

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 2<sup>nd</sup> OF AUGUST, 2023**

**WRIT PETITION No. 18206 of 2023**

**BETWEEN:-**

**ANKIT S/O SHRI CHHOTELAL, AGED ABOUT 19 YEARS,  
OCCUPATION: AGRICULTURE VILLAGE SAKTAYA,  
TEHSIL KHATEGAON, DISTT. DEWAS (MADHYA  
PRADESH)**

**.....PETITIONER**

***(SHRI MAKBOOL AHMAD MANSOORI, LEARNED COUNSEL FOR THE  
PETITIONER.)***

**AND**

- 1. COLLECTOR DISTT. DEWAS (MADHYA PRADESH)**
- 2. CHIEF EXECUTIVE OFFICER ZANPAD  
PANCHAYAT, DEWAS DEWAS (MADHYA  
PRADESH)**
- 3. CHIEF EXECUTIVE OFFICER JANPAD PANCHAYAT  
KHATEGAON DIST. DEWAS (MADHYA PRADESH)**
- 4. JAGDISH S/O SHRI HEERALAL JAT, AGED ABOUT  
70 YEARS, OCCUPATION: AGRICULTURE VILLAGE  
SAKTAYA, TEHSIL KHATEGAON, DISTT. DEWAS  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI TARUN KUSHWAH, LEARNED GOVT. ADVOCATE FOR THE  
RESPONDENTS/STATE ON ADVANCE COPY.)***

*.....*  
*This petition coming on for hearing on admission this day, the court  
passed the following:*

**ORDER**

The petitioner has filed the present petition seeking direction to the respondents to decide the representation submitted by him u/s. 36(3) of M.P.

Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Act of 1993" for short).

According to the petitioner, respondent No.4 who has been elected as Surpanch of the Gram Panchayat, had already been convicted u/s. 307/34 of the IPC, therefore, he is disqualified to hold the post of Surpanch.

Learned counsel for the petitioner submits that under sub-section (3) of the Act of 1993 the Collector is the competent authority to remove an office bearer from the post and treat the seat as vacant.

Sub-section (3) of Section 36 of the Act of 1993 is reproduced below :

*"36(3). In every case the authority competent to decide whether a vacancy has occurred under sub-section (2) shall be Collector in respect of Gram Panchayat and Janpad Panchayat and Commissioner in respect of Zila Parishad who may give his decision either on an application made to him by any person or on his own motion. Until the Collector or the Commissioner, as the case may be, decides that the vacancy has occurred, the person shall not cease to be an office bearer:*

*Provided that no order shall be passed under this sub-section against any office bearer without giving him a reasonable opportunity of being heard."*

According to the aforesaid provision, in case whether a vacancy has occurred under sub-section (2) the authority competent shall be Collector in respect of Gram Panchayat and Janpad Panchayat who may give his decision either on an application made to him by any person or on his own motion. Sub-section (2)(a) of Section 36 says that if any person having been elected as an office bearer of Panchayat subsequently becomes subject to any of the disqualification mentioned in sub-section (1) and such disqualification is not

removable or being removable is not removed or becomes office bearer concealing his disqualification for it which has not been questioned and decided by any election petition u/s. 122, he shall, subject to the provisions of sub-section (3) cease to be such office bearer and his office shall become vacant. All the aforesaid clauses apply in a case where the office bearer has incurred disqualification after election having been elected as an office bearer. Sub-section (2) a also provides that if an office bearer concealing his disqualification, then such issue shall be decided by an election petition u/s. 122. Therefore, the issue in respect to sub-Section (3) is liable to be decided by following the conditions mentioned in sub-section (2). Even otherwise, the election of respondent No.4 had already been challenged by one Ramnivas by way of election petition which has been dismissed and against which W.P. No.4309/2023 is pending before this Court. Therefore, no interference at the instance of present petitioner is made out.

Accordingly, this writ petition is dismissed in *limine*.

सत्यमेव जयते

**(VIVEK RUSIA)**  
**JUDGE**