

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2491 of 2017

Rajkumari Pal, W/o Shri Mahendra Pal, aged about 37 years, Vice President, Janpad Panchayat, Batauli, R/o village Kunkuri, Police Station Batauli, Tahsil Batauli, District Surguja (CG).

---- Petitioner

Versus

1. Chief Executive Officer, Janpad Panchayat Batauli, District Surguja (CG).
2. Sub Divisional Officer (Revenue), Sitapur, District Surguja (CG).

---- Respondents

For Petitioner : Mr. Manoj Paranjpe, Advocate.
For State : Mr. Shashank Thakur, Govt. Advocate

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

11/09/2017

(1) Learned counsel appearing for the petitioner would submit that the petitioner has erroneously preferred an appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 for setting aside motion of no confidence and he ought to have raised reference under Section 28(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and therefore, it could not have been rejected by the learned Commissioner, Surguja, District Surguja, Ambikapur.

(2) Learned counsel appearing for the State would support the impugned order and oppose the prayer made by learned counsel for the petitioner.

(3) In the matter of **J. Kumaradasan Nair & another Vs. IRIC Sohan & Others** reported in **2009 AIR SCW 1921**, the Supreme Court has clearly held that mentioning of wrong provisions would not be sufficient to take away jurisdiction of the court, which states as under in paragraph 14:-

“14. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, be itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent provisions like Sections 5 & 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of Section 14 of the Limitation Act *per se* may not be applicable but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof.”

(4) Since the reference is maintainable before the Commissioner, Surguja Division, Surguja under Section 28(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and the same was preferred within 30 days from the date of motion of no-confidence, the Commissioner ought to have treated the same as reference under Section 28(4) of the Act of 1993.

(5) In view of above and after hearing learned counsel for the parties, the impugned order deserves to be and is hereby set-aside and the Commissioner, Surguja Division, Surguja is directed to consider and decide the appeal treating it as reference under Section 28 (4) of the Chattisgarh Panchayat Raj Adhiniyam, 1993 expeditiously preferably within a period of three months from the date of receipt of copy of this order.

(6) With the aforesaid observation, the writ petition stands finally disposed of.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-