

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12826 OF 2016
(Ashok Rambhau Kalane Vs.Gram Sevak, Gram Panchayat,
Limpangaon and others)

WITH

WRIT PETITION NO.12827 OF 2016
(Manjulabai Balasaheb Ovol Vs.Gram Sevak, Gram Panchayat,
Limpangaon and others)

Mr.R.R.Mantri, Advocate for the petitioners.

Mr.S.T.Shelke, Advocate for respondent No.1.

Mr.N.T.Bhagat, AGP for respondent Nos. 2 and 2A.

Mr.D.B.Rode and Mr.P.N.Khedkar, Advocate for respondent Nos. 3 to
7, 9, 11 to 14, 16 and 17.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 04/01/2017

PER COURT :

1. The petitioners are aggrieved by the passing of the “No Confidence” motion and the rejection of their Gram Panchayat dispute by the impugned orders.

2. In the first petition, the petitioner Ashok Rambhau Kalane is the Up-Sarpanch of Gram Panchayat, Limpangaon, Taluka Shrigonda, Dist.Ahmednagar. In the second petition, the petitioner Manjulabai Balasaheb Ovol is the Sarpanch who belongs to the Scheduled Caste Category. Both have suffered the No Confidence Motion by 3/4th majority and have been voted out of their positions in

the special meeting convened on 09/11/2016.

3. Mr.Mantri, learned Advocate appearing on behalf of both the petitioners has tendered the proposed amendment in order to bring on record that two members namely Smt.Padambai Tule and Mr.Ravi Ujagare have been disqualified by the order dated 23/12/2016 passed by the Additional Collector, Ahmednagar on the ground of failing to submit their caste validity certificates. Such disqualification is effected from the date of filing their nomination papers. Learned Advocates for the respondents do not oppose and the amendment is permitted. The order of the Additional Collector dated 23/12/2016 is taken on record.

4. I have heard the submissions of the learned Advocates for the respective sides at length. I find that the following judgments need to be considered while deciding this case :-

[1] Vishwas Pandurang Mokal Vs.Group Gram Panchayat, Shihu and others, [2011(3) Mh.L.J. 501] – Full Bench.

[2] Punjaji Shamrao Kadam and others Vs.Divisional Commissioner, Aurangabad and others, [2012(6) Mh.L.J.463]

[3] Tatyasaheb Ramchandra Kale Vs Navnath Tukaram Kakde and others, [2014(6) Mh.L.J.804] – Full Bench.

5. There is no dispute as regards the following factors :-

[a] The Limpangaon Gram Panchayat has 17 members who are duly elected.

[b] One member was disqualified on 29/04/2016.

[c] 12 persons (11 who have signed) are said to have moved a requisition dated 09/11/2016 proposing a No Confidence Motion against both the petitioners and the said notice was served upon the Tahsildar of Taluka Shrigonda.

[d] On 09/11/2016, the Tahsildar, after receiving the requisition, issued a notice for convening a special meeting on 16/11/2016 for considering the motion moved by 11 persons.

[e] Both the petitioners have received copies of the said notice.

[f] The Sarpanch Smt.Manjulabai claimed to be suffering from giddiness and claimed to be hospitalized and therefore did not participate in the meeting.

[g] Independent proceedings and an independent vote count was taken with regard to both the petitioners.

[h] The Up-Sarpanch suffered No Confidence Motion by a vote count of 12 in favour of the motion and 3 against the motion (3/4th majority).

[i] The Sarpanch Smt.Manjulabai suffered no confidence by

a vote count of 12 in favour of the motion and 3 against the motion (3/4th majority).

[j] The Gram Panchayat Dispute No.113/2016 and 112/2016 filed by both these petitioners under section 35(3-B) of the Maharashtra Gram Panchayat Act were rejected by the competent authority by the impugned order dated 17/12/2016.

6. The grievance of the petitioners is that the learned Full Bench of this Court has ruled in paragraph Nos. 17 and 18 in the matter of Vishwas Pandurang (supra) to conclude that the motion has to be moved. Merely placing the notice signed by 11 persons would not tantamount to actually moving of a motion. No such motion was moved in the special meeting by anybody and hence the business transacted in the special meeting is rendered *void-ab-initio*.

7. The contention of the petitioners in this context can be considered under Section 35(3-A) of the Act which reads as under :-

“Section 35(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.”

8. The observations of the learned Full Bench in Vishwas Pandurang case (supra) in paragraph Nos.17 and 18 read as under :-

“17. Thus, Rule 17 provides that the person who has submitted notice of the motion shall move the motion in the meeting. Rule 20 deals with how amendments to the motion can be proposed. Rule 21 deals with how a person who wants to speak on a motion has to address. What should be the duration of the speech and what is the decoram to be followed in speaking at the meeting. Thus, in these Rules provisions in detail have been made for the conduct of the meeting both ordinary and special of the village panchayat. Perusal of the No Confidence Motion Rules shows that they do not contain any provision in relation to the conduct of the meeting. Provisions for conduct of the meeting of the village panchayat are to be found in the Meeting Rules. The manner of submitting a requisition for convening a special meeting of the village panchayat to consider motion of no confidence against the Sarpanch or Up-Sarpanch is to be found in sub-section 1 & 2 of Section 35 and the No Confidence Motion Rules. But neither in Section 35 nor in the No Confidence Motion Rules we find provisions made as how many days notice should be given to the members of the Special meeting to be convened under Section 35. Therefore, in our opinion, for that purpose one will have to follow the provisions of the Meeting Rules because they lay down as to how many days notice of special meeting is to be given to the members. Section 35 provides that the

Sarpanch or Up-Sarpanch against whom the motion is to be moved is entitled to attend and participate in the meeting, and he is entitled to speak at the meeting. But there is no provision to be found made in Section 35 or in the No Confidence Motion Rules as to the manner in which the Sarpanch or Up-Sarpanch can exercise his right to participate and speak at that meeting. Provisions for that purpose are to be found in the Meeting Rules. Neither Section 35 nor No Confidence Motion Rules lay down as to what is to be done if the requisite quorum is not present at such meeting. But the Meeting Rules contain provisions in that regard. Neither Section 35 nor No Confidence Motion Rules makes provision dealing with the situation when the members present in the meeting disregard the authority of the presiding officer. Those provisions are to be found in the Meeting Rules. In our opinion, therefore, there is no reason why the provisions of the Meeting Rules to the extent that no contrary provision is made either in the Act itself or in the No Confidence Motion Rules should not apply to a meeting called under Section 35. In our opinion, if the provisions of the Meeting Rules are held to be applicable to a meeting called under Section 35, it will facilitate holding of meeting under Section 35 effectively. Therefore, in our opinion, it can be safely said that the provisions of the Meeting Rules generally apply to a special meeting convened under Section 35. However, such provisions of the Meeting Rules which are found to be contrary to the provisions contained either in the Act in relation to the holding of the special meeting for consideration of motion of no confidence against Sarpanch or Up-Sarpanch or in the No Confidence Motion Rules would not apply

to a meeting called under Section 35. Now taking up the question whether specifically provisions of Rule 17 of the Meeting Rules apply to a meeting called under Section 35 is concerned, in our opinion, the provisions of Section 17 will apply in a meeting called under Section 35. As observed above Section 35 contains a provision for submission of requisition by members to the Tahsildar for calling a special meeting of the village panchayat to consider the motion of no confidence against Sarpanch or Up-Sarpanch. It casts a duty on the Tahsildar to call a meeting for that purpose within seven days of the receipt of the requisition. But Section 35 does not contain any provision as to how that meeting is to be conducted, save and except to provide that the Sarpanch or Up-Sarpanch concerned shall have a right to attend and participate in that meeting. We have already observed above that perusal of No Confidence Motion Rules and the Form of the requisition shows that when the members of the village panchayat submit the requisition to the Tahsildar, what they actually do is that they request the Tahsildar to convene a special meeting of the village panchayat so that in that meeting they can move a motion of no confidence against Sarpanch or Up-Sarpanch. It is, thus, clear that moving of the motion of no confidence is not by submission of requisition to the Tahsildar. The requisition is only for calling a special meeting to facilitate moving of motion of no confidence. The motion of no confidence is actually moved in the meeting of the village panchayat and as there is no contrary provision to be found either in the Act or in the No Confidence Motion Rules, in relation to moving of a motion in a meeting of the village panchayat, Rule 17 of the Meeting

Rules which makes such a provision will apply. In the Meeting Rules there is a provision made for calling a special meeting of village panchayat because a requisition is received from members. Therefore, concept of convening a special meeting of the village panchayat as a consequence of requisition received from the members is to be found in the Meeting Rules itself and therefore, all those provisions contained in the Meeting Rules in relation to convening and holding of a special meeting of the village panchayat will apply to the special meeting convened under Section 35, subject to there being any specific contrary provision in the Act or in the No Confidence Motion Rules.

Perusal of the provision of sub-section 3A of Section 35 shows that provision makes difference between moving of a motion and carrying of a motion by requisite majority. Provision of sub-section 3-A of Section 35 reads as under :

(3-A) If a 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.

It is clear that in a special meeting of the village panchayat called for the purpose of consideration of motion of no confidence against the Sarpanch or Up-Sarpanch, a motion is to be moved in

the meeting.

18. We make it clear that though it is clear to our mind that the provisions of the Meeting Rules generally and Rule 17 in particular will apply to the above extent to a meeting called under Section 35, we are not deciding the question as to what is the consequence in relation to validity or otherwise of a motion of no confidence being passed against Sarpanch or Up-Sarpanch in violation or without following a particular Rule. That question will have to be decided in each case after considering the nature of the provision, whether the provision is mandatory or directory. In other words, though it is clear to our mind that the provisions of Rule 17 of the Meeting Rules are to be followed in passing the motion in a meeting called under Section 35, we are not deciding the question as to what is the consequence if the provisions are not followed and the motion is passed. Because, that question as to whether the provisions of Rule 17 are mandatory or directory has not been referred to us. In our opinion, therefore, the first question will have to be answered in the affirmative by holding that the provisions of the Meeting Rules generally and provisions of Rule 17 in particular apply to a meeting convened under Section 35.”

9. It is, therefore, obvious from the observations of the learned Full Bench that Section 35 does not contain any provision as to how a special meeting is to be conducted. The concerned Sarpanch or the Up-Sarpanch shall have a right to attend and participate in the

meeting. It was further held that moving of a motion of No Confidence is not by submitting the requisition to the Tahsildar. The requisition is merely for calling a special meeting to facilitate the moving of the motion of no confidence. Rule 17 of the Meeting Rules would therefore apply and by virtue of Rule 17, the motion can be moved.

10. After the judgment in Vishwas Pandurang case (supra) was delivered, the learned Full Bench of this Court in Tatysaheb Ramchandra Kale case (supra) has dealt with the issue of formally moving a motion of no confidence as required by Rule 17 of the Maharashtra Village Panchayat (Meeting) Rules. The view taken by the learned Full Bench in Vishwas Pandurang case (supra) was also considered. The learned Full Bench in Tatysaheb Kale case (supra) has concluded that a formal proposer or a seconder to the No Confidence motion is not mandatory and the absence of a proposer or seconder to the motion of no confidence under Rule 17 would not impinge the validity and legality of the motion of no confidence passed in a special meeting.

11. Paragraph Nos.18 to 21 in the Tatysaheb Kale judgment

(supra) read as under :-

“18. Since much store was laid on the judgment of the Division Bench of this Court in Vishnu Ramchandra Patil's case and since the Division Bench in the said case has relied upon the judgment of the full bench in Vishwas Pandurang Mokal's case it would be necessary to consider the said Division Bench Judgment. The Division Bench, in so far as the issue as to whether Rule 17 is directory or mandatory is concerned, relied upon the full bench judgment in Vishwas Pandurang Mokal's case and held that the said issue is no more res-integra in view of the full bench Judgment. In fact the full bench in Vishwas Pandurang Mokal's case has specifically held that the question as to the consequence of non-compliance of any rule will have to be decided in each case after considering the nature of the provision. The full bench has observed that as regards whether Rule 17 is mandatory or directory or consequence of non-compliance on the validity or otherwise on the confidence motion, the full bench observed that it was not deciding that question since the same was not referred to it. Hence the Division Bench in the instant LPA was right when it observed that the finding recorded by the Division Bench in Vishnu Ramchandra Patil's case that the issue as to whether Rule 17 is directory or mandatory is no more res-integra on account of the full bench judgment runs counter to the dictum of the full bench. After so observing the Division Bench in the instant LPA observed that it could not be persuaded to take the view as taken by the Division Bench in Vishnu Ramchandra Patil's case and therefore referred the issue to a larger bench. In so far as Vishnu Ramchandra

