

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3005 of 2017**

Smt. Deep Khandekar W/o Sujeet Khandekar, Aged About 35 Years
Upsarpanch, Village Panchayat Lalpur (Thana), Tahsil Lormi, District
Mungeli Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat & Rural Development, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Commissioner, Bilaspur Division, District Bilaspur (C.G.)
3. Collector, Mungeli, District Mungeli (C.G.)
4. Sub Divisional Officer (Revenue) Lormi, District Mungeli (C.G.)
5. Smt. Sunita Nishad Wife Of Parmeshwar Nishad, Ex- Sarpanch, Village Panchayat Lalpur (Thana), Tahsil - Lormi, District Mungeli (C.G.)
6. Village Panchayat, Lalpur (Thana), Through its Acting Sarpanch, Lalpur, Tahsil Lormi, District Mungeli Chhattisgarh.

---- Respondents

For Petitioner	: Shri Praveen Das, Advocate.
For State	: Shri Aditya Sharma, Panel Lawyer.
For Respondent No. 5	: Shri Ramesh Nayak, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****29/11/2017**

(1) Smt. Sunita Nishad, respondent No. 5 herein, was the Sarpanch of village Panchayat Lalpur (Thana), Tahsil Lormi, District Mungeli. She was removed from the post of Sarpanch by Sub Divisional Officer (Revenue), Lormi vide order dated 27.09.2017. Respondent No. 5 preferred revision under Section 91 of the Chhattisgarh Panchayati Raj Adhiniyam, 1993 (for short "Adhiniyam, 1993") before the Additional Commissioner, Bilaspur on 6.7.2007 thereagainst, which was entertained

and interim order staying the effect and operation of the order dated 27.09.2017 was passed. Feeling aggrieved and dissatisfied with the order of Additional Commissioner, Bilaspur Division, petitioner, Up Sarpanch of village Panchayat Lalpur (Thana) has filed this writ petition under Article 226 of the Constitution of India questioning the same.

(2) Learned counsel appearing for the petitioner would submit that against the order of removal of respondent No. 5 under Section 40 of the Adhiniyam, 1993, revision is barred under second proviso to Rule 5(1)(a) of the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (henceforth "Rules, 1995"), therefore, impugned order is liable to be set aside.

(3) On the other hand, counsel for respondents would support the impugned order.

(4) I have heard learned counsel appearing for the parties considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(5) It is not in dispute that the order was passed by the Sub Divisional Officer (Revenue) removing the respondent No. 5 from the post of Sarpanch on 27.09.2017.

(6) At this stage, it would be appropriate to notice Rule 3(a) of the Rules, 1995 *and* second proviso to Rule 5(1)(a) of the Rules, 1995, which states as under:-

“3. Appeal and appellate authorities.- Save where it has been otherwise provided in the Act or rules or bye-laws made thereunder, an appeal shall lie,-

(a) in the case of an order passed by the Sub-Divisional Officer under any provision of the Act or rules or byelaws made

thereunder-to the Collector.

(b)	Xxxx	xxxx	xxxx
(c)	Xxxx	xxxx	xxxx

5. Revision.- (1) (a) the State Government, the Director of Panchayat, the Collector on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:

Provided further that no application for revision shall be entertained against an order appealable under the Act."

(7) A careful perusal of the Rule 3(1) would show that order passed by the Sub Divisional Officer (Revenue) under Section 40 of the Adhiniyam, 1993 is appealable before the Collector *whereas* the second proviso to Rule 5(1)(a) would clearly states that the revision cannot be entertained against an appellate order under the Adhiniyam, 1993. In the instant case, as stated hereinabove, the order of Sub Divisional Officer (Revenue) removing the respondent No. 5 from the post of Sarpanch is appealable order, therefore, by virtue of second provision to Rules 5(1)(a) of the Rules, 1995 revision before the Commissioner was admittedly barred as the order passed by the Sub Divisional Officer was appealable order. Thus, the learned Commissioner has erred in entertaining the revision filed by respondent No. 5 and thereby staying the effect & operation of the order passed by the Sub Divisional Officer (Revenue).

(8) In view of the aforesaid discussion, impugned order dated 06.10.2017 passed by the Additional Commissioner is set aside. However, the respondent No. 5 is at liberty to prefer appeal before the Collector in accordance with Rule 3(a) of the Rules, 1995 alongwith application for condonation of delay in filing the same. In the eventuality of

filing such appeal, the Collector shall decide the same strictly in accordance with law after hearing the affected parties.

(9) The writ petition is allowed to the extent sketched hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-