

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10100 OF 2023

Prajakta Prabhakar Kadu
Up-Sarpanch of Gram-Panchayat Shedsai ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Ms. Sonali Jadhav a/w. Mr. Kamlesh Ghumre and Mr. Sanket Patil, for the
Petitioner.

Mr. A. P. Vanarase, AGP for the State/Respondent Nos. 1 to 3.

Mr. Aseem Naphade a/w. Mr. Abhishek Karnik i/b. Mr. Prashant Raul, for
Respondent No.4.

CORAM : MADHAV J. JAMDAR, J.

DATED : 7th NOVEMBER 2023

JUDGMENT :

1. Heard Ms. Sonali Jadhav, learned counsel appearing for the
Petitioner, Mr. A. P. Vanarase, learned AGP appearing for the
State/Respondent Nos. 1 to 3 and Mr. Naphade, learned counsel
appearing for Respondent No.4-Sarpanch.

2. By way of the present Writ Petition filed under Article 227 of
the Constitution of India the Petitioner is challenging the legality and
validity of the order dated 31st July 2023 passed by the Collector,
Raigad-Alibag in Gram Panchayat Dispute Application No.12 of 2023.
The said Dispute Application has been filed under Section 35(3) of

the Maharashtra Village Panchayats Act, 1959 (“**said Act**”) challenging the legality and validity of the motion of no confidence dated 5th June 2023 moved against the Respondent No.4-Sarpanch. By the impugned order dated 31st July 2023, the Collector-Raigad has allowed the Dispute Application on the ground that the said motion of no confidence carried on 5th June 2023 against Respondent No.4-Sarpanch is illegal. The only reason given by the Collector to arrive at said conclusion is that the meeting in which the said motion of no confidence was carried, had not been conducted in accordance with Rules 17 to 26 of the Bombay Village Panchayats (Meetings) Rules, 1959 (“**said Rules**”).

3. Learned counsel appearing for the Petitioner has relied on a Full Bench decision of this Court in *Tatyasaheb Ramchandra Kale v. Navnath Tukaram Kakde*¹ to contend that the said Rules are not mandatory. It is her submission that six out of total seven members of the Gram Panchayat have voted against the Respondent No.4-Sarpanch and therefore, it is in compliance with the requirements under Section 35 of the said Act. She pointed out the minutes of the

1 2014 SCC OnLine Bom 1483 : (2014) 6 Mah LJ 804 (FB)

said meeting dated 5th June 2023 annexed to the Writ Petition at pages 34-39. She submitted that the motion of no confidence is passed in accordance with Section 35 of the said Act and therefore, the order dated 31st July 2023 passed by the Collector deserves to be quashed and set aside.

4. On the other hand, Mr. Naphade, learned counsel appearing for Respondent No.4-Sarpanch pointed out Sub Sections 1 and 2 of Section 35 of the said Act and Rules 17 to 26 of the said Rules. He submitted that what is contemplated is a thorough discussion and an informed decision by the members of the Gram Panchayat. He also contended that the said Rules are mandatory and therefore, supported the order passed by the Collector. He submitted that what is contemplated under the scheme of Section 35 of the said Act is that members should make an informed decision and therefore, an opportunity is required to be given to the Respondent No.4-Sarpanch to submit her reply in the meeting. He relied on paragraph No.4 (vi) and (vii) as set out in the petition to contend that there was no thorough discussion whatsoever and the discussion was limited only with respect to the manner in which voting should be conducted viz. whether it should be an open or a secret voting. To substantiate his

contention, he relied on the decision of a learned Single Judge of this Court in *Manoj Ghanshyamdas Banode v. Presiding Officer/Tahsildar, Dhamangaon*²

5. Before considering the rival submissions, it is necessary to set out certain factual aspects. On 15th January 2021, the Petitioner, Respondent No.4-Sarpanch and other five members were elected as members of Group Gram Panchayat Shedsai, Roha, Raigad and on 10th February 2023, Respondent No.4 was elected as its Sarpanch. On 31st May 2023, six out of seven elected members submitted the notice of motion of no confidence against Respondent No.4-Sarpanch to the Respondent No.3-Tahsildar. On 31st May 2023, Tahsildar convened a special meeting to be held on 5th June 2023 by issuing notices to all seven elected members. Notice issued to Respondent No.4 has been accepted by her mother-in-law on 1st June 2023. The said meeting was held on 5th June 2023 and in a secret vote, a motion of no confidence was passed against the Respondent No.4-Sarpanch. Six out of seven elected members voted in favour of the motion of no confidence. Accordingly, the motion of no confidence has been carried by an overwhelming majority in said meeting dated

2 2019 SCC OnLine Bom 85 : (2019) 2 Bom CR 249

5th June 2023.

6. The Respondent No.4-Sarpanch challenged the said motion of no confidence before the Collector, Raigad at Alibag by filing Dispute Application No.12 of 2023 under Sub Section 3 of Section 35 of the said Act. By the impugned order dated 31st July 2023, Respondent No.2-Collector has held that the meeting in which the said motion of no confidence has been passed, has not been conducted in accordance with law and therefore, set aside the said motion of no confidence.

7. The first submission which Mr. Naphade, learned counsel appearing for Respondent No.4-Sarpanch has made is that no discussion whatsoever has been held in the said meeting dated 5th June 2023 and that no opportunity whatsoever has been given to the Respondent No.4-Sarpanch to speak and make her case in her defence. Therefore, he contends that the decision made by the members to vote against Respondent No.4-Sarpanch does not qualify as an informed decision. To substantiate the said contention, he has relied on certain averments in the Writ Petition. Before considering the said submission, it is required to be noted that the Collector has not passed the impugned order on the said ground.

8. The Petitioner has annexed the minutes of the said meeting at Exhibit-B to the Writ Petition. The Tahsildar has recorded the minutes in a detailed manner. As far as the discussion is concerned, the Tahsildar has stated the following in the minutes:-

“अविश्वास ठरावाला नोटीसीत नमुद केल्याप्रमाणे नोटीसीत नमुद केलेली कारणे सर्व सदस्यांना वाचून दाखवली व चर्चा करण्यात सूचित केले. विद्यमान सरपंच श्रीम प्रिया दिनेश कडू यांनी अविश्वास ठरावाच्या नोटीसीतील आरोप मान्य नसून मी पारदर्शक कारभार केला आहे तसेच प्राजक्ता प्रभाकर कडू यांनी प्रस्तावर सभा सुरू करण्यात यावी अशी विनंती केली.

तयनंतर उपस्थित पंचायतीच्या सदस्यांना हातवर करून मतदान करण्याबाबत सूचित केले त्यावरून विद्यमान सरपंच प्रिया दिनेश कडू यांनी मतदान हे गुप्त पद्धतीने घेण्याबाबत विनंती केली. तसेच श्रीमती जनी किसन पवार यांनी अशिक्षित असल्यामुळे मतदनीस मिळण्याची विनंती केली. दोन्ही अर्जांची नोंद घेऊन गुप्त मतदान घेण्याबाबत निर्णय घेण्यात आला.”

(Emphasis added)

English translation of the same is as follows:-

“The grounds mentioned in the Notice in respect of No-confidence Motion as mentioned in the said notice have been read out to all the members and instructions have been given to have a discussion thereon. The sitting Sarpanch Smt. Priya Dinesh Kadu stated : “I am not

agreeable to the allegations mentioned in the Notice in respect of No-confidence Motion. I have managed the affairs transparently”. Moreover, Prajakta Prabhakar Kadu requested that the business of the meeting may be commenced on the point of the said proposal.

Thereafter, instructions have been given to the members of the Panchayat who were present in the meeting, to give votes by raising their hands. Thereupon, **the sitting Sarpanch Priya Dinesh Kadu requested to conduct the voting by secret vote method.** Similarly, Smt. Jami Kisan Pawar requested that as she was illiterate, assistant may be provided to her. Taking both the said applications into consideration, decision was taken to conduct voting by secret vote method.”

(Emphasis added)

9. Thus, it is clear that the notice of motion of no confidence served to the Tahsildar by six out of seven members has been read in the said meeting. The said notice *inter alia* contains the following reasons for no confidence against Respondent No.4-Sarpanch. The relevant part of said notice reads as under:-

“शेडसई ता. रोहा ग्रामपंचायतीच्या सरपंच सौ. कडू प्रिया दिनेश या मनमानी कारभार करीत असुन ग्रामपंचायत सदस्यांना विश्वासात न घेता ग्रामपंचायतीचा कारभार करीत असुन अरेरावी करीत असतात.”

English translation of the same is as follows:-

“Sau. Kadu Priya Dinesh, the Sarpanch of the Grampanchayat of Shedsai village, Taluka Roha is managing the affairs arbitrarily and that she carries out the affairs of the Grampanchayat without taking the Grampanchayat members into confidence and she behaves arrogantly.”

10. The minutes as reproduced herein above clearly show that the Tahsildar has asked all the members to discuss the above motion of no confidence. The said motion of no confidence has been read out in the meeting dated 5th June 2023. The Respondent No.4-Sarpanch has denied the accusations against her and has stated that she has worked in a transparent manner. Thus, it is clear that a discussion has been held in the meeting dated 5th June 2023. The duration and thoroughness of said discussion will not be relevant and it is not proper for the Court exercising jurisdiction under Article 227 of the Constitution of India to go into said aspects. However, this is not a case where no discussion whatsoever has been held or no opportunity whatsoever to speak has been given to the Respondent No.4-Sarpanch. The notice of motion of no confidence mentions the reasons for no confidence. The said notice has been read out in the

said meeting. The Respondent No.4-Sarpanch has expressed her views. Therefore, it cannot be said that no discussion whatsoever has taken place and that members have not made an informed decision.

11. Mr. Naphade, learned counsel very heavily relied on **Manoj Ghanshyamdas Banode** (supra) and more particularly, on paragraph 12 therein which reads as under:-

“12. The first contention raised on behalf of the petitioner concerns lack of opportunity to him to speak on the no confidence motion and to give his views and explanation as regards the charges levelled against him in the no confidence motion. There cannot be any doubt about the fact that it is a valuable right of a person like the petitioner who is sought to be removed by a motion of no confidence, to give opportunity to him to address all members of the body, the Gram Panchayat in the present case, before voting on the motion is undertaken. It is quite possible that after a person like the petitioner is given an opportunity to present his views or explanation, the voting in the Gram Panchayat would be in a such manner that mandatorily required majority of 2/3^d of members would not be achieved for passing the motion of no confidence to throw out an elected person like the petitioner out of office. This has been emphasised by this Court in its judgments in Shri Ashok

Krishakant Mehta v. State of Maharashtra and Vijay Ramchandra Katkar v. Group Gram Panchayat, Pali, Mr. Nivrutti Kashinath Bansode v. Gramsevak, Grampanchayat, Nazara and Ashok Vitthal Gabhane v. The Additional Commissioner, Amravati (supra)."

12. There cannot be any two opinions about the above legal position. However, it is significant to note the factual position in ***Manoj Ghanshyamdas Banode*** (supra), discussed in paragraph 16 therein, which reads as under:-

"16. Applying the aforesaid position of law to the facts of the present case, it would be necessary to consider the minutes of the meeting dated 05.12.2016 written by the respondent no.1 Tahsildar/Presiding Officer. A perusal of the said minutes of the meeting dated 05.12.2016 show that the respondent no.1 has recorded the charges levelled against the petitioner in the notice for motion of no confidence. Thereafter, presence of 17 members of the Gram Panchayat is noted. Thereafter, it is held that the voting would be conducted by show of hands and after that the respondent no.1 has stated the words "discussion was held on no confidence motion". It is then recorded that 12 members voted in favour of the no confidence motion by raising their hands and 5

members, including the petitioner, voted against the no confidence motion. Thus, other than the aforesaid words i.e. "discussion was held on no confidence motion", it is not recorded at all as to in what manner the petitioner was given an opportunity to make his statement to put forth his views/explanation in respect of the allegations and charges levelled against him in the notice for motion of no confidence before the House and the members of the Gram Panchayat. There is nothing in the said minutes of the meeting to show that the petitioner was heard by the members of the Gram Panchayat before voting was conducted on the motion of no confidence. This clearly violates the mandate of the law as laid down in the above quoted judgments of this Court."

(Emphasis added)

13. Thus, the factual position in *Manoj Ghanshyamdas Banode* (supra) is totally different from the present case. The present case is not a case where no discussion whatsoever has been held or no opportunity whatsoever to speak in the meeting has been given to the Respondent No.4-Sarpanch. The motion of no confidence mentions the reasons for no confidence. The said notice has been read out in the meeting. The Respondent No.4-Sarpanch has expressed her views in the said meeting. Therefore, it cannot be said that no discussion

whatsoever has taken place and that members have not made an informed decision.

14. The only reason given by the Collector to arrive at said conclusion is that the meeting in which the said motion of no confidence was carried, has not been conducted in accordance with Rules 17 to 26 of the said Rules. The relevant discussion in the order of the Collector is to be found on page 33 of the Writ Petition, which reads as under:-

“मुद्दा क्र.३ — मा. उच्च न्यायालय येथील (विजय रामचंद्र काटकर विरूद्ध ग्रुप ग्रामपंचायत पाली, २०१०(४) ऑल एम. आर. ७०७) मध्ये दिलेल्या न्यायनिर्णयानुसार ग्रामपंचायत सभाबाबत नियम १९५९ मधील नियम १७ ते २६ अनुसार प्रस्ताव एखाद्याने आधी मांडला पाहिजे. त्यानंतर दुस-याने त्या प्रस्तावास अनुमोदन दिले पाहिजे व त्या प्रस्तावावर चर्चा झाली पाहिजे आणि त्यानंतर मतदान व्हायला पाहिजे. ज्याचेविरूद्ध अविश्वासाचा प्रस्ताव दाखल झाला आहे त्याला त्याचे मत मांडण्याची व चर्चा करण्याची संधी दिली पाहिजे तरच असा अविश्वासाचा प्रस्ताव मंजूर होईल. अन्यथा सदरचा प्रस्ताव नामंजूर होईल असे निर्णय पारीत केले आहे.

सदर प्रकरणी उपरोक्त न्यायनिर्णयाचा उहापोह घेता येईल. सरपंच श्रीम. प्रिया दिनेश कडू यांच्या विरूद्ध मांडण्यात आलेल्या अविश्वासाचा ठरावाच्या अनुषंगाने दि. ०५/०६/२०२३ रोजी घेण्यात आलेल्या सभेमध्ये सरपंच, श्रीम. प्रिया दिनेश कडू यांचेविरूद्ध कोणत्याही सदस्यांनी ठराव मांडण्यात आले नसल्याचे तसेच सदर ठरावास अनुमोदन दिले नसल्याचे इतिवृत्तावरून दिसून येत आहे. त्यामुळे सदर अविश्वास ठरावाच्या अनुषंगाने ग्रामपंचायत सभाबाबत नियम, १९५९ मधील नियम १७ ते २६ अनुसार कार्यवाही झाली नसल्याचे प्रथमदर्शनी दिसून येत आहे.”

(Emphasis added)

English translation of the same reads as under:-

“Point No.3 :-As per the Judgment declared in Vijay Ramchandra Katkar Versus Group Grampanchayat, Pali, 2010(4) All M.R. 707) filed before the Hon’ble High Court, a decision has been given that any one member should place the proposal first as per Rule 17 to 26 of the Rules, 1959 in respect of the Grampanchayat meetings and the another member should second the said proposal and thereafter, discussion should be held on the said proposal and thereafter, voting should be conducted. Opportunity should be given to the person against whom the No-confidence motion has been placed, to putforth his/her say and to hold discussion thereon and only thereafter, such No-confidence motion will be passed or else the said proposal will be rejected.

In the present matter, the above-mentioned judgment can be discussed. From the minutes of the Meeting, it is seen that **no member had placed any proposal against the Sarpanch Smt. Priya Dinesh Kadu during the course of the meeting dated 05.06.2023 held in connection with the No-confidence motion placed against the Sarpanch Smt. Priya Dinesh Kadu and that nobody had seconded the said proposal. Therefore, prima-facie, it is seen that no steps as per Rule 17 to 26**

of the Rules, 1959 in respect of the Grampanchayat meetings has been taken in connection with the said No-confidence motion.”

(Emphasis added)

15. As far as the above reasons given by the Collector that the meeting in which the motion of no confidence was passed, was not conducted in accordance with Rules 17 to 26 of the said Rules, it is to be noted that the Full Bench of this Court in ***Tatyasaheb Ramchandra Kale*** (supra) has held that the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirements of section 35(3) of the said Act. The relevant conclusion of the Full Bench is in paragraph 21 therein which reads as under:-

“21. Finally to put the matter in perspective, the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirement of section 35(3) of the Bombay Village Panchayats Act, 1958. The infraction that has occurred on account of the motion not being formally proposed and seconded cannot invalidate the motion if the same has been passed by fulfilling the requirements of section 35(3) of the Bombay Village Panchayats Act, as the said infraction does not affect the merits of the case. Hence we hold that Rule 17 is directory, and the test laid down in

section 44(3) of the Bombay Village Panchayats Act namely whether the defect affects the merits of the case, would have to be applied, if a challenge is raised to such a motion. We accordingly answer the reference and remit the matter back to the Division Bench for the above Letters Patent Appeal being decided on merits.”

(Emphasis added)

16. The said Full Bench decision in ***Tatyasaheb Ramchandra Kale***

(supra) makes reference to Sub Section 3 of Section 44 of the said

Act, which reads as under:-

44. Vacancy not to affect proceedings of *Panchayat*.-

(1)...

(2)...

(3) No act or proceedings of a *Panchayat* shall be deemed to be invalid on account of any defect or irregularity in any such act or proceeding not affecting the merits of the case or on account of any irregularity in the service of notice upon any member or for mere informality.

(Emphasis added)

The said Full Bench discusses Sub Section 3 of Section 44 in paragraph 19, which reads as under:-

“19. The applicability of section 44(3) of the Bombay Village Panchayats Act was sought to be questioned on behalf of the Appellant and the State on the ground that the said provision applies only when the proceedings of

the Panchayat are conducted when there is a vacancy in the Panchayat and would therefore not apply to a meeting held for passing of a motion of no confidence. In support of the said contention reliance was sought to be placed on the heading of the said section which is to the following effect; "Vacancy not to affect proceedings of Panchayat".

Insofar as headings being used as a tool for interpretation of a provision is concerned. It is well settled that they cannot control the plain words of the provision, they also cannot be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous nor can they be used for cutting down the plain meaning of the words in the provision when only in the case of ambiguity or doubt the heading or subheading may be referred to as an aid in construing the provision. (See Frick India Ltd. v. Union of India, AIR 1990 SC 689).

*Insofar as sub-section (3) of section 44 of the Bombay Village Panchayats Act is concerned, the said sub-section (3) can be said to be an exception to subsections (1) and (2) of section 44 of the Bombay Village Panchayats Act. **The language of sub-section (3) makes it very clear that it applies to all acts or proceedings of the Panchayat, and is not restricted to the meeting of the Panchayat held when there is a vacancy.** Since the words are very clear*

*and ambiguous, it is not necessary to take recourse to the heading for interpretation of the said provision. **The said provision would therefore apply to a meeting held for passing of a motion of no confidence. Resultantly, the test whether the defect or irregularity affects the merits of the case would come into play.***

*It is further required to be noted that the provision akin to section 44(3) of the Bombay Village Panchayats Act has been recognized as a feature of modern legislations. The said provision is inserted to put beyond challenge the defect of constitution of the statutory body and defects of procedure which have not led to any substantial prejudice. The Apex Court has nick-named the said provision as the “Ganga” clause thereby meaning it to be a clause cleansing the proceedings of any defects. An identical clause/section had come up for consideration before the Apex Court in *B.K. Srinivasan etc. v. State of Karnataka*, AIR 1987 SC 1059 and thereafter in *Akhil Bharat Goseva Sangh v. State of A.P.*, (2006) 4 SCC 162. In *B.K. Srinivasan's* case the Apex Court was concerned with section 76-J of the Mysore Town and Country Planning Act, 1961. The said section 76-J read thus:—*

*“**76-J.** Validation of acts and proceedings. — No act done or proceeding taken under this Act shall be questioned on the ground merely of,*

- (a) the existence of any vacancy in, or any defect in the constitution of the Board or any Planning Authority;*
- (b) any person having ceased to be a member;*
- (c) any person associated with the Board or any planning authority under section 4F having voted in contravention of the said section; or*
- (d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or*
- (e) any omission, defect or irregularity not affecting the merits of the case.”*

*In the said case section 13(4) and Rule 33 required publication of Outline Development Plan as approved by the Government in the Official Gazette. What was published in the Gazette was a notice with Outline Development Plan as approved by the Government was available for the inspection at the office of the Planning Authority during office hours. The Apex Court held that on a proper construction of section 13(4) the publication complied with its provisions and that even if there was any defect it was cured by section 76-J. **The said section 44(3) therefore cleanses the proceedings of any defect if the same do not affect the merits of the case.***

Hence though we have come to a conclusion that Rule

17 of the Meeting Rules is directory however on the touchstone of section 44(3) of the Bombay Village Panchayats Act and having regard to the fact that the resolution has been passed by a 2/3rd majority, any defect in the procedure relating to passing of the said resolution can be said to be cured, and therefore, on the application of section 44(3) of the Bombay Village Panchayats Act, the resolution cannot be said to be vitiated on account of any infirmity in the proceedings.”

(Emphasis added)

17. Thus, it is clear that the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirement of Section 35(3) of the said Act as the said infraction does not affect the merits of the case.

18. It is to be noted that the Collector has held that notice of motion of no confidence is given by 2/3rd of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat as required under Section 35(1) of the said Act and the same has been passed by 3/4th of the total number of members who are for the time being entitled to sit and vote at any

meeting of the Panchayat as required under Section 35(3) of the said Act. Thus, it is clear that no confidence motion carried in said meeting dated 5th June 2023 fulfilled the requirement of Section 35(3) of the said Act. Thus, the Collector has erred in concluding that the meeting in which the motion of no confidence was passed is not legal as the same was not conducted in accordance with Rules 17 to 26 of the said Rules.

19. The Collector has very heavily relied on the decision of learned Single Judge in *Vijay Ramchandra Katkar v. Group Gram Panchayat, Pali & Ors.*³. However, the said decision is not good law in view of the judgment of Full Bench in *Tatyasaheb Ramchandra Kale* (supra).

20. In this particular case, the admitted position is that six out of seven members have given the notice of motion of no confidence to the Tahsildar as contemplated under Sub Section 1 of Section 35 of the said Act and as per the demand of Respondent No.4-Sarpanch a secret voting was held and six out of seven members voted in favour of said motion of no confidence. Thus, it is clear that an overwhelming majority of the members and in any case more than 3/4th of the total number of all members of the Panchayat have voted

3 2010 SCC OnLine Bom 710 : (2010) 4 Mah LJ 497

in favour of the motion of no confidence. In fact, except Respondent No.4-Sarpanch, against whom the motion of no confidence has been moved, all other members of the Panchayat have voted in favour of the motion of no confidence. Thus, requirement of Section 35(3) of the said Act is fulfilled.

21. For the above reasons, impugned order dated 31st July 2023 passed by the Collector is not in accordance with the law and is contrary to the law laid down by the Full Bench of this Court in *Tatyasaheb Ramchandra Kale* (supra).

22. Accordingly, impugned order dated 31st July 2023 passed by the Collector, Raigad-Alibag in Gram Panchayat Dispute Application No.12 of 2023 is quashed and set aside and said Gram Panchayat Dispute Application No.12 of 2023 is dismissed.

23. The Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]