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

**BEFORE  
HON'BLE SHRI JUSTICE VINAY SARAF  
ON THE 10<sup>th</sup> OF APRIL, 2024**

**WRIT PETITION No. 22078 of 2023**

**BETWEEN:-**

**RATIRAM S/O SHRI KAMMOD AHIRWAR OCCUPATION:  
EX SARPANCH GRAM PANCHAYAT KHARYANI JANPAD  
PANCHAYAT BIJAWAR, DISTRICT CHHATARPUR R/O  
VILLAGE KHARYANI, TEHSIL BIJAWAR, DISTRICT  
CHHATARPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ADITYA AHIWASI - ADVOCATE )***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
THE SECRETARY PANCHAYAT AND RURAL  
DEVELOPMENT DEPT. MANTRALAYA VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. THE COMMISSIONER, SAGAR DIVISION SAGAR  
(MADHYA PRADESH)**
- 3. THE COLLECTOR CHHATARPUR CHHATARPUR  
DISTRICT CHHATARPUR (MADHYA PRADESH)**
- 4. THE SUB DIVISIONAL OFFICER (REVENUE)  
COMPETENT AUTHORITY BIJAWAR DISTRICT  
CHHATAPUR (MADHYA PRADESH)**
- 5. THE PRESCRIBED AUTHORITY (PANCHAYAT)  
CUM C.E.O. JILA PANCHAYAT CHHATARPUR  
DISTRICT CHHATARPUR (MADHYA PRADESH)**
- 6. THE C.E.O. JANPAD PANCHAYAT BIJAWAR  
C H H A T A R P U R CHHATARPUR (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY SHRI MANU V. JOHN - PANEL LAWYER AND SHRI SHREYASH PANDIT  
- ADVOCATE FOR CAVEATOR )***

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

**ORDER**

Petitioner was elected as Sarpanch of Gram Panchayat of Kharyani Janpad Panchayat, Bijawar District- Chhatarpur (M.P.) has challenged the legality, validity and propriety of order dated 14.08.2023 passed by Commissioner Sagar, Division Sagar in Appeal No. 145/Appeal/2023-24 (Annexure P/1), whereby the Learned Commissioner upheld the order passed by Prescribed Authority (Panchayat) cum CEO, Zila Panchayat, Chhatarpur on 30.06.2023 in Case No. 001/Section 40-92/2023-24 holding petitioner guilty for the embezzlement of government exchequer amount of Rs. 2,50,000/- and Rs. 88,820/- respectively.

2. Learned counsel for petitioner submits that petitioner was duly elected and due to the political reasons, report was lodged by caveator alleging the embezzlement of the amount on the ground that despite no work was carried out, the amount was withdrawn from Gram Panchayat and misappropriated by the petitioner and Panchayat Secretary. He further submits that before passing the impugned order by CEO, under Section 40 of M.P. Panchayat Raj Adhiniyam, 1993, no proper inquiry was conducted, statements of the witnesses were not recorded, the petitioner was not provided opportunity to cross-examine the witnesses and only on the basis of inspection report, the order was passed which is bad in law and liable to be quashed. He relied on the judgment of Co-ordinate Bench delivered in the matter of *Mango Bai Vs. State of M.P. and others (2003) 2 MPLJ 112*, wherein the Co-ordinate Bench has held that before holding guilty, the proper opportunity of hearing should be granted. The relevant paragraphs of the judgment are reproduced as under :

8. *In the instant case the only question for consideration is whether the enquiry has been properly held before ordering removal of the petitioner u/s 40. No doubt about it SDO directed Panchayat Inspector to submit the report, but, the enquiry was not held by the Inspector in presence of the petitioner and report submitted by Panchayat Inspector was also not supplied to the petitioner which constituted adverse material which ought to have been supplied to the petitioner. Show-cause notice mentioned that work was not done by the beneficiaries and whether there is total misappropriation of the amount advanced, are questions on which an enquiry ought to have been held. Petitioner ought to have been allowed to adduce the evidence and only after determination of question about the misappropriation of the money advanced and what role as a matter of fact was played by the petitioner in the capacity of Sarpanch in disbursement of loan by Janpad Panchayat, was also the subject matter of evidence for which the petitioner ought to have been allowed an opportunity to adduce the evidence.*

9. *Principles of natural justice are required to be observed before ordering removal of Sarpanch u/s 40 of the Act. In Kailash v. State of M.P. [1999 (2) J.L.J. 280] esteemed brother S.P. Khare, J. considered the question and held that removal of Sarpanch u/s 40 is a serious matter when he is removed and further disqualified for six years to be elected under the Act. It is not sufficient to give a mere lip-service to the requirement of law. It is true that it is not specifically provided in section 40 that principles of natural justice should be followed while holding an enquiry but it is implicit in this provision that the officer-bearer who is sought to be removed will be given a fair hearing. This Court held that the words "after such inquiry as it may deem fit to make" in the main part of section 40 (1) of the Act would mean an inquiry which is held in the presence of the office-bearer and not behind his back. He should be allowed to inspect the documents which are to be relied upon against him and he should have the right to adduce his own evidence. These are the important facets of an inquiry to be held in conformity with the principles of natural justice. It is not the subjective choice of the prescribed authority to get an inquiry held of any kind. It does not envisage a secret enquiry or a preliminary inquiry alone. That is made only for collection of evidence and at that stage there is no participation of the person against whom the action is sought to be taken. The words "as it may deem fit" have to be construed objectively and would mean an inquiry depending upon the facts and circumstances of each case. Some of the facts of the inquiry may be excluded if the facts are not very much in dispute or there are other circumstances to dispense with them. But the office bearer has a right of fair hearing. "You must hear the person who is going to suffer". That is a duty which lies upon everyone who decides anything. There is, however, some flexibility depending upon the subject-matter. Similar is the law laid down by this Court in Raja*

*Raj Singh v. State of M.P. and others [2000 (2) JLJ 242].*

*10. Secret enquiry or preliminary enquiry alone is not enough. Collection of evidence is required and participation of person against whom the action is sought to be taken. Order-sheets of the SDO's file indicated that biparte enquiry was not held at all nor was directed. Panchayat Inspector conducted the exparte enquiry. Report of which not supplied. Thereafter an incompetent authority, SDM considered the report and recommended the removal and order dated 31.3.1999 mentioned that Prescribed Authority i.e. SDO was in agreement with the view of the SDM and has passed the order on 31.3.1999 itself. Whereas it was incumbent upon the SDO to receive the reply and to apply independent mind after holding an enquiry. All these requirements have been flagrantly violated in the instant case. Considering the serious nature of charges levelled against the petitioner she ought to have been given due and proper opportunity.*

3. He further relied upon the judgment of Co-ordinate Bench delivered in the matter of ***Phool Bai vs. State of M.P. and others*** reported in **2009 0 ILR(MP) 1631**, whereby the Co-ordinate Bench after considering the scope of inquiry to be held as under Section 40 of the Act for the purpose of removal of office bearer of Panchayat held that if any order is passed violating the principle of natural justice, the same cannot survive and, therefore, it is liable to be quashed. The relevant paragraph of the judgment is reproduced herein under :

*11. Thus, the prescribed authority though aware of the fact that the officers who prepared the enquiry report did not appear for cross-examination, yet proceeded to hold the petitioner guilty of charges on the basis of same enquiry report. The procedure, therefore, as adhered to by the prescribed authority cannot, in the considered opinion of this Court, by any stretch of imagination be termed as a fair trial. It is not the case that because the concerning officials who have furnished the enquiry report were not cross-examined, the report was not taken into consideration. On the contrary the prescribed authority has heavily relied upon the findings recorded in the enquiry report and in the considered opinion of this Court not affording of an opportunity to cross-examine the officers who prepared the enquiry report has resulted in miscarriage of justice and denial of a reasonable opportunity of hearing. An order of removal/disqualification based on such defective enquiry cannot be given the stamp of approval.*

4. He further relied upon the judgment of Co-ordinate Bench passed in

the matter of *Nanuram vs. State of M.P. and others* reported in **2018 1 MPLJ 63**, wherein the Co-ordinate Bench has considered the inquiry conducted under the provision of Section 60 of the Act and held that if during the inquiry, opportunity of cross-examination has not been granted or the statements have not been recorded, the said inquiry is contrary to the principles of natural justice and the order passed on the basis of the said inquiry cannot be sustained. He prays for quashment of the orders under challenge.

5. Learned Panel Lawyer appearing on behalf of respondents/State supported the orders passed by CEO and Commissioner and submits that petitioner is having an alternate remedy of approaching State Government by preferring revision, which has not been availed by petitioner and the petitioner has directly approached this Court under Section 226 of the Constitution of India.

6. He further submits that as per the record available with the Learned Panel Lawyer, proper inquiry was conducted, show-cause notice was issued to the petitioner and Secretary, petitioner participated in the inquiry proceeding, he filed the reply of show-cause notice dated 21.05.2023, proceedings were drawn, the petitioner and Secretary of Gram Panchayat were given opportunity to produce their case and they were heard in person on 06.06.2023 and, thereafter, speaking order was passed, wherein the petitioner was held guilty of embezzlement of the funds. He further submits that during inquiry the petitioner has not demanded for recording of statement of any witness rather the petitioner has accepted the guilt by depositing the amount during the proceedings and, therefore, no case of interference is made out. He further submits that when the spot inspection was done and the *panchanama* was prepared in respect of alleged work upon the application of the petitioner dated 31.05.2023, the

petitioner himself was present at spot and it is found that no work was carried out at spot.

7. He further submits that upon receipt of complaint, CEO, Zila Panchayat, Chhatarpur instructed to CEO, Janpad Panchayat Bijawar, District Chhatarpur to conduct an inquiry and committee was formed to conduct the inquiry, thereafter, a four member committee was constituted and the second committee also inquired the matter and submitted a report, wherein the petitioner was found guilty. It is further submitted that for the purpose of illegally withdrawal of the amount, petitioner and Panchayat Secretary has prepared forged bills and vouchers.

8. Learned counsel for Caveator submits that though the inquiry was initiated upon the complaint of caveator but he has not been impleaded as respondent in the case. He supported the impugned orders and submitted that guilt was accepted by the petitioner and, therefore, the amount of embezzlement was deposited by the petitioner in the bank account of Gram Panchayat and no case of interference is made out. He relied on the judgment of Apex Court passed in *Civil Appeal No. 8223 of 2009* in the matter of *The Chairman, State Bank of India and another vs. M.J. James* delivered on *16.11.2021*, whereby the Apex Court has held that there is a distinction between "adequate opportunity" and "no opportunity at all" and it is held that prejudice exception operates more specifically in the later case, wherein facts are admitted, no prejudice is caused to the person complaining the breach of natural justice.

9. It is further held that procedural and substantive provisions of law in warding the principles of natural justice when infringed must lead to prejudice being caused to the litigant in order to affording relief. What particular rule of

natural justice should apply to a given case, must depend to a great extent on the facts and circumstances of that case, the framework of law under which the inquiry is held and constitution of the body of persons or Tribunal appointed for that purpose? The procedures which are considered inherent in the exercise of *quasi* judicial or administrative power are those which felicitate if not ensure a just and fair decision.

10. Learned counsel further submits that in the facts and circumstances of the present case, if the statements of the witnesses were not recorded and opportunity of cross-examination was not granted to the petitioner, no prejudice was caused to the petitioner as the petitioner has accepted the guilt and deposited the amount in the bank account.

11. Heard learned counsel for the parties and perused the record received from the office of CEO, Zila Panchayat, Chhatarpur.

12. After perusal of the record, it appears that after receipt of complaint, a two member committee was constituted, who visited at the site and submitted its inspection report on 24.05.2023, wherein the Committee found the embezzlement of amount of Rs. 2,50,000/- and, therefore, the proceedings were initiated against under Section 40 and 92 of M.P. Panchayat Raj Adhiniyam, 1993 against the petitioner and Panchayat Secretary on 25.05.2023 and show-cause notice was issued to them, wherein allegations were specified in detail and it was also specifically mentioned that in respect of which bill/ voucher, the allegations were levelled against them. Both of them appeared and filed the reply of show-cause notice, thereafter, they were granted opportunity of personal hearing. Personal hearing was carried out and, thereafter the order was passed by Competent Authority cum CEO, Zila Panchayat, Chhatarpur under Section 40 of the Act on 30.06.2023, wherein it is specifically mentioned that in the

reply, the petitioner has accepted that the work could not be carried out and the amount which was already withdrawn, was redeposited by the petitioner and Secretary, Gram Panchayat in the bank account of Gram Panchayat, Khariyani on 31.05.2020. Before passing the order and after considering the reply of petitioner, CEO, Zila Panchayat constituted a four member committee and the four member committee also enquired the matter and inspected the spot in the presence of petitioner and submitted its report on 16.06.2023, wherein the petitioner was found guilty and the allegations of embezzlement, was found true and thereafter, the order was passed by Zila Panchayat, which was challenged by petitioner before Commissioner unsuccessfully and the Commissioner upheld the order dated 30.06.2023 by passing impugned order in Appeal No. 145/2023-24 on 14.08.2023.

13. The Apex Court in the matter of State of ***U.P. vs. Sudhir Kumar Singh and others*** reported in ***(2020) SCC Online SC 847*** crystallized the law in respect of principles of natural justice as under :

"39. An analysis of the aforesaid judgments thus reveals:

*(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot be itself, without more, lead to the conclusion that prejudice is thereby caused.*

*(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*

*(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*

*(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*

*(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."*

14. Learned counsel for petitioner mainly based his arguments on the ground that during the inquiry, statements of the witnesses were not recorded and the petitioner was not granted opportunity of cross-examination. The Co-ordinate Benches in the judgments relied by learned counsel for petitioner has held that action of removal of office bearer under Section 40 of Adhiniyam, 1993 is a serious matter and it also debar for six year to contest the election therefore, the inquiry should be fair and in presence of incumbent and the principles of natural justice should be observed, copies of the material be supplied and opportunity of hearing should be granted to the incumbent.

15. Considering the aforesaid, law laid down by Apex Court in the matter of Sudhir Kumar Singh (supra) and the orders passed by Co-ordinate Benches in the matter of Mango Bai (supra), Nanuram (supra) and Phool Bai (supra), the present matter is examined. In the present matter it is found that after receipt of complaint, a two member committee was formed, report was obtained thereafter, show-cause notice was issued wherein, all the allegations were levelled in detail and opportunity was granted to the petitioner to reply all the allegations. The petitioner submitted his reply and thereafter, opportunity of personal hearing was also granted to the petitioner however, during this period, a four member committee was also formed and re-inquiry was conducted and

the second committee was also found that, there was embezzlement of funds of Gram Panchayat and, therefore, it is not a case wherein, the proper opportunity was not granted to the petitioner or there is any violation of principles of natural justice. In the present matter, the petitioner himself has accepted in the reply that the work was not carried out and he tried to explain the reasons followed by redepositing the amount in the bank account of Gram Panchayat therefore, there was no need to record the oral evidence of the witnesses to the effect that work was not carried out and amount was withdrawn, because these facts were admitted in the matter and consequently, no irregularity or illegality committed by CEO, Zila Panchayat, Chhatarpur in passing the impugned order dated 30.06.2023.

16. After examining the case in view of law laid down by Apex Court in the matter of Sudhir Kumar Singh (supra), it appears that there was no violation of principles of natural justice and no prejudice was caused to the petitioner, who is complaining the breach of natural justice and, therefore, no case for interference is made out.

17. Consequently, admission is declined, petition is disposed of. No order as to costs.

**(VINAY SARAF)**  
**JUDGE**

Shub