

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 280 of 2018**

Rajbali S/o Nansai, aged about 30 years, Village Patora, Tahsil Lundra, District Surguja (C.G.) **----Petitioner**

Versus

1. State of Chhattisgarh through the Collector, Ambikapur, District Surguja, (C.G.)
2. Kishun Ram S/o Bolo, R/o Village Patora, Tahsil Lundra, Lundra District Surguja (C.G.)
3. Kedarnath S/o Mukund, R/o Village Patora, Tahsil Lundra, Lundra District Surguja (C.G.) **---- Respondents**

For Petitioner	:	Mr. Anurag Singh, Advocate.
For Respondent No. 1/State	:	Mr. R. N. Pusty, G. A.
For Respondents No. 2 & 3	:	Mr. Sanjay Pathak, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****18/07/18**

1. Learned counsel for the petitioner would submit that petitioner was elected as Panch on 04.02.2015 from Ward No. 17 of Gram Panchayat Patora. His election as Panch was challenged by respondents No. 2 and 3 by filing an application under Section 36(1)(q) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'Act') before the Collector to declare him disqualified which was considered by the Collector and he was declared disqualified. The appeal preferred by the petitioner under Section 36(4) was also rejected by the Commissioner, Surguja Division by order dated 24.04.2017. Questioning that order, this writ petition has been

preferred by the petitioner.

2. Learned counsel for the petitioner would submit that the order disqualifying him from the post of Sarpanch is unsustainable and bad in law as on the basis of the enquiry report submitted by the Revenue Inspector (Patwari), the Collector has declared him disqualified. No opportunity under the proviso to sub-section (3) of Section 36 of the Act was provided to the petitioner and no copy of enquiry report has been supplied to him and also no opportunity of hearing was given to him and the order has been passed which is illegally affirmed by the Appellate Authority.

3. Learned counsel for the respondents and for the State would oppose the submissions made by counsel for the petitioner and would support the order impugned.

4. I have heard learned counsel for the parties at length, considered their rival submissions made herein-above and gone through the records with utmost circumspection.

5. The application was preferred by the respondents No. 2 and 3 seeking disqualification of the petitioner as Sarpanch on the ground mentioned under Section 36(1)(q) of the Act that he is an encroacher upon the government land and has constructed house on that land. The petitioner was given notice and on 11.03.2016 the Collector has directed the Revenue Inspector, Lundra to submit enquiry report which was submitted before the Collector on 16.03.2016 but no copy of the enquiry report was supplied to the petitioner and the matter was fixed for examination on 15.06.2016 and straightaway order of disqualification was passed. The non-supply of copy of the enquiry

report and not affording opportunity to adduce the evidence to rebutt the said enquiry report and to prove that petitioner is not an encroacher upon the government land is clearly contrary to proviso to sub-section (3) of Section 36 of the Act and therefore, the order of the Collector deserves to be set aside and the Appellate Authority also failed to look into the same and affirmed the order of the Collector. In consequence, the order of the Collector and the Appellate Authority both are set aside but the petitioner is not entitled for reinstatement on the post of Sarpanch as the new election has already been held and one Jageshwar is said to have been elected on the said post. However, the petitioner would be at liberty to prefer an election petition under Section 122 read with Rules 1995 for questioning that election in accordance with law.

6. The writ petition is allowed to the extent indicated herein above. No order as to cost(s).

SD/-
(Sanjay K. Agrawal)
Judge