

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11548 2023

Vijay Ramdas Kokate

...Petitioner

Versus

The District Collector Solapur

& Ors.

...Respondents

Mr. Ajit J. Kenjale a/w Sai Rajendra Kadam, Azharuddin Khan,
Prachi Deokar for Petitioner.

Mr. Mohansinh U. Rajput a/w Mr. Sachin A. Ambulkar for
Respondent Nos. 5 to 10.

Mr. P.G. Sawant for Respondent-State.

CORAM : MADHAV J. JAMDAR, J.

DATE : 12th December 2023

ORAL JUDGMENT:

1. Heard Mr. Kenjale, learned Counsel appearing for the Petitioner, Mr. Rajput, learned Counsel appearing for Respondent Nos.5 to 10 and Mr. P.G. Sawant, learned AGP for Respondent Nos.1 to 3 on earlier occasion.

2. The challenge in the present Writ Petition is to the Order dated 29th August 2023 passed by Collector, Solapur ("**impugned Order**") by which Gram Panchayat Dispute Application No.28 of 2023 filed under Section 35(3-B) of the *Maharashtra Village Panchayats Act [Act No. III of 1959]* ("**said Act**") has been

dismissed by the Collector, Solapur. In the said Dispute Application, challenge was to the motion of no confidence carried in the meeting of Gram Panchayat on 30th May 2023 and also to the entire proceedings of said motion of no confidence. In view of the dismissal of said Gram Panchayat Dispute Application, said motion of no confidence has been held to be valid.

3. It is the contention of Mr. Kenjale, learned Counsel appearing for the Petitioner that on 8th February 2022, a Notice under Section 35(1) of the said Act moving motion of no confidence was served upon the Tahsildar and accordingly the Tahsildar by issuing Notice dated 8th February 2022 convened the meeting on 15th February 2022 to consider said motion of no confidence. He submits that on 9th February 2022, the said proceedings were closed as the said motion of no confidence had been moved before completion of the two years period as contemplated under Section 35(3)(a) of the said Act. He further submitted that Section 35(1) of the said Act specifies that once the motion of no confidence is moved by not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed then such notice once given shall not be withdrawn. He further submitted that as

per the fifth proviso to Section 35(3)(a) of the said Act, no motion is permitted to be moved within next two years from the date of failure of motion of no confidence and therefore a fresh motion of no confidence could not have been moved during the said period of two years. He therefore submitted that issuance of second Notice dated 23rd May 2023 under Section 35(1) of the said Act within a period of around one year and three months is not permitted under the said Act. He therefore submitted that the second Notice dated 23rd May 2023 and the proceedings pursuant thereto are null and void.

4. On the other hand, Mr. Rajput, learned Counsel appearing for Respondent Nos.5 to 10 submits that as far as the proceedings initiated on the basis of first Notice dated 8th February 2022 issued as per Section 35(1) of the said Act moving a motion of no confidence are concerned, the same were closed as the motion was moved before completion of two years as contemplated under the fourth proviso of Section 35(3)(a) of the said Act. Therefore, it cannot be said that the motion has been carried by a majority of not less than three-fourth of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch or the motion has failed as contemplated under Section 35(3)(a) of the said Act. He relied on the decision of a learned Single Judge of this

Court in the case of *Sunil Bhaskar Katkar v. Raosaheb Ramchandra Gavhane*¹.

5. Before considering the rival submissions, it is necessary to set out the factual position. At the outset, it is to be noted that there is no dispute regarding the factual position.

(i) The Petitioner was elected as Upa-Sarpanch of Grampanchayat - Tambole, Taluka - Mohol, District - Solapur on 23rd February 2021. The said Grampanchayat has total nine members.

(ii) A Notice of moving of motion of no confidence under Section 35(1) of the said Act signed by six members was served upon the Tahsildar on 8th February 2022 (**“Notice of first no-confidence motion”**) i.e. within a period of around eight months from the date of election of the Petitioner as Upa-Sarpanch.

(iii) On 8th February 2022, the Tahsildar issued a Notice and scheduled a meeting to be held on 15th February 2022 to consider the said motion of no confidence.

(iv) On 9th February 2022, the Tahsildar closed the said file as the motion of no confidence had been moved before completion of two years from the date of election as Sarpanch/Upa-Sarpanch as required by the fourth proviso to Section 35(3)(a) of the said Act.

(v) On 23rd May 2023, a second Notice of motion of no confidence against the Petitioner under Section 35(1) of the said

1 W.P. No. 4494 of 2018 11-04-2018 : 2018 SCC OnLine Bom 1060

Act was served by six members of the Panchayat (“**Notice of second no-confidence motion**”). The said Gram Panchayat at the relevant time was having a total of eight members. The period of Notice of second motion of no confidence counted from the date of election of the Petitioner as Upa-Sarpanch is around 2 years and 3 months i.e. more than the two years period as contemplated by the fourth proviso to Section 35(3)(a) of the said Act. If the same is counted from 8th February 2022 i.e. when the Notice of first motion of no confidence is given then the same is around one year and four months.

(vi) As the said motion of no confidence was moved by two-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat, the Tahsildar convened a special meeting at 11.00 a.m. on 30th May 2023 by Notice dated 23rd May 2023.

(vii) On 30th May 2023, the said motion of no confidence was carried by an overwhelming majority of seven members in favour of and only one member against the motion. There is no dispute that seven out of eight members have voted in favour of the motion of no confidence fulfilling the requirement of Section 35(3)(a) of the motion being carried by a majority of not less than three-fourth of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat.

Accordingly, the motion of no confidence was successfully carried against the Petitioner - Upa-Sarpanch.

(viii) The Petitioner filed a Dispute Application i.e. Gram Panchayat Dispute Application 28 of 2023 on 1st June 2023 and the said Dispute Application came to be rejected on 29th August 2023.

6. The only contention which is required to be examined is whether the notice of second motion no-confidence motion issued under Section 35(1) of the said Act could have been issued or not and further actions pursuant to said notice of second no-confidence motion in view of the bar of two years as contemplated under the fifth proviso of Section 35(3)(a) of the said Act could have have been taken.

7. As the contention raised by both the parties is regarding interpretation of Section 35 of the said Act, the same is reproduced herein below for ready reference:

“35. Motion of no confidence.- (1) A motion of no confidence may be moved by not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Such notice once given shall not be withdrawn.

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the Panchayat for considering the motion of no confidence at the office of the Panchayat at a time to be appointed by him and he shall preside over such meeting. At such special

meeting, the Sarpanch, or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(3)(a) If the motion is carried by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat the Sarpanch or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat:

Provided also that, where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat;:

Provided also that, no such motion of no-confidence shall be moved within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before six months preceding the date on which the term of panchayat expires:

Provided also that, if the no-confidence motion fails, then no motion shall be moved within next two years from the date of failure of no-confidence motion."

(Emphasis added)

8. Section 35 of the said Act contemplates following steps before passing a motion of no confidence:

(i) Notice of 'Motion of No Confidence' against Sarpanch and Upa-Sarpanch is required to be submitted to Tahsildar by not less than two-third members of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat.

(ii) Within seven days from the date of receipt of such notice by the Tahsildar, he shall convene a Special Meeting of the panchayat for considering 'Motion of No Confidence' at the office of the panchayat at the time to be appointed by him and he shall preside over such meeting. Notice of such meeting is to be served on all the members of the Panchayat including the Sarpanch and the Up-Sarpanch.

(iii) At such special meeting of Grampanchayat, the Sarpanch or Upa-Sarpanch against whom 'Motion of No Confidence' is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting including the right to vote.

(iv) Such a motion is required to be carried by a majority of not less than three-fourth of the total number of members, who are

for the time being entitled to sit and vote at any meeting of the Grampanchayat.

9. The only dispute is whether, in view of issuance of first Notice dated 8th February 2022 under Section 35(1) of the said Act, a further Notice could have been issued on 23rd May 2023 i.e. before expiry of two years period from the Notice of first no-confidence motion.

10. For resolving said issue, Sections 35(1), 35(2), and 35(3) (a) are important. Section 35(1) provides that Notice of 'Motion of No Confidence' against Sarpanch and Upa-Sarpanch is required to be submitted to Tahsildar by not less than two-third members of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat. However it is very specifically provided that such Notice is to move motion of no-confidence in the meeting of the Panchayat. Section 35(2) provides that within seven days from the date of receipt of such Notice issued under Section 35(1) of the said Act by the Tahsildar, he shall convene a Special Meeting of the Panchayat for considering 'Motion of No Confidence' at the office of the Panchayat at the time to be appointed by him and he shall preside over such meeting. Thus it is clear that motion of no confidence is required to be moved in the meeting of Panchayat and Notice contemplated under Section 35(1) of the said Act is Notice given

to Tahsildar that motion of no-confidence will be moved in the special meeting of the Panchayat convened to consider such motion of no-confidence. Section 35(3)(a) of the said Act specifically provides that if the motion of no confidence is carried by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and stop performing all the functions and duties of the office of Sarpanch or Upa-Sarpanch. It is to be noted that the fourth proviso to Section 35(3)(a) specifically provides that no such motion of no confidence shall be moved within two years from the date of election of Sarpanch or Upa-Sarpanch and before six months preceding the date on which the term of Panchayat expires. The fifth proviso provides that if the motion of no confidence fails, then no such motion shall be moved within next two years from the date of failure of motion of no confidence. Thus, a combined reading of Section 35(3)(a) as well as the fourth and fifth proviso to the same clearly shows that the requirement is, thus, failure of no confidence motion moved in the special meeting of the Panchayat convened by Tahsildar in accordance with Sections 35(1) and 35(2) of the said Act i.e. no confidence motion is not carried by required majority of three-

fourth of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat.

11. In the present case, what has been done by the said Notice of first no confidence motion dated 8th February 2022 is that Notice is given to Tahsildar that motion of no confidence will be moved by not less than two-third members. Pursuant to said Notice on 8th February 2022, the Tahsildar has scheduled the meeting for considering said motion of no confidence on 15th February 2023. However, as the said 'No-Confidence Motion' could not have been moved before completion of two years period by the Petitioner as Upa-Sarpanch, in view of the fourth proviso to Section 35(3)(a), the said proceedings were filed. Thus, it is clear that as no special meeting of Panchayat was held and could not have been held as the said Notice dated 8th February 2022 was given before expiry of the mandatory period of 2 years and therefore the said motion of no confidence initiated pursuant to the Notice of first motion of no confidence was not moved and therefore there was no consideration of the same in the special meeting of the Panchayat and therefore no question of the same being carried or not carried, as contemplated under Section 35(3)(a) of the said Act and therefore, the same has no consequence in the eyes of law. Thus, it is clear that the Notice of motion of no confidence dated 8th February 2022 is null and void and the

meeting scheduled by the Tahsildar on 15th February 2022 to consider said motion of no confidence is also null and void and in fact, no such meeting had been held.

12. Thus, it is clear that the requirement of Section 35(1) read with Section 35(3)(a) of the said Act is that motion of no confidence is required to be moved by not less than two-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat and further that if motion of no confidence fails then no motion can be moved within next two years from the date of failure of no-confidence motion. In the present case, notice of first motion of no confidence is given before the expiry of two years period from the date of election of the Petitioner as Upa-Sarpanch and therefore, the entire proceedings initiated pursuant to said Notice dated 8th February 2022 are null and void.

13. Thus, it is clear that what is important is moving a motion of no confidence in special meeting convened by Tahsildar under section 35(2) of the said Act and such motion is to be carried by a majority of not less than three-fourth of the total number of the members. In the present case, the Notice of no-confidence motion is merely given and the same was filed as above.

14. The fifth proviso to Section 35(3)(a) of the said Act clearly provides that if a no-confidence motion fails, then no such motion

shall be moved within next two years from the date of failure of motion of no confidence. In this particular case, special meeting of Panchayat to consider said motion of no confidence has not been held as contemplated under Section 35(1) read with Section 35(2) of the said Act. Therefore, by no stretch of imagination, the prohibition under fifth proviso that no such motion of no confidence shall be moved within period of two years from the date of failure of earlier motion of no confidence will apply to the present case.

15. Mr. Rajput, learned Counsel appearing for Respondent Nos.5 to 10 has relied on *Sunil Bhaskar Katkar* (supra). The observations in *Sunil Bhaskar Katkar* (supra) are squarely applicable to the present case. As the 'No-Confidence Motion' is not actually moved in the special meeting of Gram Panchayat, and as such special meeting is not held there is no question of failure of the same. In the decision of *Sunil Bhaskar Katkar* (supra), it has been held that the fifth proviso to Section 35(3)(a) of the said Act, on which Mr. Kenjale, learned Counsel appearing for the Petitioner has heavily relied, specifically provides that if the no-confidence motion fails, then no such motion shall be moved within next two years from the date of failure of no-confidence motion. It is the contention of learned Counsel appearing for the Petitioner that as Notice of a no-confidence motion is given on 8th

February 2022 and as the meeting was scheduled on 15th February 2022 and thereafter, file was closed, it means that the no-confidence motion has failed. However, the scheme of Section 35 of the said Act clearly provides that the motion of no-confidence has to be moved in the special meeting convened by Tahsildar as per Sections 35(1) and 35(2) of the said Act and either the motion is carried by a majority of not less than three-fourth of the total number of the members, who are for the time being entitled to sit and vote at any meeting of the Panchayat or such motion fails, and only in case of failure of motion in such special meeting the prohibition under fifth proviso will be applicable.

17. It is clear that pursuant to the first Notice of motion of no confidence as contemplated under Section 35(1) of the said Act, the motion of no confidence has not failed, therefore the said prohibition is not applicable.

18. For the above reasons, the Writ Petition is dismissed however with no order as to costs.

19. In view of dismissal of the Writ Petition, *ad interim* relief granted earlier is vacated forthwith.

(MADHAV J. JAMDAR, J.)