

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.3831 of 2013

1. Anita Sharma, W/o Rajkumar Sharma, Aged about 36 years, R/o Village Riva, Post Riva, PS Mandir Hasaud, Tahsil Arang, District Raipur (C.G.)
2. Tarun Bai Chandrakar, W/o Uttam Chandrakar, Aged about 35 years, R/o Village Mokhla, Post Bhilai, PS Arang, Tahsil Arang, District Raipur (C.G.)
3. Rukhmani Sahu, W/o Ramkumar Sahu, Aged about 28 years, R/o Village Samoda, Post Samoda, PS Arang, Tahsil Arang, District Raipur (C.G.)
4. Hemlata Chandrakar, W/o Vinod Chandrakar, Aged about 32 years, R/o Village and Post Chhatera, PS Arang, Tahsil Arang, District Raipur (C.G.)
5. Derhin Nishad, W/o Pawan Nishad, Aged about 29 years, R/o Village and Post Paragaon, PS Arang, Tahsil Arang, District Raipur (C.G.)
6. Anita Sahu, W/o Bharatlal Sahu, Aged about 28 years, R/o Village Kumhari, Post Gorbhat, PS Arang, Tahsil Arang, District Raipur (C.G.)
7. Sarita Sahu, W/o Kailash Sahu, Aged about 30 years, R/o Village Pahanda, Post Murka, PS Abhanpur, Tahsil Arang, District Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Panchayat and Village Development, New Mantralaya, Mahanadi Bhawan, Post & PS Mandir Hasaud, Raipur (C.G.)
2. Director (Panchayat), Directorate of Panchayat, Post & PS Civil Lines, Raipur (C.G.)
3. Collector, Raipur, Collectorate, Post & PS Gol Bazar, Raipur (C.G.)
4. Chief Executive Officer, Janpad Panchayat Arang, Post & PS Arang, District Raipur (C.G.)
5. Project Officer, Integrated Women & Child Development, Arang, Post & PS Arang, District Raipur (C.G.)

---- Respondents

 For Petitioners: Mr. Shantam Awasthi, Advocate.

For Respondents No.1, 2, 3 and 5/State: -

Mr. Siddharth Dubey, Deputy Govt. Advocate.

For Respondent No.4: -

Mr. A.S. Kachhawaha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/09/2021

1. The petitioners call in question the order dated 11-10-2013 passed by the revisional authority affirming the order of the Director (Panchayat) dated 14-3-2007 by which the Director (Panchayat) has affirmed the order of the Collector.
2. It is the case of the petitioners that the petitioners were appointed as Aanganbadi Karyakarta / Assistants on 11-7-2006 which was objected by the local MLA on which the Additional Collector took cognizance and passed resolution / order dated 1-12-2006 (Annexure P-4) suspending the effect and operation of the resolution for appointment of the petitioners which was confirmed by the Director (Panchayat) on 14-3-2007 and which the petitioners questioned by filing revision before the revisional authority and the revisional authority by order dated 11-10-2013 dismissed the revision which has been called in question in this writ petition.
3. Mr. Shantam Awasthi, learned counsel appearing for the petitioners, would submit that the learned Additional Collector has exercised the power under Section 85(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, 'the Act of 1993') which has been confirmed by the Director (Panchayat) under Section 85(2) of the Act of 1993, but no notice / no opportunity of hearing has been given to the petitioners while affirming the orders of the learned Additional Collector and that of the Director (Panchayat) by the revisional authority and therefore the order passed in revision by the revisional

authority has to be set aside.

4. Mr. Siddharth Dubey, learned Deputy Govt. Advocate appearing for the State / respondents No.1, 2, 3 and 5, and Mr. A.S. Kachhawaha, learned counsel appearing for respondent No.4, would support the impugned order and oppose the writ petition.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. The short question for consideration is, whether the State Government / competent authority is obliged to give opportunity of hearing under the proviso to Section 85(2) of the Act of 1993 to the affected person / petitioners?
7. At this stage, it would be appropriate to notice Section 85 of the Act of 1993, which provides as under :-

“85. Power to suspend execution of orders, etc. - (1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion, -

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised;

(b) such resolution, order licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, of the continuance in force of such licence or permission of the doing of such act is likely -

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

(iii) to cause injury or annoyance to the public or any class or body of persons; or

(iv) to lead to a breach of peace.

(2) Whenever an order is made by the prescribed authority under sub-section (1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and, the State Government or the officer nominated by it may confirm, set aside, revise or modify the order or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit :

Provided that no order of the prescribed authority passed under sub-section (1) shall be confirmed, set aside, revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order.”

8. Vide notification dated 13-5-2003, the Collector has been notified as the prescribed authority for exercise of power conferred under Section 85(1) of the Act of 1993 qua the Janpad Panchayat. Similarly, the Director, Panchayat has been notified to be the competent authority for the purpose of proviso to Section 85(2) of the Act of 1993 vide notification dated 26-7-2005.
9. Section 85(1) of the Act of 1993 provides power to the State Government or the prescribed authority who is empowered to suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, by an order in writing and for reasons to be stated therein, if in his opinion such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised or such resolution, order licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law or if its execution is

likely to cause some loss or damage to any property vested in the Panchayat or is prejudicial to public health and safety or is likely to cause injury or annoyance to the public or may lead to breach of peace. By virtue of Section 85(1) of the Act of 1993, only the power to suspend the execution has been given to the prescribed authority.

