



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 613 OF 2024

Smt. Shila W/o Vijay Chavan,
Age : 39 Years, Occ. Agriculture and Social work
R/o. Rahuwadi Tq. Ambad Dist. Jalna Petitioner

VERSUS

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Rural Development Department, Mantralaya,
Mumbai-32.
2. The Divisional Commissioner,
Chh. Sambhajinagar, Near Delhi Gate,
Chh. Sambhajinagar
3. The District Collector,
Jalan, Collectorate Office building
Jalna.
4. The Presiding Officer & Tahsildar,
Ambad Tq. Ambad District Jalna.
5. The Grampanchayat,
Rahuwadi Tq. Ambad Dist. Jalna
Through its Gramsevak.
6. Kavita Gopinath Jadhav,
Age : 42 Years, occ. Agriculture,
7. Babu Meharban Pawar,
Age : 65Years, Occ. Agriculture
8. Kalabai Shivdas Rathod,
Age : 44 Years, Occ. Agriculture

9. Gopal Omprakash Rathod,
Age : 36 Years, Occ. Agriculture
10. Gulab Lalu Rathod,
Age : 51 Years, Occ. Agriculture
11. Vijay Arjun Chavan,
Age : 28 Years, Occ. Agriculture
12. Shobha Anil Rathod,
Age : 32 years, Occ. Agriculture

All resident of Rahuwadi Tq. Ambad
District Jalna.

.. Respondents

AND
WRIT PETITION NO. 614 OF 2024

Smt. Anita W/o Ankush Rathod,
Age : 29 Years, Occ. Agriculture and Social Work,
R/o.Rahuwadi Tq. Ambad Dist. Jalna. ..Petitioner

VERSUS

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Through its Additional Chief secretary,
Rural Development Department, Mantralaya,
Mumbai-32.
2. The Divisional Commissioner,
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All resident of Rahuwadi Tq. Ambad
District Jalna.

.. Respondents

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Advocate for the Petitioners : Mr. Shahaji. B. Ghatol Patil
AGP for Respondent Nos. 1 to 4 : Mr. A. S. Shinde
Advocate for Respondent No.5 : Mr. P. G. Boarade
Advocate for Respondent Nos. 6 to 12 : Mr. Vinayak P. Narwade

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CORAM : S. G. MEHARE, J.

DATE : 23.01.2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. The petitioners were Sarpanch and Upa-Sarpanch of village Panchayat consisting of eleven members. Seven village panchayat members submitted a notice under Section 35 of the Maharashtra Village Panchayats Act, 1958, for no-confidence against both of them on 3rd October 2023. They have assigned the reasons for the no-confidence motion in the notice. The Tahsildar issued notice to both the petitioners. The petitioners received the notice. They were present in the meeting dated 10.10.2023, specially convened for the no-confidence motion. Both petitioners submitted their say in writing. In the meeting, the resolution of a no-confidence motion was passed against both the petitioners by 3/4th majority. The said resolution was impugned before the District Collector, Jalna. The District Collector confirmed the resolution and dismissed the appeal.
3. The petitioners have objected that a notice of no-confidence motion does not mention that it was a notice of no-confidence motion, and the rules under which the said notice was issued were also not mentioned therein. The notice of a no-confidence motion was received two days prior to the meeting; therefore, they did not have sufficient

time to prepare. The petitioners have submitted their say on the allegations levelled against them in writing. However, there was no whisper of the discussion on the submissions of the petitioners, and the resolution of a no-confidence motion was mechanically passed. The vehement argument has been advanced that both the petitioners were asked to vote by secret ballot in writing. However, the no-confidence resolution did not reflect that Tahsildar put the subject for discussion in the meeting. Since the intimation was not given to the members, they were unaware of the demand for secret votes by ballots. The resolution was silent about the demand for votes by secret ballots. The Tahsildar, who was presiding over the meeting, did not ask about the voting by secret ballot in the meeting. Hence, members had no occasion to make a demand. No orders were passed on their application asking for the voting by secret ballots. The motion of a no-confidence was not moved in the meeting. There were no proposers and seconders to the subjects. The resolution without proposer and seconder was in violation of the Village Panchayats Meetings Rules 1959 (Rules 1959 for short), particularly Rules 17 and 23. All these points were raised in the appeal filed before the Collector, Jalna. The Collector, Jalna, has merely recorded the points of objection but did not discuss them in the concluding part of his order. The order of the

Collector, Jalna, was mechanical and without application of mind. No opportunity of hearing was granted to the petitioners in the meeting.

4. To bolster his arguments, he relied on the cases of
 - (i) *Vijay Ramchandra Katkar Vs. Group Gram Panchayat Pali, District Raigad and others 2010 (4) ALL MR 707,*
 - (ii) *Aarti Santosh Pawar Versus The State of Maharashtra and others, Writ Petition No. 14612 of 2021 of this Court decided on 18th October 2023.*
 - (iii) *Jaenendrakumar Phoolchand Daftari Versus Rajendra Ramsukh Mishra and others 1994 (1) Mh.L.J. 100.*
 - (iv) *Viswas Versus Group Grampanchayat Shihu (201(3) Mh.L.J. 500 Uddhav Poma Aade Vs. Additional Commissioner of Aurangabad and others 2018 (3) Mh. L. J. 529*
 - (v) *Manoj Ghanshyamdas Banode Vs. Presiding Officer/Tahsildar Dhamangaon and others 2019 SCC OnLine Bom 85: (2019) 2 Bom CR 249*
 - (vi) *Tatyasaheb Ramchandra Kale Versus Navnath Tukaram Kakde and others 2014(6) Mh.L.J.*
 - (vii) *Vipulbhai M. Chaudhary Vs. Gujarat Co-operativer Milk Marketing Federation Ltd and others 2015(8) SCC 1.*

- (viii) *Kishor Ramchandra Phalak Vs. Vilas Damordhar Mahajan and others 1997 Mh. L.J 27*
- (ix) *Nagorao Sambhaji Dange Vs. Rudra Ramkisan Warkad and others of this Court in Writ Petition No. 4863 of 2018 decided on 5th February 2020.*
- (x) *Ganesh Sukhdeo Gurule Vs. Tahsildar Sinnar and others 2019 (5) Mh.L.J. 509.*
- (xi) *Bhaskar Laxmanrao kadam Vs. Additional Collector, Nanded and others 2013 (6) Mh.L.J. 613.*
- (xii) *Sangita Bhaskar Ingale Vs. State of Maharashtra and others 2015(6) Mh. L. J. 957.*

5. Considering the above judgments, the arguments of the learned counsel for the petitioners revolve around the applicability of the Rules of meetings. He has emphasized that the Bombay Village Panchayats Sarpanch and Up-sarpanch (No Confidence Motion) Rules 1975 are silent about the meeting procedure and practice. Therefore, the Bombay Village Panchayat (Sarpanch and Up-Sarpanch) Election Rules 1964 would attract. He has specifically referred to Rule 10 and vehemently argued that the voting rules by secret ballots should be applied to the no-confidence motion meeting. He has also vehemently argued that the Full Bench of this Court, in the case of Vishwas

Pandurang Bokad (*supra*) has dealt with Rule 17 of the Rules 1959 and answered that the Rules 1959 would apply to the meeting of a no-confidence motion. Therefore, the other Rules, particularly Rules 21, 22 and 26 of Rules 1959, would attract. Therefore, there must be a proposer and seconder to the subject, and the subject should be put up for discussion in the meeting. There shall be a discussion on the subject, and then the resolution is put for voting. This mandatory procedure has not been followed; therefore, the resolution of no-confidence passed against the petitioners is against the law. He prayed to allow both the petitions.

6. Per contra, the learned counsel for the contesting respondents has vehemently argued that notice of a no-confidence motion was perfect as per the requirement of no-confidence motion Rules. It is a true translation of the contents given in the said so-called format. He would argue that the notice clearly indicates the intention of the signatories that they requested the Tahsildar to convene a special meeting to consider a no-confidence motion against the petitioners. The law is well-settled that the discussion on the subject in the no-confidence meeting is not mandatory. The resolution by a majority of votes expressing their no-confidence in the meeting is sufficient to pass

the resolution. In the democratic States, the majority is the Rule. The majority was against the petitioners. The petitioners had submitted their submissions in writing. That submissions were read over in the meeting, and members were invited to comment thereon. The meeting minutes are specific: the opportunity was granted to the petitioners to make the submissions. He has vehemently argued that Rule 28 of the Rules, 1959 is very specific: unless the majority demands secret ballot voting, the presiding officer cannot act on his own and invite the members for secret voting by ballot. In the absence of any such request or demand by the majority of the members present in the meeting, the Rule is voting by showing hand or oral voice. Since only these two petitioners had requested in writing for secret ballots, and the majority did not demand it, the Presiding Officer has correctly not considered the request. It was not the subject of no a-confidence motion. It was part of the procedure. The demand by minority people does not fall for consideration before the Presiding Officer in the meeting of a no-confidence motion. He referred to the judgment in the case of *Bhaskar Laxmanrao kadam Vs. The Additional Collector Nanded and others 2013 (6) Mh. L.J 613*, and vehemently argued that voting by show of hands is a general method while voting by secret ballot is an exception. He also relied on the case of *Shital Sudhir Sonavle Vs.*

Group Gram Panchayat Vaghoshi and others 2003(3) Mh.L.J.565 and argued that no specific procedure for proposing and seconding motion is prescribed by Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975. Members seeking motion need to give only two separate notices in the form to Tahsildar. He relied on the case of *Gulab Pandu Chavan Vs. State of Maharashtra and others 2015 (5) Mh.L.J. 113* and argued that the question of a proposer and a seconder was directly involved in this case. This Court answered that Rule 17 of the Rules, 1959, in relation to Section 35(3) of M.V.P. Act, is held to be directory in nature and not mandatory. When more than 1/3rd of the members of the Grampanchayat have moved the notice introducing the motion of 'no-confidence', a proposer and seconder are not held to be mandatorily required. Again, on the point of the method of voting in a no-confidence motion meeting, he relied on the case of *Kishor Ramchandra Phalak Vs. Vilas Damodhar Mahajan and others 1997(3) Mh.L.J. 27*. It has been held that the Rules 1959 are applicable to the meetings of no-confidence motion. He further relied on the case of *Jivan Somarya Tahkare Vs. Additional Collector, nandurbar and others 2015(3)Mh.L.J. 590*. In this case, it has been held if a member chooses to remain silent and does not desire to speak, Section 35 cannot be interpreted to mean that every member

shall be compelled to speak. He also relied on the case of **Nimba Rajaram Mali Vs. Collector Jalgaon and others 1998 (3) Mh.L.J. 204.**

In this case, it has been held that though the grounds of No Confidence Motion are required to be incorporated in the notice, the precision or specification of giving details of such reasons is not a prerequisite of a No-Confidence Motion. Alleged vagueness in reasons given in notice does not invalidate notice as well as motion passed on such notice. He also relied on the judgment in the case of **Mohan Vijay Murtadak and others Vs. District Collector, Ahmednagar and others Writ Petition No. 11235 of 2023, dated 02.01 2024** delivered by me and argued that the essential requirement of a No-Confidence Motion is that the party against whom such motion has been passed has ceased to enjoy the confidence of the requisite majority of members. Therefore, the subject or allegations levelled against him or them are immaterial, and only the Rule of majority is material.

7. Hearing both sides at length, the following points fall for consideration:-

- (i) Which Rules, i.e. the Rule of Village Sarpanch election Rules or Rules of 1959, apply to the meeting of a no-confidence?
- (ii) Are the proposer and seconder the essential requirements for passing the motion of a no-confidence?

- (iii) Is the Presiding Officer bound to invite the members to vote by secret ballots?
- (iv) Was it essential to the Presiding Officer to pass the specific order on the request of the petitioners to have voting by secret ballots?
- (v) Has the rights of petitioners been violated, and resultantly, was the resolution vitiated for not considering Rules 21, 22, and 26 of the Meetings Rues 1959?
- (vi) Whether the opportunity of being heard was granted to the petitioners to make their submissions in the meeting?

As to point No.1:-

8. In various judgments, this Court has decided this point. Rule 17 of Rule 1959 speaks about the procedure for considering the motion as the meeting of no-confidence against the Sarpanch or the Upa-Sarpanch. It also prescribes for commencement of the motion by speech by formal motion after the motion is duly seconded. In other words, it may be stated that it prescribes the procedure for opening the subject. A proposer should move the subject, and the seconder should second it. The question is whether this Rule is mandatory or directory. In the case of Vijay Ramchandra Katkar (supra), this Court held that Rule 17 was mandatory. However, this question was referred to the Full Bench of this Court in the case of *Vishwas Pandurang Mokle Vs. Group Gram Panchayat Shihu and others 2011(3) Mh.L.J.* In this case, considering the question regarding which Rule of meeting applies to

the meeting of a no-confidence, the Full Bench answered that the provisions of the Meeting Rules 1959 generally and provisions of Rule 17 in particular apply to a meeting convened under Section 35. The Court has unequivocally observed in paragraph No. 18 that we are not deciding the question as to what is the consequence in relation to the validity or otherwise of a motion of no confidence being passed against Sarpanch or Upa-Sarpanch in violation or without following a particular Rule. That question will have to be decided in each case after considering the nature of the provisions, whether the provision is mandatory or directory. The Full Bench has explicitly left the question of the consequences of not following Rule 17, open. It decided that Rule 17, in particular, applied to the meeting convened under Section 35 of the no-confidence motion. However, whether Rule 17 is mandatory or directory was again referred to the Full Bench of this Court in the case of Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde and others (supra). It has been argued by the learned counsel for the petitioners that Rules 21, 22 and 26 are about speaking and addressing the speech of the members. The simple question is whether the discussion on the subject in the meeting is mandatory and whether it must be proposed and seconded. The proposing and seconding of the subject has been specifically provided in Rule 17. In

the said case, the cases of **Vishnu Ramchandra Patil Vs. Group Gram Panchayat, Kharivli and others 2013(3) Mh.L.J. 133.** Viswas Pandurang Mokal (supra) and Vijay Katkar (supra) were considered. Referring to the relevant provisions of law, this Court has ruled that the requirement of Rule 17 in proposing and seconding a motion is directory. It cannot impinge upon the validity of the motion of no confidence, which is passed by fulfilling the requirement of Section 35(3). Referring to this pronouncement, this Court, in the case of Gulab Pandu Chavan (supra), has reiterated the view of the Full Bench and observed in paragraph No.21, which reads thus:-

“21. As such, Rule 17 in relation to Section 35(3) of MVP Act is held to be directory in nature and not mandatory. When more than 1/3rd of the members of the Grampanchayat have moved the notice introducing the motion of no confidence, a proposal and a seconder is not held to be mandatorily required”.

