
(2001) 12 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4604 of 2001

Geeta Bai (Smt.) and Another	Vs	APPELLANT
Smt. Sushila Bai and Others		RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 10(1), 21, 21(3), 21(4), 21A

Citation : (2002) 2 JLJ 423 : (2002) 2 MPLJ 233

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : S.L. Saxena and Sanjay Bakshi, for the Appellant; Ravish Agrawal, Pranay Verma for Respondent No. 1 and Sanjay Agrawal, Panel Lawyer for State, for the Respondent

Judgement

Dipak Misra, J.

The centrodial issue that has spiralled to this Court in this writ petition under Articles 226 and 227 of the Constitution of India pertains to challenge of the order dated 28.8.2001. Annexure P-I. passed by the Collector. Raisen. in exercise of power conferred on him u/s 21(4) of the Madhya Pradesh Panchayat Raj Adhiniyam. 1993 (hereinafter referred to as 'the Act') whereby the said authority has declared that the motion of no confidence mooted against the Respondent No. 1, the elected Sarpanch of Gram Panchayat, Khairbada, District, Raisen. by the Ward Members is void.

The factual 'expose' is as follows :

Gram Panchayat, Khairbad was established u/s 10(1) of the Act consisting of two villages, namely. Khairbada and Jecrabada. Entire area of the said Gram Panchayat was divided into 10 wards and a Panch was elected from each ward. The office of the Sarpanch was reserved for a woman candidate belonging to the Scheduled Caste. The Respondent No. 1 contested in the election for the post of

Sarpanch held in the month of February, 2000 and was elected by the Members of the Gram Sabha and entered into office of the Sarpanch on 3.2.2000. As the ? Panchas? of the Panchayat were dissatisfied and disillusioned with the performance of the Respondent No. 1, they moved a motion of: no confidence after expiry of one year of the entering into the office of the Respondent No. 1 and requested the Sub-Divisional Officer, Bareilly, to appoint a Presiding Officer to convene a meeting. Consequent upon such request, the Sub-Divisional Officer directed the Tahsildar, Bareilly to preside over the meeting to be held on 16.6.2001. The meeting was held on the date fixed and on that date after due discussion a motion of no confidence was put to vote. Ten members voted in favour of the motion and the Respondent No. 1 was the sole person to counter it. The motion was passed by more than 3/4th of the members present and voted by more than 2/3rd of the total strength of the elected members of the Gram Panchayat. The motion of no confidence came into force immediately and the office of Sarpanch fell vacant. Thereafter, a request was made to the Sub-Divisional Officer and the Prescribed Authority, Bareilly to hold a meeting of the Gram Panchayat, Khairbada for taking appropriate and suitable steps to elect the Sarpanch, who has to function temporarily till the new Sarpanch is elected in accordance with the provisions of the Act.

According to the writ Petitioners, a meeting was held on 28.6.2001 in which all the Panchas were present who unanimously elected the Petitioner No. 1 to function temporarily as the Sarpanch of the Gram Panchayat, Khairbada. A copy of the memo of the said meeting was sent to the District Election Officer, Raibareilly by the Prescribed Authority, as per Annexure P-5. The Petitioner No. 1 entered into the office of Sarpanch with effect from 2.7.2001 and started functioning as the Sarpanch of the concerned Gram Panchayat. The Petitioner No. 1 as averred is a woman belonging to the Scheduled Caste and is eligible to be elected as Sarpanch u/s 38 of the Act.

It is put forth in the writ petition that when the matter stood thus, the Respondent No. 1 raised a dispute before the Collector, Raibareilly. u/s 21(4) of the Act and the said authority, by order impugned, came to hold that as the Respondent No. 1 was a directly elected Sarpanch, he could only be recalled u/s 21-A of the Act and could not have been removed by the motion of no confidence. Being of this view, he annulled the motion of no confidence, as a consequence of which the Respondent No. 1 started functioning as the Sarpanch.

It is urged that Section 21 of the Act provides removal of a Sarpanch by motion of no-confidence and as steps were taken under the said provision, interference by the Collector was totally unwarranted. It is put forth that Section 21-A was inserted in the Statute Book by Act No. 5 of 1999 which came into force on 5.4.1999 granting power to members of the Gram Sabha to recall the office bearers of Gram Panchayat through a secret ballot by a majority of more than half of the total number of the members constituting Gram Sabha within the Gram Panchayat in accordance with the procedure as may be prescribed but the

said provision does not obtrude or infringe upon the provisions that has been vocalized and spelt out u/s 21 of the Act.

It is further set forth that the Collector has committed gross error in construing the purpose behind the amended scheme of the Act and, therefore, his order is sensitively susceptible. Apart from the above, averments have been made that the Respondent No. 1 has committed immense irregularities while she was functioning as Sarpanch and, hence, a motion of no confidence was moved against her. With these averments prayer has been made for quashment of the Annexure P-I and to restore the position that of the Petitioner No. 1 and to pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

As a pure question of law arose, the matter was heard without waiting for the return and the learned Counsel for the parties unhesitatingly addressed on the core issue.

I have heard Mr. S.L. Saxena, learned senior counsel along with Mr. Sanjay Bakshi, learned Counsel for the Petitioners, Mr. Ravish Agrawal, learned senior counsel along with Mr. Pranay Varma, learned Counsel for the Respondent No. 1 and Mr. Sanjay K. Agrawal, learned Panel Lawyer for the Respondent No. 2 to 4.

Assailing the order passed vide Annexure P-1 it is submitted by Mr. Saxena, learned senior counsel for the Petitioners that the order is totally indefensible and penetrable inasmuch as the Collector has failed to appreciate the scheme of the Act in proper perspective and absolutely missed to take note of the fact that Section 21 of the Act is still in existence in the Statute book, and once a provision is in existence no authority can construe it to have been obliterated nor can be deport the same as such a perception tantamounts to an illegal and incurable action.

Mr. Agrawal, learned senior counsel, on the contrary, submitted that validity of Section 21 of the Act has been assailed and the matter is subjudice before this Court and, therefore, the action of the Collector at this juncture should not be adjudicated. In any case, propounded Mr. Agrawal, the view expressed by the competent authority is a plausible one.

The central issue which falls for consideration is whether the order passed by the Collector is justified in the facts and circumstances of the case. On a scrutiny of the order impugned, it transpires that the Collector has not found any illegality in the procedure pertaining to conducting of the meeting as per Section 21 of the Act but has opined that the Respondent No. 1 could not have been removed u/s 21 of the Act, inasmuch as the time stipulated u/s 21-A of the Act is 2 years and a half and the action has to be taken u/s 21-A of the Act and not u/s 21. He has also expressed the view that the action has been taken prior to the stipulated period and not in accordance with relevant provision. I may hasten to add though the order has been passed by the Collector is slightly unclear on this score but the essence of the order is that the Respondent No. 1 could have been

proceeded u/s 21-A of the Act and not u/s 21 of the Act. In this context I may profitably refer to Section 21 of the Act. The said provision deals with no confidence motion against Sarpanch and Up-Sarpanch. It is apposite to reproduce the same :

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 anything 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 and 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 the previous motion of no confidence was rejected.

(4) If the Sarpanch or the Up-Sarpanch, as the case may be, desires to challenge the validity of the motion carried out under Sub-section (1), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him, and his decision shall be final.

Section 21-A provides for recalling of office bearers of Gram Panchayat. The said provision, as has been stated earlier, was introduced by way of an amendment on 5.4.1999. The said provision reads as under:

21-A. Recalling of office bearers of Gram Panchayat.

(1) Every Sarpanch of a Gram Panchayat shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot, by a majority of more than half of the total number of the members constituting the Gram Sabha within the Gram Panchayat in accordance with the procedure, as may be prescribed :

Provided that no such process of recall shall be initiated unless a notice is signed by not less than one-third of the total number of members of the Gram Sabha and presented to the prescribed authority :

Provided further that no such process shall be initiated, :

(i) within a period of two and half years from the date on which such Sarpanch elected at the General Election enters his office; or

(ii) if half of the period of tenure of the Sarpanch elected in a bye-election has not expired.

(2) Every panch of a Gram Panchayat shall forthwith be deemed to have vacated his office if he is recalled through a secret ballot by a majority of more than half of the total number of members of the Gram Sabha constituting the ward from which the Panch is elected.

(3) The provisions of Sub-section (1) shall apply mutatis mutandis in relation to recall of a Panch.

(4) If such Sarpanch or Panch, as the case may be. desires to challenge the validity of recalling him under the foregoing Sub-sections he shall within seven days from the date on which he is deemed to have vacated the office, refer dispute to the Collector who shall decide it. as far as possible, within 30 days from the date on which it was received by him, and his decision shall be final.

On a scrutiny of the anatomy of Section 21 of the Act it is luminescent that a no confidence motion can be mooted against a Sarpanch within a period of one year from the date on which the Sarpanch enters the office. This is one of the aspects which is relevant for the present purpose. The other conditions enumerated under Sub-section (3) of the aforesaid Section are not relevant in the case at hand. It is not disputed at the Bar that no-confidence motion against the Respondent No. 1 was proposed after expiry on one and half years from the date of her entering into reference. Thus, the ban enjoined u/s 21(3)(i) of the Act is not attracted.

The heart of the matter is whether such a motion could have been moved because of insertion of Section 21-A into the Act. I may proceed to add, I cannot advert to the validity of Section 21 of the Act because that has to be done by the appropriate Division Bench. It is not disputed before me that operation of the provision has not been stayed by the Division Bench. Thus, presently the question arises whether by incorporation of Section 21-A, operation of Section 21 of the Act gets ostracized. It is noteworthy to mention here that the provision u/s 21 of the Act has not been expressly repealed nor has it been substituted by any provision. The hub of the matter is whether by incorporation of Section 21-A. the provision of Section 21 of the Act is impliedly repealed. To elucidate, whether the introduction of Section 21-A into the Act has the effect of annulment of Section 21-A into the Act. If the provision would have been substituted, the matter would have been quite different. But it is not so. Another concept of implied repeal

which has assumed significance is whether there is irreconcilability between the two provisions. On a X-ray of both the provisions, it cannot be said by any stretch of imagination that there is any inconsistency or incompatibility between the two. In my humble view, both the provisions do not indicate any kind of self contradiction. They do not portray any paradox. In fact, no inconsonance is perceptible. I venture to say so, as I am of the considered opinion, both the provisions operate in two different spheres/compartments. The authorities who take action under the provisions are different. u/s 21 of the Act, it is the ?Panchas?, who are to take action by passing a resolution. It is lack of confidence of the ?Panchas? in the Sarpanch. Section 21-A postulates for recalling of office bearers of the Gram Panchayats by Gram Sabha and such a power is vested with the members of the Gram Sabha to recall the Sarpanch by way of secret ballot. It is not inapposite to state here, a motion of no-confidence can be advanced or mooted after expiry of one year by the ?Panchas? whereas the members of Gram Sabha have been empowered to recall after expiry of 2-1/2 years. The further stipulation is that the recall is to be passed by more than 1/2 of the total members of Gram Sabha. On a plain reading of both the provisions, it is crystal clear that one relates to the internal functioning of the Gram Panchayat where ? panchas? may be aware of certain mal-functioning of the Sarpanch and may not desire his continuance in the office, and then the question of motion of no confidence arises. The other one is a step taken by a dissatisfied and disillusioned Gram Sabha. The time period provided is also different and the Legislature in its wisdom has provided two different periods. The purpose of deliberating all these is that the two provisions are quite distinct. Both of them being in the Statute Book, it cannot be said that one has to be taken recourse to, being a later provision, and the other one has to be abandoned and buried because it was an earlier one. The later one does not cause the natural death of the earlier provision. It does not even create an accidia. Such an interpretation would have found favour, had there been substitution or the language employed u/s 21-A of the Act would have been couched in a different manner to connote a meaning that there has been implied repeal of Section 21 of the Act. I may hasten to add, I have not dealt with whether Section 21 of the Act is ultra vires or intra vires. I have only dealt with the aspect, when both the provisions are in existence in the Statute book and there is no incompatibility or disharmony between the two, they have to be allowed their full play and one cannot abrogate the other.

In view of my preceding analysis, the opinion expressed by the Collector that action could only have been taken u/s 21-A of the Act is absolutely pregnable and does not stand scrutiny by this Court. The said order being unsustainable is quashed and the authorities are directed to take steps in accordance with law. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.