

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 3730 of 2021

Judawan Gabel, S/o. Mahettar Gabel, Aged About 43 Years, Member Of Janpat Area No. 02, Janpat Panchayat Malkharoda, R/o. Village Bundeli, Tehsil Malkharoda, District Janjgir Champa, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Panchayat Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Bilaspur Division, District Bilaspur, Chhattisgarh.
3. Collector, Janjgir Champa, District Janjgir Champa Chhattisgarh.
4. Sub Divisional Officer (Revenue), Tehsil Sakti, District Janjgir Champa Chhattisgarh.
5. Smt. Chameli Bai Kavar, Sarpanch Gram Panchayat Bundeli, Janpat Panchayat Malkharoda, District Janjgir Champa Chhattisgarh.
6. Shri Hemant Kumar Karsh, Than Secretary, Gram Panchayat Bundeli, Janpat Panchayat Malkharoda, District Janjgir Champa, Chhattisgarh.

---- Respondents

For Petitioner : Mr. P. Acharya, Advocate

For State/Respondents : Mr. Ravi Bhagat, Dy. Govt. Advocate
No.1 to 4

For Respondent No.5 : Mr. Prasun Kumar Bhaduri, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15.09.2021

Heard

1. Challenge in this petition is to the order dated 23.08.2021 (Annexure P-1) passed by the Commissioner whereby power of review was exercised to set aside it's earlier order dated 11.08.2021 (Annexure P-6).
2. Learned counsel for the petitioner would submit that the petitioner made a complaint against the respondent No.5 who is Sarpanch of

Gram Panchayat Bundeli that certain financial irregularities have been committed. The said issue was investigated by the S.D.O. and the S.D.O. by its order dated 25.06.2021 in exercise of power under Section 40 of the Panchayat Raj Adhiniyam, 1993 gave adverse finding against the respondent No.5. The said order was subject of appeal before the Collector by respondent No.5. Learned counsel submits that before the Collector, despite the fact that the caveat was filed by the petitioner, the petitioner was not given an opportunity of hearing and the date of hearing which was fixed on 12.07.2021, all of a sudden, on an urgent hearing application, it was preponed to 02.07.2021 and without hearing the petitioner stay order was passed. Thereafter, the petitioner filed a revision before the Commissioner and the Commissioner by its order dated 11.08.2021 (Annexure P-6) vacated the stay granted by the Collector and disposed off the revision. The said order was subsequently reviewed by order dated 23.08.2021, which is under challenge. It is submitted that the Commissioner do not have the power of review under Section 91 of the Panchayat Raj Adhiniyam and the order *per se* is bad, therefore, the order is required to be set aside.

3. Per contra, learned counsel for the respondent No.5 would submit that the Commissioner while hearing the revision in its interim order while staying the order of the Collector has disposed off the revision itself finally. It is stated if the revision has been disposed off without giving an opportunity of hearing, the right of hearing, which is statutory in nature cannot be taken away. Therefore, the order of the Commissioner dated 11.08.2021 was without jurisdiction.

4. Heard learned counsel appearing for the parties.
5. The documents and the events of facts would show that pursuant to Section 40 under the Panchayat Raj Adhiniyam, the S.D.O. has passed the order dated 25.06.2021 which was subject of appeal before the Collector and the Collector by its initial order dated 26.06.2021 fixed the case on 12.07.2021 (Annexure P-4). However, in the meanwhile, urgent hearing application was moved and the case was heard on 02.07.2021 and *exparte* stay over the order of the S.D.O. was granted. The stay order was subject of challenge in revision before the Commissioner and the Commissioner on 11.08.2021 has disposed off the revision itself by staying the order of the Collector on 23.08.2021. As appears as on date since the issue is still pending before the Collector which is against the primary finding of the S.D.O. under Section 40 of the Panchayat Raj Adhiniyam that needs to be adjudicated. The Commissioner by its order dated 23.08.2021 has reviewed the order which was earlier passed by him on 11.08.2021. Certainly, primary reading of Section 91 of the Panchayat Raj Adhiniyam would show there is no power vested to the Commissioner to review its own order, however, the order dated 11.08.2021 when it is examined it would show while the stay order granted over the order of the Collector, the entire revision was disposed off. The said part of the order whereby the entire revision was disposed off also cannot be sustained. Therefore, under the circumstances, to avoid multiplicity of proceeding, it is directed that the Collector would hear the appeal preferred by the petitioner within a period of 45 days from the date of receipt of a copy of this order.

6. It is further observed that since the serious finding is arrived by the S.D.O. against the respondent No.5, it is directed the respondent No.5 shall not be allowed to take a policy decision or to carry out the financial transaction till the appeal is finally disposed off. The parties shall be at liberty to take all the grounds in appeal.
7. In view of the aforesaid observation/direction, the petition stands disposed off.

Aks

Sd/-
(Goutam Bhaduri)
Judge