

(1996) 01 MP CK 0131

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1906 of 1995 (G)

Hargovind Johri

APPELLANT

Vs

Zila Panchayat, Morena and Others

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 35

Citation : (1996) 2 MPJR 106

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; A. Dudawat, G.A., for the Respondent

Final Decision : Allowed

Judgement

Can a meeting summoned with a view to express no confidence can be adjourned for want of quorum. This precise question has been raised in this petition preferred under Article 226 of the Constitution of India.

The brief facts which have led to the filing of this petition be noticed as under.

The petitioner is a Member of Zila Panchayat, District Morena. Some Members of the Zila Panchayat moved the competent authority for getting a meeting convened for the purpose of expressing no confidence. This meeting was scheduled to be held on 9th of December, 1995 at 11.30 A. M. The presiding officer found that quorum was not available. Her adjourned the meeting to 20th of December, 1995. The information given by the presiding officer that the meeting has been adjourned from 9th of December, 1995 to 20th of December, 1995 is contained in Annexure P/I. This is being impugned in the present petition. As indicated above, the basic challenge is that a meeting called for expressing no confidence cannot be adjourned for want of quorum. According to the learned counsel for the petitioner as the requisite members of the Zila Panchayat were not present, the meeting should be deemed to have failed.

The stand taken by the petitioner is being opposed by the State. The basic reliance is being placed in a Division Bench judgment of this Court reported as Shankerlal v. Collector, Mandsaur and others, 1975 JLJ 500. The aforementioned authority supports the respondents that a meeting for no confidence can also be adjourned. As this position is sought to be distinguished on the ground that the provisions of the statute which were (here before their Lordship in the above case) are different from the provisions contained in the Madhya Pradesh Panchayat Raj Adhiniyam, 1993, it would be apt to notice the statutory provisions in both the Acts i. e. Madhya Pradesh Panchayat Act, 1962 (hereinafter referred to as the Act of 1962) and Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as the Act of 1993). The relevant statutory provisions are sections 24 of the Act of 1962 and sections 35 of the Act of 1993. These be noticed and read as under :

Act of 1962 Act of 1993

Non-Confidence motion against Sarpaneh or Up-Sarpanch. - (1) On a motion of non-confidence being passed by the Gram Panchayat by a resolution passed by a majority of not less than two-thirds of the Panchas present and voting and such majority is more than one half of the total number of panchas constituting the Gram Panchayat for the time being, the Sarpaneh or Up-Sarpanch against whom such motion is passed, shall cease to hold office with effect from the date immediately next after the date on which such motion is passed.

(2) Notwithstanding anything contained in this Act or the rules made thereunder, a Sarpaneh or an Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is discussed against him but such meeting shall be presided over by an officer of the Government as the prescribed authority may appoint for the purpose. However, the Sarpaneh or the Up-Sarpanch as the case may be, shall have a right to speak and otherwise to take part in the proceedings of the meeting.

(3) A meeting for the purposes of this section shall be held in the manner prescribed.

No. confidence Motion against President and Vice-President - (1) On a motion of no confidence being passed by Zila Panchayat by resolution passed by majority of not less than three fourths of the members present and voting and such majority is more than two-thirds of the total number of members constituting the Zila Panchayat for the time being the President or the Vice-President against whom such motion is passed shall cease to hold office forthwith.

(2) Notwithstanding anything contained in this act or the rules made thereunder, President or Vice-President shall not preside over a meeting in which a motion of no confidence is discussed against him. Such meeting shall be convened in such a manner as may be prescribed and shall be presided over by an officer of the Government as the prescribed authority may appoint. The President or Vice-President as the case may be, shall have right to speak at or otherwise to take

part in the proceeding of the meeting.

(3) No-confidence motion shall not be against the President or Vice-President within a period of:-

(i) one year from the date on which the Zila President or Vice-President enter their respective office.

(ii) Six months preceding the date on which the term of office of the President or Vice-President as the case may be, expires;

(4) one year from the date on which previous motion of no confidence was rejected.

The rules enacted under the two statutes also does require to be noticed. Under the Act of 1962, Rules known as Madhya Pradesh Gram Panchayats (No-confidence Motion Against Sarpanch or Up-Sarpanch) Rules, 1964 were framed. Under the Rules of 1964, a notice was required to be given by the Secretary of the Body and the meeting was to be called by him under his own signature. The presiding authority has been indicated in rule 5 of the Rules of 1964. Under the Adhiniyam, 1993 also rules have been framed. These are known as Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janapad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994. In these rules, section 3 deals with the requirement of giving notice. Rule 4 deals with appointment of presiding officer, rule 5 deals with the method and manner in which a meeting is to be conducted, rule 6 deals with the question as to how the minutes of the proceedings are recorded. As the two rules differ in some manner, therefore, it would be apt to notice these rules also.

Rules of 1964

Notice.-Any Panch or Panchas who desire or desire to move a motion of no-confidence against the Sarpanch or Up-Sarpanch shall give a notice there-of to the Secretary in the Form appended to these rules. Where the Panch or Panchas desires or desire to move the motion of no-confidence against the Sarpanch as well as the Up-Sarpanch, he or they shall give two separate notices. If the notice is given jointly by more than one Panch, the motion may, subject to the provisions of sub-rule(2) of rule 5, be moved by any of the Panchas signing the notice.

(2) The Secretary shall, on receiving the notice under sub-rule(1), sign there on certificate stating the date on which and the hour at which the notice has been given to him and shall acknowledge its receipt.

(3) On receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of 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 time and place for the meeting of the Gram Panchayat, Janpad Panchayat or Zila

Panchayat, as the case may be, which cannot be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, and place thereof shall be caused to be despatched by him through the Secretary of the Gram Panchayat or Chief Executive or of the Janpador Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before meeting.

Appointment of Presiding Officer. -The Prescribed Authority shall appoint an Officer of the Government u/s (2) of Section 21, sub-section (2) of Section 28 or sub-section (2) of Section 35 to preside over the meeting of a Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be for the purpose of considering the no confidence motion against Sarpanch or Up-Sarpanch, a Revenue Officer not below the rank of Naib Tehsildar against President or Vice-President of Janpad Panchayat as the Sub-Divisional Officer (Revenue) and against President or Vice-President of Zila Panchayat the Collector or Additional Collector shall be appointed to preside over such meeting and the prescribed authority shall inform the Secretary of the Gram Panchayat or Chief Executive Officer of Janpad or Zila Panchayat as the case may be and the Collector of the district about such appointment at least 3 days before the date fixed for the meeting. 5. Conductor meeting. - (1)The Presiding Officer shall record the attendance of the members of the Panchayat Present at the meeting.

(2) If the signatories of the no-confidence motion wants to withdraw the motion suo moto he/they may do so in writing and by presenting such notice in person to the Presiding Officer before the no-confidence motion is taken up for consideration.

(3) If the motion is not withdrawn suo moto the Presiding Officer shall ask any of the signatories to the notice to move the motion.

(4) After the motion is moved the mover shall first speak on the motion and thereafter other members may, if so desire, speak on the motion.

(5) On the conclusion of the debate on the motion, the Presiding Officer shall call the members present in the motion one by one and shall give them ballot paper duly signed by him to indicate its authenticity to cast his vote for or against the motion. The member who wants to vote in favour of the motion shall affix the symbol (i) and the member who wants to vote against the motion shall affix the symbol "X". After the members has recorded his vote, he shall fold the ballot paper to maintain secrecy and put it in the ballot box kept on the table of the presiding officer.

Convening of the meeting. The meeting of the Gram Panchayat for the purposes of Section 24 of the Act shall be convened by the Secretary and the notice of such meeting specifying the time and place thereof shall be despatched by the Secretary to every Panch seven clear days before the meeting. A copy of the notice shall be sent to the Chief Executive Officer of the Janapda Panchayat concerned.

Presiding authority. - (1) At any meeting of the Gram Panchayat, while a motion of no-confidence against the Sarpanch is under consideration, the Up-Sarpanch and while a motion of no-confidence against the Up-Sarpanch is under consideration, the Sarpanch, a while a motion of no-confidence against the Sarpanch as well as the Up-Sarpanch is under consideration, such Panch as may be elected by the Panchas present at the meeting shall preside. (2) A Panch elected to preside shall not be allowed to move the motion of no-confidence.

(3) The presiding authority shall not have casting vote in case there is equality of votes on the motion of no-confidence and the motion shall be deemed to have failed.

(2) The minute of the proceedings recorded under sub-rule (1) shall include--

(i) the names of the Panchas present;

(ii) the decision of the meeting on the motion of no-confidence; and

(iii) when such decision is not unanimous the number of votes and names of panchas voting for and against such motion and the names of those who have remained neutral.

Decision to be communicated to the Chief Executive Officer and the Collector-. When the Gram Panchayat takes a decision on any motion of no-confidence the Secretary shall communicate forthwith to the Chief Executive Officer of the Janapad Panchayat concerned and the Collector, the names of all the Panchas who were present at the meeting at which such decision was taken and the vote given by each Panch whether in favour of or against the motion.

Minutes of the proceedings- (1) Minutes of the proceedings at the meeting of the Gram Panchayat shall be drawn up by the Secretary and recorded in the book kept for the purpose.

Rule of 1994

Notice. - (1) Any member of Gram Panchayat. Janpad Panchayat or Zila Panchayat desiring to move a motion of no confidence against the Sarpanch or Up-Sarpanch of a Gram Panchayat or President or Vice-President of Jan-pad or a Panchayat as the case may be shall give a notice thereof to the prescribed authority in the form appended to these rules. Where a member desire to move the motion of no confidence against both the Sarpanch and the Up-Sarpanch, President, Vice-President of Janpad Panchayat, or the President and Vice-President or Zila Panchayat as the case may be shall by separate notices. If the notice is given by more than one member the motion may be moved by any of them signing notice.

(2) The prescribed authority on receiving the notice under sub-rule (1) shall sign thereon a certificate stating the date on which hour and at which the notice has been given to him and shall acknowledge its receipt.

(6) After the voting is over, the Presiding Officer shall take out the ballot papers from the ballot box and sort out the votes for and against the motion. If the number of votes in favour of the motion fulfils the requirement of subsection (1) of Section 21, Sub section (1) of Section 28, or sub-section (1) of Section 35, as the case may be, the Presiding Officer shall declare that the motion of no-confidence is passed. In the event of there being an equality of votes in favour of and against the motion, the motion would be decided by toss of coin.

Minutes of the proceedings. -Minutes of the proceedings of the meeting called under rule 4 shall be drawn up by the Presiding Officer and recorded in the minute book kept in the Panchayat for recording the proceedings of its meeting and sign it.

Reverting back to the decision in Shankerlal's case (supra), it has been held that no confidence motion can be adjourned and the rule of quorum which is applicable to other meetings would apply also to a meeting where no confidence is to be expressed. (7) The learned counsel for the petitioner submits that there are material difference in the rules framed under the Adhiniyam, 1993 and there are pointed out by him as under. -

(i) that, under the Adhiniyam of 1993 once a motion fails then another no confidence motion cannot be brought for a period of one year. According to him, when there is lack of quorum the no confidence motion should be deemed to have failed and by operation of law another meeting for expressing no confidence cannot be held before one year;

(ii) that, so far as the rules are concerned, it has been pointed that under the rules of 1964, there is no provision corresponding to rule 5 of the Rules of 1994 which deals with the method and manner in which a motion for confidence is required to be held. This was not present in the Act of 1962, therefore, by analogy one had to lean upon the provisions of section 30 of the Act of 1962 for the purposes of conducting the meeting. As in the present Adhiniyam, 1993, separate and detailed rules have been framed with regard to the manner and method in which a meeting is to be conducted, therefore, section 44 of the Adhiniyam, 1993, would not be attracted for the purposes of this case;

(iii) that, under the Rules of 1994, a meeting for no confidence is to be held within a period of fifteen days and a date for this is to be fixed by the prescribed authority. The prescribed authority in the case of Zila Panchayat is the Commissioner of the Division. Once the Commissioner of the Division fixes a date then he further indicates the person who is to preside over the meeting. The person who is to preside over the meeting is Collector or the Additional Collector. Presiding Officer has no power to fix a date for meeting.

The argument of the learned counsel for the petitioner is that the person who is nominated to preside over the meeting is merely to preside over the meeting. According to him, he has to conduct the proceedings and he has no power to adjourn the meeting and again he has no power to fix a date. It has also been

pointed out that for fixing a date one will have to depend upon the Commissioner of the Division. It is further argued that if the matter is to go before the Commissioner after the period of fifteen days has lapsed then the Commissioner would also not have any power to get a meeting convened.

The further argument of the learned counsel for the petitioner is that since a notice of the adjourned meeting has been given by the Collector, he is not the person who could be said to have been authorised to give a notice and the notice has to originate from the Commissioner.

I am of the view that there is material difference between the statutory provisions which were there before their Lordships of the Division Bench in Shankerlal's case (supra) and in this case. These are indicated as under;

(i) that, as to how a meeting is to be conducted is indicated in the rules of 1994 framed under the Adhiniyam, 1993. It was not so under the Act of 1962 which were considered by the Division Bench in Shankerlal's case (supra). It was precisely for this reason, the statutory provisions contained in the Act of 1962 with regard to holding of meetings were taken note of;

(ii) that, under the Rules of 1994 prepared under the Adhiniyam, 1993. a meeting for expressing no confidence has to be called within a period of fifteen days. If it is not done then the original notice would lapse. This factor was again missing under the rules framed under the Act of 1962;

(iii) that, the date for fixing a meeting is to be indicated by the prescribed authority and thereafter an officer has to be appointed for holding the meeting of no confidence, under the rules of 1994. In the present case, the date is to be fixed by the Commissioner of the Division. The meeting is to be presided over by the Collector or the Additional Collector. Under the old Act which was being considered by the Division Bench, the fixation of meeting was to be by the same functionary and the Sarpanch or Up-Sarpanch as the case may be the preside over the meeting; and

(iv) that, the Adhiniyam of 1993 makes a provision to the effect that if a no confidence motion fails then another meeting for no confidence cannot be called for at least one year in case of President of Zila Panchayat. This was again missing in the old Act.

The above distinctions which have been pointed are material. As a matter of fact, the distinction pointed out that the method and manner of conducting the meeting of no confidence has been indicated under the Rules of 1994 is very material. There is no requirement of quorum being there in Rule 5. If this be the position then the meeting could not be adjourned. It is further to be seen that the officer who is presiding over the meeting is merely authorised to preside over the meeting. He has not been authorised to fix another date for the purposes of holding a meeting and in case a meeting is ordered to be held beyond the period of fifteen days then this would be in breach of the rules referred to above.

The decision given by the Division Bench of this Court in Shankerlal's case (supra) be now examined.

The above decision is an authority for the proposition that a meeting which is called with a view to express lack of confidence can also be adjourned. The relevant observations made are as under :

...There is nothing in Section 24 or the relevant rules to provide for a case like the present where the meeting could not be held at the time specified in accordance with rule 4 due to absence of all Pattellas on account of which it had to be adjourned. Section 24 and the corresponding rules are silent on the point of adjournment of the meeting so convened, in view of the express content of rule 4 of the 1964 Rules, it cannot be doubted that the time of the meeting is required to be expressly stated in the notice given under rule 4 to every Panch. Such a notice is required to be given seven clear days before the meeting. Thereafter the Rules are silent and make no provision to regulate an adjournment which may become necessary for several reasons including want of quorum as in the present case. It would be reasonable to hold that the provision of sub-section (4) of section 30 which provides for adjournment of a meeting applies to such a meeting also the same being not inconsistent in any manner with section 24 or the corresponding rules. To hold otherwise, would lead to the curious result that there would be no provision to govern the adjournment of a meeting required to be held u/s 24 of the Act where the same cannot be held at the specified time for any reason whatsoever, even though provision is made to regulate adjournment of ordinary meeting in sub-section (4) of section 30. The further inevitable consequence would be that the power to adjourn a meeting convened for the purposes of section 24 of the Act being undoubted for the reasons already given, the same would be untrammelled even though such a meeting is bound to be an important one.....

Even if this view expressed by the Division Bench is accepted and it is conceded that a meeting summoned with a view to express lack of confidence is like any other meeting and can be adjourned, the question still remains whether this could be adjourned in a manner which could be in conflict with the mandatory provisions indicated in the Rules of 1994. The question arises as to who could adjourn it and for which date ? As noticed above, under the Rules of 1994, the decision as to when a meeting is to be convened is left with the Commissioner of the Division in this case. It is this officer who takes a decision to appoint a presiding officer. Again the meeting expressing lack of confidence has to be held within fifteen days from the date a request is made in this regard to the Commissioner of the Division. Thus, even if it is conceded that a meeting summoned with a view to express lack of confidence can be adjourned even then the petitioner is entitled to the relief to the extent that this meeting could not be adjourned beyond fifteen days to be calculated from the date of the" original request.

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 Shankerlal's case (supra): 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 - Shankerlal'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.

Accordingly, it held that the notice, Annexure P/I by which meeting was adjourned to 12th of December, 1995, being beyond a period of fifteen days, as indicated in rule 3 (3) of the Rules of 1994, it would not be a valid meeting. This petition is allowed. The requisitionist who sent a notice to the prescribed authority under rule 3 (1) of the Rules of 1994, would not at liberty to make a fresh requisition for getting a meeting of no confidence convened.