
(1974) 07 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 110 of 1971

Bansilal Motilal

APPELLANT

Vs

O.V. Nagar, Collector and others

RESPONDENT

Date of Decision : 24-07-1974

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 117(2)(ii), 120

Citation : (1975) JLJ 504

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.L. Garg, for the Appellant; P.L. Mehta, A.G.A and G.P. Shahu, for the Respondent

Final Decision : Dismissed

Judgement

G. L. Oza, J.—This petition has been filed by the petitioner challenging the resolution of no-confidence passed against him as the President of the Janapada Panchayat on 10-9-1971.

2. The facts relevant for the purpose of decision of this petition are that the petitioner was the resident of village Ojhar, Tehsil Rajpur District West Nimar and that he was elected as a member of the Gram Panchayat in the elections held in April 1970 for the Gram Panchayat Ojhar. He is also unanimously elected to represent the Ojhar Gram Panchayat in the Janapada Panchayat Rajpur and thereby he was elected as a member of the Janapada Panchayat Rajpur. On 29-5-1971 the petitioner was elected as the president of the Janapada Panchayat Rajpur and his election was notified by respondent No. 1 on 10-6-1971. It is alleged that respondent No. 18, who was also a candidate at the election of the President of the Janapada Panchayat, filed an election petition challenging the election of the petitioner as President. It is also alleged that thereafter on an application by respondent No. 18 in the election petition, the election of various sub-committees of the Janapada Panchayat was stayed but later, on cause being shown by the petitioner before respondent No. 1, the stay order was vacated. It

is alleged that even thereafter the petitioner was not permitted to function as the President of the Janapada Panchayat by respondent No. 1 by various methods, but all that was alleged was only to show that respondent No. 1 was acting prejudicially against the petitioner. It is further alleged that on 17-8-1971 respondent No. 18 gave a notice of a motion of no-confidence and a copy of this notice was sent by respondent No. 18 to respondent No. 1 with a request to appoint an officer to preside over the meeting u/s 117 (2) sub-clauses (ii) and (iii) of the Madhya Pradesh Panchayats Act. This notice was signed by respondent No. 18 alone according to the petitioner. On this notice, it is alleged that respondent No. 1 passed an order appointing respondent No. 2 to preside over the meeting as the prescribed authority to consider the motion of no-confidence against the petitioner; and in accordance with this order respondent No. 3 issued a notice on 1-9-1971 to the President, Vice-President and other members of the Janapada Panchayat Rajpur informing them that a meeting of the Panchayat was called on 10-9-1971 at 12.00 Noon to consider a no-confidence motion, notice of which was given by Shri Ummedsingh, against the petitioner. In accordance with this notice, it is alleged that the meeting was held on 10-9-1971 and it was presided over by respondent No. 2 and the resolution was passed by 16 votes to 8 and therefore it was declared to be passed. The contention raised in this petition is that this meeting was illegal and therefore the resolution of no-confidence could not be said to have been passed by a valid meeting of the Janapada Panchayat.

3. The main contention advanced by learned counsel for the petitioner is that u/s 120 of the Madhya Pradesh Panchayats Act (hereinafter referred to as "the Act") whenever a requisition for consideration of a no-confidence motion is received, a special meeting could be called by the President. But such a requisition must be in writing by not less than one-half of the total number of members of the Janapada Panchayat. Consequently, it was contended that the meeting convened for consideration of the no-confidence motion, notice of which was given only by respondent No. 18, could not be said to be a valid meeting so, the resolution could not be said to have been passed against the petitioner. However, it was contended for the respondents that the meeting contemplated u/s 120 (2) is a special meeting and section 120 does not deal with the question of no confidence. Sub-section (2) of section 120 only provides that in addition to normal General meeting, special meetings may be convened by the President for transacting general business if a requisition is submitted by not less than one half of the total number of members. But, for the consideration of the question of no-confidence, section 117 has especially been enacted; and section 117 contemplates a meeting to be held giving seven days clear notice for consideration of such resolution and it also provides as to who shall preside over such meeting. Section 117 does not provide as to how notice of a motion of no confidence is to be given. Normally, therefore, the rules of conduct of business framed u/s 119 will be applicable. Rule 14 of these rules provides for notice of resolution and Rule 2 provides for the agenda for the meeting to be fixed by the

Chief Executive Officer. Consequently, it was contended that section 120 will have no application.

4. Section 120 of the Act runs:--

120. Meeting of Janapada Panchayat.--

(1) A Janapada Panchayat shall meet for the transaction of business at least once in every month at the office of the Janapada Panchayat and at such time as the President may determine.

(2) The President may, whenever he thinks fit, and shall upon a written request of not less than one half of the total number of members, call a special meeting.

(3) Notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every member and exhibited at the Janapada Panchayat Office seven clear days before an ordinary meeting and three clear days before a special meeting.

*** **

Apparently, sub-section (2) provides for a special meeting and it provides that such a special meeting may be summoned by the President on a written request of not less than one-half of the total number of members. It is also clear that section 120 does not refer to no-confidence resolution at all. It refers to meeting of Janapada Panchayat. Sub-section (1) refers to ordinary meetings for transaction of business and sub-section (2) refers to special general meeting. Sub-section (3) contemplates a notice of every meeting specifying the time and place thereof and the business to be transacted therein, to be despatched to every member of the Panchayat and affixed at the Janapada Panchayat Office seven clear days before an ordinary meeting and three clear days before a special meeting. Apparently therefore, this provision pertains to the meetings in general of the Janapada Panchayat whereas section 117 deals with no-confidence motion against President and Vice-President particularly.

