

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

WRIT PETITION NO.14163 OF 2023

Smt. Poonam Bharat Kudale ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Kalpesh Patil i/b. Mr. Pratik Deshmukh and Mr. Nandan Gavali, for the
Petitioner.

Mr. P. G. Sawant, AGP, for the State/Respondent Nos.1 to 3.

Mr. Drupad S. Patil a/w. Mr. Namitkumar S. Pansare, for Respondent Nos.
6 and 11.

CORAM : MADHAV J. JAMDAR, J.

DATED : 9th NOVEMBER 2023

JUDGMENT:

1. Heard Mr. Kalpesh Patil, learned counsel appearing for the
Petitioner, Mr. P. G. Sawant, learned counsel appearing for the
State/Respondent Nos.1 to 3 and Mr. Drupad Patil, learned counsel
appearing for Respondent Nos.6 and 11.

2. The challenge in the present Writ Petition is to the legality and
validity of order dated 27th October 2023 passed by the Collector,
Pune in Grampanchayat Dispute No.111 of 2023 filed under Section
35(3-b) of the Maharashtra Village Panchayats Act (Act No.III of
1959) (“**said Act**”). By said impugned order dated 27th October 2023,

the Collector, Pune dismissed the said Grampanchayat dispute. In the said Grampanchayat dispute, challenge was to the legality and validity of the motion of no confidence carried in the meeting of Grampanchayat Hiware, Tal. Purandar, Dist. Pune dated 17th July 2023.

3. It is the main contention of Mr. Kalpesh Patil, learned counsel appearing for the Petitioner that the Petitioner has not been given an opportunity to put-forth her views/explanation in respect of the allegations and charges levelled against her and therefore, the meeting in which the motion of no confidence was carried, is totally illegal. To substantiate the said contention, he relied on the decision of learned Single Judge in the case of **Manoj Ghanshyamdas Banode v. Presiding Officer/Tahsildar, Dhamangaon**¹.

4. On the other hand, Mr. Drupad Patil, learned counsel appearing for Respondent Nos.6 and 11 submitted that the minutes of resolution clearly show that proper opportunity has been given to the Petitioner. He relied on the decision of learned Single Judge in the matter of **Sarpanch Grampanchayat Yelvi & Anr. vs. Deputy Collector, Office of Collector, Rajwada, Sangli District Sangli & Ors.**² and more

1 2019 SCC OnLine Bom 85 : (2019) 2 Bom CR 249

2 2015 SCC OnLine Bom 913

particularly, on the paragraph 3 of the same. He also relied on the decision of Full Bench of this Court in the matter of **Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde**³ and particularly, on certain portion of paragraph Nos.19 and 20. He also relied on Section 44(3) of the said Act.

5. Before considering the rival contentions, it is necessary to set out certain factual aspects. There are total 9 members of said Grampanchayat Hiware. About 7 members have given notice of motion of no confidence on 11th July 2023 to the Tahsildar, Purandar. Pursuant to said notice of no confidence, the Tahsildar, Purandar vide his communication dated 11th July 2023 scheduled the meeting for consideration of the said motion of no confidence on 17th July 2023. On 17th July 2023, the meeting was held and 8 out of 9 members of the said Grampanchayat voted in favour of the motion of no confidence.

6. For appreciating the contentions of learned counsel appearing for the Petitioner, it is necessary to set out the relevant portion of the minutes of said meeting, which reads as under:-

“ग्रा. पं. हिवरे ता. पुरंदर जि. पुणे येथील सरपंच सौ पुनम भरत

3 2014 SCC OnLine Bom 1483 : (2014) 6 Mah LJ 804 (FB)

कुदळे यांचेविरूद्ध ग्रा.पं.सदस्य श्री सागर शिवाजी कुदळे यांनी खालील मुद्दयांच्या आधारे अविश्वास प्रस्ताव सभेत मांडला व त्याला अनुमोदक म्हणुन श्री राजेंद्र निवत्ती जाधव (ग्रा.पं.सदस्य) यांनी अनुमोदन दिले.

१. कोणत्याही सदस्यांना विश्वासात न घेता ग्रामपंचायतीच्या खात्यावरून निधीचा अपव्यवहार करून बोगस धनादेश काढले आहेत.

२. कोणत्याही प्रकारचे अर्ज न करता ग्रामपंचायतीत गैरहजर राहतात.

३. ग्रामसेवकास हाताशी धरून चुकीचे ठराव तयार करणे व सहीचा गैरवापर करून बोगस बिले तयार केली आहेत.

४. ग्रामपंचायत सदस्यांना विश्वासात न घेता व कोणत्याही विकास कामाची पुर्व कल्पना सदस्यांना न देता नियमानुसार कोणतीही प्रक्रिया राबवित नाहीत.

५. महिला सभेला जाणीवपूर्वक गैरहजर राहतात.

६. सार्वजनिक वारातील शासकीय शौचालये ठराव न करता परस्पर पाडली.

७. ग्रामपंचायत मालकीचे पेव्हिंग ब्लॉकची परस्पर विक्री केली.

८. आयुष्यमान भारत योजनेच्या नावाखाली ग्रामस्थांकडून बोगस लोकांद्वारे ग्रामपंचायतच्या नावे पैसे गोळा केले.

वरील मुद्दयांच्या अनुशंगाने सरपंच सौ. पुनम भरत कुदळे यांनी खालीलप्रमाणे मुद्देनिहाय युक्तीवाद सादर केला.

मुद्दा क.१— यांचा मुद्दा क.१ मला मान्य नाही. मी कुठल्याही प्रकारचा अपव्यवहार केलेला नाही.

मुद्दा क.२—मुद्दा क.२ मला मान्य नाही.

मुद्दा क.३—मुद्दा क.३ मला मान्य नाही. बोगस बिले काढलेली नाहीत.

मुद्दा क.४—मुद्दा क.४ मला मान्य नाही.

मुद्दा क.५—वैदयकीय कारणाव्यतिरिक्त इतर वेळी हजर असते.

मुद्दा क.६—याविषयी मला कल्पना नाही.

मुद्दा क.७—मी असे काहीही केलेले नाही. मला हा मुद्दा मान्य नाही.

मुद्दा क.८—याविषयी कायदेशीर प्रक्रिया राबविणेत आलेली आहे.

यानंतर मुंबई ग्रा. पं. अधिनियम १९५८ चे कलम उग्र मधील तरतुदीनुसार सरपंच अविश्वास मतदानाची प्रक्रिया सर्व उपस्थितांना समजावुन

सांगणेत आली. त्यानुसार न्या. ग्रा. पं सदस्यांना ठरावाच्या बाजूने मतदान करावयाचे असेल त्यांनी आपला उजवा हात वर करावा व ज्या ग्रा. पं सदस्यांना अविश्वासाच्या विरुद्ध मत नोंदवायचे असले त्यांनी आपले दोन्ही हात खाली ठेवावेत असे प्रक्रिया समजविण्यात आली.

ग्रा. पं. हिवरे ता. पुरंदर जि. पुणे येथील सरपंच सौ. पुनम भरत कुदळे यांचे विरुद्ध मांडलेले अविश्वास प्रस्तावाचे बाजूने खालील ग्रा. पं सदस्यांनी आपले मत नोंदविले.

१. श्री. रामदास दत्तात्रय कुदळे
२. सौ. भारती गुलाब गायकवाड
३. सौ. शोभा शांताराम दळवी
४. सौ. सोनाली दिपक चव्हाण
५. सौ. पुनम सोपान कामठे
६. श्री. राजेंद्र निवृत्ती जाधव
७. श्री. मनोज अशोक कुटे
८. श्री. सागर शिवाजी कुदळे

अविश्वास प्रस्तावाचे विरुद्ध खालील सदस्यांनी आपले मत नोंदविले.

१. सौ. पुनम भरत कुदळे

ग्रा. पं. हिवरे ता. पुरंदर जि. पुणे येथील एकूण पात्र ग्रा. पं. सदस्य संख्या ९ असून सरपंच अविश्वास प्रस्ताव मंजूर होणेसाठी एकूण ७ (सात) सदस्यांनी प्रस्तावाचे बाजूने नोंदविणे आवश्यक आहे. प्रस्तुत प्रकरणामध्ये एकूण ८ ग्रा.पं.सदस्यांनी प्रस्तावाचे बाजूने मत नोंदविले असल्याने सदरील अविश्वास प्रस्ताव मंजूर झाला असे अध्यासी अधिकारी यांनी जाहिर केले.”

(Emphasis added)

7. The said minutes clearly show that the Petitioner has been given opportunity to explain and put-forth her views/explanation in respect of the allegations and charges levelled against her in the

notice of motion of no confidence.

8. Mr. Kalpesh Patil, learned counsel appearing for the Petitioner has relied on paragraph No.16 of the decision of **Manoj Ghanshyamdas Banode** (supra) 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)

However, perusal of the minutes of the meeting show that opportunity is given to the Petitioner and she has put-forth her views/ explanation before the meeting. Thus, the observations in **Manoj Ghanshyamdas Banode** (supra) are not applicable to the present case.

9. On this aspect, learned counsel appearing for the Respondent Nos.6 and 11 has relied on paragraph No.3 of **Sarpanch Grampanchayat Yelvi & Anr.** (supra). Said paragraph No.3 reads as under:-

3. The Learned Counsel appearing on behalf of the Petitioners would contend that the proceedings of the meeting were vitiated on the ground that the Petitioners were not allowed to address the meeting, though a specific request was made and secondly, that the request of the Petitioners for a secret ballot was not acceded to. In so far as the first contention is concerned, as indicated above the factum of the Petitioners giving their explanation in respect of the charges levelled against them is recorded in the minutes. It is also an undisputed

position that the Petitioners have attended the meeting. Hence, there is no merit in the contention urged on behalf of the Petitioners that they were not allowed to address the meeting. In so far as the second contention is concerned, it is not incumbent on the Presiding Officer to adopt the procedure of secret ballot as there is no mandate cast by any statutory provision that the voting should be only by secret ballot and not by show of hands. As indicated above the resolution was passed by a majority of 7 : 2, in my view the Petitioners have to respect the will of the house which is against them. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.”

The discussion in said paragraph No.3 is squarely applicable to the present case.

10. Mr. Drupad Patil, learned counsel appearing for Respondent Nos.6 and 11 has also relied on the decision of **Tatyasaheb Ramchandra Kale** (supra) and particularly, on paragraph Nos.19 and 21, relevant portion of which reads as under:-

“19. 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.

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.”

11. Thus, it is clear that in the present case, motion of no confidence is carried out by an overwhelming majority. 8 out of 9 members have voted in favour of the motion of no confidence. Therefore, there is no substance in the contentions raised by learned counsel appearing for the Petitioner.

12. Therefore, in this case no interference of this Court under Article 227 of the Constitution of India is warranted. The Writ Petition is dismissed with no order as to costs.

[MADHAV J. JAMDAR, J.]