

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

WRIT PETITION NO.11982 OF 2015

Harihar s/o Shridhar Nagargoje,
Age 41 years, Occu. Agriculture
and Sarpanch of village Gram
Panchayat, Rudrapur, Taluka
and District Beed

..Petitioner

Versus

1. The State of Maharashtra
through Collector, Beed
2. Tahsildar,
Tahsil Office, Beed,
District Beed

..Respondents

Mr K.D. Khade, Advocate for petitioner
Mr A.V. Deshmukh, A.P.P. for respondents

CORAM : N.W. SAMBRE, J.

DATE : 14th December 2015

PER COURT

Heard.

2. The petitioner, elected Sarpanch suffered no confidence motion pursuant to the meeting held on 29th August 2015. The said order was subject matter of dispute before the Collector, Beed pursuant to the provisions of Section 35 (3-B) of the Bombay Village Panchayats Act (hereinafter referred to as 'the Act' for brevity). The said dispute/appeal came to be rejected on 21st November 2015, as such present petition.

3. Learned Counsel for the petitioner would urge that the total strength of the members of the panchayat is seven, out of which one member namely Sumitra Aghav has resigned by communication dated

7th August 2015. According to him, as such on the date of consideration of motion, there were only six members out of which five members have voted in favour of motion, one has opposed and one member remained absent. While relying upon the judgment of this Court in the matter of **Indubai Vedu Khairnar Vs. State of Maharashtra and ors.**, reported in **2003 (2) Bom. C.R. 239** would urge that the total strength as required for passing of the motion will be six and not five. He would submit that in view of above, the petition is liable to be allowed.

4. Learned A.G.P. has invited attention of this Court to Section 29 sub-section (6) of the Act so as to submit that the resignation tendered by elected member shall take effect from the date on which it was approved by the Panchayat in the next meeting following the resignation. According to him, on the date of consideration of no confidence, the resignation of the member was not accepted and as such, member was considered to be valid member of the Panchayat, who was entitled to participate and vote in the no confidence motion meeting and prays for dismissal of the petition.

5. Having considered the rival submissions, it is noted that out of total seven members as per statute, what is required is 2/3rd members should support the motion of no confidence. In the present case, out of seven, five members have voted in favour of the motion. As such, in my opinion, the majority with which support the motion is passed is not less than the total strength. In view thereof, the submission, that the motion was not passed by 2/3rd majority is required to be rejected.

6. So far as the resignation of member is concerned, same was tendered on 7th August 2015, which pursuant to provisions of Section 29 sub-section 2 of the Act, appear to have been endorsed by the Sarpanch on 29th August 2015. The said resignation then was processed and accepted in the next meeting of the panchayat. Though the learned Counsel for the petitioner has relied upon the certification at page 34 of the petition, it will be clear that it was the date on which the Sarpanch has received the resignation and ordered the Secretary of the panchayat to verify the contents and to place the same in the next monthly meeting.

7. It appears that the said resignation was accepted in the meeting held on 21st September 2015, as is apparent from the observations made by the Additional Collector, Beed while dealing with the appeal.

8. In view of above, it is clear that on the date of consideration of no confidence motion, i.e. on 29th August 2015, the said member has not resigned from the post and was entitled to vote in the special meeting of no confidence.

9. In view of above observations and particularly, scheme of Section 29 of the Act, no interference in extra-ordinary jurisdiction is called for. As such, writ petition stands dismissed.

(N.W. SAMBRE, J.)