

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1626 of 2017

Vinita Markam W/o Shri Surendra Markam, Aged About 24 Years R/o Village Lawar, Tahsil Masturi, District Bilaspur (Chhattisgarh)

Petitioner

Versus

1. State Of Chhattisgarh Through, The Secretary, Department Panchayat & Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, P O & P. S. Rakhi, District Raipur (Chhattisgarh)
2. Collector, Bilaspur, District Bilaspur (Chhattisgarh)
3. Sub Divisional Officer (Revenue), Masturi, District Bilaspur, Chhattisgarh
4. Secretary, Chhattisgarh State Election Commission, D. K. S. Bhawan, Raipur (Chhattisgarh)
5. Mahendra Mahilange Up Sarpanch Village Lawar, Tahsil Masturi, District Bilaspur (Chhattisgarh)

Respondents

For Petitioner	: Shri Mateen Siddiqui, Advocate.
For Respondent/State	: Shri Dilmanrati Minj, Deputy Government Advocate.
For Respondent No.5	: Shri Vivek Ranjan Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16.06.2017

1. Challenge in the present writ petition is to the order dated 13.4.2017 passed by the Collector in Case No.01/A-89(9)/2016-17 whereby the Collector, District Bilaspur has rejected the appeal preferred by the Petitioner.
2. The brief facts of the case, are that, the Petitioner was initially elected as a Sarpanch of Gram Panchayat, Lavar on 31.1.2015. Subsequently, a complaint

was made before the Sub-Divisional Officer (Revenue), in which, it was found that the Petitioner was involved in certain irregularities and misappropriation of funds of the State Government. The Sub-Divisional Officer (Revenue) *suo moto* registered a case against the Petitioner and had initiated proceedings under Section 40 of the Panchayat Raj Adhiniyam, 1993.

3. After hearing, the Sub-Divisional Officer (Revenue) vide order dated 3.10.2016 held that the allegations and charges levelled against the Petitioner were found true and on account of the said misconduct, she has been removed from the said post. The Petitioner immediately thereafter preferred an appeal before the Collector challenging the order dated 3.10.2016 passed by the Sub-Divisional Officer (Revenue) where the case was registered as Case No. 01/A-89(9)/2016-17. The Collector also taking into consideration the contentions which the Petitioner had raised in an appeal and after due consideration of the same and after hearing of the parties, vide order dated 13.4.2017 had rejected the appeal upholding the order of removal of the Petitioner dated 3.10.2016.
4. Though, the order dated 13.4.2017 was received by the Petitioner on 22.4.2017 but the present writ petition has been filed on 8.6.2017 alongwith an application for taking up the matter during summer vacation.
5. A perusal of the contents of the petition clearly reflects that the Petitioner in accordance with the provisions under the law had already availed an alternative statutory remedy of appeal against the order of the Sub-Divisional Officer (Revenue) dated 3.10.2016. Once when the Petitioner has availed an alternative statutory remedy of appeal, it comes without saying that the Petitioner shall have to follow the other provisions of appellate remedy as prescribed under the Act. Against the order of the Collector dated 13.4.2017 as per the provisions of the Act, it is a revision which has to be preferred before the Divisional Commissioner.

6. In the instant case, nothing is reflected from the proceedings as to why the Petitioner has not availed the remedy of revision before filing of the present writ petition.
7. Learned counsel for the Petitioner heavily relied upon the orders passed by this Hon'ble Court in Writ Petition (C) No.1902 of 2014 (Radhe Shyam Singh Rajput v. State of Chhattisgarh & Others) passed on 17.11.2017, Writ Petition (C) No.430 of 2017 (Smt. Sunita Sarthi v. State of Chhattisgarh & Others) passed on 23.2.2017 and the case passed by the High Court of Madhya Pradesh in Writ Petition No.1275 of 1998 (Kailash Kumar Dangi v. State of MP & Others) reported in 2000(1) M.P.H.T. 143.
8. A perusal of the orders relied upon by the Learned counsel for the Petitioner would clearly reflect that the Petitioners in all those cases were either filed at the threshold immediately after passing of order of the Sub-Divisional Officer (Revenue) or was filed after the revisional Court had decided the revision. But none of the writ petition were entertained midway immediately after the remedy of appeal availed by the Petitioner. In the present case, though the order of the Collector was passed on 13.4.2017 and as per the provisions of Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995, there is a remedy of revision against the order of the Collector. The Petitioner ought to have availed this alternative statutory remedy prescribed under the law.
9. It is not in dispute that in writ jurisdiction or the High Court in exercise of its power under Section 226/227 of the Constitution of India can entertain a petition in spite of having an alternative statutory remedy, but the fact still remains that such remedy has to be exercised at the first available moment. In the present case, the order adversely affecting the right of the Petitioner was first passed on 3.10.2016. The Petitioner decided to challenge that order as per the statutory provisions. Once having decided to avail an alternative

statutory remedy under the law, the Petitioner is duty bound to avail the other remedies available under the law as is envisaged under the Acts and Rules framed under the Panchayat Raj Adhiniyam. The Petitioner cannot be permitted to seek a writ remedy midway without availing the remedy of revision. It is the fact that the Petitioner had not filed any revision and straightaway file this instant writ petition that too after a considerable period. Having not availed the alternative statutory remedy, the present case is distinguishable from the various orders relied upon by the Learned counsel for the Petitioner.

10. For all the aforesaid reasons, this Court is of the opinion that the present writ petition in its present form for want of alternative statutory remedy, is not maintainable and the same stands rejected.

11. Our reluctance to admit / entertain the petition would not preclude the petitioner from availing the remedies available to him under the Act.

-Sd/-
(P. Sam Koshy)
Vacation Judge