify the work and accounts, apart from other defence taken.
23. In the order Annexure P-1 it only mentions that once there is a signature of petitioner in the proceedings/note-sheet for payment, he could not escape from his liabilities and once the records have been produced and signed he could not deny his responsibility. With respect to the defence of Rule 81 of the Rules, 1971 in the impugned order it is recorded that the said averment of reply is examined in records, payment without work by signing petitioner has also made himself responsible along with Chief Municipal Officer. In para-4 of the impugned order, defence taken by petitioner with respect to Rule 146, 148 and 149 of the Rules, 1971 that procedure for payment of bills, formate of preparation of bills and after process and submission of bills after completion of work by

Sub-Engineer through Chief Municipal Officer and on recommendation of Chief Municipal Officer payment is to be made and the role of President is only as joint signatory. The said defence has been held to be non-acceptable by only mentioning that there is a joint signature. In the order impugned it is not concluded that proceedings for payment of bills produced before petitioner for his signature was incomplete, procedure prescribed is not followed, payment has been made without there being any valuation report from concerned engineer, value of work completed without being authentication and recommendation of Chief Municipal Officer. There is no finding in the impugned order that petitioner in any manner abused his power or there is intentional wrong committed by him, there is dishonest on the part of the petitioner in signing the bills produced before him. It is also not a case of respondents-State that petitioner is a habitual failure in performing duties.

24. In absence of the specific finding that petitioner signed the documents without there being compliance of any procedure for payment of bills with ill intention, in the opinion of this Court there appears no strong and weighty reason for taking action against petitioner for removal from post of President Municipal Council.
25. Hon'ble Supreme Court in case of **Sharda Kailash Mittal (supra)** has observed that power and the consequences that flows under Section 41-A of the Act, 1961 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.

26. The action of removal casts a serious stigma on the personal and public life of the office-bearer concerned and may result in his/her disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office-bearer.
27. For the forgoing discussions made here-in-above and aforementioned decisions of Hon'ble Supreme Court, the impugned order dated 30.11.2021 (Annexure P-1) passed by the State Government removing petitioner from post of President, Municipal Council, Mungeli under Section 41-A of the Act, 1961 is not sustainable and accordingly it is set-aside.
28. Accordingly, this petition is allowed.

Sd/-
(Parth Prateem Sahu)
Judge

Balram