

# Parveen Akhter vs U.T. Of J&K And Others on 5 August, 2022

**Author: Sindhu Sharma**

**Bench: Sindhu Sharma**

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

WP(C) No. 1831/2020  
CM No. 6506/2020

Pronounced on: 05.08.2022

Parveen Akhter

.... Petitioner/Appellant(s)

Through:- Mr. Muzaffar Iqbal Khan, Advocate.

V/s

U.T. of J&K and others

.....Respondent(s)

Through:- Mr. Ayjaz Lone, Dy. A.G.  
Mr. A.M. Malik, Advocate with  
Mr. Suyash Singh Chandel, Advocate.  
Mr. Vikram Sharma, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE  
JUDGMENT

01. The petitioner seeks quashing of her removal as Sarpanch of Panchayat, Kandi (Upper Block), Budhal, District Rajouri vide order/minutes of meeting dated 24.09.2020. She also seeks a direction to the respondents to reinstate her as Sarpanch of Panchayat, Kandi (Upper Block), Budhal, District Rajouri.

02. The Panches of Panchayat, Kandi (Upper Block), Budhal, District Rajouri moved a resolution on 11.09.2020, seeking removal of the petitioner by moving a No Confidence Motion against her on serious allegations of misconduct regarding violation of Jammu and Kashmir Panchayati Raj Act and had sought convening of a special meeting in this regard.

03. The Secretary, Panchayat Halqa, Kandi (Upper Block), Budhal, District Rajouri informed the Chairman, B.D.C, Budhal that seven Panches of Panchayat, Kandi (Upper Block), Budhal, District Rajouri have sought convening of a special meeting regarding No Confidence Motion against the petitioner and the Chairman, B.D.C, Budhal in this regard requested him to proceed over the same

in terms of the Rules.

04. The Secretary, Panchayat Halqa, Kandi (Upper Block), Budhal, District Rajouri on 13.09.2020, issued notice to all the members of Panchayat regarding convening of a special meeting on 24.09.2020 to be presided over by the Chairman, B.D.C. On 24.09.2020, a special meeting regarding No Confidence Motion against the petitioner was held in the office of Chairman, B.D.C which was attended by all the seven Panches of Panchayat. All the Panches supported No Confidence Motion against the petitioner and, accordingly, the petitioner was removed as Sarpanch and the charge of Sarpanch was given to Naib Sarpanch.

05. The grievance of the petitioner is that the Panches had already approached the Court and filed a writ petition bearing WP(C) No. 1540 of 2020 titled 'Zatoon Begum and others vs. Union Territory of J&K and others'. This writ petition was decided on 09.10.2020, by directing the Director, Rural Development and Panchayati Raj, Jammu to look into the matter and same should be taken to the logical end.

06. It is urged that the respondents, instead of enquiring into the allegations against the petitioner by giving her an opportunity of hearing have removed the petitioner from the post of Sarpanch in violation of the principles of natural justice. The respondent No. 6, in connivance with all the Panches of the Panchayat and at the back of the petitioner had also taken away the financial powers of the petitioner as Sarpanch arbitrarily. It is also stated that respondent No. 7 in connivance with all the Panches issued minutes of meeting/order dated 24.09.2020 at the back of the petitioner without informing her of the same. It is further submitted that even in the enquiry, in terms of the directions of this Court in writ petition titled 'Zatoon Begum and others vs. Union Territory of J&K and others', the respondents had directed all the seven Panches to attend the meeting but no such intimation was given to the petitioner. The meeting was convened by the respondents without issuing any notice of intention to move a resolution for removing the petitioner from the post of Sarpanch was served upon her, therefore, the removal of the petitioner from the post of Sarpanch was in contravention to Rule 81 read with Section 7 of the Panchayati Raj Act, as such, the same being arbitrary, illegal and the same is required to be set aside.

07. The official respondents, in their objections, have stated that on 12.09.2020, the Secretary of Panchayat Halqa, Kandi (Upper Block), Budhal, District Rajouri informed the Chairman, B.D.C, Budhal that seven Panches of Panchayat Kandi (Upper Block), Budhal, District Rajouri have sought the convening of a meeting regarding No Confidence Motion against the petitioner and requested the Chairman, B.D.C, Budhal that the meeting be presided over by the B.D.C, Chairman in terms of the Rules.

08. It is submitted that on 13.09.2020, the Secretary, Panchayat Halqa Kandi (Upper Block), Budhal, District Rajouri issued a notice regarding convening of a special meeting on 24.09.2020 and it was impressed upon all the members including the petitioner to attend the meeting to be held on 24.09.2020.

09. The removal of Sarpanch is provided under Section 7 read with Rule 81 of the Jammu and Kashmir Panchayati Raj Act and Rules. Section 7 and Rule 81 of the Act for ready reference read as under:

"Section 7:-

Removal of Sarpanch and Naib Sarpanch of Halqa Panchayat:- A Sarpanch or a Naib Sarpanch shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in his is passed by a majority of not less than 2/3rd of the total number of the Panches of halqa Panchayat at a meeting specifically convened for the purpose in this prescribed manner on the following grounds:-

- (i) Gross misconduct;
- (ii) Neglect of duty;
- (iii) Any disqualification prescribed under section (6);
- (iv) Failure to attend three consecutive meetings of the Halqa Panchayat.

Provided that failure to attend the meetings of the Halqa Panchayat shall render him liable to removal of such failure is due to reasons beyond his control. Rule 81. Procedure for removal of Sarpanch or Naib-Sarpanch - (1) A written notice of the intention to move a motion for removal of the Sarpanch or the Naib-Sarpanch under section 7 shall be necessary. It shall be signed by not less than one-third of the total members of the Panchayat and shall state the reasons for moving the motion. The notice shall be delivered in person by at least two Panches signing the notice to the Secretary of the Panchayat, who shall place it before the Sarpanch and in his absence before the Naib-Sarpanch. The Secretary of the Panchayat shall thereafter take steps to convene the special meeting not earlier than ten days and not later than twenty days from the date of receipt of the motion. The Secretary of the Panchayat shall inform the concerned Chairman of the Development Council to preside over the meeting indicated the date of meeting, place and time well in advance. (2) The concerned Chairman, Block Development Council concerned shall read to the Panches the notice received by the Panchayat. He shall then allow the motion to be moved and discussed. Upon the conclusion of the debate, the motion shall be put to vote.

(3) Concerned Chairman of the Block Development Council presiding over the meeting shall declare the result of the voting, the motion shall be declared to have been carried only when it has been passed by a majority of two-third of the members present at the voting.

(4) The proceedings of the meeting shall be recorded by the Secretary who shall send copy of the proceedings together with a copy of motion and the result of voting to the Block Development Council.

(5) When a motion has been carried as provided in sub-rule (1) the Sarpanch or the Naib-Sarpanch, as the case may be, shall stand removed from his office with effect from the date the motion has been carried. (6) (a) When a Sarpanch is removed from his office under sub-rule (5) he shall make over charge of his office to the Naib-Sarpanch.

(b) When Naib-Sarpanch is removed from his office under subrule (5) he shall make over charge of his office to the Sarpanch.

(c) When both the Sarpanch and the Naib-Sarpanch are removed from their offices under sub-rule (5) they shall make over charge of their respective offices to the Secretary of the Panchayat who shall handover the charge to the person/ persons who may be elect in accordance with Act, and rules."

10. A perusal of the motion seeking removal of the petitioner from the post of Sarpanch reveals that there were serious allegations of gross misconduct were raised against her. These allegations were required to be proceeded in accordance with Section 7 read with Rule 81, if the resolution expressing want of confidence is passed by a majority, at a meeting, specially convened for purpose. This resolution has been signed by all the members of Panchayat, Kandi (Upper Block), Budhal, District Rajouri. The meeting was conducted by the official respondents on 24.09.2020 at the office of B.D.C, Chairman but as per the respondents, even though the communication was furnished to the petitioner but it appears, she remained deliberately absent. The resolution was then passed by all the members accordingly.

11. The next contention raised by the petitioner was that, she was not given an opportunity of being heard is also without any basis that since all that was required in terms of the Act and rules is that notice of intention to move a motion for No Confidence Motion was to be brought to the notice of Sarpanch and Naib Sarpanch. The Sarpanch was informed of the notice but she chose deliberately not to appear, therefore, cannot say that she was not heard. This also has been recorded in the minutes of meeting held. The meeting was then conducted in her absence.

12. The contention of the petitioner that since the Panches had approached this Court in petition titled 'Zatoon Begum and others vs. Union Territory of J&K and others' and the respondents were directed to hold an enquiry but instead of calling upon the petitioner to hold enquiry, the respondents have issued notice to other Panches is also without any basis. Since the respondent-Director, Rural Development vide his communication dated 05.11.2020 had directed the petitioner to attend the meeting of the Directorate to be held on 09.11.2020 to complete the enquiry to its logical conclusion.

13. The Panches of the ward had approached this Court in WP(C) No. 1540 of 2020 titled 'Zatoon Begum and others vs. Union Territory of J&K and others' for a direction to the respondents to take action on the notice/resolution passed in terms of J&K Panchayati Raj Act. The official respondents before the Court had submitted that Gram Panchayat was called on 24.09.2020 and it was recorded in the order dated 09.10.2020 that action was taken. The Court only directed that since it was not a simplicitor case of passing No Confidence Motion against the Sarpanch but the allegations are quite serious, therefore, Director, Rural Development was directed to look into the allegations, thus, the

enquiry into the allegations was being conducted by the respondents. The action as per the Act was thus taken and petitioner was informed of convening of the meeting, in terms of the Act but since she chose to remain absent, the same was conducted in her absence. The motion was required to be passed with 2/3rd majority but since all the Panches unanimously voted against the Sarpanch, she was removed from the post of Sarpanch.

14. It is stated that in a democratic society, what is important is the will of the majority and elected representatives must honour the will of the majority. The will of the majority is of paramount importance and must be respected in any case. All the Panches of Panchayat, Kandi (Upper Block), Budhal, District Rajouri have unanimously passed the resolution for removal of the petitioner from the post of Sarpanch and the petitioner stood removed in terms of the said resolution. This apart, there are clear allegations of misappropriation of money which are being enquired by respondent No. 7, therefore, the petitioner has rightly been removed as Sarpanch.

15. Therefore, there is no infirmity found with the order impugned, accordingly, this petition is without any merit and is, accordingly, dismissed along with connected application(s).

(Sindhu Sharma) Judge JAMMU 05.08.2022 Michal Sharma Whether the judgment is speaking :  
Yes Whether the judgment is reportable : Yes/No