

(2012) 04 CHH CK 0029
In the Chhattisgarh High Court
Case No : W P C No. 697 of 2012

Smt Budhmati

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 21(4)
Madhya Pradesh Land Revenue Code, 1959 — Section 17, 2(6)

Citation : (2012) 3 CGBCLJ 47

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : P.K. Patel, for the Appellant; Avinash K. Mishra PL for the State and Shri U.R. Koshley, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Prashant Kumar Mishra, J.—Petitioner is Sarpanch of Gram Panchayat, Hirri, Tehsil Sarangarh, District Raigarh. 15 Panchas submitted notice for holding meeting of the Panchayat for brining motion of no confidence before prescribed authority on 23/03/2012. The application was supported with an affidavit. The prescribed authority appointed authorized officer and convened meeting which took place on 4/04/2012. In the said meeting out of 22 members of the Panchayat 19 were present and 16 of them voted in favour of motion and remaining three voted against the motion. The number of office bearers supporting motion being not less than 3/4th of the members present and voted and more than 2/3rd of the strength of the Panchas, the authorized officer declared the motion to have been carried and information under Rule 8 was sent to the prescribed authority and the Collector vide Annexure P-4 on 7/04/2012. Dispute/reference moved by the petitioner u/s 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam has been rejected by the Additional Collector by the impugned order. Learned counsel for the petitioner has argued that mandate of Rule 3 (1) of Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janapad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-

President Ke Virudh Avishwas Prastav) Niyam, 1994 has not been followed in as much as the notice submitted by the Panchas was not in prescribed format.

2. He would also submit that Additional Collector has no jurisdiction to decide the dispute u/s 21(4) of the Adhiniyam, therefore the petition deserves to be entertained.

3. After hearing learned counsel for the petitioner, this court finds itself unable to agree with the submission. The notice Annexure P-3 is supported by an affidavit in which date and place is mentioned and thus there is sufficient compliance of the format prescribed under the Rules for submission of notice for moving motion of no confidence by the Panchas. Contention regarding Additional Collector having no power to decide dispute u/s 21(4) of the Adhiniyam also does not carry any substance in as much as u/s 11 of the Chhattisgarh Land Revenue Code a list of revenue officers have been mentioned in which entry No. 3 is mentioned as Collectors (including Additional Collectors). Thus, unless the law specifically prescribes that the power shall be exercisable only by the Collector, the said power is also exercisable by the Additional Collector in view of provisions contained in Section 11 and 17 of the Chhattisgarh Land Revenue Code, 1959.

4. In the matter of Shantilal Jain Vs. M.L. Patil, Addl. Commissioner, Gwalior DN., Gwalior and others, 1988 M.P.L.J. 172 a Division Bench of M.P. High Court has held that the Additional Collector was also entitled to hear an appeal under M.P. (Khadya Padartha) Sarwajanik Nagrik Purti Scheme, 1981 on the ground that under the scheme there is no prohibition against the Additional Collector exercising any power under the scheme and the Additional Collector in view of Section 17 of the M.P. General Clauses Act read with Section 2(6) and 17 of the M.P. Land Revenue Code was clearly entitled to hear the appeal transferred to him by the Collector.

In the present case also it has not been pointed out that there is any prohibition against the Additional Collector exercising any power u/s 21(4) of the Adhiniyam.

5. It is also to be noted that the petitioner participated in the proceedings before the Additional Collector without raising any objection to the jurisdiction or maintainability of the proceedings before Additional Collector. In the matter of Mirza Rashid Beg Vs. Inayatulla Khan and others, 1986 M.P.L.J. 134 it has been held in para 6 thereof that when the person concerned has appeared before the Additional Collector without raising any objection about jurisdiction, he cannot be heard to say that Additional Collector had no authority to hear and decide the appeal. For the foregoing reasons, this court does not find any substance in writ petition, which deserves to be and is hereby dismissed.