

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 21.09.2023.

Pronounced on : 14.12.2023.

Case:- **LPA No. 67/2022**
CM No. 4243/2022

Vikas Kumar Sharma
Age 32 years,
S/o Sh. Darshan Kumar Sharma
R/o Rajal, Tehsil Nowshera,
District Rajouri.

.....Appellant

Through: Mr. Ashish Sharma, Advocate.
Mr. Munish Kumar Sharma,
Advocate.

Vs

1. **UT of J&K Through its Commissioner/Secretary Rural Development Department, Civil Secretariat Jammu/Srinagar.**
2. **Deputy Commissioner, Rajouri.**
3. **Director, Rural Development Department, Jammu.**
4. **District Panchayat Officer, Rajouri.**
5. **Block Development Officer, Block Lamberi, Tehsil Nowshera, District Rajouri.**
6. **Sh. Kishori Dutt Sudan, Sarpanch Panchayat Halqa, Lamberi East, Near Higher Secondary School, Lamberi Nowshera, Rajouri, J&K.**
7. **Sh. Pishori Lal, Sarpanch Panchayat Halqa, Chack Jaralan, Bagnoti Nalha, Nowshera, Rajouri, J&K.**
8. **Sh. Suraj Prakash, Sarpanch Panchayat Halqa, Dandesar, Near Forest Office, Dandesar, Nowshera, Rajouri, J&K.**
9. **Sh. Vijay Kumar, Sarpanch Panchayat Halqa, Lamberi Lower, Near Tehsil Market, Lamberi, Nowshera, Rajouri, J&K.**
10. **Smt. Sangeeta Sharma, Sarpanch Panchayat Halqa, Bagnoti, Near Bagnoti Market, Nowshera, Rajouri, J&K.**
11. **Smt. Nazma Shaheen, Sarpanch Panchayat Halqa,**

**Lamberi Uppar, Near Plassi Hill, Lamberi Nowshera,
Rajouri, J&K.**

..... Respondent(s)

Through: Mr. S. S. Nanda, Sr. AAG.
Mr. Vikram Sharma, Sr. Advocate
with
Mr. Sachin Dev Singh, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGMENT

(Per: Rahul Bharti-J)

- 01.** This is a letters patent appeal (LPA) which has been addressed to question the judgment dated 01.06.2022 of the writ court whereby a writ petition WP(C) no. 1441/2020 filed by the appellant came to be dismissed.
- 02.** The cause of action which brought the appellant with the writ petition WP(C) no. 1441/2020 was the passing of 'No Confidence Motion' against the appellant for his removal as Chairperson, Block Development Council of Lamberi, district Doda. Thus, the challenge in the writ petition came to be posed to the legality and validity of the 'No Confidence Motion' related process which resulted in the purported ouster of the appellant from the office of Chairperson, Block Development Council, Lamberi.
- 03.** Before we proceed to examine the impugned judgment of the writ petition, it would be in the fitness of facts to take

notice of the legal canvas within which the appellant came forward to impugn his purported ouster.

- 04.** Panchayati Raj Act, 1989 read with Panchayat Raj Rules, 1996 governs the field for constitution of Halqa Panchayats, Block Development Council and District Planning and Development Boards and the matters connected therewith, so as to strengthen the grass-root democratic institutions of the country. Chapter-II (Sections 4 to 11) deal with the Halqa Panchayat. Chapter-VI (Sections 27 to 30) deal with the Block Development Council.
- 05.** Section 27 provides for the constitution of a Block Development Council whereas section 28 provides for office-bearers of Block Development Council who being Chairman, Vice-Chairman and Secretary. Chairman and Vice-Chairman of a Block Development Council are to be elected persons by an electoral college comprising of elected panches and sarpanches of Halqa Panchayats falling within the Block as provided under section 41. Section 29 sets out the term of office of the Chairman and Vice-Chairman of Block Development Council.
- 06.** In the context of present case, it is section 30 of the Panchayati Raj Act, 1989 which is in focus and that is

with respect to the removal of a Chairman. For the sake of reference, section 30 is reproduced as under:-

“30. Removal of Chairman

The Chairman of the Block Development Council shall be deemed to have vacated his office if a motion of no confidence moved against him by any member on any of the following grounds, is carried by a majority of not less than two-third of the total number of Panches and Sarpanches of Halqa Panchayats of the Block at special meeting convened for the purpose in such manner as may be prescribed. The grounds, aforesaid are;

- (i) gross misconduct;
- (ii) neglect of duty;
- (iii) disqualification prescribed under section 6.”

Removal of an elected Chairman and Vice-Chairman of a Block Development Council can take place in three prescribed contingencies i.e. gross misconduct, neglect of duty and disqualification under section 6.

- 07.** For the purpose of serving section 30 of the Panchayati Raj Act, 1989, Rule 107 of the Panchayati Raj Rules, 1996 provides for the procedure to be undertaken for effecting removal of the Chairman and Vice-Chairman of Block Development Council. Rule 107 incorporates procedure as envisaged under rule 81 to be followed. Rule 81 lays down the procedure for removal of Sarpanch or Naib-Sarpanch. Removal of Sarpanch or Naib-

Sarpanch of a Halqa Panchayat is provided under section 7 for which the prescribed grounds of removal are gross misconduct, neglect of duty and disqualification under section 6, in addition, failure to attend six consecutive meetings of Halqa Panchayat.

