

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No.1635 of 2018**

Devkumar Jangde S/o Shri Aghoriram Jangde, Aged About 39 Years
 Occupation - Sarpanch Gram Panchayat Odkakan, R/o Village - Odkakan,
 Janpad Panchayat Bilaigarh, P.S. And Tahsil - Bilaigarh Civil And Revenue
 District Balodabajar - Bhatapara Chhattisgarh

----Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Collector, Balodabajar, District Balodabajar Bhatapara Chhattisgarh
3. Sub Divisional Officer (Revenue), Bilaigarh, District Balodabajar Bhatapara Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat Bilaigarh, District Balodabajar Bhatapara Chhattisgarh

---- Respondents

 For Petitioner : Mr.Sunil Sahu, Advocate
 For Respondents No.1 to 3 : Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****31/07/2018**

With the consent of learned counsel for the parties, the matter is heard finally.

1. The petitioner is elected Sarpanch of Gram Panchayat Odkakan, Janpad Panchayat Bilaigarh. By the impugned order, he has been restrained from exercising the financial power till the disposal of the proceedings under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as 'the Act of 1993'), against which, this writ petition has been filed.

2. Learned counsel for the petitioner submits the no such power is vested with the Sub Divisional Officer (Revenue) under Section 40 of the Act of 1993 to withdraw the financial power of the petitioner/Sarpanch and, therefore, the impugned order passed by the Sub Divisional Officer (Revenue) is illegal and without the authority of law, which is liable to be dismissed.
3. On the other hand, learned counsel for the State would submit that on account of several complaints against the petitioner, proceeding for removal has been initiated against the petitioner and finding it expedient financial power for the time being has been withdrawn from the petitioner and, therefore, the order impugned is strictly in accordance with law.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein with utmost circumspection.
5. For the sake of convenience, it would be appropriate to notice Section 40 of the Act of 1993 which states as under:-

“40. Removal of office bearers of Panchayat.-

(1) The state Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer-

- (a) if he has been guilty of misconduct in the discharge of his duties; or
- (b) if his continuance in office is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation- For the purpose of this sub-section misconduct shall include -

- (a) any action adversely affecting
 - (i) the sovereignty, unity and integrity of India; or
 - (ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or
 (iv) gross negligence in the discharge of the duties under this Act.”

6.

7. A focused perusal of the aforesaid provision would show that the State Government or the prescribed authority after such enquiry remove the office bearer if he has been guilty of misconduct in discharging his duties or if his continuance in office is undesirable in the interest of the public, but the State Government or prescribed authority, Sub Divisional Officer (Revenue) in this case has not been conferred with the power and jurisdiction to withdraw the financial power restraining the elected Sarpanch from exercising his financial power.

8. In the matter of **Dheeraj Meshram Vs. State of Chhattisgarh & others**¹ this Court while quashing the order restraining the President of Municipal Council held “from exercising his financial power” as under:-

“11. In the case in hand, though the petitioner has not been removed from the office of Sarpanch of the Gram Panchayat Viondhayasar but her financial powers have been seized under the impugned order thus the impugned order inflicts stigma which is no less serious than the stigma cast when the Sarpanch is removed from the office because when powers are withdrawn, the person loses credibility in the minds of voters and her supporters that she is a person who does not have integrity and does not stick to financial discipline. In a case like this, the person continues to hold the office but loses her powers to put her signatures on the financial instruments like bills, cheques etc. which are presently signed by other competent officers even though the Sarpanch is available in the office. This effect of the impugned order causes humiliation to an elected President of the Municipal Council which amounts to casting of stigma losing her reputation, therefore, this Court has no hesitation in holding that considering from any angle the impugned order cannot be sustained which deserves to be quashed.”

¹ 2012 SCC Online CHH 148

9. Thus, following the principle of law laid down in the above-stated judgment by this Court in **Dheeraj Meshram** (supra) and in absence of legislative provision enabling the State Government / prescribed authority to restrain the elected Sarpanch from exercising her financial powers; such an order passed by prescribed authority restraining the elected Sarpanch / petitioner from exercising financial power is without jurisdiction and without authority of law and deserves to be quashed.

10. Accordingly, the writ petition is allowed and the impugned order dated 3.4.20187 (Annexure P/1) passed by Sub Divisional Officer (Revenue), Bilaigarh is hereby quashed, leaving the parties to bear their own costs. However, the Sub Divisional Officer (Revenue) will proceed for removal proceedings in accordance with law expeditiously.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (C) No.1635 of 2018****Petitioner**

Devkumar Jangde

Versus**Respondents**

State of Chhattisgarh and others

(Head-note)

(English)

Financial power of Sarpanch cannot be withdrawn by the Sub-Divisional Officer (Revenue) in absence of legislative provision.

(हिन्दी)

विधायी उपबन्धों के अभाव में अनुविभागीय अधिकारी (राजस्व) द्वारा सरपंच की वित्तीय शक्तियों को वापस नहीं लिया जा सकता।