

(1996) 08 MP CK 0045

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4323 of 1995

Dhumadandhin

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1994 — Section 21

Citation : (1997) 2 MPLJ 175

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : Sunil Sinha, for the Appellant; V.K. Shukla, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

The petitioner was a Sarpanch of Gram Panchayat, Govindpur who has filed this writ application for quashing no confidence motion dated 16-11-1995 passed against her.

Short facts giving rise to the present application are that the petitioner was elected as the Sarpanch of the Gram Panchayat, Govindpur and the said election took place in the month of June 1994. A notice to consider the no confidence motion dated 29-9-1995 was received by the prescribed authority on 26-10-1995. The prescribed authority on receipt of the aforesaid notice appointed one Naib Tahsildar as the Presiding Officer to preside over the meeting and date of the meeting fixed by the prescribed authority was 16-11-1995. It is on the said date the motion of no confidence was considered against the petitioner and the motion was passed by a majority as prescribed u/s 21 of the M.P. Panchayat Raj Act.

The only submission made on behalf of the petitioner to impugn the motion of no confidence is that the date of meeting fixed for consideration of the motion of no

confidence, is beyond 15 days from the date of receipt of the notice, given by the members for consideration of the no confidence motion. It is admitted fact that the notice of no confidence dated 29-9-1995 was received by the prescribed authority on 26-10-1995, who has fixed 16-11-1995 as the date for consideration of the no confidence motion. This is definitely beyond 15 days from the receipt of the notice. It is contended by the learned counsel for the petitioner that Rule 3(3) of M.P. Panchayat Ke Sarpanch Tatha Upsarpanch Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav Niyam, 1994, contemplates that the prescribed authority shall fix the date, time and place for the meeting of the Gram Panchayat which shall not be more than 15 days from the date of the receipt of the said notice. Rule 3(3) of the aforesaid Rules which is relevant for the purpose is being quoted below :-

"Rule 3(3) - On receiving the notice under Sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to Sections 21(3), 28(3) and 35(3), as the case may be. On being thus satisfied, he shall fix the date, time and place for the meeting of the Gram Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be, which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof shall be caused to be despatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janpad or Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before the meeting."

According to the learned counsel for the petitioner the prescribed authority has convened the meeting on a date which is beyond 15 days of the date of receipt of the notice. According to the learned counsel no confidence motion passed on the said date, is in violation of the rule, which vitiates the no confidence motion. In support of the aforesaid submission learned counsel has placed reliance on a Judgment of this Court in the case of Hargovirid Johari v. Zila Panchayat, Morena, 1996 MPLJ 409. My attention has been drawn to the following paragraph of the Judgment which read as under :-

"14. Thus, I am of the view :-

(i) that, the Rules of 1994 are materially different from the statutory provisions which were under consideration before the Division Bench in Shankarlal's case, 1975 MPLJ 190 : 1975 MBLJ 500 and

(ii) that, the Rules of 1994 and more particularly Rule 5 indicated a detailed procedure and no provision is made for adjournment of a meeting and even if it be conceded that the view expressed in Shankarlal's case (supra) that such a meeting can be adjourned even then in view of the provisions contained in Rule 3(3) of Rules, 1994, this meeting could not be adjourned beyond a period of fifteen days from the date of receipt of the notice referred to in Rule 3(1) of the Rules of 1994."

In the aforesaid case after the meeting was fixed for a particular day the Presiding Officer adjourned the same on account of nonfulfilment of the quorum. Due to nonfulfilment of the quorum, the date of the meeting was fixed beyond 15 days from the date of receipt of the original request for convening the meeting. In the background of the aforesaid fact the learned Judge held that the notice by which meeting was adjourned beyond a period of 15 days could not be valid. In the aforesaid case it was the notice by which the meeting was adjourned beyond a period of 15 days was challenged and the same was found to be bad in view of Rule 3(3) of the Rules. However, in the present case the petitioner has not challenged the notice by which the meeting was directed to be held beyond a period of 15 days. However in the present case the petitioner's grievance is that no confidence motion passed on a date which is beyond 15 days from the date of the notice for convening of the meeting was given, is vitiated. In view of the aforesaid fact the Judgment relied upon by the learned counsel for the petitioner is clearly distinguishable.

In the present case the question which falls for consideration is, as to whether the passing of a no confidence motion beyond a period of 15 days can be said to be vitiated only on this account. Rule 3(3) of the Rules casts a duty upon the prescribed authority to fix the date, time and place of the meeting which shall not be more than 15 days from the date of receipt of the notice. The question therefore, is as to whether failure on part of the prescribed authority to fix the meeting within the time stipulated shall render the motion of no confidence vitiated in the eye of law. Rule 3(3) of the Rules casts duty on the prescribed authority, the members who have given the notice for consideration of the no-confidence motion, has no control over the same. In my opinion, the will of the members in relation to the no confidence motion cannot be defeated on account of inaction or delayed action of the prescribed authority. Holding otherwise, will lead to nullifying the wish of the members on the no confidence motion for an act over which they have no control. In my opinion, Rule 3(3) of the Rules operates in the field of public duty and to hold null and void acts in its neglect work serious injustice to persons who have no control over those who are entrusted with the duty. Accordingly I am of the considered view, that a motion of no confidence passed against the petitioner beyond a period of 15 days from the date of notice cannot be held to be illegal. Accordingly I negative this submission of the learned counsel for the petitioner.

There is yet another reason which disentitles the petitioner from the relief sought for in the present writ application. The petitioner did not challenge the notice issued by the Prescribed Authority fixing the date of the meeting beyond 15 days. She took chance and ultimately when the motion of no confidence has been passed against her, she has turned her head and chosen to approach this court, challenging the no confidence motion. In case the petitioner was aggrieved by fixing of a date beyond the period of 15 days from the date of notice, she could have very well approached this court impugning the said notice. She has not chosen to do the same. Further nothing has been shown to demonstrate that

the petitioner in any way was prejudiced by holding of the meeting beyond a period of 15 days. These are additional reasons which disentitles the petitioner for the relief sought in the present writ application. By way of abundant caution I may state that in case the meeting is not held within 15 days, the members have the right to approach this court for its compliance and this Judgment may not be construed to have held that the prescribed authority has the discretion to fix the meeting beyond 15 days from the date of receipt of notice. However, the no confidence motion cannot be invalidated on account of the fact that meeting was convened beyond 15 days of the notice.

For the reasons mentioned aforesaid, I do not find any merit in the writ application and it is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to cost.