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**(2004) 10 MP CK 0018**

**Madhya Pradesh High Court**

**Case No:** Writ Petition No. 2469 of 2004

Nirdosh Model

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision:** Oct. 19, 2004

**Acts Referred:**

- Madhya Pradesh Municipalities Act, 1961 - Section 41A

**Citation:** (2004) 4 MPHT 397

**Hon'ble Judges:** Dipak Misra, J

**Bench:** Single Bench

**Advocate:** K.K. Trivedi, Sanjay Sharma, for the Appellant; P.N. Dubey, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Dipak Misra, J.

The protagonists on the centre stage can not be oblivious of the fact that in the name of performance they can totally forget the script. In a drama of law better it is the performers maintain "historic continuity" as a part of sacrosanct duty, being a real necessity rather than march over it treating it as a corpse. Every order by a Court has to be given due respect and can not be overlooked by the persons who are required to act, on the ground that they had acted earlier but due to inadvertence could not say so. The silence was neither sanguine nor golden. The attempt to equate it with the power of unchanted "mantra" only invites the frown of law. It is utter ignorance, a sacrilege and unacceptable omission, if I say so.

2. Presently I shall proceed to state the factual score. The petitioner, the President of Municipal Council, Waraseoni, District Balaghat has visited this Court seeking interference by issue of a writ of certiorari for quashment of the order dated 17-2-2004 contained in Annexure P-10 and the consequential order dated 23-6-2004 as per Annexure P-11.

3. The requisite facts which need to be adumbrated are that the petitioner was elected as the President of the aforesaid Municipal Council in the year 1999. A proceeding u/s 41-A of the Madhya Pradesh Municipalities Act, 1961 (in short "the Act") for his removal was initiated. After the show-cause notice was issued the petitioner filed his reply. At this juncture, the State Government referred the matter to the Economic Offences Bureau for holding an enquiry about the allegations made in the notice. In the said report the petitioner was exonerated, but as that report was not taken into consideration he knocked at the doors of this Court in W.P. No. 624/2004. In the aforesaid case on 26-2-2004 this Court passed the following order:--

"Short facts of the case are that respondent No. 1 issued a show-cause notice to the petitioner vide Annexure P-1, on 4-10-2002 in which petitioner was asked to show cause why on the basis of the allegations made in the notice, petitioner be not removed from the post of President, Municipal Council, Waraseoni. The notice was replied by the petitioner vide Annexure P-2 on 10-3-2003. It is submitted that after issuance of show-cause notice (Annexure P-1), the State Government referred the matter to the Economic Offence Bureau for holding enquiry about the allegations made in the notice. The aforesaid Bureau investigated the matter and it is stated that the report was submitted by the Bureau in favour of the petitioner. The petitioner on receiving notice (Annexure P-6), dated 27-12-2003 appeared before respondent No. 1 and submitted that the aforesaid report of the Economic Offence Bureau be considered by respondent No. 1 while deciding the show-cause notice (Annexure P-1). Contention is, that respondent No. 1 is not considering the aforesaid report and is bent upon to pass the order on the basis of the notice and reply filed by the petitioner. He prays that respondent No. 1 be directed to consider the entire material including the report of the Economic Offence Bureau while deciding the show-cause notice.

The learned Counsel appearing for the State submits that while deciding the show-cause notice, entire material in the case shall be considered by respondent No. 1 and if any report is received from the Economic Offence Bureau that shall be considered by respondent No. 1 while deciding the show-cause notice (Annexure P-1).

The petitioner is an elected President of the Municipal Council, Waraseoni, against whom proceedings u/s 41-A of the M.P. Municipalities Act, 1961 have been initiated. Though there are allegations against the petitioner, which have been replied by the petitioner, but while deciding the matter of the petitioner, respondent No. 1 is expected to take all the material into consideration. The report of the Economic Offence Bureau is also relevant in this matter and it is expected that respondent No. 1 shall take into consideration the aforesaid report, if it is available with respondent No. 1. In the circumstances, this petition stands finally disposed of with the following directions:--

(1) Respondent No. 1 who is deciding the matter u/s 41-A of the M.P. Municipalities Act, 1961 against the petitioner shall take into consideration the reply of the petitioner; and if any report from the Economic Offence Bureau is received by respondent No. 1 that will also be considered while deciding the matter finally.

(2) Respondent No. 1 while deciding the matter finally, shall afford personal opportunity of hearing to the petitioner in this regard."

4. I have reproduced the entire order for proper appreciation, as that is the fulcrum of submission of Mr. K.K. Trivedi, learned Counsel for the petitioner. In the aforesaid case, as is discernible, the State was represented. The matter was argued and the order was passed. This Court directed for consideration of the report from the Economic Offences Bureau and to offer personal opportunity of hearing to the petitioner. It is the admitted position that nothing has happened in pursuance of the aforesaid order, but what has been done not only tantamounts to travesty of justice, but also indubitably destroys the fundamental alchemy of justice. I am compelled and impelled to say so as after the aforesaid order the State Government woke up from slumber and the order dated 17-2-2004 (Annexure P-10) was sent to the petitioner on 18-6-2004. Along with the aforesaid order another order dated 23-6-2004 contained in Annexure P-11 was also served.

5. It is submitted with immense vehemence by Mr. Trivedi, learned Counsel for the petitioner that without complying with the order dated 26-2-2004 an order of removal could not have been served on the petitioner as that not only expositis the flagrant violation of the mandate of this Court but also exposes an attempt of over-reaching the order of the Court.

6. Mr. P.N. Dubey, learned Deputy Advocate General for the State has submitted that due to inadvertence order dated 17-2-2004 could not be brought to the notice of this Court.

7. I think it appropriate and apposite to restrain myself from, dwelling upon the aforesaid innovative conception of inadvertence. Instead of putting the blame on anyone propriety commands that the order dated 17-2-2004 should pave the path of extinction and accordingly, it is quashed. Annexure P-11 which is a communication to the petitioner has to pave the path of vitiation and accordingly it is so directed.

8. At this juncture, Mr. Dubey submitted that the petitioner has not been functioning since June, 2004 and Mr. Alok Khare has been appointed by the State Government as per order dated 24-6-2004 (Annexure R-1) and the said person being not a party to this writ petition the order contained in Annexure P-10 should not have been dealt with on merits. The aforesaid contention of the learned Counsel for the State is only to be noted to be rejected. It is well settled in law, when a person assails his removal, the person who has come in his place is neither a necessary nor proper party. What is assailed is his removal. If he succeeds in his challenge the consequence is bound to follow. An order when is given effect to and by virtue of

such giving effect, consequentially someone who has availed the benefit of a fortuitous circumstance, can not claim as a matter of right to be impleaded as a party. It may not be the position in all cases. I may hasten to clarify that in cases like seniority or promotion the principle is not attracted but indubitably, in a case of removal, non-impleadment would not make the petitioner a non-suit. Thus, the colossal objection raised by Mr. Dubey has to melt like an ice-cube and even eventually pale into total insignificance as solidity of law does not encompass such proposition with acceptable glee.

9. Before I part with the case, I think it seemly to take note of another submission made by Mr. Sanjay Sharma, learned Counsel who has intervened in the petition on behalf of the intervenor, who had lodged the complaint before the State Government. The State has taken action on the basis of the said complaint u/s 41-A of the Act. But as this Court has not addressed itself with regard to the merits of the complaint, sufficiency of the cause of removal or dwelled on that count I am inclined to think that the intervenor can not have any say in praesenti.

10. In the result, the writ petition stands allowed. Needless to emphasise, the State Government is at liberty to proceed against the petitioner as per directions issued by this Court on the earlier occasion in W.P. No. 624/2004.