

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

WRIT PETITION NO.2437 OF 2017

Smt. Laxmibai Kiran Jaiswar
Age 26 years, Occu. Household and
Sarpanch, Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad ... PETITIONER

VERSUS

1. The State of Maharashtra
through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Additional Collector,
Aurangabad, District Aurangabad
3. The Tahsildar, Soygaon and
Returning Officer for Elections to
Sarpanch of Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad
4. The Gramsevak, Grampanchayat,
Kankrala, Tal. Soygaon,
District Aurangabad
5. Shivdas s/o Lalchand Rajput,
Age major, Occu. Agri. & Member of
Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad
6. Samadhan s/o Tukaram Patil,
Age major, Occu. Agri. & Member of
Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad
7. Shantabai Santosh Shinde,
Age major, Occu. Household & Member of
Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad

8. Archanabai Pravin Gusinge,
Age major, Occu. Household & Member of
Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad
9. Sangitabai Surajmal Dhakre,
Age major, Occu. Household & Member of
Grampanchayat, Kankrala,
Tal. Soygaon, District Aurangabad

... RESPONDENTS

.....
Shri S.S. Thombre, Advocate for petitioner
Shri S.R. Yadav, A.G.P. for respondent Nos.1 to 3
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CORAM: S. B. SHUKRE, J.

DATED: 21st February, 2017.

ORAL JUDGMENT :

1. Heard Mr S.S Thombre, learned counsel for the petitioner, and Mr. Yadav, learned A.G.P. for respondent No.1 to 3, who appears by waiving notice. There is no need to issue notice to remaining respondents as they are not interested parties. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. The question involved in this petition is as to whether or not a fresh special meeting for considering passing of No Confidence Motion against the Sarpanch i.e. the petitioner could be held even before expiry of period of one

year from the date of holding of the last meeting in view of the embargo placed on holding of such meeting, under Section 35(3-A) of the Bombay Village Panchayats Act, 1958.

This provision reads as under :

"(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."

3. A bare perusal of this provision makes it clear that it is applicable only when the motion is not moved by the requisite number of the members i.e 2/3rd of the members or is not carried by the requisite number of members i.e. 3/4th of the members, entitled to seek and vote at any meeting of the Panchayat. It also becomes clear that this provision of law does not apply when the motion is moved and/or is carried by the requisite number of voters. In other words, the prohibition of one year applies only when the motion is not

moved or is defeated.

4. Even in the case of **Prakash Barku Patil Vs. State of Maharashtra & ors.**, reported in **1998(1) Mh.L.J. 43**, the Division Bench of this Court has held that, in order to ascertain whether motion is moved or not moved, the meeting in pursuance of the notice of no confidence must be held and voting must be held, and vote must be recorded either against or in favour of the motion, thereby indicating that casting of vote in a special meeting in requisite numbers is necessary.

5. In the instant case, the last special meeting was held on 26.10.2016 and in this meeting, No Confidence Motion was moved as well as carried by the requisite number of members. It was subsequently set aside by the learned Additional Collector by his order passed on 24.11.2016 on the ground that the special meeting held on 26.10.2016 was not held within seven days from the date of receipt of the notice by the members, as required under Section 35(2).

6. According to learned counsel for the petitioners, since the effect of special meeting dated 26.10.2016 itself was erased, another meeting for moving of No Confidence Motion within one year could not have been held. I think, this

argument is self-contradictory. If the effect of the special meeting has been removed, the question of application of the prohibition of Section 35(3-A) would not arise and in any case the prohibition applies only when there is in existence, a special meeting, in which No Confidence Motion has not been moved by requisite numbers or has been defeated. If the existence of the special meeting itself has been erased, the further question of passing of the motion, rightly or wrongly, would not arise.

7. Learned counsel for the petitioner also submits that, the motion was passed, may be rightly or wrongly and, therefore, prohibition of one year still applied. As rightly submitted by learned A.G.P. for respondent Nos.1 to 3, such an argument cannot be accepted for the simple reason that Section 35(3-A) applies, and I have only clarified so, only in a case where there is a non-moving of the motion by the requisite numbers or a defeat of the motion, because of absence of the requisite number of members carrying it and it does not apply when the motion itself is moved and/or carried by the requisite number of members. Here is a case where, rightly or wrongly, the motion was not only moved but also carried by the requisite number of members. From this perspective, the argument of learned counsel for the

petitioner for pressing into service the provisions of Section 35-3-A cannot be accepted. No patent illegality is seen in the impugned order. The petition deserves to be dismissed. The petition is dismissed. Rule is discharged. No costs.

(S. B. SHUKRE)
JUDGE

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