

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7403 OF 2013

- 1) Udhav S/o Digambar Rathod,
Age: 25 years, Occu : Upsarpanch,
R/o : Kaulkhed, Tq. Udgir,
Dist. Latur
 - 2) Babu S/o Pema Rathod,
Age: 50 years, Occu : Agril,
R/o : As above
 - 3) Pradip S/o Subhash Balkunde,
Age: 30 years, Occu: Agril,
R/o : As above
 - 4) Rupabai W/o Manmath Kondmare,
Age: 35 years, Occu: Household,
R/o : As above
 - 5) Tanyabai W/o Narayan Rathod,
Age: 45 years, Occu: Household,
R/o : As above
- ...PETITIONERS

VERSUS

- 1) Sow Shobha W/o Gorakh Gaikwad,
Age: 40 years, Occu: Household &
Sarpanch, R/o : Kaulkhed, Tq. Udgir,
Dist. Latur
 - 2) The Tahsildar,
Tahsil Office, Udgir,
Dist. Latur
 - 3) Village Panchayat,
Through Gramsevak,
Kaulkheda, Tq. Udgir,
Dist. Latur
- ...RESPONDENTS

Mr R. K. Ashtekar, Advocate for petitioners;
Mr B.B. Sandanshi, Advocate holding for Mr D. B. Bhange, Advocate for respondent No.1;
Mr S. K. Tambe, Asstt. Govt. Pleader for respondent No.2;
Mr S. N. Patil, Advocate for respondent No. 3

CORAM : N.W. SAMBRE, J.

DATE : 9th March, 2015

ORAL ORDER :

Respondent no.1 herein was elected as Sarpanch of Village Panchayat, Kaulkhed, Taluka Udgir, District Latur on 16th July, 2010.

2. The other members of the Village Panchayat, having lost confidence in respondent no.1 - Sarpanch, issued notice requesting the Presiding Officer, to convene special meeting for consideration of no confidence motion against respondent no.1 – Sarpanch, in view of the provisions of section 35 of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as “Panchayats Act, for the sake of brevity). All the members of the Village Panchayat including respondent no.1 – Sarpanch, were served with the notice and the special meeting was convened on 2nd July, 2013.

3. In the said special meeting, the motion was passed against respondent no.1 – Sarpanch by 3/4th majority and as such, she was

removed from the post of Sarpanch, which has prompted her to file a dispute before the Collector, Latur on 5th July, 2013. The Additional Collector, Latur, by order dated 7th September, 2013, has allowed the said dispute in the light of the provisions of section 35 (3-B) of the Panchayats Act. Thus, the present petition by the other members of the Village Panchayat.

4. Learned Counsel appearing on behalf of the petitioners would urge that the Additional Collector has set aside the minutes of no confidence motion meeting passed against the respondent – Sarpanch, on the sole ground that she was not given an opportunity to put-forth her case. He would urge that perusal of the minutes of the meeting would reflect that respondent no.1 was called upon to speak against each of the issues, which were raised against her in the said meeting convened for considering no confidence motion against her and her response to each of the issues was very much recorded in the minutes of the said special meeting. In support of his contention, he has invited my attention to the minutes of the meeting at page 10 (annexure “A”). According to him, in a democratically elected office if respondent no.1 has lost the confidence of the majority, least that was expected of respondent no.1 was to vacate the office honourably, however, she intended to continue in the office against the wish of the majority. He would further urge that having regard to the fact that respondent no.1 has lost majority, the development activity and

other working of the Panchayat has come to a stand-still. Thus, the petitioners prayed for setting aside the order impugned.

5. Learned Counsel appearing on behalf of respondent no.1 – Sarpanch would urge that though the motion of no confidence carried against respondent no.1 was by majority, few of the members of one family, i.e. Rathod family have formed a group against her so as to remove her from the post of Sarpanch. He would further urge that respondent no.1 should have been given an opportunity to open the meeting with her address and though she was allowed to speak against each of the issues raised in the meeting, denial of initial opportunity to address the meeting has resulted into denial of opportunity of hearing. He would further urge that the same amounts to violation of principles of natural justice and as such it was rightly looked into by the Additional Collector, by setting aside the motion. According to him, the petition being devoid of merit deserves to be rejected.

6. Upon perusal of the documents annexed to the petition, it is required to be noted that the special meeting for consideration of no confidence motion against respondent no.1 was convened, pursuant to the notice issued under section 35 of the Panchayats Act. The said special meeting was convened on 27th June, 2013 and the meeting was scheduled on 2nd July, 2013 in the village panchayat office. Respondent

no.1 – Sarpanch whole heartedly attended the said meeting and also participated, as is reflected from recording of her say in the minutes of the meeting. The majority of the members of the village panchayat expressed 'no confidence' against respondent no.1 on four issues. While recording the minutes, participation of respondent no.1 as against each of the issues is very much taken note of and accordingly reflected in the minutes of the said meeting. Once it is noticed that respondent no.1 was permitted to participate and speak in the said meeting, Additional Collector giving finding that respondent no.1 was not given an opportunity to express her views in the said meeting, is contrary to the record of the meeting. The said finding is perverse. Perhaps, the Additional Collector has not considered the minutes of the meeting while recording such finding. It has been rightly pointed out on behalf of the petitioners that in a democratically elected body, will of the majority prevails. Once respondent no.1 had lost the confidence of the majority, least that was expected of her was to vacate the office honourably.

7. In view of above, the fact remains that, as per the requirement of the statute the motion of no confidence has been passed against respondent no.1 by the majority. In view thereof, the writ petition deserves to be allowed.

8. In that view of the matter, I pass following order :-

The order dated 7th September, 2013, passed by Additional Collector, Latur, in Case No.2013/GPN/CR/608, is quashed and set aside.

It is declared that the motion of no confidence is validly passed against respondent no.1 – Sarpanch.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj