

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 5th OF AUGUST, 2024

WRIT PETITION No. 20486 of 2024

RAMESH KUMAR DWIVEDI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Neeraj Singh Chauhan – Advocate for the petitioner.

Shri Veer Vikrant Singh- Dy. Government Advocate for the respondents / State.

ORDER

1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-
 - (i) Issue a writ in nature of mandamus and direct to the respondent no. 3 to decide the pending case no. 05/ Section 40-92/2023-24 strictly as per the provision of Section 40 of the Act, and take appropriate action against the erring persons in the interest of justice.
 - (ii) Issue any other writ, order or direction as this Hon'ble Court deems fit.
2. It is submitted by counsel for the petitioner that a show cause notice under Section 40 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam has been issued to respondent no. 3 on 16.1.2024. It is submitted by counsel for the petitioner that as per Section 40 (1) (c) (*proviso*), final order has to be passed within a period of 90 days from the date of issuance of show cause notice and where the pending case is not

decided within 90 days, the Prescribed Authority shall inform all the 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. It is submitted that not only more than 90 days have expired but even the C.E.O. Jila Panchayat Chhatarpur has also not sought extension of time from his senior officer.

3. Heard learned counsel for the petitioner.
4. The petitioner has not filed a copy of the order sheets / proceedings of the show cause notice dated 16.1.2024. However, it is the contention of the petitioner that the final order has not been passed. If that is so, then in the light of the provisions of Section 40 (1) (c) (*proviso*) of the Act, it is obligatory on the part of the Competent Authority to seek extension of time from senior officer. Accordingly, this petition is **finally disposed of** with the following observations :-

- (i) If final order on the show cause notice dated 16.1.2024 has not been passed, then the Competent Authority shall proceed further in accordance with the provisions of Section 40 (1) (c) (*proviso*) which provides that the inquiry must be concluded and final order shall be passed within a period of 90 days, otherwise, Prescribed Authority shall inform all the fact to the senior officer and shall request for extension of time which shall not be more than 30 days.
- (ii) If the Prescribed Authority has not requested the senior officer for extension of time, then the Prescribed Authority is directed to immediately refer the matter to the senior officer requesting for extension of time and after considering the provisions of law as well as the steps taken in the inquiry so far, the senior officer shall decide

as to whether time can be extended or not but shall ensure that in case of extension of time it shall not be more than 30 days.

5. Needless to mention here that this Court has not considered the merits or demerits of the case and has passed this order strictly in the light of the Section 40 (1) (c) (*proviso*) of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam. The authority shall decide the show cause notice / proceedings strictly in accordance with evidence which would come on record as well as provisions of law.

(G. S. AHLUWALIA)
JUDGE

JP