

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9024 OF 2015

Mrs. Tulasa Omana Jatti ... Petitioner
vs.
Mr. Parshram Bharmanna Patil & Ors ... Respondents
.....
Mr. P.G. Jagdale for the petitioner.
Mr. P.D. Dalvi a/w. Mr. Kedar Lad for the respondent.
Ms. M.s. Bane, AGP for respondent nos. 10 , 11.
....

CORAM : M.S. SONAK, J.
DATE : 9th SEPTEMBER, 2015.

P.C.:

1. This petition challenges order dated 04/07/2015 made by the Addl. Collector Kolhapur holding that no confidence motion against the petitioner was validly made in terms of section 35 of Maharashtra Village Panchayat Act 1959 (Said Act).

2. Mr. P.G. Jagdale, the learned counsel for the petitioner submits that the Panchayat in all comprises nine members. In the present case six out of nine members voted in favour of the resolution of no confidence and three against. Mr. Jagdale, submits that in terms of the 3rd proviso sub-section 3 of section 35 of the said Act, any such motion cannot be said to have been validly carried out, as the petitioner

was a woman & 3rd proviso requires 3/4th majority for such motion of no confidence to be validly passed.

3. Mr. Jagdale, relying upon the 3rd proviso to Section 35(3) of the said Act submits that where the office of Sarpanch is reserved for a woman or where the post of Sarpanch is held by a woman, the motion of no confidence can be admitted to have been validly passed, only if majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote any meeting of the Panchayat, support such motion. In short, therefore, Mr. Jagdale contended that the two requirements i.e. post of the Sarpanch being reserved for women and post of Sarpanch being held by woman are disjunctive. If either of these requirements are fulfilled, it is necessary that motion of no confidence is passed by majority of 3/4th of the total number of the members.

4. Section 35 of the said Act reads thus:

35. Motion of no confidence.--(1) *A motion of no confidence may be moved by not less than (one-third) of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. [Such notice once given shall not be withdrawn.]*

(2) *Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the*

proceedings at the meeting (including the right to vote).

(3) If the motion is carried by [a majority of not less than two-third of] the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch of the Upa-Sarpanch, as the case may be, shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in sub-section (3-B); and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

[Provided that, where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote any meeting of the Panchayat.]

[Provided further that] no such motion of no confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.

5. Mr. Jagdale's contentions have been answered against the petitioner by the learned Single Judge of this Court in the case of **Saw. Rohini Sanjay Bhosale V/s. State of Maharashtra**¹. The decision of the learned Single Judge was confirmed by the Division Bench of this Court in the case reported in **2012 (10)LJSOFT 90**. Accordingly, it is not possible to accept Mr. Jagdale's contentions.

6. The learned Single Judge of this Court in the case of *Saw. Rohini Sanjay Bhosale (supra)* after analyzing provision of section 35 of the said

¹ WP No. 1236 of 2012 decided on 11/05/2012

Act, including in particular, the 3rd proviso in section 35 of the said Act at paragraph 11, 12, 13, 14 has observed thus:

11. *The literal interpretation of a provision is the rule. Perusal of the said provision it is evident that the motion of no confidence if it is carried by two-third of the total number of members who are for time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upsarpanch as the case may be shall cease to hold the office after seven days from the on which the motion was carried. Meaning thereby that as a general rule two-third number of the total members entitled to sit and vote at any meeting are required for passing the motion of no confidence. The exception is carved out by virtue of first proviso to sub Sec. 3 of Sec. 35 of the Said Act. It lays down that if the office of Sarpanch being reserved for woman is held by a woman Sarpanch, such motion of no confidence shall be carried only by majority of not less three-fourth of the members who are entitled to sit and vote at any meeting of the Panchayat. The said proviso requires twin condition to be satisfied. (1) the office of Sarpanch should be reserved for a woman and (2) same shall be held by a woman Sarpanch. The proviso shall have to be strictly construed.*

12. *The said proviso will not apply if the office of Sarpanch is reserved for person belonging to Scheduled Tribe or Scheduled Caste and is held by woman. The prima donna requirement of said proviso is that the office of Sarpanch should be reserved for woman. It is only if said office is reserved for a woman and a woman candidate is occupying the office, then said proviso would apply.*

13. *If the office of Sarpanch is meant for open category or is reserved for any other class other than woman, then said proviso requiring 3/4th majority to pass no confidence motion would not apply.*

14. *In the present case, it is not disputed that the said office of Sarpanch was reserved for a candidate belonging to S.T. category and was not reserved for a woman. The first requirement of the said proviso itself is not satisfied, in view of that the proviso cannot be made applicable.*

7. The Division Bench of this Court whilst confirming aforesaid view, at paragraph 8, has observed thus:

8. *If it has to be 3/4th majority, the appellant has to show that the first proviso to Section 35(3) of the Act of 1958, is squarely attracted. The proviso is very specific and it requires 91) an office of Sarpanch which is reserved for woman and (2) A woman holding that office. Thus, both these ingredients are complimentary and cannot be severed from each other. If contention of learned counsel for appellant is to be accepted, the requirement of office of Sarpanch being reserved for woman, is rendered nugatory and that particular part of proviso is required to be deleted or always overlooked. This cannot be done. The learned Single Judge has therefore correctly appreciated the controversy. No case is made out for interference. Appeal is rejected. No costs. Civil application for stay is also rejected.*

8. Mr. Jagdale, however, contended that the Full Bench of this Court in the case of **Tatyasaheb Ramchandra Kale V/s. Navnath Tukaram Kakde & Ors.**² has taken a contrary view in the matter. In this regard, reliance was placed upon paragraph 12 of the decision of the Full Bench, which reads thus:

12. *The election of the Sarpanch from amongst the members of the Panchayat is provided by section 30(1). The rest of the sub-sections of section 30 are not material for the present reference. A reading of section 35 discloses that the legislature considering the importance of the post of Sarpanch and Upa-Sarpanch has advisedly provided safeguards which can be said to be inbuilt in section 35. In the context of passing of a motion of no confidence, the first safeguard is that the requisition has to be moved by not less than 1/3rd of the members who are entitled to sit and vote. The second safeguard is that the resolution has to be passed by 2/3rd of*

the members who are entitled to sit and vote, which in respect of a woman Sarpanch is 3/4th of the members who are entitled to sit and vote. The said section also provides that no motion could be moved against Sarpanch or Upa-Sarpanch. The underlying principle appears to be to lend stability in so far as the posts of Sarpanch and Upa-Sarpanch are concerned and to see to it that the elected body functions smoothly. In so far as the No Confidence Motion rules are concerned, they prescribe the procedure and the matter in which the motion is to be moved and the action to be taken by the Tahsildar after he receives a requisition from 1/3rd of the total number of members in terms of section 35(1) of the BVP Act.

9. The submission of Mr. Jagdale cannot be accepted. The issue before the Full Bench was not at all the issue which arose in the present petition. The Full Bench was considering the issue as to whether failure to formally move and second section of motion of no confidence as required by Rule 17 of the Bombay Village Panchayats, (Meeting) Rule, 1959 would render motion of no confidence carried by requisite majority under section 35 of the said Act is invalid. Consequently, in paragraph 12, the Full Bench of this Court has merely made a brief reference to the provision contained in section 35 of the said Act. There was no occasion for the interpretation of the 3rd proviso to Section 35 (3) of the said Act in paragraph 12 as aforesaid. It is trite that based upon a sentence from a judgment extracted entirely out of context, the ratio of the said judgment cannot be culled out. Accordingly, there is no basis to contend that the decision in the case of *Saw. Rohini Sanjay*

Bhosale (supra) is in any manner affected by the decision of the Full Bench in the case of *Tatyasaheb Ramchandra Kale (Supra)*.

10. In the facts and circumstances of the present case admittedly, the post of Sarpanch had not been reserved for women, accordingly the very first predicate for the applicability to the 3rd proviso was not fulfilled. This Court in the case of *Saw. Rohini Sanjay Bhosale (supra)* has held that 3rd proviso will have to be strictly construed and the provision in the 3rd provision will be attracted only if twin conditions prescribed were fulfilled. The twin conditions are that the office of Sarpanch be reserved for women and further the same should be held by women Sarpanch. The proviso will not apply to situation where the office of Sarpanch was not reserved for women, though, post of Sarpanch may be actually held by a Woman. Being bound by view taken by the Division Bench of this Court in the Case of *Saw. Rohini Sanjay Bhosale (supra)*, submission of Mr. Jagdale cannot be accepted.

11. Mr. Jagdale then contended that in the present case the Respondent Nos. 1 to 3 gave a notice for convening a meeting to consider motion of no confidence on 12/05/2015 to the Tahsildar Chandgad, the special meeting of the Panchayat was convened only on

19/05/2015. On this ground Mr. Jagdale contended that there is breach of provision of 35(2) of the said Act and therefore the motion of no confidence passed against the petitioner is legally infirm.

12. At the outset, it is to be noted that such contention was never raised by the petitioner either in the meeting where the no confidence motion was passed or for that matter before the Addl. Collector who has made the impugned order. If the grounds raised in this petition are perused, it is clear no such ground finds mention in paragraph 13 of the petition which contained the grounds on which the impugned order is challenged. The ground as raised, at the highest, is a mixed issue of law and fact. The pleadings are not clear as to when notice dated 12/05/2015 was served upon the Tahsildar, Chandgad. Accordingly there is no question of entertaining such ground in this Writ Petition.

13. As noted earlier, the motion of no confidence has been passed against the 6 out of 9 members. Whilst the petitioner may be entitled to make submissions on the basis of statutory provisions, ultimately it is to be noted that elected representative can continue in office as long as they enjoy the confidence of the other elected members in the house. The insistence of continuance in office, despite having lost the

confidence of majority, unless of course, clear infraction of statutory provision is demonstrated and established is not a course of action ordinarily countenanced in exercise of writ jurisdiction. In this case there is no clear infraction of the statute is either pleaded, demonstrated or established.

14. For the aforesaid reasons this petition is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

CERTIFICATE

“Certified to be true and correct copy of
original signed Judgment/Order.”