

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12013 OF 2015

Sau. Tai Daji Patil

Petitioner

Vs.

State of Maharashtra through
Election Dept. and Ors.

.. Respondents

.....

Mr.Umesh R Mankapure for the Petitioner.

Mr Priyal Gopaldas Sarda for the respondents nos. 5 to 12.

Mrs. M.S. Bane 'B' Panel Counsel for respondent no.1.

.....

CORAM : M.S.SONAK, J.

DATE : 3rd DECEMBER, 2015.

P.C.:

1. The Challenge in this petition is to the order dated 7th November, 2015 by which the collector has dismissed petitioners challenge to the no confidence motion passed against her on 6th October, 2015.

2. Mr.Umesh Mankapure, the learned Counsel for the petitioner has submitted that in this case notice under section 35(1) of the Maharashtra Village Panchayats Act, 1958 (the said Act) proposing motion of no confidence was addressed to the Block Development Officer and not the Tahsildar. This, according to the learned Counsel, constitutes breach of mandatory provisions and therefore motion of no confidence in pursuance of such notice is void. The learned Counsel also made reference to the form appended to the rules which refers to address of notice to the Tahasildar and not the Block Development Officer.

3. Mr.Mankapure has further contended that in this case there is a video recording which indicates that some members were forced to vote in favour of the motion and employment of such force is clearly contrary to democratic principles which should govern such proceedings. He submitted that there is a breach of section 35(2) of the said Act in as much as a special meeting was never convened by the Tahsildar within period of 7 days from the date of receipt of notice under section 35(1) of the said Act.

4. Mr.Mankapure further submitted that in this case nine copies of the motion were never furnished and there was neither a proposer nor a seconder to the motion. For all these reasons he submitted that the impugned order made by the Collector requires to be set aside and the no confidence motion be declared as nullity.

5. Having heard the learned Counsel for the parties and perused the record and judgement, no case is made out to interfere with the impugned order.

6. Although, the notice under section 35(1) may have been addressed to the Block Development Officer, the same was also served upon the Tahsildar. The endorsement of the Tahsildar is quite visible upon the notice. The fact finding authority has also accepted this position. Section 35(1) of the said Act provides that a motion of no confidence may be moved by not less than the prescribed number of members after notice thereof has been given to the Tahsildar. Substantive provision does not refer to address of notice, rather uses the phrase “.....*after giving such notice thereof to the Tahsildar*”. The record clearly establishes that notice was duly given to the Tahsildar. There is also no dispute that it is Tahsildar who has acted upon the said notice and convened a special meeting to

consider the motion of no confidence. In this factual position, it cannot be said that there is any breach of the provision contained in section 35(1) of the said Act.

7. Further, the decision of the Division Bench in the case of Chandrakalabai K. Wankhede v. Balaji S. Dhoke & Ors. [2000(4) Bom.C.R.157] is not applicable. The issue involved in the said case is not the issue involved in the present case. In the said case notice had been issued to the Naib Tahsildar and the issue was whether such notice and the subsequent convening of meeting by the Naib Tahsildar meets with the requirement of section 35 of the said Act. In this case notice has been given to the Tahsildar who has convened the meeting to consider motion of no confidence.

8. There is no merit in the contention that force was employed upon some members. In the first place this is disputed question of fact. Secondly, this is not a case where any members, upon whom force was allegedly employed, have made any grievance, either in the meeting or within some reasonable period from the conclusion thereof. If force were indeed to be applied, it is reasonable to presume that such members would have reacted to the same. In this case, nine out of eleven members of the Panchayat have supported the motion of no confidence against the petitioners. There is, accordingly, more than ample compliance with democratic principles. In fact, democratic principles would require that a person who has lost the confidence of the majority, gracefully steps down.

9. There is no merit in the contention based upon non compliance of the provisions contained in section 35(2) of the said Act. The meeting was convened by the Tahsildar within the period prescribed.

10. The provision with regard to supply of copies to proposing and seconding the motion have been held to be directory provisions. On the basis of alleged breach of such provision, motion of no confidence, otherwise validly passed cannot be set aside.

11. In this case there is neither any jurisdictional error nor perversity in the making of the impugned order. No case is made out to entertain this petition.

12. This petition is dismissed. There shall however be no order as to costs.

(M.S.SONAK, J.)