

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1866 of 2017**

1. Smt. Parwati Lahre W/o. Shri Premshankar Lahre, Aged About 31 Years Sarpanch Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
2. Premshankar Lahre, S/o Shri Kondaram Lahre, Aged About 29 Years Panch Ward No. 05, Up-Sarpanch Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.

-----Petitioners

Versus

1. State Of Chhattisgarh Acting Through The Secretary, Panchayat and Rural Development Department, Government Of Chhattisgarh, Naya Raipur, Civil & Revenue District Raipur (Chhattisgarh)
2. Collector, Janjgir, Civil & Revenue District Janjgir Champa, Chhattisgarh.
3. Sub Divisional Officer (Revenue)/ Prescribed Officer, Pamgarh, Civil & Revenue District Janjgir Champa (Chhattisgarh)
4. Tahsildar/ Presiding Officer, Tahsil Pamgarh, Civil & Revenue District Janjgir Champa (Chhattisgarh)
5. Pinki Devi Lahre, W/o Shri Dev Kumar Lahre, Aged About 29 Years Panch Ward No. 01, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
6. Sonaram Mahipal, S/o Shri Nebheram Mahipal, Aged About 36 Years Panch Ward No. 02, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
7. Kevra Patel, S/o. Shri Dilip Kumar Patel, Aged About 33 Years Panch Ward No. 03, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
8. Nahar Bai Jangde, W/o Shri Dujram Jangde, Aged About 46 Years Panch Ward No. 04, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
9. Upendra Kumar Ratnakar, S/o Shri Jayant Ratnakar, Aged About 49 Years Panch Ward No. 06, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.

- 10.** Ashwani Kumar Kurrey, S/o Shri Reshulal Kurrey, Aged About 41 Years Panch Ward No. 07, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
- 11.** Jagdish Yadav, S/o Shri Balram Yadav, Aged About 46 Years Panch Ward No. 08, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
- 12.** Satrupa Ratnakar, W/o. Shri Heeralal Ratnakar, Aged About 33 Years Panch Ward No. 09, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
- 13.** Sukrita Lahre, W/o Shri Babulal Lahre, Aged About 32 Years Panch Ward No. 10, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
- 14.** Manjulata, W/o Shri Ramesh Kumar, Aged About 25 Years Panch Ward No. 11, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.
- 15.** Manchitra Patel, S/o Shri Baniya Patel, Aged About 46 Years Panch Ward No. 12, Gram Panchayat Mudpar (Chu) Janpad Panchayat Pamgarh, R/o Of Village Mudpar, (Chu), Post Rasouta, P. S. & Tahsil Pamgarh, Civil & Revenue & District Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioners	:	Mr.Ramesh Nayak, Advocate
For Res.No.1 to 4	:	Mr.Shashank Thakur, G.A.
For Respondent No.10	:	Mr.Manoj Paranjape, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

6/9/2017

- 1.** Petitioner No.1 is Sarpanch and petitioner No.2 is Up-Sarpanch of Gram Panchayat Mudpar (Chu). Total number of panchas are 13 in the said Gram Panchayat, 9 panchas of the said Gram Panchayat submitted a notice of 'No Confidence Motion' against the petitioners before the Prescribed Authority/Sub

Divisional Officer (Revenue), Pamgarh. The said authority having satisfied convened a meeting of 'No Confidence Motion' after issuing notice to all the panchas, notices are said to have been dispatched and meeting was held on 9.7.2016, only 9 panchas were present and they cast their votes in favour of 'No Confidence Motion'. The petitioners made a reference to the Collector under Section 21 (4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as 'Act of 1993') against proceedings of 'No Confidence Motion' contending that notices were not served to them including two other panchas, which has been negated by learned Collector, Janjgir-Champa, against which, this writ petition has been filed by the petitioners herein.

2. Mr.Ramesh Nayak, learned counsel appearing for the petitioners, would submit that notices were not served to the petitioners and two other panchas and they were deprived from 'No Confidence Motion' and resultantly, 'No Confidence Motion' has been passed against them, which caused serious prejudice to them. He would further that in the reference made by the petitioners the Collector has come to the conclusion that notices were served to them and dismissed the reference, which is unsustainable and bad in law.
3. On the other hand, learned State Counsel would support the impugned order.
4. Mr.Manoj Paranjape, learned counsel appearing for respondent

No.10, would submit that notices were duly served to the petitioners and if they deliberately did not participate in the motion of 'No Confidence', they have to blame themselves. Therefore, the writ petition deserves to be dismissed.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
6. It is the case of the petitioners that they were never noticed by the Sub Divisional Officer (Revenue), Pamgarh to participate in the meeting held on 9.7.2016, whereas it is the case of other panchas that notices were served to them. The Collector while deciding the reference has come to the specific conclusion that notices were served to the panchas relying upon all the material available on record.
7. The question that arises for consideration is whether notices were served to the petitioners and two other panchas of the meeting of 'No Confidence Motion' held on 9.7.2016 as it has seriously been disputed by the petitioners that they were never served with the notices. In that case, how the matter has to be processed, has been dealt with by the M.P. High Court in the matter of **Kandhilal Patel and others Vs. State of M.P. and others**¹ in which it has been held that evidence has to be led by the parties before the Collector as it is the "dispute" under Section 21(4) of the Act of 1993 and

¹ 1999 (2) J LJ 109

held as under:-

“15. The question for consideration still is whether the dispute submitted under Section 21 (4) is to be decided as an appeal or is to be decided as original proceedings. One can straight way say that if the intention of the legislature was to treat the dispute at par with an appeal, then instead of using the word 'dispute' in Section 21 (4), the legislature could use the word appeal in Section 21 (4). Section 21 (4) reads "he shall within seven days from the date on which such motion was carried, refer the dispute to the Collector". The language employed in Sub-section (4) of Section 21 of the Act clearly shows the intention of the legislature. It never wanted to treat the dispute at par with an appeal under Section 91. It appears that the legislature was alive to the situation that in an appeal, a fact finding enquiry may not be made by the appellate forum, and in a case where the motion is carried, sometimes factual allegations may be made or factual disputes can be raised. The word 'dispute' in its ordinary sense would mean that the person aggrieved by an order is challenging its correctness, validity and propriety not only on the legal aspects, but even on the factual aspects as he is dissatisfied with the resolution carrying the motion. When a dispute under Section 21 (4) is raised, it cannot be decided as an appeal. The party aggrieved by the resolution can challenge its correctness, as observed, on legal grounds so also on the factual aspects. On the legal aspects, the aggrieved party can always say that because of the infraction or breach of the mandatory provisions or rules, the resolution was bad. While challenging the resolution on facts, the aggrieved party can always say that the manner in which the resolution was carried was bad or there were certain factual disputes or the facts as projected by the aggrieved party if stand proved after recording the evidence and hearing the parties, would certainly affect the validity of the resolution. When such allegations are made, then the authority cannot decide the dispute simply hearing the arguments of the parties. Where the parties agree before the authority hearing the dispute that they do not wish to lead any evidence, then certainly the authority would be competent to decide the dispute after hearing the parties, but where prima-facie it appears to the authority that there are certain factual disputes or allegations against the other side, then it is duty bound to call for the reply of the other side. It is obliged to give opportunity to the parties to

substantiate their allegations/counter allegations by producing oral and documentary evidence. The authority would also be obliged to give proper opportunity of hearing to the parties and shall also be obliged to decide the matter in accordance with law.

16. The manner in which the competent authority has decided the dispute referred to it under Section 21 (4) of the Act would clearly show that it had not applied its mind to the legal provisions and simply proceeded to decide the matter as if it was an appeal either under Section 21 (4) of the Act or under Section 91 of the Act read with Rule 3 of the Rules. When the allegations relating to service of the summons were made, then the authority on face of the allegations was duty bound to enquire into the allegations. On one side the learned Addl. Collector was holding that the Summons were served as there was endorsement by the Bailiff, and on the other hand the learned Addl. Commissioner was holding that as the service report did not bear the date, it was not possible to hold whether the notices were offered for service. Each of the authority did not try to appreciate that it was a factual dispute relating to offering of the notices to the noticees. Whether the notices were offered or not could be well said by the persons to whom the notices were offered. The report on the said notices may lead to some inference or presumption, but such inference and presumption would always be rebuttable. A noticee could always show that the notices were not offered to him for service or on the date when the report was written he was not available for offering the notices or for some reasons akin to it, the notices could not be offered to him for effecting the service. Neither on basis of the endorsement nor on basis of nonavailability of the date, it could be held that the summons were offered for service or were not offered. The Addl. Commissioner was unjustified in observing that as there was no date under the signatures of the panch or the Bailiff, it was not proper to hold that the summons were in fact offered for service. Similarly the Addl. Collector was also not justified in observing that in view of the report submitted by the Bailiff, the summons would be deemed to be properly served. If the party having opportunity to rebut the presumption does not exploit the opportunity, then alone reliance could be placed on the report made on the notice. "

8. In the instant case, since there is serious dispute as to the

service of notice to the petitioners and two panchas, the Collector ought to have made an enquiry by allowing the parties to lead evidence. That has not been done in this case and only on the basis of material available on record, it has been held that service has been made to the petitioners, which is impermissible in law.

9. For the foregoing reasons, the impugned order dated 3.7.2017 (Annexure P/19) passed by the Collector, Jajgir-Champa in Case No.01/A-89(21)/2015-16 is set aside. The matter is remitted to the Collector, Janjgir-Champa for permitting the parties to lead evidence on the question of service of notice and thereafter to pass the order afresh within a period of three months from the date of receipt of copy of this order after hearing the parties.

10. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-