

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 21.11.2017

Delivered on 24.11.2017

Writ Appeal No. 467/2017

(Arising out of order dated 23.10.2017 in WP(C) No. 1422/2017)

- Smt. Bindu Bai W/o Chandrabhan, Aged About 46 Years, Caste Pao, Sarpanch Gram Panchayat Gullidand, Janpad Panchayat Marwahi, District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary Panchayat And Rural Development Mantralaya, Mahanadi Bhavan, Naya Raipur, District Raipur, Chhattisgarh.
2. Additional Commissioner, Bilaspur, Division, Bilaspur, Chhattisgarh.
3. Additional Collector, Pendra Road, District Bilaspur, Chhattisgarh.
4. Sub Divisional Officer (R), Pendra Road, District Bilaspur, Chhattisgarh.
5. Tahsildar, Marwahi, District Bilaspur, Chhattisgarh.
6. Chief Executive Officer, Janpad Panchayat, Marwahi, District Bilaspur, Chhattisgarh.
7. C.P. Tiwari, Taxation Officer, Janpad Panchayat, Marwahi, District Bilaspur, Chhattisgarh.
8. Village Secretary, Mahendra Pradhan Village Panchayat Gullidand, Janpad Panchayat Marwahi, District Bilaspur, Chhattisgarh.
9. Sarvan S/o Ganpat, Caste Ahir, Elected Up Sarpanch, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
10. Rambai W/o Shivnath, Caste Pao, Elected Panch Ward No. 1, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
11. Ashok Kumar Kenwat S/o Ganpat, Caste Pao, Elected Panch Ward No. 2, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
12. Sakuntala W/o Kailash, Caste Kenwat, Elected Panch Ward No. 3, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
13. Anita W/o Mahesh, Caste Panika, Elected Panch Ward No. 4, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.

14. Janki W/o Narbada Prasad, Caste Kenwat, Elected Panch Ward No. 5, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
15. Indrajeet S/o Gangaram, Caste Kenwat, Elected Panch Ward No. 8, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
16. Semwati W/o Belan, Caste Gond, Elected Panch Ward No. 8, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
17. Kunwar Singh Maravi S/o Shivilal, Caste Gond, Elected Panch Ward No. 11, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
18. Geeta Bai W/o Sukhdev, Elected Panch Ward No. 14, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
19. Dev Singh S/o Amol Singh Caste Gond , Elected Panch Ward No.15, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
20. Pakshi Bai W/o Man Singh Caste Gond, Elected Panch Ward No. 18, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
21. Gouri Shankar S/o Ramsundar, Caste Gond, Elected Panch Ward No. 10, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
22. Kunwar Singh S/o Babulal, Caste Gond, Elected Panch Ward No.17, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
23. Krishna Kumar S/o Samaru, Caste Gond, Elected Panch Ward No. 16, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.
24. Senwati W/o Durjan, Caste Gond, Elected Panch Ward No. 12, R/o Village Gullidand, Janpad Panchayat Marwahi, Tahsil Marwahi, District Bilaspur, Chhattisgarh.

---- Respondents

Appellant	:	Shri A.S. Rajput, Advocate
For Respondents No. 1 to 5/State	:	Shri R.K. Gupta, Dy. Advocate General
For Respondents No. 9 to 24	:	Shri Yogendra Chaturvedi, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

Per Sharad Kumar Gupta, Judge

1. In this writ appeal, challenge is levied to the order dated 23.10.2017 passed by learned Single Judge in WP(C) No. 1422/2017 whereby and whereunder the learned Single Judge allowed the writ petition preferred by the present respondents No. 9 to 24.

2. It is admitted by the appellant that she is an elected Sarpanch and respondents No. 9 to 24 are the elected Panchs under village Panchayat Gullidand, Janpad Panchayat Marwahi, District Bilaspur. The aforesaid respondents moved an application for no confidence motion against her before the prescribed authority i.e. respondent No.4 who fixed the date 09.09.2016 for convening the meeting and appointed Tahsildar – Shankar Dayal Mishra (respondent No.5) as election officer. The appellant wrote a letter to respondent No.5 that she had not been given 7 days prior notice from the date 09.09.2016. Thus, it may be adjourned. Respondent No.4 fixed the date for the meeting for no confidence motion on 21.09.2016 vide Annexure P-6. On 21.09.2016, no confidence motion was carried out with majority of 15 votes out of 18. Respondent No.5 sent the report vide Annexure P-7 to Respondent No.4. Being aggrieved with the no confidence motion the appellant preferred an appeal before the Additional Collector, Pendra Road who passed the order dated 28.11.2016 vide Annexure P-1 that all the proceedings are

cancelled on the ground of vitiation. Being aggrieved, respondents No. 9 to 24 preferred a revision before the Additional Commissioner, Bilaspur. The Additional Commissioner, Bilaspur by order dated 02.12.2016 vide Annexure P-8 stayed the operation of the order Annexure P-1. Being aggrieved, the appellant preferred Writ Petition No. 3233/2016. The said revision was dropped by the Additional Commissioner, Bilaspur on 01.05.2017 vide Annexure P-9 because respondents No. 9 to 24 submitted that they did not press the revision. Writ Petition No. 3233/2016 had been dismissed on 09.08.2017 as having become infructuous. Thereafter, respondents No. 9 to 24 filed aforesaid writ petition which was allowed vide the impugned order as mentioned above.

3. In brief, the case of respondents No. 9 to 24 is that the application for no confidence motion is Annexure P-2. The order of Respondent No. 4 regarding the fixation of the date for meeting on 09.09.2016 is Annexure P-3. The letter written by the appellant for the stay is Annexure P-4. Respondent No.5 had, after going through the notice service register, found that the appellant had received Annexure P-3 on 05.09.2016.

4. Shri A.S. Rajput, counsel for the appellant argued that no prescribed authority was appointed by respondent No.4 which is violation of Section 21(2) of Chhattisgarh Panchayat Raj Adhiniyam, 1993 (herein after called as 'the Adhiniyam').The meeting for no confidence motion was fixed beyond 15 days from the date of receipt of notice which is contrary to the provisions of

Rule 3(3) of the Chhattisgarh (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President ke Virudh Avishwas Prastav) Niyam, 1994 (herein after called as ' the Niyam'). In Annexure P-6, the time and place have not been mentioned. Order Annexure P-1 had become final under Section 21(4) of the Adhiniyam. Thus, the writ petition was not maintainable. Therefore, the impugned order passed by the learned Single Judge is illegal and against the propriety. It may be quashed.

5. Shri Yogendra Chaturvedi, counsel for respondents No. 9 to 24 submitted that the impugned order is proper, reasonable and is in accordance with the Adhiniyam and the Niyam. It does not call for any interference.

6. Shri R.K. Gupta, Deputy Advocate General for respondents No. 1 to 5 supported the impugned order.

7. It would be pertinent to mention the provision of Section 21(2) of the Adhiniyam, which reads as under:

“ 21(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.

8. The provision of Rule 3(3) of Niyam, 1994 are also noticeable which are extracted hereunder:

“3(3) On receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to Section 21 (3), 28(3) and 35(3), as the case may be. On being thus satisfied, he shall fix the date, time and place for the meeting of the Gram Panchayat, Janapad Panchayat or Zila Panchayat, as the case may be which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof shall be caused to be despatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janapad or Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before the meeting.

9. As per order of respondent No. 4, the date 09.09.2016 was initially fixed for the meeting of no confidence motion.

10. As per Annexure-P/4, the appellant had written to respondent No. 5 that she had not received 7 days prior notice from the date 09.09.2016 fixed for the meeting. Thus, the proceedings may be stayed.

11. As per the report of respondent No. 5 dated 09.09.2016 vide Annexure P/5, he examined the notice service register and found that the appellant had received notice only on 05.09.2016. Thus he wrote to respondent No.4 that another date may be fixed for the meeting to discuss the no confidence motion.

12. In **Muku Bai v. State of M.P. and Others**¹ the Hon'ble Supreme Court while dealing with the issue relating to requirement under Rule 3(3) of the Niyam has held that requirement to convene meeting within 15 days as provided in the Rule is mandatory. Such convened meeting can be adjourned because of reasons beyond control.

13. On 21.09.2016 there were no election held. Therefore, there was no need to appoint an election officer instead presiding officer was needed. There is no such material available on record that Tahsildar-Shankar Dayal Mishra had not discharged his duties as presiding officer instead of it he had discharged some other duties.

14. It is true that in Annexure P-6, the time and the place regarding the meeting of the no confidence motion had not been mentioned. It is revealed from Annexure P-7 that 18 members had casted their votes. It is not the appellant's case that due to non mentioning of the place and the time, she herself and her supporter-Panchs could not caste their vote.

15. The appellant failed to establish that the date for convening the meeting for no confidence motion after 15 days from 09.09.2016, Tahsildar – Shankar Dayal Mishra was appointed as election officer and non mentioning of place and time for the meeting of the no confidence motion have caused prejudice to the appellant or her interests have been affected adversely.

1 1998 (2) M.P.L.J. 661

16. As per the Section 21(4) of the Adhiniyam the order of the Collector is final. Thus, withdrawal of the revision from the Additional Commissioner, Bilaspur does not preclude the appellant to file writ petition against the order Annexure P-1; in other words, the aforesaid writ petition is maintainable.

17. Looking to the aforesaid facts and circumstances, this Court finds that in the case in hand the substantive compliance of Section 21(2) of the Adhiniyam and Rule 3(3) of the Niyam have been done and there is no fundamental violation of said provisions. Thus, the order Annexure P-1 is illegal. Therefore, we agree with the reasoned impugned order Annexure A-1 passed by the learned Single Judge and affirm the same.

18. Consequently, we find the appeal *sans substratum*, deserves to be and hereby dismissed. No order as to costs.

(Thottathil B. Radhakrishnan)
Judge

(Sharad Kumar Gupta)
Judge