Suratram Vs. the Addl. District Development Officer, Ajmer and ors.

Suratram Vs. the Addl. District Development Officer, Ajmer and ors.

SooperKanoon Citation : sooperkanoon.com/752657

Court : Rajasthan

Decided On : Feb-20-1979

Reported in : AIR1979Raj186

Judge : G.M. Lodha, J.

Acts : Constitution of India - Article 226(1); Rajasthan Panchayat Act, 1953 - Sections 19; Rajasthan Panchayat Rules - Rule 15

Appeal No. : Civil Writ Petn. No. 46 of 1979

Appellant : Suratram

Respondent : The Addl. District Development Officer, Ajmer and ors.

Advocate for Def. : S.B. Mathur, Dy. Govt. Adv. for Nos. 1 and 2 and; R.S. Kejariwal and;

Advocate for Pet/Ap. : B.P. Agarwal and; K.K. Sharma, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

G.M. Lodha, J.

1. This writ petition provides a typical example of attempt of an undemocratic Sarpanch to flout majority verdict on the heels of legal technicalities.

2. Before I proceed to give the facts of this case, it would be useful to mention in brief the historical concept of Panchayat institution.

3. The age old concept of 'Panch Parmeshawara' Panch is God, which was prevalent in ancient India, disappeared completely during British rule in India. The institution of Panchayat Raj or Village Panchayat has been an institution existing from times Immemorial in this country but during British rule this institution collapsed.

4. The Indian Independence of 1947 and its Constitution again revised the 'Panchayat' concept by placing it in the directive principles of State policy. The framers of the Indian Constitution, enacted Article 40 as follows:--

'The State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self Government.'

5. The Community Development Programme was initiated in the country in 1952. In 1957, a committee on plan projects was appointed by the National Development Council which in turn further appointed a study Team under the Chairmanship of late Shri Balwant Rai Mehta which recommended a three tier pattern of panchayati Raj institutions in the country based on the philosophy of 'Democratic Decentralisation'. This recommendation was accepted by the National Development Council in 1959 which inter alia decided that

'While the broad pattern and the fundamentals may be uniform, there should not be any rigidity in the pattern. In fact, the country is so large and panchayati Raj is so complex a subject with far reaching consequences, that there is the fullest scope ,of trying out various patterns and alternatives. What is most important is the genuine transfer of power to the people. If this is ensured, form and pattern may necessarily vary according to conditions prevailing in different States.'

'In pursuance of this decision taken by the National Development Council in 1959, Rajasthan had the distinction of being the first in the whole country (along with Andhra Pradesh) to have launched upon Panchayati Raj on 2-10-59, which was inaugurated by the late Prime Minister Shri Jawahar Lal Nehru at Nagaur. At the time the scheme of Democratic Decentralisation was initiated in Rajasthan, there was great enthusiasm for it both among officials and non-officials : various other States in fact were encouraged by the lead given by Rajasthan and enacted necessary laws for the purpose. To ensure sustained growth of panchayati Raj Institutions in the State on right lines, various studies were undertaken from time to time in regard to growth of panchayati Raj Institutions in different spheres of their activities, A panchayati Raj Study team under the Chairmanship of Shri Sadiq Ali, the then member of Parliament was appointed in 1962 which gave its comprehensive report to the Government in 1964. The Naik Committee (1963) and the Bhandari Committee (1969) also made valuable recommendations regarding primary Education and the role of Panchayati Raj Institutions in this respect. Various studies have also been carried out by the Evaluation Organisation from time to time in specified spheres of the activities of panchayati Raj.'

6. The High power Committee of Ra-jasthan set up in 1971 and known as Vyas Committee also discussed the topic of 'No Confidence Motion' against Sar-panch at page 28 para. 3.27 in its report of 1973, which reads as under;--

'No Confidence Motion:-- In case of Sarpanch, the no-confidence motion can be passed by 3/4 of the total number of the specified panchas and in case of Up-Sarpanch it could be passed by a simple majority of total number of such panehas. In case of the first no-confidence motion against Pradhan, 2/3 majority of the total number of members of Panchayat Samiti is needed before it could be carried. In case of subsequent no-conidence motion, a simple majority of the total electoral college (which elected the Pradhan) is needed. In case of first no-confidence motion against Up-Pradhan, 2/3 majority of the total number of members of the Panchayat Samiti is required. A simple majority of such members of the Panchayat Samiti would be sufficient to carry a second no-confidence motion against him. Similar provisions exist for no-confidence motion against the Pramukh and the Up-Pramukh. With the proposed Shrunken electoral college of the

Pradhan and Pramukh, the no-confidence motion should also now be passed only by the voting members of the Panchayat Samiti or the Zila Parishad both in the case of Pradhan/Up-Pradhan and Pramukh/Up-Pramukh respectively. Regarding the existing provision of 2/3 and 3/4 majority required in the first and subsequent no-confidence motion against the Pradhan and the Pramukh and the 3/4 majority required in the case of Sarpanch, the Committee feels that it provides undue security to these posts. An optimum blend between adequate security and easy removeability of such office bearers of these institutions would alone provide an inbuilt, mechanism against excessive security of such elected persons. We, therefore recommend that after their election the Sarpanch, Up-Sarpanch, Pradhan, Up-Pradhan. Pramukh and Up-Pramukh should be free from the ever-hanging Damocles' sword of no-confidence motion for at least one year. This would provide sufficient time for them to settle down for concrete work and to justify the confidence reposed by the electorate. After one year, the Pradhan, Up-Pradhan, Pramukh and Up-Pramukh should be removeable by a no-confidence motion passed against them by a simple majority of the voting members of the Panchayat Samiti or the Zila Parishad as the case may be. In case of the Sarpanch, he should be removeable by 2/3 majority of voting Panehas instead of 3/4 majority required at present. The Up-Sarpanch should be removable by a no-confidence motion carried by a simple majority of total number of such Panehas.'

7. The State Govt. have not so far accepted its recommendation and it is now considering the report of another still more important and all India Committee, which is popularly known as 'Ashok Mehta Committee' for improvement of Panchayat functioning.

8. Be that as it may, in the above historical background, the implications of provisions of 'No Confidence Motion' against Sarpanch contained in Section 19 of the Rajasthan Panchayat Act of 1953 and Rule 15 is to be considered in the peculiar facts and circumstance of this case. I would now proceed to mention first the facts of this case.

9. Surat Ram, Sarpanch of Gram Panchayat, Khawas has filed this writ petition with the following prayer:--

(i) That the writ petition may kindly be accepted and the relevant record pertaining to the aforesaid 'No Confidence Motion' may kindly be ordered to be summoned from the respondents Nos. 1, 2 and 4 and the order dated 2-1-1979 summoning the special meeting of the Gram Panchayat, Khawas for 15-1-79 at 11.00 A.M. at the panchayat office, Gram Panchayat, Khawas be quashed and an appropriate writ, order or direction may kindly be ordered to be issued against the respondents restraining them from holding the aforesaid special meeting dated 15-1-1979 and considering the alleged 'No Confidence Motion';

(ii) That any other writ, order or direction as the Hon'ble Court may think just and proper in the facts and circumstances of the case may also kindly be ordered to be issued against the respondents: That costs of the writ petition may kindly be saddled on the respondents.'

10. The gram panchayat of village Khawas, Tehsil Kekari, District Ajmer consists of 13 members of the panchayat including the Sarpanch and Upsarpanch. It is functioning under the provision of the Rajasthan Panchayat Act 1953 and the rules framed thereunder. A 'No Confidence Motion' was moved against the petitioner and Shri Kishorilal Aswal, Tehsildar, Kekari was nominated to preside over the Motion by the District Development Officer, Ajmer and the meeting was fixed on 30th of Dec., 1978 at 11.00 A.M. to consider the No Confidence Motion, referred to above. On 30th of Dec., 1978 at 11.00 A.M., the time when the meeting was to commence for the consideration of the No Confidence Motion Shri Kishorilal, the presiding officer remained absent.

11. The controversy between the parties starts from this stage. According to the petitioner only Gokul and Mohanlal in addition to him were present in this meeting and no other panchas came there to attend it. The Secretary of the gram panchayat Prehlad has contested this position by filing a counter affidavit and submitted that 10 more panchas were present. The affidavit of Prehlad dated 23rd of Jan., 1979 is as under:--

'kiFk&i;=

eSa fd izgykn iq= Hkwjkyky [kkrhmez 25 o'kZ djhcu] lg;d lfpo xzke iapk;r [kokl rglhy dsdMh ftyk vtesj 'kiFkiwoZdc;ku djrk gwa fd%&&

1 ;g fd eSa izgykn iq= Hkwjkyky[kkrh tks fd fnukad 18&11&78 ls xzke iapk;r [kokl esa lgk;d lfpo in ijfu;qDr fd;k x;k gwa vkSj rHkh ls ml in ij dk;Z dj jgk gwa A

2 ;g fd xzke iapk;r [kokl dsdk;Zokgh iaftdk esa tks fnuad 30&12&78 dks dk;Zokgh dh fy[kkoV esjh gS Atks esjs euk djus ij Hkh tcju nckc Mkydj ljiap Jh- lqjrjke pksiMk us fy[kokbZ A

3 ;g fd dk;Zokgh jftLVj esa tksd;Zokgh dh xbZ gS o fnukad 30&12&78 dks nksigj ds nks cts eq>lsdjokbZ xbZ tks rglhynkj dsdMh Jh- fd'kksjhykyth vloky ftUgsa fnukad30&12&78 dks izkr% 11 cts ls ,d cts rd ljiap lqjrjke pksiMk ds fo:)vfo'okl dh ehfVax dh v/;{krk ds fy;s vfr- ftyk fodkl vf/kdkjh vtesj us fu;qDrfd;k Fkk] mudk mijksDr vfo'okl dh ehfVax dks fujLr djds vU; rkjh[k ds fy;sehfVax dk i= ljiap egksn; o iapk;r dk;kZy; ij igqaps ,oa ljiap lqjrjke }kjk gLrk{kj djizkIr djus ds ckn dh xbZ A

4 ;g fd iapk;r dh mijksDrfnukad 30&12&78 dh dk;Zokgh iaftdk esa vU; 10 esEcjksa ds thi esa cSBdjdsdMh tkus ds ckn dh xbZ A tks esjs }kjk fyf[kr gS A

5 ;g fd fnukad 30&12&78dks iapk;r ds lHkh lnL; iapk;r Hkou ij izkr% 11 cts ls 1 cts rd mifLFkr Fks A

6 ;g fd rglhynkj dsdMh Jh-fd'kksjhykyth vloky fnukad 30&12&78 dks ljiap ds fo:) vfo'okl ds izzLrkodh ehfVax ysus gsrq ugha i/kkjs A

g-

izgykn [kkrh]

'kiFk x`fgrk

rlnhd

eSa fd 'kiFk x`fgrk izgykn iq=Hkwjkyky [kkrh mez 25 o'kZ djhcu lgk;d lfpo xzke iapk;r [kokl rglhy dsdMhftyk vtesj 'kiFk iwoZd ;g 'kiFk i= rlnhd djrk gwa fd mijksDr 'kiFk i= dk isjk ua-1 yxk;r 6 esjh tkudkjh o fo'okl ds lkFk fcYdqy lgh gS ftlesa dksbZ

rF; >qaBkugha gS vkSj dksbZ Hkh rF; fNik;k ugha gSa A fcYdqy lgh o lp gS bZ'oj lk{kh gS A

g-

t;iqj izgykn [kkrh

fnukad 'kiFk x`fgrk

Gaffar, Ball, Nathu, Hajari, Kishan, Mishrilal, Harkaran, Laxman and Devilal have also filed affidavits controverting the allegations of the petitioner.

12. The case of these ten members of the panchayat which is supported by the above affidavit of the Secretary of the Panchayat is that they all assembled at 11.00 A.M. at gram panchayat office and waited up to 1PM. for the Tehsildar, but the Tehsildar did not come there to preside over the meeting. These ten panchas thereupon took a Jeep and went to Tehsildar at Kekari and moved application in writing before him mentioning that they have waited at the office of gram panchayat from 11.00 A.M. to 1 A. M. and since the presiding officer has not come they have come here. The Tehsildar refused to take the application and said that the application may be given to Naib Tehsildar as he is on medical leave. The application was then given to Naib Tehsildar who returned it with his comments for being produced before the Collector, which was then presented before the Collector, Ajmer along with the complaint against the Tehsildar Kekari.

13. These ten panchas further asserted in their affidavits that after meeting Tehsildar they went to the S.D.O. Kekari they were informed that he had gone to Sarwad Camp and then they went to Sarwad and met him there and presented a complaint, against the Tehsildar in which it was alleged that the Tehsildar, Kekari has joined hands with the Sarpanch and mala fidely not come to preside over the meeting. These ten panchas, who as alleged above are supported by the affidavits of the Secretary of the gram panchayat, further assert that the proceedings which were drawn by the Sarpanch in the register on 30th Dec. 1978, and which have been filed in this writ application, were got prepared under duress, from the Secretary of the panchayat by the Sarpanch after the ten panchas left in a Jeep.

These ten panchas further made clear in the affidavit that they stayed there from 11 A.M. to 1 P.M. to support the No Confidence Motion against Surat Ram but on account of the collusion between the Tehsildar and the Sarpanch the meeting could not take place. They went to Kekari and made complaint as mentioned above. They have further asserted that on 15-1-79 they have supported the No Confidence Motion against the Sarpanch.

14. The respondents Nos. 1 and 2 have filed their reply in which they have alleged that the complaint of collusion between the Tehsildar, Kekari and the Sarpanch was made and is being enquired into. Mr. Mathur, appearing for these respondents, has categorically asserted before me that the meeting was not presided over by the Tehsildar, Kekari on account of his collusion with the Sarpanch, who was in hopeless minority and wanted to postpone the evil day.

15. Respondent No. 4 Kishorilal Aswal, Tehsildar, Kekari has not filed any reply to the writ application. He is present in person in the court, but has not filed any affidavit to controvert the allegations which have been made against him of collusion and fraudulent conduct, by 10 panchas and Mr. Mathur. The petitioner has filed an affidavit controverting the facts and that affidavit has been taken on record. But I am inclined to disbelieve it in view of the speaking circumstances being against his version.

16. Having perused the entire record of the case including affidavits filed by the parties, and the panchas and the Secretary. I am convinced that ten panchas who have admittedly voted against the Sarpanch in the meeting held on 15th of January, 1979, the proceedings of which have been opened in the presence of the learned counsel of the parties just now, and the factual aspect of the proceedings having not been challenged by anyone, were present at the office of the village panchayat concerned on the first meeting at 11 A.M. on 30-12-78, with the determined object of ousting the Sarpanch. It is not without significance that they per-, sued the matter by going in a Jeep after 1 P.M. to Kekari and meeting Tehsildar, Kekari and the S.D.O. even by going to Sarwad' where he was having Camp and moving application and complaint against the misconduct of the Tehsildar Kekari then and there. There is not the slightest doubt that these ten

panchas of the panchayat were persuing the 'No confidence Motion' right from the time the meeting was called and in order to exhibit their firm stand in support of the 'No Confidence Motion' they went in a Jeep from place to place, on the same day and filed a complaint against the Tehsildar.

17. The fact that these ten members of the Panchayat voted against the Sarpanch on 15-1-79 only corroborates their affidavits and there is inherent truth in the story of the respondents that these ten panchas were against the Sarpanch and wanted to oust him by supporting No Confidence Motion in the first meeting also.

18. There is no reason to believe the story put up by the petitioner that only two panchas who were in his favour were present at the panchayat office and nobody else came there. The Secy, of the Panchayat, who is an independant person in the employment of the panchayat; has completely smashed the story of the petitioner and expressly alleged on oath that the Sarpanch Surat Ram got the proceedings written after the ten panchas left and forced the Secretary to write and record in the presence of the Sarpanch and two other persons only.

19. It is very curious and surprising that the Sarpanch Surat Ram against whom No Confidence Motion was to be voted, has by the proceedings dated the 30th Dec., 1978 produced by him, declared the meeting over on account of the absence of the Tehsildar. Section 19 of the Rajasthan Panchayat Act expressly debars any such Sarpanch or Up-Sarpanch from presiding over such meeting and the only right which had been given to him is to take part in it and to vote. The fact that Sarpanch himself has signed these proceeding of 30th Dec., 1978 as Sarpanch (President) only depicts the anxiety which he had to get the proceedings drawn and not to leave it to any other panchas who were said to be present according to him.

20. Thus the basic facts in this case are now clinched by the proceedings of the meeting which took place on 15th of Jan., 1979 which have given corroboration and authenticity to the conduct of the ten panchas who are against the Sarpanch. I am, therefore, inclined to believe the version of the first and second meetings as put by the ten panchas who voted against the petitioner Sarpanch, and this version finds support from the affidavit of the Secretary of the gram panchayat and

is substantiated in many respects and supported by respondents Nos. 1 and 2 also who are State functionaries. I am also of the opinion that the manner and method in which the respondent No. 4, Tehsildar, Kekari, acted in this case, is abnormal and un-expect-ed of a State functionary who is supposed to discharge his functions in a detached and impartial manner, uninfluenced by any of the parties. Respondents Nos. 1 and 2 are already making enquiry into his conduct and it would be for them to take suitable action in case the facts alleged are established on the record.

21. The question which now comes, for consideration is whether in such a case the contentions of the petitioner which have been raised by Mr. Agarwal should be considered seriously and the no confidence motion which has been passed against this Sarpanch by the ten panchas should be ignored and a direction as prayed for by the petitioner in the writ application be issued?

22. The contention of Mr. B. P. Agarwal, the learned counsel for the petitioner, is that under Rule 15 there is no provision for adjournment or postponment of a meeting of No Confidence Motion which has been called and convened according to Rules. Rule 15 is as under:

Rule 15 Meeting for consideration of Motion- (1) Upon delivery of the notice of a motion of no confidence the (Addl. District Development Officer) shall, if he finds the notice to be in order, call a special meeting of the panchayat for the consideration of the motion at the office of the panchayat on a date (which shall not be later than 30 days from the date on which notice was delivered to him) and at the time appointed by him.

(2) The (Addl. Distt. Development Officer) shall send, by registered post or by other means, not less than seven clear days before the appointed date of the meeting a notice of such meeting and of the date and time appointed therefor to every member of the panchayat including the Up-sarpanch and also to the Sarpanch thereof.

(3) The (Addl. District Development Officer) or any other officer authorised by him in this behalf, shall preside at such meeting.

(4) If the requisite quorum is present at the time fixed for the meeting or within half an hour of such time, the presiding officer shall read the motion, for the consideration of which the meeting has been convened and declare it to be open for discussion.

(5) The meeting shall not be adjourned and shall automatically terminate on the expiry of two hours from the time of its commencement unless it is concluded earlier.

(6) Upon the conclusion of the debate or upon the expiry of the said period of two hours, as the case may be, the motion shall be put to the vote of the panchas present and the presiding officer shall not speak on its merits.

(7) If the requisite quorum is not present for an hour from the time appointed for the commencement of the meeting it shall be adjourned and the notice of the motion of no confidence shall lapse.

(8) No notice of any subsequent motion, expressing want of confidence in the same Sarpanch or Up-Sarpanch, shall be made until after the expiration of six months from the date of such meeting.'

23. Mr. Agarwal gave emphasis on Sub-clause (4) and submits that these provisions are mandatory and if the meeting cannot proceed according to Sub-clause (4) then consequence is given in Sub-clause (7). It is submitted that if the meeting cannot commence on account of want of quorum, from the time appointed for the commencement of the meeting, the no confidence motion will fail as it will lapse and the Sarpanch will have six months time in which his continuation in the office as Sarpanch cannot be challenged by second and subsequent no confidence motion or by holding a meeting as an adjourned meeting in pursuance of the first no confidence motion. Mr. Agarwal relied upon the plain language of the Rule and submitted further that the Legislature has also framed Rule 15A to overcome difficulties or anomalies or situations, which may be created on account of any unforeseen contingencies. Rule 15A is as under:--

Rule 15A-- 'Postponement of meeting:-- The State Government on its own motion or on the report of the Collector/ Addl. Distt./Development Officer/Deputy/ Distt. Development Officer, may order postponement of the meeting fixed for the consideration of the motion of no confidence against the Sarpanch or Up-Sarpanch for such period as deemed necessary and the procedure prescribed in Rule 15 (2) shall be followed for the notice of the next meeting.'

Mr. Agarwal submits that in this Rule 15A only the Govt. is empowered to postpone the meeting and D,D.O. or anyone else cannot postpone this meeting.

24. It is also submitted that the powers of State Govt. under Rule 15A have not been delegated to the D.D.O. or any other authority.

25. Mr. Agarwal further submitted that since these matters of no confidence motions relate to the special branch of election law or the law relating to the functioning of elected representatives, strict interpretation should be made and the violation of rule should not be allowed. He relies upon a judgment of this court in Vishwanath's case, 1957 Raj LW 536 where the then Chief Justice Wanchoo sitting with Dave Justice as he then was, held that it is the District Magistrate and District Magistrate alone who can call the meeting. That matter related to a Municipal Board and under the provisions of Rajasthan Town Municipalities Act. The District Magistrate alone was competent to call the meeting under Rule 3 for the election of a Chairman. The court held that if the meeting is not called by District Magistrate, it is not a meeting within the meaning of Rule 3 and whatever is done at such a meeting is of no effect and validity. Even if all the members happen to be present in the meeting it would not validate the meeting according to their Lordships as the words are unambiguous.

26. I am of the view that the amendment introduced in Article 226 of the Constitution (42nd Amendment) has given new dimensions to the considerations of such matters now. To remain in office of Sarpanch is certainly not a fundamental right. For redress of any other grievance based on violation of any rule or law under Clause (b) or (c) of Sub-clause (1) of Article 226 of the Constitution, the petitioner is legally duty bound to first show that injury and not only that but substantial injury has been caused to him by violation of law or the

rule. If his case comes under Clause (c) then he has to prove before this court that there has been substantial failure of justice on account of the illegality in any proceedings mentioned in Sub-clause (b). Crucial point is that the petitioner is now required to establish correlation between the illegality complained of and its result and that result must lead to substantial failure of justice or substantial injury to the petitioner.

27. The first question, therefore, to be considered in this case is whether assuming the submission of Mr. Agarwal to be correct (although as I would later on discuss this aspect, I am not convinced about it), whether on account of the calling of the meeting on 15th Jan., 79 after the proceedings which were taken on 30th of Dec. 1978, the petitioner has suffered any 'substantial injury' or it has caused 'substantial failure of justice.'

28. The fact remains that ten panchas out of thirteen were against the petitioner on 30th of Dec. 1978 and continue to be so till now as nothing has been shown contrary to it. This fundamental and basic fact, undisputed, important and pertinent feature of this case, completely smashes the bogey of imaginary and vague injury or failure of justice, in this case of the petitioner. Out of thirteen members of the Panchayat, if the ten members are consistently functioning with declared disapproval of the Sarpanch by supporting 'no confidence motion' to pursue it to its logical conclusion again and again, how can a Sarpanch, function in any meeting because at learst he requires majority for getting any motion passed in a meeting, Contrary to it f majority is against petitioner.

29. It would have been in such circumstances, serious failure of justice, the other way, if on account of the so called lapse, alleged, the ten panchas would have been treated into a minority by legal fiction or technicalities.

30. The phrase 'failure of justice' used in Article 226 of the Constitution clearly points out that the court is required to consider and weigh equities also and then adjudicate whether the failure of justice would be occasioned by accepting writ petition of the Sarpanch who is in hopeless minority having support of two persons and facing opposition of 10 panchas or to reject it and permit the normal democratic way to function. After all whatever the legal technicalities may be in the

ultimate analysis no sarpanch can function in a panchayat against the expressly declared determined opposition of 10 panchas and with the thin support of two panchas, in a panchayat of 13.

31. It is surprising that instead of realising the factual position and respecting majority the petitioner has chosen to play on technicalities and that too in a background where the Tehsildar who was supposed to come and preside over the meeting, sent a notice of cancelling the meeting at 1 P. M. with a Chaprasi, in circumstances, which according to the speaking facts of this case, are leading to the only inference that there was prima facie good reason to believe of his design to avoid the meeting for helping Sarpanch.

32. That being so, before I enter into other aspect of the case, I am inclined to hold that as the Sarpanch has not challenged even till today that there is any doubt about the ten panchas opposing him in the Panchayat and supporting the no confidence motion, and further because he is not claiming even till today that he has got even a working majority or support of more than two panchas in addition to him, there cannot be any substantial failure of justice or substantial injury to him by technical violation of the Rule 15, even if it is held to be so in convening the meeting of 15th Jan. 79 wherein he has been ousted by a no confidence motion which was passed with the support of 10 panchas out of 13.

33. I have already held in a number of cases, that unless substantial failure of justice or substantial injury is proved under Article 226(1)(b) or (c) as the case may be, I would not entertain writ petition even if the impugned order or act is patently without jurisdiction or against law, as that would be converting these temples of justice into legal Gymnastic dubs or wrestling grounds of technicalities or hair splitting defects by cutting t's and dotting i's. I have held that under Article 226(1)(b) or (c) of the Constitution more legal gimmicks without correlation to the grievance or redress of injury to petitioner, cannot be permitted, though they may be very useful for Universities, Debating societies or research scholars. I have on a careful and thoughtful consideration of it, respectfully disagreed with the Bombay view and observed so in Manjoor Ahmad's case (AIR 1979 Raj 98). 'While considering this question in Miss Bharti Chaturvedi v. State of Rajasthan, Civil Writ

Petn. No. 770 of 1978, decided on Jan. 2, 1979, I have observed as under:

'The Parliament in its wisdom put these two riders, which of course are alternative, to circumscribe and put fetters on the jurisdiction of this court under Article 226. This plenary power of the legislature cannot be challenged. It is also a matter of common knowledge that even earlier to it the High Courts used to insist upon the proof of substantial injury or injury to the petitioner in most of the writ applications.'

'Unless the facts showing 'substantial injury' or 'substantial failure of justice' are specifically pleaded, a writ petition cannot be entertained under Article 226(1)(b) & (c) of the Constitution, and deserves to be dismissed 'in limine.'

'It appears to me that the express addition of the above two phrases in Clauses (b) and (c) in Article 226 was not without significance. The Parliament must have intended to oust and exclude the cases of 'academic interest' only so that the precious time of the court is saved for being utilised for deciding those matters which affect and involve the rights of citizens. The Parliament was conscious of the fact that this country cannot afford to waste the court's time for deciding academic or luxurious litigation.....

The High Court should not be required to enter into controversies of academic interest although they may certainly be very useful and of great interest to the professors and students of law in Universities. They would be injurious and detrimental to other litigants who are waiting in queue for a decade and are impatient to get justice from High Court.'

'Are we to convert the sacred and pious temples of justice into 'legal gymnastic clubs,' 'legal debating societies' or even 'luxurious research centres of Jaw'? Are we to wait and watch helplessly the gimmics of talented logic and brilliant feats of oratory of those fortunate few, who can afford to have luxury of academic litigation at the cost of those thousands litigants who are either waiting in jail cells for last 5 to 6 years to get their guilt or innocence decided or those thousands of civil servants or industrial workmen, petty shopkeepers or farmers whose fundamental rights have been invaded by unscrupulous employer or State functionaries and who want to have 'justice according to law' at least if not real justice or social

justice, but who are not getting their turn of hearing due to heavy cause-list and arrears of cases. A lakh of such disappointed, helpless, impatient, gloomy, sad faces of litigants involved in about 10,000 pending cases, are staring before me, and remind me of the great importance of giving effect to the 'riders' of 'substantial injury', 'substantial failure of justice,' to make room for deciding their awaiting fates and to liberate them from 'coma' caused due to suspense of pending cases for more than a decade.'

'Again can we shut our eyes and become blind to the hard reality that lakhs of poor, down-trodden, less privileged citizens are those who are still outcast from the realms of courts, justice and law, as they cannot afford to reach and spend in competition of the privileged, resourceful, educated and enlightened litigants; nor can they afford to await in long queue. That being so, even though they deserve consideration and relief from the courts but we are helpless to act as 'watch dogs and sentinel' of Constitution and give justice to them.

While I am sitting in the Court room, my eyes are observing the unending stream of tears rolling from the eyes of 'Saharias of Sahbad' and others (tillers of Shahbad, subdivision Kota District) who with their empty bellies and naked skeleton of bones and starving body are helplessly watching their farms being encroached, trespassed and cultivated and crops being harvested by rich, resourceful invaders; but they can never afford to even weep and cry in protest and cannot imagine of either going to a court of law or to obtain relief of getting back possession in spite of 'talk talk of legal aid to poor' and its inclusion in Constitution. It may be that, if I describe the above tragic functioning of our law, courts of justice enumerating the hard realities, I may for a while take a role of a poet, philospher or reformer, rather than a Judge but it is this restraint which is responsible for the wide spread of feeling that 'Judges live in ivory towers* a feeling which even if untrue or partially true, should be repelled by 'imparting speedy, cheap, social, ready and real justice' to the lowest in the ladder, i, e. a tiller, a workman, a cobbler etc, and not by using handy sword of 'contempt' only.'

'The High Court should literally and faithfully insist on enforcing the riders of 'substantial injury' and 'substantial failure of justice' while entertaining the writ

petition under Article 226 of the Constitution of India except when violation of fundamental rights is alleged and proved'

(b) 'In a no confidence motion against Chairman of Municipal Board, 18 members out of 20, vote against Chairman. The Presiding Officer in law is Collector but Additional Collector, not having Collector's powers presides. The ousted Chairman applies under Article 226 on the ground that the entire proceedings are without jurisdiction. The High Court under Article 226 would refuse to entertain such writ as the Chairman cannot show any substantial injury or failure of justice; merely on account of Additional Collector presiding over it.

34. The present case falls in the category of illustration (b) which I have given in the above case.

35. In fact a series of judgments of this Court, wherein either elections or no confidence motion meetings were set aside on technical grounds, cannot provide any guidance now in view of the amendment made in Article 226 by addition of the riders 'substantial injury' or 'substantial failure of justice'. Vishwanath's case cited by Shri B. P. Agarwal falls in the same category. Some of the other cases affected by the above constitutional Amendment are.

(1) Anokhmal v. Chief Panchayat Officer, AIR 1957 Raj 388: ILR (1956) 6 Raj 1044; (2) Prabhudayal v. Chief Panchayat Officer, ILR (1957) 7 Raj 177 : 1957 Raj LAV 357; (3) Hiralal v. Chief Panchayat Officer, 1958 Raj LW 421; (4) Mangilal v. Collector, Bhilwara, ILR (1958) 8 Raj 152: 1958 Raj LW 96; (5) Kalyan chandra v. CPO, ILR (1956) 6 Raj 206: 1954 Raj LW 414; (6) Bishambhar Dayalv. CPO, ILR (1956) 8 Raj 189; (7) Gokul Chand v. State of Rajasthan, ILR (1961) 2 Raj 1047 : 1961 Raj LW 374.

36. Under the amended Article 226(1)(b) & (c) it would be necessary even in cases of Constitutional violations except fundamental rights, to prove substantial injury or substantial failure of justice due to the violation complained of.

37. The writ application is therefore, not maintainable on this constitutional bar of the petitioner's failure to correlate any substantial injury or substantial failure of

justice, with the alleged illegality or irregularty in calling a second meeting on 15th Jan. 1979, even if it is assumed to be so.

38. Even, before the amendment of Article 226 of the Constitution, this court in a series of cases has taken the view that in matters of no confidence motion once it is established that the motion was passed by a requiste number of the members against the sarpanch or Chairman, proper course for ousted public representative is to leave the office gracefully, rather than to try to wriggle out of it by legal technicalities. In the case of Radhey Shyam v. State of Rajasthan wherein the case related to ousted Chairman of the Municipal Board Srigangana-gar Hon'ble Justice Tyagi as he then was, observed as under;

'The traditions of democracy require that a person who wants to hold the elected office of a local body must, give due respect to the wishes of the majority of the members of that body and if he has lost the confidence of that majority then he should not try to stay in that office even for a moment and should not come forward to seek the protection of this court under the extraordinary jurisdiction conferred by Article 226 of the Constitution'.

In a series of cases which are reported in AIR 1976 Raj 184, Bhurekhan v. State, 1975 Raj LW 591, 1977 Raj LW 158 this court has emphasised the cardinal principle that in equitable jurisdiction under Article 226 of the Constitution, the elected representative who has lost the confidence of the requisite majority should not be allowed to thrust himself in that office by legal quibbles, technicalities. He cannot claim protection of abstract doctrines of law.

39. Law about 'No Conadence' is contained in Section 19, and Rule 15 can be interpreted to be subservient to it only. B. 10 is as under;--

'Motion of no-confidence -

(1) A motion of no-confidence may be moved by (any elected or co-opted Panch) after giving such notice as may be prescribed against the Sarpach and Upasarpanch.

(2) If the motion against the Sarpanch is carried by a majority of not less than 3/4th of the total number of (members of the Panchayat including the Sarpanch but excluding the associate panchas) or if the motion against the Upsarpanch is carried by a majority of the total number of (members of the Panchayat including the Sarpanch but excluding the associate Panchas), the Sarpanch or the Upasar-panch, as the case may be shall, within 2 days of the passing of the motion, resign his office by submitting his resignation to the (officer-in-charge of panchayats) and thereupon his office shall be deemed to be vacant.

(3) If the Sarpanch or the Upsarpanch, as the case may be, against whom the motion of no-confidence has been carried, does not resign his office within the period prescribed in Sub-section (2), he shall be removed from his office by the (Officer in-charge of Panchayats.)

(4) Notwithstanding anything contained in this Act or Rules made thereunder, a Sarpanch or Upsarpanch shall not preside at a meeting in which a motion of no-confidence is discussed against him but he shall have a right to speak and otherwise to take part in the proceedings of the Panchayat (including a right to vote.)'

40. Thus when out of 13 members of Panchayat admittedly 10 have voted against Sarpanch, conditions of Section 19 for passing of no-confidence motion by 3/4 majority are fulfilled. Viewed with this angle, the quoting of Sub-rules (7) & (4) of Rule 15 by the ousted Sarpanch against express wording of Section 19, appears to me like 'Devil quoting Scriptures'. I would not permit this to happen to make it 'mockery of justice.'

41. I have admitted the case and directed that the meeting as scheduled on 15 Jan. 1979 would take place so that any doubt about the requisite majority being against the Sarpanch can be clearly removed. Now that on 15-1-1979 the same 10 persons who waited from 11 A. M. to 1 P. M. on 30th of Dec. 1978 to pass no confidence motion and who later on went in a Jeep to Kekari and Sarwad to pursue their efforts, again voted against the petitioner and made it clear that whatever had happened on 15-1-1979 was also going to happen on 30-12-1978 (sic) if the said functionary who was to preside over the function would not have

taken sides in the matter and exhibited sense of responsibility which is expected of him, more so in discharging such statutory functions.

42. The hob-nobbing by the State functionray, either to create an impediment in the successful working of the democracy by helping one side against the other, is a matter of serious concern, as the entire fabric of our democracy, which is enshrined in the Constitution and other laws is based on the assumption that the State functionaries would discharge their duties in ascertaining the will of the people, may be in Panchayat or District, Boards Assemblies or Parliament, Co-operatives or District Boards, by meticulously acting impartially and independently and in a detached manner. This case prima facie a glaring example of the State functionary 'hob-nobbing and siding' with the Sarpanch, who has lost the confidence and was trying to avoid the evil day.

43. This court cannot become a party to such inceremonious undemocratic functioning of the Sarpanch, against the express declared will of the ten Panchas, out of thirteen, by thrusting him as a Sarpanch on the ground of so called irregularities or violations, I am, therefore, firmly of the view that Sarpanch Suratram lost the confidence of the requisite number of majority of Panchas in this village Panchayat and whatever happened on 30th of Dec. 1978 was a designed effort by the Sarpanch in collusion with the Tehsildar to thrust himself in the seat of Sarpanch by questionable methods which requires to be deprecated by this court. It would be for the State Government to ascertain the actual guilt of Tehsildar Kekari by a regular inquiry under the provisions of the law, after giving full opportunity to the delinquent officer and then if found guilty, to take appropriate action so that such recurrences are not made and the State functionaries should not go with the impression that they can go 'scot free' even after adopting such questionable methods.

44. Coming to the merits of the case, I am of the opinion that a no-confidence motion cannot lapse in the circumstances which were created in this case, on 30-12-1978 as no meeting commenced at all. There was no question of lapse of motion as all 13 members were present absence of Presiding Officer, cannot result in lapse of the motion. The Presiding Officer cannot be allowed to give

power of 'Veto' by defeating no-confidence motion by remaining absent or by remaining present but refusing to conduct, convene or commence the meeting. That would be negation of law and the democracy. It has been held by Hon'ble Justice Kan Singh, as he then was, in Ganga Sahai v. Dy. Distt. Development Officer (1968 Raj LW 507) that motion cannot lapse in case, by unavoidable circumstances meeting is not held. The Judgment of Hon'ble Justice Jagat Narain in 1962 Raj LW 276, Ramu v. State of Rajas-than and Abdul Rahman v. Municipal Board, Makrana, 1965 Raj LW 295 also supports the view which I have taken above.

45. In Ramu v. State it was held, in relation to rule 15:--

'From a perusal of this rule, I am of the opinion that the Collector or the presiding officer cannot adjourn the meeting once it has commenced, but that there is no bar to the Collector cancelling the meeting and fixing another date for holding it before the meeting has commenced. It is clear from para 4 of the petition that the meeting fixed for 8-10-61 was not held. There was thus no question of adjourning the meeting held on 8-10-1961. That meeting was cancelled before it was held and a meeting was called for 22-10-1961 which the Collector was authorised to do. This contention has therefore no force.'

46. In Ganga Sahai v. Dy Distt. Development Officer, Sawai Madhopur this Court observed as under in relation to the intepretation of Rule 15 and Section 19 about the situation when a motion can be declared as lapsed:--

'Even so, what is noteworthy is that there must be a meeting of the Gram Panchayat which was once held and at that meeting either the no confidence motion was voted down or it had lapsed under the stated condition'.

'It is noteworthy that once a meeting has commenced then the rule does not give any power to the Presiding Officer to terminate the meeting for any reason before the fixed period. The Legislature or the rule making authority perhaps never contemplated that these small cells of democracy will have to be subjected to so much stress and strain. It was not a little surprising that even though a Magistrate of the status of a Sub Divisional Magistrate was apprised in advance that there

was tension in the village and there was a threat to peace yet the machinery under the Criminal Procedure Code for meeting any such threat to peace was not resorted to. If there was real threat of peace as the respondents would have me believe, then a more suitable action could have been contemplated well in advance. It is not unknown that when a big mass of people collects to pose a threat to peace it may be difficult to control the crowd on the spur of the moment. A small contingent of 20 persons could hardly be sufficient to meet the menacing situation. Even bigger number might be insufficient. Howsoever turbulent may be the crowd I do not believe that such state of things have arisen in Rajasthan where they become mightier than the majesty of law itself. Politicians at times are tempted to work in a way that may be of benefit to them for future elections, but this cannot be the attitude of civil servants. In the present case unfortunately the impression is unavoidable that officers have got mixed up with politicians. Civil servants have to place their duty under law above everything else.'

'In the result, I allow the writ petition in part and direct the respondent No. 1, the Deputy District Development Officer to first collect the necessary material bearing on the question on the actual holding of the meeting on 16th Feb. 1968 and then in the light of the material so collected by him reach proper conclusion as to whether the meeting was in fact held as alleged by the petitioner or not. If he comes to the conclusion that no such meeting was held, then he shall fix another date for the special meeting of the Gram Panchayat.'

47. I am therefore of the opinion that the motion never lapsed as the meeting did not commence on 30-12-1978 at all and there was no meeting at all.

48. The result is that this writ petition fails and is dismissed with costs. Since the writ petition has been dismissed the petitioner would no longer function as Sarpanch and the respondents would take steps to proceed according to law to give charge of this office to Up-Sarpanch till fresh elections to the office of the Sarpanch are held according to law. All the respondents except respondent No. 3, would get separate set at costs from the petitioner.

49. Copy of this Judgment be sent to the Chief Secretary and Panchayat Ministry of the State of Kajasthan for prompt action.