

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

WRIT PETITION NO. 417 OF 2014

Sau. Jijabai Lalasaheb Muthe,
Age: 50 years, Occu: Agriculture,
and Sarpanch of Village Panchayat,
Kumbhephal, Tq. Ashti, Dist. Beed.

...Petitioner

versus

1. The Tahsildar,
Tahasil Office, Ashti,
Tq. Ashti, Dist. Beed.
2. The Additional Collector,
Beed, Tq. & Dist. Beed.
3. Kamal Ramdas Kakade.
4. Kanchan Daulat Muthe.
5. Abhijit Shivaji Janjire.
6. Nanda Gopalrao Kakade.
7. Shashikala Ambadas Gadhe.
8. Shivaji Shripati Gadhe.

All - Age : Major, Occu: Agriculture,
R/o : Kumbhephal, Tq. Ashti,
Dist. Beed.

...Respondents

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Mr. V. D. Salunke, Advocate for petitioner.

Mrs. Y. M. Kshirsagar, A. G. P. for respondent/State.

Mr. S. N. Gaikwad, Advocate h/f Mr. B. T. Bodke, Advocate for
respondent Nos. 3 to 8.

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CORAM : N.W. SAMBRE, J.

RESERVED ON: 25th FEBRUARY, 2015

PRONOUNCED ON: 05th MARCH, 2015

ORDER :

. This petition is by elected member of Village Panchayat against whom No Confidence Motion was passed.

2. The petitioner claims that, she herself and respondent Nos. 3 to 8 were elected as Member of Village Panchayat, Kumbephal, Tal Ashti, District Beed in 2012.

3. Respondent Nos 3 to 8 issued notice for convening motion of No Confidence against the petitioner, as a consequence whereof, Tahsildar-respondent No. 1 has issued notice dated 04/10/2013 to the petitioner and respondent No. 3 to 8 calling upon them to attend special meeting on 10/10/2013. In the said special meeting, the order of convening meeting came to be passed on 04/10/2013 and as such meeting was held on 10/10/2013, wherein No Confidence Motion was passed by majority against the petitioner. The petitioner claims that, she was never served with notice of No Confidence Motion, as such she was unable to attend the said meeting and in view of provisions of Rule 7 of Bombay Village Panchayats Rules, 1959 (hereinafter shall be referred as 'the Rules' for brevity), motion be declared as illegal. In support of this contention, learned Counsel for petitioner has sought to place reliance upon certain documents on record of respondent No. 1 so as

to urge that her signature on the acknowledgment was forged.

4. He further submits that, after she came to know about passing of No Confidence Motion, she preferred dispute before the respondent No. 2-Additional Commissioner under Section 35 (3) (b) of the Bombay Village Panchayat Act, 1958 questioning the legality and validity of the resolution of No Confidence Motion and prayed for setting aside of the same. He would further urge that, in the said dispute, she had moved an application seeking indulgence by respondent No. 2 so as to refer acknowledgment and her admitted signature to the hand writing expert. He further urge that, in a dispute, respondent No. 2 instead of referring the matter to the hand writing expert, has proceeded to verify her signature on the acknowledgment with that of other admitted signature and original record and has proceeded to decide the dispute against her. According to him, the said approach on the part of respondent No. 2 amounts to denial of natural justice.

5. Learned Counsel for the respondents would urge that, under the relevant provisions of Evidence Act, it is very much open for the authority i.e. respondent No. 2 to verify admitted signature of the petitioner with that of one on acknowledgment i. e. disputed signature. He would further urge that, motion was passed by majority

as is required under the statute and once a democratic elected body has proved No Confidence in the petitioner, the petitioner should honourably vacate the office, instead of taking recourse to illegal remedy, that too on hiper-technical ground. He further urged that, it will be hard to digest in the facts of the present case that the petitioner was not aware about convening of meeting of No Confidence against her when in fact, she was holding responsible post of Sarpanch and least that was expected of the petitioner being Sarpanch was to be aware about happenings in the Village Panchayat. According to him, special meeting of No Confidence Motion was not convened in privately, but was held in the public premises i.e. Grampanchayat office.

6. Learned A. G. P., while opposing the claim of the petitioner, would urge that, the power exercised by the respondent No. 2 of verifying the signature of the petitioner with that of admitted one is very much is available with the said authority and said authority has rightly exercised same. He would further urge that, in deciding the dispute, the approach of the authority is required to be summary in nature and if the petitioner so desire, may file a suit, so as to establish her case that the notice though was acknowledged by her was not received by her. Learned A.G.P., for the perusal of this Court, has produced on record the photostat copies of the notice

requisitioning the special meeting, document containing acknowledgment by the petitioner and other members which was witnessed by the Police Patil and Talathi of the Village.

7. In the light of rival contentions of the parties, this Court has dwelt upon the controversy in view of the factual matrix narrated herein above and law as is laid down by this Court in the catena of Judgments in relation to the issue involved and sought to be canvassed before this Court.

8. Section 73 of the Evidence Act reads thus :

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

9. What appears from the conduct of the respondent No. 2-Authority is, respondent No 2-Authority while taking recourse to the said provision, has *prima facie* satisfied itself petitioner has acknowledged the receipt of notice of special meeting by comparing

the same with that admitted signature of the petitioner with one on the acknowledgment of notice of meeting. One more aspect that is taken into account by respondent No. 2 is, the acknowledgment by present petitioner was in the presence of witnesses namely Police Patil and Talathi of said village. One failed to understand as to why Police Patil and Talathi will depose against the petitioner particularly having regard to known enmity with the petitioner. At least no such allegations to that effect in the appeal of present petition are made.

10. This Court is required to take judicial note of the fact that, the Court can always draw presumption under section 114 of the Evidence Act qua existence of fact. Having regard to the provisions of section 73, the witnesses Police Patil and Talathi witnessing signature of the petitioner on the acknowledgment of the receipt of the notice and said fact was taken into account by respondent No. 2 at the time of verification of admitted signature with one that of disputed and has rightly held that, the notice was served on the petitioner.

11. One more aspect of the matter, which this Court must take note of the fact that, in a democratic elected office, which was ruled by the petitioner in the capacity of Sarpanch was required to be governed by will of the majority. Once, the majority has passed

resolution of No Confidence Motion against the petitioner, the least that was expected of the petitioner was to vacate the office honourably. This Court can draw support to above referred observations in paragraph Nos 9, 10, 11 of the judgment of this Court in the matter of **Appa Munjaji Pawar Vs. Divisional Commissioner & ors.** reported in **2009(5) Bom. C. R. 691**, which read thus :

“9. As already discussed above, the said judgment has not been noticed by the Division Bench and Single Judges on the judgments of whom Shri Ghatge relies. The Division Bench in the case of (Nimba Rajaram Koli Vs. Collector, Jalgaon)7, 1999(1) Bom. C.R. 546(A.B.) : 1998(3) Mh.L.J., relying on the case of Annapurnabai Ajabrao has also held that once resolution of the No Confidence Motion is passed, by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed must honour the will of the majority and make way for the new election of his successor.

It is difficult to appreciate that when all other members have received notice of no confidence motion, it is only the petitioner who has not received the notice of no confidence motion. The petitioner and all other members are residents of a same village. In any case, notice has been served by the Tahasildar. No allegations of mala fide or bias

have been made against the Tahasildar that the notice of meeting was not properly served on the petitioner by the Tahasildar with an ulterior motive.

10. At the cost of repeatation, I must say that, in consonance with the view taken by the aforesaid two Division Benches in the case of Annapurnabai Ajabrao and Nimba Rajaram in a democratic set up it is the will of majority that must prevail. Once a person loses the confidence of a majority, as required under the statute, he has no right to continue in the office, and thrust himself against the wishes of the majority of the members.

11. In that view of the matter, no case is made out for interference with no confidence motion which has been passed by the requisite majority of more than 2/3 members. Hence no interference is warranted in exercise of extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. The petitioner is therefore, rejected.”

12. In view of the above, no case for interference is made out. Writ Petition being sans merit, stands dismissed.

[N.W. SAMBRE, J.]