

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3040 of 2018**

1. Smt. Rusha Khare W/o Shri Dhanau Khare Aged About 30 Years Working As Officiating Sarpanch At Gram Panchayat Pendrawan, Janpad Panchayat Bilaigarh, District- Baloda Bazar-Bhatapara, Chhattisgarh.
2. Bhuneshwar Mahish S/o Shri Ranglal Mahish Aged About 44 Years R/o Village And Post Pendrawan, Tahsil Bilaigarh, District- Baloda-Bazar-Bhatapara, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Welfare Department, Mahanadi Bhavan, Mantralaya, New Raipur, District : Raipur, Chhattisgarh
2. Collector Baloda-Bazar-Bhatapara, District- Baloda-Bazar-Bhatapara, Chhattisgarh.
3. Sub Divisional Officer (Revenue) Bilaigarh, District- Baloda-Bazar-Bhatapara, Chhattisgarh
4. Chief Executive Officer Janpad Panchayat Bilaigarh, District- Baloda-Bazar-Bhatapara, Chhattisgarh
5. Smt. Geeta Baghel W/o Shri Sant Ram Baghel Removed Sarpanch, At Gram Panchayat Pendrawan, Janpad Panchayat Bilaigarh, District- Baloda-Bazar-Bhatapara, Chhattisgarh

---- Respondent

For Petitioners	Mr. RS Patel, Advocate
For Respondent /State	Mr. Sameer Behar, Panel Lawyer

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****31/10/2018**

1. Heard.
2. Respondent No.5, Sarpanch of Gram Panchayat, Pendrawan, Janpad Panchayat, Bilaigarh, suffers an order of removal under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short "the Adhiniyam"). The said order was affirmed by the Collector and the Commissioner. However, the Secretary, Government of Chhattisgarh, Department of Panchayat and Rural Development, has passed an order on 24.7.2018, holding that the enquiry against the said Sarpanch was not in accordance with law, therefore, a fresh enquiry be made. The Secretary, therefore, quashed the order and remitted the matter back for fresh enquiry against the Sarpanch-respondent No.5.
3. Pursuant to the above order of the State Government, the SDO(R), Bilaigarh, has passed the order impugned -Annexure P/3 directing the petitioner to hand over the charge of the office of Sarpanch to respondent No.5
4. Petitioner No.1 being the officiating Sarpanch and petitioner No.2 being the complainant against respondent No.5, have moved this petition *inter alia* on the plea that before completion of enquiry, as directed by the State Government, respondent No.5 should not have been handed over the charge of the office of Sarpanch.
5. In the considered view of this Court, neither petitioner No.1 in the capacity of officiating Sarpanch nor petitioner No.2 being

the complainant can hold up handing over the charge of the office of Sarpanch to respondent No.5 for the simple reason that both of them do not have any right over the office.

6. Petitioner No.1 is not an elected Sarpanch. His entitlement to officiate had arisen only on account of removal of respondent No.5, therefore, once the order of removal has been set-aside by the State Government, he no longer remains entitled to officiate as Sarpanch because the office ceases to be vacant after the order of the State Government.
7. Since petitioner No.2 claims to have made the complaint, which was the basis for taking action against respondent No.5 under Section 40 of the Adhinyam, he may participate in the enquiry against respondent No.5, if he so desires.
8. In view of the contents of the last paragraph of the State Government's order, it is expected of the concerned SDO(R) to conclude the enquiry against respondent No.5 expeditiously, preferably within a period of 6 months from today.
9. The writ petition is accordingly disposed of.

Sd/-

(Prashant Kumar Mishra)

Judge

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