

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 91 of 2019**

{Arising out of order dated 23.10.2018 passed in Writ Petition (C) No. 1676 of 2018 by the learned Single Judge}

Smt. Gulab Bai Maitri W/o Shri Jageshwar Maitri Aged About 45 Years R/o Village Thakurpali, post Office Churaghantha, Police Station And Tahsil Dabhara, Civil And Revenue District Janjgir Champa Chhattisgarh.

----Appellant

Versus

1. State of Chhattisgarh Through The Secretary Panchayat Rural Development Department Government Of Chhattisgarh, Mahanadi Bhawan New Raipur Civil And Revenue District Raipur Chhattisgarh.
 2. Collector Janjgir District Election Officer (Panchayat) Janjgir Champa Chhattisgarh.
 3. Shri Anupam Tiwari Sub Divisional Officer (Revenue) Dabhara/ Competent Authority District Janjgir Champa Chhattisgarh.
 4. Shri Neelam Toppo Presiding Officer And Tahsildar Dabhara ,district Janjgir Champa Chhattisgarh.
 5. Shri Padum Lal Patel Panchayat Social Education Officer (Panchayat Inspector) Janpad Panchayat Dabhara Tahsildar, Navagarh District Janjgir Champa Chhattisgarh.
 6. Smt. Ahibaran Maitri W/o Shri Mayaram Maitri Aged About 68 Years Panch Ward No. 1,gram Panchayat Thakurpali
 7. Smt. Mohanmati Maitri W/o Shri Hemchand Matri Aged About 40 Years Panch Ward No. 2,gram Panchayat Thakurpali
 8. Smt. Reeta Bai Chauhan W/o Shri Kamta Prasad Chauhan Aged About 26 Years Panch Ward No. 3,gram Panchayat Thakurpali
 9. Shri Muralidhar Chauhan S/o Shri Ramesh Chauhan Aged About 41 Years Panch Ward No. 4,gram Panchayat Thakurpali
 10. Shri Than Singh S/o Shri Neelambar Singh Maitri Aged About 39 Years Panch Ward No. 5,gram Panchayat Thakurpali
 11. Smt. Anjani Bai Bareth W/o Shri Dularam Bareth Aged About 28 Years Panch Ward No. 6,gram Panchayat Thakurpali
 12. Smt. Bhojkunwar Maitri W/o Shri Devnarayan Maitri Aged About 53 Years Panch Ward No. 7,gram Panchayat Thakurpali
- Respondent No. 6 to 12 are Resident of village Thakurpali, Post Office Churaghantha, Police Station and Tahsil Dabhara, Civil and Revenue District Janjgir Champa, Chhattisgarh.
13. Smt. Devna Bai Yadav W/o Shri Dilchand Yadav Aged About 44 Years Panch Ward No. 8, Gram Panchayat Thakurpali
 14. Smt. Nandani Maitri W/o Shri Mohankant Maitri Aged About 30 Years Panch Ward No. 9, Gram Panchayat Thakurpali
 15. Shri Sanjay Jangde S/o Shri Moharsai Jangde Aged About 28 Years Panch Ward No. 10, Gram Panchayat Thakurpali

Respondent No. 13 to 15 are R/o Village Semradih Post Office Kirari (D) ,police Station And Tahsil Dabhara Civil And Revenue District Janjgir Champa

Chhattisgarh.

16. Shri Bharos Kumar S/o Shri Laharam , Aged About 44 Years Panch Ward No. 11 Gram Panchayat Thakurpali
17. Smt. Sukanti Bai W/o Shri Jogilal Aged About 48 Years Panch Ward No. 12 Gram Panchayat Thakurpali
18. Shri Puran Das Bairagi S/o Shri Bhagwati Das Aged About 69 Years Panch Ward No. 13 Gram Panchayat Thakurpali
19. Smt. Fuleshwari Chandra W/o Shri Manohar Chandra Aged About 27 Years Panch Ward No. 14 Gram Panchayat Thakurpali
20. Shri Rajkumar Maitri S/o Shri Kanhaiya Maitri Aged About 46 Years Panch Ward No. 15 Gram Panchayat Thakurpali

Respondent No. 16 to 20 are R/o Village Hardidih, Police Station And Tahsil Dabhra Civil And Revenue District Janjgir Champa Chhattisgarh.

---- Respondents

For Appellant	: Shri K.A.Ansari, Senior Advocate with Shri Ramesh Kumar Nayak, Advocate.
For Respondent/State	: Shri R.S.Baghel, Deputy Advocate General.
For Private Respondents	: Shri Yogesh Chandra, Advocate.

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

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

13/02/2019

1. Heard learned counsel for the parties.
2. Appellant filed a writ application since by a vote of no confidence, she was removed from the post of Sarpanch of Gram Panchayat, Thakurpali, Janpad Panchayat, Dabhra. A meeting was convened on the motion of no confidence moved by 15 members of the Gram Panchayat on 31.01.2018, after verification of the membership and signatures of the signatories by the Sub Divisional Officer (Revenue). The meeting did take place on 31.01.2018 at the scheduled time and the motion of no confidence got carried by majority, since 12 out of 16 members present, voted in favour of the motion of no confidence and 4 voted against the motion.

3. Against the decision of the august house, she preferred an application under Section 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 before the Collector, Janjgir-Champa. She levelled various allegations in the manner in which the vote of no confidence was carried including the way the meeting itself was convened. However, the primary thrust of the argument was focused on the vote casted by one of the Panchayat member namely Bhojkunwar Maitri. It was alleged that she was allowed help of a companion/assistant to cast her vote which violated the secrecy of the vote and therefore, her vote should not be counted. If the objection in relation to her voting is sustained, the vote of no confidence fails.
4. Since such allegation was made against the said Panchayat member, the Collector allowed the said Panch-Bhojkunwar Maitri to file an affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 giving her a chance to explain her conduct. The affidavit is available on record, however the same is being read by the learned senior counsel representing the Appellant in a way which favours his line of argument. His contention is that in absence of any rules, the Presiding Officer could not have allowed assistance to the said Panch in casting her vote and since it is an accepted position that she was allowed assistance, the Collector committed an error by not interfering with the resolution taken in the vote of no confidence.
5. We have gone through the affidavit filed by Bhojkunwar Maitri herself before the Collector. She states in the affidavit that because of her age and physical difficulty in movement as well as sight, she was provided assistance by her nephew in locomotion, but she also categorically states that she casted the vote in favour of the motion by ticking the box by herself and that the companion i.e. the nephew had no role to play in the casting of the vote by her.

6. After having heard learned senior counsel for the Appellant, learned counsel for the State and the private Respondents, in absence of any unimpeachable evidence to show that the statement made in the affidavit filed by Bhojkunwar Maitri did not reflect the correct position, we have to go by the evidence available on record and what better evidence it could be than the affidavit on behalf of the said Panch herself stating that the vote was casted by her personally without any undue influence or assistance in the exercise of voting by her nephew.
7. If, in this background, the learned Single Judge refused to interfere with the decision, we are of the opinion that he has committed no wrong because even in the appeal, nothing new has come which will belie the findings recorded by the learned Single Judge that Bhojkunwar Maitri was assisted by her nephew only till the ballot box and therefore, it was her decision and doing where nephew played no role.
8. The fact is that the Appellant has lost the confidence of the majority and the whole legal battle is to hang on to that post and position through assistance from the Court and not the people's trust which alone can be the deciding factor in such a situation.
9. We also further record that we do not find any infirmity either from the stage of notice of no confidence drawn against the Appellant till passing of the resolution.
10. The appeal therefore has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE