

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1665 of 2016**

1. Thakur Ram Nirmalkar S/o Panchram Nirmalkar Aged About 28 Years R/o Village Mahkakhurd, Tahsil Patan, District Durg (Chhattisgarh)
2. Sangeeta Nirmalkar, W/o Shri Manoj Nirmalkar, Aged About 25 Years R/o Village Mahkakhurd, Tahsil Patan, District Durg (Chhattisgarh)

---- Petitioners**Versus**

1. State of Chhattisgarh Through The Secretary (Wrongly Mentioned As Collector In Impugned Order) Panchayat Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. Kumari Nutan Yadav, Sarpanch, Gram Panchayat, Mahkakhurd, Tahsil Patan District Durg (Chhattisgarh)
3. Returning Officer/ Naib Tahsildar Bhilai- 3, Tahsil Patan, District Durg (Chhattisgarh)
4. The Prescribed Officer/ Sub Divisional Officer (R), Patan, District Durg (Chhattisgarh)
5. The Gram Panchayat Mahkakhurd, Through The Secretary, Janpad Panchayat Patan, District Durg (Chhattisgarh)
6. The Collector, District Durg (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Prateek Sharma, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State
For Respondent No.2	:	Shri H.B. Agrawal, Sr. Adv. with Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****05/07/2016**

1. Motion of no confidence brought by the petitioners along with other Panchas was carried against respondent No.2 by a margin of 10:1 with one Panch remaining absent. Despite the house being opposed to the continuance of respondent No.2 as Sarpanch, the Collector, Durg while hearing the revision filed by respondent No.2 under Section 21 (4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993') has stayed

the order of removal of respondent No.2.

2. It is argued that ordinarily a resolution whereby the motion of no confidence is carried against the office bearer is not stayed by the authority because the resolution is in the nature of declaration, therefore, the Collector, Durg should not have stayed the operation of the resolution carrying the motion of no confidence. It is also argued that the Collector, Durg has not provided opportunity of hearing to the petitioners although they had initiated the motion of no confidence.
3. Shri H.B. Agrawal, learned senior counsel appearing for respondent No.2, on caveat, would submit that since after the impugned order dated 3-6-16, respondent No.2 has already been handed over the charge of the Sarpanch on 17-6-16, therefore, nothing further is required to be done.
4. Considering the entire facts situation of the case as also for the reason that respondent No.2 has prima facie lost the confidence of the house, the writ petition is disposed of with a direction that the Collector, Durg shall hear and decide the application under Section 21 (4) of the Adhiniyam, 1993 after hearing respondent No.2, as well as, all the Panchas who had voted against respondent No.2 and thereafter decide the matter on its own merits. Let the entire proceeding be completed within a period of one month from today. The parties shall appear before the Collector, Durg on 11-7-2016.
5. Till the application under Section 21 (4) is decided by the Collector, Durg, respondent No.2 shall not exercise any financial power.

Sd/-

Judge
Prashant Kumar Mishra

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