



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 1960/2024

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Rural Development And Panchayat Raj Department, Government of Rajasthan, Secretariat, Jaipur.
2. The Additional Commissioner And Deputy Government Secretary (Inquiry), Rural Development And Panchayati Raj Department, Government Of Rajasthan, Secretariat , Jaipur.

----Respondents

For Petitioner(s) : Mr. Parvez Khan Moyal

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

REPORTABLE

27/02/2024

1. Heard learned counsel for the petitioner.
2. The present writ petition has been filed against the order dated 24.01.2024 (Annex.5), whereby, the petitioner has been suspended from the post of Sarpanch, Gram Panchayat Jadana, Panchayat Samiti Rashmi, District Chittorgarh.
3. Briefly noted the facts in the present writ petition are that the petitioner was elected as Sarpanch of Gram Panchayat Jadana, Panchayat Samiti Rashmi, District Chittorgarh in the year 2020. The petitioner, while working as Sarpanch, was arrested in pursuance of an FIR No.301/2023 dated 03.12.2023 registered by Anti Corruption Bureau, Chittorgarh under Section 7 of the Prevention of Corruption Act, 1988. The allegation against the petitioner was that he was caught red handed while accepting an amount of Rs.2,40,000/- as bribe. In pursuance of the FIR



registered against the petitioner, he was put in judicial custody and was ultimately bailed out by a Co-ordinate Bench of this Court vide order dated 16.01.2024. The petitioner was issued a notice dated 24.01.2024 seeking an explanation as to why the proceedings under Rule 22 (2) of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as 'the Rules of 1996') be not initiated against him and on the same date the petitioner was served with a charge-sheet (Annex.4). As a consequence, the petitioner was suspended by the respondents vide order dated 24.01.2024. Hence, the present writ petition has been filed against the order of suspension dated 24.01.2024.

4. Learned counsel for the petitioner vehemently submits that the respondents have proceeded in a hasty manner as the petitioner was issued a notice on 24.01.2024 and on the same day the charge-sheet was filed and the order of suspension was also issued on 24.01.2024 itself. Learned counsel submits that recourse to sub-Rule (1) of Rule 22 of the Rules of 1996 had not been taken and therefore, the order of suspension issued is arbitrary, illegal and unreasonable. He, therefore, prays that the writ petition may be allowed and the order of suspension dated 24.01.2024 may be quashed and set-aside.

5. I have considered the submissions made at the Bar and have gone through the relevant record of the case including the impugned order dated 24.01.2024.

6. The admitted facts in the present case are that the petitioner, while discharging the functions & duties of a Sarpanch of Gram Panchayat Jadana, Panchayat Samiti Rashmi, District Chittorgarh, was caught red handed while accepting a bribe of



Rs.2,40,000/-. In pursuance of the registration of FIR No.301/2023, the petitioner was arrested and had suffered incarceration till he was bailed out by a Co-ordinate Bench of this Court vide its order dated 16.01.2024.

7. Sub-Rule 1 & 2 of Rule 22 of the Rules of 1996 reads as under:

“(1) Before taking any action under Sub-sec. (1) of Sec. 38, where on its own motion or upon any complaint the State Government may ask the Chief Executive Officer or any other officer to get a preliminary enquiry done and to send his report to the State Government within one month.

(2) If, upon consideration of the report received as aforesaid or otherwise, the State Government is of the opinion that action under Sub-sec. (1) of Sec. 38 is necessary, the State Government shall frame definite charges and shall communicate them in writing to the Chairperson, Deputy Chairperson or Member of the Panchayati Raj Institution together with such details as may be deemed necessary. He shall be required to submit written statement within one month admitting or denying the allegations, giving his defence if any and whether he desires to be heard in person.”

8. The basic intention of the rule framers is that if any complaint or any allegation is brought to the notice of the State Government then before proceeding against concerned official under Section 38 of the Rajasthan Panchayati Raj Act, 1994, a fact finding preliminary enquiry should be done. The intention of the law is to find out the veracity of the allegations made in the complaint or to verify the facts which have been brought to the notice of the Government before proceeding against the Officer / Office Bearer under Section 38 of the Rajasthan Panchayati Raj Act, 1994 and if, such report or the appropriate facts are submitted to the State Government, then recourse to sub-Rule (2)



of Rule 22 of the Rules of 1996 may be taken after consideration of the material brought before it and if need be, the erring official in certain cases may file his appropriate explanation for the same. In short, to proceed against a person under Section 38 of the Rajasthan Panchayati Raj Act, 1994, the State Government should have complete facts and if required, seek an explanation from the erring official to proceed against him.

9. In the present case, as stated above, the admitted facts are that the petitioner was arrested while accepting a bribe of Rs.2,40,000/- while discharging his duties as Sarpanch and, therefore, the facts disclosed in the FIR are clear, unambiguous and do not warrant any preliminary enquiry to be conducted to find out the veracity or correctness of the same. Since, the petitioner has been bailed out by a Co-ordinate Bench of this Court after having suffered incarceration of more than one and half month, therefore, it can safely be presumed that prima facie the petitioner was involved in the incident as mentioned in the FIR registered in this case.

10. In the opinion of this Court, it was not incumbent upon the State Government to take recourse to sub-Rule (1) of Rule 22 of the Rules of 1996 before initiating the action as per sub-rule 2 of Rule 22 against the petitioner. Since, the petitioner was present in person at the time of handing over the notice / order dated 24.01.2024, he was confronted with the questions and presumably he has averred his contentions, but the fact of the matter remains that the petitioner could not have been in a position to deny the factual details as narrated above. In these circumstances, the charge-sheet issued to the petitioner while



taking recourse to sub-rule (2) of Rule 22 of the Rules of 1996 appears to be just and proper and as a consequence, in view of Section 38 Sub-Rule 4, the suspension order dated 24.01.2024 (Annex.5) has been passed.

11. This Court is firmly of the view that in the cases in which an office bearer or an officer is caught red handed and is being proceeded under Prevention of Corruption Act, 1988, there is no scope of taking a lenient view and therefore, in an appropriate case, if the facts are so clear which do not warrant any preliminary enquiry to be conducted, recourse to sub-Rule (2) of Rule 22 of the Rules of 1996 for proceeding against erring official under Section 38 of the Rajasthan Panchayati Raj Act, 1994 can be taken. A dishonest official or a person deserves no sympathy and leniency.

12. Even otherwise, the petitioner is placed under suspension which is not a punishment as the petitioner has been kept away from the workplace so that he may not influence the proceedings of the enquiry and since, in the present case the petitioner has been caught red handed while accepting the huge amount of bribe and the fact that he was behind the bars for more than 48 hours therefore, an order of suspension was *sine qua non*.

13. In view of the discussion made above, there is no force in the writ petition. The same is, therefore, dismissed.

(VINIT KUMAR MATHUR),J

22-Arun P/-