
(1982) 05 MP CK 0008
In the Madhya Pradesh High Court
Case No : M. P. No. 251 of 1981

Bhaiya Lal

APPELLANT

Vs

Gram Panchavat, Naurja and others

RESPONDENT

Date of Decision : 01-05-1982

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 24

Citation : (1983) JLJ 270 : (1983) MPLJ 367

Hon'ble Judges : C.P. Sen, J;A.R. Navkar, J

Bench : Division Bench

Advocate : J.P. Shrivastava, for the Appellant; M.A. Shah, Deputy Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

The petitioner by this petition under article 226 has prayed for quashing of the no-confidence motion passed against him as Sarpanch and for appropriate writs and directions.

The petitioner was elected as Sarpanch of Gram Panchayat, Naurja under the provisions of the M. P. Panchyats Act, 1962. Respondent No. 1 is the Gram Panchyat, Naurja, respondents 2 and 3 are the Collector and the State of Madhya Pradesh and the remaining respondents are the Panchas of the Gram Panchayat, there are in all 17 Panchas including the petitioner. Ramswaroop Dubey, acting as the secretary of the Gram Panchayat issued notices for a meeting to be held on 24-9-1981 to consider the no-confidence motion moved against the petitioner by the respondent No. 13 to 11 other Panchas. It appears that the meeting did not take place on that day and the aforesaid secretary re-issued notices on 30-9-1981 to consider the no-confidence motion on 10-10-1981 at 12 o'clock in the noon in the school building.

The meeting was held at the appointed time and place, the motion was carried, 9

Panchas in favour, 2 against with 6 abstentions. It may be mentioned here that the M. P. Panchayats Act, 1962 was repealed by the M. P. Panchayats Ordinance, 1981, on 24-4-1981, and the Ordinance was replaced by the M. P. Panchayats Adhiniyam, which came into force on 7-10-1981. The petitioner has challenged the no confidence motion on the following grounds. Firstly, it is non-est as not being ratified by the Gram Sabha as required u/s 24 of the old Act, this vested right not being taken away under the new enactments in spite of repeal. Secondly, the notices served failed to give 7 days clear notice of the meeting as is mandatory under the rule and as such meeting was illegal and thirdly, the notices failed to mention the names of Panchas moving the resolution and the grounds thereof and the petitioner was not given reasonable opportunity to meet the same.

It appears that the Chief Executive Officer, Janpad Panchayat Gyaraspur, asked the petitioner on 20-10-1981 to handover charge as per direction of the District Panchayat Officer. This fact was brought to the notice of this Court by the petitioner by I. A. No. 3636/81, dated 5-11-1981, by I. A. No. 3665/81, dated 9-11-1981, the petitioner sought leave to amend the petition to urge the following additional grounds: -

(i) There was no discussion in the meeting nor the petitioner was allowed to speak and it was held under duress.

(ii) Notices to the Sarpanch and to Up-sarpanch were neither despatched nor delivered seven clear days before the meeting, and

(iii) The voting should have been by secret ballot.

The respondents 2 and 3 by their return dated 6-1-1982 submitted that as Gram Sabhas have been abolished under the new enactment and the old Act of 1962 and the rules framed thereunder repealed, there was no question of any ratification by a non-existing body; the notices were issued in accordance with Rules on 30-9-1981, they were all served by 2-10-1981, notices were despatched on 30-9-1981, 7 clear days before the meeting and it was not obligatory to serve the notices 7 clear days before the meeting, which was held in accordance with law and the procedure followed did not infringe any rule; the petitioner should have vacated his office immediately after the no-confidence motion was passed and so the petition be dismissed with costs.

The petitioner moved a second application for amendment of the petition by I. A. No. 787/82 dated 23-2-1982 seeking leave to urge following additional grounds:-

(a) The minutes of the meeting were not drawn by the Secretary but falsely afterwards on the dictation of Panchas opposed to the petitioner.

(b) By order dated 13-5-1981, the Chief Executive Officer of the Janpad Panchayat Gyaraspur made ad hoc appointment of Ram Swaroop as Secretary of the Gram Panchayat, Naurja, to work between 6th to 10th of each month but by order dated 25-9-1981, Panchayat and Shiksha Sangathak, Gyaraspur, removed

Ram Swaroop and appointed Surendra Kumar as the Secretary of the Gram Panchayat, Naurja and therefore the meeting called by Ram Swaroop, who was no longer secretary, was unauthorised, null and void;

(c) The notice to the petitioner was acknowledged by his brother, Dwarka i-"rasad, with whom he is on inimical terms in view of the litigations between them so there was no valid service of the notice of the meeting and in fact the acknowledgment was obtained before tiling of the return from his enemy; and

(d) The petitioner was not supplied the copies of the proceedings in spue of several applications.

The respondent Nos. 4, 5, 9, 10, 12, 15 and 16 by their return dated 23-2-1982 tried to suport the contention of the petitioner that the old Act of 1962 applied, the no-confidence motion is required to be rati tied by the Gram Sabha u/s 24 of that Act, which being a vested right is preserved even after the repeal. This Court by interim order dated 15-3-1982, stayed the proposed election of the Sarpanch of the Gram Panchayat Naurja on 16-3-1982. Howe\\er, on 23-3-1982 the petitioner moved 1. A. No. 1284/82 to take Contempt of Court proceeding against Shri Tiwari, Election Oificer and others for proceeding with election of the Sarpanch on 16-3-1982 in spite of the certified copy of the interim oidcr shown to him.

We will first of all take up the grounds taken in the petition for quashing the no-confidence motion before taking up the additional grounds sought to be raised in two applications for amendment of the petition. The main ground in the petition is that since the petitioner was elected Sarpanch under the M. P. Panchayat Act of 1962, the no-confidence motion passed against him by the Gram Panchayat was required to be ratified by the Gram Sabha u/s 24 of the Act and this being a vested right, the same has not been taken away by the repeal of the Act by section 121 of the JV1. P. Panchayats Ordinance 1981 on 24-4-1981, which has now been superseded by the M. P. Panchayats Act of 1981 on 7-10-1981. For the reasons stated in our order passed under similar circumstances in Miscellaneous Petition No. 248 of 1981 Kalicharan v. Collector, Morena ana" others, delivered to-day, we find no force in the contention. Gram Sabhas were established by the State Government u/s 3 of the old Act :in respect of village or group of villages having population of less than one thousand, the Gram Sabha to consist of all persons shown in the voter list but the body of Gram Sabha has been abolished under the Ordinance and the Adhiniyam of 1981. The no-confidence motion was moved when the Ordinance was in force, while it was passed while Adhiniyam came into effect. In the absence of any repeal or savings clause in the Adhiniyam of 1981, section 10 of the M. P. General Clauses Act, 1957 is attracted. Section 10 (2) provides that the repeal would not revive anything not in force at the time the repeal takes effect. Since Gram Sabhas were not in existence when the Adhiniyam came into force, there is no question of reviving them nor of ratification of the no-confidence motion passed by the Gram Panchayat by the Gram Sabha u/s 18 of the Ordinance and the Adhiniyam. The no-confidence

motion passed by a Gram Panchayat, is not required to be ratified by any body and this being a procedural law, it will take effect retrospectively *Nani Gopal Mitra Vs. The State of Bihar*, , section 10 (c) of the General Clauses Act and section 121 (1) (b) of the Ordinance, which is the repealed and savings provision, the new enactments not to affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment. Section 121 (2) (a) of the Ordinance provides that the Gram Panchayat for the existing area of the Gram Sabha would be deemed to be a Gram Panchayat under the new enactments till such time a new body is constituted under its provisions. So these two clauses of section 121 are to be harmoniously construed. If the Gram Sabha is not in existence then there can be no vested right to get the no confidence being ratified by a non-existing body. Otherwise also, this cannot be vested right but only a procedural advantage which has not been saved. The Supreme Court in *Lalji Raja and Sons Vs. Firm Hansraj Nathuram*, , has held that the non-executability of a valid decree passed by a British Indian Court in 1949 under the CPC 1908 in Madhya Bharat, where another CPC was applicable, was not an accrued right but a mere procedural advantage which came to an end after extension of the Code of 1908 to Madhya Bharat and repeal of the Corresponding Code in force there.

In the absence of any Rules being framed under the ordinance or the Adhiniyam for the procedure to be followed in considering the no-confidence motion against the Sarpanch or the Up-sarpanch, the M. P. Gram Panchayat ("Procedure of no-confidence Motion against the Sarpanch or Up-Sarpanch) Rules, 1979, framed under the Act of 1962 would continue to prevail. Rule 4 requires notices to be despatched to the Panchas 7 clear days before the meeting to consider the motion of no-confidence. Notices have to be despatched and not served 7 clear days before the meeting. Interpreting a similar provision under the U. P. Municipalities Act, 1966 the Supreme Court in *Jai Charan Lal Vs. State of U.P. and Others*, has held that notices have to be despatched 7 clear days before meeting. In the present case the notices were despatched on 30-9-1981 for the meeting to be held on 10-10-1981 and so fulfilled the requirement of rule 4. This Rule does not require that the names of the Panchas moving the motion of no confidence or the grounds thereof to be given in the notice issued by the secretary for the meeting or for giving reasonable opportunity to show cause against motion. Besides, the return and the affidavit of the respondent Nos. 2 and 3 show that the notices were served on all the Panchas by 2-10-1981 and again there was 7 clear days notice even after service.

The additional grounds urged in applications for amendment of the petition are not tenable and so there is no need to amend the same. There is nothing to show that there was no discussion in the meeting held on 10-10-1981 before passing the no-confidence motion or that it was held under duress or that the petitioner was prevented from speaking in the meeting. If all these were true, there is no reason why the petitioner would not have mentioned about the same in the petition as originally filed. The minutes of proceedings show that the

meeting was properly held and the minutes were drawn by the secretary himself and not at the dictation of any one particularly when the petitioner had signed the minutes. Notices were duly despatched and served on the Panchas and Up-Sarpanch. There is no requirement that the voting has to be by ballots, that was under the Gram Sabha Rules. Here the voting was by show of hands and also by signatures by Panchas for and against the resolution. Admittedly, Ramswaroop was the secretary of the Gram Panchayat, Naurja appointed by the Chief Executive Officer of the Janapad Panchayat Gyaraspur on 13-5-1981. The petitioner has produced a memo dated 25-9-1981 of the Panchayat Shiksha Sangathak, Gyaraspur removing Ramswaroop and appointing one Surendra Kumar in his place as secretary of the Gram Panchayat, Naurja. Firstly, it is not shown that the latter could supersede the order of the Chief Executive Officer and secondly, assuming this to be so, yet it is not shown that Suresh Kumar had taken over charge as secretary from Ramswaroop on or before 30-9-1981 when the notices for the meeting were despatched. Assuming that the notice to the petitioner was served on his brother Dwarka Prasad with whom he has enmity due to pending litigation but this can have no effect on the meeting. The requirement is of despatch and not service of notice and as such notice properly addressed and sent by registered post to the petitioner complied with the provision. If the petitioner was not supplied with the copies of the proceedings that cannot vitiate the no-confidence motion passed against the petitioner or show that the same were drawn subsequently before filing of the return, as the petitioner had signed the minutes. Under the circumstances the applications I. A. Nos. 3665 /81 and 787/82 for amendment of the petition are rejected.

I. A. No. 1284/82 moved by the petitioner for drawing up contempt of Court proceedings against Shri Tiwari Election Officer and others for disobedience of the interim order of this Court be separately registered as M. C. C. and placed before the regular Division Bench for orders.

With the result the petition fails and it is dismissed with costs to be paid by the petitioner to the respondent Nos. 2 and 3. Counsel's fee Rs. 250/-