

(2019) 02 CHH CK 0439

Chhattisgarh High Court

Case No: Writ Petition (S) No. 1292 Of 2019

Rakesh Kumar Dhruv

APPELLANT

Vs

State Of Chhattisgarh  
And Ors

RESPONDENT

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Date of Decision: Feb. 25, 2019

Acts Referred:

- Representation Of People Act, 1951 - Section 28A

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Anup Majumdar, Anshuman Shrivastava

Final Decision: Allowed

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### Judgement

P. Sam Koshy, J

1. The challenge in the present writ petition is to the charge-sheet dated 12.12.2018 passed by the respondent No. 2, the Divisional Commissioner,

Division Raipu, District Raipur.

2. The solitary challenge to the said charge-sheet is incompetency of the officer who has issued the charge-sheet. According to the petitioner since

the petitioner was initially appointed as an Assistant Returning Officer, he becomes an officer of the Election Commission. The notification for the

election had already been published by the State Government on 06.10.2018 and till the election duties were completed the petitioner stood under the

control, superintendence and discipline of the Election Commission. According to the petitioner during the said period it was to be considered as if the

services of the petitioner is on deemed deputation to the election commission. In view of the same the petitioner contended that the State authorities during the said period could not have initiated disciplinary proceedings against the petitioner and thus prayed for the quashment of the charge-sheet only on this ground.

3. The State counsel on the other hand opposing the petition submits that since the period of misconduct committed by the petitioner was prior to the election programme being notified. It cannot be said that the State authorities were denuded of their power rather they had all the powers to initiate disciplinary proceedings and as such the petitioner would not be entitled for the protection that is there under Section 28 A of the 'The Representation of People Act, 1951(in short, 'The Act of 1951').

4. The State counsel further submits that since charge sheet has been issued on 12.12.2018 and by that time the election programme had already been completed as on 12.12.2018 the results were also declared, it cannot be said that the State Govt. would not be competent to initiate disciplinary proceedings for the misconduct that the the petitioner had committed and therefore, the petitioner would not be entitled for the protection under Section 28A of the Act, 1951.

5. Having heard the contention put forth on either side and perusal of the record particularly the contents of the documents enclosed with the writ petition what is not in dispute is the fact that the election programme for the Assembly elections for the State of the Chhattisgarh was notified on

6.10.2018. The impugned charge sheet in the present case has been issued during the election programme that is on 12.12.2018. The said charge sheet has been issued by the officer of the State Govt. that is Divisional Commissioner, Division Raipur, District Raipur. Now the issue left to be decided is whether the Divisional Commissioner at that relevant point of time was competent to issue the charge sheet to the petitioner.

6. Whether the election programme was complete or not, it would be relevant at this juncture to refer to Annexure P/1, notification dated 26.10.2018 issued by the Election Commission of India which clearly has mention 13.12.2018 to be the date by which the election programme shall be complete.

If that be so, the charge sheet issued on 12.12.2018, as in the present case, would definitely be a charge sheet which has been issued during the election programme itself.

7. It is relevant at this juncture to refer to Section 28 (A) of the ( The Act of 1951):

28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission- The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State

Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from

the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such

officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

8. Recently this Court had an occasion of deciding the similar issue whether the order of suspension passed during the election program was under

challenge that is in the case of Kamal Singh Nareti Vs State of Chhattisgarh and others in Wps No. 8061/2018 decided on 6.12.2018. This Court

referring to a couple of decision of the Madhya Pradesh High Court had taken the stand that the during the period of election after the notification of

the same, employees who have been assigned election duties for all practical purposed stand on deputation to the election commission and during the

said period the entire control, superintendence and discipline of these officers rest with election commission. This Court in Paragraph 5 to 7 for the

said case has held as under:

5. At this juncture it would also be relevant to refer to the judgment of the Madhya Pradesh High Court rendered in this regard on similar facts in

1992 M.P.L.J. 173 (Umesh Singh Yadav Vs. collector/District Returning Officer Balaghat and others.) The Division Bench of Madhya Pradesh High

Court in the said case while deciding a similar issue where the concerned employee of the Rajya Van Vikas Nigam Limited was placed under

suspension by the Returning Officer during election time in paragraph-6 held as under:

6. Having given our careful consideration to the contention raised on behalf of the parties, we are of the opinion that the petition deserved to be allowed on the short ground that the impugned order of suspension could not have been passed by the Returning Officer under the provisions of Section 28-A of the Act, 1951, which confers power of superintendence, control and discipline only on the Election Commission in respect of various officer working during election, and who are deemed to be on deputation which the election Commission. The provision of Section 28-A of the Act, 1951 as introduced by Amendment Act No.1/1989, with effect from 15.03.1989 is reproduced hereinunder:.....

On a plain reading of the above provisions, it is clear that the authority to take disciplinary action is vested only with Election Commission and during the period of election.

6. The said judgment of the Division Bench of MP High Court further has been again reiterated by the MP High Court in a similar set of facts in the case of S. K. Tripathi Vs. State of MP and others, 2009 (3) MPHT 50 4 wherein the District Education Officer was placed under suspension by the Divisional Commissioner during the election period and relying upon the aforesaid judgment in the case of Umesh Singh Yadav (supra) in paragraph-9 & 10 the MP High Court has held as under:

9. The distinction which is sought to be made by Mr. Shukla, in my considered opinion, is really not of any assistant to him. What has been stated by the Division Bench is that the power vests in the Election Commission for taking action against incumbents who are working during the election and deemed to be on duty with the Election Commission. That is the ratio of the said decision. I have said so because in paragraph-6 of the decision the Division Bench has expressed the view that the power of superintendence, control and discipline is only conferred on the Election Commission in respect of various officers working during election. The term ""only"" is of immense significance. The innovative submission of Mr. Shukla that the said decision was rendered only in context of Returning Officer and Election Commission is noted to be rejected inasmuch as the Bench has really stated that the power exclusively vests with the Election Commission. In the case at hand, the order of suspension has been passed by the respondent no.2.

He may be the Disciplinary Authority under the 1966 Rules but when the petitioner was on election duty there is deemed deputation with the Election

Commission and, therefore, the provision contained in Section 28A would be applicable on all fours. Therefore, the respondent no.2 could not have

passed the order as has been passed by him under Annexure P-1 as the election duty was in continuance. In view of the aforesaid analysis the order

contained in Annexure P-1 suspending the petitioner has to pave the path of extinction and accordingly, it is hereby lanced. The petitioner would be

deemed to be in service and would be entitled to all consequential benefits including the salary. Needless to emphasize, as the election duty is over in

praesenti, it will be open to the respondents to pass appropriate orders keeping in view the law in the field.

7. Given the aforesaid two judgments of the MP High Court and also taking note of the provisions of Section 28A of the Representation of People

Act, 1951, this Court is of the opinion that the impugned order in the instant case also stands squarely covered by the aforesaid judgments. Hence, this

court is of the view that the impugned order of suspension has been issued by an Officer who is not otherwise competent.

9. Based on the said judgment of Kamal Singh Nareti (Supra), this court more recently in case of Amit Kumar Sinha Vs. State of Chhattisgarh & Ors.

(WPS No.535 of 2019) vide order dated 25.01.2019 had quashed the charge sheet under similar circumstances.

10. Given the aforesaid stand that this Court has already taken in the aforesaid cases and also based on the decision of the Madhya Pradesh High

Court under similar factual background, this Court in the present case is also inclined to take the same stand that since undisputedly the petitioner was

appointed as Assistant Returning Officer and the Election program stood notified on 6.10.2018. The impugned order that is the charge sheet has been

issued during the election program and the authority who has issued the charge sheet was the officer of the State Govt.. This Court, thus, has no

hesitation in reaching to the conclusion that the charge sheet issued at that point of time was by an incompetent officer and the same therefore is not

sustainable and the same deserves to be and is accordingly set aside/ quashed only on the ground that the Divisional Commissioner at that point of

time was not having the authority to initiate disciplinary proceedings against the petitioner particularly when the allegations levelled against the petitioner also relates to the election work.

11. Accordingly, the writ petition stands allowed and the impugned order/ charge sheet stands set aside/quashed, reserving the right of the

Government to proceed afresh after the election work is complete.