

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 361 of 2020**

(Arising out of order dated 25.08.2020 passed by learned Single Judge in WP(C) No. 1626/2020)

- Bhupendra Rigari S/o late Darbari Rigari, A/a-39 years, Sarpancha R/o Gram Panchayat Nagpura, Tahsil and District-Durg C.G.

-----Appellant/Respondent 5**VERSUS**

1. State of Chhattisgarh through Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Raipur C.G.
2. Director, Department of Panchayat and Rural Development, Indrawati Bhawan, Nawa Raipur, Atal Nagar, Raipur Chhattisgarh
3. Deputy Director, Department of Panchayat and Rural Development, Durg Chhattisgarh
4. Sub-Divisional Officer (Revenue) Durg Chhattisgarh
5. Akash Sen S/o Deepak Sen, aged about 27 years, R/o Village- Nagpura, Tahsil and District-Durg Chhattisgarh

-----Petitioner**-----Respondents**

For Appellant	:	Mr. Prasoon Agrawal, Advocate
For Respondent-State	:	Mr. Chandresh Shrivastava, Advocate.
For Respondent 5	:	Mr. Malay Shrivastava, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****30/09/2020**

1. Correctness and sustainability of the impugned order dated 25-08-2020 passed in WP(C) no. 1626/2020 by learned Single Judge is put to challenge in this appeal.
2. Facts of the case emerging from the records and the impugned order are that the 4th Respondent being the prescribed authority under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "Adhiniyam, 1993") has passed an order under Section 40(1) of the Adhiniyam, 1993 on 30-05-2020 against appellant/ Respondent 5 who was elected as Sarpancha during that period. On enquiry, the 4th Respondent has found

some financial irregularities but recording that the elected tenure of the appellant/ Respondent 5 came to an end, the action under Section 40 of the Adhiniyam 1993 is not proper, directed for recovery of the amount. Order of Respondent 4 was challenged by Respondent 5/ petitioner/ complainant by filing writ petition mentioning that the 4th respondent while passing the order dated 30-05-2020 under Section 40 of the Adhiniyam, 1993 has overlooked the provisions of Section 40(2) of the Adhiniyam 1993.

3. Upon hearing, the learned counsel for the petitioner as well as learned Additional Advocate General representing the State and taking note of the provisions under Section 40(2) of the Adhiniyam, 1993, learned Single Judge has held as under

“6. So far as Sub-section (1) of Section 40 is concerned, the proceedings stands concluded and since the respondent No.5 has not challenged the same, the same has also attained finality. So far as Sub-section (2) of Section 40 is concerned, the said section stands in two parts. First part deals with ceasing of the delinquent to be a member of the Panchayat from where he was elected. Now since the tenure of his previous election has already concluded, this first part of Sub-section (2) also gets rendered inconsequential. However, the second part of Sub-section (2) clearly puts an embargo on such person who has been found guilty under Sub-section (1) of Section 40 of being disqualified for a period of 6 years to be elected. If this second part of Sub-section (2) is not given effect to in its letter and spirit, the findings given by the respondent No.4 under Sub-section (1) of Section 40 would prove to be an empty formality without having any implication or consequence.

7. Having not done so, this Court is of the opinion that at this juncture ends of justice would meet if the matter stands remitted back to the respondent No.4 for reconsidering his decision dated 30.05.2020 to the extent of mentioning the consequence of the order passed under Sub-section (1) of Section 40 keeping in view the provisions of the second part of the Sub-section (2) of Section 40. The respondent No.4 accordingly is directed to take appropriate decision in this regard at the earliest preferably within a period of 60 days from the date of the furnishing of the certified copy of this order and any order so passed would be of course after giving an opportunity of hearing to the respondent No.5.”

4. This made Respondent 5/ appellant to file the present appeal.
5. Mr. Prasoon Agrawal, learned counsel for the appellant submits that the impugned order has been passed against him in violation of principle of natural justice without issuance of notice of the writ petition; writ petition itself would not be maintainable in view of the alternative remedy available to the petitioner therein to file an appeal under the provisions of Adhiniyam, 1993. He further submits that the learned Single Judge has erroneously recorded a finding that the order passed by the 4th Respondent has also “attained finality” whereas the appellant has preferred an appeal challenging the order passed by the 4th Respondent under Section 40 of the Adhiniyam, 1993 and if the notices ought to have been issued to him, he could have brought into notice the filing of appeal before the appellate authority. He argued that the observation made by the learned Single Judge will be prejudicial to his interest as the appellate authority may be influenced by the impugned order. He further submits that in the facts and circumstances of the case, the impugned order requires interference.
6. Countering the submissions of learned counsel for the appellant, Mr. Malay Shrivastava, learned counsel for Respondent 5/petitioner submits that the order passed by Respondent 4/ prescribed authority under the Adhiniyam, 1993 was on 30-05-2020. He submits that when once the prescribed authority in a proceeding drawn under Section 40 of the Adhiniyam, 1993 comes to the conclusion that the irregularities have been committed by elected member(s) of the Panchayat and passes an order under Section 40(1) against those office bearers, then it was mandatory upon the prescribed authority to pass an order under Section 40(2) of the Adhiniyam, 1993.
7. In the case at hand, the 4th Respondent has passed the order against the appellant/ Respondent 5 under Section 40 of the Adhiniyam, 1993 but

erroneously taking into consideration that as the elected term of the appellant came to an end, no action can be taken under Section 40 of the said Adhiniyam. He also pointed out that the submission made by the learned counsel for the appellant with regard to filing of the appeal is not correct and submitted that the prescribed authority passed an order on 30-05-2020, writ petition was filed on 13-07-2020, learned Single Judge passed the impugned order on 25-08-2020 whereas the appeal before the Collector was filed by the appellant only on 14-09-2020. On the date of passing of the impugned order, no appeal under the Adhiniyam 1993 challenging the order dated 30-05-2020 passed by 4th Respondent, was pending consideration.

8. Mr. Prasoon Agrawal, learned counsel for the appellant controverting the submission made by Mr. Malay Shrivastava, submitted that appellant has specifically pleaded in the appeal with regard to filing of the appeal and also assigned the reasons of filing the appeal after sometime i.e. the appellant was found Corona +ve and he had to make himself quarantine. Mr. Malay Shrivastava, learned counsel submits that the appellant found Corona +ve only on 10-09-2020 whereas the order of prescribed authority was of 30-05-2020.
9. We have heard learned counsel for the respective parties and went through the record with utmost circumspection.
10. So far as, the submission made by the learned counsel for the appellant that the observation made by the learned Single Judge with regard to the order passed by Respondent 4 under Section 40 of the Adhiniyam, 1993 has attained finality as not challenged to be not correct as the appellant has preferred the appeal, do not have any substance. By going through the dates and events mentioned in the memo of appeal and the submission made by the learned counsel for the respective parties, it is apparent that the appellant has preferred an appeal only on 14-09-2020

challenging the order dated 30-05-2020. Writ petition was filed on 13-07-2020 which came up for hearing on 25-08-2020, on which date, learned Single Judge passed the impugned order.

11. Admittedly, on the date of passing of impugned order, no appeal of the appellant challenging the order passed under Section 40(1) of the Adhiniyam, 1993 was pending before any of the authority. The ground raised with regard to the maintainability of the appeal, in view of having the alternate remedy of filing the appeal under the provisions of Adhiniyam, 1993, for maintaining the writ petition, availability of alternative remedy will not be an absolute bar. We have put pin pointed query to the learned counsel for the appellant that whether the impugned order passed is contrary to any of the provisions of law to which he could not able to point out but for his submission that the Respondent 5/ petitioner has the remedy to file appeal before the Collector under the Adhiniyam, 1993.
12. Upon going through the impugned order, learned Single Judge, based on the provisions of Section 40 of the Adhiniyam has not passed any order touching merits of the order under Section 40(1) of the Adhiniyam, 1993 but only remitted back the case to Respondent 4 for re-consideration of the order dated 30-05-2020 to the extent of consequence of the order passed under Section 40(1) of the Adhiniyam, 1993, in view of the provisions of Section 40(2). Learned Single Judge has further made it clear that order to be passed after giving an opportunity of hearing to the appellant.
13. Upon going through the impugned order, we are of the view that the interest of appellant has been protected as there is a specific direction that the order under Section 40(2) of the Adhiniyam to be passed only after giving an opportunity of hearing to the appellant.
14. In view of the above, the submission made by the learned counsel for the appellant that he was not served with notice(s) and heard by learned

Single Judge while passing of the impugned order is not having any force because learned Single Judge has not passed any order against the appellant but only remitted the case to Respondent 4 back for consideration of the provisions under Section 40(2) of the Adhiniyam 1993 and to pass appropriate orders.

15. For the foregoing reasons, we do not find any tenable grounds in this appeal calling interference in the impugned order.

16. The other submission made by the learned counsel for the appellant that the order passed by the learned Single Judge may affect his case pending before the appellate authority. It is directed that the appeal, if any, filed by the appellant challenging the order dated 30-05-2020 before the appellate authority and is pending consideration, the appellate authority shall decide the appeal on its own merits without being influenced by the order passed in WPC No. 1626/2020 dated 25-08-2020.

17. Appeal stands dismissed.

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

Sd/-
(Parth Prateem Sahu)
 Judge