Patil's case is concerned, it is required to be noted that Section 44(3) of the BVP Act was not brought to the notice of the said Division Bench as also the judgment in K Narasimhiah's case (supra) was not cited before it. Hence the Division Bench in Vishnu Ramchandra Patil's case has rendered its decision oblivious of the said provision as well as the judgment of the Apex Court in K Narasimhia's case. The judgment in Vishnu Ramchandra Patil's case therefore does not state the correct position in law vis-a-vis whether Rule 17 is directory or mandatory.

19. The applicability of Section 44(3) of the BVP Act was sought to be questioned on behalf of the Appellant and the State on the ground that the said provision applies only when the proceedings of the Panchayat are conducted when there is a vacancy in the Panchayat and would therefore not apply to a meeting held for passing of a motion of no confidence. In support of the said contention reliance was sought to be placed on the heading of the said Section which is to the following effect; "Vacancy not to affect proceedings of Panchayat".

In so far as headings being used as a tool for interpretation of a provision is concerned. It is well settled that they cannot control the plain words of the provision, they also cannot be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous nor can they be used for cutting down the plain meaning of the words in the provision when only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision. (See Frick India Ltd. v/s.

Union of India, AIR 1990 SC 689).

In so far as sub-section 3 of Section 44 of the BVP Act is concerned, the said sub-section 3 can be said to be an exception to sub-sections (1) and (2) of Section 44 of the BVP Act. The language of sub-section (3) makes it very clear that it applies to all acts or proceedings of the Panchayat, and is not restricted to the meeting of the Panchayat held when there is a vacancy. Since the words are very clear and unambiguous, it is not necessary to take recourse to the heading for interpretation of the said provision. The said provision would therefore apply to a meeting held for passing of a motion of no confidence. Resultantly, the test whether the defect or irregularity affects the merits of the case would come into play.

It is further required to be noted that the provision akin to Section 44(3) of the BVP Act has been recognized as a feature of modern legislations. The said provision is inserted to put beyond challenge the defect of constitution of the statutory body and defects of procedure which have not led to any substantial prejudice. The Apex Court has nick-named the said provision as the "Ganga" clause thereby meaning it to be a clause cleansing the proceedings of any defects. An identical clause/section had come up for consideration before the Apex Court in B.K.Srinivasan and another etc. v/s. State of Karnataka and ors. AIR 1987 SC 1059 and thereafter in Akhil Bharat Goseva Sangh v/s. State of A.P. and ors., (2006 4 SCC 162. In B K Srinivasan's case the Apex Court was concerned with Section 76-J of the Mysore Town and Country Planning Act, 1961. The said [Section](#)

[76-J](#) read thus :-

"76 J. Validation of acts and proceedings--No act done or proceeding taken under this Act shall be questioned on the ground merely of,

(a) the existence of any vacancy in, or any defect in the constitution of the Board or any Planning Authority;

(b) any person having ceased to be a member;

(c) any person associated with the Board or any planning authority under [section 4F](#) having voted in contravention of the said section; or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(e) any omission, defect or irregularity not affecting the merits of the case."

In the said case [Section 13\(4\)](#) and Rule 33 required publication of Outline Development Plan as approved by the Government in the Official Gazette. What was published in the Gazette was a notice with Outline Development Plan as approved by the Government was available for the inspection at the office of the Planning Authority during office hours. The Apex Court held that on a proper construction of [section 13\(4\)](#) the publication complied with its provisions and that even if there was any defect it was cured by [Section 76-J](#). The said [Section 44\(3\)](#) therefore cleanses the proceedings of any defect if the same do not affect the merits of

the case.

Hence though we have come to a conclusion that Rule 17 of the Meeting Rules is directory however on the touchstone of Section 44(3) of the BVP Act and having regard to the fact that the resolution has been passed by a 2/3rd majority, any defect in the procedure relating to passing of the said resolution can be said to be cured, and therefore, on the application of Section 44(3) of the BVP Act, the resolution cannot be said to be vitiated on account of any infirmity in the proceedings.

20. Since reliance on behalf of the Appellant herein was sought to be placed on the judgment of the Division Bench in Janardan Shankar Watane v/s. CEO, Zilla Parishad, Amravati, 1965 Mh.L.J. Note No.2, as also the judgment of the Division Bench of this Court in Ganesh Raghunath Samel v/s. State of Maharashtra and ors. 2002(4) Bom.C.R.425 in support of their contention that Rule 17 is mandatory and non-compliance thereof result in the proceeding being vitiated, it would be necessary to consider the said two judgments.

In Janardan Shankar Watane's case the Division Bench was concerned with Rule 2 of the No Confidence Motion Rules. The said Rule as it then stood required that the special meeting under Section 35 of the BVP Act ought to be held within 7 days from the date of receipt of the requisition but before expiry of 15 days. The Division Bench held that the right to move a motion of no confidence was a creature of the Act which provides for exercise of that right in the manner prescribed by the rules and that where a statute gives a right to do something in a given manner,

it can be done only in that manner and in no other. The said Rule 2 was held to be a part of the right itself as such considered mandatory and a resolution passed in contravention was held to be illegal. In so far as the said Rule 2 is concerned, the same was in sync with Section 35(2) of the BVP Act, as [Section 35\(2\)](#) also provides that a meeting is to be called within 7 days from the date of receipt of the notice by the Tahasildar. It is in the said context, the Division Bench held that the said Rule is a part of the right itself, and is therefore, mandatory. However, in so far as Rule 17 is concerned, it is a part of the general rules applicable to meetings of the Panchayat, and non-compliance thereof cannot impinge upon the resolution which satisfies the requirements of Section 35(3) of the BVP Act.

In so far as the judgment in Ganesh Raghunath Samel's case is concerned, the Division Bench in the said case was concerned with [Section 35\(2\)](#) which as indicated above postulates that a meeting is to be held within 7 days from the date of receipt of the notice by the Tahasildar. The Division Bench held that a meeting held after the stipulated period of seven days would be illegal and all consequential action in pursuance of the said no confidence motion was required to be quashed and set aside. In Ganesh Raghunath Samel's case the Division Bench was concerned with the compliance of a substantive provision and it is in the said situation that the Division Bench held that the motion of no confidence passed in the meeting held after 7 days was illegal. In our view, the aforesaid two judgments in Janardan Shankar Watane's case and Ganesh Raghunath Samel's case (supra) do not further the

case of the Appellants that Rule 17 is mandatory and that there has to be a strict compliance thereof.

21. Finally to put the matter in perspective, the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirement of Section 35(3) of the Bombay Village Panchayats Act, 1958. The infraction that has occurred on account of the motion not being formally proposed and seconded cannot invalidate the motion if the same has been passed by fulfilling the requirements of Section 35(3) of the BVP Act, as the said infraction does not affect the merits of the case. Hence we hold that Rule 17 is directory, and the test laid down in Section 44(3) of the BVP Act namely whether the defect affects the merits of the case, would have to be applied, if a challenge is raised to such a motion. We accordingly answer the reference and remit the matter back to the Division Bench for the above Letters Patent Appeal being decided on merits."

12. In both these cases, though the Tahsildar who had convened the meeting may not have happily worded the text of the proceedings, it does appear that while conducting the said special meeting, he placed the requisition before the house and noted that the motion for considering 'no confidence', be taken up for discussion in the said meeting. Considering the law as is laid down in Tatyasaheb Kale case (supra), the Tahsildar appears to have commenced the meeting

by placing on record the requisition and by declaring that the said subject is being taken up for discussion.

13. In the proceedings, the Up-Sarpanch while dealing with his own case, has addressed the minds of the members present and defended his conduct as a Up-Sarpanch. Pursuant to his address, as nobody else expressed a desire to speak, the motion was put to voting and by a vote count of 12 against 3, the motion was carried. As such, the motion was passed by 4/5th majority.

