

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 555 of 2016**

Smt. Ramkali Raj, W/o Babulal Raj, aged about 50 years, Sarpanch,
Gram Panchayat Lalpur, Tahsil Podiuproda, District Korba (CG)

---- Appellant**versus**

1. State of Chhattisgarh, Through the Secretary, Department of Panchayat & Rural Development, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (CG)
2. Collector, Korba, District Korba (CG)
3. Sub-Divisional Officer (Revenue)-cum-Prescribed Authority, Podiuproda, Korba (CG)
4. Chief Executive Officer, Janpad Panchayat, Podiuproda, District Korba (CG)
5. Gram Panchayat Lalpur, Tahsil Podiuproda, District Korba (CG.)
6. Smt. Parmila Bai Neti, W/o Pratap Singh Neti, aged about 46 years, Panch, Gram Panchayat Lalpur, Tahsil Podiuproda, District Korba

---- Respondents

For Appellant	:	Shri Vivek Shrivastava, Advocate
For State/Respondents	:	Shri Arun Sao, Deputy Advocate General

Coram: **Hon'ble Shri Deepak Gupta, Chief Justice**
 Hon'ble Shri Sanjay Agrawal, Judge

Judgment on Board**05/01/2017**

1. The interesting question which arises in this writ appeal is whether a Sarpanch or other office bearers of the Gram Panchayat who have been suspended by the Prescribed Authority i.e. Sub Divisional Officer (Revenue) (for short 'S.D.O.') can approach this Court directly or should they first file an appeal before the Appellate Authority i.e.

Collector in terms of Rule 3 of Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (hereinafter referred to as 'the Rules').

2. Briefly stated facts of the case are that Appellant/Petitioner Smt. Ramkali Raj was elected Sarpanch of Gram Panchayat Lalpur, Tahsil Podiuproda, District Korba. A complaint was made against her and a notice was issued to her under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam') as to why she be not removed from the office of the Sarpanch. The proceedings were going on and on 13.10.2016, the Appellant/Petitioner was not present and on that date the S.D.O. passed an order suspending the Appellant till further orders. Aggrieved by the said order, the Appellant filed a writ petition before this Court. The Learned Single Judge held that the Appellant has an efficacious alternative remedy of approaching the Collector by filing an appeal in terms of Rule 3 of the Rules and hence rejected the writ petition. Aggrieved by the said order, the Appellant has preferred this appeal.
3. Shri Vivek Shrivastava, learned counsel for the Appellant has drawn our attention to two Judgments/Orders, the first is delivered by the learned Single Judge of this Court in Writ Petition (C) No. 1035 of 2008, decided on 18.2.2008 (Smt. Savitri Goswami vs. State of C.G. & Others) reported in 2008 (2) C.G.L.J. 397. In that case the suspended Sarpanch filed an appeal before the Collector. It appears that Mr. Tiwari who was the S.D.O. who passed the order of suspension, in the meantime got promoted and was holding the charge of Additional Collector. He heard the appeal against his own

order and stayed the said order. The learned Single Judge has rightly held that Mr. Tiwari had no business to hear and entertain the appeal against his own order. After referring Section 39 (1) of the Adhiniyam made following observations:

“A bare perusal of these two sub-sections of section 39 would make it clear that after passing of the order of suspension under sub-section (1), it is incumbent on the concerned authority to report such suspension to the State Government for which a period of 10 days has been provided and there is hardly any room for any authority to side track the provisions of sub-section (2) and to begin with the provisions of appeal etc., against such order passed under sub-section (1) of section 39. The provisions of sub-section (2) would show that the Legislature in all its wisdom has used the word like “shall” in this sub-section, making the provision of reporting the order of suspension to the State Government imperative and further this sub-section also provides that if the Government does not confirm the order of suspension within a period of 90 days from the date of receipt of such report, the order shall be deemed to have vacated. Therefore, in all propriety, if the order of suspension was passed by the concerned authority under sub-section (1) of section 39 that has to be reported to the Government within the stipulated period which has not been done in this case and by-passing the aforesaid provision the appeal was entertained by the Addl. Collector and the order impugned was stayed.”

In the second order a learned Single Judge has entertained the petition against order of suspension and stayed the same.

4. It is contended by Shri Vivek Shrivastava that these orders indicates that no appeal lies against the order of suspension and it is only on the administrative side that the Collector can confirm or set aside the order of suspension.
5. We may make reference to Section 39 (1) and (2) of the Adhiniyam, which reads as follows:

“39. Suspension of office bearer of Panchayat.-(1) The prescribed authority may suspend from office any office bearer -

(a) against whom charges have been framed in any criminal proceedings under Chapter V-A, VI, IX, IX-A, X, XII,

Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, suspension of immoral traffic in women and children, protection of civil rights and Prevention of Corruption; or

(b) On whom, show cause notice along with charge sheet under this Act, has been served for removal from office.

(2) 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.”

6. If we carefully analyse Section 39, what emerges is that the Prescribed Authority under Clause (a) of sub-section (1) may issue an order of suspension when an office bearer of the Panchayat is charged with having committed any one of the offences enumerated in this clause. Clause (b) is more relevant for our purpose and provides that if an office bearer has been served with show cause notice alongwith charge sheet, proposing his removal, then also an order of suspension can be passed. Removal of office bearers of Panchayat is dealt with under Section 40 of Adhiniyam which lays down the grounds on which an office bearers of Panchayat can be removed. Once a charge sheet has been issued then if the Prescribed Authority is satisfied that it is necessary to suspend the office bearer, the Prescribed Authority can pass such an order.
7. We are dealing here with persons elected to an elected office. We live in a country where democracy is being a part of basic structure of our Constitution. In a democracy, the will of the people must prevail. This

does not mean that if an elected person is dishonest or does not perform his duties, action cannot be taken against him/her. However this should not be done in a mechanical manner. Therefore the Legislature in its wisdom introduced sub-section (2), which safeguards the rights of an elected person by providing that within 10 days of the office bearer being suspended, the Prescribed Authority must report to the State Government and the State Government must confirm the order of suspension within 90 days. In case the State Government does not agree with the Prescribed Authority, it can vary the order. This Section also lays down that if the State Government does not exercise its powers within 90 days, then it will be presumed that it does not agree with the order of the Prescribed Authority and the order of suspension shall stand vacated.

8. It is not disputed before us that the State Government vide notification dated 2.2.1998 has delegated its powers to the Collector of the concerned District and therefore it is the Collector who has to either confirm or vary the order of the Prescribed Authority.
9. The matter does not end here. Section 91 of the Adhiniyam provides that an appeal or revision shall lie against the orders or proceedings of a Panchayat and other Authorities as may be prescribed. In exercise of powers vested under sub-section (1) of Section 95 read with Section 91 of the Adhiniyam, the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 have been framed and Rule 3 which is relevant for our purpose, reads as follows:

“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) in the case of an order passed by the Collector under any provision of the Act or rules or bye laws made thereunder-to the Director or Panchayat.
- (c) in the case of an order passed by the XX Director of Panchayats-to the State Government.
- (d) in the case of an order passed by the Panchayat specified in Column (1) of the Table below- to the authority specified in the corresponding entry in column (2) thereto.

TABLE

(1)	(2)
(a) Gram Panchayat	Sub-Divisional Officer.
(b) Janapad Panchayat	Collector.
(c) Zila Panchayat	Director of Panchayat”

10. Therefore, any order passed by the S.D.O. is appealable to the Collector and limitation for filing such appeal is 30 days as prescribed in Rule of 4 of the Rules. It is also not disputed that the Prescribed Authority is the S.D.O.. Therefore, appeal against any order passed by him lies to the Collector. In the context of an order of suspension passed in terms of Section 39 of the Adhiniyam, the Collector has a dual role. He acts as the State Government in administrative capacity while confirming or varying the order in terms of Section 39 (2) of the Adhiniyam and if an appeal is filed challenging the order of suspension, he is also the Appellate Authority to decide the case. While exercising administrative powers of the State Government, the Collector is not required to hear the party but he only goes through the record and passes an order on the administrative side. However, if an

appeal is filed, then he has to decide the appeal strictly in accordance with law. As pointed out above, the Prescribed Authority has to report about the order of suspension passed within 10 days to the State Government (Collector). The limitation for filing an appeal is 30 days. Therefore, an appeal may be filed even before the matter is reported to the Collector. It may be otherwise also. It may happen that the person suspended may not even file an appeal. Even if no appeal is filed, the Collector while exercising powers of the State Government is not to act in a mechanical manner. He must go through the record and if he is satisfied that the order passed is proper, he can confirm the same. But, if he finds that the order of suspension was not rightly passed, he can vary or modify or set aside the order of suspension. When an appeal is filed by the office bearer who has been suspended, then obviously the Collector will have to hear the parties. In such eventuality, if he has not already taken decision on administrative side, he can pass both the decisions together. Administrative decision as well as quasi judicial or judicial decision can both be passed either by one order or by separate order. Obviously they both have to be in consonance to each other. Therefore, we do not agree with Shri Shrivastava that an appeal does not lie. An appeal, in our view, does lie against an order of suspension to the Collector and the Collector in any event is required to decide the issue within 90 days of the matter reported. We would however like to read into the Rules, the requirement that if an appeal is filed that must also be decided within 90 days.

11. Shri Shrivastava has submitted before us that his client cannot

expect justice from Collector who is higher in hierarchy and he will obviously dismiss the appeal against any order passed by the S.D.O.

12. What is bias has been the subject matter of various decisions.

Initially under English Law, there were three types of bias – pecuniary bias; personal bias; and official bias/departmental bias/policy bias or bias as to subject matter. One more type has now been added i.e. bias on account of judicial obstinacy. This last type of bias has been added pursuant to judgment of the Apex Court reported in (1998) 5 SCC 513 (State of W.B. and others vs. Shivananda Pathak and others).

13. De Smith in his treatise (Judicial Review of Administrative Action (5th Edn.) 391) has observed as follows:

“Whilst it was undoubtedly proper to conclude from the nature of the legislative scheme that the Minister was entitled to approach his statutory duty to consider objections with a strong inclination to implement his own policy, the House of Lords used terminology which could be regarded lending countenance to the view that a public authority did not act in a judicial capacity, in the sense of being required to observe the rules of natural justice, unless it occupied the role of an adjudicator determining something approximating to a *lis inter partes*, in which case a duty to observe natural justice might be superimposed upon the procedural requirements already prescribed by statute.”

14. Garner in his book (Administrative Law (8th Edn.) 247) has stated thus:

“The Court of Appeal, it may be noted, had itself reached the same decision, but on rather narrower grounds that the statute had chosen to confer the power of final decision on the initiator of the proposal and the Minister had merely followed the prescribed procedure. In other words, *whereas the Court of Appeal said that in this situation the statute implicitly excluded challenge based on such inevitable appearance of bias, the House of Lords said that the rule was not applicable to administrative decisions anyway.*”

15. The position in India is virtually identical. It has been normally held that an “office” or “policy” does not disqualify a person from acting as an adjudicator unless there is total non-application of mind on his part or he acts on dictation of the superior authority instead of applying his mind independently, when the official acts with closed mind, then there is sufficient institution of bias to set aside the judgment.

16. In (1986) 4 SCC 537 (Institute of Chartered Accountants of India vs. L.K. Ratna), a member of the Institute was removed on the ground of misconduct. It was urged before the Apex Court that the finding of the Council holding the member guilty of misconduct was vitiated on account of bias because the Chairman and the Vice-Chairman of the Disciplinary Committee were *ex officio* President and Vice-President of the Council, the Apex Court held as follows:

“We must remember that the President and the Vice-President of the Council and three members of the Council compose the Disciplinary Committee. The President and the Vice-President do certainly hold significant status in the meeting of the Council. A member whose conduct has been the subject of enquiry by the Disciplinary Committee ending in conclusions adverse to him can legitimately entertain an apprehension that the President and the Vice-President of the Council and the other members of the Disciplinary Committee would maintain the opinion expressed by them in their report and would press for the acceptance of the report by the Council. To the member whose conduct has been investigated by the Committee, the possibility of the Council disagreeing with the report in the presence of the President and the Vice President and the other members of the Committee would seem rather remote. His fears would be aggravated by the circumstances that the President would preside over the meeting of the Council, and would thus be in a position to control and possibly dominate the proceedings during the meeting. We do not doubt that the President and the Vice-President, and also the three other members of the Disciplinary Committee, should find it possible to act objectively during the decision-making process of the Council. But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed.”

17. In (2008) 12 SCC 230 (Cantonment Executive Officer vs. Vijay D. Wani), the members of the inquiry committee were also acting as the members of the Board which was to take final decision on imposition of penalty on the delinquent. It was held that the participation of those members furnished a real apprehension in the mind of the delinquent that he would not get fair justice. The bias was very much real and substantial.
18. Keeping in view the aforesaid principles of law, we now deal with the contention raised by Shri Shrivastava. The basic contention of Shri Shrivastava is that because the Collector holds an office under the State Government, he cannot be expected to give fair hearing to the Petitioner.
19. We are in this case concerned mainly with official bias or departmental bias. This can also be termed as institutional bias. Institutional bias basically refers to that type of bias when the person becomes a judge in his own cause. This may happen directly or indirectly. This may also happen when policies are framed by the State Government and which have to be implemented by the State Government. When any disputes arises, that has to be decided by the officials of the department.
20. The law is well settled that this institutional bias is not by itself sufficient to set aside the orders passed by the authorities. As long as the authority follows the procedure prescribed for hearing and the rules of natural justice are followed the orders cannot be set aside. Merely because an officer is part of an institution does not lead to an

inference that the official bias is so strong as to nullify his judgment. When policy matters are concerned, effective decisions will have to be taken by departmental officials. As far as the present case is concerned, there is no institutional bias *per se* because a complaint is made against an elected representative of the Panchayat and after verifying the complaint, the Prescribed Authority passed an order of suspension. There is neither any personal bias nor any institutional bias. When appeal is heard by the Collector, merely because he is higher in authority is not a ground to hold that there is any element of bias.

21. Having held so, we are clearly of the view that in those cases, where the Collector exercising the powers of the State Government upholds an order of suspension either before the appeal is filed or in those cases where an appeal is filed, decides the matter on the administrative side without hearing the appeal and approves the order of the Collector, then he would disentitle himself from hearing the appeal. In such a case, he has applied his mind, though on the administrative side, to decide the matter. He has upheld the order of the Prescribed Authority, after application of mind. In such a case, the aggrieved party would have a reasonable apprehension that he would not get justice from the Collector. This is not personal bias but institutional bias or official bias. The Collector having taken a decision in the matter without having heard the affected parties, may not change his decision even after hearing the parties. In such cases the Appellant will have a justifiable apprehension that he may not get justice at the hands of the Collector.

22. In view of the above discussion, we are clearly of the view that there is no merit in the contention of Shri Shrivastava that merely because the Collector is the authority prescribed to hear the appeal, the Petitioner cannot expect justice for him. There are various laws in which administrative officer also exercise judicial or quasi-judicial powers. Merely because they have a dual role, is not sufficient to hold that there is an element of bias. That brings us to the next question as to whether the petition should have been rejected holding that the Petitioner has an efficacious alternative remedy.

23. The writ courts have prescribed a self limitation which over a period of time has virtually developed into a rule that when there is an alternative efficacious remedy available to a party, the writ court will normally not entertain the petition. We may make it clear that if the order challenged is wholly without jurisdiction or passed beyond the period of limitation or in any other special circumstances, the writ court may even entertain a petition even though there is an alternative efficacious remedy. However normally this should not be done and if there is an alternative efficacious remedy available, the party cannot be relegated to recourse to the remedy available to it.

24. The rule of alternative remedy is a rule of prudence. It is a rule of practice. It is a procedural rule. It does not take away the right of the parties. What it does is to relegate the party first to some other remedy and then he can again come to the Court. In exceptional circumstances, this rule can be waived and the writ court can even entertain a writ petition.

25. Shri Shrivastava has drawn our attention to certain orders passed by the learned Single Judge wherein the Petitions against the suspension orders have been entertained and stay orders have been granted. We are not commenting on the merits of the orders but in view of the conflicting view prevalent in this Court, we felt that it would be appropriate for us to go into the entire aspect when an appeal lies and when there is an alternative remedy.
26. To sum up, in case the Collector has not taken any decision then alternative remedy of filing an appeal is available to the suspended office bearer by filing an appeal to the Collector. However if the Collector has already exercised the powers under Section 39 (2) and confirmed the order of the prescribed authority, then there would be no efficacious alternative remedy available and in such a case the Petitioner would be entitled to approach this Court to invoke its writ jurisdiction.
27. Therefore, we are in agreement with the learned Single Judge that instead of approaching this Court, the Petitioner should have approached the Collector by filing an appeal.
28. We must also take into consideration the fact that the Petitioner has approached this Court under Article 226 of the Constitution of India because a number of such petitions are being entertained by the Court and also because there was some misconception in view of the judgment of the learned Single Judge in Smt. Savitri Goswami (supra). We therefore direct that in case the Appellant/Petitioner files an appeal within 30 days from today before the Collector, the same

shall be treated to be within limitation and it shall be disposed of by the Collector in accordance with law within a period of 90 days as prescribed.

29. With the aforesaid observations, the writ appeal is disposed of.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge