

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.2215 of 2017**

Smt. Narmada Dhruw, wife of Shri Nandkishore Dhruw, aged about 35 years, R/o Village and Post office Bindra Navagarh, Tahsil Gariyaband, Police Station Mainpur, District Gariyaband (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Panchayat Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (CG).
2. The Collector, Gariyaband, District Gariyaband (CG).
3. The Sub-Divisional Officer (Revenue), Gariyaband, District Gariyaband (CG).
4. The Chief Executive Officer, Janpad Panchayat Gariyaband, Block Gariyaband, District Gariyaband (CG).
5. Gram Panchayat Bindra Navagarh, through the Secretary, Block Bindra Navagarh, Police Station BindraNavagarh, District Gariyaband (CG).

--- Respondents

For Petitioner :Mr. Prateek Sharma, Advocate
 For State :Mr.Dhiraj Wankhede, Govt. Advocate

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

11/08/2017

(1) Impugning the legality, validity and correctness of order dated 11.07.2017 (Annexure P/1) passed by respondent No.3-Sub-Divisional Officer (Revenue), Gariyaband removing the petitioner from the post of Sarpanch under Section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as 'the Act of 1993'), the instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner herein.

(2) Mr. Dhiraj Wankhede, learned counsel appearing for the State would submit that against the impugned order dated 11.07.2017 passed by Sub-Divisional Officer (Revenue), Gariyaband, an appeal would lie before the appellate authority i.e. Collector, Gariyaband under the Chhattisgarh Panchayat (Appeal and Revision) Rules 1995.

(3) Mr. Prateek Sharma, learned counsel appearing for the petitioner would submit that this Court can entertain a writ petition under Article 226 of the Constitution of India in three contingencies. In support of the case, he would rely upon the judgment of the Supreme Court in the matters of **Ram & Shyam Company Vs. State of Haryana & Others¹**, **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others²**, **Harbanslal Sahnia & another Vs. Indian Oil Corporation Ltd.³** & **Committee of Management & another Vs. Vice-Chancellor & Others⁴** and submit that the issue raised in the instant petition is covered by the judgments of the Supreme Court.

(4) I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.

(5) Copy of the order dated 16.04.2017 would show that some complaints were made to the Collector on 12.04.2017 under Lok Suraj Abhiyan and in turn, the Collector has forwarded the said complaint to the Sub Divisional Officer (Revenue) to look into the same and take decision on that complaint. Mere forwarding of the complaint by the

1 AIR 1985 SC 1147

2 AIR 1999 SC 22

3 2003 (2) SCC 107

4 (2009) 2 SCC 630

Collector without application of mind it cannot be held that the Collector has exercised the jurisdiction and therefore, he cannot hear the appeal under the C.G. Panchayat Raj Adhiniyam, 1993. There is no constitutional command that all the matter should be heard by the Constitutional Court by passing the alternative remedy available under the statute. Therefore, in my considered opinion all the issues including the jurisdictional issue which has been raised in the writ petition can very well be raised before the Appellate forum. Therefore, the instant writ petition as framed and filed is held to be not maintainable. Accordingly, the writ petition is dismissed. However, this will not bar the petitioner to file an appeal against the impugned order.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-