

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2016 of 2017**

- Smt. Nirmala Gandharv W/o Jeevan Gandharv, Aged About 50 Years Sarpanch, Gram Panchayat Bhathlikala, Tahsil And District Mungeli Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
2. The Commissioner, Bilaspur Division, Bilaspur Chhattisgarh.
3. The Upper Commissioner, Bilaspur Division, Bilaspur Chhattisgarh.
4. The Additional Collector, Mungeli, District- Mungeli, Chhattisgarh
5. The Sub-Divisional Officer Revenue, Mungeli, District Mungeli Chhattisgarh.
6. The Chief Executive Officer, Mungeli, District Mungeli Chhattisgarh.
7. Narad Singh Dhruw S/o Late Janakram Dhruw, R/O Gram Panchayat, Bhathlikala, Tahsil And District- Mungeli, Chhattisgarh.
8. Ramkumar Sahu, The Then Secretary Gram Panchayat, Bhathlikala, District- Mungeli, Chhattisgarh, R/o Village Khursi, District Mungeli, Chhattisgarh.

---- Respondent

For Petitioner : Miss Sofia Khan, Advocate.
For Respondent/State : Shri Vikram Dixit, Govt. Advocate.
For Respondents 7 & 8 : Shri CK Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board**

16/01/2019 :

1. The petitioner would call in question the legality, validity and propriety of the order passed by the Sub Divisional Officer (Revenue) Mungeli on 21.4.2016, which has been affirmed by the Collector, Mungeli and Additional Commissioner, Bilaspur Division. By the impugned orders, the petitioner has been removed from the office of Sarpanch of Gram Panchayat Bhathlikala.
2. Respondents No.7 & 8 moved a complaint before the concerned SDO on 15.9.2015 received by the SDO on 16.9.2015, as per the endorsement on the said application and on the same date, show cause notice was issued to the petitioner for her removal under Section 40 and for recovery of the embezzled amount under Section 92 of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam'). In the show cause notice, charges levelled in the complaint filed by respondents No.7 & 8 were reiterated without there being any independent preliminary enquiry or issuance of charge sheet. After receipt of notice, the petitioner submitted reply and in the meanwhile, the SDO(R) also obtained enquiry report from the concerned Naib Tehsildar, who visited the spot, obtained statements of villagers as also of the petitioner, collected documents and submitted report dated 4.1.2016 before the SDO.
3. The SDO (Revenue) did not examine any witness. He relied on the statements recorded by the Naib Tehsildar during enquiry conducted by him.
4. Section 40 of the Adhiniyam provides that the prescribed authority,

may after such enquiry as it may deem fit to make at any time, remove office bearer if he has been guilty of misconduct in the discharge of his duties or his continuation in the office is undesirable in the interest of the public. Section 40 of the Adhiniyam does not speak about serving a charge sheet to the delinquent office bearer of the Gram Panchayat but Section 39 (1)(b) of the Adhiniyam speaks about serving of show cause notice along with charge sheet under the Adhiniyam upon office bearer for his removal from the office. Thus before removal from the office, the Adhiniyam contemplates serving charge sheet on the concerned office bearer.

5. In the case at hand, the points of complaint made by respondents No.7 & 8 have been treated to be the act of misconduct and the same allegations have been reiterated in the show cause notice issued against the petitioner without preparing any charge sheet after preliminary enquiry.
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.
7. In view of the above, the impugned orders are quashed. The matter is remitted back to the concerned prescribed authority for initiating fresh action against the petitioner, if it so desires. The petitioner shall be

handed over the charge of office of the Sarpanch forthwith.

8. The Writ Petition is accordingly allowed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve