

(1997) 05 MP CK 0064

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3971 of 1996 (J)

Smt. Sharda Bai Khatik

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke Adhyaksha Tatha Upadhyaksha Ke Virudh Avishwas Prastav) Niyam, 1994 — Rule 5

Madhya Pradesh Panchayat Raj Act, 1993 — Section 21

Citation : (1998) 1 MPJR 45

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : Ravindra Shrivastava, for the Appellant; Harish Agnihotri, Advocate for respondents 1, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

Petitioner was elected Sarpanch of the Gram Panchayat Rajkhedi, in the Election which was held on 10.6.94. A motion of no confidence was brought against her on 30.11.95 which was declared to have been passed. Aggrieved by the same, petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India.

Shorn of unnecessary details, facts giving rise to the present writ petition are that on 20.11.95 notice was given to the prescribed authority to convene the meeting of the Gram Panchayat to consider the motion of no confidence against the petitioner. The prescribed authority by its notice 20.11.95, fixed 30.11.95, as the date for convening the meeting. In the said meeting 21 members participated and on the ground that 17 votes were polled in favour of the no confidence motion and 4 against it,

motion of no confidence was declared to have been carried out. According to the petitioner, however, out of 17 votes polled in favour of no confidence motion, 4 votes although were invalid but were counted in favour of the no confidence motion.

It is the stand of the petitioner that although notice for convening the meeting of Gram Panchayat to consider the motion of no confidence was dated 20.11.95 but the same was given to the members on 25.11.95. On the basis of the above factual matrix, Shri Ravindra Shrivastava appearing in support of the writ petition submits that in case 4 votes, which according to him are invalid are excluded from consideration, in favour of the no confidence motion, total number of votes polled in favour of the no confidence motion would be 13 and the same does not conform to the requirement of section 21 of the M.P. Panchayat Raj Act, 1993 (hereinafter referred to as the Act).

It is common ground that in case, 4 votes are excluded from the total votes counted in favour of the no confidence motion, the same will not conform to the requirement of sec. 21 of the Act. Under the orders of the Court the original record of the no confidence motion has been produced, which shows that 17 votes were polled in favour of the no confidence motion. However, learned counsel for the petitioner has drawn my attention to 3 ballot paper regarding which grievance have been made. It look like this:-

Shri Shrivastava contends that the aforesaid symbol cannot be considered to be tick mark for the purpose of counting the said ballot papers in favour of the no confidence motion. Rule 5(5) of the M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up Sarpanch Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice Prsident Ke Virudh Aviswas Prastav) Niyam, 1994 (hereinafter referred as the Rules), interalia contemplated the manner of voting. The said rules provides that the member who wants to vote in favour of the motion shall affix the symbol (?) and the member who wants to vote against the motion shall affix the symbol (x). By no stretch of imagination, symbol put in 3 of the aforesaid ballot papers can be said to be cross and if one looks into the symbol on the 3 ballot papers, which are the subject matter of controversy, from one angle, there is no doubt that it indicates the symbol (?). One has to bear in mind that practice of symbol is invoked, considering the over all illiteracy in the country i.e. symbol is prescribed to convey the intention of the voter.

As stated earlier, affixture of symbol is to ascertain the intention of the voter. The intention of the voter is writ large and the same leads to one and the only conclusion that they wanted to vote in favour of the no confidence motion. Accordingly, I negative this submission of the learned counsel for the petitioner.

Now, I advert to the other submission of the learned counsel for the petitioner the notice of meeting was served on 25.11.95, whereas the meeting to consider the no confidence motion was held on 30.11.95. Learned counsel, half heartedly contended that failure to give 7 days notice to the member from the date of

convening of the meeting vitiates the no confidence motion. I am afraid the submission is devoid of any substance. Rule 3 (3) of the Rules contemplates despatch of the notice of meeting specifying the date, time and place thereof by the prescribed authority through the Secretary of the Gram Panchayat, to every member 7 days before the meeting. Therefore, in my opinion, requirement of law under Rule 3(3) of the Rule is for despatch of the notice and not service on the members, as contended by the learned counsel for the petitioner. Accordingly, I do not find any substance in the submission of the learned counsel for the petitioner also.

In the result, I do not find any merit in the writ petition. Accordingly it is dismissed. There shall be no order as to cost.