

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 116 of 2017**

Bajinath Patel S/o Late Shri Puran Lal Patel, Aged About 50 Years Sarpanch Of Village Panchayat Kadadarha, P. S. And Tehsil Bagbahara, District Mahasamund Chhattisgarh.

---- Appellant

Versus

1. Collector Mahasamund District Mahasamund Chhattisgarh.
2. Sub Divisional Officer Revenue, Mahasamund District Mahasamund Chhattisgarh.
3. Tahsildar, Mahasamund District Mahasamund Chhattisgarh.
4. Smt. Bed Bai Patel, W/o Devlal Patel, Aged About 32 Years Up-Sarpanch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
5. Smt. Mamta Sabar, W/o Ravishankar Aged About 25 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
6. Hemchand Sabar, S/o Jagat Ram, Aged About 38 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
7. Bhuneshwar Patel, S/o Deendayal, Aged About 36 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
8. Shekhar S/o Daulatram, Aged About 32 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
9. Kushal Ram Sahu, S/o Chhaganlal, Aged About 50 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
10. Smt. Champeshwari, W/o Manoj Kumar Sabar, Aged About 26 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
11. Smt. Prembai W/o Kheduram Sahu, Aged About 53 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
12. Narendra Kumar Sahu, S/o Tike Lal, Aged About 30 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
13. Smt. Surja Bai W/o Arun Kumar Sahu, Aged About 35 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
14. Smt. Mehatarin Tande, W/o Purshottam Tande, Aged About 56 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.
15. Smt. Vimla Bai, W/o Devlal Sahu, Aged About 38 Years Panch, R/o Village Panchayat Kadadarha, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh.

---- Respondents

For Appellant	: Shri V.K. Pandey, Advocate.
For Respondent/State	: Shri Vikram Sharma, Panel Lawyer.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

08/03/2019

Per Ajay Kumar Tripathi, Chief Justice

1. The matter is heard for final disposal.
2. The Appellant was Sarpanch of Gram Panchayat Kadadarha, Tahsil Bagbahara, District Mahasamund. He was removed by passing a resolution of no confidence on 07.09.2016. He decided to challenge the motion of no confidence by moving the writ Court since even the Collector did not entertain the objection or the plea of the Appellant that a second no confidence motion could not have been brought in violation of Section 21(3)(iii) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Act, 1993').
3. It was the case of the Appellant before the learned Single Judge that a motion of no confidence was earlier brought by the Panchas on 19.07.2016. Such application for a motion of no confidence stood rejected by the prescribed authority on 23.08.2016 meaning thereby that the vote of confidence was never placed on the floor of the house by convening a meeting of the elected representative to debate on the motion of no confidence. The second motion was brought on 26.08.2016 which was obviously less than one year of so-called previous motion of no confidence and a plea was taken that the second motion ought not to have been entertained by the prescribed authority and if the meeting was convened where no confidence got carried and Appellant removed, the same was required to be interfered with.
4. Since the argument hinges around the statutory provision, the Court would like to reproduce the same:-

“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 Panhas 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 proceedings 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. (emphasis ours)

(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. The argument of the counsel for the Appellant before the learned Single Judge and even before us is that as per Section 21(3)(iii) of the Act, 1993, the embargo of one year from the date of previous motion of no confidence talks of rejection. Submission is that any and every kind of rejection of the previous motion of no confidence will come in the way of a second motion of no confidence.

6. Admitted position in the present case is that the earlier motion of no confidence was rejected by the prescribed authority for the infirmities noted by him. The motion was never brought before the house, therefore, it was no motion in the eyes of law.

7. From a reading of the statutory provision of Section 21, especially sub-section (3), it is evident that the no confidence must be brought before the august house and only on its rejection, the statutory bar of one year before the second motion could be entertained will kick in. If there was no occasion for the house to consider or debate the motion of no confidence earlier and such motion was rejected at the threshold by an executive authority, the word 'rejected' here will not mean rejection by the executive authority or the prescribed authority, but rejection by the august house.

8. The learned Single Judge was conscious of such position as well as the possibility of mischief which could be played around with the statutory provision if the word 'rejected' is interpreted lightly in following words:-

“8. To attract the bar contained under Section 21 (3) (iii), the rejection of motion of no confidence should be on merits and not on mere technicalities. This interpretation would serve the legislative intent because the set up of the provision contained in the Adhiniyam, 1993 and the Rules, 1994 needs adherence to the rule of purposive construction. The purpose being not to allow an incumbent Sarpanch who has lost the confidence of the house to remain in the office on the strength of technicalities, but not when the house had no occasion to discuss and vote on the motion. In a given case, the prescribed authority or any other officer may protect the incumbent Sarpanch who has lost the confidence of the house by not acting on the application for convening a meeting to consider the meeting of no confidence.

9. Likewise, the Sarpanch may himself initiate such motion by acting in collusion with some supporting Panchas and, thereafter, getting it rejected on the ground of non-compliance of the provisions under the rules. To avoid such misuse of legal provision either by the prescribed authority or by the incumbent Sarpanch, the rejection of motion of no confidence as referred in Section 21 (3) (iii) of the Adhiniyam, 1993 has to be read as rejection on merits and not on technical grounds.

10. If the matter is considered from another angle, the application for initiation of proceedings for consideration of motion of no confidence does not become a motion unless it is tabled in the house and discussed for consideration on merits. Till the application remains in the hands of prescribed authority either at the stage of verification of signature or up to the time before holding of meeting, it does not convert into consideration on the motion of no confidence by the house but it remains in the pipeline for

consideration of the motion, therefore, to call it 'a motion of no confidence' in real terms, it has to be considered by the house and not at any stage prior to that. Before this stage, it merely remains a proposal for bringing a motion of no confidence and it remains in pipeline in form of an application.

11. While taking the above said view, I am fortified by the judgment rendered by the High Court of Madhya Pradesh in Babpusingh, S/o Ghisaji v. State of M.P. reported in 1989 MPLJ 322. In the said decision, the High Court of Madhya Pradesh held thus at paras 13 & 14 :

“13. The word 'reconsideration' in sub-section clause (3) has a material meaning i.e. when once the no-confidence motion is placed before the House and after it is thought over by the members and thereafter it is disposed of then it can be said that it cannot be reconsidered as it was disposed of. From the order of the Chairman of the specially convened meeting it is evident that it was not considered at all by the members of the House. Section 14(2)(iii) is also relevant for the purposes of consideration when the motion of no-confidence is placed before the House, which speaks that the Chairman or Vice-Chairman, as the case may be, shall have a right to speak and otherwise to take part in the proceedings of the meeting.

14. In the present case, as the motion of no-confidence was not placed for disposal before the House it cannot be said that the no-confidence motion moved was finally disposed of and cannot be placed for reconsideration against the petitioner. The prohibition under sub-section (3) of Section 14 of the Adhiniyam is reconsideration of no-confidence motion within six months from the date of disposal of the earlier no-confidence motion. Besides the word 'consideration' and word 'disposal' are also very relevant which denote to deal with the motion definitely. This having not been done, the bar of sub-section (3) of Section 14 does not come into play.”

9. We have difficulty, therefore, in the above background to accept the argument of learned counsel for the Appellant that rejection by any authority to a motion will amount to rejection by the house and therefore, they will be precluded or barred from bringing another no confidence before one year period expires.

10. It is the democratically elected members of the house who only have the powers to either repose faith in the leadership or withdraw confidence in the said leadership. If any interpretation in line of argument made on behalf of the Appellant

is accepted, then the elected representative will have no role to play in taking a decision which is their valuable right to either elect or replace the leadership.

11. The appeal therefore has no merit. It is dismissed as there is no infirmity in the view so taken by the learned Single Judge in the writ case.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Anu