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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 17 of 2019**

Smt. Rambai Baghel W/o Channu Ram Baghel Aged About 50 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department Mahanadi Bhawan, Atal Nagar, District Raipur, Chhattisgarh.
2. Commissioner Division Raipur, District- Raipur, Chhattisgarh.
3. Collector Raipur, District- Raipur, Chhattisgarh.
4. Sub Divisional Officer Raipur, District- Raipur, Chhattisgarh.
5. Tehsildar/returning Officer Tehsil Dharsiva, District- Raipur, Chhattisgarh.
6. Chief Executive Officer Janpad Panchayat, Dharsiva, District- Raipur, Chhattisgarh.
7. Jhannu Lal Nishad S/o Late Shri Samliya Ram Nishad Aged About 50 Years Up - Sarpanch R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District Raipur Chhattisgarh.
8. Kripa Ram Dhruv S/o Shri Dhanush Ram Dhruv Aged About 45 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District- Raipur Chhattisgarh.
9. Sunita Bai Nishad W/o Suvit Nishad Aged About 35 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District- Raipur Chhattisgarh.
10. Shanti Dewangan W/o Janak Ram Dewangan Aged About 65 Years Gram Panchayat Baratnara, Tehsil Dharsiva, District Raipur Chhattisgarh.
11. Chaman Lal Chakradhari S/o Late Orbahara Ram Aged About 48 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District- Raipur Chhattisgarh., District : Raipur, Chhattisgarh
12. Kamal Kumar Kumbhkar S/o Late Kheduram Aged About 52 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District Raipur Chhattisgarh.
13. Shakuntala Dewangan W/o Bad Ram Dewangan Aged About 43 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District-Raipur Chhattisgarh.
14. Purnima Dhruva W/o Bodhan Dhruva Aged About 45 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District- Raipur Chhattisgarh.
15. Shail Verma W/o Ram Prasad Verma Aged About 48 Years R/o Gram Panchayat Baratnara, Tehsil Dharsiva, District- Raipur Chhattisgarh.

---- Respondents

For Appellant	: Shri Y.C. Sharma, Advocate.
For Respondent/State	: Shri Siddharth Dubey, Deputy Government Advocate.
For Respondent No.7 to 15	: Shri Ashutosh Pandey, Advocate.

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

Judgment on Board

19/03/2019

Per Ajay Kumar Tripathi, Chief Justice

1. Heard counsel for the parties.
2. The learned Single Judge allowed the writ application filed on behalf of the nine Panchas of Gram Panchayat Baratnara, Tahsil Dharsiva, District Raipur, Chhattisgarh by setting aside the order passed by the Commissioner, Raipur Division which was moved by the outgoing Sarpanch against the motion of no confidence, which was passed by majority.
3. The learned Single Judge took note of the sequence of events and recorded the following finding as well as the arguments made before him:-

“2. Few dates are relevant which are required to be mentioned for appreciating the controversy. For moving a motion of no confidence against the respondent No.7 – Smt. Rambai Baghel of Gram Panchayat, Baratnara, Tahsil Dharsiva, District Raipur, the petitioners, who are Panchas of said Gram Panchayat, moved an application before the prescribed authority on 13-11-2017 expressing their intention to bring motion of no confidence against the Sarpanch. Signatures of the Panchas were verified by the Sub Divisional Officer on 16-11-2017 and the date for considering the meeting of no confidence motion was fixed on 25-11-2017, however, while issuing the notice the prescribed authority mentioned the date of meeting as 4-12-2017 instead of 25-11-2017 and the meeting was, in fact, held on 4-12-2017. In the said meeting the respondent No.7-Smt. Rambai Baghel was not present and all other members of Gram Panchayat, who are 10 out of total 11 members, voted in favour of motion of noconfidence ousting the Sarpanch from the office.

3. Application under Section 21 (4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Act, 1993') was dismissed by the Collector, Raipur, against which the Sarpanch moved a revision application before the Commissioner, Raipur Division, which has been allowed only on the ground that there are corrections in the order sheet and the meeting has been fixed beyond the period of 15 days, which is not in accordance with 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 (for short 'the Rules, 1994').

4. The issue that the requirement of fixing the meeting not beyond the period of 15 days from the date of application is mandatory is no longer res integra, as the Division Bench of the High Court of Madhya Pradesh in **Muku Bai v State of Madhya Pradesh and Others, 1998 (2) MPLJ 661**, has held that the requirement of holding meeting not beyond 15 days as provided under Rule 3 (3) is mandatory, as the statute uses the word 'shall' directing the prescribed authority that he shall call meeting within 15 days from the date of receipt of notice. The Division Bench observed that in democracy, the rule of law is supreme and once the law says that such important meeting like motion of no confidence should be convened within 15 days from the date of receipt of notice, then it should be given its natural meaning and the intention of the Legislature is that the meeting shall be convened within 15 days. Despite holding thus, the Division Bench refused to set aside the resolution passing the no confidence motion on the ground that matter of no confidence motion is an important part of democracy and that a person who has lost majority has no right to rule.

5. In addition to what has been held by the Division Bench of the High Court of Madhya Pradesh in Mukhi Bai (supra), it is also to be seen that if the functioning of the democratic institution, at the grass root level, is left at the mercy of prescribed authority any influential Sarpanch or his political boss may dent the sanctity of the provisions concerning holding of meeting to consider no confidence motion by committing deliberate mistakes providing a ground for interference in favour of Sarpanch. The fact that the Sarpanch in the present case was aware of the outcome of the meeting of no confidence motion is writ large for the simple reason that having sensed the inevitable she remained absent from the meeting as either she had no explanation to offer to the members of the Panchayat or was aware that she is most likely to be ousted from the office.

6. Learned State counsel has made available to this Court the original record of the proceedings which makes an interesting reading inasmuch as in the order sheet dated 16-11-2017 the prescribed authority would mention in the last paragraph that the meeting shall be convened on 25-11-2017 i.e. well within time of 15 days, but has subsequently issued notices to the members of the Panchayat informing them that the motion of no confidence shall be considered on 4-12-2017. In the order sheet date of 4-12-2017 was never fixed for

consideration of the motion of no confidence. At the bottom of order sheet of 16-11-2017 the date 4-12-2017 is mentioned as the next date when the authorised officer would inform the prescribed authority about the outcome of the meeting which was to be held on 25-11-2017. When the office clerk prepared the notice fixing the date 4-12-2017 it was the duty of the authority to have verified the date from the order sheet and by not doing so the prescribed authority has allowed occurrence of such mistake knowing fully well that he has not fixed the date for 4-12-2017.

7. Rule of law and the principles of governance at the grass root level cannot be left at the mercy or at the ransom of the prescribed authority or his clerks, therefore, even if Rule 3 (3) of the Rules, 1994 providing for holding of meeting within 15 days is mandatory, in the facts and circumstances of the case the Commissioner, Raipur Division ought not to have interfered with the motion of no confidence, which has been passed by majority where no other member of Panchayat has voted in favour of respondent Sarpanch.

8. Thus, the order passed by the Commissioner deserves to be and is hereby quashed. The motion of no confidence against the respondent No.7 – Smt. Rambai Baghel is held to be validly passed in the meeting dated 4-12-2017. Consequently, the respondent No.7 - Smt. Rambai Baghel ceases to be the Sarpanch of Gram Panchayat, Baratnara, Tahsil Dharsiva, District Raipur.

9. As a sequel, the writ petition is allowed, leaving the parties to bear their own cost(s)."

4. What emerges from the record as well as finding recorded by the learned Single Judge is that all the nine Panchas who had given the requisition for convening a vote of no confidence in one unison had voted against the Appellant and obviously, there was an effort made by some vested interest to create some confusion with regard to the conduct of the meeting for no confidence motion. The fact that notices were issued, meeting was convened and except for the Appellant, everybody participated and all voted in support of no confidence, was the primary reason for the learned Single Judge to set aside the order of the Commissioner who missed the core issue and the mischief which was going to add to the advantage of the Sarpanch against whom the majority voted.

5. In the given facts, therefore, no interference is required with the order of the learned Single Judge.

6. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Anu