

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11007 OF 2014

Sou. Vatsala Kundalik Davare.] ... Petitioner

Versus

Grampanchayat Pardewadi,]
Through Gramsevak, and Ors.] ... Respondents

WITH

WRIT PETITION NO.11011 OF 2014

Sou. Mangal Dashrath Gavas.] ... Petitioner

Versus

Grampanchayat Pardewadi,]
Through Gramsevak, and Ors.] ... Respondents

Mr. Rahul Deodhar h/f Mr. S. M. Kamble for Petitioners in both Writ Petitions.

Mr. Abhijeet Desai for Respondent Nos.3 to 7 in both Writ Petitions.

Mr. A. D. Kango, A.G.P., for Respondent Nos.8 and 9 in both Writ Petitions.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 01, 2015

P. C. :-

1. These petitions have been instituted by *Sarpanch* and *Upasarpanch* of village panchayat of Pardewadi. The petitioners

challenge the motion of no confidence passed against them in the special meeting of the panchayat held on 27/08/2014. The Additional Collector, Kolhapur, by impugned order dated 29/10/2014, has dismissed the dispute raised by the petitioners under Section 35 (3b) of the Maharashtra Village Panchayats Act, 1958 ('said Act'). Hence the present petitions.

2. Mr. Rahul Deodhar, learned Counsel for petitioners in both the writ petitions, submitted that the minutes of the special meeting held on 27/08/2014 do not specify details with regard to the names of proposer and seconder for the motion of no confidence. Mr. Deodhar submitted that, in fact, the minutes suggests that the procedure for proposing and seconding the motion was not at all observed and this constitutes serious breach of the procedure prescribed under the rules for the passing of motion of no confidence. Mr. Deodhar further submitted that the material on record indicates that Akkatai Sutar has not signed the minutes and has not voted in favour of the motion of no confidence. If, therefore, the participation of Akkatai Sutar is excluded, then the motion of no confidence cannot be said to have been carrying by a majority of not less than 2/3rd of the total members of the panchayat who are, for the time being, entitled to sit and vote at the meeting of the panchayat. On these grounds, Mr. Deodhar submitted that there is no valid motion of no confidence against the petitioners and the petitioners should be declared as continuing to hold the office of *Sarpanch* and *Upasarpanch*.

3. Having heard the learned Counsel for parties and perused the record, including in particular the minutes of the special meeting dated 27/08/2014 produced by the learned A.G.P. appearing for respondent nos.8 and 9, there is no reason to entertain the present petitions. The minutes do bear the thumb impression of Akkatai Sutar. The minutes also specifically record the presence of Akkatai Surat and her participation in the debate. That apart, in the dispute raised by the petitioners, it was not even alleged that Akkatai Sutar was not present at the special meeting held on 27/08/2014. The minutes clearly records that Akkatai Sutar, by raising her hand, had supported the motion of no confidence. Therefore, on the basis of material on record, it is apparent that 5 out of 7 members of the panchayat who are for the time being entitled to sit and vote in the meeting of panchayat, have supported the motion of no confidence against the petitioners by expressing want of confidence against the petitioners. In these circumstances, the Collector rightly dismissed the dispute raised by the petitioners questioning passage of no confidence motion against them.

4. On the aspect of alleged non-compliance with the procedure with regard to proposing and seconding the motion, there is no factual basis to sustain the same. Even otherwise, the Full Bench of this Court, in the case of *Shri Tatyasaheb Ramchandra Kale Vs/ Shri Navnath Tukaram Kakde and Others*¹, has held that the provision with regard to formal moving and seconding the motion of

¹ Letters Patent Appeal No.312 of 2013 in Writ Petition No.6967 of 2012, decided on 09th October 2014,

no confidence as contained in Rule 17 of the Bombay Village Panchayats (Meeting) Rules, 1959 is only directory and even substantial compliance therewith is sufficient to uphold the resolution of no confidence which satisfies the requirement of Section 35 (3) of the said Act. Accordingly, there is no reason to interfere with the resolution or the impugned order made by the Additional Collector, on the basis of such a hyper-technical plea.

5. The record clearly indicates that the petitioners have lost the confidence of the majority of the members of the panchayat. There is no illegality in the passage of the motion of no confidence. Further, pursuant to the passage of motion of no confidence, even fresh elections have been held for the posts of *Sarpanch* and *Upasarpanch*. In these circumstances, no case is made out to exercise the extraordinary jurisdiction under Article 227 of the Constitution of India.

6. Both the petitions are therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.