

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 369 of 2014**

1. Chief Executive Officer, Janpad Panchayat, Surajpur, P.S. Surajpur, Distt. Surguja (C.G.)

---- Petitioner**Versus**

1. Smt. Anita Singh W/o Shri Manoj Singh Aged About 25 Years R/o Village Kharsura, Saraipara, P.S. Saraipara, Tah. Surajpur, Distt. Surguja C.G.
2. Smt. Saroj Gupta D/o Ramsurat Gupta Aged About 29 Years R/o Sohagpur, Karanji, P.S. Karanji, Tah. Surajpur, Distt. Surguja C.G.
3. Ku. Swati Gupta D/o Shri Ramsurat Gupta Aged About 29 Years R/o Village Sohagpur, Karanji, P.S. Karanji, Tah. Surajpur, Distt. Surguja C.G.
4. State Of Chhattisgarh Through Secretary, Department Of Panchayat And Social Welfare DKS Bhawan, Mantralaya, Raipur C.G., Now Mahanadi Bhawan, P.S. Mantralaya, New Raipur C.G.
5. Collector Ambikapur, Distt. Surguja C.G.
6. Chief Executive Officer Zila Panchayat, Ambikapur, Distt. Surguja C.G.
7. Sub Divisional Officer Ambikapur, Distt. Surguja C.G.
8. Selection Committee (Shiksha Karmi) Through-The Chairman, Janpad Panchayat, Surajpur, Distt. Surguja C.G.

---- Respondent**And****WPS No. 2419 Of 2015**

1. Surbhi Mishra W/o Yagnyawalky Mishra Aged About 40 Years R/o Sattipara Ambikapur Distt. Surguja Chhattisgarh

---- Petitioner**Vs**

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat & Social Welfare, Rural Development, Mahanadi Bhawan, Raipur Chhattisgarh
2. Collector, Surajpur Distt. Surajpur Chhattisgarh

3. Chief Executive Officer Zila panchayat Surajpur, District Sarguja Chhattisgarh
4. Chief Executive Officer Janpad Panchayat Surajpur, District Sarguja Chhattisgarh
5. Selection Committee (Shiksha Karmi) Through Chairman, Janpad Panchayat Surajpur, Distt. Surajpur Chhattisgarh

---- Respondent

For Petitioner in
WPS No.2419 of 2015

Shri Shakti Raj Sinha, Advocate

For Respondent/State

Shri Shashank Thakur, Govt. Advocate

For CEO, Janpad
Panchyat, Surajpur

Shri Shashank Thakur, Advocate

For Respondent No.1 & 2
in MCC No.369 of 2014

Shri Ashok Kumar Shukla, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

13-06-2016

1. MCC No.369 of 2014 (*Chief Executive Officer v. Smt. Anita Singh & Others*) is an application moved by the Chief Executive Officer, Janpad Panchayat, Surajpur, seeking extension of time for completion of enquiry in pursuance of the direction issued by this Court in its order dated 25-10-2013 passed in WPS No.934 of 2010 (*Saroj Kuswaha & Others v. State of Chhattisgarh & Others*) and other connected writ petitions. During pendency of the MCC, the enquiry itself has been completed and, thereafter, final order has been passed terminating the services of 99 Shiksha Karmis.

2. WPS No.2419 of 2015 (*Surbhi Mishra v. State of Chhattisgarh & Others*) has been preferred by one such effected candidate, whose services have been terminated vide order impugned therein passed by the Chief Executive Officer, Janpad Panchayat, Surajpur, on 23-6-2015.
3. The matter pertains to appointment of Shiksha Karmi Grade III by Janpad Panchayat, Surajpur in the year 2006-07. The said Janpad Panchayat issued an advertisement on 19-5-2006 for recruitment of 44 Shiksha Karmi Grade III including 4 posts of Science subject. By another advertisement dated 5-6-2007, 97 posts of Shiksha Karmi Grade III were advertised including 3 posts for Urdu subject and 3 posts for Science subject. As against 44 + 97 (total 141) posts advertised the Janpad Panchayat issued appointment orders in favour of approx. 300 candidates. One Rahul Jaiswal, Member, Zila Panchayat, Surguja, made a complaint to the Collector, Surguja, alleging large scale illegalities, malpractice and bungling in recruitment of Shiksha Karmi Grade III by the Janpad Panchayat, Surajpur. The Collector, Surguja, directed the Sub Divisional Officer, Ambikapur, to enquire into the allegations and submit a report. The said Sub Divisional Officer submitted a report finding that appointments of 74 candidates including the writ petitioner Surbhi Mishra have been made on the basis of forged certificates, which have been admitted by the candidate during the enquiry. However, the candidates also stated that they have never submitted any such certificates which have been found to be

forged. One candidate namely; Kalinder Singh admitted before the enquiry officer that he has paid Rs.90,000/- for his selection, however, he refused to divulge the name of the person who received the amount, however, it was found that one Shri Kamlesh, Kumda Mandal President, has also been paid the amount. The Sub Divisional Officer, recommended for lodging of First Information Report against the persons involved in the entire affair including the illegal appointees. Based on the findings of the enquiry, the Collector, Surguja, vide its order dated 5-2-2010 directed the Chief Executive Officer, Janpad Panchayat, Surajpur, to suspend the Shiksha Karmis, issue charge sheet and proceed to take further action in the matter.

4. The Shiksha Karmis challenged the order dated 5-2-2010; similar order dated 26-3-2012, passed in respect of some other candidates; and the separate order by which the Collector also directed the Chief Executive Officer to lodge FIR against the Shiksha Karmis for obtaining appointment on the basis of forged certificates, in WPS No.934 of 2010 and other connected writ petitions, which came to be disposed of by order dated 25-10-2013.

5. While disposing of WPS No.934 of 2010 and other connected writ petitions this Court passed the following order :

6. On a perusal of the enquiry report dated 23-9-2009 (Annexure – P/2 of WPS No.804 of 2010), it would appear that the concerned Shiksha Karmis were given opportunity of hearing by the enquiry committee and on the basis of

statement made and affidavits sworn by the petitioners the enquiry team concluded that forged certificates have been submitted. However, at the same time, it is important to keep in mind that the petitioners are alleging that at the time when the enquiry was conducted in the office of the Collector, Sarguja, they were pressurized to submit affidavit and make statement that they have committed fraud. Since under Article 20 (3) of the Constitution of India it is provided that no person shall be compelled to be a witness against himself, keeping the said principle in mind, although it may not be applicable in the present case because at the stage of enquiry by the team of Revenue Officers no offence was registered against them, yet the decision to lodge FIR on the basis of their own statement and thereafter, to proceed for holding an enquiry under the relevant circulars may not be the correct procedure.

7. It has been informed that pursuant to interim order dated 10-3-2010, passed in WPS No.804 of 2010, whereby the said part of the order directing lodging of FIR has been suspended by this Court, the petitioners are still continuing in service and FIR has not been lodged. Thus, instead of keeping these writ petitions pending and considering the nature of controversy, the same are disposed of with the following directions :

- The concerned Janpad Panchayat shall proceed to conduct enquiry as directed by the Collector by serving a charge sheet to each of the Shiksha Karmi mentioned in the order of the Collector.
- The Chief Executive Officer shall complete the enquiry after recording specific finding with respect to each of the Shiksha Karmi about their service.
- Each of the Shiksha Karmi shall be granted full and effective opportunity of hearing before concluding the enquiry.
- On completion of enquiry and based upon its finding the concerned Chief Executive Officer shall proceed to take action in

accordance with direction issued by the Collector within a period of six months from today.

- While recording finding one way or other the concerned Chief Executive Officer may consider the enquiry report, but the said report cannot form sole basis of finding and the finding recorded on the conclusion of enquiry shall be based on the entire material available before the enquiry officer, which shall be submitted by each of the Shiksha Karmi and any other evidence brought before the enquiry.
- During the enquiry proceeding, the interim order passed by this Court shall remain in force for a period of six months.

6. In compliance of the order passed by this Court, the Chief Executive Officer, Janpad Panchayat, Surajpur, proceeded to initiate the enquiry, however, the officers were not cooperating with the Chief Executive Officer; therefore, he could not complete the enquiry within time. In the circumstances, the Chief Executive Officer preferred MCC No.369 of 2014 seeking extension of time.
7. In this said MCC on 3-7-2014 this Court observed that the Chief Executive Officer, Zila Panchayat and the Collector are not providing the records to the Chief Executive Officer, Janpad Panchayat, Surajpur, and directed them to cooperate in the matter, failing which their personal appearance would be secured.
8. Despite such observation, the Chief Executive Officer, Janpad Panchayat was not provided the record compelling this Court to mention that if the situation continues, the matter may be handed

over to the Central Bureau of Investigation. On 8-8-2014 the Chief Executive Officer, Janpad Panchayat, informed this Court that the Commissioner, Surguja Division, has also initiated the enquiry and notices have been issued to the Shiksha Karmis. This Court directed the Commissioner, Surguja Division, to file affidavit as to under which provision of law he is holding enquiry into the matter.

9. On 14-8-2014 this Court observed thus in MCC :

According to Janpad Panchayat the superior officer at the district and commissioner level were in possession of relevant record probably in connection with the some other enquiry, therefore, the same were not provided to the Chief Executive Officer which resulted in delay in compliance of the order passed by this Court. The Chief Executive Officer has filed the present application seeking extension of time to conduct the enquiry as directed by this Court. On a previous date of hearing it was informed that an enquiry is pending before the Commissioner, Surguja Revenue Division. Apprehending that the said enquiry may be an effort to frustrate the enquiry directed by this Court, the Commissioner, Surguja Revenue Division was directed to submit affidavit as to under which provision of law he is holding enquiry by issuing notices to the Shiksha Karmis. The Commissioner has filed an affidavit to the effect that on a complaint made by Chhattisgarh Karmachari Sangh the Commissioner of the department of Scheduled

Caste and Scheduled Tribe Development, Govt. of Chhattisgarh, has directed for an enquiry, however, he has not stated as to under which provision of law the said enquiry is conducted. Thus, it appears, the enquiry by Commissioner, Surguja Division is in the form of an administrative enquiry rather than statutory enquiry under any provision of Panchayat Raj Adhiniyam or the rules framed there under.

Considering the fact that this Court had passed the order in the writ petition on 25/10/2013 and immediately thereafter the Chhattisgarh Karmachari Sangh made a representation before the Commissioner, Scheduled Caste and Scheduled Tribe Department, Govt. of Chhattisgarh on 27/12/2013, after more than six years of the subject appointment, this Court is of the prima facie opinion that the enquiry directed by the Commissioner, Scheduled Caste and Scheduled Tribe Department may be to circumvent or overreach the enquiry directed by this Court and may be an effort to derail the enquiry which would ultimately benefit the erring officers and the fraudulent Shiksha Karmis.

When this M.C.C. was pending consideration before this Court, yet another effort was made to derail the enquiry by transferring the CEO from the office of Surajpur to Janpad Panchayat Lundra, however, the said order has been stayed by this Court in W.P.(S) No. 3984/2014.

In the circumstances, instead of disposing of this M.C.C. I deem it expedient and necessary in the

interest of justice to extend the time and direct the Chief Executive Officer to complete the enquiry within a period of three months from today. It is further directed that no other officer of the State Govt. shall interfere in the enquiry conducted by Chief Executive Officer. Any effort to circumvent the enquiry would be construed as committing contempt of lawful authority of this Court. All the concerned departments and authorities are directed to render due cooperation to the Chief Executive Officer in the enquiry which shall be conducted on day-to-day basis.

List it on 18th September 2014 for informing this Court about the progress in the enquiry.

Presence of Chief Executive Officer is dispensed with, unless directed.

10. After the above quoted order passed in the MCC the enquiry was somehow concluded, however, further action was not taken and instead the matter was sent to the General Administration Committee/Education Committee of the Janpad Panchayat. The said committee subsequently refused to accord permission to cancel the appointments even though it was concluded in the enquiry that the appointments have been obtained by committing fraud. This again compelled this Court to observe thus in MCC on 22-4-2015 :

Principal Secretary to the Government of Chhattisgarh, Department of Panchayat & Social Welfare and the Collector, Surajpur, shall remain in attendance before this Court on 30-4-2015 to

explain whether the decision taken by the Collector pursuant to the direction issued by this Court is required to be sent to the Janpad Panchayat for taking decision in the matter and in a situation when the Janpad Panchayat refuses to act upon the report of the Collector what action is to be taken in the matter.

Shri Sridhar, learned counsel appearing for the applicant, is directed to supply names of the persons who are the members of the General Administration Committee of the Janpad Panchayat, Surajpur, so that in the event it is found that they have not done their duty in accordance with law, the matter would be recommended to the appropriate authority for taking action against each one of them under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 for their removal. This is in addition to the proceedings for committing contempt of Court, which may be initiated by this Court after considering the matter at length on the next date of hearing.

