

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 53 of 2018**

*{Arising out of order dated 11.12.2017 passed by the learned Single Judge in
Writ Petition (C) No. 2675 of 2017}*

- Navalram Sahu, S/o Dularuram Sahu, aged about 55 years, Gram Panchayat Khapridarbar, Block Chhuikhadan, District Rajnandgaon (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Panchayat and Social Welfare Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Commissioner, Durg Division, Durg, District Durg (C.G.)
3. Collector, Rajnandgaon, District Rajnandgaon (C.G.)
4. Sub Divisional Officer, Khairagarh, District Rajnandgaon (C.G.)
5. Tahsildar, Chhuikhadan, District Rajnandgaon (C.G.)
6. Smt. Kamti Bai, W/o Manglu Ram, aged about 45 years, Sarpanch, R/o Village Gram Panchayat Khapridarbar, Block Chhuikhadan, District Rajnandgaon (C.G.)

---- Respondents

For Appellant	:	Shri Govind Dewangan, Advocate.
For Respondents No. 1 to 5/State:	:	Shri Gagan Tiwari, Deputy Government Advocate.
For Respondent No.6	:	Shri Tarun Dansena, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****07.03.2019**

1. Heard learned counsel for the Appellant, the learned Deputy Government Advocate for the State and the learned counsel for the Respondent No. 6.
2. The private Respondent was elected as Sarpanch of Gram Panchayat Khapridarbar. Allegation was made that she had withdrawn certain money by

forging muster roll. The complaint was made to the Sub Divisional Officer (Revenue) Khairagarh, who got an enquiry held through the Tahsildar. Based on the report of the Tahsildar, the Sub Divisional Officer (Revenue) in exercise of power under Section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Act of 1993') issued a show cause, found materials against the private Respondent and ordered removal. That order of removal was affirmed by the Collector and then the Divisional Commissioner. Such orders came to be tested before the writ Court. The writ Court after taking into consideration the plethora of decisions on such issue concluded his opinion as to why the impugned orders are required to be interfered with:

“14. Though proviso to sub-section (1) of Section 40 of the Act of 1993 only provides 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, but it is implicit in this provision that the office-bearer who is sought to be removed will be given a fair hearing and real opportunity to meet the charges levelled against him.

15. Reverting back to the facts of the case in hand, it is quite apparent that upon receipt of preliminary enquiry report which the Sub Divisional Officer (Revenue) got conducted beyond the back of the petitioner and which was submitted on 16.06.2016, the show cause notice was issued to the petitioner and after getting reply from the petitioner, straightway, the order of removal was passed. In fact, this is a case where no enquiry was done and mainly relying upon the report of ex-parte preliminary enquiry, the Sub Divisional Officer (Revenue) has removed the petitioner from the post of Sarpanch. In order to establish the charge alleged against the petitioner, the Sub Divisional Officer (Revenue) has examined none and thus, no opportunity of hearing much less reasonable opportunity of hearing was granted to the petitioner to refute the said charges. Thus, the order of removal has been passed without following the mandate of Section 40 (1) of the Act of 1993 and therefore it suffers from illegality as well as the principles of natural have been followed in its full breach and such illegality and non-compliance of *audi alteram partem* remain unnoticed by the learned Collector and the learned Commissioner as well.”

3. Aggrieved by such an order, the appeal has been preferred.
4. No person can be punished without an opportunity of hearing is a well established principle of law. When it comes down to removal of an elected

representative of a Panchayat in whom the will of the people by majority has been imposed cannot be removed in such a summary or casual manner by obtaining materials or evidence behind the elected representative's back and not even providing a copy of those materials, for such person to defend himself or herself. The violation of the principles of *audi alteram partem* therefore, formed the reason for the learned Single Judge to set aside the entire order. Though he allowed the Sub Divisional Officer (Revenue) to proceed in accordance with law.

5. We do not find any error in the view so taken. There is nothing to interfere with the order impugned dated 11.12.2017 of the learned Single Judge.
6. Counsel for the private Respondent informs the Court that the enquiry afresh is being held by the Sub Divisional Officer (Revenue) now and it is in advanced stage for conclusion.
7. If this be so, let the Appellant go and assist the Sub Divisional Officer (Revenue) to get to the truth of the matter. Appeal is otherwise dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge