

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

WRIT PETITION NO.5868 OF 2017

Sushila Anna Kamble

.. Petitioner

Versus

State of Maharashtra

.. Respondent

Mr.Naseem R. Shaikh, Advocate for the petitioner
Mr.P.S.Patil, AGP for the respondent Nos. 1 and 2/State
Mr.A.V.Hon, Advocate for respondent Nos. 3 to 7

**CORAM : R.M. BORDE &
S.M. GAVHANE, JJ.
DATED : 09.08.2017**

P.C. :-

. The challenge raised in the instant petition is in respect of notice of motion of no confidence issued against the Sarpanch i.e. the petitioner. The petitioner claims to belong to Scheduled Caste category and is elected to the office of Sarpanch which is stated to have been reserved for Scheduled Caste category. The petitioner contends that the village Borkheda (Budruk), Tq. Chalisgaon, Dist. Jalgaon is included in Scheduled Areas and in view of section 54 (d)(vi) of the Maharashtra Village Panchayat Act, the motion of no confidence shall not be moved against the elected Sarpanch within a period of two and half years from the

date of election. It is contended that the petitioner has been elected as Sarpanch on 07.08.2015 and as such in view of provisions of Section 54(d)(vi) of the Act, it was not permissible for respondents to move motion of no confidence against the petitioner. While issuing an order granting interim relief it was tried to be contended that the provisions of Section 54(d)(vi) will have applicability. However, it was not disclosed that the said village does not form part of the scheduled areas. Chapter III-A of the Maharashtra Village Panchayat Act makes special provisions for Gram Sabha and Panchayat in Scheduled Areas Section 54 (1)(a) provides that notwithstanding anything contained in Section 4 and 5 or any other provision of this Act in the scheduled areas- habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs, and which is declared as a village in the prescribed manner shall be the village for the purposes of this Chapter. In the instant matter it has not been brought to notice that the village has been declared to be part of Scheduled Area. Section 3(17) A of the Maharashtra Village Panchayat Act defines "Scheduled Area" as the area referred to in Clause-I of Article 224 of the Constitution of India. Clause-I of the Article 224 (1) provides that the provisions of 5th scheduled shall apply

to the administration and control of the scheduled areas and the Scheduled Tribes in any State, other than the State of Assam, Meghalaya, Tripura, Mizoram. Part-C of the 5th Schedule defines expression "Schedule Area" as such areas as the president may by order declare to be Scheduled Area. In the instant matter it has not been demonstrated that the relevant village is a scheduled area or forms part of a District which has been declared to be a scheduled area. In view of the discussion as above, the protection accorded in Section 54(d)(6) shall not extent to the petitioner as has been stated above while granting interim relief on 28.04.2017, this legal position was not disclosed to this Court and the Court was misled to grant interim orders.

2. For the reasons recorded above the writ petition does not deserve favourable consideration and stands rejected. The interim relief stands vacated. It would be open for the respondent Tahasildar to proceed with the no confidence motion from the stage from which it was stopped by virtue of interim orders issued by this Court.

[S.M. GAVHANE, J.]

[R.M. BORDE, J.]