

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1838 of 2018**

Gangaram, S/o. Panchram Pradhan, aged about 35 years, R/o.Village Kumhari, Vikash Khand Kasdol, P.S. - Kasdol, Civil & Revenue Distt. - Balodabajar – Bhatapara (C.G.)

----Applicant

Versus

1. State of Chhattisgarh, Thru Secretary, Panchayat and Rural Development Department, Mahanadi Bhawan, Capital Complex, Mantalaya, Naya Raipur, District Raipur (C.G.)
2. Commissioner, Raipur Division Raipur, District – Raipur (C.G.)
3. Collector, Balodabazar, District Balodabajar – Bhatapara (C.G.)
4. Sub Divisional Officer (Revenue), Kasdol, District Balodabajar-Bhatapara (C.G.)
5. Smt. Har Bai Bhaina, W/o Shri Milan Ram Bhaina, Ex-Sarpanch, Gram Panchayat Kumhari, Vikash Khand Kasdol, P.S.- Kasdol, Civil & Revenue Distt. Balodabajar- Bhatapara (C.G.)
6. Mewalal Shrivastava, S/o Shri Bodhram Shrivastava (Up-Sarpanch)
7. Shailendra Kumar Patel, S/o. Shri Babulal Patel.
8. Dilip Patel, S/o. Shri Shobhitram Patel.
9. Pyarelal Patel, S/o Santram Patel,
10. Shanker Lal Sahu, S/o. Shri Sukhram Sahu.
11. Shatrughan Pradhan, S/o Shri Hukum Pradhan.
12. Sonalal Patel, S/o. Shri Teenulal Patel.
13. Tiharu Ram Patel, S/o. Shri Uttar Singh Patel.
14. Dushasan Pradhan, S/o. Shri Mangal Singh Pradhan.

Respondents No. 6 to 14 are resident of Gram Panchayat Kumhari, Vikash Khand – Kasdol, P.S. - Kasdol, Civil and Revenue Distt. - Balodabajar Bhatapara (C.G.)

---- Respondents

For Petitioner	: Shri Sunil Sahu, Advocate.
For State	: Shri Anand Dadariya, Dy. Govt. Advocate.
For Respondent No. 5	: Shri K.K. Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/08/2018

1. In a proceeding initiated under Section 40 of the Chhattisgarh Panchayt Raj Adhiniyam, 1993 (for short "Adhiniyam, 1993"), respondent No. 5 – Smt. Har Bai Bhaina was served with the notice for 05.09.2016. Since the said date was declared holiday by the State Government, therefore, the matter was taken up for hearing on various dates i.e. 20.09.2016, 20.11.2016 and 5.10.2016 but ultimately on 29.09.2016, she was proceeded *ex parte* and subsequently final order of her removal from the post of Sarpanch was passed by the Sub Divisional Officer (Revenue), Kasdol on 05.11.2016, which was affirmed by the Collector, in appeal preferred by respondent No.5, by order dated 17.07.2017.

2. Respondent No. 5 preferred revision against the order of S.D.O. (Revenue) as affirmed by the Collector before the Commissioner, Raipur Division. The Commissioner, by its impugned order dated 04.06.2018, set aside the order of removal as well as the order of Collector holding that the date, on which she was proceeded *ex parte*, was the declared holiday the State Government and, therefore, a fresh notice ought to have been issued to respondent No. 5, which had not been done by the SDO (R), and it is in violation of principles of natural justice, against which instant writ petition has been filed by the petitioner questioning the same.

3. Learned counsel appearing for the petitioner would submit that though on

5.9.2016 was the declared holiday but she was served with the notice and, therefore, she has rightly been proceeded *ex parte* and it has rightly been affirmed by the Collector but learned Commissioner has committed illegality in allowing the revision and remanding the matter to the Sub Divisional Officer for deciding the matter afresh after giving opportunity of hearing to respondent No. 5 and, as such, the impugned order passed by the Commissioner is liable to be quashed.

4. Per contra, counsel for the respondent No.5 would support the impugned order.

5. I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

6. It is not in dispute that the respondent No. 5 was served with the notice for 5.9.2016, and that day was declared holiday by the State Government and, therefore, the matter could not be heard on that day and subsequently the matter was taken up for hearing on 20.09.2016, 20.10.2016 & 5.10.2016 and ultimately on 29.09.2016, she was proceeded *ex parte* and, thereafter, final order of removal of respondent No. 5 from the post of Sarpanch was passed on 5.11.2016.

7. Fact remains that the respondent No. 5 was served with the notice for 5.9.2016, and that date was declared holiday by the State Government and, therefore, fresh notice giving next date of hearing ought to have been issued by the learned Sub Divisional Officer as the respondent No. 5 was not obliged to appear on 5.9.2016 as it was declared Holiday and if that day was declared holiday by the State Government, it ought to have been served with the fresh notice by the Sub Divisional Officer and the non-service of fresh notice to the petitioner has resulted into the failure of justice. Thus, this Court is of the view that

the learned Commissioner is absolutely justified in allowing the revision and remanding the matter to the Sub Divisional Officer (Revenue) for hearing afresh after giving due opportunity of hearing to the respondent No. 5 and other affected parties. I do not find any illegality or perversity in the order impugned warranting interference by this Court in the instant writ petition.

8. Consequently, the writ petition, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

9. However, it is directed that Sub Divisional Officer (Revenue), shall decide the matter expeditiously.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

