

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1314 of 2015

- Smt. Kamla Bai W/o Virendra Kashyap, Aged About 37 Years R/o Vill-Vyas Nagar, P.O. Nandeli, P.S. & Tahsil Pamgarh, District Janjgir-Champa (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat & Social Welfare Department, Mahanadi Bhawan, New Raipur, Tahsil & District Raipur (Chhattisgarh)
2. Sub Divisional Officer (Revenue) Pamgarh, Prescribed Authority, Under Panchayat Raj Adhiniyam, Pamgarh, P.S. & Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)
3. Gram Panchayat, Nandeli, Through Secretary, Village Nandeli, P.S. & Tahsil Pamgarh, District Janjgir-Champa (Chhattisgarh)

---- Respondent

For Petitioner	Shri H. V. Sharma, Advocate
For Respondent/State	Shri Rajendra Tripathi, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

15/01/2016

1. In proceedings under Section 92 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth 'the Adhiniyam, 1993'), the concerned Sub Divisional Officer (for short 'the SDO') has passed the impugned order directing the petitioner to deposit the embezzled amount while refusing to conduct any enquiry. It is stated by the SDO that Section 92 of the Adhiniyam, 1993 does not permit any enquiry, but it is only for recovery of the amount from the defaulter.

2. Section 92 of the Adhiniyam, 1993 reads as under:-

“92. Power to recover records articles and money (1)

Where the prescribed authority is of the opinion that any person has unauthorisedly in his custody any record or article or money belonging to the Panchayat, he may, by a written order, require that the record or article or money be delivered or paid forthwith to the Panchayat, in the presence of such officer as may be appointed by the prescribed authority in this behalf.

(2) If any person fails or refuses to deliver the record or article or pay the money as directed under sub-section (1) the prescribed authority may cause him to be apprehended and may send him with a warrant in such form as may be prescribed, to be confined in a Civil Jail for a period not longer than thirty days.

(3) The prescribed authority may -

(a) for recovering any such money direct that such money be recovered as an arrear of land revenue; and

(b) for recovering any such record or articles issue a search warrant and exercise all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of the code of Criminal Procedure, 1973 (No.2 of 1974)

(4) No action under sub-section (1) or (2) or (3) shall be taken unless a reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him.

(5) A person against whom an action is taken under this section shall be disqualified to be member of any Panchayat for a period of six years commencing from the initiation of such action.”

3. Under Section 92, the SDO is required to

- (i) Form an opinion and thereafter
- (ii) To recover the amount from the defaulter

The issue of forming an opinion is further controlled by the provisions under sub-section (4), which provides that no action under sub-sections (1), (2) & (3) shall be taken unless a reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him. Thus, the law provides in

unambiguous terms that the SDO shall provide reasonable opportunity to the person concerned before forming an opinion about the default committed by him. This process of forming an opinion can only be achieved when the SDO proceeds to hold an enquiry wherein the person concerned is given reasonable opportunity to defend himself.

4. The SDO is wholly unjustified in concluding that the provisions contained in Section 92 does not contemplate any enquiry in the matter.
5. For the foregoing, the impugned order of recovery is quashed. The matter is remitted back to the concerned SDO for conducting enquiry by giving proper opportunity of hearing to the petitioner in form of submission of reply and adducing evidences. The SDO shall thereafter pass a reasoned order and proceed to make recovery thereafter, if any, for which the petitioner is held to be liable.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala