

Rameshwar Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-30-1989

Reported in : AIR1990Raj69

Judge : M.B. Sharma and; I.S. Israni, JJ.

Acts : Rajasthan Panchayat Act, 1953 - Sections 89; Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 - Rules 14, 15 and 16

Appeal No. : C.W.P. No. 4858 of 1988

Appellant : Rameshwar Singh

Respondent : State of Rajasthan and ors.

Advocate for Def. : M.I. Khan, Addl. Adv. General

Advocate for Pet/Ap. : B.L. Sharma,; Jagdeep Dhankar and; Hanuman Choudhary

Disposition : Petition dismissed

Judgement :

Israni, J.

1. Under this writ petition the petitioner has challenged the proceedings that took place in meeting held on Aug. 26, 1988 wherein motion of no-confidence against

the petitioner who is Sarpanch of Gram Panchayat, Kaliyasar, Panchayat Samiti Alsisar was passed and in consequence thereof notice dated Dec. 8, 1988 (Annexure-4) was issued and it has been prayed that the above mentioned notice and the proceedings of meeting dated Aug. 26, 1988 be quashed and appropriate order/direction be issued that the petitioner continues to be Sarpanch.

2. It has been stated by the petitioner in the petition that he was elected Sarpanch of Gram Panchayat Kaliyasar on July 6, 1988. He was administered oath on the same day. The Additional District Development Officer, Jhunjhunu under notice dated Aug. 18, 1988 convened a special meeting of the village panchayat for consideration of motion of no-confidence moved against the petitioner by some of the panchas. This meeting was to be held on Aug. 26, 1988 at the head quarters of village panchayat Kaliyasar and the S. D. C. Jhunjhunu was appointed to preside over the meeting. It is stated that normally such meetings are presided over by Tehsildar but in this case it was to be presided by the S. D. O. Shri Pratap Bhanu Poonia, who is a protege of Shri Sheeshram Ola, a minister in the Government of Rajasthan. This notice is marked as Annexure-1. The petitioner had earlier filed another writ petition being No. D. B. C. W. P. No. 2792/88 before this Court wherein it was prayed that notice dated Aug. 18, 1988 regarding no-confidence motion against the petitioner be set aside; Rules 14, 15 and 16 of the Rajasthan Panchayat and Nyaya Panchayat, (General) Rules, 1961 (for short 'the Rules, 1961') be declared to be invalid and struck down and Section 19 of the Rajasthan Panchayat Act, 1953 (for short 'the Act 1953') be also declared to be invalid and struck down for the reasons given in the said petition. As a result of interim order passed on Aug. 25, 1988 the meeting was permitted to be held on Aug. 26, 1988 as scheduled but the result thereof was stayed. This petition was dismissed on Dec. 7, 1988 and the result of the no-confidence motion was permitted to be declared which was passed in the meeting against the petitioner.

3. It is submitted by the petitioner that in the earlier writ petition the proceedings of the meeting held on Aug. 26, 1988 were neither assailed nor they were liable to be assailed at that time as the petition was filed earlier 10 Aug. 26, 1988.

4. The contention of Shri B. L. Sharma, learned counsel for the petitioner is that the petitioner has had a commendable political stature in area to which he belongs. He succeeded in several elections in last two years held in the field of Co-operative and Panchayats'. The petitioner has sharp political rivalry with respondent No. 5 Smt. Sudha Devi who is the M. L. A. from Mandawa constituency of Jhunjhunu. The petitioner lodged a complaint to the Prime Minister of India, copies of which were sent to several persons including Chief Minister of Rajasthan, against respondent No. 4, Shri Sheeshram Ola, for his acts whereby 'Sati Pratha' was encouraged and appreciated, copy of this complaint is marked as Annexure-2. This complaint came to be highlighted in various newspapers and magazines in which the name of the petitioner appeared prominently. On this account, it is alleged respondents Nos. 4 and 5 launched a massive crusade to crush the petitioner politically and otherwise. The petitioner has also been implicated in a criminal case the F. I. R. of which bearing No. 59/88 has been filed on Sept. 1, 1988 at police station Malsisar district Jhunjhunu. It is further contended that there was no debate or discussion on the no-confidence meeting in spite of serious effort of the petitioner and nor there was any voting. No proceedings as contemplated under R. 16 were drawn by the presiding officer.

5. In the return filed on behalf of respondents Nos. 1 to 3, it is stated that a Senior Officer e. g. S. D. O. Jhunjhunu was appointed as presiding officer and it has been denied that he was under influence of respondent No. 4. It has been denied that no-confidence motion was engineered due to political rivalries and pressure of respondent Nos. 4 and 5. It is further stated that the meeting of no-confidence motion was held in accordance with Rule 16 and the motion was discussed and thereafter put to vote. The proceedings of the meeting were conducted in fair manner and without any influence or interference from any political agency. The petitioner was knowing the result of the motion and a notice under Section 19(2) read with Rule 18(2) was also given to him by a registered post for resigning within three days even though the petitioner was present in the meeting and had full knowledge that no-confidence motion was passed against him. It has been denied that the petitioner was not given copy of proceedings drawn under Rule 16.

6. We have heard the parties and also gone through the documents on record. The contention of Shri B. L. Sharma, learned counsel for the petitioner is that the motion of no-confidence was entered at behest of respondents Nos. 4 and 5 as the petitioner had courageously raised his voice against respondent No. 4 for glorifying 'Sati Pratha'. It is further stated by the learned counsel that respondents Nos. 4 and 5 launched a massive crusade to crush the petitioner politically and otherwise. The entire district machinery was employed to achieve this object. It has been vehemently argued that Shri Oma Ram an elected panch of Village Panchayat Samiti, Kaliyasar has filed an affidavit dated Oct. 25, 1988 in writ petition 2792/88, a copy of which has been filed and marked as Annexure-3. In this affidavit Shri Oma Ram has stated that respondent No. 4 called him in 'Dak-Bungla' at Jhunjhunu where the respondent No. 5 was also present. Shri Ravat Ram, Up Sarpanch Gram Panchayat, Kaliyasar in the presence of respondents Nos. 4 and 5 made him to sign on blank paper. When he wanted to know what for his signature on blank paper was taken respondent No. 4 told him how he dared to ask that. Thereafter when he wanted to go home, he was not permitted to do so by respondent No. 4 and he had to stay for few days at Mahansgarh and at residence of respondent No. 4 at Jaipur. During this period he was made to sign on several blank-papers. He has further stated that both the above-mentioned respondents asked me to vote against petitioner in the meeting of no-confidence motion otherwise he will suffer dire consequences. He was taken to the venue of the meeting i.e. Panchayat Bhawan, Kaliyasar by Ravat Ram, Up Sarpanch. It is further stated that lot of police people were present at Panchayat Bhawan, Kaliyasar. No meeting as such was held and all those persons were asked to sign in favour of the motion. It is also stated that he had not received any notice regarding holding of meeting to consider the motion of no confidence. He states that he has full confidence in the petitioner and if any voting had taken place, he would have voted in favour of the petitioner. It is, therefore, contended that the meeting was not held in accordance with Rules 14, 15 and 16 of the Rules, 1961 and it may be declared that no-motion of confidence was passed against the petitioner. It is contended that the petitioner is ready and willing to face the motion of no-confidence in a meeting which may be presided over by a Judicial-Officer. It is also pointed out that no discussion took place for consideration of motion of no-

confidence and meeting came to an end within few minutes. It is contended that it was mandatory under the aforesaid Rules that the motion of no-confidence be read in extenso and since this has not been done, therefore, the entire proceedings deserve to be quashed, moreso, in view of affidavit of Oma Ram who is an elected Panch. It is also contended that the entire proceedings have been taken against the petitioner in a mala fide manner at the behest of respondents Nos. 4 and 5 and there has been flagrant breach of principles of natural justice, fair play and reasonableness. The learned counsel for the petitioner has pointed out that in the case of C.S. Rowjee v. The State of Andhra Pradesh, AIR 1964 SC 962, it was held by the Apex Court that when allegations of mala fides and personal ill-will are made against Chief Minister of the State and petitioners in their affidavits had given detailed facts, and no affidavit in reply from Chief Minister was filed, the allegations against the Chief Ministers remained unrebutted. Reliance has also been placed on the case of S. Pratap Singh v. State of Punjab, AIR 1964 SC 72. This was a case in which mala fides were alleged on part of Minister in charge. Counter-affidavit was filed by Secretary in the Department who had no personal knowledge of the allegations made against the Minister. The apex Court held that the mala fides were proved and orders were set aside. In the case of Abdul Rahman v. Municipal Board, Makrana 1965 Raj LW 295, while considering the provisions of Section 72 of the Municipalities Act regarding motion of no-confidence against Chairman (or Vice Chairman), it was held by this Court that the provisions in the above-stated section were mandatory and must be properly followed. It is pointed out by the learned counsel that Sub-clause (6) of Section 72 also required that as soon as the quorum is present, the prescribed authority or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion. It is stressed that, as is evident from the affidavit of Oma Ram, that nothing like this was done. Therefore, all the proceedings held in the meeting, where the motion of no-confidence was considered, were invalid and liable to be set aside.

7. It is contended by Shri M. I. Khan, learned Additional Advocate General that the allegations of pressurisation and mala fides made by the petitioner against the respondents Nos. 4 and 5 are vague, baseless and have been denied. It is pointed out that respondent No. 4 is not Minister of Co-operative Department and

therefore, has no control over the same. It is stressed that there can be no grievance to the petitioner when a Senior Officer like S.D.O. presided over the meeting. It is only expected that an officer of such rank will conduct the proceedings in most impartial manner as has been done in this case also. This Court called upon the State to produce the proceedings of the meeting dated Aug. 26, 1988 and all relevant record for perusal of the Court was produced. A copy of the proceedings of the meeting was also supplied to the petitioner. It is stressed by the learned counsel that proceedings of the meeting clearly show that the relevant rules specially 14, 15 and 16 of the Rules, 1961 were properly followed. It is evident from the proceedings of the meeting that discussion on the motion of no-confidence was held and proceedings of the meeting were drawn by the presiding officer. It is contended by the learned counsel that from proceedings it is clear that Shri Oma Ram supported the no-confidence motion and did not oppose the same as is contended by the learned counsel for the petitioner. It is also pointed out that respondent No. 4 Shri Sheesh Ram Ola, respondent No. 5 Smt. Sudha Devi, M. L. A. from Mandawa Constituency and Shri Pratap Bhanu Poonia S. D. O. have filed their affidavits in which the allegations made against them have been denied. It is further pointed out that F.I.R. against the petitioner was not lodged at the instance of respondent No. 4 or 5 but there are serious charges of embezzlement against the petitioner to the tune of Rs. 83,600/- and there were serious complaints from public against the petitioner.

8. Shri A. K. Sharma, appeared on behalf of Shri Ravat Ram Up Sarpanch, who was one of the signatories to the motion of no confidence and prayed that he may be allowed to be made party to the proceedings. However, he was allowed to intervene and was heard. It was pointed out by the learned counsel that in the earlier writ petition No. 2792/88 filed by the petitioner in this Court which was dismissed vide order dated Aug. 22, 1988, Oma Ram had filed an affidavit dated Nov. 1, 1988 in which he has stated that he has not given any affidavit in favour of Rameshwar Singh. He further states in the affidavit that petitioner Rameshwar Singh had forcibly taken signatures of Oma Ram on blank papers and the petitioner used the same in writing material of his own choice without knowledge of Oma Ram and produced the same in this Court as an affidavit. It has been also denied in this affidavit that respondents Nos. 4 and 5 over pressurised him to vote

against Rameshwar Singh on the no-confidence motion. It has also been denied that these respondents ever asked him to sign on any blank-papers. He has also stated that he did receive the notice regarding the meeting to be held on Aug. 26, 1988 and that he voted against petitioner of his own choice as he did not have confidence in petitioner as Sarpanch. In short he has denied all the allegations made in the affidavit dated Oct. 25, 1988. It is, therefore, contended by the learned counsel, there is no truth in the allegations made by the petitioner in his writ petition.

9. From the facts and circumstances described above in details, it is clear that no reliance can be placed on the affidavit of Oma Ram dated Oct. 25, 1988. File of writ petition No. 2792/88 was called for perusal of the affidavit dated Nov. 1, 1988 said to have been filed by Shri Oma Ram. We are constrained to observe that it was duty of the petitioner to have informed this Court regarding the affidavit dated Nov. 1, 1988 filed by Shri Oma Ram in which he had denied the affidavit dated Oct. 25, 1988 said to have been filed by him. It is expected, those who approach this Court under extraordinary jurisdiction under Arts. 226 and 227 of the Constitution and seek relief on the basis of equity and justice shall not conceal any facts which may be relevant for the consideration of the petition filed in the Court. These two affidavits of Shri Oma Ram clearly show that no reliance can be placed on his allegations and counter-allegations made by him in these affidavits. Respondents Nos. 4 and 5 and the Presiding Officer have filed their affidavits in which the allegations made against them have been specifically denied and we, therefore, do not find any force in the allegations made against them regarding pressurising and mala fides etc. The law cited by the learned counsel for the petitioner in this respect is of no help to him. Rule 14 of the Rules 1961 deals with moving a motion of no-confidence against a Sarpanch or a Upsarpanch which has to be given in writing. Rule 15 is regarding the meeting for consideration of the motion. It provides that a special meeting of Panchayat for consideration of the motion at the Officer of Panchayat on a date which shall not be later than thirty-days from the date on which the notice was received, shall be held at the appointed time. Sub-clause (2) provides that not less than seven clear days notice regarding the meeting shall be sent by a registered-post or by other means to all the members of panchayat including Up-Sarpanch and the Sarpanch; Clause (3)

states that either the Deputy District Development Officer or any other Officer authorised by him in this behalf, shall preside at such meeting. Clause (4) provides regarding requisite quorum and that the motion for consideration shall be read over in the meeting and discussion shall be held on the same. Other clauses also deal with certain situations regarding the motion of no confidence. Rule 16 deals with proceedings of meeting and the presiding officer is required to draw up the proceedings in such details as are mentioned in this rule. The perusal of the proceedings of the meeting held on Aug. 26, 1988 shows that Rules 14, 15 and 16 were adhered to and motion of no confidence has been reproduced. The presence of the panchas who attended the meeting is recorded and their signatures have been obtained. It is also stated therein that the meeting started at 11.00 A.M. and the motion was considered for 45 minutes. Thereafter votes regarding the motion of no confidence were taken and 10 out of 11 panchas including Shri Oma Ram voted in favour of the motion and against the petitioner. The petitioner alone voted against the no confidence motion. It is also mentioned that since there is a stay order from this Court in writ petition No. 2792/88, therefore, the result was not declared as per directions of this Court. The contention of the learned counsel for the petitioner is that it should have been mentioned in the proceedings that the motion of no confidence was read over and kept before the panchas for consideration. It is evident from the proceedings that the motion was placed before panchas for consideration, discussed for 45 minutes and subsequently passed in the said meeting. We are, therefore, satisfied that the relevant Rules 14, 15 and 16 of the Rules, 1961 were properly followed. The petitioner was thereafter informed about the result of the motion and a notice as required under Section 19(2) of the Act read with Rule 18(2) was also given to him by registered post for resigning within three days, even though the petitioner was present in the meeting and had full knowledge about the result of the no confidence motion. The contention of the learned counsel for the petitioner that mala fides are proved even from the fact that the writ petition bearing No. 2792/88 was dismissed on Dec. 7, 1988 and on the next day i.e. Dec. 8, 1988 notice to the petitioner under Section 19(2) of the Act was given even without waiting to obtain certified copy of the order of this Court before such notice was issued. We are not impressed by this contention of the learned counsel. It was only because of stay order of this Court

that the petitioner continued to be Sarpanch from Aug. 25, 1988 to Dec. 7, 1988 when his writ petition No. 2792/88 was dismissed. There can be no grudge against issuing of the notice under Section 19(2) of the Act to the petitioner on the next day i.e. Dec. 8, 1988, but in fact when the petition of the petitioner was dismissed, he should have himself resigned from his post of Sarpanch, rather than to wait for receipt of the notice under Section 19(2) of the Act.

10. In the result, we do not find any force in this writ petition, which is dismissed with no order as to costs.

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