10. By virtue of Section 85(2) of the Act of 1993, whenever an order is made by the prescribed authority under Section 85(1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government copy of the order with the statement of reasons for making it and the State Government or the officer nominated therein has been empowered to confirm, set aside, revise or modify the order passed by the prescribed authority under Section 85(1) of the Act of 1993. Proviso to Section 85(2) of the Act provides for opportunity of hearing to Panchayat concerned against the proposed order.

11. In this regard, the decision of the Madhya Pradesh High Court in the matter of **Naresh Singh v. State of M.P. and Others.**¹ may be noticed herein profitably in which His Lordship has clearly held that by virtue of proviso to Section 85(2) of the Act of 1993, not only the Panchayat but the person who is affected by the order passed by the prescribed authority under Section 85(1) of the Act of 1993 is also required to be given reasonable opportunity of hearing before confirming, setting aside, revising or modifying the order passed under Section 85(1) of the Act of 1993. Paragraph 16 of the judgment states as under:-

“16. I find that there is violation of Articles 14 and 16 of the Constitution of India in the present case as no opportunity of hearing was afforded. Thus, the order issued is entirely bad in law and is liable to be quashed. As per proviso to Section 85 of the Adhiniyam, reasonable

1 2002 (2) MPLJ 575

opportunity of being heard against the proposed order could have been afforded not only to the panchayat concerned but also to the person affected by it. The action under Section 85 of the Adhiniyam is not sustainable and consequently removal based on it particularly when the petitioner had served for one and half years, he should have been afforded opportunity of hearing. The law is well settled that it is the basic minimum requirement of issuance of show cause notice and the incumbent is required to be heard and an enquiry may be conducted which may be necessary in the facts and circumstances of each case. That was not done as held by the Supreme Court in *Ku. Neelima Misra vs. Dr. Harinder Kaur Paintal and others*, AIR 1990 SC 1402, *Shrawan Kumar Jha and others vs. State of Bihar and others*, AIR 1991 SC 309, *Basudeo Tiwary vs. Sido Kanhu University and others*, AIR 1996 SC 2219, *S. Ashok Kumar and others vs. State of Tamilnadu and others*, 1994(2) SCC 631. A similar view was taken by a Division Bench of this Court in the case of *Mata Prasad Sahu vs. State of M.P. and others*, 2000(3) MPHT 408.”

12. Thus, it is quite clear that under Section 85(1) of the Act of 1993, the prescribed authority has the power to suspend the execution of an order finding it illegal and thereafter, the prescribed authority is required to forward its order to the competent authority/State Government or the Officer nominated by the State Government within 10 days for the purpose of Section 85(2) of the Act of 1993 and by virtue of proviso to Section 85(2) of the Act of 1993, the order passed by the prescribed authority under Section 85(1) of the Act of 1993 can be set aside, revised or modified by the State Government or the officer nominated by it only after giving an opportunity of hearing to the Panchayat concerned including the person who is affected by the order of the prescribed authority. Any order passed by the State Government or the officer nominated by it for the purpose of Section 85(2) of the Act of 1993 without giving reasonable opportunity of hearing to the concerned Panchayat or the person directly affected, would be without jurisdiction and without authority of law as proviso to

Section 85(2) of the Act of 1993 is mandatory in character because under Section 85(1) of the Act of 1993, the prescribed authority has only been given the power to suspend the execution of an order finding it illegal and unless the order of the prescribed authority is confirmed or modified by the State Government or the officer nominated by it under Section 85(2) of the Act of 1993, the order of the prescribed authority would not have any effect. Further for the reason that the order passed under Section 85(1) of the Act of 1993 has drastic consequences, therefore, it requires confirmation/rectification by the State Government or the officer nominated by it being the competent authority after giving reasonable opportunity of hearing to the concerned Panchayat and the person affected by the order of the prescribed authority in terms of proviso to Section 85(2) of the Act of 1993.

13. Reverting to the facts of the present case in the light of the aforesaid legal proposition, it is quite vivid that the appointment of the petitioners was stayed by the Additional Collector by passing a resolution / order exercising power under Section 85(1) of the Act of 1993 and the said resolution / order was sent to the Director (Panchayat) for confirmation under Section 85(2) of the Act of 1993. On receipt of the resolution / order of the Additional Collector, on 14-3-2007, the Director (Panchayat) heard the concerned Janpad Panchayat and submissions have also been recorded, but yet, the order / resolution of the Collector / Additional Collector passed under Section 85(1) of the Act of 1993 was confirmed. The petitioners being the affected persons ought to have been heard and reasonable opportunity to support the order dated 11-7-2006 ought to have been extended to them. As such, the resolution / order passed by the Additional Collector under

Section 85(1) of the Act of 1993 confirmed by the Director (Panchayat) under Section 85(2) of the Act of 1993 is in teeth of the decision rendered by the M.P. Court in Naresh Singh (supra). Accordingly, the impugned order dated 11-10-2013 (Annexure P-1) being in violation of the principles of natural justice deserves to be set aside. In the result, the order / resolution of the Additional Collector affirmed by the Director (Panchayat) and further affirmed by the State Government are hereby set aside.

14. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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