

(2018) 01 MP CK 0200
In the Madhya Pradesh High Court
Case No : 10330 of 2017

Kalyan and another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

[Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993](#), [Section 21](#), [Section 38B](#)

Citation : (2018) 01 MP CK 0200

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : Shyam Yadav, N.S. Chouhan

Judgement

1. The petitioner has filed the present petition challenging the resolution dated 24.06.2017 as well as letter dated 28.06.2017 issued by the Sub

Divisional Officer, Shahdol by which the petitioner has been removed from the post of Sarpanch after passing no-confidence motion.

2. Brief facts of the case are that the election of Village Panchayat Chandrapur, Janpad Panchayat Burhar, District Shahdol was conducted in the

year 2015 and the petitioner has been elected as Sarpanch of the said Gram Panchayat. On 25.02.2015, the Sub Divisional Officer has published

a notification under Section 90 thereby declaring the petitioner as elected for the post of Sarpanch. The petitioner, thereafter, performing her work

properly and without any complaint. The Secretary of the Gram Panchayat has committed some irregularity with the fund of Gram Panchayat. The

petitioner has, therefore, raised an objection with respect to that irregularity, therefore, the elected Panch of the Gram Panchayat has submitted a

notice of no-confidence motion of Sarpanch in the month of January, 2017. After receiving the notice of noconfidence, the prescribed authority has fixed the date for meeting in Gramsabha on 31.01.2017 as per the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Upsarpanch, Janpand Panchayat Tatha Jila Panchayat Ke Adhyaksh Tatha Upadhyaksh Ke Virudh Avishwash Prastav) Niyam, 1994. However, the said resolution was withdrawn by the Gramsabha. Thereafter, in the month of June the Panch of the Gram Panchayat has again submitted a notice to no-confidence before the prescribed authority against the petitioner. On 09.06.2017 the Tehsildar and officers were appointed for conducting the meeting of noconfidence, which has been fixed on 24.06.2017 at 11:00 am at Panchayat Bhawan and it was also directed to convey information about the meeting to all the Panch of the Village Panchayat and for Sarpanch i.e. petitioner. Accordingly, the Chief Executive Officer of Janpad Panchayat Burhar has sent a copy of notification under format 26-A under Section 90 of the M.P. Panchayat Election Rules, 1995 before his office. The prescribed authority, thereafter, has issued the notices to all the Panch of Village Panchayat along with the petitioner. In the said notice, the date of meeting is not mentioned. After service report by the Secretary of Village Panchayat, the Secretary has submitted a letter regarding the service of notice of noconfidence motion to the petitioner before the Sub Divisional Officer, in which he has stated that the notice to no-confidence has been served to the petitioner on 21.06.2017, whereas, meeting is fixed for 24.06.2017. A Panchnama is also submitted before the prescribed authority. Thereafter, on 24.06.2017 meeting was conducted in the Gram Panchayat Bhawan for noconfidence motion and a resolution was passed against the petitioner by 11/3 votes. After passing of the noconfidence motion against the petitioner, the Sub Divisional Officer vide letter dated 28.06.2017 has directed the Chief Executive Officer of Janpad Panchayat Burhar to conduct the fresh election as per Section 38(B) of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the "Adhiniyam"). Being aggrieved by that resolution as well as letter dated 28.06.2017, the petitioner has filed the present petition.

3. Learned counsel appearing on behalf of the petitioner submits that the entire action of the respondents in passing the no-confidence motion

against the petitioner is illegal and contrary to law. He submits that the petitioner has been elected as Sarpanch in the year, 2015 and as per Rule

90 of the Panchayat Election Rules, 1995, noconfidence motion cannot be called out before two & half year from the date on which Sarpanch has

been elected. In the present case, the petitioner has been elected as Sarpanch on 25.02.2015 and the process of no-confidence motion has been

initiated against the petitioner in the month of January, 2017. He further submits that the notice which is issued against the petitioner is also contrary

to the Rule 3 of 1994 Rules. He submits that as per Rule 3 of the Rules, a 15 days notice is required to be served on the petitioner before the date

of meeting. In the present case, he submits that the notice was served on the petitioner on 21.06.2017 and the meeting was held on 24.06.2017

i.e. before the expiry period of 15 days. He further submits that the petitioner was not given proper opportunity of hearing before passing the

impugned order.

4. The respondents have filed their reply and in the said reply, the respondents have stated that the petitioner was elected as Sarpanch of Gram

Panchayat Chandrapur in the year 2015 and since then she is holding the post. There were allegations against the petitioner and, therefore, she is

lost confidence amongst people. Thus, 1/3rd majority of Panchayat submitted a proposal of noconfidence against the petitioner before the SDO

Jaitpur. In pursuance to the same, the Tehsildar, Jaitpur was appointed as prescribed authority for conducting noconfidence motion as per the

proposal submitted by 1/3rd majority of the Panchayat. The prescribed authority in compliance of Rule 3 of the Madhya Pradesh Panchayat

(Gram Panchayat Ke Sarpanch Tatha Upsarpanch, Janpand Panchayat Tatha Jila Panchayat Ke Adhyaksh Tatha Upadhyaksh Ke Virudh

Avishwash Prastav) Niyam, 1994 and also verifying all mandatory provisions as well as Section 21 (3) of the Adhiniyam, 1993 issued a notice and

fixed the meeting of no-confidence on 24.06.2017, in which no-confidence motion was passed against the petitioner. Thereafter, further

proceedings under Section 38(B) of the Act has also been completed and one Smt. Tarawati Singh has been elected as new Sarpanch of Gram

Panchayat. The respondents have further stated that as per Section 21 of the Act, no-confidence motion cannot be lie against the Sarpanch of the

Village Panchayat before six months from the date of previous no-confidence was rejected. But, in the present case, in the previous meeting dated

31.01.2017, it is evident that the subject matter of the said meeting was different and the same was only in respect of discussion on the complaints

made against the then Sarpanch. The same was not a proposal of noconfidence and, therefore, it cannot be said that earlier the no- confidence

motion was held against the petitioner on 31.01.2017. The respondents have also taken an objection that the petitioner has an alternate remedy of

approaching before the Collector of the District for redressal of her grievance as per Section 21(4) of the Act of 1993. In light of the aforesaid,

learned counsel for the respondents submits that the petition deserves to be dismissed.

5. Heard learned counsel for the parties and perused the record.

6. In the present case, the petitioner was elected as Sarpanch of Gram Panchayat Chandrapur, Janpad Panchayat Burhar, District Shahdol on

25.02.2015. Thereafter, some complaints have been made against the petitioner. Therefore, a meeting was held by the Gramsabha on

31.01.2017. However, in the said meeting no decision has been taken against the petitioner and the same has been withdrawn. From perusal of the

resolution dated 31.01.2017 which is filed by the petitioner along with the petition as Annexure-P/3 and the minutes of the said meeting shows that

the meeting was called for considering the complaints against the petitioner and it is not for passing any no-confidence motion against the petitioner.

Thereafter, again the complaints were made against the petitioner by 13 Panchs of the same Gram Panchayat and, therefore, the Sub Divisional

Officer in exercise of the powers given under Section 21 of the Act has appointed Tehsildar Jaitpur for considering the noconfidence motion

against the petitioner on 09.06.2017 and the meeting was fixed on 24.06.2017. However, the notice dated 09.06.2017 has been served on the

petitioner on 21.06.2017 which is clear from the receipt of notice dated 22.06.2017 (Annexure-P/5) as well as copy of the Panchnama which is

filed by the petitioner along with the petition.

7. The Rule 3 of Rule 1994 provides that 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 shall be served on every members of the Panchayat concerned seven days before the meeting.

8. In the present case, as stated earlier that as per the letter of the Secretary of Gram Panchayat dated 22.06.2017 to Sub Divisional Officer, in which it has been stated that the notice has been served on the petitioner on 21.06.2017 and the meeting was held on 24.06.2017 i.e. prior to 7 days as prescribed under the Act.

9. The Section 21 of the Act provides for the Noconfidence motion against the Sarpanch and Up- Sarpanch:- As per sub Section 3 of Section 21-

Noconfidence motion shall not lie against the Sarpanch or Up- Sarpanch within a period of two and half year from the date on which the Sarpanch or Up-Sarpanch enter their respective office.

10. In the present case, admittedly, the petitioner was elected as Sarpanch on 25.02.2015 and no-confidence motion has been passed against the petitioner on 24.06.2017 i.e. prior to two and half year of her date of election as Sarpanch and, therefore, the said resolution is not sustainable in

law and consequently it is quashed. So far as, objections raised by the respondents regarding availability of the alternate remedy is concerned, the

Division Bench of this Court in the case of Dhanwanti Vs. State of M.P. and Others, 2013(2) MPHT 254 (DB) in paragraphs 21 and 22 has held

as under:-

21. In regard to availability of alternative remedy, it is an admitted position of law that for writ of certiorari, the alternative remedy is not a bar. In

regard to the alternative remedy, Hon"ble Supreme Court in the case of M/s Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad,

reported in AIR 1969 S C 556, has held as under:-

When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special

jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the

High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs

and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds

thereof. But, it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a

rule of policy, and discretion rather than a rule of law and the Court may, therefore, in exceptional cases issue writ such as a writ of certiorari,

notwithstanding the fact that the statutory remedies have not been exhausted. There are at least two wellrecognised exceptions to the doctrine with

regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a

provision of law, which is ultra vires it is open to a party aggrieved thereby to move the High Court under Art. 226 for issuing appropriate writ for

quashing them on the ground that they are incompetent, without his being obliged to writ until those proceedings run their full course.

22. Hon"ble Supreme Court in the case of Union of India and others Vs. Mangal Textile Mills India Pvt. Ltd. reported in (2010) 14 SCC 553,

quoted the observations of the earlier judgment of the Hon"ble Supreme Court in Harbansal Sahnia Vs. Indian Oil Corpn. Ltd., (2003) 2 SCC

107, and has held as under:-

9. In Harbansal Sahnia Vs. India Oil Corpn. Ltd., enumerating the contingencies in which the High Court could exercise its writ jurisdiction in spite

of availability of the alternative remedy, this Court observed thus:-

"7.....that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an

appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three

contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice;

or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged".

11. Thus, in light of the aforesaid, the writ petition is allowed. The impugned orders dated 24.06.2017 and 28.06.2017 are hereby set aside. There

shall be no order as to costs.