

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 113 of 2015**

Shailendra Dewangan S/o Shri Yashwant Dewangan Aged About 28 Years Working As - Sub Engineer, O/o The Sub Divisional Officer, R.E.S., Sub Division, Raipur, District- Raipur [Chhattisgarh]

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through - The Secretary, Department Of Panchayat & Rural Development, Mantralay, Mahanadi Bhawan, Naya Raipur.
2. The Collector, District- Raipur [Chhattisgarh]
3. The Chief Executive Officer, District Panchayat, Raipur District- Raipur [Chhattisgarh]
4. Sub Divisional Officer [revenue]/ Competent Authority, Arang/ Abhanpur, District- Raipur [Chhattisgarh]
5. The Chief Executive Officer, Janpad Panchayat, Arang, District- Raipur [Chhattisgarh]
6. Shri B.R. Sahu The Sub Divisional Officer R.E.S. Janpad Panchayat, Arang, District- Raipur [Chhattisgarh]
7. Shri K.C. Jain Sub Engineer, Janpad Panchayat, Arang, District- Raipur [Chhattisgarh]
8. Sarpanch, Gram Panchayat, Nardaha, Block- Arang District- Raipur [Chhattisgarh]

---- **Respondents**

For Petitioner	:Shri R.K.Kesharwani, Advocate
For Respondents 1, 2 & 4/State	:Shri P.K.Bhaduri, G.A.
For Respondent 3	:Shri Ajay Dwivedi, Advocate
For Respondent 4	:Shri B.L. Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Judgment On Board

02/08/2016

Assail in this petition to the communication issued by the Zila Panchayat, Raipur, to the C.E.O., Janpad Panchayat Aarang instructing the

said Officer to lodge F.I.R. against the petitioner.

2. The petitioner is working as Technical Assistant in Janpad Panchayat Aarang. The said Janpad Panchayat was sanctioned a sum of Rs.4,00,000/- for construction of C.C. road at Vyavasayik Parisar (Atal Bazar), Nardaha, amongst other works. The said work was executed through the concerned Gram Panchayat. On allegation that construction was not made at the place, for which, the sanction was accorded by the Director of Panchayat and Social Services and the Zila Panchayat but at some other place, the villagers lodged a complaint with the Zila Panchayat, on which, show-cause notices were issued to the petitioner on 18.11.2014 and 04.12.2014, to which, the petitioner submitted his reply on 11.12.2014 (Annexure P/10). However, by the impugned order, the Zila Panchayat has directed for lodging F.I.R. against the petitioner.

3. It is contended by the learned counsel for the petitioner that after issuing show-cause notices to the petitioner, the reply submitted by him has not at all been considered and dealt with in the impugned order. He would submit that the impugned order is thus not supported with any reasons and is in violation of principles of natural justice. It is further argued that at the time when the construction was actually made, the petitioner was not posted in the concerned Janpad Panchayat, therefore, he is not at all involved in the decision making process concerning the change of location. It is also argued that even otherwise, such change was affected pursuant to a resolution passed by the Gram Panchayat, therefore, considering the case from any angle, the petitioner cannot be held responsible and the direction for lodging F.I.R. is thus wholly illegal and contrary to record.

4. Learned State Counsel and learned counsel appearing for other respondents as well would argue that the Zila Panchayat, Raipur, appears to have exercised jurisdiction under Section 52 and 53 of the Chhattisgarh

Panchayati Raj Adhiniyam, 1993 (for short 'the Adhiniyam') to direct for lodging F.I.R., therefore, the order is purely administrative in nature and does not call for interference.

5. Section 52 of the Adhiniyam provides for functions of Zila Panchayat. It says, subject to the provisions of this Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time, it shall be the duty of Zila Panchayat to ensure, amongst other functions, overall supervision, co-ordination and consolidations of the plans prepared by the Janpad Panchayat and further to ensure the execution of schemes, works, projects entrusted to it by any law and those assigned to it by the Central Government or State Government. Section 53 speaks about power of State Government in relation to functions of Panchayats. Section 53(1)(a) provides that :

“53. Powers of State Government in relation to functions of Panchayats.--- (1) (a) Subject to such conditions as may be specified by general or special order issued by the State Government, the Panchayat at the appropriate level shall have the powers and authority as may be necessary to enable them to function as institutions of self Government in relation to matters listed in Scheduled IV, including preparation of plans, implementation of schemes for economic development and social justice, and other duties and functions assigned to them under Sections 49, 49-A, 50, 52 and Chapter XIV-A.”

6. There is no dispute about the fact that the work of construction of C.C. road at the subject place was approved by the concerned department of the State Government, pursuant to which, Zila Panchayat, Raipur, granted administrative approval on 03.06.2011 (Annexure P/2), therefore, Janpad Panchayat being entrusted with the subject construction to be executed through the Gram Panchayat, it was the duty of the Zila Panchayat to supervise the execution of the construction work and whenever any defect, illegality or deviation has been found in such execution, pass appropriate orders. The order thus cannot be termed as without jurisdiction.

7. The issue to be addressed is, if the order has been passed in exercise of powers under Section 52 of the Adhiniyam, whether this Court should interfere in such administrative matters or direct the petitioner to submit representation before the Director, Panchayat, particularly, in view of the fact that there is no allegation against the petitioner of being involved in embezzlement of Government fund but it only involves change of place of construction of C.C. road. In the considered opinion of this Court, the Director Panchayat would be in a better position to appreciate the entire issue and pass effective order after hearing the parties.

8. The petition is, therefore, disposed of with direction that in the event the petition prefers representation before the Director Panchayat within a period of one month from today, the said Director shall summon the entire record, hear the interested parties and decide the petitioner's representation in terms of the powers of the State Government under Section 53 of the Adhiniyam by passing a reasoned order. Let the order be passed by Director, Zila Panchayat within a period of 3 months from the date of submission of representation.

9. Till the matter is decided by the Director, Zila Panchayat, no coercive steps be taken against the petitioner.

Sd/-
Judge
(Prashant Kumar Mishra)

(b) The State Government may, by notification, endow Panchayats at the appropriate level with powers and responsibilities for the selection, recruitment, appointment and management of any cadre or cadres of employees required for the efficient implementation of schemes, subject to the staffing pattern approved by the State Government and such other conditions as it may deem fit.

(2) The State Government may, by general or special order, add to any of the functions of Panchayats or withdraw the functions and duties entrusted to such Panchayats, when the State Government undertakes the execution of any of the functions entrusted to Panchayat. The Panchayat shall not be responsible for such functions so long as the State Government does not re-entrust such functions to the Panchayats.