

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4574 of 2021

- Toran Das Vaishnav S/o Dev Das Aged About 47 Years Ex. Sarpanch R/o Village Bamnicharbhatha Block Chhuriya District Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, through the Secretary, Department of Panchayat New Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Collector District Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh
3. Sub Divisional Officer (Revenue) Dongargaon, District Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh
4. Chief Executive Officer Janpad Panchayat Chhuriya District Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh

----Respondents

For Petitioner – Shri Sushobhit Singh, Advocate.

For State-respondents – Shri Rahul Jha, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-11-2021

Heard.

1. The present petition has been brought with a prayer to quash the proceeding initiated by respondent No.3 against the petitioner for recovery of amount.
2. It is submitted that the petitioner is Ex-sarpanch of Gram Panchayat Bamnicharbhatha, District Rajnandgaon. Certain allegations were made against the petitioner regarding financial irregularities. The enquiry was made and report was submitted vide Annexure-P/2 in which it was held that without any resolution of Panchayat and without consent of the Secretary the petitioner has made withdrawal of Rs.4,62,240/-. The valuation of the work executed by the panchayat was lesser compared to the withdrawal made and therefore, the amount is recoverable from the petitioner.

3. The petitioner had submitted his explanation but the same was not considered and no reasonable opportunity of hearing was given to the petitioner and straightway the proceeding of recovery has been initiated which is clearly against the provision under Section 89 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short 'the Adhiniyam, 1993'). The show cause notice has been issued to the petitioner invoking Section 92 of the Adhiniyam, 1993 which is illegal. Therefore, the impugned order be quashed. Reliance has been placed on the order of the M.P. High Court in **Review Petition No.554/2021** decided on 27-09-2021. Hence, it is prayed that the petitioner be granted relief.

4. The State counsel opposes the submission and submits that in the enquiry made it has been clearly held that the petitioner has made withdrawal of the amount from the Panchayat funds which were excess to the work executed by him. Therefore, the process of recovery initiated under Section 92 of the Adhiniyam, 1993 is lawful and the petitioner has no entitlement for grant of any relief.

5. Heard learned counsel for the parties represented and perused the document.

6. Considered on the submissions. On minute perusal of the enquiry report (Annexure-P/2) it is found that the enquiry officer has made observations that withdrawal of the amount was made by the petitioner without any authority and the amount withdrawn has been utilized in making payment. It was also observed that value of the work executed was lesser than the amount withdrawn, therefore, the difference amount is recoverable from the petitioner. No further enquiry has been made by respondent No.3.

7. According to the enquiry report the amount recoverable was Rs. 3,80,001/- from the petitioner. The show cause notice (Annexure-P/1) has been issued invoking provision under Section 92 of the Act, 1993 in which it is mentioned that the petitioner has made withdrawal of Rs.82,601/- from the

funds of the community center, Rs. 1,59,913/- from the funds of food godown, Rs.1,37,487/- from the funds of MANREGA and Rs. 4,62,240/- from the funds of 14th Finance and thus in total he has made withdrawal of Rs.8,42,241/- which is recoverable from him. The petitioner has made partial deposit of Rs.1,54,846/- in the Gram Panchayat funds and for the remaining amount notice was issued to the petitioner to show cause as to why it should not be recovered.

8. The enquiry report by the enquiry officer Assistant Development Officer is with respect to the recoverable amount of Rs.3,80,001/- only. The heads from which the amount was withdrawn is not mentioned in the enquiry report, whereas, different heads have been mentioned in the show cause notice (Annexure-P/1) and the amount recoverable Rs.8,42,241/- regarding which the petitioner has made partial payment.

9. Section 89 of the Adhiniyam, 1993 provides that any office bearer or servant of Panchayat shall be personally liable for loss, waste or misapplication of any money or other property of the Panchayat to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The amount required for reimbursing such loss, waste, or misapplication shall be recovered by the prescribed authority, The proviso to the section mentions that no recovery shall be made under this Section unless the person concerned has been given a reasonable opportunity of being heard.

10. Section 92 of the Adhiniyam, 1993 provides that where any person is unauthorisedly in possession of any record or article or money belonging to the Panchayat, he shall be required to deliver or pay such article or money to the Panchayat by the orders of the prescribed authority and in case of his failure to return the article or to pay money as directed, then the prescribed authority shall proceed to take action against the person concerned as provided under this Section.

11. Clearly under Section 92 of the Adhiniyam 1993 the prescribed authority has to form opinion that the office bearer of the Panchayat has unauthorisedly taken custody of any record, article for money, which is not a case with respect to the petitioner herein. The enquiry report and the wordings of the show cause notice (Annexure-P/1) are only regarding unauthorized withdrawal of money for the purpose of execution of works of the Panchayat which were found to be undervalued. Therefore, this appears to be clearly a case under Section 89 of the Adhiniyam, 1993. On the basis of the discussion made hereinabove it is found that invoking of provision under Section 92 of the Adhiniyam, 1993 by respondent No.3 against the petitioner is erroneous. However, the language of the show cause notice (Annexure-P/1) shows that the proceeding against the petitioner is in accordance with Section 89 of the Adhiniyam, 1993 for the reason that the petitioner has been required to show cause, give appearance, reply before action is taken for recovery of the amount mentioned in the show cause notice. There is no rule framed as to in what manner the enquiry shall be made. Proviso to section 89(1) of the Act, 1993 provides for giving reasonable opportunity to the person concerned, therefore, the reasonable opportunity in this case would be only to the extent of following the principle of natural justice the settled principle of Audi alteram partem. The reasonable opportunity also means that the petitioner should not only be heard, he should be given opportunity to submit reply, produce evidence oral and documentary in his defence before taking any decision.

12. On the basis of the discussion made hereinabove, it is found that the proceeding initiated against the petitioner has to be treated as proceeding under Section 89 of the Adhiniyam, 1993. Only for the reason that there is erroneous mention of legal provision in the notice, the same cannot be and should not be quashed. Therefore, this petition is required to be disposed off with direction. The respondent No.3 who is prescribed authority for the purpose

of Section 89 of the Adhiniyam, 1993 is directed to hold an enquiry in the matter on which the show cause notice (Annexure-P/1) issued against the petitioner making compliance with the provision under Section 89 of the Adhiniyam, 1993 by giving sufficient opportunity to the petitioner to contest the allegations against him and subsequent to that, pass appropriate order strictly in accordance with law. With these observations this petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge