

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3422/2025

Mahaveer Prasad Gautam S/o Shri Bhura Lal, Aged About 47
Years, R/o Village Takarvada, District Kota. (Raj)

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary Cum
Commissioner, Rural Development And Panchayati Raj
Department, Government Of Rajasthan, Jaipur.
2. Deputy Commissioner Cum Add. Commissioner (Inquiry),
Rural Development And Panchayati Raj Department,
Government Of Rajasthan, Jaipur.
3. The Chief Executive Officer, Zila Parishad, Kota (Raj).

-----Respondents

connected with

S.B. Civil Writ Petition No. 11269/2025

Shri Raghunath Prasad Verma S/o Shri Mangala Ram, Aged
About 73 Years, R/o Govindpura, Village Govindpura, District
Sikar (Raj).

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Rural
Development And Panchayati Raj Department,
Government Of Rajasthan, Government Secretariat,
Vikas Khand, Bhagwan Das Road, Jaipur, Rajasthan.
2. Additional Commissioner Cum Deputy Secretary,
Ii(Inquiry) Rural Development And Panchayati Raj
Department, Rajasthan Government, Government
Secretariat, Vikas Khand, Bhagwan Das Road, Jaipur,
Rajasthan.
3. District Collector, Sikar Having Office Near Atal Seva
Kendra, Sikar (Raj).
4. Chief Executive Officer, Zila Parishad, Sikar Having Its
Office Near Doliyon Ka Bass, Sikar (Raj).
5. The Village Development Officer, Panchayat Samiti,
Khandela, Sikar (Raj).

-----Respondents

S.B. Civil Writ Petition No. 8076/2025

Hemant Bairwa Son Of Shri Dulichand Ji, Aged About 29 Years,
Sarpanch Gram Panchayat Natoj, Panchayat Samiti Kathumar,
District Alwar, Rajasthan.

-----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary And Commissioner Gramin Vikas And Panchayati Raj Department (Panchayati Raj), Govt. Of Rajasthan, Govt. Secretariat, Jaipur (Raj.)
2. Additional Commissioner And Deputy Secretary (Investigation), Gramin Vikas And Panchayati Raj Department (Panchayati Raj), Govt. Of Rajasthan, Govt. Secretariat, Jaipur (Raj.)
3. Phool Singh S/o Bhawani, Administrator, Gram Panchayat Natoj, Panchayati Samiti Kathumar, Alwar, Rajasthan

-----Respondents

S.B. Civil Writ Petition No. 9779/2025

Archana Surana D/o Shri Kanhaiyalal Surana, Aged About 50
Years, R/o Sadar Bazar, Bhinai, Tehsil Bhinai, District Ajmer

-----Petitioner

Versus

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

(Panchayati Raj) Jaipur

5. The District Collector Ajmer, District Ajmer
6. Chief Executive Officer, Zila Parishad, Ajmer.

----Respondents

S.B. Civil Writ Petition No. 10610/2025

Farida Bano Wife Of Ata Mohammad, Aged About 28 Years,
Resident Of Chhatadi Road, Kayampura, District Ajmer.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary,
Department Of Rural Development And Panchayati Raj,
Secretariat, Jaipur.
2. Additional Commissioner And Deputy Secretary
(Inquiry), Department Of Rural Development And
Panchayati Raj, Secretariat, Jaipur.
3. Divisional Commissioner, Ajmer.
4. Chief Executive Officer, Zila Parishad, Ajmer.

----Respondents

S.B. Civil Writ Petition No. 10846/2025

Ramchij Meena S/o Latur Meena, Aged About 45 Years,
Resident Of Gram Panchayat Chakeri, Tehsil And District Sawai
Madhopur, Rajasthan. (Former Sarpanch, Gram Panchayat
Chakeri)

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary,
Rural Development And Panchayati Raj Department,
Government Of Rajasthan, Secretariat, Jaipur.
2. Additional Chief Secretary/ Principal Secretary, Rural
Development And Panchayati Raj Department (Inquiry)
Government Of Rajasthan, Secretariat, Jaipur.
3. The District Collector, Sawai Madhopur, Rajasthan.
4. The Chief Executive Officer, Zila Parishad, Sawai
Madhopur, Rajasthan.

5. The Vikas Adhikari, Panchayat Samiti, Chakeri, Rajasthan.
6. Mahavir Prasad Sharma S/o Radha Kishan Sharma, Aged About 58 Years, Resident Of Chakeri, Tehsil And District Sawai Madhopur, Rajasthan.

-----Respondents

S.B. Civil Writ Petition No. 11390/2025

Vimla Devi W/o Shri Mala Ram Gurjar, Aged About 35 Years, R/o Village- Panchu, Kharkedda, Post Doonga Ki Nangal, Tehsil Patan, District Sikar.

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary And Commissioner, Rural Development And Panchayati Raj Department, Government Of Rajasthan, C-Scheme, Vaniki Marg, Jaipur.
2. The Additional Commissioner And Deputy Govt. Secretary (Enquiry), Rural Development And Panchayati Raj Department, Govt. Of Rajasthan, Jaipur.
3. Chief Executive Officer, District Council, Sikar.
4. Development Officer, Panchayat Samiti, Patan District-Sikar.
5. Village Development Officer, Gram Panchayat-Doonga Ki Nangal, Patan, District-Sikar.

-----Respondents

S.B. Civil Writ Petition No. 10316/2025

Hemant Bairwa S/o Shri Ramcharan Bairwa, Aged About 36 Years, R/o Village Post Ganeshganj, Gram Panchayat Ganeshganj, Panchayat Samiti Itawa, Tehsil Peepalda, District Kota,

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary Department Of Rural Development And Panchayati Raj Secretariat, Jaipur

2. Additional Commissioner And Deputy Secretary (Inquiry), Panchayati Raj Department, Panchayati Raj Bhawan, Jln Marg, Jaipur.
3. Chief Executive Officer, Zila Parishad, Kota
4. Block Development Officer, Panchayat Samiti Itawa,, District Kota.

-----Respondents

S.B. Civil Writ Petition No. 11049/2025

Brija Raj Singh Hada S/o Shambhu Lal Hada, Aged About 59 Years, R/o Rajput Mohalla, Dhowara, Bundi, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary Department Of Rural Development And Panchayati Raj Secretariat, Jaipur.
2. Additional Commissioner And Deputy Secretary (Inquiry), Panchayati Raj Department, Panchayati Raj Bhawan, Jln Marg, Jaipur.
3. Chief Executive Officer, Zila Parishad, Bundi.
4. Development Officer, Panchayat Samiti Hindoli, District Bundi.

-----Respondents

S.B. Civil Writ Petition No. 4189/2025

Narayan Lal Mehta S/o Shri Ghasi Lal, Aged About 62 Years, Resident Of- Gram Panchayat Pipalkhedi, Tehsil Shahbad, District Baran, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary Rural Development And Panchayati Raj Department (Panchayati Raj) Secretariat, Jaipur, Rajasthan.
2. Additional Commissioner And Deputy Secretary Ii (Investigation), Rural Development And Panchayati Raj Department, Jaipur.

3. Divisional Commissioner, Kota Division, District Kota, Rajasthan.
4. Chief Executive Officer, District Council, Baran, Rajasthan.
5. Block Officer, Panchayat Samiti, Shahbad, District Baran, Rajasthan.

----Respondents

S.B. Civil Writ Petition No. 10309/2025

Shri Shishram Dayama Son Of Shri Bhambhuraam, Aged About 42 Years, Resident Of Lakhawala, Virat Nagar, District Kotputli-Behror, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Secretariat, Jaipur.
2. The Additional Commissioner And Deputy Secretary (Investigation), Panchayati Raj Department, Secretariat, Jaipur.
3. The District Collector, Kotputli-Behror.
4. The Development Officer, Panchayat Samiti Viratnagar, District Kotputli-Behror.

----Respondents

S.B. Civil Writ Petition No. 3157/2025

Moiz Uddin Guddu S/o Naim Uddin Guddu, Aged About 36 Years, Resident Of 129, Kesar Bagh, Police Line, Kota-324006 (Raj.)

----Petitioner

Versus

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

3. The Deputy Commissioner, Panchayati Raj Department, Government Secretariat, Jaipur
4. The Additional Commissioner And Deputy Secretary (Ii), Rural Development And Panchayati Raj Department (Panchayati Raj), Jaipur
5. The District Collector, Kota District Kota
6. Zila Parishad Kota, Through Its Chief Executive Officer
7. Block Development Office, Panchayat Samiti Ladpura, District Kota

-----Respondents

S.B. Civil Writ Petition No. 5047/2025

Bhoor Singh Meena S/o Sh. Jamphal Meena, Aged About 27 Years, R/o Village Mongepura, Panchayat Samiti Mandrayal, District Karauli, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Secretariat, Jaipur.
2. Additional Commissioner And Deputy Secretary (Enquiry), Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Secretariat, Jaipur.
3. Chief Executive Officer, Zila Parishad, Karauli, (Rajasthan).

-----Respondents

S.B. Civil Writ Petition No. 10822/2025

Khirraj Singh Son Of Shri Mukund Singh, Aged About 62 Years, Resident Of Ragaron Ka Mohalla, Kukar, Panchayat Samiti Todaraisingh, District Tonk (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through Its Principal, Village Development And Panchayatiraj Department, Government Of Rajasthan, Govt. Secretariat, Jaipur (Raj.)

2. Additional Commissioner And Dy. Secretary Administration (Inquiry), Department Of Rural Development And Panchayatiraj, Government Of Rajasthan, Secretariat, Jaipur
3. District Collector, Tonk, District Tonk (Raj.)
4. Additional Divisional Commissioner, Ajmer (Raj.)
5. Chief Executive Officer, Zila Parishad Tonk, District Tonk (Raj.)
6. Development Officer, Panchayat Samiti, Todarisingh, District Tonk (Raj.)

----Respondents

S.B. Civil Writ Petition No. 11703/2025

Rajesh Kumar Khatik S/o Shri Prabhulal Khatik, Aged About 42 Years, R/o Village Khuredi, Peeplu, District Tonk

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Rural Development And Panchayati Raj (Panchayati Raj Department) Government Of Rajasthan, Government Secretariat, Jaipur
2. The Additional Commissioner Cum Deputy Secretary To The Government (Enquiry), Department Of Rural Development And Panchayati Raj (Panchayati Raj Department) Government Of Rajasthan, Government Secretariat, Jaipur
3. The District Collector Tonk, District Tonk
4. Chief Executive Officer, Zila Parishad Tonk
5. Development Officer, Panchayat Samiti Peeplu, District Tonk
6. Village Development Officer, Gram Panchayat Kureda, Panchayat Samiti Peeplu, District Tonk Rajasthan

----Respondents

S.B. Civil Writ Petition No.10406/2025

Alok Kumar Meena Son Of Mohan Lal Meena, Aged About 30

Years, Resident Of Khirkhiri Ka Pura, Kalyani, District Karauli (Rajasthan) The Then Sarpanch, Gram Panchayat, Mamchari, Panchayat Samiti, Karauli, District Karauli (Rajasthan)

-----Petitioner

Versus

1. The State Of Rajasthan, Through Principal Secretary, Rural Development And Panchayati Raj Department, Secretariat, Jaipur (Rajasthan)
2. The Additional Commissioner And Deputy Secretary (Inquiry), Rural Development And Panchayati Raj Department Jaipur (Rajasthan)
3. The Block Development Officer, Panchayat Samiti, Karauli, District Karauli (Rajasthan)
4. The Chief Executive Officer, Zila Parishad Karauli, District Karauli, (Rajasthan)

-----Respondents

Connected With

S.B. Civil Writ Petition No.10995/2025

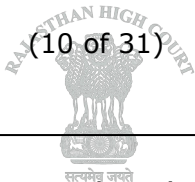
Kajod Mal Yadav Son Of Mahadev Prasad Yadav, Aged About 71 Years, Resident Of Village Nopura, Sarpanch Wali Dhani, Hasteda, Jaipur, District Jaipur The Then Sarpanch, Gram Panchayat, Hasteda, Panchayat Samiti, Govindgarh, District Jaipur (Rajasthan)

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Rural Development And Panchayati Raj Department, Secretariat, Jaipur (Rajasthan)
2. The Additional Commissioner And Deputy Secretary (Inquiry), Rural Development And Panchayati Raj Department, Jaipur (Rajasthan)
3. The Bolck Development Officer, Panchayat Samiti, Govindgarh, District Jaipur (Rajasthan)
4. The Chief Executive Officer, Zila Parishad, Jaipur (Rajasthan)

-----Respondents



For Petitioner(s) : Mr.Anil Mehta, Sr.Adv. with
Mr.Yashodhary Pandey
Mr.Mahindra Shandilya
Mr.Rahul Kamwar
Mr.Anurag Sharma with
Mr.Akshat Sharma &
Mr.Anoop Meena
Mr.Anshuman Saxena
Mr.Tanveer Ahamad
Mr.Laxmi Kant Malpura
Ms.Naina Saraf
Mr.Jiya Ur Rahman
Mr.Pradeep Sharma
Mr.Laxmi narayan Saini
Mr.Martand Pratap Singh
Mr.Amit Jindal with
Ms.Neetu Bhansali
Mr.Shiv Lal Meena
Mr.Vikas Kumar Jakhar
Mr.Devendra Choudhary
Mr.Dinesh Kumar Garg

For Respondent(s) : Mr.Kapil Prakash Mathur, AAG with
Mr.Ashutosh Udawat,
Mr.Saurabh Sharma,
Mr.Sumit Purohit
Mr.Prateek Saxena
Mr.Abhishek Bhardwaj

JUSTICE ANOOP KUMAR DHAND
Order

Reserved on : 11th & 12th Aug, 2025
Pronounced on : 18 Aug,2025
Reportable

For convenience of exposition, this judgment is divided in the following parts:-

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Preface

1. The voice of the people is the voice of God. The latin phrase “vox populi, vox Dei” has been used throughout history from time immemorial to suggest that the will of the people is divinely inspired.
2. Father of the Nation, Mahatma Gandhi said “Panchayati Raj Institution references true democracy.” He believed that a decentralized system of governance, where village communities govern themselves, would be more effective way to achieve true democracy in India.
3. Gandhi’s ideas on Panchayati Raj were rooted in his belief that true democracy should not be confined to the National or State levels, but should extend to the grass root levels, ensuring the participation of all citizens in the decision making process. He saw Panchayats as building blocks of a strong and vibrant democracy, where local needs and aspirations could be addressed directly by the people themselves.
4. Gram Panchayat is the basic governing institution, at the village level, in Indian villages. It is a political institution, akin to the cabinet of a village or a group of villages. Member of the Gram Panchayat are directly elected by the local people and the Gram Panchayat is headed by an elected Sarpanch, who serves as the administrative head of the Panchayat. There are approximately 2,50,000 Gram Panchayats across India. As per the available statistics till March, 2021, Rajasthan alone had 11,341 Gram Panchayats.
5. Gram Panchayat plays a vital role in ensuring local governance and to address the needs and concerns of even the

most remote areas. The idea of establishment of Panchayat Raj came into force vide 73rd Amendment to the Constitution of India. These Panchayats enable the rural residents to actively participate in governance and ensure that the voices of the marginalized and needy are heard.

6. As per the provisions contained under Article 243-E of the Constitution of India, the tenure of a Panchayat is five years, which can be extended for a maximum period of six months thereafter.

7. In a democratic setup, an elected representative, such as members of the Panchayati Raj Institutions, serve as the voice of the people they represent. Therefore, removing them from their post, requires careful consideration and due process.

8. Under the rule of law, an elected representative is entitled to hold office for the term unless it is proven that his conduct is disgraceful or that he has misused his power and position. Such an elected representative can certainly be suspended and removed from their post, after following the procedure contained under the provisions of Section 38 of the Rajasthan Panchayati Raj Act, 1994. Whether such representatives can be removed from their post without being given an opportunity to be heard or not is the precise issue, which is required to be decided by this Court in the instant batch of writ petitions.

Factual Matrix:

8. Since common questions of law and facts are involved in these writ petitions, hence, with the consent of counsel for the parties, the arguments have been heard together and all these writ petitions are being decided by this common order.

9. In all these writ petitions, the orders of removal of the petitioners from the post of Administrator have been assailed primarily on the ground that they were passed without affording any opportunity of hearing to the petitioners and without conducting any enquiry, as required under Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 (for short, "the Rules of 1996") and straightaway the orders impugned have been passed.

Contentions of the petitioners:

10. Learned counsel for the petitioners Mr. Rahul Kamwar, Adv. submits that after completion of the petitioners' tenure as Sarpanch, a notification was issued by the Department of Panchayati Raj, Government of Rajasthan vide order dated 16.01.2025 in the light of the Sections 95 and 98 of the Rajasthan Panchayati Raj Act, 1994 (for short, "the Act of 1994") and Rules framed thereunder. It is submitted that by the said notification an arrangement was made for appointing the outgoing Sarpanch as Administrator by the concerned Panchayats to manage the day-to-day affairs of the respective Gram Panchayats. Counsel further submits that the said notification was having statutory force, being in consonance with the provisions contained under Article 243-E of the Constitution of India and the provisions contained under Sections 95 and 98 of the Act of 1994.

11. Counsel submits that after levelling variety of charges against the petitioners, a notice was issued to them calling upon them to submit their reply. Counsel submits in response to the notice, the petitioners duly submitted their reply, however, without conducting any enquiry, as mandated under Order 22 of the Rules of 1996 and without affording the petitioners any opportunity of

hearing, the impugned orders of removal from the post of Administrator were passed straightaway. Counsel further submits that even the notice referred to Section 38 of the Act of 1994, which deals with the power of the State Government for removal of Member of the Panchayati Raj Institutions, however, such power can only be exercised after affording an opportunity of hearing to the concerned person before passing any order. Counsel submits that under these circumstances, orders passed by the State removing the petitioners from the post of Administrator are not tenable in the eye of law and are liable to be quashed and set-aside.

12. Counsel for the petitioner Mr. Anurag Sharma, Adv. appearing in the case of Bhoor Singh Meena Vs. State of Rajasthan (S.B. Civil Writ Petition No.5047/2025) submits that even show-cause notice was not served upon the petitioners prior to the issuance of the impugned order of his removal from the post of Administrator, which was passed straightaway on the basis of a fact finding report prepared by the respondents. Counsel submits that the impugned order refers to certain allegations/charges which are stigmatic in nature. Counsel submits that whenever any order, which is stigmatic in nature, is passed, it is mandatory for the respondent-State to afford an opportunity of hearing before passing the order. Counsel submits that under these circumstances, the impugned order has been passed without holding any enquiry and without affording any opportunity of hearing to the petitioners, which has resulted in violation of the principles of natural justice. Hence, on this count alone, the

impugned order is liable to be quashed and set aside on this count alone.

13. Counsel for the petitioner Mr.Martand Pratap Singh, Adv. appearing in the case of Vimla Devi Vs. State of Rajasthan (S.B. Civil Writ Petition No.11390/2025) submits that after the completion of her term as Sarpanch, the petitioner was appointed as Administrator. However, by passing the order impugned, she has been removed from the post of Administrator and now, some third person has been appointed in her place as Administrator. Counsel submits that although there were earlier recommendations for her suspensions, but even then, she was appointed as Administrator. Therefore, under these circumstances, the impugned order passed by the respondents is not sustainable in law and is liable to be quashed and set-aside.

14. Counsel for the petitioner Mr.Anil Mehta, Sr. Adv. appearing in the case of Hemant Bairwa Vs. The State of Rajasthan (S.B. Civil Writ Petition No.8076/2025) submits that with regard to the similar charges, the petitioner was exonerated by the concerned Minister of the Department and a recommendation was made in his favour stating that since the recovery amount has been duly deposited by the petitioner, it would not be appropriate to remove him from the post of Sarpanch.

15. Counsel submits that by exercising the powers contained under Section 98 of the Act of 1994, the petitioner was not only appointed as the Administrator, but was also nominated as a Member of the Committee, constituted to manage the day-to-day affairs of the Panchayat. Counsel further submits that in accordance with the Sections 17 and 94 of the Act of 1994, after

expiry of term of any Panchayat, its functions are still required to be carried out, and the Panchayat cannot be left in a state of dissolution, pending the conduct of fresh elections.

16. All other counsels appearing for the petitioners have adopted the arguments raised by Mr.Rahul Kamwar, Adv., Mr.Anurag Sharma, Adv., Mr.M.P. Singh, Adv. & Mr.Anil Mehta, Sr.Adv.

Contentions of the respondents:

17. *Per contra*, learned counsel for the respondent-State opposes the arguments advanced by counsel for the petitioners and submits that in all these writ petitions, the petitioners were elected as the Sarpanch of their respective Gram Panchayats. After completion of their tenure and looking to the delay in conducting fresh elections, their terms were extended and they were allowed to continue as a stopgap arrangement. Counsel submits that in exercise of the powers contained under Section 95 of the Act of 1994, a circular/order dated 11.02.2025 was issued by the Department of Panchayati Raj, Government of Rajasthan whereby a decision was taken to hand over the charge of the post of Sarpanch to the same persons, who were holding the post of Sarpanch prior to completion of their term. Counsel submits that the aforesaid circular/order does not have any statutory force and therefore, the petitioners do not hold any statutory post. As such, they do not suffer any legal injury and they are not entitled to invoke the extraordinary jurisdiction of this Court, contained under Article 226 of the Constitution of India. Counsel further submits that the decision to remove all the petitioners from the post of Administrator was taken, the pending enquiry relates to the allegations/charges of misconduct committed by the

petitioners, during the course of their tenure as the elected Sarpanch. Counsel submits that in the facts and circumstances, the judgment passed by this Court in the case of **Puranmal Verma & State of Rajasthan** (S.B. Civil Writ Petition No.5608/2025) is not applicable to the present set of facts and the same is distinguishable.

18. In support of his contention, counsel for the respondents placed reliance upon the following judgments are as follows:-

1. **Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.** reported in **(2013) 4 SCC 465.**
2. **J.R. Raghupathy & Ors. Vs. State of A.P. & Ors.** reported in **(1988) 4 SCC 364.**
3. **Ramesh Chand malviya Vs. State of Rajasthan & Ors.** reported in **(2001) 2 RLW 1291.**

19. Lastly, counsel for the respondent-State submits that the orders impugned are not stigmatic in nature, as the enquiry is still pending and the matter remains sub judice. Counsel further submits that the order of removal of the petitioners from the post of Administrator will have no effect on their future prospects, as there is no chance of their promotion in future. Counsel submits that the concept/analogy of 'stigmatic order' is applicable in service matters only and not in the present cases. Counsel submits that in view of the submission made herein above, these writ petitions are not maintainable and being devoid of any merit, are liable to be rejected.

Analysis, Discussions & Findings:

20. Heard and considered the submissions made at the Bar and perused the material available on record.

21. Article 243-B of the Constitution of India deals with the constitution of Panchayats and Chapter-III of the Act of 1994 deals with the procedure of constitution of the Panchayati Raj Institutions. As per Article 243-B of the Constitution of India there shall be constituted in every State, Panchayats at the village and at district levels and Section 9 of the Act of 1994 deals with the provisions of establishment of panchayats.

22. Article 243-E of the Constitution of India deals with the duration of the Panchayat and it lays down:-

"243E. Duration of Panchayats, etc.—(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period

for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.”

23. Similarly, Section 17 of the Act of 1994 deals with the duration of and election to the Panchayati Raj Institutions and it lays down:-

“17. Duration of, and election to the Panchayati Raj Institutions.- (1) Every Panchayati Raj Institution, unless sooner dissolved under this Act, shall continue for five years from the date of the first meeting of the respective institutions and no longer.

Explanation- The meeting held for the election of Chairperson of a Zila Parishad or Panchayat Samiti or, as the case may be, of up-Sarpanch of a Panchayat shall be deemed to be the first meeting of the respective Panchayati Raj Institution.

(2) The Superintendence, direction and control of the preparation of electoral rolls for and the conduct of, all elections to the Panchayat Raj Institution shall be vested in the State Election Commission.

(3) The election to constitute a Panchayati Raj Institution shall be completed-

(a) before the expiration of its duration specified in Sub-sec. (1); and

(b) in the case of dissolution, before the expiration of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Panchayat Raj Institution would have continued is less than six months, it

shall not be necessary to hold any election under this clause for constituting the Panchayati Raj Institution for such period.

(4) A Panchayati Raj Institution constituted upon its dissolution before the expiration of its duration, shall continue only for the remainder of the period for which it would have continued under Sub-sec. (1) had it not been so dissolved.

(5) The State Government may, from time to time, make provisions by rules with respect to all matters relating to or in connection with the election to the Panchayati Raj Institution including those in relation to the preparation of electoral rolls, the delimitation of wards or constituencies and all other matters necessary for securing the due constitution of such institutions."

A conjoint reading of Article 243-E of the Constitution of India and Section 17 of the Act of 1994 goes to show that the duration of all the Panchayati Raj Institutions is five years and in the present case, the tenure of all the Panchayats expired in the month of January, 2025.

24. As per Article 243-E (3) of the Constitution of India, an election to constitute a Panchayat shall be completed before the expiration of its duration, i.e., five years and before the expiration of a period of six months from the date of its dissolution.

25. Perusal of the record indicates that the petitioners were elected as the Sarpanch of their respective Gram Panchayats and their term of five years expired in the month of January, 2025. This fact is not in dispute that fresh elections for the post of Sarpanch or Member of Panchayats have not been conducted till

date. Hence, as a stopgap arrangement, the petitioners have been appointed as the Administrators of their respective Panchayats, pursuant to the Notification issued by the State Government in exercise of its powers contained under Sections 95 and 98 of the Act of 1994.

26. For ready reference, Sections 95 and 98 of the Act of 1994 are reproduced as under:-

"95. Consequences of dissolution.- (1) When a Panchayati Raj Institution is dissolved under this Act, following consequences shall ensue:-

(a) all the members of the Panchayati Raj Institution including the Chairperson shall, on the date of dissolution vacate their respective offices but without prejudice to their eligibility for re-election or re-appointment.

(b) all powers and duties of the Panchayati Raj Institution shall, during the period of dissolution, be exercised and performed by such administrator as the State Government may appoint in this behalf; and

(c) all property vested in the Panchayati Raj Institution shall, during the period of dissolution, vest in the Government.

(2) If it shall not be possible to reconstitute the Panchayati Raj Institution within the time specified in Clause (b) of Sub-sec (3) of Sec. 17 because of any stay by any competent court or authority on any general election to the Panchayati Raj Institution concerned and the proceedings consequent thereof the consequences specified in Clause (b) and (c) of Sub-sec. (1) shall follow.

(3) An order of dissolution made under Sec. 94 together with a statement of the reasons thereof shall be laid before the House of the State Legislature, as soon as may be, after it has been made.

98. Delegation of Powers.- The State Government may, by notification in the Official Gazette, delegate-

- (a) all or any of its power under this Act to any officer or authority subordinate to it, and
- (b) all or any of the power of the officer-in-charge of Panchayats under this Act to any other officer or authority."

The Panchayati Raj Institutions of the petitioners have been dissolved under Section 95 of the Act of 1994 and powers of the Administrator have been delegated to them under Section 98 of the Act of 1994. This Court finds no substance in the submissions of counsel for the respondents that since the petitioners have completed their five-year term and were thereafter appointed as Administrator, they have no legal right to file these writ petitions. On the contrary, the petitioners have been allowed to continue by virtue of the provisions of law which are not having statutory force.

27. All of the petitioners have been removed under Section 38(1) of the Act of 1994. Section 38 of the Act of 1994 deals with the provisions of removal and suspension of any member of the Panchayati Raj Institution. Section 38 of the Act of 1994, being relevant in the present context, is reproduced as under:-

"38. Removal and Suspension.- (1) The State Government may, by order in writing and after giving him an opportunity of being heard and making such enquiry as may be deemed necessary, remove from office any member including a Chairperson or a Deputy Chairperson of a Panchayati Raj Institution, who-

- (a) refuses to act or becomes incapable of acting as such; or
- (b) is guilty of misconduct in the discharge of duties or any disgraceful conduct :

Provided that any enquiry under this sub-section may, even after the expiry of the term of the Panchayati Raj Institution concerned be initiated or, if already initiated before such expiry, be

continued thereafter and in any such case, the State Government shall, by order in writing, record its findings on the charges levelled.

(2)The Chairperson or the Deputy Chairperson removed under Sub-sec. (1) may at the discretion of the State Government also be removed from the membership, of any of the Panchayati Raj Institution concerned.

(3)The member or the Chairperson or the Deputy Chairperson removed under Sub-sec. (1)or against whom finding have been recorded under the proviso to that sub-sec, shall not be eligible for being chosen under this Act for a period of five years from the date of his removal or, as the case may be, the date on which such findings are recorded.

(4)The State Government may suspended any member including a Chairperson or a Deputy Chairperson of a Panchayati Raj Institution against whom an enquiry has been initiated under Sub-sec. (1) or against whom any criminal proceedings in regard to an offense involving moral turpitude is pending trial in a Court of law and such person shall 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 wished 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-third 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.

(5) The decision of the State Government on any matter arising under this section shall, subject to any order made under Sec. 97, be final and shall not be liable to be questioned in any Court of law."

28. Bare perusal of Section 38 of the Act of 1994 postulates that the State Government may remove any member of the Panchayati Raj Institution, after giving him an opportunity of being heard, who refuses to act or becomes incapable of acting as such; or who is guilty of misconduct in discharge of his duties or any disgraceful conduct.

29. Herein the instant cases, all the petitioners have been removed from their posts of the Administrators on the basis of various kinds of allegations/charges levelled against them, having been found prima facie guilty on the basis of fact- finding reports prepared by the concerned Authorities. In some cases, charge-sheets along with memorandum of charges have been served upon them, whereas in some cases, no charge-sheet has been given to them.

30. In the majority of cases, the charges pertain to misuse of the powers and the position during the petitioners' tenure as Sarpanch. The petitioners have been found prima facie guilty of the charges/ allegations levelled against them and consequently, they have been removed from the post of Administrator.

31. The very opening of Section 38(1) of the Act says that any member of Panchayati Raj Institution may be removed if he is found guilty of misconduct or disgraceful act. But, herein the

instant case, all the petitioners have been removed straightaway without granting them any opportunity of hearing.

32. Counsel for the respondents submitted that the petitioners, being Administrators, have no right to continue on the post of Sarpanch, after completion of their tenure on the post of Sarpanch. He further submitted that the petitioners were appointed as Administrators merely as a stopgap arrangement till conducting of new & fresh elections, therefore, neither any notice was required to be issued to them nor it was necessary to afford them an opportunity of being heard. Counsel submitted that after removal of the petitioners from the post of Administrator, now appropriate enquiry will be conducted against them and in case, the charges are found to be proved against them, appropriate orders will be passed against them, including debarring them from contesting the future elections.

33. This implies that the respondents would conduct a Post-Decisional Hearing with closed mind and such a hearing would amount to a sheer formality, conducted with the pre-conceived intention to impose punishment, thereby rendering the Post-Decisional Hearing ineffective. The basic prospect of natural justice mandates a pre-decisional hearing and not a post-decisional hearing. If the authorities have already decided to take action prior to initiating any enquiry, then granting a post-decisional hearing would be an empty formality calling for violation of the principle of natural justice.

34. It is the settled proposition of law that any administrative or quasi-judicial order is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made

it. The Hon'ble Apex Court in the case of **Man Singh v. State of Haryana** reported in **(2008) 12 SCC 331** has held in para 20 as under:-

"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."

35. It is a well-settled principle of law that gathering evidence by way of enquiry with an intention to support the pre-decisional punishment will just emphasize the matter and the same would be against the principle of Natural Justice. In the case of **State of Punjab vs Davinder Pal Singh Bhullar & Ors.** reported in **(2011) 14 SCC 770**, the Hon'ble Apex Court has held as under:

"Since the foundation of initiation of the departmental proceeding and its conduct have been shown to be entirely illegal, the foundation has to be necessarily removed, as a result of which the structure/work of punishment given to this writ petitioner stood, is bound to fall."

36. A similar methodology was employed by the Hon'ble Supreme Court in **Swadeshi Cotton Mills Co. Ltd. v. Union of India** reported in **(1981) 1 SCC 664** where a void administrative choice was approved by way of post-decisional hearing. An order assuming control over the administration of an organization by the Government without earlier notice or hearing was held to be bad as it abused the audi alteram partem rule. Be that as it may, the Court approved the impugned order on the grounds that the Government had consented to give post-decisional hearing.

