

(2008) 02 CHH CK 0033
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1035 of 2008

Smt. Savitri Goswami

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 303, 304B, 305, 306

Citation : (2008) 2 MPJR 97

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Parag Kotecha, for the Appellant; Sushil Dubey, Government Advocate, and Mr. Bharat Rajput, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.

Heard finally, with the consent of all the parties.

Respondent No. 4 Smit. Babita Parihar was the elected Sarphnch of Gram Panchayat, Khaija, Tahsil Boloda, Distt. Janjgir Champa. She was suspended by an order dated 24.9.2007 (Annexure P-2) passed by the Sub-Divisional Officer, Janjgir on account of framing of charges u/s s 409, 420, 467,468,471,477-A & 409 of I.P.C., against her in Criminal Case No. 607/2007 pending in the Court of Judicial Magistrate First Class, Janjgir. It appears that after her suspension, she filed an appeal before the Addl. Collector, Janjgir, vide Appeal Case No. 2/A-89(15)/2007-2008 and in the said appeal, the Addl. Collector Janjgir Champa passed the impugned order dated 30.11.2007 and stayed the order of suspension passed on 24.9.2007.

Learned Counsel for the Petitioner argues that the impugned order dated 30.11.2007 passed by the Additional Collector (Annexure P-3) is wholly without jurisdiction and is a nullity, firstly because after passing of the order of suspension, the matter was to be referred to the State Government under Sub-

section (2) of Section 39 and in spite of referring the matter to the State Government, the matter was taken up in appeal and stay was granted and secondly that one Mr. A.K. Tiwari, Additional Collector, who has passed the order in appeal is the same person who has passed the suspension order on 24.9.2007, therefore, in all fairness, even in a different capacity, he would not have entertained the appeal file against his own order before him.

On the other hand, learned Counsel for the Respondent No. 4 supports the impugned order passed by the Addl. Collector.

I have heard learned Counsel for the parties at length and have also perused the records of the writ petition.

Section 39(1) of Panchayat Raj Adhiniyam 1993 reads as under:

Suspension of office bearer of Panchayat (1) The prescribed authority may suspend from office any bearer.

(a) against whom charges have been framed in any criminal proceedings under Chapter V-A. VI, IX-A, X, XII, Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460 of Chapter XVII and chapter XVIII of the Indian Penal Code, 1860 (XIV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs (suppression of immoral traffic in women and children, protection of civil rights and Prevention of Corruption);

Section 39(2) provides that the order of suspension under Sub-section (1) shall be reported to the State Government within a period of 10 days and shall be subject to such orders as the State Government may deem fit to pass. It further provides that if the order of suspension is not confirmed by the State Government within a period of 90 days from the date of receipt of such report it shall be deemed to have been vacated.

A bare perusal of these two Sub-sections of Section 39 would make it clear that after passing of the order of suspension under Sub-section (1), it is incumbent on the concerned authority to report such suspension to the State Government for which a period of 10 days has been provided and there is hardly any room for any authority to side track the provisions of Sub-section(2) and to begin with the provisions of appeal etc., against such order passed under Sub-section (1) of Section 39. The provisions of Sub-section (2) would show that the Legislature in all its wisdom has used the word like "shall" in this Sub-section making the provision of reporting the order of suspension to the State Government imperative and further this Sub-section also provides that if the Government does not confirm the order of suspension within a period of 90 days from the date of receipt of such report, the order shall be deemed to have vacated. Therefore, in all propriety, if the order of suspension was passed by the concerned authority under Sub-section (1) of Section 39 that has to be reported to the Government within the stipulated period which has not been done in this

case and by-passing the aforesaid provision the appeal was entertained by the Addl. Collector and the order impugned was stayed. It is surprising that Mr. Tiwari (Addl. Collector) himself was the person who has passed the order of suspension dated 24.9.2007 in the capacity of Sub-Divisional Officer and later he himself, as an appellate authority, has entertained the appeal preferred against the said order and has stayed the effect and operation of that order by the impugned order dated 30.11.2007.

In the facts and circumstances of this case, the impugned order dated 30.11.2007 cannot be sustained and the same has to be quashed. Moreover, the grounds taken for staying the operation of the suspension order are also not in accordance with law. The appellate authority has said that since a revision has been filed against the order of framing of charges before the Session Judge, therefore, he is staying the operation of the order whereas neither the effect and operation of framing of charges have been stayed by the Session Judge nor the Sessions Judge has quashed the framing of charges till date.

For the foregoing reasons, the petition is allowed. The impugned order dated 30.11.2007 passed by the Addl. Collector in Appeal Case No. 2/A-89(15)/2007-2008 is hereby quashed.

The caveat petition filed by Respondent No. 4 be treated as disposed of.

There shall be no order as to costs.