

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 471 OF 2016

TARAMATI SHESHRAO HAWLE AND ANOTHER
VERSUS
MAYABAI KISAN WAGHMARE AND OTHERS

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Mr. S. T. Veer and Mr. S. P. Koli, advocate for the petitioners
Mr. Girish B. Kulkarni , advocate for respondent Nos. 1 to 5
Mr. S. N. Kendre, AGP for respondent Nos. 7 to 9

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CORAM : V. K. JADHAV, J.
DATE : 12th February, 2016

ORDER :-

1. By way of this writ petition, the petitioners, who are the Sarpanch and Upa-Sarpanch of Gram Panchayat Helaswadi, Taluka Mantha, District Jalna, are challenging the special proceedings of 'no confidence motion' dated 26.11.2015 held against them and the judgment and order dated 31.12.2015 passed by learned Additional Collector, Jalna in proceedings No.55 of 2015 in this regard.

2. Brief facts giving rise to the present writ petition are as follows:

Five members i.e. respondent Nos.1 to 5 gave requisition dated 20.11.2015 to the concerned Tahsildar seeking 'no confidence motion' against petitioners and thereby requested to convey special meeting for consideration of 'no confidence motion' against petitioners. Respondent No.8-Tahsildar, Mantha, accordingly

entertained said notice dated 20.11.2015 and fixed the special meeting of the members of Gram Panchayat on 26.11.2015. On 26.11.2015, 'no confidence motion' was passed against the petitioners. Said five members voted in favour of 'no confidence motion' out of total strength of seven members of the said Gram Panchayat. Petitioners had challenged the said 'no confidence motion' before Additional Collector, Jalna vide proceedings No.55 of 2015. The Additional Collector, Jalna, by order dated 31.12.2015, rejected the said dispute. Hence this writ petition.

3. Learned counsel for the petitioners submits that petitioners have not been served with the notice of 'no confidence motion' by Tahsildar, Mantha, and therefore, the proceedings of 'no confidence motion' dated 26.11.2015 stand vitiated against them. Learned counsel submits that the village Talathi affixed notice of petitioner No.1-Sarpanch on the closed house of one Ramdas Maruti Bondare situated towards the north side of house of petitioner No.1, which is standing in the name of her husband. Similarly, notice issued against petitioner No.2 also came to be affixed on another closed house belonging to some other villager. Learned counsel submits that even the panch witnesses of panchnama of service of notice have filed their affidavits in favour of the petitioners.

4. Learned counsel for the petitioners further submits that petitioner No.1 is a woman candidate and when a woman candidate is holding the post of Sarpanch, as per provisions of Section 35(3) of the Maharashtra Village Panchayats Act, 1958 (for short "the Act of 1958"), motion of no confidence is required to be passed by three-fourth majority. Learned counsel submits that only five members have voted against petitioner No.1. Learned counsel submits that six members should have voted against petitioner for carrying out 'no confidence motion'. Learned counsel submits that even the meeting Rules were not followed while conducting the meeting convened for discussing 'no confidence motion'. Learned counsel submits that the Additional Collector has not considered the above aspects and thus, erroneously rejected the dispute.

5. Learned counsel for the petitioners, in order to substantiate his contentions, places his reliance on the decisions in the following cases:

1. ***Indubai Vedu Khairnar vs. State of Maharashtra and others***, reported in **2003 (2) Bom.C.R. 239**,
2. ***Sangita Bhaskar Ingale vs. State of Maharashtra and others***, reported in **2015 (6) Mah.L.J. 957** and
3. Judgment dated 01.08.2013 delivered by this Court (Principal Seat at Bombay) in **writ petition No.**

***11177 of 2012 i.e. Shri Tanaji Bhauso Mane vs.
Smt. Ushatai Balkrushna Mane.***

6. Learned AGP appearing for respondent Nos. 7 to 9 and Mr. Kulkarni, learned counsel appearing for respondent Nos. 1 to 5 submit that notices are properly served on petitioners and the 'no confidence motion' was carried out by majority of members in tune with the provisions of Section 35 of the Act of 1958. They further submit that, admittedly, so far as Gram Panchayat, Helaswadi is concerned, the post of Sarpanch was not reserved for woman candidate and the proviso to Sub-section 3 of Section 35 of the Act of 1958 cannot be read in parts or in isolation. They submit that if the office of Sarpanch is reserved for a woman candidate and if it is being held by a woman Sarpanch, such motion of no confidence is required to be carried out by majority of not less than three-fourth of the total members. In the case in hand, since the office of Sarpanch was not reserved for a woman candidate, such motion of no confidence is required to be carried out by only a majority of not less than two-third of the total strength of members. They further submit that the Additional Collector has rightly considered this legal position and rejected the dispute. There is no substance in the writ petition and the same is liable to be dismissed. Learned AGP places reliance on Judgment dated 11.05.2012 delivered by this Court in ***Writ Petition No. 1236 of 2012 i.e. Saw. Rohini w/o Sanjay***

Bhosale vs. The State of Maharashtra and others.

7. Section 35 of the Act of 1958, and its proviso reads as under:

“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 or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the functions and duties of the office and

thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in the case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat:

Provided also 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 at any meeting of the Panchayat:

Provided also 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.

(3-A)

(3-B)"

8. As per proviso to Sub-section 3 of Section 35 of the Act of 1958, if the office of Sarpanch being reserved for a woman and is held by a woman Sarpanch, such motion of no confidence shall be carried out by a majority of not less than three-fourth of the members, who are entitled to sit and vote at any meeting of the Panchayat. The said proviso dictates two conditions to be satisfied, 1) the office of Sarpanch is reserved for woman and 2) if it is held by a woman Sarpanch. The proviso shall have to be strictly construed. Said two conditions cannot be read in isolation or separately. In the case in hand, since the office of Sarpanch is not reserved for woman, 'no confidence motion' can be carried out only by a majority of not less than two-fourth of the members, who are entitled to sit and vote at any meeting of the Panchayat.

9. This Court in Writ Petition No.1236 of 2012, has taken a view

and accordingly, in paragraph Nos. 12 and 13, made the following observations:

“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.”

10. In light of the aforesaid observations and the discussion made in the foregoing paragraphs, first requirement of the said proviso is not satisfied in the case in hand and thus, the proviso cannot be made applicable.

11. So far as service of notice of 'no confidence motion' on the petitioners is concerned, Additional Collector, Jalna, on perusal of record and proceedings, has arrived at a conclusion that the notices are properly served by affixing the same on conspicuous part of the residential houses of the petitioners. Affidavits of panch witnesses

filed at a later stage of the proceedings pending before the Additional Collector carries no importance.

12 In the case of **Indubai** (*supra*), relied upon by learned counsel for the petitioners, the issues were altogether different. In the said case, notice of 'no confidence motion' was served on another member of the family, and the same was also not proved. Since the mandatory provision was not followed, it is held that the same vitiates the motion. In the case in hand, no such issue is involved. In this case, petitioners were not present in the house and their residential houses were found locked and therefore, the notices were affixed on the conspicuous parts of their residential houses by way of substitute service.

13. In the case of **Sangita Ingle** (*supra*), relied upon by learned counsel for the petitioners, it is held that the Rule of 'rounding off' cannot be applied for removal of a Sarpanch if majority required for removal falls short by a fraction. The case cited above cannot be made applicable to the facts and circumstances of the present case.

14. In the case of **Tanaji Bhauso Mane** decided by this Court (Principal Seat at Bombay) by way of Writ Petition No.11177/2012, relied upon by learned counsel for the petitioner, the Rule of

'rounding off' was under consideration.

15. In the light of above discussion, the writ petition is devoid of any merits and the same is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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