Shri Sridhar is directed to serve a copy of this order on each member of the General Administration Committee of the Janpad Panchayat, Surajpur through the Chief Executive Officer of the said Janpad Panchayat.

11. It is only after the appearance of the Additional Chief Secretary to the Government of Chhattisgarh, Department of Panchayat & Rural Development and the Collector, Surajpur, the final order was

passed, but still FIR was not lodged. When this Court directed the State counsel to submit the status report in the matter it was informed on 9-7-2015 that Cr.No.263/2015 has been registered at Police Station Surajpur, for offence under Section 420 read with Section 34 of the Indian Penal Code. However, the matter did not rest here and nothing further was done by the investigating agency which compelled this Court to seek personal appearance of the concerned Station House Officer and, thereafter, the Director General of Police of Chhattisgarh. On 28-7-2015 Director General of Police appeared and informed that Special Investigation Team (SIT) has been constituted to investigate the crime, which has now been registered for offences under Sections 420 read with Section 34 of the Indian Penal Code, 467, 468, 471 & 120-B of the Indian Penal Code and under Section 13 (1) (d) & 13 (2) of the Prevention of Corruption Act, 1988.

12. The criminal law having been set in motion, it will take its own course. For the present this Court is seized of the challenge to the impugned order of termination dated 23-6-2015, which has been passed by the Chief Executive Officer, Janpad Panchayat, Surajpur in compliance of the order passed by this Court in of WPS No.934 of 2010 and other connected writ petitions.
13. Assailing the impugned order, petitioner's counsel would urge that the enquiry ordered by this Court has been conducted even though the entire records were not available, therefore, the order of termination deserves to be set aside. Learned counsel would

further argue that the petitioner has not submitted the alleged forged certificates, which might have been inserted by the members of the selection committee, therefore, the petitioner cannot be held guilty for an act which has not been committed by her. It is also put forth that since the entire records were not available, there has been violation of principles of natural justice because the petitioner was not aware as to the basis/document on which the finding of commission of fraud has been arrived at.

14. Per contra, learned counsel appearing for the State would vehemently oppose the prayer made in the writ petition on submission that large scale manipulation of record has been done not only by the members of the selection committee, but also by the candidates who derived the benefit flowing from the forged certificates. Learned counsel would argue that the petitioner herself having averred in the writ petition including the previous writ petition that she has not submitted any certificate on the basis of which bonus marks were awarded, it is an apparent case of forged selection on the basis of non-existing documents or on the basis of forged documents. Learned counsel would also urge that the petitioner having been afforded due and proper opportunity, as directed by this Court, the principles of natural justice have duly been complied with.
15. In the first enquiry report dated 23-9-2009 the Sub Divisional Officer, Ambikapur, has recorded the finding in respect of petitioner Surbhi Mishra that she appeared before the enquiry committee and

admitted that the certificates of Scout & guide and BTI have not been submitted by her, therefore, marks awarded on this count were not admissible to her and as a consequence her appointment is illegal and forged.

16. Although the order passed by the Collector on 5-2-2010 & 26-3-2012 on the basis of first enquiry report has merged with the order passed by this Court in WPS No.934 of 2010 yet it cannot be lost sight that the petitioner was afforded an opportunity of hearing even in the first enquiry. The second enquiry was conducted in pursuance to the order passed by this Court on 25-10-2013. The circumstances in which the enquiry was concluded has also been narrated in the preceding paras of this order.
17. The Sub Divisional Officer, Ambikapur, supplied the required documents on 17-4-2014 vide Annexure – R4/18 in respect of 193 candidates, however, few documents still remain to be supplied, which were later on supplied by the Sub Divisional Officer on 12-7-2014 (Annexure – R4/22). Thus, it is quite apparent that, although belatedly, the documents were made available to the Chief Executive Officer, Janpad Panchayat, and it is not the case where the enquiry has been completed even in absence of the original documents pertaining to the selection process. At a later point of time the Collector deputed four other officers to assist the Chief Executive Officer, Janpad Panchayat in conducting the enquiry. The Chief Executive Officer eventually submitted his report on 12-11-2014 (Annexure – R4/24) running into 133 pages. The

finding in respect of the petitioner Surbhi Mishra is available at internal page 3 of the report mentioning that in response to the show cause notice the petitioner appeared with the original certificate of Higher Secondary and at the same time denying to have submitted any certificate of Scout & Guide and BTI. As a result of recalculation of the marks which the petitioner should have obtained, it was found that her selection was not possible and, thus, the selection was found to be illegal based on forged or non existent documents.

18. The question as to whether in absence of proof that the petitioner was responsible for submitting forged documents, her selection deserves to be set at naught is required to be considered on the principle that once it is found that a candidate was wrongly allotted marks on some count for which she was not entitled, the selection deserves to be cancelled even though the fraud may have been committed by the members of the selection committee. A fraud would remain a fraud whether it is committed by the candidate herself or by the selection committee and any benefit flowing from the act of fraud is *void ab initio*.

19. The Supreme Court in **S.P. Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs and Others**¹, held thus :

“1. 'Fraud avoids all judicial acts, ecclesiastical or temporal' observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a

¹(1994) 1 SCC 1

judgment/decreed — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

20. In **Union of India and Others v. Ramesh Gandhi**², the Supreme

Court held thus :

25. This Court on more than one occasion held that fraud vitiates everything including judicial acts. In *S.P. Chengalvaraya Naidu v. Jagannath*, this Court observed as follows: (SCC p. 2, para 1)

“1. ‘Fraud avoids all judicial acts, ecclesiastical or temporal’ observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law. Such a judgment/decreed—by the first court or by the highest court—has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

(emphasis supplied)

26. Again in *A.V. Papayya Sastry v. Govt. of A.P.* this Court reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows: (SCC pp. 236-37).

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the applicant plaintiff which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by

²(2012) 1 SCC 476

the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.”

(emphasis supplied)

21. The decision rendered in **S.P. Chengalvaraya Naidu** (supra), has again been followed in **Dalip Singh v. State of Uttar Pradesh and Others**³ and **Union of India and Others v. Major S.P. Sharma and Others**⁴.
22. In the case at hand, the petitioner has made the following averment at para 8.5 of the earlier writ petition i.e. WPS No.1564 of 2010 :

8.5 I don't know how the marks has been distributed but it is clear that my appointment was took place from the waiting list I have submitted marksheet of 10th class, marksheet of 12th class, marksheet of the M.A., Domicile Certificate and registration of Employment Exchange Office other then these document I have nothing submitted with the application form for appointment.....

³(2010) 2 SCC 114

⁴(2013) 10 SCC 150

23. The above averment is in line with the petitioner's own admission in the first enquiry as also in the second enquiry that the certificate of Scout & Guide and BTI were not submitted by her. If the petitioner on her own showing is not claiming benefit of weightage of marks on the basis of Scout & Guide and BTI certificate, the marks allotted to her on this count have to be reduced as the same were fraudulently added to the total marks secured by the petitioner and, thus, the illegal and fraudulent benefit was conferred on the petitioner even though she was not entitled for it. The petitioner was, thus, apparently the beneficiary of some fraudulent act committed either by herself in conspiracy with the members of the selection committee or by the selection committee itself. It is beyond comprehension as to why members of the selection committee would confer such benefit to the chosen number of candidates without the candidates asking for it. Coupled with the finding recorded in the first enquiry wherein one candidate has admitted to have paid money to an individual who was close to the members of the selection committee, there may be collusion and conspiracy between the candidates, some outsider elements who had acquaintance and influence over the members of the selection committee. This needs to be examined by the criminal Court in course of trial for the offence bearing Cr.No.263/2015. At this stage, it cannot be concluded that the petitioner was not at all involved in the commission of crime.

24. The petitioner has not assailed the merits of the findings recorded against her in the enquiry report. The challenge is mainly on the ground of violation of principles of natural justice and conduct of enquiry without entire documents being available with the Chief Executive Officer, however, as discussed in the preceding paragraphs, firstly all material documents were available with the Chief Executive Officer and secondly the enquiry was conducted after providing opportunity of hearing to the petitioner as directed by this Court in the earlier writ petition. Thus, there is no violation of principles of natural justice on either count.
25. In the result, petition bearing WPS No.2419 of 2015, being devoid of merit, is liable to be and is hereby dismissed and MCC No.369 of 2014 is dismissed as having become infructuous.
26. There shall be no order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri