

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2247 of 2016**

1. Roopnarayan Khunte S/o Shri Ramkanhai Khunte, Aged About 40 Years R/o Village Ghoghra, Post Office Sendari, Police Station & Tahsil Sakti, Civil & Revenue District Janjgir Champa, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Collector Janjgir, Civil & Revenue District Janjgir Champa, (Chhattisgarh)
2. Shri S. Jaiwardhana, Sub Divisional Officer (Revenue) Sakti/ Competent Authority, Civil & Revenue District Janjgir Champa (Chhattisgarh)
3. Shri P.R. Bhaskar, Presiding Officer & Tahsildar Sakti, Civil & Revenue District Janjgir Champa, (Chhattisgarh)
4. Shri Kartikram Jaiswal, S/o Shri Jagannath Prasad Jaiswal Aged About 35 Years Panch Ward No.1 Gram Panchayat Mohagaon
5. Smt. Dulari Bai Sahu W/o Shri Bhuneshwar Sahu, Aged About 40 Years Panch Ward No. 2, Gram Panchayat Mohgaon
6. Smt. Janki Bai Sahu, W/o Shri Uday Ram Sahu, Aged About 38 Years Panch Ward No. 3, Gram Panchayat Mohgaon
7. Shri Shivcharan Yadav, S/o Late Shri Dasrath Yadav, Aged About 34 Years Panch Ward No.4, Gram Panchayat Mohgaon
8. Smt. Ganga Bai Mahant W/o Shri Dildas Mahant, Aged About 45 Years Panch Ward No.5, Gram Panchayat Mohgaon
9. Smt. Ramkuwar Sidar W/o Shri Gulab Singh Sidar, Aged About 50 Years Panch Ward No.6, Gram Panchayat Mohgaon
10. Smt. Phool Bai Sahu W/o Shri Dayashankar Sahu, Aged About 45 Years Panch Ward No.7, Gram Panchayat Mohgaon

Respondents No.4 to 10 are R/o Village Mohagaon, Post Office Barpali, Police Station & Tahsil Sakti, Civil & Revenue District Janjgir Champa, (Chhattisgarh)

11. Shri Puran Singh Sidar S/o Late Shri Bhog Singh Sidar Aged About 35 Years Panch Ward No.8, Gram Panchayat Mohgaon
12. Shri Tilakram Sahu S/o Maniram Sahu, Aged About 38 Years Panch Ward No.9, Gram Panchayat Mohgaon
13. Smt. Maltidas Mahant W/o Shri Ajitdas Mahant, Aged About 30 Years Panch Ward No.10, Gram Panchayat Mohgaon
14. Smt. Guruwari Bai Gond W/o Shri Shankar Gond, Aged About 45 Years Panch Ward No.11, Gram Panchayat Mohgaon

Respondents No.11 to 14 are R/o Village Ghoghra, Post Office Sendri, Police Station & Tahsil Sakti, Civil & Revenue District Janjgir Champa, (Chhattisgarh)

---- Respondent

For Petitioner	Shri Ramesh Kumar Nayak, Advocate
For Respondent/State	Ms. K. Tripti Rao, Panel Lawyer
For Respondent No.11	Shri Sushobhit Singh, Advocate
For Other Respondents	None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/02/2017

1. The seminal issue involved in this petition is —

Whether a resolution for ouster of the office bearer of a Gram Panchayat by way of no confidence motion is sustainable when the office bearer i.e. Sarpanch has not been allowed to speak when the resolution was discussed in the house ?

2. Without adverting to unnecessary details, suffice it would be to mention that a motion of no confidence brought against the

petitioner under Section 21 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Act, 1993') read with the Rules as contained in 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 'the Rules, 1994') and accordingly a meeting of the Gram Panchayat was convened on 9-3-2016 for consideration. The proceedings of the said meeting records that Smt. Malati Mahant, Panch, was allowed to table and speak for the motion of no confidence to which she replied that the petitioner attends the meeting of Panchayat after consuming liquor and does not accede to the suggestions given by the office bearers of the Panchayat.

3. The Presiding Officer, thereafter, records that the members of the Panchayat present in the meeting were informed about the provisions of Section 21 of the Act, 1993 and the method of voting prescribed under the Rules. The members, thereafter, casted their vote. The petitioner moved away from the place of meeting on the pretext of attending the nature's call and did not return for about 15 minutes, therefore, the counting was done in his absence wherein it was found that 10 votes polled in favour of motion and 2 votes against it. The petitioner came back at

the place of meeting immediately after the counting. The Presiding Officer declared that the no confidence motion has been passed by the required majority.

4. Shri Ramesh Kumar Nayak, learned counsel appearing for the petitioner, would submit that the petitioner was neither apprised of his right to speak nor was invited or allowed to speak in the meeting, therefore, the same being in violation of the mandatory provisions contained in Rule 5 of the Rules, 1994, the entire meeting is vitiated.
5. Shri Sushobit Singh, learned counsel appearing for the respondent No.11, would submit that the petitioner himself left the place of meeting on the pretext of attending nature's call and came back after the counting, therefore, he has waived his right to speak and it is not a case of violation of mandatory provisions. He would further submit that as per sub-rule (4) of Rule 5 of the Rules 1994, the right to speak is only with the mover of motion and for others it is optional, therefore, directory. He would read the relevant provisions.
6. Ms. K. Tripti Rao, learned counsel appearing for the State, would oppose the writ petition.

7. Section 21 of the Act, 1993 and Rule 5 (4) of the Rules, 1994 being relevant for deciding the issue involved, they are re-produced hereunder :

Section 21 of the Act, 1993 :

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.

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(4) xxx xxx xxx

Rule 5 (4) of the Rules, 1994 :

5. Conduct of meeting.--

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) After the motion is moved the mover shall first speak on the motion and thereafter other members may, if they so desire, speak on the motion.

(5) xxx xxx xxx

(6) xxx xxx xxx

8. A plain reading of the provisions contained in sub-section (2) of Section 21 of the Act, 1993 would indicate that whenever a meeting is held to consider motion of no confidence against the Sarpanch or Upsarpanch they shall not preside over the meeting, however, the Sarpanch or the Upsarpanch, as the case may be, shall have a right to speak at, or otherwise to take part in, the proceeding of the meeting. Sub-rule (4) of Rule 5 confers similar right on the mover of the motion.
9. A harmonious reading of both the provisions would reveal that while one provision confers right to speak on the Sarpanch or the Upsarpanch, as the case may be, the other provision confers such right on the mover of the motion and on other members of the Panchayat, if they so desire. Reference to sub-rule (4) of Rule 5 of the Rules, 1994 by the learned counsel appearing for the respondent No.11 is only one part of the provision whereas the right of Sarpanch to speak in the meeting is provided under Section 21 (2) of the Act, 1993.

10. Sarpanch has been conferred or is made entitled to speak in the meeting as a part of adherence to the principles of natural justice because he is elected by majority of voters, but he is to be removed by the Panchas only. It is one facet of principles of natural justice that nobody should be condemned unheard, therefore, the principles of natural justice has been ingrained in Section 21 (2) of the Act, 1993. Any non-compliance of principles of natural justice as ingrained in the provision would face the consequences vitiating the entire proceeding.
11. In the case at hand, the resolution does not record that the motion was discussed in presence of all. On the contrary, it records that the mover of the motion namely; Smt. Malati Mahant was allowed to speak, however, there is no such mention that the petitioner was also called to speak in his defence. When reference can be made regarding opportunity provided to the Panch, the same reference could have been made that the Sarpanch was also allowed, but there being no such mention in the resolution, the irresistible conclusion is that the petitioner was neither informed nor invited to speak on the motion. Thus, there is violation of mandatory provision contained in Section 21 (2) of the Act, 1993, which uses the word 'shall' have a right to speak. In the context of overall setting of the

provision the word 'shall have a right to speak' indicates the provision being mandatory in nature, the violation of which would vitiate the entire exercise. (See: **Gramvasi Gram Khari Panchayat Dhamni & Another v. The Collector, Baloda Bazar & Others**¹).

12. In **Prabhulal v. Gram Panchayat, Guradiya Deda and Others**², the Full Bench of the High Court of Madhya Pradesh while considering the motion of no confidence by secret ballot, not provided under the statute observed that validity of no confidence resolution passed by majority against the Sarpanch passed in a manner contrary to law and following a procedure which is prohibited cannot be upheld. (Also see : **Nagsai v. State of Madhya Pradesh & Others**³).
13. In **Sukhnandan Patel v. State of M.P. others**⁴, while dealing with the same provision the High Court of Madhya Pradesh concluded that when there was deliberation made on the no confidence motion, it cannot be argued that the Sarpanch was not allowed to speak.
14. In **Balramdas v. Commissioner, Raipur**⁵, the Division Bench of

1 AIR 2015 Chhattisgarh 7

2 AIR 1986 Madhya Pradesh 200

3 AIR 1998 MP 81

4 2003 (1) MPLJ 220

5 1984 WN (336) page 391

the Madhya Pradesh High Court, while considering the similar provision under the MP Panchayat Adhiniyam, 1981 observed that Section 18 (c) of the MP Panchayat Adhiniyam, 1981 confers a right on the Sarpanch to speak at or otherwise to take part in the proceeding of the meeting in which a motion of no confidence was discussed against him. This right is not an empty formality, inasmuch as, it enables the Sarpanch to give out his point of view and, if possible, to dissuade the Panchas from voting against him. In the said case, the resolution passed in contravention of provision was declared invalid.

