

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6032 of 2008

- Sarpanch, Gram Panchayat Salakhiya, through Smt. Ahilya Bai, W/o Shri Bajrang, aged about 40 years, Sarpanch, Gram Panchayat Salakhiya, resident of Village Salakhiya, Block and Tahsil Lailunga, District Raigarh (CG)

---- **Petitioner**

Versus

1. Banshidhar Bhoi, aged about 20 years, S/o Shri Jogiram Bhoi, resident of village Salakhiya, Block and Tahsil Lailunga, District Raigarh (CG)
2. The State of Chhattisgarh, Through the Secretary, Department of Panchayat & Social Welfare, DKS Building, Raipur (CG)
3. The Deputy Director/Prescribed Authority, Panchayat & Social Welfare, District Raigarh (CG)
4. The Chief Executive Officer, Janpad Panchayat, Lailunga, District Raigarh (CG)

---- **Respondent**

For Petitioner : None.
For Respondent No.1 : Shri CJK Rao, Advocate.
For Respondents 2 & 3 : Shri S. Majid Ali, Panel Lawyer.
For Respondent No.4 : Shri MPS Bhatia and Shri Vinay Pandey, Adv.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/02/2016

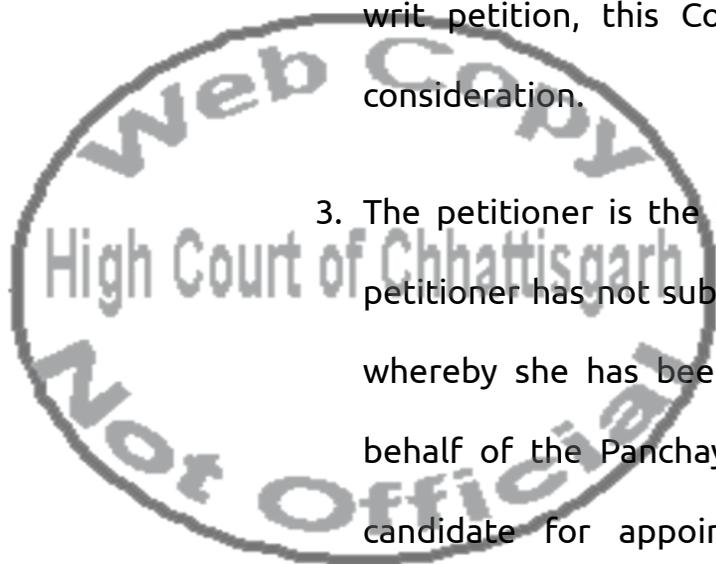
1. This petition under Article 226/227 of the Constitution of India has been preferred by the Sarpanch of Gram Panchayat, Salakhiya questioning the legality and validity of the order dated 12.7.2005 (Annexure-P/3) whereby the Prescribed Authority cum Deputy

Director, Panchayat and Social Welfare, Raigarh has notified respondent No.1 as Panchayat Secretary of Gram Panchayat, Salakhiya. The petitioner has also assailed the order (Annexure -P/1) dated 29.6.2005 issued by the petitioner herself appointing respondent No.1 as Panchayat Karmi of the said Gram Panchayat.

2. No-one appeared for the petitioner even when the matter was called out twice. However, considering the nature of issue involved and the objection raised by the respondents regarding maintainability of the writ petition, this Court proceeded to take up the matter for consideration.

3. The petitioner is the Sarpanch of Gram Panchayat Salakhiya. The petitioner has not submitted any resolution of the Gram Panchayat whereby she has been authorized to prefer this writ petition on behalf of the Panchayat. Since the petitioner herself was not a candidate for appointment as Panchayat Karmi or Panchayat Secretary, she was not aggrieved by appointment of respondent No.1. However, if it is permissible in law to maintain this writ petition on behalf of the Gram Panchayat, the petitioner should have raised the issue in Gram Panchayat for passing the resolution for challenging the orders Annexure-P/1 & P/3.

4. A Gram Panchayat is established under Section 10 of the CG Panchayat Raj Adhiniyam, 1993 (henceforth 'the Act') whereas Section 11 provides for incorporation of the Panchayat. It is provided therein that every Gram Panchayat, Janpad Panchayat and



Zila Panchayat shall be body corporate by the name specified having perpetual succession and a common seal and shall be the said name, sue and be sued and shall be subject to the provisions of this Act and the rules made thereunder, have power to acquire, hold or transfer property movable or immovable, to enter into contracts and to do all other things necessary for the purpose of this Act.

5. The manner in which Gram Panchayat is constituted is provided under Section 13. In exercise of powers conferred by the sub-section (1) of Section 95 read with Section 48 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, the State Government has enacted the Chhattisgarh Panchayat (Powers and Functions of Sarpanch and Up-Sarpanch of Gram Panchayat, President and Vice-President of Janapad Panchayat and Zila Panchayat) Rules, 1994 (for short 'the Rules, 1994'). Rule 3 of the Rules, 1994 are relevant for the present purpose which is quoted hereunder:-

"3. Powers and Functions of Sarpanch and Up-Sarpanch of Gram Panchayat.- (1) The Sarpanch shall be directly responsible for carrying out or getting to be carried out:-

(a) the resolutions of the Gram Panchayat passed by it for the purpose of carrying out the provisions of the Act.

(b) all directions issued by the State Government or any other authority authorised by the State Government under the Act; and

(c) all functions assigned to the Gram Panchayat under Section 49 of the Act.

(2) In the absence of the Sarpanch, the powers and functions of the Sarpanch shall be exercised and performed by the Up-Sarpanch.

(3) In addition to the powers and functions which are specifically conferred by or under the Act:-

(i) the Sarpanch shall-

(a) preside over and regulate the meetings of the Gram Panchayat;

(b) ensure proper custody and maintenance of records and register of the Gram Panchayat;

(c) exercise supervision and control over the acts done and action taken by the employees of the Gram Panchayat;

(d) be responsible for the safe custody of the Gram Panchayat Fund;

(e) operate the Gram Panchayat Fund including authorisation of Payment, issue of cheques and refunds etc. as per the provisions of the Act;

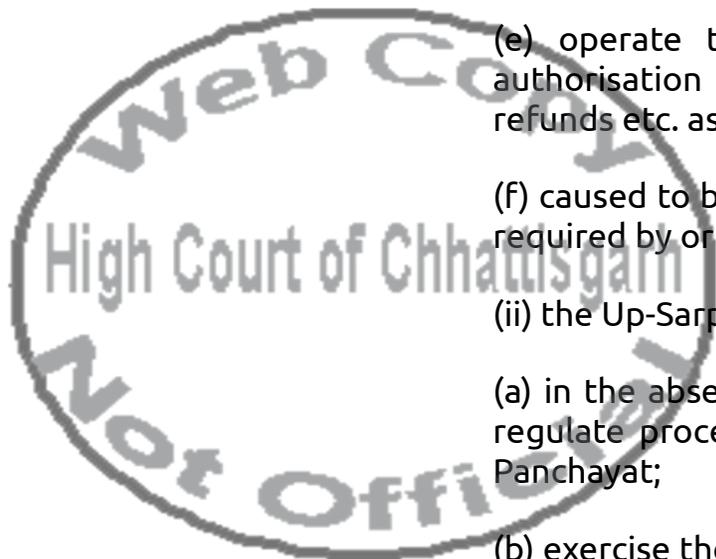
(f) caused to be prepared all statements and reports required by or under the Act.

(ii) the Up-Sarpanch shall-

(a) in the absence of the Sarpanch preside over and regulate proceedings of the meetings of the Gram Panchayat;

(b) exercise the powers and perform the functions of the Sarpanch pending the election of the Sarpanch or in case the Sarpanch is unable to attend the meeting due to any reason."

6. A plain reading of the above referred provisions contained in the Act and the rules would manifest that the Gram Panchayat is body corporate; it can sue or be sued by the said name and the Sarpanch is responsible for carrying out or getting to be carried out the resolutions of the Gram Panchayat passed by it for the purpose of carrying out the provisions of the Act and to comply with all directions issued by the State Government or any other authority authorized by the State Government under the Act. Sarpanch is also



entitled to preside over and regulate the meetings of the Gram Panchayat, ensure proper custody and maintenance of records and register of the Gram Panchayat; exercise supervision and control over the acts done and action taken by the employees of the Gram Panchayat etc. The Statute thus nowhere provides that a Sarpanch can sue any person on behalf of the Panchayat without being authorized by the Gram Panchayat by passing resolution to the said effect.

7. The present petition has been preferred by the Sarpanch in her official capacity and not by name, therefore, this is a petition on behalf of the Gram Panchayat. However, in the absence of specific resolution authorizing the Sarpanch to prefer writ petition, it is not maintainable. The above view is fortified by extremely recent judgment rendered by the Supreme Court in the matter of **Ahmedabad Municipal Corporation and Another Vs. Rajubhai Somabhai Bharwad and Another** {(2015) 7 SCC 663}. In this matter, Sarpanch had entered into compromise on behalf of the Gram Panchayat in a pending litigation. While holding that in the absence of resolution by the Gram Panchayat, Sarpanch has no authority to enter into compromise, the Supreme Court has referred to the provisions of the Gujarat Panchayat Services (Conduct) Rules, 1998 and the original enactment under which the said rules were framed. In the above background, it has been held in paras 21 to 23 thus:-

"21. The purpose of referring to the same is that the village panchayat by a specific provision of the Act is regarded as a body corporate. A body corporate as

has been held can sue or be sued in its name. Section 101, which we have already reproduced, confers power on the village panchayat to enter into a compromise. As the factual matrix has been uncurtained, the village panchayat represented itself through the Sarpanch. Nothing has been brought on record that the panchayat had conferred any authority on the Sarpanch to enter into any kind of settlement with the workman, the first respondent herein. In the absence of any authority and in the absence of any statutory permissibility it is absolutely inconceivable in law that a Sarpanch can enter into settlement with a workman.

22. Another material aspect which is required to be taken note of is that the learned Single Judge has referred to Section 2(g) of the Industrial Disputes Act, 1947. It defines the term “employer”. We are disposed to think that by no stretch of imagination it can be held that the Sarpanch is the employer of the workman. He belongs to the village panchayat services if he had properly been appointed. It is the village panchayat which is the employer. The laconic analysis on the part of the learned Single Judge of the High Court in this regard does not commend acceptance and we are unable to agree with the same.

23. In the obtaining factual score, we are impelled to observe that a Sarpanch is required to look after the interest of the Gram Panchayat. The legislature has given certain executive powers under Section 55 of the Act. We repeat at the cost of repetition that it has its limitations. He should not rush into an area where angels fear to tread. Part IX of the Constitution has been inserted by the Constitution Seventy-third (Amendment) Act, 1992. Article 243 is the dictionary clause. Article 243(d) defines “panchayat” to mean an institution (by whatever name called) of self-government constituted under Article 243-B, for the rural areas. Article 243-B deals with the constitution of panchayats. Article 243-C provides for composition of panchayats. Article 243-G deals with powers, authority and responsibilities of panchayats. The said Article is as follows:

“243-G. Powers, authority and responsibilities of panchayats.—Subject to the provisions of this Constitution, the legislature of a State may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to



function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

The purpose of our referring to the same is that Parliament by the constitutional amendment required the State Legislatures to bring their State laws in conformity with Part IX of the Constitution. Power has been conferred on the panchayats so that they are able to function as an institution of self-government. The State Legislature has also been empowered to make provisions by which powers are given to the Gram Panchayats. Once responsibility is given they are to be carried out with sanguine responsibility. A Sarpanch, as we perceive in this case, by entering into a settlement has not only acted contrary to the provisions of the Act and but also the spirit of the responsibility cast on the local self-government.”

(Emphasis supplied)

8. In the present case also, similar provisions regarding incorporation of the Panchayat has been made in the Act. The petitioner having preferred writ petition in the name of Sarpanch of Gram Panchayat without supported with the resolution of the Gram Panchayat was not authorized to maintain the writ petition. It is often seen that a body corporate is arrayed through Sarpanch or President of the concerned Panchayat i.e. Gram Panchayat, Janpad Panchayat or Zila Panchayat. Inherent danger in description of the body corporate in such manner clothes the concerning Sarpanch or President to enter into compromise after filing Vakalatnama in a litigation. Therefore,

in all such cases, it is the body corporate which should be sued and not the Sarpanch or President. Permitting this would allow the Sarpanch or President to misuse his post to submit return or enter into compromise without getting approval or resolution of the Gram Panchayat or Janpad Panchayat or Zila Panchayat, as the case may be.

9. For the foregoing, the writ petition is dismissed as not maintainable.

Sd/-
Judge
(Prashant Kumar Mishra)

