

(2010) 09 CHH CK 0047

In the Chhattisgarh High Court

Case No : Writ Petition No's. 1802 and 3288 of 2003

Devgun Yadav and Another and Gurudayal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Citation : (2010) 09 CHH CK 0047

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—W.P. Nos. 1802 and 3288 of 2003 involve the same question of law and facts and, as such, they are being considered and decided by this common order.

2. By these petitions, the petitioners, who are Sarpanch, Upsarpanch and Panchayat Karmi, respectively of Gram Panchayat- Kachanda, seek to challenge the legality and validity of the order dated 22/04/2003 (Annexure P/1) passed by the Additional Collector, Janjgir-Champa in Appeal No. 2 A-89 (15) 2002-2003 State of Chhattisgarh v. Devgun Yadav and Ors. whereby and whereunder the Additional Collector directed to recover the amount from the petitioners on the ground that they had committed certain illegalities and irregularities in various construction activities.

3. The facts, in brief, for disposal of these petitions, are that on account of certain complaints against the petitioners with regard to misappropriation of public exchequer, the Gram Sabha of Gram Panchayat - Kachanda resolved to recover the amount from the petitioners. On the basis of said resolution, enquiry was conducted and thereafter, notice was issued by the Collector on 20/08/2002. In response to the said notice, the petitioners submitted their response denying the allegations leveled against them. After receipt of the reply, the Collector passed the impugned order of recovery. Thus, these petitions.

4. Learned Counsel appearing for the respective petitioners submit that the learned Additional Collector without appreciating the reply submitted by the petitioners in its true perspective and without enquiring the matter properly as to whether the petitioners have committed the alleged irregularities and without going through the certain records of the Gram Panchayat, wrongly passed the impugned order, which is not at all sustainable in the eye of law. Even, the Additional Collector has not recorded any cogent and sufficient reason for passing the impugned order. In fact, the petitioners have not committed any misappropriation of public exchequer. Thus, the impugned order may be quashed.

5. On the other hand, learned Counsel appearing for the State submits that the petitioners without availing the appropriate remedy the petitioners straightaway approached this Court, thus, the writ petitions are not maintainable and the same may be dismissed on this count alone.

6. With regard to the aforesaid objection of availability of statutory forum is concerned, it is well settled principle of law that it is the judicious discretion of the Court, having regard to the facts situation of the cases to entertain the writ petitions, even if statutory alternative remedy is available. In the cases on hand, the present writ petitions were filed on 18/06/2003 and 10/10/2003, respectively and today at this stage, throwing the petitions on the ground of availability of statutory remedy would not be just and proper. Thus, the contention of the State counsel is rejected. Even otherwise, the Additional Collector while passing the impugned order of recovery from the petitioners has not followed the due process of law by recording the statement of witnesses and by going through the records of Gram Panchayat, etc.

7. Notice was issued on 20/08/2002 after holding that the petitioners were personally liable for loss caused to the Gram Panchayat and, as such, why said amount may not be recovered from them. They were asked to appear before the Collector on 03/09/2002 to put forward their respective cases. This cannot be held as a show cause notice. Once it has been decided that the petitioners were liable to pay the loss of amount to the effect that why should the said amount may not be recovered from them, cannot be held as show cause notice.

8. In *Durgesh Prasad Sinha v. State of Chhattisgarh and Ors.*¹, this Court had an occasion to define the word "show cause notice" as under:

11. "Show cause notice" implies opportunity of submitting an explanation to a clear unambiguous notice. Thus, in the facts of the case an information was brought in the knowledge of the petitioners without giving show cause notice to file response to prove genuineness or bona fide of the documents.

9. In the cases on hand, indisputably, no opportunity of hearing by issuing show cause notice was granted to the petitioners. Thus, the impugned order is not sustainable in the eye of law.

10. In the result, the impugned order dated 22/04/2003 (Annexure P/1) is

quashed and both the writ petitions are allowed. However liberty is reserved to the respondent authorities to take appropriate steps, in accordance with law and pass reasoned order protecting the finance of the Gram Panchayat-Kachanda.

11. There shall be no order as to costs.