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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.2191 of 2017**

Angad Kumar Khatkar S/o Shri Ganesh Ram Khatkar, Aged About 45 Years Sarpanch Of Gram Panchayat Bamhanpuri, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baloda Bazar Bhatapara, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat And Samaj Seva, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Collector, Baloda Bazar Bhatapara, Chhattisgarh.
3. Sub Divisional Officer (Revenue), Bilaigarh, Prescribed Authority, District Baloda Bazar Bhatapara, Chhattisgarh.
4. Miss. Rajni Bhagat, Tahsildar, Bilaigarh (Presiding Officer Of No Confidence Motion) District Baloda Bazar Bhatapara, Chhattisgarh.
5. Chief Executive Officer, Janpad Panchayat Bilaigarh, District Baloda Bazar Bhatapara, Chhattisgarh.
6. Gram Panchayat Bamhanpuri, Through Its Secretary, District Balodabazar Bhatapara, Chhattisgarh.
7. Smt. Tarabai, W/o Shri Dharmendra Sahu, Aged About 28 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
8. Smt. Geeta Bai W/o Shri Mayaram Sahu Aged About 56 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
9. Dharmendra Singh S/o Rameshwar Aged About 45 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
10. Narmada Prasad, S/o Shri Mohan Lal Satnami, Aged About 40 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
11. Bhuneshwar, S/o Shri Manbodh Yadav, Aged About 55 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh,

Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.

12. Tekram S/o Shri Bhudram Nirala, Aged About 32 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
13. Smt. Chandrika Lahre, W/o Shri Tejram Lahre, Aged About 55 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
14. Smt. Dhaneshwari Sahu, W/o Shri Kamal Kishore Sahu, Aged About 35 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
15. Smt. Geeta Nirala, W/o Shri Harsichandra Nirala, Aged About 26 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
16. Smt. Ishwari Sahu W/o Shri Mohar Sai, Aged About 27 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.
17. Smt. Kanti Khute, W/o Shri Bhugeshwar, Aged About 27 Years Panch, R/o Village Bamhanpuri, Janpad Panchayat Bilaigarh, Thana Sarsiwa, District Baldoa Bazar Bhatapara, Chhattisgarh.

--- Respondents

For Petitioner : Mr. Vinay Pandey, Advocate
For State : Mr. Arun Sao, Dy.A.G.

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

10/08/2017

(1) Learned counsel appearing for the State would submit that against the order dated 17.07.2017 passed by Collector, Balodabazar-Bhatapara, the revision would be maintainable before the Commissioner. In support of the case, he relied upon the decision of this Court order dated 01.08.2017 passed in Writ Petition (C) No.80 of 2017 (**Ganga Sahu & others V. State of Chhattisgarh & others**) in which, this Court has observed as under:-

“11. The issue so raised is no longer res integra. The Madhya Pradesh High Court in the matter of **Sadan Kumar v. State of M.P. and others**¹ speaking through Dipak Misra, J. (as then His Lordship than was) has clearly held that a revision before the Commissioner against the resolution of no-confidence would be maintainable. The report states as under:-

“10. It is apposite to state here that the learned Judge had referred to the decision rendered in the case of Ram Charan Ahirwar Vs. Sub-Divisional Officer, Jatar, 1997(II) MPJR 357, wherein C.K. Prasad, J. came to hold that when in a statute different words are used, there is presumption that they are not used in the same sense. The learned Judge made a distinction between the orders and the resolutions. Thus, in the case of Ramnath Kaushik Vs. State of Madhya Pradesh and others, 1999(2) MPLJ 67 it has been held that a motion of no-confidence cannot be challenged either in appeal or revision but when a motion of no-confidence is passed and the aggrieved party raises a dispute under Section 21(4) of the Act and the authority concerned, namely, the Collector decides the same he passes the order under Section 21(4) of the Act and that becomes a decision which is final. It is submitted by Mr. Jain that as finality is attached to the order passed by the Collector, no revision would lie against the said order. In the case of Kandhilal Patel and others Vs. State of M.P. and others, 1999(2) JLJ 109 R.S. Garg, J., after referring to the decisions rendered in the cases of Naumal Bros. through Gopaldas of Mandsaur Vs. Alihussain Kamarali and others, 1961 JLJ, 450, Kailashchandra Vs. District Judge, Bhopal, 1963 JLJ 163, Surya Prasad Vs. Mohanlal, 1965 MPLJ SN 26, Than Singh

1 2002(2)MPHT 257

and others Vs. Board of Revenue and Others, 1967 RN 396, Indian Homeopathic Medical Association, Calcutta and others Vs. Kanai Lal Pal and another, AIR 1950 Calcutta 263, Commissioner of Sales Tax, U.P. Vs. M/s. Super Cotton Bowl Refilling Works, AIR 1989 SC 922 and Jetha Bai and Sons Vs. M/s Sunderdas Rathenai, AIR 1988 SC 812 came to hold in Paragraph 11 as under:-

“11. Section 91 which relates to appeal and revisions provides that an appeal or revision against the order or proceeding of a Panchayat and other authorities under the Act shall lie to such authority and in such manner as may be described. The State Govt. has framed the M.P. Panchayats (Appeal & Revision) Rules, 1995. Rule 3 provides that in case of an order passed by the SDO under any provisions of the Act or Rules or Bye-laws made thereunder, an appeal shall lie to the Collector. In case of an order passed by the Collector, an appeal shall lie to the Commissioner and in case an order is passed by the Commissioner or Director of Panchayats to the State Government. Rule 5 relating to the revisions provides that the State Government, the Commissioner, the Director of Panchayat, the Collector may on its/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 Sub-ordinate to it/him call for an 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. It cannot be disputed that in the hierarchy and according to Rule 3 of the Rules, the Collector is Sub-ordinate to the Commissioner. If an order is passed by the Collector, an appeal shall lie to the Commissioner,

therefore, the Commissioner would also have the revisional jurisdiction to call for and examine the records of a matter where an order is made under the Act by the Collector, Reverting back to Section 21(4), it can clearly be seen that Section 21(4) does not provide for an appeal. When Section 21 (4) provides for no remedy of appeal then provisions of Section 91 relating to the appeal would not be applicable. Any person aggrieved by the motion carried out under Sub-section (1) of Section 21, has a right to refer a dispute to the Collector who is expected to decide the same possible within thirty days of submission of the dispute. On face of Section 21(4), an appeal shall not lie either to the Collector or to the Commissioner or to any other authority. Section 21(4) if does not refer to an appeal then consideration of the dispute treating it to be an appeal would prima facie be illegal and contrary to the provisions of law. In the present case, the Addl. Collector heard the matter as an appeal and disposed of the same without recording any evidence, etc. Whether the procedure adopted by the Addl. Collector was proper or not would be dealt separately but for the purposes of consideration of the maintainability of the revision petition, this Court must hold that against the order passed under Section 21(4), a revision before the Commissioner shall be maintainable because the order passed by the Collector is an order passed under the Act and the Commissioner being the revisional authority is certainly entitled to call for the records either suo motu or on the application of any party for the purpose of satisfying himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of the authority Sub-ordinate to him. The Commissioner would certainly be entitled to examine the records of any case pending before or disposed of

by an authority Sub-ordinate to him under the Act. The first challenge thrown to the order passed by the Addl. Commissioner deserves to and is accordingly rejected. It is held that the revision before the authority (Addl. Commissioner) was competent.”

(2) At this stage, learned counsel appearing for the petitioner would submit that he may be allowed to prefer revision before the Additional Commissioner.

(3) Prayer appears to be fair and reasonable.

(4) Be that as it may, the petitioner is permitted to prefer revision before the Additional Commissioner. If such revision is filed by the petitioner before the Additional Commissioner within 30 days from today and in turn, the Additional Commissioner shall consider and decide the revision of the petitioner after hearing the parties within a further period of 60 days from the date of receipt of copy of this order along with revision.

(5) With the aforesaid observation, the writ petition stands finally disposed of. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-