

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 393/2023

Smt. Nirmala Bai Wife Of Shri Mahaveer Meena, Aged About 38
Years, Resident Of Galana, Tehsil Ladpura, District Kota (Raj.)

----Appellant

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Rural Development And Panchyati Raj, Secretariat, Jaipur (Raj.)
2. Dy. Commissioner And Dy. Secretary Administration (Ii), Rural Development And Panchyati Raj Department, Jaipur.
3. Chief Executive Officer, Zila Parishad, Kota.

----Respondents

For Appellant(s)	:	Mr. Suresh Pareek, Senior Advocate with Ms. Nandini Sharma Mr. Abhay Purohit Ms. Muskan Soni
For Respondent(s)	:	Ms. Divya Rathore Ms. Anshul Ranga Mr. Anirudh Sharma for Mr. Kapil Prakash Mathur, AAG

HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Judgment

20/04/2026

1. Instant DB Special Appeal is preferred by the appellant-writ petitioner aggrieved from order dated 11.11.2022 in SB Civil Writ Petition No. 5563/2022 and further order dated 25.04.2023 in Review Petition (Writ) No. 64/2023. Learned Single Judge has dismissed the writ petition filed by appellant-petitioner and further dismissed the review petition filed to review the order dated 11.11.2022.

2. Learned Senior Advocate appearing for appellant while placing reliance upon judgment dated 17.01.2023 in **SB Civil Writ Petition No. 6771/2022, Satish Kumar Dohariya Vs. State of Rajasthan and Ors.**, passed by a Single Judge Bench of this Court submits that in an identical case, a suspension order was passed by the authority without waiting for reply was quashed. He further submitted that in the instant case Learned Single Judge has placed reliance upon a division bench judgment in case of **Pankaj Mittal Vs. State of Rajasthan and Ors. reported as 2022 (1) WLC (Raj) 222 (DB)**, and decided the case, whereas the judgment has different facts and not applicable upon the facts of present case. He further submitted that in case of **Pankaj Mittal (supra)**, not only reply was filed, but a proper inquiry was initiated, whereas in the instant case no opportunity of submitting reply was given to the writ petitioner. He also submitted that the charge to accept gratification was not alleged directly upon the writ petitioner as no money has been accepted by her and she was falsely implicated by the complainant due to political rivalry. He further referred the provisions and submitted that without opportunity of hearing, the impugned order was passed and the Learned Single Judge has erroneously dismissed the writ petition and also the review application.
3. Aforesaid contentions were opposed by the learned counsel appearing on behalf of the respondents and he submitted that the order passed by the Learned Single Judge is based

upon a judgment passed by a Division Bench of this Hon'ble Court and there is no perversity in the order.

4. Heard learned Senior Advocate appearing on behalf of appellant writ petitioner and learned counsel appearing on behalf of respondents. Perused the material placed on record. Also considered the judgment as referred by learned Senior Advocate.
5. Brief facts of the case are that the appellant writ petitioner, who was functioning as Sarpanch of village Panchayat Gandhi Pali Panchayat Samiti, Ladpura District Kota, has filed a writ petition on the ground that on 25.02.2022 a charge-sheet is served levelling certain allegations against her but without holding a preliminary inquiry. The writ petitioner was given time up to 15.03.2022 to submit her explanation but to her surprise, on day of service of charge-sheet i.e. 25.02.2022 by invoking power under subsection (4) of Section 38 of Rajasthan Panchayat Samiti Act, 1994 (hereinafter referred as "Act of 1994"), the writ petitioner was placed under suspension. The writ petitioner has challenged the suspension order and also the charge-sheet by filing a writ petition. Learned Single Judge after considering the submission of both the parties had dismissed the writ petition on 11.11.2022 without following observation:

"The Division Bench of this Court has, in case of Pankaj Mittal (supra), held as under:-

"In terms of sub-section (4) of Section 38 of the said Act the State Government has power to suspend a member including a Chairperson or a Deputy Chairperson of a Panchayati Raj

Institution against whom an enquiry has been initiated under sub-section (1) or against whom any criminal proceedings for an offence involving moral turpitude is pending trial in a court of law. In this respect communication dated 18.09.2020 becomes significant. As noted under this communication the Secretary required the petitioner to remain present on 27.11.2020 in connection with the complaint received against him of being involved in a trap case. Thus the enquiry as envisaged under sub-section (1) of Section 38 had already been initiated. The procedure for conducting the entire enquiry as laid down in Rule 22 of the Rules should not be concluded without initiation of enquiry as referred to in sub-section (4) of Section 38. Holding and conducting entire enquiry would require framing of formal charges against a person concerned and soliciting his response to such charges. Nevertheless when we are dealing with the situation of powers to suspend a person, the same are necessarily of interim measure and urgent character. Sub-section (4) of Section 38 of the said Act does not envisage conduct of the whole enquiry before power of suspension can be exercised."

Thus, the Division Bench of this Court has categorically held that calling for explanation of the elected representative with regard to a complaint received against him, amounts to initiation of an enquiry under Section 38 (1) of the Act and before placing the elected representative under suspension under sub-section(4) of Section 38, entire enquiry as laid down under Rule 22 of the Rules of 1996 is not required to be conducted. The aforesaid legal position has not been disputed even by learned counsel for the petitioner. In view thereof, since, in the present case, the petitioner's explanation was sought vide order dated 25.02.2022 as to why enquiry

should not be initiated against her under Rule 22 (2), which amounts to initiation of an enquiry under Section 38 (1), this Court finds no illegality and invalidity in the order dated 25.02.2022 placing the petitioner under suspension. In view of the judgement in case of Pankaj Mittal (supra), this Court is also not satisfied that prior opportunity of hearing was required to be furnished to the petitioner before placing her under suspension."

6. The petitioner has filed a review petition on the ground that she was given a liberty in DB Special Appeal (Writ) No. 1325 of 2022 filed against order dated 11.11.2022 and further also on the grounds as mentioned in review petition. Learned Single Judge has dismissed the review petition observing as under:

"True it is that Section 38 (4) of the Act of 1994 inter alia provides for suspension of an elected member against whom an enquiry has been initiated under Section 38 (1) of the Act of 1994; but, the submission made by the learned counsel for the review-petitioner that there is no initiation of enquiry against her in absence of preliminary enquiry is wholly misconceived and misplaced inasmuch as Rule 22 (2) of the Rules of 1996 provides that if, upon consideration of report received as aforesaid, i.e., preliminary enquiry report under sub-Rule (1) or otherwise, the State Government is of the opinion that action under sub-Section (1) of Section 38 of the Act of 1994 is necessary, the State Government shall frame definite charges and shall communicate in writing to the concerned person to carry with such details as maybe deemed necessary. Thus, Rule 22 (2) of the Rules of 1996 provides in no uncertain terms that action under Section 38 (1) can be initiated by the State Government either on receipt of the preliminary enquiry report under Rule 22 (1) of the Rules of 1996 or even otherwise also. Submission of the learned counsel for the petitioner that the phrase "or otherwise", has to be read in consonance with "framing of charges in a criminal trial" as stipulated under Section 38 (4) of the

Act of 1994 as one of the conditions for passing the order of suspension, is wholly devoid of merit and cannot be countenanced by this Court. In the considered opinion of this Court, the Rule 22 (2) of the Rules of 1996 provides that if the State Government is satisfied upon consideration of material other than the preliminary enquiry report, it can initiate an enquiry under Section 38 (1) of the Act of 1994.

As already observed by this Court vide its order dated 11.11.2022, a Division Bench of this Court in case of Pankaj Mittal (supra), after examining the scheme of Section 38 and Rule 22, held that if the State Government solicits response of the delinquent in connection with the complaint received against him of being involved in the trap case, the enquiry as envisaged under sub-Section (1) of Section 38 of the Act of 1994 had already initiated to warrant suspension of the delinquent. In view of the aforesaid analysis, this Court is not persuaded to hold that holding of the preliminary enquiry is sine qua non for initiation of an enquiry under Section 38 (1) of the Act of 1994.

7. The fact leading to passing of impugned order are that a complainant Vishnu Kumar Nagar has filed a complaint for demand of illegal gratification by present appellant petitioner and on her direction complainant met her husband Mahaveer, who accepted bribe of ₹10,000/- on behalf of appellant. A trap was led after verification and husband of present appellant Mahavir Meena and present appellant were arrested. Present appellant was arrested on 17.03.2021 and sent to judicial custody on 18.03.2021 and was released on bail on 07.04.2021 so she remained in custody from 17.03.2021 to 08.04.2021.
8. On the basis of criminal case, a charge sheet was issued on 25.02.2022 on the ground that the act committed is a

misconduct. Simultaneously, the writ petitioner (appellant) was placed under suspension by order dated 25.02.2022 (Annexure-7). A reply submitted by the respondents indicate that appellant petitioner was treated as public servant under Section 108 of the Act of 1994 and circular dated 31.12.1996 is applicable upon writ petitioner for automatic suspension. Further, reliance is placed upon circular dated 12.10.2021 14.12.2010, 08.02.2001, 07.07.2010 and 12.01.2011.

9. Section 38(4) of Act of 1994 is reproduced as under:

The State Government may suspend any member including a chairperson or a deputy chairpersons of a Panchayati Raj Institution against whom an enquiry has been initiated under Sub-Section (1) or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a Court of law such person shall stand debarred from taking part in any act or proceeding of the Panchayati Raj Institution [stand debarred from taking part in any act or proceeding of the Panchayati Raj Institution concerned while being under such suspension.

Provided that the State Government may also suspend any Panch on the recommendation of the Ward Sabha or a Sarpanch on the recommendation of the Gram Sabha, but the State Government shall do so only when a resolution to that effect passed by a Ward Sabha. or a Gram Sabha as the case may be, is referred by the State Government to the collector for convening a special meeting of the Ward Sabha or the Gram Sabha, as the case may be, for finally ascertaining the wishes of the members and the members present in the meeting so convened by the Collector and presided over by his nominee, reaffirm the resolution seeking suspension of the Panch or the Sarpanch, as the case may be, by a majority of two thirds of the members present and voting

Providing further that no resolution seeking suspension of the Panch or Sarpanch shall be moved or passed before the completion of a tenure of two years by a Panch or a Sarpanch, as the case may be.

10. Aforementioned indicate that the State Government may suspend any member including a Chairperson or Deputy Chairperson of a Panchayat Samiti, Panchayati Raj Institution against whom inquiry has been initiated under subsection (1) or against whom any criminal proceedings in accordance with offense involved, moral turpitude is pending trial in a court of law. The provision itself indicates that for removal it is necessary to give an opportunity of being heard, but for suspension after issuance of a charge sheet, it is not necessary to give an opportunity of hearing.
11. The material on record indicate that the present petitioner was charged under the Prevention of Corruption (Amendment) Act 2018 and FIR No. 90 of 2021 dated 28.03.2021 was registered at ACB Kota Rural (Jaipur) year 2021. Present petitioner and her husband Mahaveer Meena are accused and a charge sheet is also filed in the trial court. The writ petitioner remained in police/judicial custody for more than 48 hours.
12. Section 38(1) of Act of 1994 provides that for removal an opportunity of hearing is required to be granted, but under subsection (4) of Section 38, it is not necessary to give opportunity of hearing while passing the order of suspension. Admittedly, suspension is not considered a penalty or punishment in itself, rather it is a temporary or

stop-gap arrangement pending inquiry in a situation where a person is charged with grave misconduct.

13. The writ petitioner was issued a charge sheet under Section 38(1) of Act of 1994 on 25.02.2022 and subsequent to charge sheet, the writ petitioner was placed under suspension on very same day, but after issuance of charge-sheet by invoking power under Section 38(4) of Act of 1994. The provision is clear that no opportunity of hearing or a prior notice to explain conduct is required before issuing any order of suspension under Section 38(4) of Act of 1994. passed during pendency of the inquiry. Therefore, Learned Single Judge has not committed any error while dismissing the writ petition and also a review petition.
14. In view of discussion made hereinabove, instant special appeal (writ) preferred by writ petitioner is hereby dismissed with pending application, if any.
15. No order as to costs.

(ASHOK KUMAR JAIN),J

(INDERJEET SINGH),J