
(2013) 08 CHH CK 0028
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 298 of 2013

Smt. Lalita Bharti

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 4 CGLJ 325

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Advocate : Om P. Sahu, for the Appellant; Adil Minhaz, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.

Heard learned counsel for the parties.

1. Challenge in this petition is to the legality and validity of the order dated 05.04.2013 (Annexure P-1) passed by the Additional Collector, Durg in Appeal No. 07/A-89/12-13 (Smt. Lalita Bharti Vs. Sub Divisional Officer (Revenue), Durg-cum-Presiding Authority (Panchayat) & Others). The petitioner also seeks quashing of the no confidence motion proceedings initiated against her on 07.03.2013. Case of the petitioner, in short, is that the petitioner was an elected Sarpanch of Gram Panchayat, Thanoud. From the date of election, the petitioner performed her duties with great sincerity and utmost satisfaction to the public at large. On 21.02.2013, the no confidence motion proceedings were initiated against the petitioner by the Panchas of the said Gram Panchayat before the respondent No. 2. Thereafter, the respondent No. 2 without following the due process of law and without appreciating the facts and circumstances of the case in its letter and spirit, fixed the date of no confidence motion on 07.03.2013 and accordingly notices were issued on 22.02.2013.

2. Subsequently, on 23.02.2013 the Presiding Officer has been appointed for

presiding over the meeting on 07.03.2013. However, all of a sudden the Presiding Officer has been changed by order dated 04.03.2013 (Annexure P-6). The Presiding Officer without affording proper opportunity of hearing to the petitioner has started no confidence motion proceedings. The ballot papers were prepared on waste papers and the cardboard box has been used as ballot box. In the no confidence motion, 18 votes were polled in favour of no confidence motion and 3 votes against the motion.

3. The petitioner, being aggrieved, preferred the dispute u/s 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short, "the Act, 1993"), challenging the proceedings of no confidence motion. According to the petitioner, the Additional Collector, Durg without appreciating the contention made by the petitioner, dismissed the appeal by order dated 05.04.2013. Thus, this petition.

4. Challenge in this petition is to the order dated 5.4.2013 (Annexure-P/1) passed by the Additional Collector, Durg, in two folds. Firstly; the notice was received only on 2.3.2013 when no confidence motion took place on 7.3.2013 that was within a period of 7 days. Secondly; as per the records the order was passed 23.2.2013, however, notice to convene the no confidence motion was issued on 22.2.2013 (Annexure-P/4). Thus, before taking the decision to convene the no confidence motion, notice was issued. This is contrary to 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").

5. On the other hand, it is pointed out by the learned counsel appearing for the State that so far as date of issuance of notice is concerned, the Additional Collector has taken cognizance of the matter and in the reply the Sub Divisional Officer submitted that there was a typographical mistake. In fact, the notice was issued on 23.2.2013, but due to typographical error it was typed out as 22.2.2013.

6. It is an admitted position that no confidence motion was carried out against the petitioner by thumping majority as 18 members voted in favour of no confidence motion and 3 members against the no confidence motion. The Collector, in the dispute referred u/s 21(4) of the Act, 1993 has considered the issue raised before him. The Collector has rightly come to the conclusion that after following the due process of law and after affording opportunity of hearing to the petitioner, the no confidence motion proceedings was initiated.

7. In regard to the contention of the petitioner that after service of the notice, the certificate was not issued then and there, but on a subsequent date, on bare perusal of Rule 3 of the Rules, 1994, in its entirety, it is crystal clear that the requirement is that 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. On receiving the notice under sub-rule (1) the prescribed authority shall satisfy

himself about the admissibility of the notice with reference to Section 21(3), 28(3) and 35(3), as the case may be. There is no infirmity. In this case an application was received on 21.2.2013 and after satisfaction order was passed for convening the meeting on 23.2.2013. The same is in accordance with the requirement of the provisions of law. Rule 3 of the Rules, 1994 does not contemplate issue of certificate and receipt of the notice at the time of receiving the notice then and there, but the same can be done even on the subsequent date also.

8. Sub-rule (3) of Rule 3 of the Rules, 1994, which is in respect of issue of notice provides for dispatch of notice shall be 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.

9. Rule 3 of the Rules, 1994 reads as under:

3. Notice.--(1) Elected members 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 Janpad or Zila Panchayat, as the case may be, shall give a notice thereof to the prescribed authority in the form appended to these rules.

Provided that such notice shall be signed by not less than one third of the total number of elected members of the concerned Panchayat:

Provided further that where the elected members desire to move the motion of no confidence against both the Sarpanch and Up-Sarpanch, President and Vice-President of Janpad Panchayat or Zila Panchayat, as the case may be, they shall give separate 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.

(3) On receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to Section 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 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.

10. In an identical matter, this Court, in *Pilaram Dewangan & Another Vs. State of Chhattisgarh & Others* 2008 (1) BLJ 40 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 dispatch 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.

11. The second contention that notice was pre-dated, deserves to be rejected, as the same has been clarified by the Sub Divisional Officer that due to typographical mistake the date has been mentioned as 22.2.2013, though the notice was issued on 23.2.2013 i.e. after passing of the order.

12. 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 favour. 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. The no-confidence motion has been passed by a clear majority in a proper resolution held in presence of the petitioner.

13. This Court, in Ghanshyam Yadav Vs. Rameshwar Sahu and 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, he was removed by no-confidence motion.

14. In view of the foregoing, and for the reasons stated hereinabove, this Court, in exercise of its power under Article 227 of the Constitution of India, is not inclined to interfere with the impugned order as well as the no confidence motion proceedings which are legal, just and proper. Accordingly, the writ petition is dismissed. No order as to costs.