37. Considering the facts and circumstances of the present cases and the law laid down by the Hon'ble Apex Court, as referred in above paragraphs, this Court finds that the petitioners were proceeded in accordance with the provision of Section 38 of the Act of 1994, without being afforded any opportunity of hearing and all of them have been removed from the post of Administrator and thereafter, charge-sheets have been served upon them to conduct enquiry.

In the opinion of this Court, the respondents have pre-determined to impose the order of removal on the petitioners and thereafter, proceeded to hold enquiry, giving only a post-decisional opportunity of hearing which does not subserve the rule of natural justice and is contrary to the principles of fair play. The respondents who embark upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation of the petitioners at such a post-decisional opportunity.

38. The issue involved in the instant cases can be understood with the following saying that "An accused person cannot be held guilty prior to the commencement of a trial against him." It is settled proposition of law that every accused has a right to a fair trial to determine whether he is innocent or guilty. This is an internationally recognized human right. If any charges have been levelled against the petitioners, they have right of fair opportunity of hearing and enquiry. Fair trial helps establish the truth and is vital for everyone involved in a case. This is a cornerstone of democracy, helping to ensure fair and just societies and limiting abuse by Government and the State authorities. A fundamental principle behind the right of fair trial or enquiry is that every person should be presumed innocent until proven guilty. But, in the instant case, the petitioners have been treated as guilty before they have had their day in enquiry. Hence, their right of fair enquiry has been undermined.

39. The Rule of law mandates that the State Authorities must act strictly in accordance with law and remain accountable for their actions. It also means that everyone within the State is subject to the same legal framework and laws. No individual, regardless of wealth or power, is above the law. The rule of law must be enforced uniformly and consistently. This may necessitate the adoption of special measures to ensure that individuals are afforded a fair chance to present their defence.

Conclusion & Directions:

40. In the instant case, the respondents have failed to comply with the mandatory provisions contained under Section 38(1) of

the Act of 1994, as no opportunity of hearing has been provided to the petitioners by the respondents prior to passing their orders of removal from the post of Administrator. Accordingly, this Court quashes and sets aside the impugned removal orders of the petitioners from the post of Administrator and grants liberty to the respondents to proceed against the petitioners by exercising the powers contained under Section 38 of the Act of 1994 and Rules of 1996 framed thereunder.

41. The respondents are expected to initiate proceedings against the petitioners in accordance with Sections 38(1) and 38(4) of the Act of 1994, and conclude the same expeditiously as early as possible, preferably within a period of two months from today and pass fresh orders, after affording opportunity of hearing to the petitioners.

42. With the aforesaid observation and directions, all these petitions as well as the stay application and all pending, if any, also stand disposed of.

Parting Remarks:

43. In the name and interest of delimitation, the Government cannot postpone the entire election process of the Panchayati Raj Institutions indefinitely, contrary to the mandate contained under Article 243-E of the Constitution of India and Section 17 of the Act of 1994. The entire exercise of delimitation should have been completed prior to the expiry of the term of the Panchayats or within six months of the dissolution of these Panchayati Raj Institutions.

44. The Government and relevant Authorities are duty-bound to ensure that the delimitation process is completed in a timely manner, allowing elections to be conducted as per the constitutional mandate. In cases where Panchayats are dissolved, elections should ideally be held within six months, as per the constitutional framework. This ensures that the democratic process remains uninterrupted and local governance continues to function effectively.

45. The principle of democratic governance at the grass root level is fundamental to the functioning of the Panchayati Raj Institutions and adherence to constitutional timelines is essential for the health of local democracy.

46. The instant cases are glaring example of violation of the Constitutional mandate, wherein the petitioners were permitted to hold the post of Administrator to manage the day-to-day affairs of their respective Panchayats and even after expiry of more than six months of dissolution of their respective Panchayats, the petitioners are allowed to continue on the post of Administrator. But, subsequently they have been removed without adhering to the provisions and procedure prescribed under the law.

47. In case of persistent failure & delay to conduct election process of the Panchayati Raj Institutions, it is incumbent upon the State Election Commission or the Election Commission of India to intervene and take necessary measures to restore the democratic process.

48. Prolonged postponement of these elections can result into a governance vacuum at the local level, adversely affecting the

delivery of services and developmental activities at the grass root level. This Court hopes and trusts that the Government of Rajasthan will look into the matter and address the issue promptly and will further ensure that elections of the Panchayati Raj Institutions are conducted at the earliest opportunity.

49. Let a copy of this order be sent to the Chief Secretary, Government of Rajasthan, Election Commission of India and the State Election Commission to look into the matter and to do the needful in terms of the mandate contained under Article 243-E of the Constitution of India and observations made by this Court in Para Nos.43 to 48 of this order.

(ANOOP KUMAR DHAND),J

Aayush Sharma, Jr.PA.