
(1977) 04 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1531 of 1971

Bhawani Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-04-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1977) RLW 158 : (1977) WLN 273

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.

1.The facts of this case lie in a narrow compass. The petitioner was elected as a Sarpanch of the Gram Panchayat, Sildar in Tahsil Sirohi. The total strength of the aforesaid Gram Panchayat as fixed by the State Government is 13 Panchas, besides a Sarpanch. On July 28, 1971, eight of the Panchas of Gram Panchayat, Sildar gave notice of a motion of no-confidence against the petitioner in respect of the office of Sarpanch. The aforesaid notice of no-confidence was addressed to the Collector, Sirohi & the case of the petitioner is that it was presented by the eight Panchas before the Collector, Sirohi. It appears that the Collector forwarded the aforesaid notice of motion of no-confidence to the Deputy District Development Officer, (hereinafter referred to as "the D.D.D.O.,) Sirohi who was the competent authority in the matter and the D.D.D.O. on receiving the aforesaid notice of motion of no-confidence, called a special meeting of the Panchayat on September 13, 1971 for consideration of the motion of no-confidence and authorised the Tehsildar, Sirohi, to preside over the said meeting of the Gram Panchayat Notices in respect of holding of the special meeting of the Panchayat for considering the motion of no-confidence against the petitioner from the office of Sarpanch were sent by the D.D.D.O. to all the members of the Gram Panchayat Sildar, including the petitioner. The meeting took place on

September 13, 1971 as scheduled and 11 members of the Panchayat, including the petitioner, were present at the said meeting, out of whom, ten Panchas cast their votes against the petitioner, while the petitioner was the lone dissenter. The result was that the motion of no-confidence against the petitioner was carried by ten votes to one.

2. The petitioner raised the following three objections before the Tehsildar, Sirohi, who presided over the aforesaid meeting of the Panchayat, convened to consider the motion of no-confidence against the petitioner, namely:

(1) two of the Panchas, Durjan Singh and Gulaba had ceased to hold the office of Panchas and as such, they were not eligible to take part in the proceedings of the Panchayat and they should have been excluded from the said meeting held on September 18, 1971;

(2) under sub-Section (2) of Section 19 of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as "the Act"), the motion of no-confidence against a Sarpanch must be carried by majority of not less than 3/4th of the total number of Panchas, including the Sarpanch and as the total number of members of the Gram Panchayat, Sildar was 14 the minimum number of Panchas who should have voted in favour of the motion of no-confidence so that the same could be carried, should have been at least 11. As only ten Panchas had voted in favour of the motion of no-confidence against the petitioner, it could not be declared to have been carried; and

(3) the notice to move the motion of no-confidence against the petitioner was neither addressed to nor it was delivered to the Deputy District Development Officer by the eight Panchas as required by Sub-rule (1) of Rule 14 of the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 (hereinafter referred to as "the Rules") and as such the said notice was illegal and invalid.

3. All these three submissions made by the petitioner were held to be untenable by the Tehsildar, who wrote a rather well considered order rejecting these objections. In the present writ petition, which has been filed by the petitioner in this Court challenging the aforesaid decision of the Tehsildar, Sirohi holding that the motion of no-confidence was carried against the petitioner, the very same three grounds which were urged by the petitioner before the Tehsildar have been reiterated, I shall presently consider the said three grounds in seriatim.

4. As regards the first contention, it was argued by the learned Counsel that two of the Panchas namely, Durjan Singh & Gulaba did not attend four consecutive meetings of the Panchayat and as such, they were removed from the membership of the Panchayat and the ceased to hold office as Panchas because they remained absent even in the fifth meeting of the Panchayat held on November 24, 1968. The submission of the learned Counsel is that on account of the aforesaid two persons remaining absent in five consecutive meetings of the Panchayat, their seats became vacant and these two persons could not have taken part in the meeting of the Gram Panchayat held on September 13, 1971 at

which the motion of no-confidence was passed against the petitioner. The Tehsildar, Sirohi rejected this contention on the ground that it was not proved before him that notices in accordance with the rules were duly served on the two absentee Panchas and as no declaration was made by the D.D.D.O. that the seats of such Panchas had become vacant, it cannot be held that the aforesaid two persons ceased to hold office of Panchas in the absence of such a declaration. In this petition, the very same allegations have been repeated by the petitioner but no proof has been produced on behalf of the petitioner even before this Court to show that the absentee Panchas namely, Durjan Singh and Gulaba were duly served with notices in accordance with Rule 12 of the Rules nor it has been shown that the D.D.D.O. made any declaration to the effect that the seats of the aforesaid two persons have become vacant. It cannot, therefore be held that the two persons had ceased to hold office of Panchas as alleged by the petitioner.

5. Sub-section (2) of Section 17 of the Act provides that if a Panch, during the term of his office absents himself from five consecutive meetings of the Panchayat without giving information in writing to the Panchayat, he shall cease to hold office of a Panch. However, elaborate procedure in this respect has been laid down in Rule 12 of the Rules, which requires that after a Panch absents himself in four consecutive meetings of the Panchayat and before the fifth meeting takes place, a notice shall be given to the absentee Panch informing him that he has not attended four immediately preceding meetings inspite of due notice and that his seat would become vacant if he does not attend the fifth meeting. If, after such notice is duly served upon the absentee Panch, he fails to attend the fifth meeting, the Panchayat shall pass a resolution to the effect that the absentee Panch has remained absent from five consecutive meetings of the Panchayat. The resolution along with the concerned record shall then be sent to the D.D.D.O., who shall scrutinize the record, consider the recommendation of the Panchayat and after making such further enquiry as he may consider necessary and after giving the absentee member an opportunity of hearing, the D.D.D.O. shall declare such seat to have become vacant. In the present case, it appears from the order passed by the Tehsildar, Sirohi that the notices were not duly served on the two absentee members and they are alleged to have orally refused to receive such notices. However, Sub-rule (3) of Rule 12 provides that in case the absentee member refuses to receive such notice, then it shall be deemed to be duly served if the messenger affixes the said notice at some conspicuous place of his dwelling house, in the presence of two witnesses of the locality. No affixation is alleged to have been made in the present case on the refusal of the absentee Panchas to receive, the notices in question and, therefore, it cannot be held that there was proper notice to Durjan Singh and Gulaba, who are alleged to have absented themselves in the earlier four meetings of the Panchayat. Moreover, it is also not disputed that the D.D.D.O. did not make any declaration under Sub-rule (5) of Rule 12 of the Rules to the effect that the seats of the aforesaid two persons have become vacant. In the absence

of such a declaration, the two persons named above cannot be deemed to have ceased to hold office of Panchas. In *Nand Ram v. The State of Rajasthan and Ors.* ILR (1965) Raj. 746, it was held by this Court that after the coming into force of Rule 12 of the Rules, the disqualification specified in sub-Section (2) of Section 17 of the Act is not automatic but it could be incurred only after a declaration is made to that effect. Thus, in the absence of due service on the two absentee Panchas and in the absence of a proper declaration by the D.D.D.O., Durjan Singh and Gulaba continued to hold the office of Panchas & they could take part in the voting in respect of motion of no-confidence against the petitioner.

6. As for the second submission of the learned Counsel, the matter now stands well settled In *Banshidhar v. State of Rajasthan and Ors.* ILR (1969) Raj. 943, it was held by this Court that the expression "total number of Panchas" occurring in sub-Section (2) of Section 19 of the Act referred to the total number of members of the Panchayat, including the Sarpanch, holding office at the relevant time. The aforesaid words have not been defined in the Act. but in Section 2(16) of the Act, it has been provided that words and expressions used but not defined in it and defined in the Rajasthan Panchayat Samitis and Zila Parishads Act, shall have the meaning assigned to them in that Act. Similarly, Section 2(16) of the Panchayat Samitis and Zila Parishads Act also lays down that words and expressions used therein but not defined in that Act shall have the meaning assigned to them in the laws for the time being in force relating to the Panchayats, Municipalities and District Boards. Sub-section (36) of Section 3 of the Rajasthan Municipalities Act defines the words "whole number" or "total number", when used with reference to the members of the Municipal Board, as referring to the total number of members holding office at the relevant time. The same view was also taken by another learned Single Judge of this Court in *Chandra Singh v. The Collector Sikar* RLW 1974 270 and it was held that the expression "total number of members" in the Panchayat, used in sub-Section (2) of Section 19 of the Act refers to the total number of members of the Panchayat, holding office at the relevant time. Recently, the matter was again examined by Sachar J. in *Nand Lal v. The State of Rajasthan* 1976 WLN 494 and he also agreed with the view expressed by the two learned Judges of this Court in the earlier decisions referred to above. Thus, there could be no doubt now that the expression "total number of Panchas" occurring in Section 19(2) of the Act should be taken to refer to the total number of Panchas, including the Sarpanch, holding office at the relevant time and not the total strength of Gram Panchayat, as fixed by the State Government. It is not in dispute that the total number of Panchas holding office on September 13, 1971 when the motion of no confidence against the petitioner was considered by the Panchayat was 12, including the Sarpanch, because one of the Panchas had expired and another had resigned from his office. 3/4th of the total number of Panchas voting for the motion of no-confidence could have carried the same, in accordance, with the provisions, of sub-Section (2) of Section 19 of the Act. In the present case, ten Panchas had voted in favour of the motion of no-confidence against the petitioner and as

such, it cannot be held that the said motion was not passed by the requisite 3/4 majority of the total number of Panchas, as provided in Section 19(2) of the Act.

7. In respect of the third submission, the provisions of Sub-rule (1) of Rule 14 require that any Panch of a Panchayat, desiring to move a motion of no-confidence against its Sarpanch, shall deliver or cause to be delivered a notice of such motion in writing to the D.D.D.O. The requirement of the Rule is that the notice of motion of no-confidence should be in writing and should be delivered either personally by any Panch desiring to move such motion to the D.D.D.O. or should be caused by him to be delivered to the aforesaid officer. The notice of motion of no-confidence thus would not in any manner be invalidated merely because it was addressed to the Collector, Sirohi. The other submission in this respect is that the notice of motion of no confidence was not delivered by the eight Panchas to the D.D.D.O., but it was delivered to the Collector and that it appears to have been forwarded by the Collector to the D.D.D.O. The respondents in their reply have also accepted the fact that the notice of motion of no-confidence was presented to the Collector, who forwarded the same to the D.D.D.O. In my view, the provisions of Sub-rule (1) of Rule 14 were substantially complied with in the present case, in as much as the crux of the matter is that the notice of motion of no-confidence should either be delivered by the mover thereof personally to the D.D.D.O. or the mover may cause it to be delivered to the said officer. In the present case, the notice of motion of no-confidence, though presented by the eight Panchas before the Collector, was forwarded by him to the competent authority namely the D.D.D.O. and thus it can be said that it was caused to be delivered by the movers of the said motion to the D.D.D.O. More over as the motion of no-confidence actually reached the competent authority and he took proceedings in respect thereof and issued notices for holding a special meeting of the Panchayat for the consideration of the said motion of no-confidence, in accordance with Rule 15 of the Rules, the irregularity in the presentation of the motion, if any, was merely of a technical nature. It must be kept in view that out of eleven Panchas, who were present at the meeting to consider the motion of no confidence, all voted against the petitioner, except the petitioner himself. In *Bhoorekhan Vs. The State of Rajasthan and Others*, Joshi J. made the following observations:

It is well settled principle of democracy that the person who has lost the confidence of the members of a democratic institution should not be allowed to stay against the will of the members of the institution. The writ of mandamus or certiorari does not issue as a matter of course but is a writ of discretionary nature. Looking to the facts and circumstances of the case; this Court is not at all inclined to entertain the plea of technical nature to permit the petitioner who has lost the confidence of the members of the Panchayat. This Court is, therefore not disposed to help such a person in the exercise of its extra-ordinary jurisdiction.

This view was confirmed on appeal by a Division Bench of this Court in

Bhurekhan v. State of Rajasthan and 14 Ors. 1976 WLN 73, while dismissing the appeal of Bhurekhan. There is no doubt that in order to create healthy conventions for the functioning of democratic institutions in this country, this Court should be slow in helping a person in his attempt to stick to an elective office even after the unequivocal declaration by an overwhelming majority of the members that he has lost their confidence. The Court, in its extra-ordinary jurisdiction under Article 226 of the Constitution, should be rather reluctant in helping such a person in his attempt to cling to an elective office. In the present case, as I have already mentioned above, ten out of twelve members of the Panchayat, holding office at the relevant time, had voted in favour of the motion of no confidence against the petitioner and it would not be just and proper for this Court to interfere on a mere technical ground with the verdict of such a vast majority of the members of the Panchayat.

8. In view of the aforesaid discussion, there is no merit in the writ petition and the same is hereby dismissed.