



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 5452/2022

Mahendra Kumar Mewara S/o Shri Babulal Mewara, Aged About
53 Years, R/o Ward No. 2, 72, Shanti Nagar, Sirohi (Rajasthan)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary To The Local Self Department, Secretariat, Jaipur (Rajasthan).
2. The Director Cum Joint Secretary, Directorate, Local Self Department, Jaipur (Rajasthan).
3. The District Collector, Sirohi (Rajasthan).
4. The Sub Divisional Officer, Sirohi (Rajasthan).
5. Ramniwas Daga S/o Shri Gopi Kishan Daga, Aged about 35 years, R/o Bada Bas Marwar, Mathaniya, Tehsil Tivri, District Jodhpur.

----Respondents

For Petitioner(s) : Mr. C.S. Kotwani with
Ms. Swati Shekhar

For Respondent(s) : Mr. Rajesh Panwar, Sr. Adv. & AAG
with Ms. Meenal Singhvi
Mr. R.D. Bhadu, Dy.G.C.
Mr. Ramniwas Daga, respondent No.5
present-in-person.

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

01/04/2024

1. Heard learned counsel for the parties.
2. The present writ petition has been filed against the order dated 07.04.2022, whereby a notice under Section 39 of the Rajasthan Municipalities Act, 2009 (hereinafter referred to as the 'Act of of 2009) has been issued to the petitioner.
3. Briefly noted the facts in the present case are that the petitioner was elected as Councillor of Ward No.2 of Municipal



Council, Sirohi in the election held in the year 2019. After the election of the petitioner as Councillor, he was appointed as the Chairperson of the Municipal Council, Sirohi. While the petitioner was working as Chairperson of the Municipal Council, Sirohi, he was issued with a notice dated 07.04.2022 seeking his response/reply within a period of 15 days. Aggrieved of the notice issued under Section 39 (1) of the Act of 2009, the present writ petition has been filed by the petitioner on the ground that the notice issued to the petitioner under Section 39 (1) is *de hors* the law.

4. Learned counsel for the petitioner submits that there is no provision under the Act of 2009 which gives authority to the respondents to issue notice under Section 39 for pre-election disqualifications and disputes. He submits that the only action which the law provides is taking recourse of filing an election petition against the petitioner for any disqualifications incurred or the petitioner is not holding the eligibility for contesting the election on the post of Councillor as per rules. Learned counsel further submits that the initiation of the proceedings by issuing notice to the petitioner under Section 39 is not sustainable. He, therefore, prays that the writ petition may be allowed and the notice dated 07.04.2022 may be quashed and set aside.

5. Per contra, the private respondent No.5 present-in-person vehemently argued that after the amendment in Section 39 of the Act of 2009, the notice issued to the petitioner is absolutely legal and the proceedings undertaken against the petitioner are completely justified. He, therefore, submits that the writ petition may be dismissed.



6. Mr. Rajesh Panwar, learned Sr. Counsel & Additional Advocate General appearing for the official respondents submits that the amendment in Section 39 of the Act of 2009 has taken place on 13.04.2023 and since the proceedings in the present case have been initiated prior to the amendment, therefore, the respondents may be given liberty to take appropriate action against the petitioner as per the amended provisions in accordance with law.

7. I have considered the submissions made at the Bar and have gone through the relevant record of the case.

8. After hearing the counsel for the petitioner, while issuing notices, this Court passed the following order on 18.04.2022:

“Learned counsel for the petitioner has submitted that the petitioner was elected as Councilor of Ward No.2 of Municipal Council, Sirohi and thereafter he was elected as Chairperson of the Municipal Council, Sirohi.

It is submitted that in the year 2021, a complaint was filed on behalf of one Ramniwas Daga S/o Shri Gopi Kishan Daga, resident of Mathania, District Jodhpur alleging that in the year 2019, when the petitioner contested the election for the post of Councilor, a criminal case was pending against him, but he did not disclose the said fact in his nomination form.

It is submitted that on the said complaint, the Election Commission has also issued a notice to the petitioner on 15.02.2021 to which the petitioner submitted his reply. The said proceeding is still pending against him.

It is further submitted that in the meantime, the respondent No.2 issued a notice dated 7.4.2022 asking the petitioner to submit his explanation as to why the proceedings under Section 39 of the Rajasthan Municipalities Act, 2009 be not initiated against him.

Learned counsel for the petitioner has argued that for pre-election disqualification, no proceedings under Section 39 of the Rajasthan Municipalities Act, 2009 can be initiated against an elected representative. It is also submitted that



in respect of pre-election disqualification, only an election petition can be filed.

Issue notice. Issue notice of stay petition also, returnable on 23rd May, 2022.

Meanwhile, further proceedings pursuant to the notice dated 7.4.2022 (Annex.5) issued by the respondent No.2 to the petitioner shall remain stayed."

9. It is an admitted fact that Section 39 of the Rajasthan Municipalities Act, 2009 was amended on 13.04.2023 and following clause was added:

"**Section 39. Removal of member.-** (1) The State Government may subject to the provisions of sub-sections (3) and (4), remove a member of a Municipality on any of the following grounds, namely:

(a)....

(b)....

(c)....

(d)....

(e) that after his election, it has come to the knowledge of the State Government that on the date of election, he was not qualified under section 21 or was disqualified under section 14 or section 24, to be chosen to fill the seat under this Act and his election as a member of a Municipality has not been questioned by an election petition and period of limited for filing election petition has expired."

10. The amendment was done on 13.04.2023 and there is nothing on record which shows or suggests that this amendment was made effective from a retrospective date, thus, for all intents and purposes, the provision which has been added in Section 39 will be deemed to have prospective effect. In the present case, since the notice has been issued prior to the amendment in Section 39, therefore, in the opinion of this Court, the proceedings undertaken by the respondents against the petitioner under



Section 39 (1) of the Act of 2009 by way of issuing notice dated 07.04.2022 are not sustainable in the eye of law.

11. In view of the discussions made above, the writ petition merits acceptance and the same is allowed. The notice dated 07.04.2022 issued by the Director and Joint Secretary, Local Self Department, Government of Rajasthan, Jaipur is quashed and set aside.

12. However, it is made clear that the respondents will be at liberty to proceed against the petitioner afresh as per the amended provisions, if they so desire, strictly in accordance with law.

13. Stay petition as well as other pending applications, if any, stand disposed of.

(VINIT KUMAR MATHUR),J

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