
(1998) 12 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5563 of 1998

Madan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-12-1998

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 37(4)

Citation : AIR 1999 Raj 177 : (1999) 1 WLC 197

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Rajendra Soni, for the Appellant; Manish Bhandari and Ajay Gupta, for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner was a Sarpanch of Gram Panchayat, Paota, Panchayat Samiti, Virat Nagar, Jaipur. On certain allegations a no-confidence motion was moved against the petitioner on 14-8-1998 and a meeting was scheduled to be held on 18-9-1998. Initially, there was a stay order in favour of the petitioner which was vacated on 7-10-1998.

2. Another notice of no-confidence was issued on 13-10-1998 for a meeting to be held on 23-10-1998. The petitioner challenges the notice dated 13-10-1998 (Annexure-1), by which the S.D.O., Kotputli, was directed to preside over the meeting by the S.D.O., Kotputli and also Annexure-2, the resolution passed on 23-10-1998 whereby the no-confidence motion of the petitioner was passed.

3. It is one of the contentions of the petitioner that under Sub-section (4) of Section 37 of the Rajasthan Panchayati Raj Act, 1994 in a meeting where the no-confidence motion is to be moved, the meeting is to be presided over by the competent authority, provided for reasons to be recorded in writing the competent authority can nominate any other person to preside over the meeting. The competent authority has been defined under the Act, to be such officer or

authority as the State Government may, by notification in the Official Gazette, appoint to perform such functions and exercise such powers. Section 37(4) reads as under :

37. Motion of no-confidence in chairpersons and deputy chairpersons-

(1) A motion expressing want of confidence in the chairperson or deputy chairperson of a Panchayati Raj Institution may be made in accordance with the procedure laid down in the following sub-sections.

(4) The competent authority shall preside at such meeting:

Provided that if, for reasons to be recorded in writing, he is unable to do so, the officer nominated by him shall so preside.

4. The definition of competent authority reads as under :

"Competent authority" means such officer or authority as the State Government may, by notification in the Official Gazette, appoint to perform such functions and exercise such powers of a competent authority with respect to such provisions of this Act and in relation to such Panchayati Raj Institutions as are specified in the notification;

5. The petitioner submits that in the present case the competent authority was the Chief Executive Officer and he has not given any reason whatsoever to nominate the SDO, Kotputli for presiding over the meeting, it is further submitted that even the SDO, Kotputli had not presided over the meeting, rather he further delegated this power to the Tehsildar, Kotputli as is clear from Annexure-2 and thus the meeting which was mandatory and statutorily to be presided over by the Chief Executive Officer was initially not ordered to be presided in accordance with law by the SDO on the ground that no reasons had been mentioned in the order Annexure-1, but in the present case, even the SDO did not preside over the meeting and it was the Tehsildar who presided over.

6. There is merit in the submissions made by the petitioner. It is settled law that the action is to be taken in accordance with law as prescribed in the procedure. Statutorily it is the competent authority who should preside over the meeting. The Legislature had thought it expedient in the circumstances of the case to empower the highest authority of the Panchayat Samiti to preside over the meeting for passing a resolution of no-confidence against an elected Sarpanch. The Legislature was of the opinion as it seems that the interest of Sarpanch and the Panchayat shall be safe in the hands of the highest authority so that no injustice is done to either of the party and if it was not possible for such an officer to preside over the meeting, he can only delegate by giving cogent reasons and those reasons should also be known to the parties concerned. In the present case, the Chief Executive Officer had only passed an order saying that the SDO shall preside over the meeting and no reasons have been given in the order nor any reason has been brought on record by the respondent. It was stated by the respondent that no written statement is required to be filed and

the matter can be decided on the legal submissions on the facts as mentioned in Annexs.-1 and 2.

7. Because of the fact that no reasons have been mentioned in Annexure-1 for deputing the S.D.O. to preside over the meeting, the notice for holding the meeting was not in accordance with law.

8. Apart from above, even the SDO did not preside over the meeting as per direction Annexure-1 and it is the Tehsildar who had presided over the meeting as is clear from the proceedings Annexure-2. Tehsildar had no authority to be either present in the meeting or to preside over the meeting. The meeting can only be presided over by the competent authority, in the present case Chief Executive Officer, or a person nominated by him on valid reasons. Nothing has been brought on record to show as to how the Tehsildar had presided over the meeting. Any such meeting not presided over by the person as prescribed under the statute, is no meeting in the eyes of law. The guarantee of safeguarding the elected post of Sarpanch to the effect that if he is to be removed by way of no-confidence motion, he can only be removed in the meeting presided over by the competent authority, has been violated in the present case.

9. For the reasons that the writ petition succeeds on the above point, there is no necessity to go into the other submissions made by the petitioner on the point that notice Annex.-1 was short by 5 days.

10. For the reasons mentioned above, the impugned notice and resolution Annexs.-1 and 2 are quashed. The writ petition is allowed with cost of Rs. 1,000/- without going into the submissions made by the petitioner on other counts.