

(2009) 08 CHH CK 0042
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 6913 of 2008

Smt. Rekha Sahu

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 40, 40(2)
Constitution of India, 1950 — Article 311(2)

Citation : (2009) 3 CGLJ 437

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : P.R. Patankar, for the Appellant; Ajit Singh, Panel Lawyer, for State and Prateek Sharma, for Interveners, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. Challenge in this petition is to the order dated 24th November, 2008 (Annexure - P/12) passed by the Director (Panchayat), Chhattisgarh, Raipur, in revision case No. 4/A-89/08.09 whereby the Director has dismissed the revision upholding the order dated 6th October, 2008 (Annexure - P/10) passed by the Additional Collector, Dhamtari, in appeal case No. 75A/89/year 2007-08.
3. The facts, in nutshell, as projected by the Petitioner, are that the Petitioner was duly elected Sarpanch of Gram Panchayat Hasda, Block Magarlod, Dist. Dhamtari. On a complaint, the Tahsildar, Magarlod, District Dhamtari, conducted an enquiry without affording an opportunity of hearing to the Petitioner and submitted a report on the 25th April, 2008 (Annexure - P/2) holding that the Sarpanch has failed to furnish the information as sought by Jugal Kishore Nagarchi within the prescribed time, thus committed violation of the provisions of the Right to Information Act, 2005.
4. On receipt of the report, the Sub Divisional Officer issued a charge sheet vide

Annexure - P/3. The Petitioner submitted her response to the show cause notice (Annexure - P/4). The Petitioner made an application on the 4th June, 2008 (Annexure - P/5) to the Sub Divisional Officer, Kurud permitting her to cross-examine Shri B. Panchbhai, who has submitted report, as he was required to depose on the next date. On the 4th June, 2008 (Annexure - P/6) the application of the Petitioner was rejected on the ground that the enquiry has been initiated on the basis of preliminary conclusion and other documents and, as such, it is not necessary to permit the Petitioner to cross-examine the enquiry officer, who has stated in his deposition that the enquiry report may be treated as statement of the witness. Thus, without affording an opportunity of hearing the Sub Divisional Officer by order dated 26th June, 2008 (Annexure - P/7) held the Petitioner guilty of irregularities-committed by him in exercise of power under the provisions of Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "the Adhiniyam, 1993") and removed the Petitioner from the post of Sarpanch and disqualified the Petitioner for six years under the provisions of Section 40(2) of the Adhiniyam, 1993.

5. Being aggrieved by the order dated 26th June, 2008, the Petitioner preferred an appeal before the Additional Collector, Dhamtari. The Additional Collector, Dhamtari, by order dated 6th October, 2008 (Annexure - P/10) held that the enquiry was concluded on the basis of documents and it was not necessary to examine the witnesses or cross-examine any other witnesses thereon. Thus, the order dated 26th June, 2008 passed by the Sub Divisional Officer was affirmed and the appeal was dismissed on 6th October, 2008. Thereagainst, the Petitioner preferred a revision before the Director (Panchayat). The Director by impugned order dated 24th November, 2008 (Annexure - P/12) confirmed the order passed by the Additional Collector and dismissed the revision. Thus, this writ petition.

6. Shri Patankar, learned Counsel appearing for the Petitioner, would submit that the Petitioner was not afforded an opportunity to cross-examine the enquiry officer, who in his deposition/statement submitted that the enquiry report may be treated as his statement and, as such, his statement was the statement of a witness. The Petitioner ought to have been permitted to cross-examine him. Learned Counsel would further submit that the Petitioner should be permitted to produce and examine her own witnesses. Enquiry on the basis of the records is not a proper and reasonable enquiry.

7. Per contra Shri Singh, learned Panel Lawyer appearing for the State, would submit that the issue involved herein with regard to cross-examining a witness, who has given a statement at any stage, which has been brought for consideration in the enquiry, is well settled by this Court in *Gaukaran Das Banjare v. State of Chhattisgarh* and Ors. WP (C) No. 5651 of 2008 (6-11-2008).

8. This Court in *Gaukaran Das Banjare* (supra) held that if a statement made by a witness is brought on the record in the departmental proceedings, the delinquent is entitled to a copy of the statement and thereafter he should be given an opportunity to cross-examine that witness.

9. In *Kuldeep Singh Vs. The Commissioner of Police and Others*, , the Hon''ble Supreme Court observed as under:

32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "hearing in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

10. In the case on hand, an enquiry report was taken as statement of the Enquiry Officer. The Petitioner, despite request, was denied the opportunity to cross-examine the Enquiry Officer. Thus, the order dated 24th November, 2008 (Annexure P/12) is vitiated on account of the fact that the enquiry was not conducted in accordance with the basic principles of natural justice and fair play in action.

11. For the reasons mentioned hereinabove, the writ petition is allowed and the impugned order dated 24 November, 2008 (Annexure - P/12) passed by the Director (Panchayat). Chhattisgarh, Raipur, is hereby quashed. No order as to costs.

12. However, having regard to the facts situation of the case, liberty is reserved to the concerned authority to take appropriate steps, in accordance with law, if so advised, without being influenced by the observations, if any made by this Court.