

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 143 of 2019

- Smt. Sarita Sen W/o Late Yogesh Sen Aged About 30 Years
Sarpanch Mainpurkhurd, Tahsil- Mainpur, District- Gariyaband,
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of
Panchayat And Rural Development, Mahanadi Bhavan,
Mantralaya, New Raipur, District- Raipur, Chhattisgarh
2. The Additional Commissioner Raipur Division Raipur
Chhattisgarh
3. Collector Gariyaband District - Gariyaband Chhattisgarh
4. Sub- Divisional Officer Revenue Devbhog, District - Gariyaband
Chhattisgarh
5. The Chief Executive Officer Janpad Panchayat Mainpur Tahsil -
Mainpur, District - Gariyaband Chhattisgarh.
6. The Tahsildar Mainpur Presiding Officer Mainpur, Tahsil -
Mainpur, District - Gariyaband Chhattisgarh
7. Shri Mohd. Anis Solanki S/o Mohd. Hanif Solanki Panch Ward No.
19, Village Panchayat Mainpurkhurd
8. Smt. Geeta Thakur W/o Shri Shanker Thakur, Panch Ward No. 1,
Village Panchayat Mainpur Khurd
9. Smt. Budhiya W/o Chetan Nagesh Panch Ward No. 2, Village
Panchayat Mainpur Khurd
10. Smt. Jogini Pandey W/o Dilbar Pandey Panch Ward No. 4,
Village Panchayat Mainpur Khurd
11. Smt. Jogeshwar Dhruv S/o Shri Devji Dhruv Panch Ward No. 5,
Village Panchayat Mainpur Khurd
12. Smt. Saraswati Sinha W/o Yogendra Sinha Panch Ward No. 6,
Village Panchayat Mainpur Khurd
13. Smt. Kasturibai W/o Radhelal Panch Ward No. 7, Village
Panchayat Mainpur Khurd

14. Ku. Aarti Dhruv D/o Shri Nathuram Dhruv Panch Ward No. 8, Village Panchayat Mainpur Khurd
15. Shri Balihar Singh S/o Shri Mukund Singh Panch Ward No. 9, Village Panchayat Mainpur Khurd
16. Smt. Pavitra W/o Shri Mahesh Bambode Panch Ward No. 11, Village Panchayat Mainpur Khurd
17. Shri Virendra Shrivastava S/o Ramkumar Panch Ward No.12, Village Panchayat Mainpur Khurd
18. Smt. Kumaribai W/o Shri Amritlal Panch Ward No.13, Village Panchayat Mainpur Khurd
19. Balobai W/o Shri Roshan Panch Ward No.14, Village Panchayat Mainpur Khurd
20. Shri Rupesh Kashyap S/o Shri Puran Kashyap Panch Ward No.15, Village Panchayat Mainpur Khurd
21. Shri Brijlal S/o Bisahu Ram Panch Ward No.16, Village Panchayat Mainpur Khurd
22. Shri Baldev Ram S/o Dayaram Thakur Panch Ward No.17, Village Panchayat Mainpur Khurd
23. Smt. Kuntibai W/o Shri Harishankar Panch Ward No.18, Village Panchayat Mainpur Khurd
24. Smt. Vishaka Bai W/o Balkrishna Panch Ward No. 20, Village Panchayat Mainpur Khurd

Respondent No.7 to 24 R/o Village Mainpurkhurd, Tahsil Mainpur, District Gariyaband

---- Respondent

For Petitioner	Mr. Anand Shukla, Advocate
For Respondent/State	Mr. Rajesh R. Singh, Dy. Govt. Advocate

Order On Board By

Hon'ble Mr. Justice Prashant Kumar Mishra

15/1/2019

1. Heard.

2. Out of the total 20 members of the Panchayat, including the petitioner, who is the Sarpanch, 15 Panchas voted in favour of the motion of no confidence brought by the Panchas, 4 voted against it and one was declared invalid.
3. The petitioner was ousted from the office on passing of the resolution and thereafter, her application under Section 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short "the Adhiniyam, 1993") has been rejected by the Collector and the same has been affirmed by the Commissioner.
4. It is argued by learned counsel for the petitioner that the provisions contained in Rule 3(3) of the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janapad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994, have not been followed, in as much as, the concerned Prescribed Authority did not verify the signatures of the Panchas himself but delegated the same to the CEO, who, in turn, delegated the same to other officer of the Janpad Panchayat, therefore, the entire proceeding is vitiated. Reference is made to the Judgment of the Single Bench of the MP High Court in the matter of **Smt. Satya Prakash Parsadia Vs. State of M.P. and others, 2008 (3) MPHT 264.**
5. Once the petitioner lost the majority and has been unseated, as the motion of no confidence has been passed against her, the test of prejudice would come into play and the petitioner is required to demonstrate as to what prejudice is caused to her at

the time of voting which vitiated the entire proceedings. It is important to bear in mind that either before or after passing of the motion of no confidence, no Panchas, who were signatory to the motion of no confidence, have come forward to allege that his/her signature on the motion of no confidence was obtained by fraud or the same was not signed by him/her.

6. In the absence of any such fact available in the record and all the Panchas, who are signatory to the motion of no confidence, having voted against the petitioner, the resolution carrying motion of no confidence cannot be set at naught on technical grounds.
7. In the matter of **Smt. Satya Prakash Parsadia (supra)**, the Court was dealing with the proceedings under the Municipalities Act, 1961 for holding election for recall of the President of Municipal Council. In the said case, challenge was made before the voting, whereas, in the present case, voting has already taken place, therefore, the test of prejudice would apply as has been considered by the Full Bench of MP High Court in the matter of **Bhulin Dewangan Vs. State of MP and others, 2001 (2) MPLJ 372**, wherein, it has been held that there are several exceptions to the general rule that non-compliance of the mandatory requirement results in nullifying of the Act. The said requirement may be waived if no public interest is involved and in such a case, the act done will be valid even if the requirements or conditions have not been performed. It is further observed therein that in a given situation, even for non-

fulfillment of mandatory requirement, the authority empowered to take a decision may refuse to nullify the action on the ground that no substantial prejudice had been caused to the party affected or to any other party which would have any other substantial interest in the proceeding. It is also observed that the High Court under Article 227 of the Constitution of India has also a discretion not to interfere even though a mandatory requirement of law has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused.

8. There is no substance in the writ petition. It deserves to be and is hereby dismissed. Sd/-

(Prashant Kumar Mishra)

Judge

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