

(2019) 02 CHH CK 0176
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1674 Of 2018

Narendra Kumar Chandravanshi

APPELLANT

Vs

Commissioner, Division Durg And Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 40, 40(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 02 CHH CK 0176

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Surendra Kumar Dewangan, Rajendra Tripathi

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J

1. Petitioner, who has been removed from the post of Sarpanch of Gram Panchayat of Gandaikala, Tehsil Janpad Panchayat, Bodla district

Kabirdham, is aggrieved by the impugned concurrent Original, Appellate and Revisional orders passed by the authorities for removing him from the

office of Sarpanch of said Gram Panchayat. The said removal has occasioned on the allegations that the petitioner has misappropriated/embezzled an

amount of Rs. 1,48,542/- which was released to the Gram Panchayat for carrying out construction work under the 14th Finance Commission.

2. In a preliminary inquiry, it was found that the petitioner has committed misappropriation in certain construction work within the Gram Panchayat

area. Thereafter, the petitioner was served with a show cause notice dated 24.08.2017, as to why he should not be removed from the office of

Sarpanch in exercise of powers under Section 40 of the Chhattisgarh Panchayat

Raj Adhiniyam, 1993 (for short 'the Act, 1993).

3. The petitioner submitted his reply denying the charges. The Sub-Divisional Officer allowed the petitioner to cross-examine the members of the

inspection team, who had submitted the report of preliminary inquiry. Thus, the principles of natural justice have been followed.

4. In the teeth of issuance of show cause notice and providing opportunity to cross-examine the witnesses, the argument raised by the learned counsel

for the petitioner, alleging violation of principles of natural justice, is not at all sustainable.

5. The said argument is raised also on the ground that during the preliminary inquiry the petitioner has not been heard. Proviso to sub-section (1) of

Section 40 of the Act, 1993 provides that no person shall be removed unless he has been given an opportunity to show cause why he should not be

removed from his office. The provision does not contemplate service of notice prior to the initiation of proceedings under Section 40 of the Act, 1993,

i.e., at the stage of preliminary enquiry.

6. Thus, there is no occasion for the prescribed authority to summon the petitioner during the preliminary inquiry. The said inquiry is always conducted

to find out, prima facie, as to whether there is some truth or substance in the allegations of embezzlement because if such inquiry is not undertaken, it

may always be argued that merely on the basis of some complaint the office bearer has been removed, therefore, to satisfy itself, prima facie, a

preliminary inquiry has been conducted by the authority and thereafter, show cause notice has been issued against the petitioner, as required in law.

7. There being concurrent orders against the petitioner by the SDO, Collector and the Additional Commissioner, no interference is permissible in

exercise of powers under Article 226 of the Constitution of India.

8. It is settled law that the authority competent to pass orders under any statute or guidelines is like an expert body when it has passed the order with

reference to certain guidelines and the same is not interferable in writ jurisdiction unless the same is palpably illegal and perverse.

9. The Supreme Court in B.K. Muniraju v State of Karnataka and Others 1 held thus at para 22 :

22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction.

The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/ authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

10. In view of the detailed reasoned orders passed by the 1 (2008) 4 SCC 451 authorities, this Court having examined the material available on record does not find any good ground to interfere in the instant petition.

11. In the result, the writ petition, being devoid on merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).