5. Section 117 reads:--

117. No-confidence motion against President or Vice-President. (1) On a motion of no-confidence being passed by the Janapada Panchayat by resolution passed by a majority of not less than two-thirds of the members present and voting, and such majority is more than one half of the total number of members constituting the Janapada Panchayat for the time being, the President or Vice-President against whom such resolution is passed shall cease to hold office with effect from the date immediately next after the date on which such resolution is passed.

(2) For the purpose of sub-section (1), a meeting of the Janapada Panchayat shall be held in the following manner:--

(i) Seven clear days notice of such meeting shall be given to every member;

(ii) the President or the Vice-President, as the case may be, against whom a

resolution is to be placed before the meeting, shall not preside over the meeting but he shall have a right to speak or otherwise to take part in the proceedings of the meeting;

(iii) the meeting shall be presided over by such officer of the Government as the prescribed authority may appoint for the purpose;

(3) If the office of the President becomes vacant under this Act, all powers and duties of the President, until the election or appointment of his successor, shall have been notified, be exercised and performed by the Vice-President, and if there be no Vice President by such member as the State Government may appoint in this behalf.

(4) The fact of the removal of the President or the Vice-President under Sub-section (1) shall be intimated to the Zilla Panchayat and to the State Government and it shall be notified in the Gazette by the State Government. The appointment of his successor shall, in the like manner, be notified in the Gazette

Sub-section (2) of this section provides for the procedure as to how the resolution of no confidence shall be considered and it provides the manner in which a meeting of the Janapada Panchayat will be held for the purpose of consideration of a motion of no-confidence. The three sub-clauses of sub-section (2) of section 117 provide about the notice of the meeting, about the fact that a person against whom a motion is to be considered shall not preside over that meeting, and also that the prescribed authority shall appoint a person to preside over such a meeting. It was, therefore, contended that this provision does not contemplate as to who shall call the meeting.

6. u/s 119 of the Act, rules have been framed by the State Government as section 119 empowers the State Government to framed rules for conduct of business and also regarding procedure for calling of meetings and the Government has framed rules thereunder. Rule 2 of the Rules so framed provides--

2. Agenda for the meeting; (1) The agenda for the meeting shall be prepared by the Chief Executive Officer in consultation with the President. The Chief Executive Officer may include in the agenda any Subject which in his opinion should be considered by the Janapada Panchayat and shall include therein any subject specified by the President.

(2) The agenda shall be accompanied by Short notes on the items included in the agenda.

(3) For every item to be included in the agenda for the consideration of the Janapada Panchayat, the Chief Executive Officer shall incorporate at the end of the notes thereon a draft of the resolution proposed to be adopted by the Janapada Panchayat.

This rule clearly provides that it is the Chief Executive Officer of the Janapada

Panchayat who will issue notice of the meeting and also incorporate the agenda which is to be considered in a particular meeting. It is clear that when a notice of no-confidence motion was given, the prescribed authority appointed respondent No. 2 to preside over that meeting. That apparently was done under sub-section 2 (iii) of section 117. But it was contended that notice of the resolution of no-confidence could not be given by one member as learned counsel for the petitioner contended that section 120 (2) was the only provision for calling of a special meeting. It appears that learned counsel was in error. In the rules for conduct of business. Rule 14 provides for giving of notice of a resolution.

14. "Notice of resolution: (1) Notice of resolution shall be in writing and signed by the mover.

(2) A member who wishes to move a resolution shall give at least eight clear days" notice of his intention and shall together with the notice submit a copy of the resolution which he wishes to move, but the President may allow, for reasons to be stated by him, a resolution to be entered on the list of business with a shorter notice than eight day.

Clause (2) of this rule clearly provides that a member who wishes to move a resolution shall give at least eight days clear notice of his intention with a copy of the resolution which he wishes to move. Consequently, it cannot be doubted that the notice of the resolution of no-confidence which was given by respondent No. 18 was clearly in accordance with Rule 14 and on the basis of that resolution the prescribed authority appointed respondent No. 2 to preside over the meeting and the notice and agenda of the meeting was issued by the Chief Executive Officer of the Panchayat in accordance with Rule 2. Therefore, the contention of learned counsel for the petitioner that the meeting held to consider the no-confidence resolution was not in accordance with law cannot be accepted. At the meeting the resolution was passed by the required majority. Learned counsel for the petitioner frankly conceded that the petitioner was given an opportunity to speak and explain about the allegations made against him. In this view of the matter, the passing of the resolution of no-confidence against the petitioner by the meeting date 10-9-1971 could not be said to be illegal.

7. No other question was pressed. Consequently, in our opinion, there is no substance in this petition. It is therefore dismissed. The respondents shall be entitled to costs of this petition. Counsel fee Rs. 50/- (fifty) each for Additional Government Advocate and Shri Sahu appearing for the other respondents, if certified. Balance of the security deposit, if any be refunded to the petitioner after verification.