

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3322 of 2017**

1. Hetram Sahu S/o Shri Sudarshan Sahu, Aged About 32 Years Panch Ward No.1
2. Smt. Firtin Bai Sidar W/o Shri Jeetram Sidar, Aged About 36 Years Panch Ward No.2
3. Leeladhar Sahu S/o Shri Thaluram Sahu, Aged About 36 Years Panch Ward No.3
4. Subhashchandra Sidar S/o Shri Mangalsingh Sidar, Aged About 26 Years Panch Ward No.4
5. Smt. Samarin Bai Sidar W/o Shri Dukaluram Sidar, Aged About 50 Years Panch Ward No.6
6. Smt. Jhool Bai W/o Shri Nawdharam Sahu, Aged About 46 Years Panch Ward No.8
7. Bhaiyalal Gond S/o Shri Mahettar Gond, Aged About 27 Years Panch Ward No.9
8. Smt. Sevati Bai W/o Shri Dorilal Shriwas, Aged About 41 Years Panch Ward No.13
9. Purushottam Sagar S/o Shri Firat Ram Sagar, Aged About 44 Years Panch Ward No.14
10. Smt. Santoshi Khairwar W/o Agan Singh Khairwar, Aged About 37 Years Panch Ward No.15

All petitioners are R/o Village And Post Kotetara, Tahsil Jaijaipur, District Janjgir-Champa, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat And Social Welfare Department, Govt. Of Chhattisgarh, New Mantralay, Raipur, District Raipur, Chhattisgarh
2. Additional Commissioner, Bilaspur Division, Bilaspur, Chhattisgarh

3. Collector, Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh
4. Sub Divisional Officer Revenue, Sakti/ Competent Authority, Civil And Revenue District Janjgir-Champa, Chhattisgarh
5. Additional Tehsildar Presiding Officer, Hasaud, Tehsil Jaijaipur, Civil And Revenue District Janjgir-Champa, Chhattisgarh
6. Chief Executive Officer, Janpad Panchayat Jaijaipur, Civil And Revenue District Janjgir-Champa, Chhattisgarh
7. Secretary, Gram Panchayat Kotetara, Janpad Panchayat Jaijaipur, Civil And Revenue District Janjgir-Champa, Chhattisgarh
8. Smt. Sunita Chouhan W/o Shri Maniram Chouhan Sarpanch Gram Panchayat Kotetara, Aged About 27 Years
9. Smt. Basant Bai Gond W/o Shri Kirtan Lal Gond, Aged About 40 Years Panch Ward No.04
10. Smt. Mahetarin Bai Palange W/o Shri Mahettar Palange, Aged About 48 Years Panch Ward No.10
11. Smt. Kiran Bai Sahu W/o Shri Ramlal Sahu, Aged About 33 Years Panch Ward No.12
12. Nohar Prasad Yadav S/o Shri Firtram Yadav, Aged About 30 Years Panch Ward No.07
13. Smt. Rekha Sagar W/o Shri Ghanshyam Sagar, Aged About 26 Years Panch Ward No.11
14. Smt. Usha Khairwar W/o Shri Bhakta Prahlad Khairwar, Aged About 30 Years Panch Ward No.16
15. Kushal Singh Sidar S/o Shri Bhishambhar Lal Sidar, Aged About 33 Years Panch Ward No.17

Respondents No.8 to 15 all are R/o Village And Post Kotetara, Police Station And Tehsil Jaijaipur, Civil And Revenue District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Petitioners	Shri Ramesh Nayak, Advocate
For Respondent/State	Ms Astha Shukla, Panel Lawyer
For Respondent No.6	Shri Mayank Kumar, Advocate

Order On Board

By

Prashant Kumar Mishra, J.

05/12/2018

1. Petitioners are the Panchas of Gram Panchayat Kotetara, Block Jaijaipur, District Janjgir-Champa, which consists of 18 members including the Sarpanch. 14 Panchas moved motion of no confidence against the Sarpanch Smt. Sunita Chouhan (respondent No.8), however, after motion was moved, 6 Panchas were declared disqualified by order passed by the Tahsildar, Jaijaipur. Consequently, the said Panchas were not allowed to participate in the meeting of no confidence motion, which otherwise took place in accordance with the provisions of Section 21 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993').
2. In the meeting to consider the motion of no confidence out of 12 members present 10 have voted in favour of the motion and 2 opposed it. 5 more members intended to attend the meeting, but they were not allowed by the Presiding Officer for the reason that they were declared disqualified by the Tahsildar.

3. The motion of no confidence having been moved by more than 1/3rd members and the resolution was passed by not less than 3/4th of Panchas present and voting and such majority was more than 2/3rd of the total number of Panchas constituting the Gram Panchayat for the time being, the motion was declared carried and the Sarpanch was disqualified.
4. The revision preferred by the Sarpanch under Section 21 (4) of the Adhiniyam, 1993 was allowed by the Collector on the ground that 6 Panchas were illegally prevented from voting by declaring them disqualified after issuance of notice of motion of no confidence. The said order has been affirmed by the Divisional Commissioner by the impugned order.
5. It is important to notice that after the motion of no confidence was carried on 22-6-2016, out of 6 Panchas who were declared disqualified, 5 Panchas have preferred WPC No.2540 of 2016, which was allowed by this Court on 19-10-2016 holding that since the Tahsildar himself has opined that the order passed by him is without jurisdiction, the Collector shall pass necessary orders in accordance with the provisions contained in Section 36 (3) of the Adhiniyam, 1993. It is informed that subsequently the Collector has set aside the order of disqualification of 6 Panchas.

6. While allowing the revision under Section 21 (4) preferred by the Sarpanch, the Collector has observed that 6 Panchas were wrongly denied participation in the meeting, however, if the Collector was of this opinion, he should have directed for convening of the meeting afresh so that all the office bearers/ members of the Gram Panchayat participate in the meeting. If the motion of no confidence has been moved by required number of Panchas, the same has to be considered in accordance with law and it should not remain depending on any other order like the one passed by the Tahsildar disqualifying 6 members. If that is allowed to happen, whenever motion of no confidence is brought, some or other officer would pass an order declaring certain members of Gram Panchayat to be disqualified frustrating the no confidence motion itself.
7. Considering the entire facts situation of the case and for the reason that the disqualification of 6 Panchas has already been set aside, which would relate back to the date when they were disqualified by the Tahsildar, but on the strength of removal of disqualification they are deemed to be qualified to vote in the meeting of Gram Panchayat on 22-6-2016, I deem it appropriate that the meeting of Gram Panchayat should again

be allowed to take place on the basis of the same motion of no confidence brought by 14 Panchas, because if 6 Panchas vote against the motion it will fall short of more than 2/3rd of the total number of Panchas and it is otherwise, the motion will be carried.

8. Let the Sub Divisional Officer (Revenue) concerned take steps to convene the meeting of Gram Panchayat to consider the motion of no confidence brought by the petitioners on 8-6-2016 within 30 days from today. In the said meeting all the Panchas shall be allowed to participate if they are otherwise eligible to vote in the meeting.
9. Accordingly, the writ petition stands disposed of.

Sd/-

Judge
Prashant Kumar Mishra

Gowri