08. Section 30 'Removal of Chairman' and section 7 of 'Removal of Sarpanch or Naib-Sarpanch of Halqa Panchayat' are based upon fault theory that is an elected Panch, Sarpanch, and/or an elected Chairperson or Vice-Chairman who commits gross misconduct, neglect of duty or suffer disqualification under section 6 are to suffer removal from their respective position upon carrying out of a motion of no confidence by a majority of not less than two-third of the total number of Panches of Halqa Panchayat and Panches & Sarpanches of Halqa Panchayats of the Block respectively.

09. In the present case, the Block Development Council, Lamberi comprised of eight Sarpanches out of which one post of Sarpanch is laying vacant, therefore, the total number of Sarpanches constituting the Block Development Council, Lamberi are seven. Out of seven members of Block Development Council, Lamberi, a 'No Confidence Motion' came to be moved by requisite

number of members of the Block Development Council, Lamberi which resulted in Secretary, Block Development Council, Lamberi issuing statutory notice under rule 81(1) of Panchayati Raj Rules, 1996 for a special meeting to be held on 09.07.2020.

10. Notice dated 19.06.2020 came to be issued by the Member Secretary, Block Development Council, Lamberi. The timeline prescribed under the Act and the Rules for issuance of requisite notice for the purpose of convening a special meeting on a due date was followed.
11. The scheduled meeting came to take place, which was attended by the appellant himself and no confidence motion was carried out by majority of six voting in favour and one against it and the proceedings were duly documented.
12. In this backdrop of development, the appellant agitated his purported ouster by saying that the no confidence motion was *mala fide* one which was moved by its makers at the instance of alien interest and that there was procedural lapses on the part of Member Secretary in service of the requisite notice.

- 13.** The appellant in his writ petition agitated that after having received no confidence motion, the Member Secretary was supposed not to have acted in any manner whatsoever for the next ten days, but instead he came forward with issuance of a notice dated 29.06.2020 that is on the very next day when no confidence motion was moved that was moved and submitted on 28.06.2020.
- 14.** The appellant, in his writ petition, submits that as per rule 81 that the Secretary of the Block Development Council, Lamberi ought not to have issued notice for convening of the special meeting scheduled for 09.07.2020 without first allowing expiry of ten days from the day of submission of the No Confidence Motion which was on 28.06.2020.
- 15.** In this case, the date of scheduled meeting fixed was 09.07.2020 which was admittedly beyond the prescribed ten days timeline from the date of submission of No Confidence Motion though notice for holding the said meeting was issued within a period of ten days.
- 16.** An administrative exercise of issuance of a notice for the proposed special meeting is nowhere debarred from being taken within a period of ten days from the date of submission of no confidence motion and, therefore, it was

misconceived on the part of appellant to agitate the issue in his writ petition that the notice issued by the Secretary, Block Development Council was illegal. Therefore, the holding of special meeting on 09.07.2020 could not be faulted on the said ground and was rightly so held by the writ court in its judgment that the holding of the meeting was legal.

- 17.** The appellant, in his writ petition, has tried to exploit the fact that the alleged misconduct was not proved and, therefore, there was no reason for his ouster. When we peruse the notice of 'No Confidence Motion' so moved against the appellant, we find that it bears recital from the end of the makers and subscribers of and to this 'No Confidence Motion' notice about the alleged misconduct on the part of the appellant as Chairman of the Block Development Council, Lamberi. Even if the misconduct alleged against the appellant is held to have been not made out and proved, the fact remains that almost full majority of the membership of the Block Development Council, Lamberi had registered their no confidence against the appellant to continue as Chairman of the Block Development Council, Lamberi and, therefore, if the majority, which elected the appellant to be Chairman of the Block Development Council, was seeking to

withdraw its confidence from the appellant to continue as the Chairman of the Block Development Council, Lamberi of which the other members are equivalent stakeholders as that the appellant, then the doctrine of democratic representation envisaging election of a leader on the basis of confidence of majority was fully applicable as being inherent right vesting in the majority to register their no confidence and carry it through in a proper manner so as to bring to an end the term of an elected person amongst them. This is what was done by the majority of the members of the Block Development Council even if the allegations made and leveled by them against the appellant about the alleged misconduct can be said to have fallen short of proving the misconduct against the appellant.

- 18.** If we allow the appellant to have an understanding of removal of the Chairman of a Block Development Council to be based purely upon proven gross misconduct or neglect of duty then even if majority of the members of a given council are having total lack of confidence in their Chairman or Vice-Chairman, the majority would never be able to get rid of the person from the position of Chairman or Vice-Chairman after having first reposed confidence in him or her to become Chairman or Vice-

Chairman of the Block Development Council, even if all of them have lost their confidence and consensus in the elected person. Such an understanding would be an anti-thesis to the working of a representative body as a Block Development Council is.

19. We, therefore, find no fault in the judgment of the learned Single Bench in dismissing the writ petition of the appellant and, therefore, we **dismiss** this letters patent appeal as well.

JAMMU
14.12.2023
Bunty

(RAHUL BHARTI)
JUDGE

(TASHI RABSTAN)
JUDGE



Whether the order is speaking: Yes

Whether the order is reportable: Yes