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WA-1814-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 26th OF SEPTEMBER, 2024WRIT APPEAL No. 1814 of 2024*SMT. SUNITA JATAV**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Mr. Siddharth Sharma - Advocate for the appellant.

Mr. Vivek Khedkar - Additional Advocate General for respondents No.1 to 4 - State.

Mr. D.P. Singh - Advocate for respondent No.6.

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ORDER

Per. Justice Anand Pathak

1. Heard on I.A.No.7168/2024, an application filed under Section 5 of the Limitation Act for condonation of delay of 241 days in filing the instant appeal.

2. Looking to the procedural reasons assigned and the content of the application as well as in the interest of justice, I.A.No.7168/2024 is hereby allowed and the delay of 241 days in filing the instant appeal is hereby condoned.

3. With consent heard finally.

4. The instant Writ Appeal is preferred under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam,



2005, being aggrieved by the order dated 12.09.2023 passed in W.P.No.21734/2023.

5. It is the grievance of the petitioner that respondent No.6 being Sarpanch of Gram Panchayat, Kaimra, Sarai Chhola, District Morena is a fit person to be removed under Section 40 of M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter referred as "Act of 1993") because as per Section 40 (1) Explanation (a) (iii) has caused misconduct by undermining the dignity of a woman. However, he fairly submits that from the record, it appears that no opportunity of hearing was provided before proceeding against respondent No.6.

6. Counsel for the respondents opposed the prayer and submitted that only on the pretext of registration of FIR for the offence under Section 376 of IPC, respondent No.6 was subjected to removal. However, if FIR is registered against Sarpanch and charge-sheet is filed, thereafter, if charges are framed only then proceedings under Section 39 of Act 1993 can be initiated and not proceedings under Section 40 of Act 1993. Therefore, approach of authority was erroneous, Even otherwise, matter was remanded back to the authority for re-look.

7. Heard.

8. This is a case where appellant is taking exception to the impugned order passed by learned writ Court on the anvil of Section 40 of Act 1993. Perusal of Section 40 of Act 1993 reveals that the grounds are being specified for removal of Sarpanch of a Gram Panchayat.

9. Section 40 of Act 1993 is reproduced for ready reference. :



40. Removal of office-bearers of Panchayat. - (1) The State Government 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 in office 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; [(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

Explanation. - For the purpose of this clause, the expression 'relative' shall mean father, mother, brother, sister, husband, wife, son, daughter,



mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law :] [Provided further the final order in the inquiry shall be passed within 90 days from the date of issue of show cause notice to the concerned office-bearer and where the pending case is not decided within 90 days, the prescribed authority shall inform all facts to his next senior officer in writing and request extension of time for disposal of the inquiry but, such extension of time shall not be more than 30 days.] (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 disqualified for a period of six years to be elected [x x x] under this Act.

10. Perusal of Section 40 reveals that one of the grounds for removal is misconduct and in explanation, one of the attributes of misconduct is undermining the dignity of a woman. If the legislative intent would have been to incorporate alleged commission of rape as an attempt to be included in the Section 40 of Act 1993 also, then Section 39 of Act 1993 would not have been framed or at least offence under Section 376 of IPC would not have been included in the enactment. Legislative intent appears to be clear. Sections 39 and 40 of Act 1993 move in two distinct spheres.

11. If a Sarpanch commits an offence as prescribed under Section 39 of Act 1993, then he would certainly be proceeded as per the provision of Section 39 of Act 1993. Once the Section 39 of Act 1993 deals in respect of commission of certain offences which includes offence of rape which is against a woman, then it means Section 40 of Act 1993 contemplated the concept of 'Misconduct' (by way of undermining the dignity of a woman)



quite distinct from Section 39 of Act 1993 or what counsel for the appellant has argued. This misconduct is having attributes something different than commission of offence of rape. Therefore, contentions of appellant are bereft of merits, hence, rejected.

12. In the present case, it is admitted fact that no opportunity of hearing was provided to respondent No .6, therefore, on the point of opportunity of hearing as contemplated in Section 40 of Act 1993 and even otherwise guided by principles of natural justice, case of respondent No.6 gains grounds.

13. In cumulative analysis, no case for interference is made out in well reasoned order of learned writ Court. Even otherwise, matter has been remanded back by learned Judge. Therefore, parties are always having opportunity to present their case.

14. No interference is required. Appeal bereft of merits is hereby **dismissed.**

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

bj/-