

02/09/09

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31.8.09

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (227) No. 4881 of 2009

PETITIONER : Smt. Mongra W/o Shri Pyarilal aged about 45 years, officiating Sarpanch of Gram Panchayat Malda (B) Resident of at Post Malda (B) Tahsil Sarangarh Dist. Raigarh (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh Through Secretary Panchayat Department, D.K.S. Bhawan, Raipur (C.G.)
2. Additional Collector, Raigarh, District Raigarh (C.G.)
3. Sub Divisional Officer (P)/Presiding Officer Sarangarh Tahsil Sarangarh, Dist. Raigarh (C.G.)
4. Chief Executive Officer, Janpad Panchayat Office, Sarangarh, Tah. Sarangarh, Dist. Raigarh (C.G.)
5. The Presiding Officer, Sushri Rajni Bhagat, Naib Tahsildar, Sarangarh, Dist. Raigarh (C.G.)
6. Ghurau Ram S/o Shri Sarthi (Sarpanch) Gram Panchayat Malda (B) Block and Tahsil Sarangarh, Dist. Raigarh (C.G.)
7. Chhabi Lal S/o Shri Baratram Up-Sarpanch
8. Kedarnath S/o Brindavan Panch
9. Smt. Fulmati W/o Shri Sitaram Panch
10. Smt. Durga W/o Shri Bodhiram Panch
11. Chandramani S/o Shri Gunamati Panch
12. Vishnudayal S/o Shri Bholaram Panch
13. Surit S/o Shri Bhagau, Panch
14. Bhagirathi S/o Sadashiv Panch.
15. Omprakash S/o Shri Gouri Shankar, Panch
16. Smt. Rukmani W/o Shri Pitamber, Panch
17. Kamla Prasad S/o Shri Gopi Chand, Panch, all



resident of Petitioner No. 07 to 17 are residing at
Malda (B) Tahsil Sarangarh Dist. Raigarh (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Shri Satish K. Agnihotri, J.

Present: Shri R.S.Patel, Advocate for the petitioner.
Shri Shashank Thakur, Panel Lawyer for the State.

ORDER (ORAL)

(Passed on 31st day of August, 2009)

1. By this petition, the petitioner seeks to challenge the legality and validity of the order dated 17th August, 2009 (Annexure P/1) passed in Case No. 43-A-89/2008-09 (Churau Ram v. Chhabilal & Others), by the respondent No. 2, i.e. Additional Collector, Raigarh, whereby the application filed by the respondent No. 6 herein under section 35(3) of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959') read with Order 9 Rule 4 of the Code of Civil Procedure, 1908 (for short 'CPC') for restoration of the reference case which was dismissed for want of prosecution on 10th August, 2009, was allowed and the interim order granted in favour of the respondent No. 6 on 25th June, 2009, was ordered to continue.
2. The brief facts, as projected by the petitioner, are that on 14th May, 2009, the respondent No. 6, who was the Sarpanch of Gram Panchayat, Malda (B), made a reference under section 21(4) of the Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993) before the Additional Collector against the order dated 7th May, 2009 passed in Revenue Case No. 11/A-89/2008-2009 by the Sub Divisional Officer, Sarangarh, whereby the respondent No. 6 was removed from the post of Sarpanch, pursuant to the no confidence



motion carried out by the panchas of Gram Panchayat, Malda (B).

The said reference was registered as Case No. 43/A-89/2008-09 and

was fixed for hearing on 18th June, 2009. On 25th June, 2009, the order

dated 7th May, 2009 passed by the respondent No. 3 was stayed by the

respondent No. 2. The case was again fixed for hearing on 10th

August, 2009. Since none appeared on behalf of respondent No. 6, the

case was dismissed for want of prosecution. Thereafter, on 12th

August, 2009, the petitioner was appointed as officiating Sarpanch by

the respondent No. 3. On the said date, i.e. on 12th August, 2009, the

respondent No. 6 filed an application under section 35(2) of the Code,

1959 and Order 9 Rule 4 of the Code, 1908 for restoration of the

reference case. Vide the impugned order dated 17th August, 2009

(Annexure P/1) the reference case filed by the respondent No. 6,

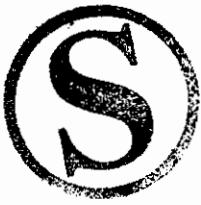
which was dismissed for want of prosecution on 10th August, 2009,

was ordered to be restored and the interim order granted in favour of

the respondent No. 6 on 25th June, 2009, was ordered to continue.

Thus, this petition.

3. Shri Patel, learned counsel appearing for the petitioner submits that the respondent No. 2 has no jurisdiction to entertain a reference under section 21(4) of the Adhiniyam, 1993. Shri Patel further submits that the provisions of section 35(2) of the Code, 1959 and the Order 9 Rule 4 of the CPC are not attracted, as the case is governed under the provisions of the Adhiniyam, 1993. It is further argued by Shri Patel that the reference case ought to have been decided within 30 days of its filing and even after lapse of about two months, the said case has not been decided. Shri Patel also submits that the petitioner ought to have been issued notice before passing the impugned order.



4. I have heard learned counsel appearing for the petitioner, perused the pleadings and documents appended thereto.

5. From perusal of the impugned order, it appears that alongwith the application for restoration, the respondent No. 6 filed an affidavit stating that on account of his ill health, he could not appear before the respondent No. 2. In support of the said contention, the respondent No. 6 also filed the medical prescriptions. From perusal of the said document, it appears that the respondent No. 6 fell ill from 8th August, 2009 and on account of that, he was not in a position to attend the proceedings on 10th August, 2009. After considering all the facts and circumstances of the case and the personal difficulties of the respondent No. 6, the respondent No. 2 has rightly allowed the application of the respondent No. 6 and restored the reference case to its original number. So far as other points on merit are concerned i.e. competence of the Additional Collector to entertain a reference under section 21(4) of the Adhiniyam, 1993 and further decision of the reference within the stipulated time is concerned, the petitioner is at liberty to raise the issue before the concerned authority, if so advised, as the matter is still pending consideration before the respondent No. 2.

6. Without expressing any opinion on merits of the case and for the reasons mentioned hereinabove, I do not find any illegality or infirmity in the impugned order. The same is just, proper and needs no interference.

7. Accordingly, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge