

(2017) 02 CHH CK 0034
In the Chhattisgarh High Court
Case No : 2705 of 2016

Bajinath Patel

APPELLANT

Vs

Collector, Mahasamund District Mahasamund Chhattisgarh &
Ors

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993, Section 14(2)(iii), Section 14(2)(iii), Section 21(3)(iii), Section 21(3)(iii)

Citation : (2017) 02 CHH CK 0034

Hon'ble Judges : Prashant Kumar Mishra

Bench : Single Bench

Advocate : V.K. Pandey, S.M. Ali, Varunendra Mishra

Judgement

1. Petitioner is an ousted Sarpanch of Gram Panchayat Kadadarha, Tahsil Bagbahara, District Mahasamund. The office bearers of the said Gram Panchayat ousted him by passing a resolution on the motion of no confidence brought against the petitioner on 7-9-2016.

2. There is no dispute about the satisfaction of the Rules as contained in the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 ("the Rules, 1994" henceforth) in so far as it relates to adherence of the procedure and meeting out the required number of panchas for passing a resolution of motion of no confidence.

3. The short question fallen for consideration in this petition is that - in what circumstances a motion of no confidence brought earlier, but rejected within a period of one year would be a bar for consideration of fresh motion of no confidence by the Gram Panchayat ?

4. Shri Pandey, learned counsel appearing for the petitioner, would argue that the motion of no confidence was brought by the Panchas on 19-7-2016, which was

rejected by the prescribed authority himself on 23-8-2016 and thereafter, the second motion was brought on 26-8-2016 i.e. within a period one year, which is not permissible in view of the provisions of Section 21 (3) (iii) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 ("the Adhiniyam, 1993" henceforth).

5. Per contra, learned counsel appearing for the respondents including learned State counsel would argue that to attract the bar under Section 21 (3) (iii) of the Adhiniyam, 1993 the previous motion of no confidence should have been rejected on merits and not on technical grounds.

6. To dilate on the issue, it would be necessary to refer to Section 21 (3) (iii) of the Adhiniyam, 1993, which provides that no confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of one year from the date on which previous motion of no confidence was rejected.

7. In the case at hand, the prescribed authority rejected the application moved by the Panchas for bringing the motion of no confidence on the ground that since the period of 15 days had already elapsed from the date of moving the application, the application itself elapsed in view of Rule 3 of the Rules, 1994 which mandates that when an application is presented before the prescribed authority for initiating the motion of no confidence the meeting has to be fixed within 15 days from the date of receipt of application. Having noticed the provision, when the first motion of no confidence was processed, the Sub Divisional Officer had no option, but to reject the application, however, the fact remains that the motion of no confidence was never discussed in the house.

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.

12. For the foregoing, this Court is of the considered view that the present motion of no confidence passed against the petitioner was competent, as it does not attract the bar under Section 21 (3) (iii) of the Adhiniyam, 1993.

13. In the result, the writ petition, sans merit is liable to be and is hereby dismissed. No order as to cost(s).