15. In P. Ramanatha Aiyar Advanced Law Lexicon the term 'Right' has been defined thus :

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1. That which is proper under law, morality, or ethics (know right from wrong). 2. Something that is due to a person by just claim, legal guarantee, or moral principle (the right of liberty). 3. A power, privilege, or immunity secured to a person by law (the right to dispose of one's estate). 4. A legally enforceable claim that another will do or will not do a given act; a recognised and protected interest the violation of which is a wrong (a breach of duty that infringes one's right). 5. The interest, claim, or ownership that one has in tangible or intangible property (a debtor's rights in collateral) (publishing rights). (Black, 7th Edn. 1999).

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A right is an interest which is recognised and protected by law. As it is recognised by law a man is entitled to have it. As it can be protected by law the possessor can enforce it by an appropriate action in a Court. Immunity is one aspect of right and entitles the possessor to see that no one interferes with it. It also furnishes him with a complete answer to any action intended to interfere with that right, *Raj Rajendra Sardar Maloji Narsing Rao v. Shankar Saran*, AIR 1958 All 775, 787. [Civil Procedure Code (Amendment) Act, 1951, S.20].

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16. In jurisprudential terms the word 'Right' has been understood to mean it is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined "right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "legal right" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the

right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right. (See: **Mr 'X' v Hospital 'Z'**⁶ pg.304 p.15).

17. In **State of Karnataka v. Union of India and Another**⁷, the Supreme Court has observed that “Right” in its narrow sense constitutes the correlative of duty, but in its generic sense it includes not only right *stricto sensu*, but “any advantage or benefit conferred upon a person by a rule of law”. Dias in his *Jurisprudence*, 1976 Ed., pp. 33-34, says that the word “right” has undergone successive shifts in meaning and Hohfeld in his “*Fundamental Legal Concepts as Applied to Legal Reasoning*” gives four different meanings of the word “right”. One is right *stricto sensu*, the other is liberty, the third is power and the fourth is immunity. In its strict sense “right” is defined as interest which the law protects by imposing corresponding duty on others.
18. Jurisprudential concept and the legal understanding of the meaning of the word 'Right' compels this Court to observe that the right to speak given to the Sarpanch of Up-Sarpanch, in the meeting where the motion of no confidence is considered

6 (1998) 8 SCC 296

7 (1977) 4 SCC 608

against him is a valuable legal right guaranteed to him under the statute, the denial of which would be a wrong, therefore, when such right is denied, the entire proceeding is vitiated.

19. In **Ashok Lanka and another v. Rishi Dixit and Others**⁸, **P.T. Rajan v. T.P.M. Sahir and Others**⁹, **U.P. State Electricity Board v. Shri Shiv Mohan Singh and another**¹⁰ and **State Bank of Patiala and Others v. S.K. Sharma**¹¹, it is held by the Supreme Court that the question as to whether a statute is mandatory or directory would depend upon the statutory scheme. Use of the expression "shall" or "may" by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve.
20. The provision which falls for consideration in the present case has the consequence of ousting an elected representative by passing a motion of no confidence against him. The opportunity to speak provided under Section 21 (2) of the Act, 1993 is a valuable right and is a facet of principles of natural justice. The Sarpanch or Up-Sarpanch, as the case may be, is likely to be ousted from the office, therefore, adherence to the principles of

8 (2005) 5 SCC 598

9 AIR 2003 SC 4603

10 AIR 2004 SC 5009

11 (1996) 3 SCC 364

natural justice has been made a part of the statutory scheme. Thus, in the given statutory set up, the right conferred on the Sarpanch or Up-Sarpanch to speak at the meeting is necessary to be followed and, thus, the provision is mandatory in nature, the non compliance of which would render the resolution invalid being in violation of the principles of natural justice.

21. In the result, the writ petition is allowed and the motion of no confidence passed against the petitioner is set aside. The Chief Executive Officer of the concerned Janpad Panchayat shall restore the petitioner to hold the office of Sarpanch, Gram Panchayat, Mohgaon. No order as to cost(s).

Sd/-

Judge

Prashant Kumar Mishra

Gowri