

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 339 of 2019**

{Arising out of Order dated 04/07/2019 passed in Writ Petition(C) No. 2207 of 2019 by the learned Single Judge}

1. Smt. Ashwani Diwan W/o Shri Lachchhan Diwan Aged About 32 Years Sarpanch Of Village Panchayat - Piparhattha, Block And Tahsil Chhura, Post Pateseoni, Police Station Chhura District Gariyaband Chhattisgarh., District : Gariyabandh, Chhattisgarh
2. Doman Singh Dhruw S/o Late Ude Ram Dhruw Aged About 48 Years Village Secretary Of Gram Panchayat Piparhattha, Blcok Chhura,tahsil Chhura, Post Pateseoni, Police Station Chhura District Gariyaband Chhattisgarh., District : Gariyabandh, Chhattisgarh

----Appellants/Petitioners

VERSUS

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development, Government Of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Atal Nagar, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Collector Gariyaband District Gariyaband Chhattisgarh., District : Gariyabandh, Chhattisgarh
3. The Sub Divisional Officer (Revenue), Gariyaband District Gariyaband Chhattisgarh., District : Gariyabandh, Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat Chhura District Gariyaband Chhattisgarh., District : Gariyabandh, Chhattisgarh

-----Respondents

For Appellants	:	Mr. Dheerendra Nath Nande, Advocate
For Respondent-State	:	Mr. Vikram Sharma, Panel Lawyer

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice.

25/07/2019

1. Interference declined by the learned Single Judge with regard to challenge raised by petitioners/appellants as to the unceremonious ousting of the petitioners from the posts of 'Sarpanch' and 'Gram Panchayat Secretary' respectively, is subjected to challenge in this appeal.
2. Heard Mr. Dheerendra Nande, learned counsel for the appellants as well as Mr. Vikram Sharma, Panel Lawyer for the Respondent-State.

3. The sequence of events reveals that in connection with certain misconducts, proceedings were initiated against the appellants in terms of the relevant provisions of Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. A show-cause notice came to be issued on 29-01-2019 and after hearing, it was finalized by the competent authority i.e. Sub-Divisional Officer, who passed an order on 29-5-2019, in terms of Section 40 (1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, whereby the appellants came to be removed from their office. This was sought to be challenged by filing writ petition, seeking for interference invoking the power under Article 226 of the Constitution of India.
4. When the matter was considered by the learned Single Judge, it was asserted that the order, if at all any, was to be passed by the authority within 90 days in terms of Section 40 of Chhattisgarh Panchayat Raj Adhiniyam, 1993 and under no circumstances, would it be possible for the authority to have it passed on any day after 90 days. For this reason, itself, the order was stated as bad and to be interdicted, apart from the stating that no proper opportunity of hearing was afforded, besides such other grounds.
5. The learned Single Judge observed that the reliance sought to be placed on Section 40 and the particular proviso and also the verdict passed by Division Bench of the Madhya Pradesh High Court reported in ***Dhanwati v. State of M.P. & others, (2013) 1 MPLJ 549***, was without any basis. The relevant provision was extracted and applicability of the Judgment as aforesaid was discussed in detail.
6. Going by the contents of the 'proviso', as it is applicable in the State of Chhattisgarh, it says that the order shall be passed "as far as possible" within 90 days. The proviso was almost similar in the State of Madhya Pradesh as well and the words 'as far as possible' were very much in existence. Subsequently, the State of Madhya Pradesh thought it appropriate to cause the said proviso to be amended suitably and it was accordingly, that the

same was substituted as per Act No.20 of 2005, whereby something more was added, simultaneously deleting the words 'as far as possible' from the proviso. However, the position as it existed in the State of Chhattisgarh, remains the same and it contains the words 'as far as possible'. This being the position, the law is entirely different and there cannot be any reliance on the verdict passed by the Division Bench of Madhya Pradesh High Court. Hence there was nothing wrong on the part of the authority concerned in having passed the order after 90 days. The idea & understanding of the appellants that, under no circumstances was it possible for the authority to have passed the order after 90 days, is clearly wrong and misconceived. It was accordingly, that interference was declined and the writ petition was dismissed, referring to the relevant provisions in the statute and also Section 91, which provides for an appeal and revision, as against the orders passed by the competent authority. The Collector being the authority to deal with the appeals against the orders passed by the Sub-Divisional Officer, the petitioners/ appellants have been set at liberty to pursue, appropriate remedy in accordance with law, if so advised.

7. We find no irregularity, much less any illegality in the verdict passed by the learned Single Judge, which is perfectly within the four walls of law and is not assailable under any circumstances. Interference is declined and the writ appeal stands dismissed accordingly.

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

Sd/-
(Parth Prateem Sahu)
Judge