

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2132 of 2017****Order reserved on : 10/08/2017****Order passed on : 17/08/2017**

Baisakhu Bareth S/o. Nammu Bareth, aged about 45 years, Up-Sarpanch, Gram Panchayat, Sioni, Tahsil and Police Station-Champa, District Janjgir Champa (Chhattisgarh).

---**Petitioner**

Versus

1. State of Chhattisgarh, through: Secretary, Panchayat & Rural Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, Civil and Revenue District Raipur (Chhattisgarh).
2. The Upper Commissioner, Bilaspur Division, District Bilaspur (Chhattisgarh)
3. The Collector, Janjgir-Champa, District Janjgir-Champa (Chhattisgarh).
4. Smt. Pooja Rathor W/o. Mukesh Kumar, Sarpanch, Gram Panchayat – Sioni, Tahsil & Police Station – Champa, District Janjgir Champa (Chhattisgarh).
5. Mela Bai, W/o. Narayan Dewangon, aged about 45 years, Panch Ward No.1;
6. Smt. Fekan Bai, W/o. Ghasiram Rathor, aged about 55 years, Panch Ward No.2;
7. Smt. Chandrakala, W/o. Lakhan Rathor, aged about 30 years, Panch Ward No.3;
8. Smt. Bharti Bareth, W/o. Lokesh Bareth, aged about 26 years, Panch Ward No.4;
9. Smt. Naina Agrawal, W/o. Shivkumar Agrawal, aged about 31 years, Panch Ward No.5;
10. Lachhiram Bareth, S/o. Late Achheram Bareth, aged about 56 years, Panch Ward No.6;
11. Ramadhin Rathor, S/o. Late Butari Rathor, aged about 40 years, Panch Ward No.7;
12. Binod Dheewar S/o. Dwarika Dheewar, aged about 35 years, Panch Ward No.8.

13. Chandrashekhar Rajput S/o. Late Prem Singh Rajput, aged about 39 years, Panch Ward No.9;
14. Pushanjali Dewangon W/o. Hetram Dewangon, aged about 35 years, Panch Ward No.10;
15. Photabai W/o. Manrakhan Sarthi, aged about 50 years, Panch Ward No.11;
16. Kamlesh Bareth S.o. Chhedilal Bareth, aged about 31 years, Panch Ward No. 13;
17. Smt. Poonam Agrawal W/o. Onkarmal, aged about 48 years, Panch Ward No.14;
18. Santoshi Dewangon W/o. Dhanshri Dewangon, aged about 33 years, Panch Ward No.15;
19. Bharti Bareth W/o. Santram Bareth, aged about 48 years, Panch Ward No.16;
20. Reshambai Rathor W/o. Laxmi Prasad, aged about 40 years, Panch Ward No.17;
21. Rekha Gond W/o. Nadim Gond, aged about 35 years, Panch Ward No.18;
22. Kranti Dewangon (Suryawanshi) S/o. Ramdayal Dewangon, aged about 33 years, Panch Ward No.19;
23. Radhabai Suryavanshi W/o. Fatehlal, aged about 45 years, Panch Ward No.20;

Respondent No.5 to 23 all R/o. Gram Panchayat- Sioni, Tahsil & Police Station –Champa, District Janjgir-Champa (Chhattisgarh).

---**Respondents**

For petitioner : Mr. Manoj Paranjape, Advocate.

For respondents/State : Mr. Prasun Bhaduri, Govt. Advocate.

For Respondent No.4 : Mr. K. A. Ansari, Senior Advocate with
Mr. Ramesh Nayak, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order [C.A.V.]

1. Smt. Pooja Rathor respondent No.4 herein was elected as Sarpanch of Gram Panchayat, Sioni on 01.02.2004. The petitioner

and other Panchas moved an motion of no-confidence against her to the competent authority. The said motion was tabled, discussed and carried out against her on 15.06.2016. The said respondent No.4 challenged the validity of motion carried out under sub-section (1) of Section 21 of Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter called as "Act of 1993") by raising dispute before the Collector on 29.06.2016 under Section 21(4) of the Act of 1993.

2. The Collector by its order dated 24.03.2017 allowed the dispute and set aside the motion of no-confidence passed against respondent No.4 finding that no-confidence motion was not carried out in accordance with provisions contained in Section 21(1) of the Act of 1993. The petitioner herein laid challenge before the Additional Commissioner to the order passed by the Collector, but he remained un-successful and has filed this writ petition under Article 226 of the Constitution of India questioning the order passed by the learned Collector and learned Commissioner.

3. Mr. Manoj Paranjape learned counsel appearing for the petitioner would submit as under:-

1. That the motion of no-confidence was carried out strictly in accordance with provision contained in Section 21(1) of the Act of 1993.
2. That motion of no-confidence was passed on 15.06.2016

whereas the dispute was raised on 29.06.2016 which was beyond the period of seven days as prescribed in Section 21(4) of the Act of 1993 and therefore order of Collector as upheld by learned Commissioner deserves to be set aside.

4. Mr. K. A. Ansari learned Senior Counsel appearing for respondent No.4 would reply the above-stated submission made on behalf of petitioner as under:-

1. That the Collector and Commissioner have rightly held that the motion of no-confidence was not carried out in accordance with provision of Section 21(4) of the Act of 1993.

2. That motion of no-confidence motion was allegedly carried out on 15.06.2016 and the respondent No.4 applied for certified copy of said resolution on 16.06.2016 but that was supplied on 28.06.2016 and dispute was referred to the Collector on 29.06.2016 with all promptitude, therefore it cannot be said that the dispute was raised with delay, therefore writ petition deserves to be dismissed with cost.

5. I have heard the learned counsel for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

6. In order to answer the submission raised on behalf of petitioner it would be appropriate to notice Section 21(1) of the Act of 1993, which provides for motion of no-confidence against Sarpanch and

Up-Sarpanch 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 manner as may be prescribed and shall be presided over by an officer of the Government 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 Up-Sarpanch, as the case may be, desires 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.”

7. A careful perusal of the aforesaid provision would show that following are the two requirements for passing motion of no-confidence against Sarpanch, that are:-

- (1) That motion of no-confidence must be passed by

majority of not less than three fourth of the panchas present and voting.

(2) That such majority is more than two third of the total number of panchas constituting the Gram Panchayat for the time being.

8. In the present case the following are the particulars demonstrating the facts of the case as under:-

- (i) The total number of panchas including Sarpanch - 21
- (ii) Total number of panchas who moved no-confidence motion – 14
- (iii) Total number of Panchas who participated in the no-confidence motion – 18
- (iv) Total number of panchas are 20 and one Sarpanch as total - 21

The total number of panchas voted in favour of no-confidence motion were 14 and against the motion of no-confidence four panchas voted. Three fourth of the panchas present and voting would be $13.5 = 14$ and two third of the total number of panchas of the Gram Panchayat would be 14, whereas it must have been passed by majority of more than two third as required under Section 21(1) of the Act that would be 15 in number, whereas in favour of no-confidence motion only 14 panchas voted which is less than two

third of the total number of panchas constituting the Gram Panchayat. Therefore, the learned Collector has properly concluded the motion of no-confidence has not been carried out in accordance with Section 21(1) of Act of 1993 which has rightly been upheld by the learned Additional Commissioner.

9. The submission of Mr. Paranjape that, the Sarpanch would not be included while counting two third number of panchas constituting Gram Panchayat deserved to be rejected in view of law laid down by the Madhya Pradesh High Court in the matter of **Ram Bhilash Patel v. State of M.P.**¹ wherein it was held that Sarpanch cannot be excluded while computing number of panchas under Section 21. The relevant excerpts are reproduced here-in-under for ready reference:-

“10. In my opinion, Section 44 has to be harmonized with Section 21. Sarpanch or Up-Sarpanch has to be considered as one of the panch for purpose of Section 21 of the Act and has to be counted for computation of the majority of not less than $\frac{3}{4}$ th of Panchas present and voting and such majority of more than $\frac{2}{3}$ rd of the total number of Panchas constituting the Gram Panchayat for the time being.”

Thus the first submission raised on behalf of petitioner is hereby rejected.

10. This would bring me to the next plea raised by Mr. Paranjape that dispute was raised beyond the period of seven days, therefore it could not have been entertained by learned Collector. Undisputedly, the no-confidence motion was carried out on 15.06.2016 and

1 (2003) 1 MPLJ 238

petitioner applied for certified copy of resolution on 16.06.2016 and certified copy to said resolution was furnished to her on 28.06.2016 and she raised the dispute on 29.06.2016 before the Collector.

11. Now the question is whether Time requisite in obtaining the certified copy of resolution would be excludable in computing the period of seven days as provided under Section 21(4) of the Act of 1993.

12. The Act of 1993 doesn't provide for the applicability of any of the provisions of the Indian Limitation Act, 1963 to a dispute under Section 21(4) of Act of 1993.

