

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 608 of 2018**

Smt. Satyabhama, wife of Shiv Prasad Sahu, aged about 40 years, Former Sarpanch (Terminated), Gram Panchayat Manikchouri, Tahsil Kawardha, District Kabirdham (C.G.)

----Petitioner

Versus

1. State of Chhattisgarh, Through: The Secretary, Department of Panchayat, Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. Kamlesh Sahu, son of Munna Ram Sahu.
3. Satish Pandey, son of Krishnanad Pandey,

Respondents No. 2 & 3 are R/o. Manikpuri, Tahsil Kawardha, District Kabirdham (C.G.)

4. Miss Bharti Sahu, Secretary, Gram Panchayat, Manikpuri, Tahsil Kawardha, District Kabirdham (C.G.)
5. Collector, Kawardha, District Kabirdham (C.G.)
6. Sub Divisional Officer ®, Kawardha, District Kabirdham (C.G.)

---- Respondents.

For Petitioner	: Mr. Sudhir Verma, Advocate.
For Respondents No. 2 & 3	: Mr. Raj Kumar Pali, Advocate.
For State	: Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/06/2018

(1) The petitioner was removed from the post of Sarpanch of Gram Panchayat Manikpuri by Sub Divisional Officer (Revenue), Kawardha vide order dated 15.09.2017. She preferred appeal before the Collector, Kabirdham thereagainst. In

appeal, the order of the Sub Divisional Officer was affirmed by the Collector vide order dated 09.11.2017. The petitioner preferred second appeal thereagainst before the Additional Commissioner, Durg. That second appeal has been dismissed as not maintainable holding that second appeal is not maintainable in light of Chhattisgarh Panchayat (Appeal & Revision) Rules, 1995, against which instant writ petition has been filed questioning the same.

(2) Learned counsel appearing for the petitioner would submit that since the revision is maintainable before the Commissioner against the order passed by the Collector as held by this Court in Writ Petition (C) No.80 of 2017 {Ganga Sahu & others Vs. State of Chhattisgarh & others), therefore, learned Additional Commissioner, Durg ought to have considered and treated the appeal as revision and decided the same, as such, the impugned order is bad and unsustainable in law, which is liable to be set aside.

(3) Per contra, counsel for the State and the respondents No. 1 & 2/complainants would support the impugned order.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.

(5) This Court, in Writ Petition (C) No. 80 of 2017 {Ganga Sahu & others Vs. State of Chhattisgarh & others); decided on 01.08.2017, considering the maintainability of the revision following the decision of the Madhya Pradesh High Court in the matter of **Sadan Kumar Vs. State of M.P. & others**¹ has held as

¹ 2002 (2) MPHT 257

under:-

“10. The aforesaid determination would take me to the next submission of learned counsel for the petitioners that the revision petition before the Commissioner was not maintainable in view of finality clause attached to the order of Collector deciding the dispute by virtue of provision contained in Section 21(4) of the Act of 1993.

11. The issue so raised is *no longer res integra*. The Madhya Pradesh High in the matter of **Sadan Kumar (supra)** 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, Jatara*, 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 J LJ 163, *Surya Prasad Vs. Mohanlal*, 1965 MPLJ SN 26, *Than Singh 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, 95. 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 Govt., the Commissioner, the Director of Panchayat, the Collector may on its/his 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 possibly 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."

(6) The second appeal was preferred by the petitioner against the order of Collector, it ought to have been treated as revision and could have been

decided finally by the Commissioner, which has not been done. Thus, the learned Additional Commissioner has committed illegality in rejecting the appeal as not maintainable, it could have been decided treating the same as revision, therefore, the impugned order dated 19.02.2018 is set aside. The matter is remitted to the Additional Commissioner, Durg to treat the second appeal as revision and decide the same after hearing the affected parties in accordance with law. It is made clear that, since the matter is being remitted to the Additional Commissioner, Durg for treating the second appeal as revision and decide the same afresh, the Collector, Kabirdham is directed not to fill-up the post of Sarpanch of Gram Panchayat Manikcouri, till the final decision is taken by the Additional Commissioner in case of the petitioner.

(7) The State Counsel is directed to inform the Collector, Kabirdham about passing of this order.

(8) The writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

(Sanjay K. Agrawal)
Judge

D/-