

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1396 of 2015**

- Arjun Singh S/o Late Shri Baijnath Singh Aged About 57 Years Sarpanch Gram Panchayat- Sanwla, Janpad Panchayat- Khadganwa, Thana- Khadganwa, Tahsil- Khadganwa, Distt. Korea, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, New Mantralaya, Naya Raipur, Chhattisgarh
2. Collector, Korea, Distt. Korea Chhattisgarh
3. Sub Divisional Officer (R) And Vihit Pradhikari Panchayat, Khadganwa, Chirmiri, Distt. Korea, Chhattisgarh

---- Respondents

For Petitioner : Shri Sanjay Patel, Advocate

For Respondents/State : Ms. Richa Shukla, Dy. GA

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****09/09/2019**

1. Heard.
2. The instant petition is against the order dated 29.06.2015, whereby the suspension order was issued against the petitioner in exercise of power under Section 39 (1) of the Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993').
3. Learned counsel for the petitioner would submit that the petitioner was served with a notice on 27.06.2015 under Section 39 of the Adhiniyam, 1993 and he was asked to appear on 29.06.2015 as per Annexure P-2. He would further

submit that the petitioner appeared on 29.06.2015 on the date given for appearance and on that date itself the order was passed whereby the petitioner was not given opportunity of hearing, and the rule of *audi alteram partem* was defeated. He would further submit that as per show-cause notice though certain charges were clamped but the petitioner was not served with any charge-sheet which is mandatory under Section 39 (1) (b) of the Adhiniyam, 1993, therefore, the order dated 29.06.2015 would be without jurisdiction for want of necessary statutory compliance.

4. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner and submits that serious charges were clamped against the petitioner that he has not distributed the pension to the disabled persons. Consequently, complaint was received thereafter he was given a notice and ample opportunity was given to him since the notice was served to the petitioner on 27.06.2015. Thereafter, after hearing the petitioner when he appeared, the orders were passed, therefore, the petitioner was given due opportunity of hearing.
5. I have heard learned counsel for the parties and perused the documents.
6. The show-cause notice issued under Section 39 of the Adhiniyam, 1993 is Annexure P-2. At the footnote of this Annexure P-2 it purports that it was served on the petitioner on 27.06.2015 and the notice was that required the appearance of petitioner on 29.06.2015 before the SDM. The subsequent order dated 29.06.2015 is about the suspension of the petitioner, wherein on certain allegations, the petitioner was said to have been suspended.
7. Section 39 (1) (b) of the Adhiniyam, 1993 speaks that when the show-cause

notice is served clamping certain charges then the charge-sheet is required to be served when it is for the removal from the office. The documents filed along with the reply also do not fortify the fact that along with show-cause notice the charge-sheet was served. Therefore, there was a apparent violation of the Section 39 (1) (b) of the Adhiniyam, 1993. Furthermore, the notice Annexure P-2 would show that the petitioner was given a date of appearance on 29.06.2015 and on that date itself the orders for suppression have been passed. Therefore, the submission of the petitioner that he was not given due hearing holds the sway in his favour to draw a presumption that no actual opportunity of hearing was given to him as on the same date orders were passed. As a result, the rule of *audi alteram partem* was defeated. In a result, the order dated 29.06.2015 cannot be given effect to since it is violative of Section 39 (1) (b) of the Adhiniyam, 1993 and for the fact that no opportunity of hearing was given. Consequently, the order dated 29.06.2015 (Annexure P-3) is set aside. However, the liberty shall be with the respondent authorities to act according to the Rules.

8. Accordingly, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge