

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 377 of 2017

1. Smt. Parwati Lahre, W/o Shri Premshankar Lahre, aged about 31 years, Sarpanch Gram Panchayat Mudpar [Chu] Janpad Panchayat Pamgarh, R/o Village Mudhpar [Chu] Post Rasouta, Police Station & Tahsil Pamgarh, Civil & Revenue District Janjgir Champa (CG)
2. Pemshankar Lahre, S/o Shri Kondaram Lahre, Aged About 29 Years Panch Ward No.05, Up-Sarpanch Gram Panchayat Mudhpar [Chu] Janpad Panchayat Pamgarh, R/o Village Mudhpar, [Chu], Post Rasouta, Police Station & Tahsil Pamgarh, Civil & Revenue District Janjgir Champa (CG)

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Versus

1. State Of Chhattisgarh Acting Through Secretary, Panchayat & Rural Development Department, Government Of CG, Naya Raipur, Civil and Revenue District Raipur (CG)
2. The Collector, Janjgir, Civil and Revenue District Janjgir Champa (CG)
3. The Sub - Divisional Officer Revenue/ Prescribed Officer, Pamgarh, Civil and Revenue District Janjgir Champa (CG)
4. Tahsildar / Presiding Officer, Tahsil - Pamgarh, Civil And Revenue District Janjgri Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
5. Pinki Devi Lahre, W/o Shri Dev Kumar Lahre, Aged About 29 Years, Panch Ward No. 1, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
6. Sonaram Mahipal, S/o Shri Nabharam Mahipal, Aged About 36 Years Panch Ward No.2, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
7. Kevra Patel, S/o Shri Dilip Kumar Patel, Aged About 33 Years, Panch Ward No.3, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
8. Nahar Bai Jangde, W/o Shri Dujram Jangde, Aged About 46 Years, Panch Ward No.4, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
9. Upendra Kumar Ratnakar, S/o Shri Jayant Ratnakar, Aged About 49 Years, Panch Ward No.6, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
10. Ashwani Kumar Kurrey S/o Shri Reshulal Kurrey, Aged About 41 Years,

Panch Ward No.7, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)

11. Jagdish Yadav, S/o Shri Budhram Yadav, Aged About 46 Years, Panch Ward No.8, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
12. Satrupa Ratnakar, W/o Shri Heeralal Ratnakar, Aged About 33 Years, Panch Ward No.9, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
13. Sukriti Lahare, W/o Shri Babulal Lahre, Aged About 32 Years, Panch Ward No. 10, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
14. Manjulata W/o Shri Ramesh Kumar, Aged About 25 Years, Panch Ward No. 11, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)
15. Manchitara Patel, S/o Shri Baniya Patel, Aged About 46 Years, Panch Ward No.12, Gram Panchayat Mudhpar (Chu) Janpad Panchayat Pamgarh, R/o Village Mudhpar, (Chu), Post Rasouta, Police Station & Tahsil Pamgarh, Civil and Revenue District Janjgir Champa (CG)

---- Respondents

For Appellants	:	Shri Prateek Sharma & Shri Ramesh Kumar Nayak, Advocates.
For Respondent No.1 to 4	:	Shri P. Bharat, Additional Advocate General
For Respondent No.5 to 15	:	Shri Manoj Paranjpe & Shri Vikram Dixit, Advocates.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu,J

Order on Board

Per Ajay Kumar Tripathi, CJ

11/12/2018

1. This appeal is on behalf of the appellants who are said to be Sarpanch and Up-Sarpanch of Gram Panchayat Mudpaar (Chu), Tahsil Pamgarh, District Janjgir-Champa. They also happen to be wife and husband.
2. Nine Panchas, out of total strength of thirteen, submitted a notice of 'no-confidence' against the appellants before the Prescribed Authority, said to

be the Sub-Divisional Officer (Revenue), Pamgarh. He being satisfied with the requirements of notice of 'no-confidence motion' convened a meeting for which notices were issued to all the Panchas fixing 9.7.2016 as the date for considering the motion of no-confidence. Meeting was held and nine panchas, who were signatories to the notice of no-confidence, participated, voted and carried the motion.

3. The appellants made a reference to the Collector, District Janjgir Champa under Section 21 (4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth 'the Act of 1993') challenging the proceedings of 'no-confidence motion' primarily on the ground that notices were not served on them and two other Panchas. Said plea was negated by the Collector and therefore the writ application was preferred against such decision.
4. Before the learned Single Judge a stand was taken that notices were not served on the appellants and two other Panchas and thereby they were deprived of their right to participate which in turn affected the motion of no-confidence in terms of Section 21 of the Act of 1993, which envisages 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 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) [two and half 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) [six months] 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.”

5. Argument built-up by the learned counsel for the appellants is that nine members, who gave notice of 'no-confidence', do not constitute majority in terms of Section 21 of the Act of 1993 because minimum votes required would have been '10' to carry 'no-confidence motion' and that is why a deliberate mischief was played to keep the Sarpanch and Up-Sarpanch as well as other two Panchas in dark.
6. Further argument is that the Collector wrongly came to a conclusion that notices were validly served because even the law makers have laid down a set of rules as to how the notices were required to be served. These Rules are known as the 'Chhattisgarh Panchayat (Method of Service of Notice and Document) Rules, 1995' (for short 'the Rules, 1995') and Rule 3 of which lays down the method and methodology of service as under:-

“3. Save as otherwise provided in the Act, the service of any notice or other document under the Act or under any rule, bye-law or order made thereunder on any person to whom it is by name address shall be effected-

- (a) by giving or tendering the said notice or document to such person; or
- (b) if such person is not found, by giving or tendering the same to some adult member or servant of his family; or
- (c) by sending the same by post under certificate of posting; or
- (d) if such person does not reside in the jurisdiction of Panchayat and his address elsewhere is known to the officer directing the issue of such notice or document by sending the same to him by registered post of acknowledgement:

Provided that if officer directing the issue of such notice or document is satisfied that the addressee is evading the notice or document and the notice or document cannot be served by the methods mentioned as above, the said officer shall cause such notice or document to be served by affixing a copy thereof upon some conspicuous part of the last known place of residence or business of the person concerned and service shall be as effectual as if it had been made on the address personally.”

7. Learned Single Judge took up the issue whether the notices were validly served on the appellants and two other Panchas or not, especially when it had been seriously disputed that there was no service of notice. He proceeded in the matter on the ratio of a decision rendered by the Madhya Pradesh High Court in **Kandhilal Patel and others v. State of MP & others** reported in **1999 (2) JLJ109**. Para-15 of the said decision has also been reproduced in Para-7 of the impugned order. Learned Single Judge decided that since there is a serious dispute regarding non-service of notice to the appellants and two other Panchas, the Collector ought to

have made an inquiry by allowing the parties to lead evidence, which had not been done in this case. The order passed by the Collector dated 3.7.2017 was therefore set aside and the matter was remanded back for reconsideration on the question of service of notice. It is this order which is being assailed by the Sarpanch & Up-sarpanch in the present appeal.

8. We fail to understand the reason as to why the appeal has been filed in the very first place because the thrust of argument of the appellants before the learned Single Judge was the issue of service of notice upon them and two other Panchas. Learned Single Judge accepted their submission, set aside the order of the Collector, who had held valid service upon them, and remanded back the matter giving liberty to the parties to lead evidence on the question of service of notice.
9. In our opinion, the appellants to that extent had succeeded in a significant way because motion of no-confidence was carried out on 9.7.2016, the dispute before learned Single Judge was decided on 6.9.2017 and now more than a year has elapsed during the pendency of appeal, which for all practical purposes has seen the major term of Sarpanch and Up-sarpanch through, virtually nullifying the will of majority of elected representatives by not allowing the vacant posts to be filled up due to litigation.
10. We have noticed from the evidence and material on record that notices were carried by the Secretary of Gram Panchayat to the appellants as well as two other Panchas, who claimed that no notice was served on them. The notices were tendered but there was refusal to accept and this fact is established by the endorsement made by five witnesses who had accompanied the Panchayat Secretary. Besides the above evidence, the affidavits came to be filed by some of the witnesses before the authorities including the Collector of the same said facts. Such evidence found basis

and reasons for the Collector to hold that there was valid service of notice.

11. The whole object and purpose including laying down certain procedure by way of the Rules, 1995 is to ensure notice to all the elected representatives, to ensure fair and free participation of elected representatives in the motion of no-confidence including giving an opportunity to the elected representative against whom such exercise had been set in motion. But such rules cannot be read or interpreted in a manner where a person can intentionally refuses acceptance of notice by a conscious decision with the sole object of frustrating or defeating the vote of no-confidence brought by the majority of elected representatives on hyper technicality. Question is whether he can be rewarded for his own conduct or wrong?
12. We have not seen any evidence except bald denial on behalf of the appellants that the notices, which were sought to be served upon them and two other Panchas, were only a paper transaction. No effort was made by the appellants to procure affidavits of any of the witnesses to show that they did not accompany the Secretary of Gram Panchayat when effort was made to serve notice on them, which they refused.
13. Motion of no-confidence brought against an elected representative is not a routine kind of exercise or process. Every such leader is aware of such exercise initiated. Service of such notice is to make him officially aware of the will of majority or their desire to put through a motion of no-confidence against him. If such candidates or elected representatives are allowed to make such submissions to defeat the law or the object then the Court cannot support such line of arguments which will make the salutary provision of legally replacing a leader, who has lost support of majority, by finding a replacement in whom they can put their trust in.

14. In the present case, the plea taken on behalf of appellants that no valid notice was served upon them or two panchas is required to be rejected. In the given facts where the plea of non-service of notice cannot be accepted on the face of it, there was no occasion for the learned Single Judge to quash the order of the Collector and remit the matter for taking fresh evidence or to hold an enquiry on the issue of service of notice.
15. In the peculiarity of facts and circumstances, even though the appeal is on behalf of the appellants, who were petitioners before the learned Single Judge and were aggrieved by the order of remand, but to do complete justice with the parties, we have dealt with the matter in totality and are constrained to set aside the order of learned Single Judge dated 6.9.2017.
16. The respondent authorities will proceed in accordance with law on the basis of motion of no-confidence having been carried in the meeting dated 9.7.2016 by majority of nine Panchas out of total strength of thirteen for the said gram panchayat. The respondent authorities are further directed to conduct election on the posts of Sarpanch & Up-Sarpanch of Gram Panchayat Mudpar (Chu) forthwith as the whole effort on behalf of the appellants have been to frustrate the motion of no-confidence, even though it was carried by the majority, by needless litigations.
17. The appeal stands disposed off with the above observations and directions.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-