
(2012) 02 CHH CK 0083
In the Chhattisgarh High Court
Case No : Writ Petition C. No. 310 of 2012

Tintus Tigga

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 15-02-2012

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(1)
Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 21, 21(4)
Constitution of India, 1950 — Article 226

Citation : AIR 2012 Chh 87

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shri Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 23.01.2012 (Annexure P/1) passed by the respondent No. 2/Collector, Ambikapur, whereby the application of the petitioner filed against the no confidence motion u/s 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, was dismissed.

2. The facts, in brief, as projected by the petitioner is that the petitioner was elected as Sarpanch of Gram Panchayat, Changori, Janpad Panchayat, Lundra, District Surguja. The respondent No. 5 alongwith other panchas, gave an intimation to the Sub Divisional Officer, Ambikapur, under sub-rule (1) 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') for no-confidence motion against the petitioner, the Sarpanch of the Gram Panchayat, on the allegation of financial irregularities. The SDO registered a case and fixed the date for further order on 18.08.2011 (Annexure P/5) and appointed Ambros Toppo, Tahsildar Lundra, as Presiding Officer, for convening the meeting

of no-confidence motion against the petitioner on 26.08.2011, which was held to be carried out as 9 members voted in favour and 3 against the no confidence motion. It is the case of the petitioner that the procedure as envisaged u/s 21 of the Adhiniyam, 1993 was not followed for carrying out the no-confidence motion. Thus, the no confidence motion alleged to be carried out against the petitioner, is null and void.

3. The petitioner, being aggrieved, preferred the dispute u/s 21(4) of the Chhattisgarh Panchayat Raj Adhiniyam, (for short, 'the Adhiniyam), challenging the proceedings of no- confidence motion as well as declaration to the effect that no confidence motion against the petitioner was carried out. The Collector, Ambikapur, vide order dated 23.01.2012 (Annexure P/1) held that the notice to hold no confidence motion on 26.08.2011 was issued on 18.08.2011 and the date of receipt is not important but the date of issue of notice is important and accordingly, dismissed the case.

4. Shri Rao, learned counsel appearing for the petitioner submits that the no-confidence motion was carried out by 3/4th majority, however, the whole proceeding was in violation of the Rules, 1994 as according to Rule 3 of the Rules, 1994, 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 was given to him and shall acknowledge its receipts. Thus, the whole proceedings suffer from violation of mandatory rules.

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

6. It is an admitted position that the no-confidence motion was carried out against the petitioner by thumping majority as 9 members voted in favour of no-confidence motion and only three against the no-confidence motion.

7. The Collector, in the dispute referred u/s 21(4) of the Adhiniyam, has considered the issues raised before him as well as before this Court. The Collector has rightly come to the conclusion that the date of receipt of notice before convening the meeting of the Gram Panchayat specifying date, time and place is not to be counted from the date of receipt of the notice, but from the date of its dispatch. It is not in dispute that the notice was dispatched on 18.08.2011 when it was decided to convene the meeting of the Gram Panchayat on 26.08.2011.

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. 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 dispatched 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.

9. 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 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 dispatched on 22.8.2006 for the meeting to be held on 30.08.2006. Thus, there were 7 clear days between the date of dispatch and the date of meeting.

10. 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.

11. 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, he was removed by no-confidence motion.

12. In view of the 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.

13. Accordingly, the writ petition is dismissed. No order as to costs.