9. So far as the objection as regards the discussion of the subject in the meeting, the Hon'ble Supreme Court, in the case of **Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot and others AIR 1974 S.C. 2105,** held that a no-confidence motion in the Council of Ministers is distinct from a censure motion, whereas a censure motion must set out the grounds or charge on which it is based and is moved for the

specific purpose of censuring the Government for certain policies and actions, a motion of no-confidence need not set out any ground on which it is based. Even when grounds are mentioned in the notice and read out in the House, they do not form part of the no-confidence motion.

10. The various judgments have been rendered on the subject in different cases. The Rule of majority, as required under Section 35(3) was the backbone of the no-confidence motion. In the case of Nimba (supra), the Division Bench of this Court reiterated that alleged vagueness in reasons given in the notice does not invalidate the notice nor the motion passed on such notice. It has been held that the Rule of majority is the test to decide no confidence. In this case, the case of Babubhai Patel (supra) was also referred to and considered.

11. So far as the arguments of the prescribed proforma of notice is concerned, Rules 1975 provides for the form of notice of motion of no confidence.

12. Comparing the form with the notice submitted to the Tahsildar, there appears to be no mistake in the notice of no-confidence motion. The notice submitted to the Tahsildar was written clearly in Marathi.

There was a declaration about the truthfulness of the facts stated in the notice of their information and knowledge. Such a declaration is required to bind the parties making the representation or submitting any document in the Court or before the authority to know that they have consciously made the allegations or submissions in such document or petition. This Court did not find any mistake in the notice of a no-confidence motion submitted to the Tahsildar.

13. The written submissions were placed on record by the petitioners against the notice to the Tahsildar. The resolution is very specific that the Tahsildar/ Presiding Officer invited the members present in the meeting whether anybody wanted to say anything. The petitioners had submitted their written submissions with evidence and photographs. He also asked the members whether any of them wanted to see the papers. This indicates that the submissions were put up before members present in the meeting. However, no member took cognizance; therefore, as per the procedure, the Presiding Officer put up the motion for voting by showing hands. There is no force in the argument of the learned counsel for the petitioners that the opportunity of hearing and submissions was not granted to them in the meeting.

14. Without going into the details, the law is very settled about voting by raising the hands or by mouth, unless the majority demands voting by secret ballots. It is not the duty of the Presiding Officer to invite all the members to demand secret ballot voting. The objections that the petitioners raised have already been set at rest by various judicial pronouncements referred to above. The resolution was free from infirmity and any procedural or legal defect. It was the resolution passed by the majority as required under no-confidence motion Rules. Though the Collector did not assign the reasons, he has tested the legality and validity of the resolution in pursuance of Section 35(3) of the Maharashtra Village Panchayats Act, 1958.

15. The point No.1 is answered that Rules 1959 would apply to the meeting of a no-confidence motion. Point No. 2 is answered that proposer and seconder are required to discuss the subject of the no-confidence motion. Point No.3 is answered that the Presiding Officer is not bound to invite the members present in the meeting of the no-confidence motion to demand the voting by secret ballots. Point No.4 is answered that it was not essential for the Presiding Officer to pass the specific orders on the written application for voting by secret ballots if the majority did not ask for it. Point No. 5 is answered that the rights

of the petitioners were not violated, and the meeting was not vitiated for not following Rules 21, 22, and 26 of Rules 1959. Point No. 6 is answered that the hearing was granted to petitioners in the meeting.

16. The impugned resolution of no confidence and orders of the Collector are free from infirmity, illegality and perversity. Hence, both Writ Petitions stand dismissed. No order as to costs.

The rule stands discharged.

17. The learned counsel for the petitioners submits that some breathing time may be granted to approach the Hon'ble Supreme Court. Till then, the authority may be restrained from proceeding with the appointment of new Sarpanch and Upa-sarpanch of the village. The grounds that have been raised have already been answered by this Court in various pronouncements, and this Court did not find substance and merit in the case. Hence, this Court is of the view that this is not a fit case to stay the order of this Court as prayed. The prayer thus stands rejected.

(S. G. MEHARE)
JUDGE

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