

(2011) 11 CHH CK 0058
In the Chhattisgarh High Court
Case No : Writ Petition C No 6895 of 2011

Shanti Bai

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Virudh Avishwas Prastav) Niyam, 1994 — Rule 3(3)
Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 40
Constitution of India, 1950 — Article 14, 226

Citation : (2011) 11 CHH CK 0058

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Honble Shri Satish K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the orders dated 4-3-2011 (Annexure - P/6) and 30-6-2011 (Annexure - P/13).

2. Case of the petitioner, in short, is that the petitioner was elected Sarpanch of Gram Panchayat Chirmi. On 29-11-2010 the petitioner made a complaint against the respondent No. 4 with regard to his negligence act, misbehavior, etc. before the respondent No. 3 and thereafter, lodged a report in police Station, Poudi on 5-12-2010. Even the villagers also made a complaint against the respondents No. 4 & 5 before the respondent No. 2. On the basis of the complaint, the respondent/Sub Divisional Officer initiated the proceedings and registered the case against the respondent No. 4 & 5. However, all of a sudden without any rhyme or reason, the Sub Divisional Officer proceeded against the petitioner and issued notice u/s 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and vide order dated 4-3- 2011 the petitioner was placed under suspension.

3. Being aggrieved by the said order, the petitioner preferred a petition before

this Court, being W.P. (C) No. 1544 of 2011, wherein this Court, by order dated 22-3- 2011, stayed the effect & operation of the order dated 4-3-2011. However, during pendency of the said petition, on the basis of no confidence motion proceedings dated 8-6- 2011, the petitioner was removed from the post of Sarpanch and by order dated 30-6-2011. The charge of Sarpanch was handed over to the respondent No. 7. In view of the subsequent developments, WP (C) No. 1544 of 2011 was dismissed as withdrawn by order dated 5-9-2011 with liberty to file a fresh petition to challenge the subsequent order. Thus, this petition.

4. Learned counsel appearing for the petitioner submits that the impugned orders dated 4-3-2011 & 30-6-2011 are perverse, erroneous and against the provisions of Article 14 of the Constitution of India. The no confidence motion proceedings are initiated against the petitioner is in utter violation of the well settled principles of law. The notice of no confidence motion dated 30-5-2011 was served upon the petitioner with mala fide intention on 5-6- 2011 and just 3 days before the date fixed for no confidence motion to be held on 8-6-2011. Even the petitioner was not allowed to speak in the meeting of no confidence motion dated 8-6-2011. The petitioner was not given 7 days time before considering the no confidence motion against her, due to which the petitioner could not get proper opportunity to rebut and speak in the no confidence motion proceedings.

5. Heard learned counsel appearing for the petitioner, perused the pleadings and documents appended thereto.

6. Sub-rule (3) of Rule 3 of the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Virudh Avishwas Prastav) Niyam, 1994 (for short 'the Rules, 1994'), which is in respect of issue of notice, provides for dispatch of notice seven days before the date of meeting. Seven days is accordingly not to be counted from the date of receipt of the notice, but from the date of its dispatch. Rule 3 (3) of the Rules, 1994 reads as under:

3 (3)..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.

7. In the case on hand, the petitioner has failed to establish that notice to convene meeting for no-confidence against her was not dispatched before the date of meeting. Her entire case is that notice was received three days before the date fixed for taking up the motion of no- confidence against her and as such, there is no infirmity or illegality in the issue of notice before taking up no confidence motion against her.

8. In an identical matter, this Court, in *Pilaram Dewangan & Another v. State of*

Chhattisgarh & Others observed as under:

16. The Hon^{ble} Supreme Court, in the case of Jai Charan Lal Vs. State of U.P. and Others, while dealing with the provisions under Uttar Pradesh Municipalities Act, 1916 provides for clear 7 days intervention between date of dispatch of notice and date of meeting observed that "the sub-section says that the District Magistrate shall send the notice not less than seven clear days before the date of the meeting and the word `send' shows that the critical date is the date of the despatch of the notice. As the notice was sent on the 17th and the meeting was to be called on the 25th, it is obvious that seven clear days did intervene and there was no breach of this part of the section". The identical facts and provisions of law are involved in the present case. The notice was despatched on 22.8.2006 for the meeting to be held on 30.08.2006. Thus, there were 7 clear days between the date of despatch and the date of meeting.

9. Be that as it may, election is the basic pillar of the democratic elections. A candidate who participates in the election process gets elected by majority of votes polled in his/her favor. In a similar way, when a no confidence motion is carried against an elected candidate, and the motion is carried out by a clear majority, the same cannot be held as illegal merely on the ground of some technical defects and the allegations made by the petitioner, which are not supported by any documentary evidence, or otherwise.

10. This Court, in Ghanshyam Yadav v. Rameshwar Sahu & Others held that no prejudice, whatsoever is caused in any manner when the resolution was passed by overwhelming majority. In the instant case, it is clear that the members of the Gram Panchayat have lost faith in the Sarpanch, and thus, she was removed by no-confidence motion.

11. In view of foregoing and for the reasons stated hereinabove, this Court, in exercise of its power under Article 226 of the Constitution of India, is not inclined to interfere with the impugned orders, which are legal, just and proper.

12. Accordingly, the writ petition is shorn of merit is liable to be and is hereby dismissed at the motion stage itself.