

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 117 of 2019**

1. Smt. Shailendri Bai W/o Shri Rajkumar Yadav Aged About 35 Years
Sarpanch, Gram Panchayat - Baijalpur, Tahsil Lormi, District - Mungeli (CG)

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat, New Mantralaya, New Raipur (CG)
 2. Collector Mungeli District - Mungeli (CG)
 3. Radhuvar S/o Kundan Das Satnami
 4. Bhuwan S/o Jagdish Satnami
 5. Khailendra S/o Madku Das Satnami
 6. Parmeshwar S/o Shri Kundan Das Satnami
 7. Santosh Kumar Mohle S/o Shri Sunder Das (Panch)
 8. Smt. Rupai Bai W/o Shri Santosh Kumar (Panch)
 9. Smt. Shiv Kumari S/o Rupdas Dahriya (Panch)
 10. Chainudas Tandon S/o Kejha (Panch)
 11. Manidas Patre S/o Tilak (Panch)
- Respondents No.3 to 11 are resident of Village Baijalpur, Tahsil Lormi, District - Mungeli (CG)
12. Additional Commissioner Bilaspur Division Bilaspur (CG)
 13. Sub Divisional Officer Lormi, District - Mungeli (CG)

---- Respondents

For Appellant	:	Ms. Laxmin Kashyap, Advocate
For Respondent No.1, 2, 12 & 13	:	Mr. S. Dubey, Addl. Adv.General
For Respondent No.3 to 11	:	Mr. Devesh G Kela, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board**Per Parth Prateem Sahu, J****9/7/2019**

1. Unsuccessful appellant has challenged impugned order dated 22.1.2019 passed by learned Single Judge in WPC No.1796/18 dismissing writ petition filed by appellant herein against his removal from the post of Sarpanch, Gram Panchayat Baijalpur under Section

40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Act of 1993') and order of recovery of Rs.4,80,000/- on the ground that she has incurred expenditure in excess of sanctioned amount by the State Government for construction of 126 toilets under the schemes namely 'Swachh Bharat Mission' & "Mahatma Gandhi National Rural Employment Guarantee Scheme".

2. Facts of the case, in nutshell, are that appellant was an elected Sarpanch of Gram Panchayat Baijalpur, Tahsil Lormi, District Mungeli. For construction of toilets for the beneficiaries, who are residents of Gram Panchayat Baijalpur, a sum was sanctioned at the rate of Rs.12,000/- for each toilet by the Government under "Swachh Bharat Mission" & "Mahatma Gandhi National Rural Employment Guarantee Scheme". On receipt of complaint that appellant Sarpanch is committing irregularities in construction of toilets under aforementioned schemes, respondent No.13-SDO issued a show-cause notice for initiating proceedings under Section 40 of the Act of 1993 against the appellant herein. Appellant submitted reply to show-cause notice. Respondent No.13 thereafter conducted enquiry and after conclusion of enquiry recorded a finding that allegation levelled against appellant herein was found to be correct that she has incurred excess amount than the sanctioned limit in construction of 126 toilets. He also recorded a finding that instead of Rs.15,12,000/- towards the work, Sarpanch expended Rs.19,92,000/- and therefore not only ordered for removal of appellant from the post of Sarpanch as per provisions of Section 40 of the Act of 1993 but also for recovery of excess amount of Rs.4,80,000/- from the appellant herein and the

then Secretary of Gram Panchayat Baijalpur.

3. Feeling dissatisfied with the order passed by respondent No.13, appellant preferred an appeal before respondent No.12-Additional Commissioner, Bilaspur Division, Bilaspur which also came to be dismissed vide order dated 21.5.2018 against which a petition was filed before the writ Court and the same has also been dismissed by learned Single Judge vide order impugned holding that though there was no specific finding with respect to misappropriation of funds but incurring of expenditure in excess of sanctioned limit would amount to financial indiscipline/misconduct on the part of an elected member of village panchayat.
4. Learned counsel for the appellant submits that although the expenditure incurred in construction of toilets was in excess of the budget sanctioned for that purpose under the 'Swachh Bharat Mission' scheme, but the appellant never misused or misappropriate government funds. She further submits that opportunity of hearing was not afforded to the appellant before passing order of removal and recovery of excess amount.
5. On the other hand, learned counsel appearing for the State and private respondents supported the impugned orders.
6. We have heard learned counsel for the parties and perused the records.
7. Learned counsel for the appellant did not dispute the finding recorded by the Prescribed Authority (respondent No.13), that the appellant has

incurred more expenditure in the construction of toilets under the said scheme than the amount sanctioned. This act of appellant definitely attracts provisions of Section 40 (1) (b) of the Act of 1993. Section 40 of the Act of 1993 reads thus:-

“40. Removal of office-bearers of Panchayat. - (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office-bearer,-

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public :

Provided 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.

Explanation. - For the purpose of this sub-section "Misconduct" shall include,-

(a) any action adversely affecting,-

(i) the sovereignty, unity and integrity of India; or

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or

(b) gross negligence in the discharge of the duties under this Act;

[(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.”

8. Funds sanctioned/allocated by the State Government to different local bodies for a particular work should be utilized for that work only and any expenditure exceeding such sanctioned limit should be made with prior approval/sanction of the competent authority, else there will be financial crisis for maintaining budget of the State Government or of local body. In the case at hand, appellant failed to bring on record any document showing that approval/sanction was accorded by the competent authority for such excess expenditure. She also failed to explain the circumstances or reasons which led her to make extra

expenditure for construction of toilets. As the excess expenditure incurred in construction of 126 toilets under 'Swachh Bharat Mission' was without approval of the competent authority, the same amounts to an act of misconduct on the part of appellant in terms of Section 40 of the Act of 1993. The appellant though raised a ground that she was not granted proper opportunity of hearing but failed to substantiate such plea. The order passed by respondent No.13-SDO would show that the same was passed after holding enquiry.

9. In view of above discussions, we do not find any illegality or infirmity in the impugned order passed by learned Single Judge in WPC No.1796/18 affirming the orders passed by the Additional Commissioner and Sub-Divisional Officer (R).
10. Accordingly, the writ appeal being meritless is liable to be dismissed and is hereby dismissed at the admission stage itself.

Sd/-
(P.R. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-