14. In so far as the Sarpanch is concerned, she did not attend the meeting on the ground that she was unwell. Nevertheless, it appears that the ground cited was that she gathered tension because of the motion and an application was moved not by her, but by her son seeking an adjournment of the motion. As the application was not moved by the Sarpanch herself, it appears that it was not considered.

15. In the case of the Sarpanch as well, the motion was put to voting and was passed by 12 in favour and 3 against the motion which is by 4/5th majority.

16. Considering the above, I find that the view taken by the Full

Bench of this Court in Tatyasaheb Kale case (supra) would be applicable.

17. I also find that reference can be made to the judgment in the matter of Smt. Annapurnabai Ajabrao Vs. Annapurnabai Anandrao, reported in 1967 Mh.L.J. NOC 36, in which the Learned Division Bench of this Court has observed in paragraph No.16 as follows :-

“Even if it were to be assumed that there was some technical flaw in the proceedings of the meeting or in transmission of the results of the meeting to the Panchayat Samiti, we do not see how that could entitle the petitioner to claim to continue as Sarpanch of the Gram Panchayat. A Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, appropriate attitude of the petitioner as a person working for democracy whatever have been to tender her registration straightway. At any rate, it does not behave of democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader.”

18. In the light of the above, it is apparent that the motion was carried by more than 3/4th majority. Considering the law laid down

in Tatyasaheb Kale case (supra), no fault can be found in the manner in which the motion was tabled. The Sarpanch as well as the Up-Sarpanch were subjected to independent discussion and voting and proceedings were recorded separately.

19. In so far as the contention of the petitioners that the order of the competent authority dated 23/12/2016 thereby disqualifying Padambai and Ravi Rohidas, would affect the result of the special meeting, is concerned, I do not find that the said submission deserves to be entertained. On 16/11/2016, when the special meeting was convened, both Padambai as well as Ravi Rohidas were valid elected members of the Gram Panchayat. They have been disqualified from being members of the Gram Panchayat on the ground that they failed to submit their caste validity certificates.

20. In such circumstances, the learned Full Bench of this Court in the matter of Anant H.Ulahalkar and others Vs. Chief Election Commissioner and others (WP No.10478/2014) has held in its judgment dated 09/12/2016 that the elected person is required to produce his validity certificate considering the two proviso to section 9-A of the Maharashtra Municipal Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Failure to submit a

caste validity certificate would result in the disqualification of a Councilor automatically and with retrospective effect. This judgment of the learned Full Bench is now said to be a subject matter of the SLP before the Hon'ble Supreme Court.

21. In my view, the ratio laid down as above is only to give effect to the disqualification of a person who has failed to submit his caste validity certificate. This would not render all proceedings conducted in all the meetings prior to such disqualification, invalid only because such two members had participated in the proceedings prior to their disqualification. Their disqualification from the date of their nomination or election, is a deeming fiction which would not invalidate all meetings attended by them prior to their disqualification.

22. In the light of the above, I do not find that the no confidence motion passed against these two petitioners could be faulted, much less on technical grounds. Both these petitions, being devoid of merit, are therefore, dismissed.

23. At this juncture, learned Advocate for the petitioners prays for staying this judgment and for continuation of the interim relief

granted by the learned Vacation Court. Learned Advocates for the respondents oppose this request and further submit that even if the two candidates, who have been disqualified on 23/12/2016, are subtracted, in the case of the Sarpanch (being a woman and belonging to Scheduled Caste requiring $3/4^{\text{th}}$ majority for passing the no confidence motion), yet the count of the members present would be 13 and $3/4^{\text{th}}$ would then be $9.75 = 10$. Even then 10 persons can be said to have voted in favour of the no confidence motion.

24. I have considered the above. In the case of the Up-sarpanch, even if the disqualification of the two members on 23/12/2016 is retrospectively considered, the motion has been passed by $2/3^{\text{rd}}$ majority. 15 members were present and voted in the said meeting. Even if 2 votes are deleted, assuming the disqualifying with retrospective effect, 10 have voted against the said lady Sarpanch which percentage would be $3/4^{\text{th}}$ majority. Considering this aspect, the request for continuing interim relief is rejected.

(RAVINDRA V. GHUGE, J.)