

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2861 of 2016

- Smt. Harbai Bhaina W/o Milanram Maina, Aged About 39 Years Sarpanch, Gram Panchayat, Kumhari, Block Kasdol, Distt. Baloda Bazar- Bhatapara (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat & Rural Development, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur, (Chhattisgarh)
2. Collector, Baloda Bazar- Bhatapara, (Chhattisgarh)
3. Sub Divisional Officer,(Revenue) Cum Prescribed Authority, Kasdol, Distt. Baloda Bazar Bhatapara, (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat, Kasdol, Distt. Baloda Bazar Bhatapara, (Chhattisgarh)
5. Gram Panchayat Kumhari, Block Kasdol, Distt. Baloda Bazar Bhatapara, (Chhattisgarh)
6. Gangaram, S/o Panchram Pradhan,
7. Mewalal Srivas, S/o Bodhram Srivas, Upsarpanch,
8. Shailendra Kumar Patel, S/o Babulal Patel,
9. Dilip Patel, S/o Shobit Ram Patel, Panch,
10. Pyarelal Patel, S/o Santram Patel,
11. Shankar Lal Sahu, S/o Sukhram Sahu,
12. Satruhan Pradhan, S/o Hukum Pradhan, Panch,
13. Sonalal Patel, S/o Timmulal Patel, Panch,
14. Tiharu Ram Patel, S/o Uttarsingh Patel,
15. Dusashan Pradhan, S/o Mangalsingh,

Respondents 6 to 15 are R/o Kumhari, Block Kasdol, Distt Baloda Bazar- Bhatapara, (Chhattisgarh)

---- Respondent

For Petitioner
For Respondent/State
For Caveator

Mr. K.K. Singh, Advocate
Mr. Shashank Thakur, Government Advocate
Mr. Sunil Sahu, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

23/11/2016

1. Heard.
2. This petition is preferred to challenge the order passed by the SDO(R), Kasdol, removing the petitioner from the office of Sarpanch of Gram Panchayat in exercise of powers under Section 40 of the Panchayat Raj Adhiniyam, 1993 (in short "the Adhiniyam, 1993").
3. It is argued by learned counsel for the petitioner that the petitioner has not been served with the notice of the proceedings, therefore, the petitioner has directly invoked Article 226 of the Constitution of India. He would also argue that the allegations levelled against the petitioner concerns the tenure of the previous Sarpanch Jagatram Bhaina and moreover, the petitioner has lodged FIR against respondents 6 to 15 as they were involved in illegal recovery and committing fraud in preparation of receipt book to recover export tax for limestone, therefore, the proceedings under Section 40 of the Adhiniyam, 1993 has been initiated against the petitioner in a malafide manner.
4. It appears, the petitioner has raised substantial grounds but the fact remains that the petitioner has got statutory alternative remedy of preferring an appeal before the concerned Collector. Moreover, the allegations of malafide may also involve some enquiry on factual aspects of the matter, therefore, for this reason also, it would be better for the petitioner to avail the

appellate remedy.

5. Let the petitioner prefer an appeal before the appellate authority i.e. Collector, Balodabazar-Bhatapara within a period of 15 days from today. The petitioner may raise all grounds raised in this writ petition in the appeal before the Collector. While deciding the appeal, the Collector shall specifically deal with the issue as to whether someone else has received notice of the proceedings under Section 40 of the Adhiniyam on behalf of the petitioner and whether she has been afforded any opportunity of hearing. Similarly, the Collector shall enquire the petitioner's allegations about illegal recovery of export tax for limestone by respondents 6 to 15. If the said persons are found to be involved in commission of forgery and illegal recovery of tax, the Collector shall proceed in accordance with law by directing the concerned SHO to act upon the FIR (Annexure P/2) lodged by the petitioner. It will be open for the petitioner to move an application for grant of interim relief before the Collector. The Collector shall decide the application for grant of interim relief before proceeding to decide the matter finally. The Collector shall also seek fact finding report about the service of notice on the petitioner as also the illicit recovery made by respondents 6 to 15.

6. The writ petition stands accordingly disposed of.

Sd/-

Judge

(Prashant Kumar Mishra)