

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2751 of 2019

Fulkunwar W/o Prem Sai Aged About 32 Years R/o Kudaridih,
Mainpat, Surguja, District Surguja Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Panchayat And Gramin Vikas Vibhag, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, New Raipur, District Raipur Chhattisgarh.
2. Collector Surguja, District Surguja Chhattisgarh.
3. Sub Divisional Officer (Revenue) Sitapur, District Surguja Chhattisgarh

--- Respondents

For petitioner – Shri Manoj Paranjpe, Advocate.
For State-Shri Rahul Jha, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/08/2019

Heard.

1. Instant petition is against the suspension order dated 19/07/2019 (Annexure P-1) whereby the petitioner who was acting and discharging the job of Sarpanch at village Kudaridih, Tahsil Mainpat.
2. Learned counsel for the petitioner would submit that show cause notice Annexure P-3 was served to the petitioner on 8/03/2019 and thereafter proceedings were drawn for the reason that the petitioner has not discharged the duty for proper implementation of construction of latrine bathroom in the village. On this issue of irregularities the petitioner has been suspended in violation of the Section 39 of the C.G. Panchayat Raj Adhiniyam, 1993. It is further submitted that suspension can only be made effective unless and until two conditions are fulfilled. He further submits that in this case alongwith the show cause notice neither charge sheet was served to the petitioner for removal from the office nor there is any criminal case in which charges have been framed. Consequently, both

the provisions Section 39(1)(a) and 39(1)(b) of C.G. Panchayat Raj Adhiniyam, 1993 would not be applicable (hereinafter referred to as 'the Adhiniyam, 1993'). He further submits that similar issue has been dealt with by the coordinate bench of this court in case of **Umashankar Porte Vs. State of Chhattisgarh & ors** in **WPC No.745/2017** reported in **2018 (1) MPJR 106** and would submit that instant case is squarely covered.

3. Learned State counsel was directed to seek instruction as to whether any appeal has been filed by the petitioner or not. It is contended that no such appeal has been filed.

4. Perused the order dated 19/07/2019 (Annexure P-1) and show cause notice dated 8/03/2019 (Annexure P-3). Section 39(1)(a) and 39(1)(b) of the Adhiniyam, 1993 wherein suspension reads as under:

“39.Suspension of office bearer of Panchayat.-(1) The prescribed authority may suspend from office any office bearer-

(a) against whom charges have been framed in any criminal proceedings under Chapter V-A, VI [IX], IX-A, X, XII, Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs [suppression of immoral traffic in women and children, protection of civil rights and Prevention of Corruption]; or

(b) On whom, show cause notice along with charge sheet under this Act, has been served for removal from office.]”

5. When the facts of this case are examined as against Section 39(1)(b) of the Adhiniyam, 1993, show cause notice dated 8/03/2019 do not show that any such charge sheet has been served along with Annexure P-3. It is only show cause notice as to why the action be not taken as per rules. Section 39(1)(b) of the Adhiniyam, 1993 specifically mandate that

suspension can only be effected when show cause notice along with charge sheet under this Act, has been served for removal from office. Therefore, if charge sheet has not been served, then in such case simply issuance of show cause notice will not serve the purpose and holding otherwise would amount to legislate a mandate as per Section 39(1)(b) of the Adhiniyam, 1993. Same proposition is supported by law laid down in case of **Umashankar Porte Vs. State of Chhattisgarh & ors** (supra). In view of such existing facts, order dated 19/07/2019 (Annexure P-1) is set aside in respect of the petitioner. However, the State will be at liberty to invoke provisions as per Section 39 and 40 of the Adhiniyam, 1993.

6. Accordingly, the petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE