

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 271 of 2017

- Smt. Seema Dahariya W/o Bhoj Lal, Aged About 31 Years Ex Sarpanch Of Gram Panchayat Pratappur, Janpad Panchayat, Pandariya, District Kabirdham (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through: The Secretary, Panchayat & Rural Development Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, (Chhattisgarh)
2. Collector, District Kabirdham, (Chhattisgarh)
3. Sub Divisional Officer (Revenue) & Prescribed Authority, Pandariya, District Kabirdham, (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat, Pandariya, District Kabirdham, (Chhattisgarh)
5. Tahsildar, Tahsil Pandariya, District Kabirdham, (Chhattisgarh)
6. Manisha, Upsarpanch, Ward No.13,
7. Kusum Bai, Panch Of Ward No. 06,
8. Sakun Bai, Panch Of Ward No. 05,
9. Tuleshwar, Panch Of Ward No. 03,
10. Vishnu Jangade, Panch Of Ward No. 11,
11. Khelan Ram, Panch Of Ward No. 07,
12. Ram Kumar Banjara, Panch Of Ward No. 09,
13. Lok Kumar, Panch Of Ward No. 01,
14. Rupdas, Panch Of Ward No. 02,
15. Dinesh Bhardwaj, Panch Of Ward No. 04,
16. Kumari Bai Mathur, Panch Of Ward No. 08,
17. Mongra Bai Kurre, Panch Of Ward No.12,
18. Raj Kumar Bhaskar, Panch Of Ward No. 15,

19. Kera Bai Sonwalkar, Panch Of Ward No. 16,

20. Smt. Mohani Bai, W/o Dhannu Lal, Panch Of Ward No. 10,

21. Smt. Laxmi, W/o Dinesh, Panch Of Ward No. 14,

No.6 is Up-Sarpanch and No.7 to 21 are the Panchas of Gram Panchayat Pratappur, District Kabirdham, (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Punit Ruparel, Advocate
For Respondent /State	Mr. Ramakant Mishra, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

8/2/2017

1. Heard.
2. The petitioner is an ousted Sarpanch of Gram Panchayat Pratappur, District Kabirdham, as the motion of no confidence brought against him was passed by majority of 13 out of 17 members, one vote being invalid and three votes being casted against the no confidence motion.
3. The reference application moved under Section 21(4) of the C.G. Panchayat Raj Adhiniyam, 1993, by the petitioner before the concerned Collector has also been dismissed by the impugned order Annexure P/1.
4. The only point raised before this Court is that on the date and time when the agenda was considered by the Gram Panchayat, the election took place by show of hands and not by secret ballot.

5. It is argued that initially the Specified Officer tried to develop consensus, but later on, directed the members of the Panchayat to express their views by showing hands and thereafter, they were supplied one piece of paper for marking their preference either for or against the motion of no confidence. Thus, it is projected that the procedure prescribed under the rules for holding a secret ballot was not followed. Reliance is placed on the matter of **Smt. Amarvati Vs. State of Chattisgarh, AIR 2015 Chhattisgarh 18.**
6. Learned counsel for the State would submit that on a plain reading of the resolution -Annexure P/10, it is apparent that the rules have been followed.
7. In **Smt. Amarvati (supra)**, this Court has held, thus, in para 15 :

“15. In the case at hand, the rules provide for only one method of voting i.e. by secret ballot without leaving anything to the discretion or desire of the Presiding Officer or the members present in the meeting. Any other method of voting appears impermissible under the rules. Therefore, the Presiding Officer could not have decided that since all the members are in favour of the motion by show of hands, the secret ballot is not necessary. Since the rules do not leave it to the choice or discretion of the Presiding Officer, the procedure adopted by the Presiding Officer to conduct voting by taking recourse to show of hands is illegal.”
8. In the present case, to ascertain as to whether there is any substance in the arguments advanced by learned counsel for the petitioner, this Court has gone through the entire text of

the resolution.

9. It is initially recorded in the resolution that the members present in the meeting including the Sarpanch were allowed to speak and thereafter, when the dispute could not be resolved amicably, the members were informed about the manner of vote by ballot. It was specifically informed that those who support the motion would mark (√) on the ballot and those who oppose the motion would mark (x) on the ballot. It is nowhere recorded in the resolution that a piece of paper was provided to each of the members or that the voting took place by show of hands. What is not recorded in the resolution is not permissible to be raised before this Court. If the voting took place by show of hands, the petitioner could have objected to the manner being contrary to the rules at the time of voting itself. However, no such objection being raised, the sequence of events recorded in the resolution appears to be correctly recorded. Moreover, the petitioner has not raised this ground before the Court below.

10. In the considered view of this Court, the Specified Officer has not violated any rules while deciding the fate of the no confidence motion by ballot.

11. The writ petition sans substance, is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)