

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

WRIT PETITION NO.8355 OF 2017

Sunil Panditrao Kugne.

VERSUS

The State Of Maharashtra and Others.

WITH

CIVIL APPLICATION NO.9438 OF 2017

IN

WRIT PETITION NO.8355 OF 2017

Revata Laxman Dhole

VERSUS

Sunil Panditrao Kugne And Others

WITH

WRIT PETITION NO.9271 OF 2017

Sunil Panditrao Kugne

VERSUS

The State Of Maharashtra And Others

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Mr.Jadhavar Aashish T., Advocate for Petitioner.

Mr.S.N.Kendre, A.G.P. for Respondent/State Authorities.

Mr.Deshmukh Arvind, Advocate for R/6, 7, 9 and 12.

Mr.Jagiasi Shyamsunder H., Advocate for R/8.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th August, 2017

Per Court:

1 The Petitioner in the first Writ Petition No.8355/2017 has put forth the prayer in paragraph 19-B, which reads as under:-

"(B) *The order dated 27.06.2017 passed by the respondent No.2 appointing the respondent No.4 as Election*

Officer and the notice dated 27.06.2017 issued by the respondent No.4 declaring the programme for elections to the post of Sarpanch of Grampanchayat Aadgaon on 03.07.2017 may please be quashed and set aside, by issuing writ of certiorari or any other appropriate writ, order or directions in the nature of writ of certiorari."

2 The same Petitioner in the second Writ Petition No.9271/2017 has put forth the prayer clause 19-B as under:-

"(B) *The judgment and order dated 07.07.2017 passed by the District Collector, Parbhani in Grampanchayat Dispute in Case No.2017/A-1/VP and the resolution dated 08.06.2017 adopted by the members of the Grampanchayat Aadgaon, Tq.Palam, Dist.Parbhani passing the vote of no confidence against the petitioner may please be quashed and set aside, by issuing writ of certiorari or any other appropriate writ, order or directions in the nature of writ of certiorari."*

3 I have considered the strenuous submissions of the learned Advocates appearing for the respective sides.

4 Since both the petitions are intricately connected to each other, I have taken up both of them for common hearing. The learned Advocates for the respective sides state that the decision in the second petition would impact the first petition.

WRIT PETITION NO.9271 OF 2017

5 The Petitioner is aggrieved by the passing of the no-

confidence motion by vote count of 05 in favour of the motion and one against the motion.

6 By the impugned judgment in the second petition, the appeal filed by the Petitioner has been rejected by the District Collector, Parbhani and the result of the special meeting in which the no-confidence motion was passed, has been sustained.

7 The Petitioner has raised a host of grounds which are as follows:-

- (a) The requisition motion dated 02.06.2017 was moved before the Tahasildar.
- (b) The notice for holding a special meeting was issued on the same day 02.06.2017 and the special meeting was convened within 07 days on 08.06.2017 at 02:00 pm.
- (c) After the special meeting commenced on 08.06.2017, the Petitioner/ Sarpanch moved an application which was received by the concerned Tahasildar at 02:07 pm. He made a prayer that he desires to speak on the said motion and desires to explain the development activities undertaken by him as a Sarpanch.
- (d) The motion was carried and the proceedings of the special meeting have been documented by the Tahasildar, who was the Chairperson of the meeting.

- (e) The Petitioner was not permitted to speak and despite his request, he was not allowed to address the members of the Gram Panchayat in the special meeting.

8 Reliance is placed upon the following judgments :-

- (a) Ashok Krishakant Mehta vs. State of Maharashtra and others, AIR 2001 (Bom.) 55 : 2000 (4) Mh.L.J. 197.
- (b) Shivkant Haribhau Bangar vs. Gramsevak, Mauje Ratnapur and others, 2010 (6) Mh.L.J. 149.
- (c) Sau.Surekha Vasant Jadhavar vs. Kisan Pandurang Jadhavar and others, Writ Petition No.2808/2015 (Aurangabad Bench), judgment dated 11.09.2015.
- (d) Viswas Pandurang Mokal vs. Group Gram Panchayat Shihu and others, 2011 (3) Bom.C.R. 495 (Full Bench).
- (e) Vijay Ramchandra Katkar vs. Group Gram Panchayat, Pali and others, 2010 (4) Mh.L.J. 497.
- (f) Surekha Eshwar Jadhav vs. Nirmala Madhavrao Jadhav and others, 2013(5) Mh.L.J. 710.
- (g) Nivrutti Kashinath Bansode vs. Gramsevak, Grampanchayat, Nazara and others, Writ Petition No.6873/2008 (Principal Seat at Mumbai), judgment dated 24.10.2008.
- (h) Govind Nivrutti Hipparkar vs. Tahasildar, Taluka Sangola and

others, Writ Petition No.9819/2009 (Principal Seat at Mumbai), judgment dated 18.01.2010.

9 The learned Advocates for the Respondents and the learned AGP submit that though the Petitioner tendered the application which was received by the Chairperson, he was given an opportunity to speak and he has not spoken in the said meeting. He did not participate in the debate. He has signed on the Roznama indicating that he was present in the meeting and the Roznama has been correctly written.

10 Insofar as the submission of the Petitioner that a specific motion has to be formally tabled in the meeting and there must be a proposer and seconder to such motion or else it has to be construed that no motion was moved, is an argument which cannot be sustained in the light of the Full Bench judgment of this Court in the matter of Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde and others, **2014 (6) Mh.L.J. 804**. The learned Full Bench has concluded that Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 requiring a proposer and seconder and the movement of the motion, is directory in nature.

11 It is not necessary that there should be a proposer or seconder since, in the present case, the specific agenda of the special meeting is the requisition motion alone and the special meeting is not convened for any other purpose. The Tahsildar has tabled the motion.

12 Considering the above, the only issue that survives for adjudication in this matter is as to whether, the record would indicate that the Petitioner/ Sarpanch was given an opportunity to address the members of the Gram Panchayat and speak on the no-confidence motion.

13 It is undisputed that there are seven members of the Gram Panchayat and the Petitioner is one amongst them, who was elected as Sarpanch. One member was absent in the said special meeting.

14 Considering the submissions of the learned Advocates, it is quite obvious that it is word against word. The Petitioner contends that he was not allowed to speak. The learned AGP, on instructions from the Tahasildar, submits that nobody had prevented the Petitioner from speaking.

15 In this backdrop, keeping in view the law laid down by this Court in the matters of Ashok Krishakant Mehta and Shivkant Haribhau Bangar (supra), any person desirous of speaking, be it the Sarpanch, Up-Sarpanch or any elected member of the Gram Panchayat, can speak in the special meeting. It requires no debate that the proceedings written down by the Tahasildar as Chairperson of the special meeting, is presumed to be a mirror image of the business transacted in the meeting. The proceedings written down by the Tahasildar must reflect as to what actually transpired in the meeting. Even if a single person speaks, the minutes of the meeting must indicate as to who has spoken and his contention is to be noted

down in a concise form.

16 In this backdrop, it assumes significance that the Petitioner has submitted an application within 07 minutes of the commencement of the meeting. Even if it is assumed that the meeting started sharp at 02:00 pm, the attendance of the members is recorded and their signatures are obtained on the register. This is likely to consume a few minutes. The application filed by the Petitioner is received by the Tahasildar, who has signed in acknowledgment and has noted the time as 02:07 pm. The contents of the said application indicate that the Petitioner probably was apprehensive that he may not be permitted to speak and had, therefore, tendered the application expressing a desire that he wishes to oppose the motion and speak in the meeting.

17 The minutes of the proceedings are before the Court. The Tahasildar has nowhere mentioned that the Petitioner has addressed the meeting. It was incumbent upon the Tahasildar to call upon the Petitioner to speak because he had formally tendered an application stating that he desired to speak. If he had refused to speak, the Tahasildar should have noted in the minutes that though he tendered an application and though he was called upon to speak, he has declined to speak.

18 Considering the above factors, I find that though the Petitioner had filed an application expressing his desire to speak in the meeting, it does not appear that he has spoken in the meeting. Record

does not indicate that he declined to speak.

19 The learned Advocates for the Respondents have strenuously contended that the Petitioner was given an opportunity to speak and he had declined to speak. If this be so, the Tahasildar was obliged to note in the proceeding book that the Petitioner had refused to speak. This seems to be improbable because he had submitted an application stating that he would speak in the meeting.

20 Considering the law laid down, this deficiency is fatal to the business transacted in the special meeting on 08.06.2017. It is apparent from the impugned order that the District Collector has not considered this aspect and has hardly given any importance to the application tendered by the Petitioner expressing a desire to speak.

21 Considering the above and the law as is laid down, the no-confidence motion passed in the special meeting on 08.06.2017 is rendered unsustainable. Consequentially, the second petition stands allowed in terms of prayer clause (B).

WRIT PETITION NO.8355 OF 2017

22 In the first petition, the Petitioner/ Sarpanch had prayed that the election scheduled on 03.07.2017 be stayed.

23 The learned Advocates for the Respondents have canvassed that the Petitioner had made an attempt to contest the said election and

he withdrew his candidature. This should be taken to mean that he had no grievance against the no-confidence motion.

24 I do not find the said submission to be sustainable since the Petitioner is before this Court challenging the order of the District Collector and the elections were held for filling in the post of Sarpanch during the pendency of the proceedings before the District Collector.

25 This Court, by order dated 03.07.2017, had directed that the meeting for electing a new Sarpanch shall proceed and the outcome of the said meeting would, however, not be declared. Consequentially, the result of the said election has not been declared.

26 Considering that the second petition has been allowed and the no-confidence motion is set aside, the first petition does not survive and stands disposed of. The Tahasildar, Palam, District Parbhani is, therefore, directed to keep the result of the said election in a sealed envelope and to be filed as it is inconsequential. The said envelope shall be preserved for a period of three months in the event any of the Respondents desire to challenge this decision.

27 The pending Civil Application, if any, does not survive and stands disposed of.