

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

926 WRIT PETITION NO. 7895 OF 2016
WITH WP/7896/2016

SAMBHAJI BABAJI SAKURE
VERSUS
THE COLLECTOR AHMEDNAGAR AND OTHERS

Shri. Sandip R. Andhale, Advocate, for petitioner.

Shri. U.H. Bhogale, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. Rahul R. Karpe, Advocate, for respondent
Nos.3,5,6,7,8 and 9.

CORAM: T.V. NALAWADE, J.

DATE : 31st AUGUST 2016

ORDER:

1) Both the petitions are filed to challenge the motion of no confidence passed against the petitioners and also the order of dismissal of the appeals filed by the two petitioners to challenge the motion of no confidence. The petitioner from Writ Petition No.7896 was the village Sarpanch and the petitioner from other proceeding was the Upa-Sarpanch of the village.

2) The village Panchayat consists of 9 members and they got elected in the general election of 2015. The petitioner-Sarpanch belongs to Other Backward Class but she was elected to the post of the Sarpanch when the post of the Sarpanch was for open category. The first requisition was given by six members out of 9 members on 30-3-2016 but the Tahsildar did not call the meeting and so one more requisition was given on 11-4-2016. The Tahsildar called the meeting on the basis of the requisition dated 30-3-2016 and in that meeting no confidence motion was passed against both the Sarpanch and the Upa-Sarpanch. This decision was challenged by both of them by filing appeals and the appeals came to be allowed. The appeal was allowed on the ground that the meeting was not called within the specified period, 7 days, and so the meeting itself was illegal though no confidence motion was passed by majority as required by law.

3) The requisition under consideration was given on 1-6-2016 and the Tahsildar issued notice on 2-6-2016 and called meeting which was to be held on 6-6-2016. On 5-6-2016 the petitioners filed Writ Petition No.5812/2016

in this Court to challenge the act of the Tahsildar to call meeting. This petition came to be dismissed. The meeting was then held on 6-6-2016. It was attended by both the petitioners and no confidence motion was passed.

4) The Sarpanch has challenged the motion on the ground that the requisition of 1-6-2016 was given within one year from the date of previous motion and so the meeting itself is illegal. The Upa-Sarpanch has also made similar contentions and the Upa-Sarpanch has no other ground. Learned counsel for the Sarpanch submitted that there is one more ground to the Sarpanch and that is about the number of members which ought to have voted in favour of the motion and he submitted that three-fourth members ought to have voted in favour of the motion as the Sarpanch was a lady.

5) This Court has carefully gone through the relevant provisions of Section 35(3), (3-A) which run as under.

"35. Motion of no confidence.--

(1)

(2)

(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 case 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) If the motion is not moved or is not carried by a majority of not less than two-third of or, as the case may be, 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, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of one year from the date of such special meeting."

6) The learned counsel for the petitioners submitted that in view of the aforesaid provision and as there was such motion in the past within the period of one year mentioned in the provisions, the meeting itself was illegal. This submission is not at all acceptable in view of the wording of the provision. On this point the learned counsel for the respondent placed reliance on the observations made in Writ Petition No.5812/2016 (Aurangabad Bench) (Sow. Jaya v. Tahsildar and others). This decision was rendered against the present petitioners

when they had come before this Court when notice was issued on 2-6-2016 on the basis of requisition dated 1-6-2016. This Court made it clear that as the previous meeting in which resolution was passed was itself illegal, it cannot be said that there was motion moved or it was carried. In view of these circumstances it was held that there was no illegality in the order made by the Tahsildar by which the meeting was called. In any case the wording of the aforesaid provision shows that only if meeting takes place, there is motion and if the motion fails, it is not passed with majority as mentioned in the aforesaid provision then the condition for subsequent requisition applies. Thus there is no force in the first challenge to the motion of no confidence passed against both the petitioners.

7) The proviso to sub section (3) of section 35 shows that this provision is applicable only if woman Sarpanch is elected at the time when the post was reserved for women. Thus if a woman becomes Sarpanch when the post was not so reserved, this provision is not applicable. Thus in the present case as the post of the

Sarpanch was not reserved for women, there was no necessity of passing the motion with majority of not less than 3/4th of the total number of members. Thus, there is no force in the second challenge also.

8) The learned counsel for the petitioner placed reliance on a case reported as **2000 (Supp.1) Bom.C.R. 884 (Kashinath v. Tahsildar)**. The facts of this reported case were altogether different and question as to how the period given in the aforesaid provision needs to be counted was involved. Reliance was placed on another case reported as **1998(2) All MR 281** (Bombay High Court) (Full Bench) **(Ashok Kondiba Yenpure v. State Election Commission)**. The point involved in the said case was totally different and the point involved in the present matter was not at all involved in the said matter. Thus, the observations made in the two cases decided by this Court are of no use to the petitioners. In the result, both the petitions stand dismissed.

Sd/-
(T.V. NALAWADE, J.)

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