
(2004) 01 MP CK 0023

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 163 of 2003

Smt. Kamla Durga Solanki

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 32, 35(4)

Citation : (2005) 1 JLJ 47 : (2004) 2 MPHT 76 : (2004) 1 MPJR 410 : (2004) 2 MPLJ 140

Hon'ble Judges : S.S. Jha, J;A.K. Gohil, J

Bench : Division Bench

Advocate : R.D. Jain and M.P.S. Raghuvanshi, for the Appellant; Jitendra Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

This appeal is filed against the judgment of the Single Bench holding therein that the motion of no-confidence passed against respondent No. 4 is invalid. It is contended that after passing of the no-confidence motion, appellant was elected subsequently as the President of Zila Panchayat, Morena u/s 32 of the Madhya Pradesh Panchayat Raj and Gram Swaraj Adhiniyam, 1993.

Brief facts of the case are that respondent No. 4 Shrimati Guddi Bai was elected as Member of Zila Panchayat, Morena and thereafter she was elected as President of the Zila Panchayat u/s 32 of the Madhya Pradesh Panchayat Raj and Gram Swaraj Adhiniyam, 1993 (hereinafter, referred as the "Act"). After her election, an application was submitted to the Commissioner, Chambal Division by some of the members of the Panchayat proposing to move motion of co-confidence against the elected President. On receiving the letter of the members, Commissioner issued notice (Annexure P-3), dated 12-8-2002 (annexed with the writ petition), fixing a date to consider the motion of no-confidence and

appointed Collector, District Morena as Presiding Officer to conduct the motion. Meeting was convened on 20-8-2002 and in the meeting, motion of no-confidence against the President was carried out and she was removed from the post of the President. Dispute has been raised under the provisions of Section 35 (4) of the Adhiniyam to the State Government and the representation has been rejected vide Annexure P-4, annexed with the writ petition. Respondent No. 4 then filed a writ petition before this Court. Argument was that no-confidence motion was required to be passed under the provisions of Rule 5 of the Madhya Pradesh Panchayats (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Pras-tav) Niyam, 1994 (hereinafter, referred to as the "Rules of 1994"). It was argued that the meeting was not held in accordance with Rule 5 of the Rules of 1994 and therefore, entire proceedings of the meeting are vitiated on this ground alone. It is further contended that when the dispute was referred to the State Government, it could not have been decided by the Minister concerned as the Minister has no authority to hear and decide the dispute. It was further contended that the Minister without considering the statutory provisions of the Rules and without application of mind has held that motion of no-confidence was carried out. Prayer was opposed and it was contended that the motion of no-confidence has been carried out and more than 3/4th of the members have voted in favour of motion of no-confidence, therefore, the petition is not maintainable. Since fresh elections have been held, therefore, the petitioner has an alternative remedy of election petition. Petition as filed is not maintainable. It was also contended by the Counsel for the State that vide Notification (Annexure R-2) annexed with the writ petition powers to hear dispute have been delegated to the Minister by the State Government, therefore, Minister has jurisdiction to decide the dispute. Learned Single Judge has allowed the petition on the ground that rules have not been followed and all the elected women members of the Panchayat were permitted to take the assistance of male members being their husband, brother, or friend above the age of 18 years and in view of the aforesaid matter, such permission was contrary to the law and provisions of Section 35 of the Adhiniyam and Rule 5 (5) of the Rules of 1994. It is held by the learned Single Bench that when the procedure is prescribed for doing a particular thing, it should be done accordingly and if the procedure has not been followed, then entire proceedings are vitiated. Single Bench held that secrecy of the ballot was not maintained as illiterate women members have taken assistance of male members, therefore, the elections have been set aside.

Only question involved in the appeal is whether there was any breach of rules while considering the motion of no-confidence.

Minutes of the meeting have been filed by the petitioner on 2-7-2003 in the writ petition. On perusal of the minutes, it is found that the Presiding Officer asked the members present in the meeting to speak in respect of motion of no-confidence and the members were permitted to support or oppose the motion. Shri Gajendra Singh Tomar has opposed the motion of no-confidence and

addressed the members about the work done by elected President Shrimati Guddi Bai and he requested that the members should oppose the motion of no-confidence. Shri Vrindavan Singh Sikarwar spoke in favour of the vote of no-confidence. Women members present in the meeting requested that they may be permitted to cast their votes with the help of their brother or husband. They also stated that their husband or brother will endorse the mark on the ballot paper according to their desire. Proposal of women members was accepted by all the members by majority of votes. Thereafter, the Presiding Officer explained the members what is to be done. He explained on the black board that the members are required to put the mark "v" if they want to support the motion of no-confidence and " x " mark on the ballot paper would mean that the members are against the motion of no-confidence.

In the meeting, resolution was carried out by 15/3 votes. Thereafter, respondent No. 4 Shrimati Guddi Bai preferred a dispute u/s 35 of the Adhiniyam to the State Government and said dispute has been decided by the Minister of Panchayat Department vide Annexure P-2, annexed with the writ petition. It is contended that the Minister had no jurisdiction to decide the dispute u/s 35 (4) of the Adhiniyam. Before the Single Bench, respondents with their return have filed document (Annexure R-2) wherein under the rules of business power to hear appeal and revision under the provisions of the Adhiniyam have been conferred upon the Minister of Panchayat and Social Welfare Department. However, on bare perusal of this circular it is apparent that if any appeal or revision is filed u/s 91 of the Adhiniyam, than it was to be considered by the concerned Minister and there is no delegation of powers u/s 35 (4) of the Adhiniyam to the Minister. Therefore, the dispute raised by the respondent No. 4 could not be decided by the Minister.

However, at this stage, it will not be proper to remit the dispute to the State Government as question of law is involved in the appeal. Single Bench has held that since the motion of no-confidence was required to be carried out by 3/4 members of the Panchayat, therefore, on account of breach of secrecy of ballots, result was vitiated.

Question whether permission to women members to take the assistance of their husband or brother to exercise their franchise was proper or contrary to the provisions of law is required to be examined.

Sub-rule (5) of Rule 5 of the Rules of 1994 are reproduced below:--

"On the conclusion of the debate on the motion, the Presiding Officer shall call the members present in the meeting 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 "v" and the member who wants to vote against the motion shall affix the symbol "X". After the member 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."

Rule 5 of Rules of 1994 provides for conduct of meeting and Sub-rule (5) provides that the Presiding Officer shall call the members 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. Members who want to vote in favour of the motion shall affix the symbol "v" and the members who want to vote against the motion shall affix the symbol "X". After the member has recorded his vote, he shall fold the ballot paper to maintain the secrecy and put it in the ballot box kept on the table of the Presiding Officer.

8-A. Question in this case is whether the Presiding Officer was justified in permitting the women members to take the assistance of their husband or brother or any other near relation. It may be seen that this course was adopted on the request of women members including the petitioner in the writ petition Shrimati Guddi Bai. Presiding Officer has probably considered the procedure for permission to women candidates to take the assistance under the provisions of the Madhya Pradesh Panchayat (Up-Sarpanch, President and Vice President) Nirvachan Niyam, 1995 (hereinafter, referred to as the "Rules of 1995"). Sub-rule (5) of Rule 16 of the Rules of 1995 provides that if the Presiding Officer is satisfied that owing to, illiteracy, blindness or other physical infirmity, a voter is unable to record his vote, the Presiding Officer shall permit him to take a companion, who is not less than eighteen years in age to record the vote of the member on his behalf and in accordance with his wishes : Provided that before any person is permitted to act as companion of any member under this rule the person shall be required to declare in Form IV-A that he will keep secret the vote recorded by him on behalf of voter and that he has not already acted as companion of any member.

Question involved is whether Rule 16 of the Rules of 1995 can be made applicable for consideration of motion of no-confidence. Rule 5 of the Rules of 1994 relates to conduct of meeting. It provides that the Presiding Officer shall record the attendance of the members of the Panchayat present in the meeting. Then he shall ask any of the signatories to the notice to move the motion. The mover of the motion shall first speak on the motion and thereafter other members may, if they so desire, speak on the motion. Thereafter there shall be voting. Thus, considering the provisions, it is apparent that the manner in which the ballot should be cast is provided under Rule 5 (5) of the Rules of 1994.

Counsel for the appellant submitted that the resolution could not be quashed. He submitted that the petitioner in the writ petition is estopped from challenging the mode of casting of votes by women members. No objection was raised by Smt. Guddi Bai when permission for taking the assistance of brother or husband was given to the women members, on the contrary, Shrimati Guddi Bai herself made such request. If any right has accrued to Smt. Guddi Bai she had waived her right. In support of his contention, Counsel for the appellant has referred to the Full Bench judgment in the case of Smt. Bhulin Dewangan Vs. State of M.P. and

Others, In this case question of service of notice under Rule 3 of the Rules of 1994 was considered and it was held that the rules should not be treated as mandatory but they are directory in nature. It is further held that the general rule is that non-compliance of mandatory requirement results in nullification of the act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest are involved and in such a case the act done will be valid even if the requirements or conditions have not been performed. Full Bench referred to two judgments in the cases of Dhumadhandin v. State of M.P. [1997 (1) Vid Bh 49] and Mahavir Saket v. Collector, Rewa [1998 (1) JIJ 113] for holding that mere non-compliance of first part of the rule in fixing a meeting beyond the prescribed days of the motion of no-confidence would not invalidate the whole proceedings.

Counsel for the appellant contended that since at the time of taking assistance, no objection was raised by Shrimati Guddi Bai in the meeting. She has waived her right and after passing of the motion of no-confidence, she can not take benefit of the technicalities.

In the case of Smt Saroj v. State of M.P. [2003 (1) MPJR 58] it is held that casting of votes by raising of show of hands is in violation of Rule 5 (5) of the Rules of 1994 as specific procedure is laid down. Single Bench has set aside passing of motion of no-confidence as it was passed by raising of hands.

In the case of Shankarlal Patidar v. State of M.P. (1975 MPLJ 116) effect of non-compliance of notice under Rule 3 (2) of M.P. (No-confidence Motion Against Sarpanch and Up-Sarpanch) Rules, 1964 is held, to be directory and not mandatory. In this case, validity of resolution has been considered and it is held that after passing of no-confidence motion by show of hands, on failure to comply with the requirement of entering the names of Panchas voting for and against such motion and of those remained neutral in the minutes will not render the resolution invalid. Counsel for the appellant then referred to the judgment in the case of Amir Ahmad and others Vs. Ram Niwas Agrawal and others, wherein it is held that when no-confidence motion is duly passed in properly convened meeting presided over by a Judicial Officer then mere presence of two executive officers in the meeting without finding or proof of unauthorised interference by them would not render the proceedings of the meeting void. It was submitted that until and unless it is pleaded and proved that under undue influence the women voters voted in favour of majority, there is no need to interfere with the proceedings of the meeting.

In the case of State Bank of Patiala and others Vs. S.K. Sharma, in Para 32, the Apex Court has considered the question of violation of the procedural provision and held that violation of any and every procedural provision can not be said to automatically vitiate the enquiry held or order passed, except cases falling under "no notice", "no opportunity" and "no hearing" categories. It is further held that

prejudice caused to the person must be proved. This case relates to departmental enquiry.

Counsel for the appellant then referred to the judgment in the case of Muku Bai Vs. State of M.P. and Others, In this case this Court has considered Rule 3 (3) of the Rules of 1994. In this case, Sarpanch was not allowed to speak on the motion of no-confidence, but the fact that the elected Sarpanch did not lodge any complaint that she was not permitted by the Officer to speak on motion of no-confidence, then no relief on this aspect can be given to the appellant particularly when the majority has passed no-confidence and in democracy, majority accounts.

In the case of Mahesh Prasad Chaudhary v. State of M.P. [1997 (2) J.L.J. 397] question arose that when the allegation is that the Presiding Officer without giving any opportunity to debate and permission to discuss the no-confidence motion under Rule 5 of the Rules, allowed the members to cast their votes and no-confidence motion is passed against the petitioner wherein the petitioner was present, it was held that even such a non-compliance of the procedural law would not vitiate the result of the no-confidence motion. Another Division Bench judgment in the case of Gopal Yadav v. State of M.P. [2002 (4) M.P.L.J. 369] was relied upon by the Counsel for the appellant and it is submitted that in that case after recalling the President of the Municipality, elections have been held then writ petition as filed will not be maintainable as the petitioner has remedy to challenge the election or irregularity in the election by way of election petition. Counsel for the appellant submitted that since after passing of no-confidence motion fresh elections have been held" and appellant was duly elected, her election can not be set aside unless election petition is filed, and writ petition is not maintainable. Counsel for the appellant therefore submitted that once elections are held and the resolution is passed by majority of votes, it could not be set aside. He further contended that remedy, if any for the petitioner in the writ petition was by way of filing an election petition and writ petition was not maintainable.

Counsel for respondent No. 4 specifically argued that there is no waiver or estoppel against the statute. If there is violation of statutory provisions, then irregularity in the procedure will vitiate the proceedings of the meeting. In support of his contention, he referred to the judgment in the case of Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, . He also referred to the judgments in the case of Manohar Singh Marwaha v. State of M.P. [2003 (1) M.P.J.R. 12] and Tarlochan Dev Sharma Vs. State of Punjab and Others, and submitted that in a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. Question of abuse of power by the President and the acts amounting to official abuse have been considered.

In the case of Ramdas Surjansingh v. State of M.P. and Ors. (1974 M.P.L.J. 300)

this Court while considering M.P. Gram Panchayat (No-confidence Motion against Sarpanch or Up-Sarpanch) Rules, 1964, held that when the members passing the no-confidence motion unanimously, number of votes with names of Panchas voting for and against and names of those neutral need not be recorded and absence of such recording does not render motion invalid.

In the case of *Sojharml v. Municipal Council, Kharsia* (1964 JLJ 139) the question involved was where the statute not prescribing the mode of voting, whether the ballot-mode of voting on the motion of no-confidence, which was adopted in the case was legal. It is settled position that where a statute prescribes the mode in which the vote of the body is to be taken, then that method must be followed and failure to comply with the same is fatal to any action taken and if the mode of voting is not prescribed, then the method of voting by show of hands followed, then such course must prevail.

In the present case, method of casting of votes is prescribed under Sub-rule (5) of Rule 5 of the Rules of 1994. But the question involved is whether assistance could be sought of husband or brother by illiterate members. Resolution was passed by women members which was passed by majority, of members and opposed by only one member. In the minutes, it is mentioned that except Shrimati Ratna Rawat, remaining six women members had exercised their franchise with the help of their husband and Shrimati Ratna Rawat was permitted to cast her vote with the aid of Shri B.K. Sharma, Assistant Project Officer. On bare perusal of entire proceedings of the minutes of no-confidence motion, we find that at no point of time, petitioner Shrimati Guddi Bai has registered her protest in adopting the procedure of seeking assistance for casting the vote. The provision followed is prescribed under the Rules of 1995 for election of Vice President and President. Elected members have not raised any objection to the proceedings for consideration of no-confidence motion. It is not the case of the respondent No. 4 that mandatory provisions have been violated. For conducting elections, assistance of husband/brother has been sought to provide assistance to women members for casting their votes. Before such resolution was passed, it was not opposed by Shrimati Guddi Bai. She had not registered her protest. Casting of votes was in terms of Rule 5 (5) of the Rules of 1994. It is not the case of respondent No. 4 that women members were forced by their husbands to cast votes in favour of no-confidence motion against their wishes. Women members have not been impleaded as party in the writ petition. In the absence of any allegation that exercise of votes by women members was under influence of their husbands, motion of no-confidence which has been carried out by 3/4th majority of votes can not be set at naught. Thereafter, fresh elections for the post of the President were held on 6-9-2002 and appellant was elected as President. Hence, only remedy of the petitioner in the writ petition was to challenge the election by way of election petition alleging therein that no-confidence motion was not passed properly or any other ground available to her.

Therefore, we hold that once elections have been held and motion of no-

confidence was carried out by 3/4th majority, and in the light of respondent No. 4 Shrimati Guddi Bai's conduct in not opposing the mode of election and raising objection after no-confidence motion was passed, proceedings of motion of no-confidence can not be set at naught. Respondent No. 4 Shrimati Guddi Bai automatically ceased to hold the office after passing of the motion of no-confidence.

In the result, appeal succeeds and is allowed. Judgment delivered by the learned Single Bench is set aside and the writ petition filed by respondent No. 4 Shrimati Guddi Bai is dismissed. There shall be no order as to costs.