

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1412 of 2017**

Ashish Pandey S/o Awadh Ram Pandey, Aged About 32 Years Up-Sarpanch, Gram Panchayat Dhobahar, Tahsil Marwahi, District Bilaspur (Chhattisgarh), R/o Village Dhobahar, Tahsil Marwahi, District Bilaspur (Chhattisgarh).

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Panchayat And Rural Welfare, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh).
2. Collector, Bilaspur, District Bilaspur (Chhattisgarh).
3. Sub Divisional Officer (Revenue), Pendra Road, District Bilaspur (Chhattisgarh).
4. Dhayan Singh Porte, S/o Late Bishambhar Singh Porte, Aged About 45 Years Sarpanch Gram Panchayat Dhobahar, Tahsil Marwahi, District Bilaspur (Chhattisgarh).
5. Jitendra Gupta, Panch, Ward No. 13, Gram Panchayat Dhobahar, Tahsil Marwahi, District Bilaspur (Chhattisgarh).
6. Urmila Porte, Panch, Ward No. 02, Gram Panchayat Dhobahar, Tahsil Marwahi, District Bilaspur (Chhattisgarh).

---- **Respondents**

For petitioner - Shri Malay Shrivastava, Advocate.
 For Respondent/State –Shri Anupam Dubey, Dy.G.A.
 For Respondent No.4-Dr. Rajesh Pandey, Advocate.
 For Respondents No.5 & 6-Shri Sanjay Patel, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order**

21/07/2017

1. Heard on application for grant of interim relief.
2. Reply of the State is still awaited. The learned counsel for respondent No.4 vehemently opposes the stay. It is submitted that section 39 sub-section 2 speaks about order of suspension made under Section 39 (1) of the C.G. Panchayat Raj Adhiniyam, 1993 has to be reported to State Government to confirm or modify it. It is stated that under sub section 1 for suspension shall be reported to the State Government and then it would be subject of State Government and the State Government

may pass order as it deem fit. It is stated that the State Government has delegated such power to the Collector by notification dated 2nd February, 1998, therefore it is not a case that suspension made under sub section 39 (1) has to be referred to the State Government. So Collector who was empowered was within his jurisdiction to exercise its power on such suspension. He placed his reliance in case of **Kaushal Prasad Kashyap Vs. State of M.P. & Ors.** reported in **1999 (1) MPLJ 455** and would submit that likewise delegation of power was considered by the court and it was held that there is no doubt in the notification that power has been delegated under section 39 (2) to the Collector, therefore Collector when has exercised power and has stayed the order of suspension, it cannot be stated the matter should have been referred to the State Government and thereby the wrong provision was projected by the petitioner.

3. Learned counsel for the petitioner on the other hand supports the interim order and would submit that it is not a case that power has been exercised by the Collector suo-moto but revision was filed before Collector and therefore alongwith that stay petition was filed, thereby still that part remains open.

4. Facts are that respondent No.4 Sarpanch was suspended by an order of SDO on a complaint by the petitioner in exercise of power under section 39 (1) of the Panchayat Raj Adhiniyam 1993. Section 39 (2) speaks about that order of suspension made under sub-section 1 shall be reported to the State Government and it would be further subject of State Government as the State Government may deem fit to pass any order. Section 39 (2) of the Panchayat Raj Adhiniyam 1993 is reproduced here under:-

“The order of suspension under sub-section (1) shall be reported to the State Government within a period of ten days and shall be

subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report it shall be deemed to have vacated.”

5. The notification as purports that the State Government has delegated to exercise power under section 39 (2) to the Collector which reads as under:-

Section 39(2)

No.F.1-11-95-XXII-P-2., dated 2nd February 1998. In exercise of the powers conferred by sub-section (1) of section 93 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (No.1 of 1994), the State Government hereby delegate its power under sub-section (2) of section 39 of the said Act to the officers mentioned in Column (2) of the Table below in respect of the Panchayat mentioned in the corresponding entry in column (3) thereof, namely:-

TABLE

No (1)	Officers (2)	Panchayat (3)
1.	Collector	Office bearers of Gram Panchayat
2.	Divisional Commissioner	Office bearers of Janpad Panchayat

6. Likewise the law cited in case of **Kaushal Prasad Kashya** (supra) would show that delegation of such power u/s 39(2) of Panchayat Raj Adhiniyam, 1993 was upheld. Therefore delegation of the power to the Collector under Section 39 (2) is not in dispute and as such Collector can pass an order in exercise of such vested power. Irrespective of the fact that revision has been filed, fact remains that Collector has exercised the power vested in him under Section 39 (2). Therefore at this stage exercise of power by the Collector cannot be termed to be without jurisdiction as

legality of the order itself is before it. The argument advanced by learned counsel that the Collector can only revoke the order or cancel the order and cannot stay the order is completely misconceived. If the spirit of the delegation is seen, it cannot be held that Collector shall be toothless despite delegation of power. It is always within his domain to pass interim order till final adjudication of the issue is made. Considering the same, I am not inclined to continue the stay order. Same is vacated. Collector is directed to decide the revision filed by respondent No.4 within a period of 45 days from the receipt of copy of this order.

7. With such observation, no further order would be necessary in this case and accordingly the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE