



IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. W OF 2000

(9)

BETWEEN

Gram Panchayat, Sikosh, through its Sarpanch, Smt. Puspa Bai Patel Aged 35 years, W/o Shri Vishnu Prasad Patel, Sarpanch, Gram Panchayat Sikosh, Block Development Gunder Dehi, District Durg (Chhattisgarh).

PETITIONER

A N D

1. Government of *Chhattisgarh*, Through its Principal Secretary, *Raipur*.
2. The Collector, Durg, District Durg.
3. Shri Ved Prakash, The Sub Divisional Officer (Revenue) Patan, District Durg (Chhattisgarh).
4. Shri Yashwant Kumar Sahu, Revenue Inspector, Gunderdehi, R-1 Division, Gunderdehi (Chhattisgarh).
5. Rakesh Sharma son of late Shri Chandrika Prasad Sharma, Resident of Village Sikosh, Tahsil Gunderdehi, District Durg (Chhattisgarh).
6. Shiv Prasad Pade S/o Shri Shyamlal, resident of Village Sikosh, Tahsil Gunderdehi, District Durg (Chhattisgarh).
7. Madhya Pradesh State Mining Corporation Limited, Branch Durg, District Durg (Chhattisgarh).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA



Chhattisgarh
उच्च न्यायालय, मध्यप्रदेश, जबलपुर

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W.P.No.42 of 2000

मामला क्रमांक **सन् 200**
Gram Panchayat, Sikosa -v- State of C'garh & others
आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
15-12-2000	<p>Shri Alok Aradhe, learned counsel for the petitioner.</p> <p>Dr.N.K.Shukla, learned Deputy Advocate General for respondents No.1 & 2.</p> <p>Shri Kishore Bhaduri, learned counsel for respondent No.7.</p> <p>Shri Yashwant Tiwari, learned counsel for respondents No.5 & 6.</p> <p>With the consent of the parties, the matter is finally heard.</p> <p>The petitioner is aggrieved by the order dated 9-11-2000 passed in Panchayat Case No.2-A/89/2000-2001, communicated to the Mining Inspector, Durg, on 10-11-2000. The learned counsel for the petitioner-Gram Panchayat submits that the order dated 09-11-2000 passed by the Sub-Divisional Officer is patently illegal because without hearing the petitioner and others who are adversely affected by the said order, not only the delay in filing the appeal was condoned, but to bring a new state of affairs, the interim order was granted by Sub-Divisional Officer. The grievance further is that after formation of the new State, the Mining Corporation would have no jurisdiction and even otherwise under the</p>	

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मामला क्रमांक

WP 42/2000

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>provisions of Panchayat Raj Adhiniyam, the petitioner is entitled to auction the quarries or renew the lease</p> <p>Respondents No.1 & 2 in their separate return have clearly stated that they do not support the order passed by the Sub-Divisional Officer. Respondents No. 5 & 6 also support the petitioner.</p> <p>Shri Kishore Bhaduri, learned counsel for respondent No.7, however, submits that in accordance with the constitution of the Corporation, respondent No.7 Mining Corporation is entitled to remove the sand or operate the mining quarry and as the petitioners had no jurisdiction to renew the lease, they were certainly justified in challenging the order and the learned S.D.O. was justified in condoning the delay and granting the ad-interim relief.</p> <p>I have heard the parties.</p> <p>From the order dated 09-11-2000 (Annexure P-19) it clearly appears that the Sub-Divisional Officer without issuing notice to the petitioner or others who are to be adversely affected by the order passed by the said S.D.O., firstly condoned the delay in filing the appeal and thereafter, granted order in favour of</p>	

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मामला क्रमांक सन् 200

W.P.No. 42/2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>respondent No.7. It is trite law that when a right accrues in favour of a party because of the lapses on the part of the other party, by not taking any action within limitation and in accordance with law, then, such party is entitled to be heard when such an action is brought beyond the period of limitation. In the present case, respondent No.7 filed the appeal which even according to the learned Sub-Divisional Officer, was barred by limitation. Whether such delay could be condoned or not, was the question to be decided after hearing both the sides. If the delay is not condoned after hearing both the parties, then obviously such an appellant/present respondent No.7 would not be entitled to any relief on the merits of the matter. If the delay is condoned exparte without hearing the other-side or even without issuing the notice, then a party against whom such an order is passed, would certainly be adversely affected. In the present case, the learned Sub-Divisional Officer, for the reasons, best known to him, entertained the appeal and thereafter condoned the delay. The texture and tenor of the order passed by the learned S.D.O., shows that he was virtually deciding and disposing of the matter finally.</p>	

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WP. 42/2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p>In the opinion of this Court, when an appeal is filed beyond the period of limitation, then the party against whom the relief is sought, is entitled to be heard on the question of limitation. As the learned Sub-Divisional Officer has not observed the basic principles of natural justice, the order passed by him cannot be approved. The order passed by the learned S.D.O., on 09-11-2000 in the above referred matter, deserves to and is accordingly quashed. It is, however made clear that this Court is not touching the merits of the matter nor is making any observation in relation to the merits. The parties present in the Court shall appear before the learned S.D.O., on 3rd January 2001. The learned S.D.O. shall see that the appeal memo, application, the documents & affidavit are supplied to the contesting parties. They would be given proper opportunity to file their reply and make their submissions. After hearing the parties, the learned S.D.O., firstly shall decide the question of limitation and then, after hearing the parties shall decide the question of grant of stay.</p> <p>The petition to the extent indicated above is allowed.</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
<div data-bbox="68 712 321 873" data-label="Text"> <p>ce for 15/11</p> <p>/Rao/</p> </div>	<p>Certified Copy to the parties within 3 days.</p> <div data-bbox="987 658 1260 846" data-label="Text"> <p>Sd/- R.S. Garg Judge</p> </div>	