

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 619 of 2016**

Smt. Ishwari Sahu W/o Shri Madhusudan Sahu, Aged About 45 Years R/o Teligundra, P.S. Ranitarai, Tahsil Patan, District Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, (Chhattisgarh)
2. District Collector, Durg, District Durg, (Chhattisgarh)
3. Sub Divisional Officer (Revenue), Patan, District Durg, (Chhattisgarh)
4. The Chief Executive Officer, Janpad Panchayat, Patan, District Durg, (Chhattisgarh)
5. Naib Tahsildar, Patan (Presiding Officer), Patan, District Durg, (Chhattisgarh)
6. Gram Panchayat Teligundra, Through Secretary, Gram Panchayat Teligundra, Block Patan, District Durg, (Chhattisgarh)
7. Smt. Dulesh Nirmal, W/o Shri Manharan Nirmal, Aged About 40 Years Sarpanch, Village Panchayat Teligundra, Block Patan, District Durg, (Chhattisgarh)

---- Respondents

For Petitioner : Shri S.K. Dadsena, Advocate.

For Respondent No. 1 to 3 : Shri Dhiraj Kumar Wankhede, GA

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/11/2016

(1) Father of our nation said:-

“ A democrat must be utterly selfless. He must think and dream not in terms of self or of party, but only of democracy.”

“Mahatma Gandhi”

The above-quoted lines squarely applies to the fact of the case and particularly to the petitioner.

(2) Justice H.R. Khanna speaking for the Supreme Court in the matter of **Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot**¹, defined the “No Confidence Motion” as under:-

“The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members.”

(3) The petitioner was elected on the post of Sarpanch of Gram Panchayat – Teligundra, Block Patan, District Durg. Other panchas of the said Gram Panchayat moved a motion of no confidence against him before the Prescribed Authority i.e. Sub Divisional Officer, Revenue, Patan, District Durg. The said authority issued notices after being satisfied, in order to hold the

¹ (1974) 2 SCC 706

meeting of no confidence, appointed Nayab Tahsildar, Block Patan as Presiding Officer under the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat ke President Tatha Vice-President ke Virudh Avishwas Prastav) Niyam, 1994 (for short 'Niyam, 1994') and fixed the case for consideration for no confidence motion on 9.4.2016 and on the said date, motion of no confidence was passed against the petitioner by majority.

(4) The petitioner, thereafter against the no confidence motion raised a dispute under Section 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993') challenging the validity of no confidence motion carried out against him under sub Section 1 of Section 21 of the Adhiniyam, 1993.

(5) By the impugned order, the Collector, District Durg held the validity of no confidence motion carried out against the petitioner by holding that notice of no confidence motion was duly served to all the members and it was duly tabled & discussed and, thereafter motion of no confidence was passed against the petitioner and dismissed the dispute raised under section 21 (4) of the Adhiniyam, 1993 filed by the petitioner.

(6) Feeling aggrieved & dissatisfied with the order of Collector,

Durg, instant writ petition under Article 227 of the Constitution of India has been filed by the petitioner questioning the legality and validity of the said order including motion of no confidence carried out against him.

(7) Mr. S.K. Dadsena, learned counsel appearing for the petitioner would submit as under:-

(i) That notice of no confidence motion in prescribed form under sub rule (1) of Rule 3 of Niyam 1994 was not issued as no grounds were mentioned in the notice for no confidence issued against the petitioner.

(ii) That the petitioner was not given opportunity to speak against the motion of no confidence.

(iii) That the provisions of Rule 6 of the Rules, 1994 was not complied with as the motion carried out has not been signed by the Presiding Officer.

(8) On the other hand, Shri Dhiraj Wankhede, learned State Counsel would submit that Rule 3(1) of the Rules 1994 has been complied with substantially and the petitioner was given proper opportunity to speak and petitioner did not raise any objection immediately after meeting of no confidence was held. He would also submit that non-compliance of Rule 6 of Rules, 1994 was not raised before the Collector, Durg and even not pleaded in the writ

petition.

(9) I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

(10) Section 21 of the Act of 1993 provides for no confidence motion against Sarpanch and Up-Sarpanch, which reads as under:-

“21. No-confidence motion against Sarpanch and Up-Sarpanch. (1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith.

(2) Notwithstanding anything contained in this Act or the rules made thereunder a Sarpanch or an Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is discussed against him. Such meeting shall be convened in such mannre as may be prescribed and shall be presided over by an officer of the Governetrn as the Prescribed Authority may appoint. The Sarpanch or the Up-

Sarpanch, as the case may be, shall have a right to speak at, or otherwise to take part in, the proceeding of the meeting.

(3) No-confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of -

(i) one year from the date on which the Sarpanch or Up- Sarpanch enter their respective office:

(ii) six months preceding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires;

(iii) one year from the date on which previous motion of no-confidence was rejected.

(4) If the Sarpanch or the Upsarpanch, as the case may be, desire to challenge the validity of the motion carried out under sub-section (1), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him, and his decision shall be final.”

(11) Rule 3(1) of the Niyam, 1994 is reproduced here for the sake of convenience, which reads as under:-

“3. Notice. [1] Elected members of Gram Panchayat, Janpad Panchayat or Zila Panchayat desiring to move a motion of no confidence against the Sarpanch or Up-Sarpanch of a Gram Panchayat or President or Vice-President of Janapad or Zila Panchayat, as the case may

be, shall give a notice thereof to the prescribed authority in the form appended to these rules:

Provided that such notice shall be signed by not less than one third of the total number of elected members of the concerned Panchayat;

Provided further that where the elected members desire to move the motion of no confidence against both the Sarpanch and Up-Sarpanch, President and Vice President of Janpad Panchayat or Zila Panchayat, the as the case may be , they shall give separate notice.”

(12) The notice of no confidence prescribed in the Rules of 1995, which states as under:-

NOTICE OF NO-CONFIDENCE

To,

The Prescribed Authority

.....

I/we intend to move a motion of no-confidence against
 Sarpanch/Up-Sarpanch of Gram Panchayat.....
 President/vice-President of Janapad Panchayat.....
 President/Vice-President of Zil Panchayat.....

The grounds of no-confidence motion are as under:-

.....

1.....

2.....

3.....

Place.....

Date.....

Signature

(13) A careful perusal of the notice of no confidence dated 28.03.2016 issued by Elected panchas would show that it substantially complied with the form of notice prescribed under Rule 3(1) of the Rules, 1994 and the grounds of no confidence

motion are not mentioned in the notice submitted to the Sub Divisional Officer, Patan but points for no confidence motion has been made in the said notice.

(14) Now, the question for consideration would be whether non-mentioning of the grounds in the notice of no confidence motion would not render the motion of no-confidence passed invalid.

(15) Substantive provision enacted & contained in Section 21 of the Act of 1993 and Rules regulating the procedure for no confidence does not provide that ground to be incorporated while moving the no confidence motion, such a requirement of mentioning the grounds for no confidence motion is not required, as such it cannot be held that grounds are required to be stated as it is not prescribed either by Section 21 of the Act of 1993, which is an substantive provision for no confidence motion, nor the Rules provide so. In case of no confidence motion, what is more important is the will of majority of villagers/panchas, who have elected the Sarpanch of a Village and not the grounds on which he/she is sought to be removed from the office. In a democratic institution, will of the majority should be given due respect & weight and should prevail and not the form. Thus, considering the very basic principle of no confidence motion, the provisions in the form of notice of no confidence for giving reasons in notice should be considered directly and not

mandatory, when the provisions of no confidence does not provide for giving such reasons. The non-compliance of it by not giving reasons for no confidence motion should not be considered fatal blow to such a motion; when the majority has lost confidence in the petitioner as the motion of no confidence has already been carried out by requisite majority and it cannot be brushed aside only on technical ground like non-mentioning of ground in notice. The form of notice or such technicalities shall give way to will of requisite majority & the no confidence motion carried out by requisite majority should not be set aside till the mandatory provisions of Act or Rules are violated/not followed.

(16) As back as in the year 1974, in **Babubhai Patel** (Supra), Their Lordships of the Supreme Court while repelling the similar contention with reference to Section 36 of the Gujarat Municipalities Act, 1964 and succinctly as under:-

“That there is no imperative requirement in the case of a motion of no confidence that it should be passed on some particular ground. There is nothing in the language of Section 36 of the Gujarat Municipalities Act reproduced earlier which makes it necessary to specify a ground when passing a motion of no confidence against the President. It is no doubt true that according to the form prescribed the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow therefrom that the ground must also be specified when a motion of no confidence is actually passed

against a President.”

(17) It appears from the record that petitioner has failed to establish that for non mentioning of ground in the notice of no confidence, he has suffered prejudice either before the Collector or before this Court and, therefore, this ground is not sufficient to set aside the order of Collector.

(18) This brings me to the next plea raised by the petitioner that he was not given opportunity to speak at the time when no confidence motion was discussed.

(19) The Collector, in its impugned order, has clearly recorded a finding that the petitioner has duly participated in the proceeding of no confidence motion and duly signed in the proceeding and did not raise any objection either before the Prescribed Authority or Presiding Officer immediately thereafter and, as such, it cannot be held that he was not allowed to participate/speak in the meeting of no confidence so, this ground also fails.

(20) The last ground that the provisions of Rules 6 of the Rules, 1994 has not been complied with.

“Rule 6 of the Rules, 1994 reads as under:-

“6. Minutes of the Proceedings. – Minutes of the proceedings of the meeting called under rule 4 shall be drawn up by the Presiding Officer and recorded in the minute book kept in the Panchayat for recording the proceedings of its meetings and sign it.”

(21) In the instant case, minutes of the meeting has been recorded in the book kept in the Panchayat for recording proceedings of the meeting and it has duly been signed by the Presiding Officer (Nayab Tahsildar), therefore, this ground is also not available to the petitioner.

(22) As a fallout and consequence of the aforesaid discussion, the writ petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (227) No. 619 of 2016

Smt. Ishwari Sahu

Versus

State of Chhattisgarh & others.

Head Note

English

(1) In a democratic institution, will of majority should be given due respect and should prevail.

HINDI

(1) एक लोकतांत्रिक संस्थान में, बहुमत की इच्छा को सम्यक् मान दिया जाना चाहिए तथा वह अभिभावी होनी चाहिए।