

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

WRIT PETITION NO. 12071 OF 2015

Ankush s/o Manohar Dhakare
& another

.. PETITIONERS

VERSUS

The Additional Collector, Latur
& others

.. RESPONDENTS

Mrs. P.G. Sontakke, advocate for petitioners.
Mr. P.S. Patil, AGP for the State.
Mr. N.P. Patil Jamalpurkar, advocate for respondents 3 to 8.

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**CORAM : R.M. BORDE, J.
DATE : 21st DECEMBER, 2015.**

PER COURT :

1. Petitioners are objecting to the decision rendered by the Collector dismissing the appeal presented by them challenging the motion of no confidence.

2. Petitioners hold the posts of Sarpanch and Upa-Sarpanch. The motion of no confidence was moved against the petitioners on 29.07.2015 by six members of Village Panchayat out of total strength of 9 members, levelling six charges. On receipt of the motion, the Tahsildar, AUSA, convened meeting for consideration of motion on 04.08.2015 at 2.00 pm at Village Panchayat office, Wankheda. In the meeting, that took place on the given date and time, the motion came to be passed against the petitioners with 2/3rd members voting in favour of the motion.

3. Petitioners objected to passing of the motion of no confidence by presenting appeal to the Collector on several grounds. It is the contention of petitioners that a composite notice was issued to them by the Tahsildar in respect of the motion of no confidence moved against them is not permissible in law. Another ground raised is in respect of vagueness of the charges and, thirdly, it is contended that the Collector has not given proper opportunity of hearing to the petitioners before rendering decision in the appeal. So far as the first contention raised by petitioners in respect of issuance of composite notice by the Tahsildar is concerned, the factum of issuance of such composite notice is seriously disputed by respondents by presenting affidavit-in-reply wherein it has been contended that separate notices were issued for removal of Sarpanch and Upa-Sarpanch. It is not a matter of dispute that two separate requisitions were moved to the Tahsildar for removal of Sarpanch as well as Upa-Sarpanch. Apart from this, petitioners participated in the meeting convened for consideration of motion of no confidence. The object of issuance of separate notice is to make the office bearers aware in respect of the factum of moving of the motion. In the instant case, it is not disputed that petitioners were aware of moving of motion and the date of consideration of the motion and infact, they participated in the proceedings of the meeting.

4. Relying on the judgment of Budhiya Dayaram Jamunkar Vs. Additional Commissioner and others reported in 2010(3) Bom.C.R. 725, it is contended that the charges levelled against the office bearer are quite vague and as such, it was not possible for them to meet the allegations. In the

instant matter, in perusal of the charges levelled against petitioners, I do not find any vagueness therein. One of the charges against petitioner no. 2 who is holding the post of Upa-Sarpanch is that he is acting as private contractor. Bombay Village Panchayat Act, prohibits the person interested to participate in works of the Village Panchayat, and such interest disentitles the elected representative to continue as office bearer or even to continue as member of Village Panchayat. On perusal of the other five charges, I am of the opinion that most of the charges are specific. Even if one of the charge is proved or substantiated, it is good enough for proceeding against the elected office bearer. In the matters of removal of office bearer on account of loss of confidence, the decision of removal shall not be interfered on technical consideration. The Division Bench of this Court in the matter of Smt. Annapurnabai Ajabrao Vs. Annapurnabai Anandrao reported in **1967 Mh.L.J. NOC 36**, while considering the challenge to the irregularities of the proceedings of the meeting, has observed thus :

“Even if it were to be assumed that there was some technical flaw in the proceedings of the meeting or in transmission of the results of the meeting to the Panchayat Samiti, we do not see how that could entitle the petitioner to claim to continue as Sarpanch of the Gram Panchayat. A Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, appropriate attitude of the petitioner as a person working for democracy whatever have been to tender her resignation straightway. At any rate, it does not behave of democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence I their erstwhile leader.”

The Division Bench of this court in the matter of Nimba Rajaram Mali Vs. Collector, Jalgaon and others reported in **1998(3) Mh.L.J. 204** has observed thus :

“In a democratic society what is important is the will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected representatives responsible for the governance of such democratic institutions. As observed by the Apex court in the case of Babubhai (Supra), resolution of No Confidence Motion is different from Censure Motion and such a resolution cannot be faulted on the ground that there were no reasons or reasons were vague and lacked detailed specifications. Once the resolution of 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. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes.”

5. Learned counsel for petitioners strenuously contended that the Collector has not extended opportunity of hearing which has caused prejudice to the petitioners. Without going into correctness of the contention, the petitioners have been fully heard in the instant matter and, this Court does not find any reason to cause interference in the decision in respect of adoption of motion of no confidence moved against petitioners

which has resulted in removal of petitioners. There is no merit in the petition. Writ petition stands dismissed.

(R. M. BORDE)
JUDGE

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