13. Section 29(2) of the Indian Limitation Act, 1963 provides as under:-

"29. Savings.-

- | | | | |
|-----|---|-----|-----|
| (1) | *** | *** | *** |
| (2) | Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. | | |
| (3) | *** | *** | *** |
| (4) | *** | *** | *** |

14. Thus, for applicability of Section 29(2) of the Indian Limitation Act, 1963, the following two requirements have to be satisfied by the authority invoking the said provision:-

(i) There must be a provision for period of limitation under any special local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

15. At this stage, it would be advantageous to notice Section 12(2) of the Limitation Act. Section 12(2) of the Indian Limitation Act, 1963 provides as under:-

“12. Exclusion of time in legal proceedings.-

- (1) ***
- (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
- (3) ***
- (4) ***

16.1 The Supreme Court in the matter of The Commissioner of Sales Tax, U.P. v. M/s. Madanlal Dan & Sons.², while considering the applicability of revision filed under Section 10(3B) of the U.P. Sales Tax Act, 1948 held that the Act of 1948 being a special/local law, nothing in the act expressly excluded the application of Section 12(2) of Act of 1963, therefore time taken in obtaining copy could be excluded in computing period of limitation for filing revision.

2 AIR 1977 SC 523

“4. There can be no manner of doubt that the U. P. Sales Tax Act answers to the description of a special or local law. According to sub-section (2) of Section 29 of the Limitation Act, reproduced above, for the purpose of determining any period of limitation prescribed for any application by any special or local law, the provisions contained in Section 12 (2) inter alia, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. There is nothing in the U. P. Sales Tax Act expressly excluding the application of Section 12 (2) of the Limitation Act for determining the period of limitation prescribed for revision application. The conclusion would, therefore, follow that the provisions of Section 12 (2) of the Limitation Act of 1963 can be relied upon in computing the period of limitation prescribed for filing a revision petition under Section 10 of the U. P. Sales Tax Act.”

16.2 Their Lordships further held that Section 12(2) of Act of 1963 would apply even though the copy is not required to be filed along with memorandum of appeal or revision and held as under:-

“5. It has been argued by Mr. Manchanda that it was not essential for the dealer-respondent to file a copy of the order of the Assistant Commissioner along with the revision petition. As such, according to the learned counsel, the dealer-respondent could not exclude the time spent in obtaining the copy. This contention is equally devoid of force. There is nothing in the language of Section 12 (2) of the Limitation Act to justify the inference that the time spent for obtaining copy of the order sought to be revised can be excluded only if such a copy is required to be filed along with the revision application. All that Section 12 (2) states in this connection is that in computing the period of limitation for a revision, the time requisite for obtaining a copy of the order sought to be revised shall be excluded. It would be impermissible to read in Section 12 (2) a proviso that the time requisite for obtaining copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded only if such copy has to be filed along with the memorandum of appeal or application for leave to appeal or for revision or for review of judgment, when the legislature has not inserted such a proviso in Section 12 (2). It is also plain that without procuring copy of the order of the Assistant Commissioner the respondent and his legal adviser

would not have been in a position to decide as to whether revision petition should be filed against that order and if so, what grounds should be taken in the revision petition.

11. It is plain that since 1928 when the Judicial Committee decided the case of *Surti* (AIR 1928 PC 103) (supra) the view which has been consistently taken by the Courts of India is that the provisions of Section 12 (2) of the Limitation Act would apply even though the copy mentioned in that sub-section is not required to be filed along with the memorandum of appeal. The same position should hold good in case of revision petitions ever since Limitation Act of 1963 came into force.”

16.3 The principle of law laid down in M/s. Madanlal Dan (supra) was followed with approval by the Supreme Court in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker³ accordingly it is held that sub-section (2) of Section 29 makes Section 12 of Act of 1993 applicable for the purpose of determining the period of limitation prescribed by special or local law unless its applicability is excluded by such law.

17. The Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 is a local law as it is applicable to State of Chhattisgarh only and not to the whole of India. It is also a special law. “Special law” has been defined in Kaushalya Rani v. Gopal Singh⁴ to mean a law enacted for special cases in special circumstance in contradiction to general rules of law laid down as applicable generally to all cases with which the general law deals. The Act of 1993 deals with specific subject namely Constitution, functions and powers of Panchayat, therefore the Act of 1993 is

³ (1995) 5 SCC 05

⁴ AIR 1964 SC 260

special law.

18. In The Canara Bank, Ltd. v. The Warden Insurance Co.

Ltd.⁵ the Bombay High Court has observed as under:-

"3. The period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the first schedule to the Limitation Act. It may also be different in the sense that it departs from the period of limitation fixed for various appeals under the Limitation Act. If the first schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Limitation Act"

19. The aforesaid observations of Chagla, C.J. were approved by the Supreme Court in **Vidyacharan Shukla v. Khubchand Baghel**⁶, wherein it was laid down that Section 29(2) of the Indian Limitation Act, 1963 would apply even to a case where a difference between the special law and the Limitation Act arose by the omission to provide for a limitation to a particular proceeding under the Limitation Act.

20. The Supreme Court in matter of **India House v. Kishan N. Lalwani**⁷, their Lordships while highlighting the underlying purpose of Section 12(2) of the Act have succinctly held that Section 12 of the Act of has to be liberally interpreted and time requisite for obtaining a copy of the impugned order has to be excluded from computing the period of limitation. It was observed pertinently as under:-

5 AIR 1953 Bom 35

6 AIR 1964 SC 1099

7 (2003) 9 SCC 393

“7. It is well settled that by virtue of sub-section (2) of Section 29 of the Limitation Act the provisions of Section 12 are applicable for computing the period of limitation prescribed by any special or local law. (See *D.P. Mishra v. Kamal Narayan Sharma*⁸ and *Malojirao Narasingarao Shitole v. State of M.P.*⁹) The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit extension or relaxation in computing the period of limitation such as those contained in Section 12 of the Limitation Act. The underlying purpose of these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time bar not unduly interfering with the exercise of statutory rights and remedies. That is why Section 12 has always been liberally interpreted. To wit, the time requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of limitation although such copy may not necessarily be required to be filed along with the appeal, application or memo of representation or review. No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to be made seeking the benefit of Section 12 of the Limitation Act; it is the statutory obligation of the court to extend the benefit where available. Although the language of sub-section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation prescribed and then add to it the time requisite for obtaining the copy — the date of application for copy, and the date of delivery, thereof both included — and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one’s mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefor the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that sub-section (2) of Section 12 of the Limitation Act says is the time

8 (1970) 2 SCC 369

9 (1969) 2 SCC 723

requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither is it so provided in sub-section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view.”

21. In revisional jurisdiction, the exercise of the jurisdiction is circumscribed by the statute conferring such jurisdiction. The extent of such power is regulated by statute; whereas appeal is continuation of suit or proceedings wherein the entire proceedings are again left open for consideration by the appellate authority and power to review the entire evidence subject to prescribed statutory limitation but in case of revision, the revisional authority has no such power to reassess and re-appreciate unless the statute expressly confers with that power. (See Lachhman Dass v. Santokh Singh¹⁰)

22. Thus, by virtue of provisions contained in Section 29(2) of the Limitation Act, Section 12(2) of that Act will apply to dispute covered by Section 21(4) of the Act of 1993. Section 12(2) of Act doesn't cover an 'dispute', but the word appeal/revision used therein has been given a liberal construction and construed to include an application for revision also.

23. The “dispute” under Section 21(4) of the Act of 1993 is ‘akin’ to

¹⁰ (1995) 4 SCC 201

revision to be preferred before Collector challenging the motion of no-confidence carried out against the respondent No.2, therefore provision of Section 12(2) will apply as that provision includes “revision”. Even otherwise time requisite is time beyond the control of respondent No.4 in obtaining the copy which accompanies the “dispute” and delay attributable to the office of Panchayat in supplying certified copy for which the respondent No.4 is not responsible will have to be excluded as time requisite for obtaining certified copy.

24. From the above-stated legal analysis, it follows that provisions of Section 12(2) of Act of 1963 would be applicable to “dispute” to be raised under Section 21(4) of the Act of 1993 and time spent to obtaining the copy of resolution of no-confidence motion is required to be excluded in computing the period of seven days, even if under Section 21(4) of Act, it may or may not necessary to file the certified copy of the resolution along with dispute before the Collector. In the present case, after deducting the time spent in obtaining copy of resolution that is from 16.06.2016 to 28.06.2016, the dispute was preferred admittedly within time prescribed and that learned Collector has rightly excluded the time spent in obtaining certified copy of the resolution of no-confidence and further it has duly affirmed by learned Additional Commissioner.

25. As fallout and consequence of above-stated provisions, writ petition deserved to and accordingly dismissed affirming the order of

learned Additional Commissioner. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge