

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 73 of 2019**

{Arising out of Order dated 27.11.2018 passed in Writ Petition (C) No. 591 of 2018 by the learned Single Judge}

Smt. Karuna Sarve W/o Late Dinesh Chandra Sarve, R/o Village Kachanda,
Tahsil Navagarh, Civil And Revenue District- Janjgir-Champa, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Government Of Chhattisgarh, Mahanadi Bhawan, New Raipur, Civil And Revenue District- Raipur, Chhattisgarh.
2. Collector Janjgir Civil And Revenue District- Janjgir-Champa, Chhattisgarh.
3. Additional Commissioner Bilaspur Division, Civil And Revenue District- Bilaspur Chhattisgarh.
4. Sub Divisional Officer (Revenue) Janjgir, Civil And Revenue District- Janjgir-Champa, Chhattisgarh.
5. Tahsildar Navagarh, District- Janjgir-Champa, Chhattisgarh.
6. Chief Executive Officer Navagarh, Janpad Panchayat Navagarh, District- Janjgir-Champa, Chhattisgarh.
7. Birju Diwakar S/o Rambhu Diwakar Panch Ward No.7, Gram Panchayat Kachanda
8. Samaru Tandon S/o Sotiram Panch Ward No.15, Gram Panchayat Kachanda
9. Smt. Javabai W/o Santosh Kashyap Panch Ward No.19, Gram Panchayat Kachanda
10. Smt. Chandrakanta Kashyap W/o Suresh Kashyap Panch Ward No.11, Gram Panchayat Kachanda
11. Smt. Meenu Bai Manikpuri W/o Suresh Das Panch Ward No.05, Gram Panchayat Kachanda
12. Rajaram Sahu S/o Mukru Sahu Panch Ward No.03, Gram Panchayat Kachanda
13. Smt. Narmada Rai Sagar W/o Meghnath Panch Ward No.12, Gram Panchayat Kachanda
14. Smt. Rajkumari W/o Vijay Dhiwar Panch Ward No.18, Gram Panchayat Kachanda
15. Smt. Kanta Yadav W/o Dharmendra Panch Ward No.20, Gram Panchayat Kachanda

16. Smt. Savitri Rai Sagar W/o Gayatri Prasad Panch Ward No.02, Gram Panchayat Kachanda
17. Anoop Kumar Kashyap S/o Krishno Negi Panch Ward No.06, Gram Panchayat Kachanda
18. Raju Rai Sagar S/o Ramanuj Panch Ward No.13, Gram Panchayat Kachanda
19. Umalal Sahu S/o Guharam Panch Ward No.17, Gram Panchayat Kachanda
20. Itwari Yadav S/o Firha Ram, Panch Ward No.03, Gram Panchayat Kachanda
21. Radhe Yadav S/o Puru Yadav, Panch Ward No.16, Gram Panchayat Kachanda
22. Smt. Rameshwari W/o Ramkumar Kashyap, Panch Ward No.10, Gram Panchayat Kachanda
23. Smt. Bhagwati Kashyap W/o Santosh Kashyap, Panch Ward No.09, Gram Panchayat Kachanda
24. Smt. Ishwari Khandekar W/o Ramgilass, Panch Ward No.14, Gram Panchayat Kachanda
25. Arjun Lal S/o Teturam Panch Ward No.04, Gram Panchayat Kachanda
26. Badrika Bai Sahu W/o Geeta Prasad Panch Ward No. 08, Gram Panchayat Kachanda

Respondents No. 07 to 26 R/o Kachanda, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh.

---- Respondents

For Appellant	: Shri Ramesh Kumar Nayak, Advocate.
For Respondent/State	: Shri Gagan Tiwari, Deputy Government Advocate.
For Respondents No. 16 to 26:	Shri Amit Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, J

09/07/2019

1. Challenge in this appeal is to the order dated 27.11.2018 passed in Writ Petition (C) No. 591 of 2018 whereby the writ petition filed by the Appellant was dismissed holding that the Presiding Officer has conducted the meeting of no confidence motion in accordance with law.

2. The case of the Appellant is that she was the elected Sarpanch of Gram Panchayat, Kachanda, Tahsil Navagarh, District Janjgir-Champa. The total number of Panchas in the said Gram Panchayat is 21. The Panchas of said gram panchayat had made an application before the Prescribed Authority for holding a meeting for no confidence motion against her. After going through the application submitted by the Panchas, the Prescribed Authority had fixed the meeting of no confidence motion to be held on 09.03.2017 at 12:00 noon.
3. Meeting took place and motion was said to be passed by majority. The Presiding Officer submitted report of passing of no confidence motion to the Prescribed Authority i.e. the Sub Divisional Officer (Revenue) and in turn who passed order. Proceeding of motion of no-confidence and order of Sub Divisional Officer (Revenue) was challenged before the Collector under Section 21(4) of the of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (*for short 'the Adhiniyam'*) which was dismissed. The order of Collector was challenged before the Commissioner who allowed the revision on the basis of arguments raised before it. Order of Commissioner was challenged by the Respondents herein in writ petition which was allowed and order passing of no-confidence motion with majority was upheld.
4. The learned Single Judge, after taking into consideration the notice issued to the Panchas (Annexure P/3) and the minutes of the meeting (Annexure P/4) which has been recorded by the Presiding Officer during course of conducting the meeting of no confidence motion, dismissed the writ petition and affirmed the order passed by the Collector under Section 21(4) of the Adhiniyam by observing thus:

"8. The present is a case where the Sarpanch or the other absent panchas have not raised any protest at the time when the meeting took place. It remained open for the parties to have raised objection that since the meeting is not taking place at the time mentioned in the notice it should be

called off treating the motion of no confidence to have failed. Any subsequent assertion of a fact, which is not recorded or for which there is no hint in the resolution cannot be a ground for directing an enquiry as if the Collector under Section 21(4) is holding a civil trial."

5. Learned counsel for the Appellant submits that as per the time and place fixed in the notice, the Appellant alongwith other four Panchas who are Respondents No. 7 to 10 herein kept themselves present but the Presiding Officer did not reach the venue within time fixed for the meeting. His argument is that the Presiding Officer came late and started the meeting after two hours of the time prescribed in the meeting, and therefore, the Panchas supporting the Appellant could not made themselves present to participate in the meeting for motion of no confidence. He further submits that the Appellant was not permitted to speak in the meeting and further that proper procedure of voting has not been adopted by the Presiding Officer.
6. Per contra, learned counsel appearing for the State as well as the private Respondents would vehemently argue that the documents annexed alongwith the writ petition itself shows that the Presiding Officer has conducted the meeting of no confidence motion strictly in accordance with law. The appellant was allowed to speak in the meeting and the voting took place through ballot papers, therefore, the ground raised by the Appellant does not subsist.
7. We have heard learned counsel for the parties and perused the records.
8. Perusal of the minutes of the meeting filed as Annexure P/4 alongwith the writ petition where in a very specific terms it has been recorded that on the fixed place and time, the meeting for no confidence motion started and the Appellant has been provided an opportunity to speak and thereafter, ballot papers were also issued to the Panchas present at the place of meeting. The Panchas were also explained as to how the vote is to be casted in favour or against. The minutes of the meeting also records that at the time of holding

of the meeting of no confidence, 16 out of total 21 Panchas were present. 15 Panchas voted in favour of the motion whereas only one voted against the motion. Presence of Panchas and majority voted in favour of motion of no confidence was in conformity with Section 21 of the Adhiniyam, 1993. After recording that the majority of Panchas have voted in favour of the motion, reported the Prescribed Authority that motion was carried out. We do not find any error or violation of any rule from the proceeding of no confidence motion drawn by the Presiding Officer. The factual grounds raised by Appellant could not be substantiated by any reliable documentary evidence.

9. Once the Appellant who was an elected Sarpanch lost confidence of the majority of the Panchas, then under a democratic set up, she has no right to hold the post any further.
10. In view of the aforementioned facts and figures available on record, we do not find that there is any infirmity in the order passed by the learned Single Judge. The writ appeal deserves to be and is accordingly hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE