

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 624 OF 2015

Ashwani Sinha, S/o Jahur Ram, aged about 34 years, occupation- Sarpanch of Gram Panchayat Dodki, R/o Village Dodki, Tahsil Dhamtari, Police Station- Arjuni, Civil and Revenue District- Dhamtari (C.G.)

... Appellant

Versus

1. State of Chhattisgarh, through its Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, New Raipur (C.G.)

2. Lokpal, Mahatma Gandhi Narega, District Dhamtari (C.G.), office at Room No. 62, Collectorate, Dhamtari (C.G.)

3. Dharendra Kumar Sinha, S/o Ghasiram Sinha, R/o Village Dodki, P.S. Arjuni, Tahsil and District- Dhamtari (C.G.)

... Respondents

For Appellant	:	Mr. Vimal Kumar Tondey, Advocate, under instructions of Mr. K.K. Patel, Advocate.
For Respondents 1 & 2	:	Mr. Prafull Bharat, Additional Advocate General.
For Respondent 3	:	Mr. Kunal Das, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

04/01/2016

1. The present writ appeal assails order dated 23.11.2015 dismissing Writ Petition (C) No. 1658 of 2014 preferred by the Appellant, who was the Sarpanch of Gram Panchayat Dodki, declining to interfere with the recommendation of the Lokpal under the Mahatma Gandhi National Rural Employment Guarantee Scheme, Dhamtari, for recovery of Rs. 13,98,620/- to the extent of 70% against the Appellant and the Panchayat Secretary, as also for lodging of a First Information Report.

2. Learned Counsel for the Appellant submitted that this appeal may be heard along with Writ Appeal No. 651 of 2015 preferred by Shri Umesh Kumar Thakur, Panchayat Secretary, who had preferred Writ Petition (C) No. 1482 of 2014 and which was dismissed by the common order dated 23.11.2015. It was next submitted that recommending institution of an FIR against a person was a serious matter. It ought not to have been ordered without an opportunity of defence. It was acknowledged that an FIR has subsequently been registered. It was also acknowledged that no action has been taken till date pursuant to the recommendation for recovery. The writ petition of Shri Umesh Kumar Thakur, Panchayat Secretary, was allowed in part.

3. Learned Additional Advocate General opposing the appeal submitted that the order of the Lokpal dated 10.4.2014 was made after full opportunity to the present Appellant as distinct from Shri Umesh Kumar Thakur, Panchayat Secretary, and for which reason his writ petition was partly allowed on a technicality, and that too limited to the aspect for recovery only. The case is therefore completely distinguishable. The order of the Lokpal was a mere recommendation. The matter relates to government money. If an FIR has already been instituted, the Court cannot interfere with investigation and if the Appellant is aggrieved the remedies are different. The Learned Single Judge has rightly held that there was no need for any fresh opportunity for hearing before institution of an FIR, to the proposed accused. On the own showing of the Appellant no recovery proceedings have been initiated. As and when proceedings are initiated, the Appellant would have his opportunity of defence in accordance with law.

4. We have heard the Counsel for the parties.

5. The Petitioner was the Sarpanch of Gram Panchayat Dodki. There were allegations of siphoning of funds with regard to government schemes. The Lokpal issued notice to the Appellant. The Appellant was provided full opportunity of participation in the inquiry by the Lokpal. The inquiry team was constituted by the Collector under the request of the Lokpal which also made spot inspections in pursuance of which the Lokpal made his recommendation. We find no reason to interfere with the conclusion of the Learned Single Judge that the Petitioner had no legal right to be heard again before the institution of the FIR. Now that an FIR has already been registered, investigation has to proceed in accordance with law and the Appellant would be at liberty to pursue his remedies as may be available to him under the law with regard to the same. In view of the fact that no recovery proceedings have been initiated till date, not only is the grievance of the Appellant premature, but also for the additional reason that even when a recovery proceeding is initiated the Appellant has to be provided opportunity of defence and the hearing by the Lokpal cannot be substitute for the same. The case of Shri Umesh Kumar Thakur, Panchayat Secretary, who was not heard by the Lokpal is completely distinguishable on its own facts and the Appellant cannot derive any benefit from the same. We therefore find no reason to interfere with the order under appeal.

6. The writ appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge