

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

**DIVISION BENCH : HON'BLE SHRI JUSTICE P.K. JAISWAL AND
SMT. JUSTICE S.R. WAGHMARE**

Writ Appeal No.607 of 2013

Rameshchandra Borwal S/o Bherulal Borwal
Age-42 years, Occupation-Sarpanch,
R/o- village Jetpura, Tehsil Sanwer
District IndoreAppellant

vs.

1. State of Madhya Pradesh
through Collector,
District Indore
2. Smt. Rukmabai w/o Jitendra ,
Occupation-Sarpanch,
R/o Bajrang Faliya,
Tehsil Sanwer, District Indore.
3. Poonamchand S/o Jagannath,
Occupation- Agriculturist
R/o Village Jetpura Tehsil Sanwer,
District Indore.

..... Respondents

Shri Ajay Bagadiya, learned Counsel for the appellant.

Ms. Mini Ravindran, learned Dy. Govt. Advocate for the
respondent/State.

Smt. Mamta Shandliya, learned Counsel for the respondent Nos. 2 & 3.

O R D E R
(Delivered on 28 /6//2013)

Per Mrs. S.R. Waghmare, J.

By this Writ Appeal filed under Section 2 of
M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal)

Adhiniyam, 2005, Appellant/respondent Rameshchandra Borwal has challenged the order dated 6/2/2013 passed by the learned Single Judge of this High Court in Writ Petition No. 9291/2012.

2. Briefly stated the facts of the case in a nutshell are that the Respondent/petitioner Poonamchand was the duly elected Sarpanch of Panchayat Bajrang Faliya and along with respondent No.2 Smt. Rukmabai filed an application under Section 39 of M.P. Panchayat Raj Adhiniyam 1993 alleging that appellant Rameshchandra Borwal the Sarpanch of the Panchayat was involved in one criminal case and therefore, the appellant should be suspended from the post of Sarpanch. The case was registered by the S.D.O. Sanwer as case No.62/B-121/2010-11. The present appellant filed reply before the S.D.O. stating that he had filed criminal appeal No.960/10 before the Hon'ble High Court at Indore Bench and it was pleased to suspend the sentence awarded by the Trial Court and as per Section 39 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam 1973 the proceedings may not be taken and they be dismissed. The application filed by the respondent No.2 Smt. Rukmabai and respondent No.3 Poonamchand were therefore, dismissed. Being aggrieved, they filed an appeal under Section 4 of M.P. Panchayat Raj Adhiniyam 1975 before the Additional Collector, who in his turn by order dated 5/8/2011 dismissed the appeal and maintained the order passed by the S.D.O. The respondent No. 2 & 3, being aggrieved by

the order of the Additional Collector, filed a Writ Petition before this High Court bearing W.P. No.9291/2012 and by order dated 16/2/2013 by way of interim order the learned Single Judge of this High Court directed the Additional Collector to pass an appropriate order within a period of 30 days and that the Writ Petition is still pending consideration.

3. However, the present appellant Rameshchandra Borwal has challenged the interim order of the learned Single Judge primarily on two grounds; firstly the alternative remedy was available to the respondents which has not been availed by them and secondly the learned Single Judge has himself observed that the conviction of the appellant had not been stayed by the High Court and therefore, the Additional Collector ought to have passed appropriate order in the appeal and by the present impugned order the learned Single Judge had granted final relief to the respondents at the interim stage which was contrary to provisions of law. Counsel further submitted that the appellant had not incurred the disqualification as per Section 39 of the Panchayat Raj Adhiniyam since his criminal appeal is pending consideration and whereas at present considering the direction of the Additional Collector, the S.D.O. has also passed the final order on 04.06.2013 accepting the application of the respondents as per Section 39 of the Adhiniyam and suspended the appellant from the post of Sarpanch. Counsel for the appellant has vehemently

urged that such an order was contrary to the direction given by the learned Single Judge and moreover, the alternative remedy has not been exhausted. The order was passed without giving the Appellant/respondent any opportunity of hearing and therefore, perverse in this regard. Counsel further candidly admitted that the subsequent order had not yet been passed by the learned Single Judge and the petition is pending consideration.

3. Both Counsel for the respondents and State, on the other hand, have vehemently urged that in the matter of **Navjot Singh Sidhu vs. State of Punjab and another (2007) 1 SCC (Cri) 627** under the similar circumstances the Apex Court had directed that while considering the limited question whether the order of conviction should be suspended or stayed, submission that even if stay or suspension is granted the appellant would not be absolved of the disqualification is misplaced under Sections 7 & 8 (3) & (4) of the representation of the People Act. Moreover, Counsel vehemently submitted that the present appeal has been rendered infructuous since the final order had been passed by the S.D.O. in the proceeding under Section 39 of the Panchayat Raj Adhiniyam pending before him. Counsel urged that on 7/5/2013 the Additional Collector, Indore directed the S.D.O. Sanwer, District Indore to consider the fact that the accused has been convicted for offence under Section 13(1) (d) (2) read with Section 13(2) of the Prevention of Corruption Act 1988 and sentenced to rigorous

imprisonment with fine of Rs.10,000/- and the same had not been set aside, but only suspended by the High Court and therefore, disqualification would stand in the proceedings taken under Section 39 of the M.P. Panchayat Raj Adhiniyam 1993 and therefore, the proceeding should be completed within a period of fifteen days and a reasoned order be passed. Consequently the S.D.O. has also now passed the final order on 4/6/2013 in the proceedings under Section 39 of the M.P. Panchayat Raj Adhiniyam pending before him. The existing Sarpanch Ramchandra Borwal is suspended with immediate effect under intimation in writing to the Collector. An in this light Counsel for the respondents urged that the appeal had been rendered infructuous and the interim relief otiose since the final order also been passed by the S.D.O. and proceedings are no longer pending before the S.D.O. and both these orders are not the subject matter under challenge either in the Writ Court or in the writ appeal of this Court and therefore, the appeal be dismissed.

4. On considering the above submissions, we find that Section 39 of the M.P. Panchayat Raj Adhiniyam does not require any show cause notice for suspension. The show cause notice for removal from the office is contemplated under Section 40 of the M.P. Panchayat Raj Adhiniyam and Clause (b) of Section 39 (1) of the Adhiniyam, only says about issuance of notice along with a charge sheet to show cause why the person be not removed from the office.

5. In the present case, the learned Single Judge has observed that the conviction of the appellant had not been stayed by the High Court and, therefore, the Additional Collector ought to have passed appropriate order in appeal and by the impugned order, the learned Single Judge had directed so. In pursuance to the direction issued by the learned Single Judge, the prescribed authority, i.e., Sub Divisional Officer passed the order of suspension of the appellant on 4/6/2012. The order of suspension was passed after due notice to the appellant. It is brought to our knowledge that under the Panchayat Raj Adhiniyam prescribed authority is Sub Divisional Officer, whereas learned Single Judge had directed the Additional Collector, Indore to pass appropriate order. In pursuance to the order made by the learned Single Judge, the Additional Collector also passed the order on 7/5/2013.

6. In the case of Harishankar Patel vs. State of M.P. and others 1999 (1) JLJ 255, the learned Single Judge has held that for passing an order of suspension, no notice is required. A show cause notice is required to be given for removal of the person from the office from having recourse to the proceeding under Section 40 of the Panchayat Raj Adhiniyam.

7. In compliance to order dated 16/2/2013 of learned Single Judge, the prescribed authority passed an order within a period of 30 days. The aforesaid orders

are appealable and revisable under the provisions of M.P. Panchayat (Appeal & Revision) Rules, 1995.

8. The Writ Petition No9291 of 2012 is pending and, therefore, the appellant may raise all the grounds in the writ petition. The order passed by the learned Single Judge is acted upon and lost its efficacy and now at this stage, it would not be proper for us to set aside the same when the appellant is having remedy to challenge the orders passed by the learned authorities in compliance to the impugned order by filing revision/appeal under the provisions of M.P. Panchayat (Appeal & Revision) Rules, 1995 and therefore, we are of the view that appellant may raise all the grounds before the writ Court.

9. For the above mentioned reasons, we direct the appellant to file an application for early disposal of the writ pending along with the copy of orders passed by the prescribed authority and Additional Collector and if such an application is filed within 15 days, we expect that the learned Single Judge will decide the matter expeditiously and disposed of accordingly.

10. With the aforesaid, Writ Appeal is disposed of.

(P.K. Jaiswal)
Judge

(Mrs. S.R. Waghmare)
Judge