

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 111 of 2019**

Narad Singh Dhruv S/o Late Shri Janakram Dhruv Aged About 45 Years R/o Village - Gram Panchayat Bhathlikala P.S. Jarhagaon, Tahsil Mungeli, Civil And Revenue District Mungeli Chhattisgarh.

---- Appellant**Versus**

1. Smt. Nirmala Gandharv W/o Jeewan Gandharv Aged About 50 Years Ex - Sarpanch Gram Panchayat Bhathlikala, Tahsil - Mungeli, Civil And Revenue District Mungeli Chhattisgarh.
2. The State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhavan Mantralaya, New Raipur, Chhattisgarh.
3. The Commissioner Bilaspur, Division Bilaspur, Chhattisgarh.
4. The Upper Commissioner Bilaspur, Division Bilaspur Chhattisgarh.
5. The Additional Collector Mungeli District Mungeli, Chhattisgarh.
6. The Sub Divisional Officer Revenue, Mungeli, District Mungeli, Chhattisgarh.
7. Chief Executive Officer Mungeli, District Mungeli Chhattisgarh.
8. Ramkumar Sahu The Then Secretary Gram Panchayat, Bhathlikala, District Mungeli, Chhattisgarh R/o Village - Khursi, District Mungeli Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Sunil Sahu, Advocate.
For State/Respondents Nos.2 to 6 :		Ms. Richa Shukla, Dy. GA.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice &**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****13/02/2019**

1. The appellant filed a complaint against the elected Sarpanch-respondent No.1 in the present appeal levelling various instances of illegalities or irregularities committed by her in performance of her duty as a Sarpanch. It also related to certain financial

mismanagement or misappropriation alleged to have been committed by her.

2. On the basis of the said complaint, a proceeding was initiated under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "the Adhiniyam of 1993"). A notice was issued to the Sarpanch and an enquiry was ordered to be held by the Naib Tahsildar, Mungeli. He supposedly recorded evidence of witnesses, behind the back of Sarpanch and submitted his report to the Sub-Divisional Officer (Revenue), Mungeli. Thereafter an order removing her from her post as Sarpanch and further disqualifying her for a period of 6 years was passed on 21.04.2016. That order was further affirmed by the Collector in an appeal and then by the Revisional Authority.
3. Aggrieved by such decisions, having serious consequences for the elected representative, she filed a writ application challenging those decisions primarily on the ground that the decisions so taken were in complete violation of the principles of natural justice. She was neither given proper opportunity which included non-furnishing of the materials based on which the allegations were made nor a copy of so-called enquiry report submitted by the Naib Tahsildar was furnished to her, before the S.D.O, (Revenue) passed the order of removal and disqualification.
4. The order sheets of the proceeding are available on record. Reading from the same only indicates that on the basis of the complaint filed, a notice was issued and then a direction was issued upon the Naib Tahsildar to hold an enquiry and based on the

enquiry report a decision of removal and disqualification was passed. There is nothing recorded in the order sheet of the S.D.O that any witness was examined or any opportunity was given to the Sarpanch on the materials and the evidence which were collected against her by the Naib Tahsildar.

5. It is in this background that the learned Single Judge found the decisions to be vulnerable and he records his opinion in Para-6 of the Impugned order dated 16.01.2019 as under :-

“6. In the considered opinion of this Court, principles of natural justice have been violated inasmuch as the materials on the basis of which charges were levelled in the complaint made by respondents No.7 & 8 were not served on the petitioner in the form of charge sheet coupled with preliminary report of Naib Tehsildar. The preliminary report was obtained during the proceeding under Section 40 of the Adhiniyam and not before issuance of charge sheet”

6. Since a decision under Section 40 of the Adhiniyam of 1993 has serious consequences for an elected representative, then any such decision which has civil consequences not only in relation to her continuance but also to run for the office for the next six years, such a bureaucratic routine kind of exercise of power under Section 40 of the Adhiniyam of 1993 cannot be allowed to be exercised.
7. If even a government servant cannot be removed without proper opportunity and enquiry by following due process laid down therein, then merely filing of a complaint or obtaining evidence behind the back of such person who is an elected representative cannot be treated to be worse than a government servant. The protection

therefore extended by the learned Single Judge against the decisions so assailed cannot be interfered with because no person can be hanged without proper opportunity of hearing, which was breached in the present case.

8. Accordingly, the appeal fails and is hereby dismissed.

Sd /-

(Ajay Kumar Tripathi)
Chief Justice

Sd /-

(Parth Prateem Sahu)
Judge