

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2397 of 2018**

- Ramavtar Dhruv S/o Late Kanhiya Lal Dhruv Aged About 43 Years R/o Village Ghuturkundi, Police Station and Tehsil Pandaria, Civil and Revenue District- Kabirdham, Chhattisgarh

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through Secretary Panchayat and Rural Development Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. The Commissioner, Durg Division, Durg, Chhattisgarh
3. The Additional Collector, Kabirdham, Distirct Kabirdham, Chhattisgarh
4. The Sub-Divisional Officer (Revenue), Pandariya, District Kabirdham, Chhattisgarh

---- Respondents

For Petitioner	Shri S. K. Soni, Advocate
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For Respondent-State	Shri Rajendra Tripathi, PL
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Hon'ble Justice Mr. Prashant Kumar Mishra**Order On Board****28/08/2018**

1. Challenge in this petition is to the order of petitioner's removal from the office of Sarpanch, Gram Panchayat, Ghuturkundi, Block Pandariya, District Kabirdham by the SDO (Revenue), Kabirdham in exercise of powers under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 as also to the appellate and revisional order passed by the Additional Collector,

Kabirdham and Additional Commissioner, Durg Division.

2. While the petitioner was Sarpanch of the subject gram panchayat, the work of construction of CC Road at Ward No.5,6 & 8 was sanctioned for Rs.2.2 Lakhs each. The construction was to be completed within 10 months. Similarly, sanction for Rs.2 Lakhs was accorded for construction of Muktidham shed to be completed within 3 months and further construction of cultural platform was sanctioned for Rs.4.56 Lakhs to be constructed within 10 months. The order passed by the SDO (Revenue) would reflect that the SDO (RES), Pandaria submitted progress report on 29.04.2017 indicating that all the works have been left midway and amount has been withdrawn from the Panchayat Office in a fraudulent manner without there being any resolution of the Gram Panchayat in accordance with the procedure laid down under the Adhiniyam, 1993 and the rules framed thereunder. Before the Authorized Officer also, the petitioner was allowed further time, on his undertaking, for completion of the work but yet he could complete the construction of CC Road of Ward No.5 & 6 and left the other 5 works incomplete. It is also found by the SDO (Revenue) that the petitioner withdrew different amounts for different works without the resolution of the Gram Panchayat and has thus violated the Gram Panchayat Account Rules, 1999.
3. It is argued that the petitioner was not allowed proper opportunity of hearing and that work of Ward No.8 Muktidham shed construction etc. has been completed, which has not been

properly appreciated.

4. Having seen the orders under challenge, it appears that the SDO (Revenue) has not only considered each and every submission of the petitioner but has also procured independent assessment report after verification of the work done on the spot by the SDO (RES). The report was not objected by the petitioner, as there is nothing in the order to indicate that despite the report, the petitioner submitted proof of construction of the work. There is clear finding by the competent authority that the petitioner was allowed time even during the pendency of Section 40 proceedings but he failed to complete the work of CC Road construction of Ward No.6, Muktidham shed, entry gate and cultural platform. The order passed by the competent authority has been affirmed by the Collector and the Commissioner in exercise of appellate and revisional jurisdiction. Thus, there is concurrent finding of fact against the petitioner, which cannot be interfered in this writ petition, as if this Court is sitting in appeal against the order passed by the Authorities.

5. In the matter of **B. K. Muniraju vs State of Karnataka**, reported in **(2008) 4 SCC 451**, the Supreme Court has held thus:-

22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued

only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.”

6. Having considered the entire arguments and on perusal of the papers, I do not find any ground to interfere with the impugned order. The petition fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Nirala