

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1946 of 2017**

Smt. Mayawati, W/o Shri Rajeshwar Beg, aged about 40 years, R/o Gram Panchayat Bataikela, Janpad Panchayat Batoli, District Surguja (CG).

---- **Petitioner****Versus**

1.State of Chhattisgarh, through Secretary, Panchayat and Gramin Vikas Vibhag, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur.

2.Zila Panchayat Surguja, through its Chief Executive Officer, Zila Panchayat Surguja, Ambikapur, District Surguja (CG).

3. Sub-Divisional Officer (Revenue), Seetapur, District Surguja (CG).

4.Chief Executive Officer, Zila Panchayat Surguja, Ambikapur, District Surguja (CG).

5.Chief Executive Officer, Janpad Panchayat, Batoli, District Surguja (CG).

--- **Respondents**

For Petitioner :Mr. Manoj Paranjpe, Advocate
 For State/Resp. No.1 to 3:Mr. Dhiraj Wankhede, Govt. Advocate
 For Respondent No.4 :Mr. Arun Sao, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

22/08/2017

(1) With the consent of the parties, the matter is heard finally.

(2) The show-cause notice was issued against the petitioner by Sub Divisional Officer (Revenue), Seetapur on 15.07.2016 for her removal from the post of Sarpanch, Gram Panchayat, Bataikela under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993

(hereinafter called as 'the Act of 1993'). Thereafter, on 14.09.2016 the petitioner has submitted her reply to the said notice before the Sub-Divisional Officer (Revenue), Seetapur. After considering the reply filed by the petitioner, the Sub-Divisional Officer (Revenue), Seetapur by order dated 23.09.2016 has conducted the enquiry and certain recommendation was made to the Chief Executive Officer, Zila Panchayat, Surguja to proceed against the Secretary of Gram Panchayat, Bataikela. Thereafter, the Chief Executive Officer, Zila Panchayat, Surguja has directed the Sub Divisional Officer (Revenue), Seetapur to initiate the recovery proceeding to recover the amount of Rs.6,29,677/- against the petitioner/Sarpanch and Secretary for misappropriation of the Panchayat Fund as arrears of land revenue vide impugned order dated 08.05.2017.

(3) The Sub Divisional Officer (Revenue), Seetapur by order dated 25.05.2017 issued a show-cause notice to the petitioner/Sarpanch and Secretary of Gram Panchayat, Bataikela for recovery of an amount of Rs.6,29,677/- as arrears of land revenue.

(4) Feeling aggrieved against the order dated 25.05.2017 of Sub Divisional Officer (Revenue), Seetapur, the petitioner has filed this writ petition under Article 226 of the Constitution of India.

(5) Learned counsel appearing for the petitioner would submit that no proceeding under Section 89 of the Panchayat Raj Adhiniyam, 1993 has been initiated against the petitioner and the Sub Divisional Officer (Revenue), Seetapur vide order dated 25.05.2017 filed as Annexure P/2 has issued a show-cause notice against the

petitioner/Sarpanch and Secretary of Gram Panchayat, Bataikela to initiate the proceeding for recovery of an amount of Rs.6,29,677/- as arrears of land revenue. Neither she has been given any opportunity of hearing as required under Section 89 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 nor the alleged amount has been determined and therefore, the entire proceeding is liable to be quashed.

(6) Per contra, Mr. Dhiraj Wankhede, learned counsel appearing for the State/respondents No.1 to 3 would support the impugned order and oppose the submissions made by learned counsel for the petitioner.

(7) Per contra, Mr. Arun Sao, learned counsel appearing for the respondent No.4 would also support the impugned order and submit that Sub Divisional Officer (Revenue), Seetapur by order dated 25.05.2017 filed as Annexure P/2 has only issued show-cause notice against the petitioner/Sarpanch and Secretary of Gram Panchayat, Bataikela and has not issued the order of recovery of the said amount under Section 89(1) of the Act of 1993 and therefore, the instant petition is liable to be rejected.

(8) I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the impugned order with utmost circumspection.

(9) In order to decide the above-stated dispute, it would be appropriate to notice Section 89(1) & (2) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, which states as under:-

“89. Liability of Panch etc. for loss, misappropriation.-

(1) Every Panch, member, office-bearer, officer or servant of Panchayat shall be personally liable for loss, waste or misapplication of any money or other property of the Panchayat to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The amount required for reimbursing such loss, waste or misapplication shall be recovered by the prescribed authority:

Provided that no recovery shall be made under this section unless the person concerned has been given a reasonable opportunity of being heard.

(2) If the person concerned fails to pay the amount, such amount shall be recovered as arrears of land revenue and credited to the funds of the Panchayat concerned.”

(10) A careful perusal of the aforesaid provision would show that Panch, member, office-bearer, officer or servant of Panchayat shall be personally liable for loss, waste or misapplication of any money, or other property of the Panchayat to which he has been a party or which has been caused by him by misconduct or gross negligence of his duties which shall be recovered by the prescribed authority.

(11) The proviso of Section 89(1) of the Act of 1993 would show that reasonable opportunity of being heard shall be given to the person concerned before passing any order of recovery.

(12) The expression 'waste of money or property' denotes an action by which money or property is either spent or misused without getting expected result. Every money or property has its own value and

by spending the same or by giving the same to someone, if nothing is gained in exchange, it would be called wastage of money or property.

(13) 'Misapplication' of money or property means not applying the same for a purpose for which it was meant and instead it is applied to a cause or purpose for which it should not have been applied or spent or given.

(14) Misconduct literally means wrong or improper conduct i.e. conduct in violation of a definite rule of action. It ordinarily means failure to be done. An omission to do what is required of a person to do may therefore constitute misconduct even though the person has not acted wilfully or maliciously. [See *Mohammad Sheikh Nathu v. Governor General in Council*, **AIR 1954 NAG 337** (DB)].

(15) Likewise, in the matter of **Baldev Singh Gandhi Vs. State of Punjab and Others** reported in **(2002) 3 SCC 667**, Their Lordships of the Supreme Court have considered the meaning of word "misconduct" which has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct". Thus, ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meanings of the expression "misconduct", the expression "misconduct" has to be construed with reference to the subject and the context wherein the said expression occurs, regard being had to the aims and objects of the statute.

(16) Further, in the matter of **Noratanmal Chouraria Vs. M.R.**

Murli and another reported in **2004(5) SCC 689**, Their Lordships of the Supreme Court have held as under:-

“8. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.

10. This Court in *State of Punjab V. Ram Singh, Ex-Constable* noticed: (SCC pp.57-58, paras 5 -6)

“5. Misconduct has been defined in *Black's Law Dictionary*, 6th Edn. At p.999 thus:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.’

Misconduct in office has been defined as:

‘Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces act which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of any affirmative duty to act.’

Aiyar, P.Ramanatha: *Law Lexicon*, Reprint Edn., 1987, at p.821 defines 'misconduct' thus:

‘The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the

term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgression of some established, but indefinite, rule of action, where some discretion is necessarily left to the act. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in offence may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.'

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action and code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

(17) Similarly, in the matter of **T.A. Kathiru Kunju Vs. Jacob Mathai and another reported in 2017 (5) SCC 755**, Their Lordships of

the Supreme Court have drawn distinction between the negligence and gross negligence and held as under:-

“11. The Constitution Bench, in the matter of Mr.'P' an Advocate has ruled that mere negligence or error of judgment on the part of an Advocate would not amount to professional misconduct. It has been further held therein that error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who is guilty of it can be charged with misconduct. The Constitution Bench, as is demonstrable, has drawn a distinction between “negligence” and “gross negligence”. We think it appropriate to reproduce the said passage. It is as follows:(AIR p.1316, para 7).

“7. But different consideration arise where the negligence of the Advocate is gross. It may be that before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. It dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression “moral turpitude or delinquency” is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A willful and callous disregard for the interests of the client may, in a proper case, be characterized as conduct unbefitting an Advocate. In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an Advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving

moral turpitude. The Advocates-on-record like the other members of the Bar Advocates are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why in dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression “moral turpitude or delinquency” is not to be construed in an unduly narrow and restricted sense.”

(18) Applying the principles of law laid down in the aforesaid case, the question would be whether prescribed authority has determined the misconduct or gross negligence of the petitioner after giving an opportunity of hearing to her or not?

(19) After conclusion of removal proceeding, the Sub Divisional Officer (Revenue), Seetapur has directed to initiate the proceeding for recovery of the subject amount from the petitioner/Sarpanch and Secretary of Gram Panchayat, Bataikela. The Sub Divisional Officer (Revenue), Seetapur by order dated 25.05.2017 has issued a show cause notice for recovery of the said amount. In fact, there is no determination in a proceeding initiated under Section 89(1) of the Act of 1993 that the petitioner has committed misconduct or is guilty of gross-negligence in performance of the Panchayat duties. Proviso to the said section states that no recovery shall be made under this Section unless the person concerned has been given a reasonable opportunity of being heard. The show-cause notice has been issued with predetermination that the amount is due against the petitioner. Therefore, I am of the considered opinion that the said show cause notice issued against the petitioner for recovery of the entire amount

deserves to be quashed for want of proper and appropriate proceeding under Section 89 of the Act of 1993 determining the sum due for misconduct or gross-negligence in perverse of the Panchayat duties.

(20) As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is hereby allowed. Accordingly, the impugned order dated 08.05.2017 (Annexure P/1) & order dated 25.05.2017 (Annexure P/2) are hereby quashed. No order as to costs. However, the respondent authorities would be at liberty to initiate the proceeding in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-