

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1543 of 2016**

- Ram Kumar Neti S/o Shri Mahesh Ram Neti, Aged About 35 Years Sarpanch Gram Panchayat Polmi, R/o Village Karchhipaar, Post Silli Vikas Khand, P.S. And Tahsil Pali, District Korba Chhattisgarh Civil And Revenue District Korba Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Ministry Of Panchayat And Rural Development, Mahandi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Collector, District Korba Chhattisgarh
3. Sub Divisional Officer (R) Katghora, District Korba Chhattisgarh
4. Sub Divisional Officer, Rural Engineering Services, Sub Division Pali, District Korba Chhattisgarh
5. The Chief Executive Officer, Janpad Panchayat Pali, District Korba Chhattisgarh

---- Respondents

For Petitioner : Shri Shivang Dubey, Advocate

For Respondents/State : Shri Sudeep Verma, Dy. GA

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05/09/2019**

1. Heard.
2. The grievance of the petitioner is that four CC Roads in the Gram Panchayat, Polmi was approved under the Chief Minister Samagra Vikas Yojna and an amount of Rs.9,12,000/- was sanctioned by the government.

3. Learned counsel for the petitioner would submit that after completion of the road though it was made at the instance of the other experts and the petitioner being the Sarpanch has no occasion except to pay the bill, which has been made by the cheques, the amount having been paid, subsequently, the charges have been clamped that the quality of the road is not to the approved mark, therefore, the show-cause notice has been issued to the petitioner. Though the show-cause notice dated 29.03.2016 (Annexure P-3) has been issued, whereby the petitioner has been asked to pay Rs.2,60,893/- but at the same time, the petitioner is being driven to the corner by arm twisting method to pay the entire amount. He would further submit that it would be a ground to arrive at conclusion before enquiry is made under Section 92 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. He therefore, submits that unless & until the enquiry is fully completed after giving opportunity of hearing, the petitioner cannot be forced to pay the amount asked in show-cause notice. It is further contended that the liability so affixed is apparently would be wrong since the show-cause notice to Vinita Soni has been issued for the same amount to be recovered. Therefore, without any application of mind the show-cause notice has been served and thereafter too the petitioner is being forced to pay the amount. He placed his reliance on the finding recorded by the co-ordinate Bench of this Court passed in WPC No.1233 of 2016 on 10.05.2016 and would submit that in the similar circumstances the petitioner cannot be asked to pay the amount.
4. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner and submits that the reply has been filed.
5. I have heard learned counsel for the parties and perused the show-cause notice

dated 29.03.2016 as also the reply filed by the State.

6. The co-ordinate Bench of this Court in WPC No.1233 of 2016 on 10.05.2016 has observed thus in the similar like nature of the petition at para 4, which is reproduced hereunder:-

“4. The power conferred on the competent authority under Section 92 of the Act of 1993 is drastic in nature. In the event of non-compliance of the direction to deliver money or record of article as provided under Section 92 (1) of the Act, the prescribed authority may cause him to be apprehended and he may be confined in Civil Jail for a period of 30 days. The statutory scheme engrafted under Section 92 (4) provides a protection by creating an important right of being afforded a reasonable opportunity to show cause against proposed action. This right of hearing which is rule of *audi alteram partem* has been incorporated in the statutory rule and is mandatory. It is not an empty formality. On rational construction and interpretation, rule requires issuance of notice and opportunity of hearing. It goes without saying that upon submission of reply to show cause notice, prescribed authority is required to take a decision in the matter by passing a speaking order. The direction to deposit the money, may follow only in the event, reply is not found satisfactory, for the reasons to be recorded in the order.”

7. In the present case also the similar arguments have been advanced that though the show-cause notice has been issued but the petitioner has been forced to pay the amount of Rs.2,60,893/-. Therefore, taking into the scheme of the Adhiniyam, 1993 and the rule of *audi alteram partem* has to be followed if the show-cause notice is issued then the petitioner's grievance is to be considered and before arriving at any conclusion direction to pay the money would amount to adjudicate finally which would lead to show that the show-cause notice was issued with a predetermined mind. Under the circumstances, the respondents are directed not to force the petitioner to pay the amount of Rs.2,60,893/- before the conclusion of the enquiry which is contemplated under Section 92 (4) of the Adhiniyam, 1993. The respondents are further directed that they shall

decide the show-cause notice issued to the petitioner with a speaking order and shall also take into notice the arguments which has been pointed out by the petitioner before this Court that the similar notices have been issued to Vinita Soni so as to affix the liability of individual for the same amount.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu