
(2002) 04 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition No. 2573 of 2001

Smt. Indira Surmani

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 — Rule 5

Citation : (2002) 3 CGLJ 263 : (2002) 3 MPHT 7 : (2002) 2 MPJR 38

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Ajit Singh, for the Appellant; Sanjay K. Agarwal, Dy. A.G. for the Respondent Nos. 1 and 2, Public Prosecutor Sahu, for the Respondent No. 3 and B.N. Pandey, for the Respondent

Judgement

Fakhruddin, J.

Heard.

Learned Counsel for the petitioner is permitted to amend the cause title. "Gram Panchayat Ukhra" be mentioned before the name of Sarpanch, and Collector, Mahasamund be joined as respondent No. 5.

With the consent of the parties the matter is heard finally.

The petitioner was removed from the post of Secretary (Panchayat Karmi) by the Gram Panchayat. She preferred a petition before the Collector, Mahasamund that was registered as Case No. 133/2000-2001: On 22-9-2001 the Collector passed an interim order (Annexure P-8) and stayed the operation of the order of removal dated 15-6-2001 (para 3 of the order). The said stay order was communicated on 25-9-2001 by the Deputy Collector, Mahasamund vide Annexure P-9. The respondent No. 4 Gram Panchayat Ukhra preferred a revision before the Commissioner, Raipur Division. The Additional Commissioner vide order dated 15-10-2001 (Annexure P-1) has set-aside the order dated 25-9-2001, which is a communication made by the Deputy Collector regarding

stay order dated 22-9-2001 passed by the Collector.

It appears that the Commissioner has been under the impression as if the order dated 25-9-2001 (Annexure P-9) has been passed by the Collector. It is not the order dated 25-9-2001, but in fact it is the order dated 22-9-2001, which has been passed and signed by the Collector. The Gram Panchayat filed the revision against the order dated 25-9-2001. Substantive order is dated 22-9-2001 which was not assailed by the Gram Panchayat therefore the Commissioner has considered the validity and propriety of the order dated 25-9-2001, which is more or less a communication and clearly stipulates the order of stay, is dated 22-9-2001. The Commissioner totally under misapprehension has finally decided the revision.

Rule 5 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 provides remedy of Revision, which is quoted herein below :--

"5. Revision.-- (1) (a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit :

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard :

Provided further that no application for revision shall be entertained against an order appealable under the Act.

(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in Sub-rule (1)--

(i) Where proceedings in respect of any case have been commenced by the State Government under Sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in Sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceedings by such officer or may withdraw such proceeding and pass such order as it may deem fit."

The principles of natural justice as well as proviso to Rule 5 clearly stipulates that the authority hearing revision shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard. This requirement has to be complied with before passing any final order.

Learned Commissioner in the instant case has finally decided the matter and consigned the case to the record room. The illegality is writ large. The authority further failed to see that the main order is of 22-9-2001 and not of 25-9-2001. Learned authority has acted very casually. Due care and caution is required while exercising the appellate or revisional jurisdiction.

Having thus considered the facts and circumstances of the case and material available on record in the opinion of this Court the order impugned passed by the Additional Commissioner in revision petition deserves to be and is hereby set-aside and the case is remitted to the Collector who shall now hear and decide the matter afresh, strictly in accordance with law, on all aspects including question of limitation filed u/s 5 of the Limitation Act as early as possible preferably within six weeks from the date of production/receipt of certified copy of this order.

With the above observations this petition is disposed of finally. Parties are entitled for certified copy.