

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5341 of 2007

Ashok Kumar S/o Shri Rudra Prasad, Panchayat Karmi (Secretary) Gram Panchayat Parri, Tahsil - Surajpur, District - Surguja (C.G.)

---- Petitioner

Versus

1. Shankarram Kushwaha S/o Shri Motiram, aged about 30 years ; R/o Village – Parri, Police Station and Tahsil – Surajpur, District – Surguja (CG)
2. State of Chhattisgarh Through the Secretary, Panchayat and Rural Development Department, New Raipur (CG)

---- Respondents

Shri Ashok Kumar Shukla, counsel for the petitioner/s.
None for respondent No.1 even in the second round.
Shri Satish Gupta, Govt. Advocate for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/07/2017

A short issue arises for consideration in this petition is as to whether appeal filed by respondent No.1 against decision of Gram Sabha was maintainable before the Sub-Divisional Officer (Revenue) under the statutory scheme of appeal and revision against decision of Gram Sabha as directed under Nagar Panchayat Raj Adhiniyam and Rules made therein.

2. Necessary facts are in narrow compass. Respondent no.1 while working as Panchayat Secretary of Gram Panchayat - Parri, Tahsil – Surajpur, District – Surguja, was proceeded against on certain allegations of financial irregularities and the Gram Sabha of Village - Parri passed a resolution removing respondent No.1 from the office of Panchayat Secretary on 08/04/2002. Against said decision, respondent No.1 availed remedy of filing an appeal before the Sub-Divisional Officer, Revenue, Surajpur. In the meantime, as the office of Panchayat Secretary had fallen vacant due to removal of respondent No.1, the petitioner was appointed as Panchayat Secretary vide resolution dated 08/04/2002 of same Gram Sabha. The petitioner

joined and thereafter worked.

3. The appeal filed by respondent No.1 before the SDO was dismissed, against which, respondent No.1 filed a second appeal before the Collector which was allowed vide order dated 31/08/2004 declaring illegal, the decision of the Gram Sabha and re-instating respondent No.1 as Panchayat Secretary. Aggrieved by this order, the petitioner preferred a revision before the Director. As the Director dismissed petitioner's revision affirming order of the Collector, the petitioner filed this petition.

4. Assailing correctness and validity of the order passed by the Collector, learned counsel for the petitioner raised a fundamental issue of law relating to the very appointment and jurisdiction of the Collector to hear the appeal against the order of SDO (Revenue). According to learned counsel for the petitioner, the remedy taken by respondent No.1 were completely contrary to the statutory remedial scheme provided under the Panchayat Act and Rules made therein in cases, where challenge is laid to the decision of Gram Sabha. Referring to Rule 3 of the M.P. Gram Sabha (Appeal) Rules, 2001 (for short 'the Rules of 2001'), it is submitted that the legality and validity of decision of Gram Sabha could be assailed only by filing an appeal before the authority constituted under Rule 3 thereof and not before the Sub-Divisional Officer (Revenue) as present is not a case where order of Gram Panchayat is challenged but it is a case where decision was taken by the Gram Sabha. Therefore, right from the inception, all the proceedings are without jurisdiction and authority of law and are liable to be set aside.

5. Learned State counsel would submit that the contesting party would be respondent No.1 and not the State.

6. In so far as submission that the appeal was maintainable before the Committee constituted under Rule 3 of the Rules of 2001 is concerned, that cannot be accepted because the aforesaid rules have been framed by the successor State of Madhya Pradesh and not by the State of Chhattisgarh as the Rules have been published in the M.P. Panchayat Raj Manual by Madanlal Jindal and Yogesh Jindal (Advocates) (4th Edition) and the footnote shows that this in exercise of Section 95 (1) read with Section 7(H) and published in M.P. Gazette (extra ordinary) dated 05/03/2001 at page 246. These rules, which have been framed by successor State of Madhya Pradesh after re-organisation, will not be applicable in the State of Chhattisgarh.

7. It appears that the Sub-Divisional Officer, under the notion, though erroneous

under the law that he happened to be appellate authority in the matter of appeal against the decisions taken by the Gram Sabha under Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995 whereas, the Sub-Divisional Officer is empowered to hear the appeal in case the order is passed by the Gram Panchayat. The rules do not provide for any appeal against the order of Gram Sabha. The Gram Sabha is an authority under the Panchayat Raj Adhiniyam and is distinct and separate from Gram Panchayat. Section 2 (viii) defines that it is a body consisting of persons registered in the electoral rolls relating to a revenue village or a forest village comprised within the area of the Gram Panchayat. Therefore, the Gram Panchayat and Gram Sabha are not one and the same statutory body but different and distinct.

8. Therefore, in these circumstances, the Sub-Divisional Officer (Rev.) could not have acted as the appellate authority to sit over the decisions of Gram Sabha. Infact, the series of remedies taken by respondent No.1 were misconceived. As the Sub-Divisional Officer had no jurisdiction to decide the appeal, there is no question of filing second appeal against the order of the sub-Divisional Officer. There is nothing to show that correctness and validity of decision of Gram Sabha could be examined by the Collector in exercise of any provisions under the C.G. Panchayat Raj Adhiniyam or Rules made therein.

9. The irresistible conclusion would be that the order of the Collector and the Sub-Divisional Officer both are bad in law being without jurisdiction. The Director, Panchayat failed to examine this aspect of the matter while exercising revisional jurisdiction.

10. The impugned order is set aside and the petition is allowed. As the petitioner was removed in compliance of the order passed by the Collector, now the petitioner shall be allowed to resume his duties as Panchayat Secretary of Gram Panchayat, Parri and shall also be entitled to back wages.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge