

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 748 of 2018**

{Arising out of order dated 17.09.2018 passed by learned Single Judge in Writ Petition (S) No. 2549 of 2018}

- Smt. Neeta Dansena, W/o Naresh Kumar Dansena, aged about 43 years, Sarpanch Village Panchayat Tarapur, R/o Village Tarapur, Tahsil & District Raigarh (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Panchayat Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. Commissioner Bilaspur, Division Chhattisgarh, Bilaspur, District Bilaspur, Chhattisgarh.
3. Collector Raigarh, District Raigarh, Chhattisgarh.
4. Sub Divisional Officer Raigarh, District Raigarh, Chhattisgarh.
5. Nayab Tahsildar Raigarh, Tahsil And District Raigarh, Chhattisgarh.
6. Dilip Kumar Yadav, S/o Sada Yadav (Panch Ward No.1)
7. Smt. Barat Kunwar Sarthi, W/o Runguram Sarthi (Panch Ward No. 2)
8. Santram Sidar, S/o Budhu Sidar (Panch Ward No.3)
9. Smt. Lokeshwari Patel, W/o Ashwari Kumar Patel, (Panch Ward No.4)
10. Smt. Yashoda Bai W/o Motilal (Panch Ward No. 5)
11. Smt. Buti Bai Sidar W/o Munudau (Panch Ward No. 6)
12. Nokheleshwar Raj Singh S/o Yashwant Raj Singh (Panch Ward No. 7)
13. Smt. Sangeeta Devi W/o Nokhleshwar Raj Singh (Panch Ward No. 8)
14. Bade Lal Nishad S/o Mehttar Nishad (Panch Ward No. 9)
15. Smt. Devmati Dansena W/o Chandrabhan Dansena (Panch Ward No. 10)

Respondent Nos.6 to 15 Office of Village Panchayat Tarapur, Tahsil and District Raigarh (C.G.)

---- Respondents

For Appellant : Ms. Sharmila Singhai, Advocate.

For Respondent/State : Shri U.N.S. Deo, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

24.10.2018

1. Writ application preferred by the Appellant against the decision of no confidence motion having been carried against her by majority of vote was challenged. Submissions were made in relation to the said resolution which included arguments like the Appellant not having adequate notice, information or the grounds in which the charges were brought.
2. The learned Single Judge dealt with the arguments and recorded the following findings:

“6. A Gram Panchayat is usually constituted for one village where the headquarter of the Panchayat is situated and one or two dependent villages. It is, thus, a small area, therefore, it cannot be said that the Sarpanch, who has been elected by the voters of the area, was not aware of the reason for which a majority of the office bearers of the Gram Panchayat have lost confidence in her/him. To say that the petitioner was not aware of the charges on which she was sought to be removed shows her apathy towards the affairs of the Gram Panchayat and the area as a whole. Moreover, there appears on prejudice caused to the petitioner because majority of the Panchas have voted against her. In a democracy the will of the house, which reflects will of the people, should be respected and unless any mandatory provision of the statute has been violated the motion of no confidence passed by majority against the sitting Sarpanch should not be interfered on mere *ipse dixit*.”

“7. Learned counsel appearing for the petitioner has placed reliance on the decision of the Gujarat High Court in **Suvarnaben Chetanbhai Raval Vs. State of Gujarat** reported in **(2015) 1 GCD 593**, which deals with the provisions of the Gujarat Panchayats Act, 1993. In that case the Sarpanch was denied the audience, therefore, the Gujarat High Court held that the statutory

right of the petitioner has been violated, however, in the case at hand, Annexure-P/6 would record that the Sarpanch was allowed to speak, therefore, if the petitioner did not avail the opportunity there is no violation of any statutory provision. Thus, the judgment rendered by the Gujarat High Court is distinguishable on facts.”

3. The relevant provision in relation to no confidence motion against the Sarpanch or Up-Sarpanch has been laid down in Section 21 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'Adhiniyam'). The said section reads 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.”

4. Not only from reading at the order impugned passed by the learned Single Judge nor during the course of arguments, it is successfully established that the ingredients and ambit of Section 21 of the Adhiniyam have not been followed before the vote by majority or the notice of no confidence brought against the Appellant
5. It is one of those cases where the submissions are more made than made out from records.
6. Appeal, therefore, has no merit. The decision of the learned Single Judge does not suffer from any infirmity. Writ appeal is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge