
(2003) 07 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition No. 2121 of 2003

Bhagirathi Nirmalkar

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 31-07-2003

Acts Referred:

Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 21, 47A(1), 87A
Constitution of India, 1950 — Article 14, 226, 227
Madhya Pradesh Panchayat Act, 1962 — Section 21, 21(1), 24

Citation : AIR 2005 Chh 8 : (2003) 2 CGLJ 147 : (2004) 2 MPJR 92

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fakhruddin, J.—By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the validity of Section 21 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. Originally this Act was made by Madhya Pradesh and after reorganisation of the State of Chhattisgarh it has been adopted by this State.

2. The ground for challenge as contended by the learned counsel for the petitioner is that the said provision is violative of Article 14 of the Constitution of India. In this connection, learned counsel referred to para 5.18 of the petition, whereby it is hypothetically contended that the Sarpanch is elected directly whereas Panchas are elected from the Wards and these Panchas, who have been elected, do not have right to remove the Sarpanch, who has been elected from his own constituency.

3. Section 21 of the aforesaid Act is pertinent, which reads as under :

"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 panchas 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 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 proceeding 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."

4. There is no doubt and it is true that Sarpanch is elected directly by the voters of the Gram Panchayat but the provision of removal by no confidence by the elected Panchas cannot be said to be arbitrary or violative of Article 14 of the Constitution of India. This question came up for consideration before the Division Bench of M.P. High Court in the case of Jagdish Prasad Bhunjwa Vs. The State of Madhya Pradesh and Others, . It is held therein as under :

"There is no arbitrariness violative of Article 14 of the Constitution of India. This is within the domain of the State legislature to provide the method of the election of Sarpanch and their removal. Simply because an indirect method has been provided by the State legislature, it cannot be said that it is violative of Article 14 of the Constitution. It is for the State legislature to consider whether the Sarpanch who is directly elected should be removed by the elected panchas i.e. by indirect method. It cannot be said that this method is bad or illegal as all the panchas are also elected by the gram sabha only and they are supposed to represent the will of the voters of the gram sabha."

5. The Apex Court in the case of Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, , had an occasion to deal the similar question in the context of Uttar Pradesh Municipalities Act and in that context Their Lordships held that the power of removal of President by vote of no confidence is vested in the Board. The President whether elected directly by electors or indirectly by Board is immaterial. Para 5 of the said judgment is relevant and quoted below :

"The Board is thus visualised as a body entrusted with responsibility, to keep a

watch on the President whether elected by it or the electorate. Any arbitrary functioning by the President or disregard or provision of the Statute or acting contrary to the interest of electorate could be known to the Board only. Therefore, it was not only proper but necessary to empower the Board to take action, if necessary, in fact, the power of the Board to remove a President by vote of no confidence u/s 87-A and right of the President to recommend its supersession u/s 47-A(1)(a) are a check on each others functioning. Comparison with the provisions in Panchayat Raj Act where a Pradhan is removable by the gram sabha was odious as a gram sabha is a very small body as compared to Municipality. The provision consequently cannot be held to be bad either because the Board is a smaller or different body. Nor it can be characterized as irrational or arbitrary. It would be unrealistic to say so. Any challenge founded on violation of democratic norms thus cannot be accepted."

6. In the abovesaid view of the matter, so far as validity of the provisions of the aforesaid Act is concerned, in our opinion, it is intra vires and not ultra vires.

7. The next question raised by the learned counsel for the petitioner, is that the gram panchayat originally constituted of 17 members, one member had resigned and at the time when the no confidence motion was moved and came up for consideration on 19-2-2003 there were 16 members only. It is contended that for the purposes of passing the no confidence motion the membership of 17 members should have been taken into consideration instead of 16 members.

8. This contention has no force in view of the language used. The legislature has taken care under Sub-section (1) of Section 21 of the Act, wherein this condition is imposed. The words used are "total number of panchas constituting the gram panchayat for the time being". A Division Bench of the High Court of Madhya Pradesh in the case of Shankarlal Patidar v. State of M.P. reported in 1975 MPLJ 116 while considering Section 21 of the M.P. Panchayats Act, 1962 has held as under :

"We would, however, add only this much that the expression by a resolution passed by a majority of more than one half of the total number of panchas constituting the Gram Panchayat for the time being" occurring in Sub-section (1) of Section 24 of the M.P. Panchayats Act, 1962 leaves no doubt that the actual number of panchas constituting the gram panchayat when the resolution is passed provides the basis for determining majority."

9. The matter again came up for consideration in the case of Rameshwar Dayal Maharaman v. B.N. Tripathi reported in 1978 MPLJ 318. In that case, there were 21 panchas, 5 had resigned and the number was reduced to 16 on the date of motion. The motion was passed by 10 members voting for and 6 against the motion of no confidence but the Presiding Officer held that the motion was not passed. While interpreting Section 24 of the M.P. Panchayats Act, 1962, it was held that actual number of panchas of gram panchayat has to be considered at the time of passing the resolution of no confidence.

10. In the instant case, out of 17 members one having resigned there remained 16 only. It is these 16 members were constituting gram panchayat for the time being. Out of 16 members, 14 were present at the consideration of no confidence motion. This 14 number of members present is more than 3/4th of the total panchas constituting gram panchayat. Out of 14 members, 11 voted in favour of no confidence and 3 against it. This 11 number of members voted is 2/3rd of the total panchas constituting gram panchayat. Therefore, both the requirements under the provisions of Section 21(1) of the aforesaid Act, worth three fourth of the total number of panchas present and two third of the total number of panchas constituting the gram panchayat voted for the time being, have been fulfilled. The Presiding Officer has wrongly held that the motion has not been validly passed, whereas the Addl. Collector in its order dated 17-6-2003 (Annexure P/6) has dealt the matter in great detail and has rightly held that no confidence motion was validly passed, as there was fully compliance of Section 21 of the aforesaid Act.

11. In view of what has been stated above, this petition fails and is dismissed with costs.

Counsel fee as per scale, if certified. Petition dismissed.