

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(C) No. 3104 of 2018**

Gajendra Kumar Patel, S/o. Shri Balki Patel, Aged About 42 Years, Panch, Village Karigathi, Gram Panchayat Marodarha, Tahsil Baramkela, District- Raigarh, Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through The Secretary, Panchayat & Rural Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District- Raipur, Chhattisgarh.
2. Additional Commissioner, Bilaspur Division, District- Bilaspur, Chhattisgarh.
3. Collector, District- Raigarh, District- Raigarh, Chhattisgarh.
4. Sub Divisional Officer & Presiding Officer (Panchayat) Saragarh, District- Raigarh, Chhattisgarh.
5. Chief Executive Officer, District- Panchayat Raigarh, District- Raigarh, Chhattisgarh.
6. Chief Executive Officer, Janpad Panchayat Baramkela, District- Raigarh, Chhattisgarh.
7. Priyanka Gupta, Technical Assistant, Janpad Panchayat Baramkela, District- Raigarh, Chhattisgarh.
8. Laxmi Prasad Patel, S/o. Ram Kumar Patel, R/o. Marodarha, Tahsil Baramkela, District- Raigarh, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. Raghavendra Pradhan, Advocate
For State/Respondents No.1 to 4.	:	Mr. Anshuman Shrivastava, Panel Lawyer
For Respondent No.7	:	Mr. Ram Narayan Sahu, Advocate
For Respondent No.8.	:	Mr. Roop Naik, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

30.04.2019

Heard.

1. The present petition is against the order of the Additional Commissioner, Bilaspur, dated 10.10.2018.

2. It is contended on behalf of the petitioner that against the order dated 03.04.2018 passed by the S.D.O. directly the revision was preferred before the Commissioner. It is stated that initially the order dated 03.04.2018 was passed on an enquiry under Section 40 of the Panchayat Raj Adhiniyam whereby the respondent No.8 was removed. However, instead of filing the appeal against the order of the S.D.O. the revision was filed which is against the Chhattisgarh Panchayat (Appeal & Revision) Rules, 1995 (*for short "the Rules, 1995"*) as the appeal would lie to the Collector, if the order is passed by the S.D.O. It is contended that the proviso clause of Rule 5 bars that no application for revision is entertained against the order, which is appealable.
3. Learned counsel for the respondent No.7 vehemently opposes the argument.
4. Learned counsel for the respondent No.8 would submit that at the relevant time, the C.E.O. was holding the charge of Collector and recommendation of Section 40 of the Panchayat Raj Adhiniyam was initially made by the C.E.O., therefore, filing the appeal before the Collector would have no use and as such revisional power would exercise before the Commissioner.
5. Perused the return. The return do not fortify those facts that at the relevant time, the C.E.O. & Collector was one and same. Be that as it may, the Rules, 1995 provides that in case order is passed by the S.D.O. under any provisions of the Act, Rules or Byelaws made under the Panchayat Raj Adhiniyam, the appeal would lie to the Collector. Therefore, in the instant case, the initial order dated 03.04.2018 having been passed by the S.D.O. the respondent should have preferred the appeal before the Collector instead direct revision was preferred before the Commissioner, which was not maintainable as per the proviso clause of Rule 5 of the Rules 1995.
6. Under the circumstances, the order dated 10.10.2018 passed by the Additional Commissioner, Bilaspur is set aside. It is further directed that the respondents shall be at liberty to file an appeal before the Collector within a

period of 30 days and may file an application to condone the delay stating the cause of pendency of this petition and in such case, the Collector may consider the same objectively.

7. With the aforesaid observation, the petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge

ashok