

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11250 OF 2017

Ek Nath Gopal Thakur
Vs.
Gram Panchayat, Vangani & Ors.

....Petitioner
....Respondents

Mr. C.G. Gavnekar for Petitioner
Mr. Mihir Desai, Senior Counsel a/w. Mr. Sagar Talekar for Respondent
Nos. 3 to 8
Mr. S.D. Rayrikar, AGP for Respondent Nos.2 and 11

CORAM: M.S.SANKLECHA, J.

DATE : 30TH OCTOBER, 2017.

P.C:-

1. Not on board. Upon mentioning, taken up on production board for consideration.
2. This petition under Article 227 challenges the order dated 25th September, 2017 passed by the District Collector, Raigad (Respondent No.11). By the impugned order, dated 25th September, 2017 the Petitioner's application to set aside the No Confidence motion passed against him as Sarpanch of Village Vangani was rejected / dismissed.
3. The urgency in moving this petition today has arisen on account of

the fact that the election to the post of Sarpanch (being the post from which the Petitioner was unseated on 24th April, 2017) is being held tomorrow. Therefore, and if the petition is not heard today, the same would be rendered infructuous and an alleged illegality would be perpetuated.

4. The grievance of the Petitioner is only restricted to the procedure adopted in passing the no confidence motion unseating him as the Sarpanch i.e. without strictly following Section 35 of the Maharashtra Village Panchayat Act, 1958 (the Act) and Rule 2 of the Bombay Village Panchayat Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 (No Confidence Rules). According to the Petitioner, the above provisions would require, a notice being served upon the Petitioner along with the copy of the requisition received in the prescribed form, from members calling for a meeting of the Panchayat to express no confidence in the Petitioner. It is this absence of notice in the prescribed form which has vitiated the entire procedure of unseating the Petitioner from the post of Sarpanch of the Village viz. Passing of No Confidence Motion. Moreover, this prejudiced the Petitioner in making out a proper defence at the meeting held to vote on the no confidence motion against him. The Petitioner does not dispute the fact that the special meeting to consider the expression of No Confidence in the petitioner had been

moved by not less than one third of total number of members. It is also admitted that not less than two third members of the Panchayat i.e. six out of nine have expressed their No Confidence in the Petitioner.

5. Before dealing with the above grievances, it would be useful to reproduce Section 35 of the Act and Rule 2 of the No Confidence Rules read as under:

*“35. Motion of no confidence. -⁵[(1) A motion of no confidence may be moved by not less than ⁶ [one-third] of the total number of the members⁷ * * who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. ⁸ [Such notice once given shall not be withdrawn].*

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahasildar shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

⁵ These sub-sections were subs. For sub-sections (1), (2) and (3), *ibid.*, Sec. 9.

⁶ Subs. By Mah. Act 27 of 2000, Sec. 2 (w.e.f. 22.4.2000)

⁷ The brackets and words “(other than associate members)” were deleted by Mah. Act 21 of 1994, Sec. 19(1) (w.e.f. 22.4.1994).

⁸ These words were added by Mah. Act 10 of 1992, Sec. 3(1) (w.e.f. 28.4.1992).

(3) If the motion is carried by ¹[a majority of not less than two-third of] ² [* *] the total number of the members ³* * * 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, ⁴ [shall forthwith stop exercising all the powers and perform all the functions and duties shall vest in the Upa-Sarpanch 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 authorized by the Block Development Officer, till the dispute, if any, referred to under sub-section (3-B) 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 authorized under this sub-section shall, pending the

1 Subs. By Mah. Act 27 of 2000, Sec. 2 (w.e.f. 2.4.2000)

2 Omitted by Mah. Act 5 of 1997, Sec. 2 (w.e.f. 2.1.1997)

3 The brackets and words “(other than associate members)” were deleted by Mah. Act 21 of 1994, Sec. 19 (2)

4 These words were subs. For the words “shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in sub-section (3-B); and thereupon the office hold by such Sarpanch shall be deemed to be vacant” by Mah. Act 16 of 2012, Sec. 3(i) (a).

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:]

¹²*[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.]*

³⁴*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 a motion ⁵[is not moved or is not carried] by ⁶ [a majority of not less two-third of] ⁷[or, as the case may be, three-fourth, of] ⁸[*] **the total number of the members** ⁹[* * *] meeting of the panchayat, no such fresh motion shall be moved against the Sarpancha or, as the case may be, the Upa-Sarpanch within, a period of ¹⁰[one year] ¹¹[from the date of such special meeting.*

(3-B) If the Sarpanch or, as the case may be, the Upa-Sarpanch

1 Ins. By Mah. Act 28 of 2003 dated 8.8.2003, Sec. 4(a)(i)

2 Subs. for "Provided that" by Mah. Act 16 of 2012, Sec. 3(i) (b)

3 This Proviso was added by Mah. Act 5 of 1997, Sect. 2(2) (b)

4 Subs. for "Provided further that" by Mah. Act 16 of 2012, Sec. 3(i) (c).

5 These words were subs. for the words "is not carried" by mah. Act 10 of 1992, Sec. 3 (2) (a).

6 Subs. by Mah. Act of 27 of 2000, Sec. 2 (w.e.f. 2.3.2000)

7 Ins. by mah. 28 of 2003, Sec. 4(b).

8 Omitted by Mah. Act 5 of 1997, Sec. 2 (w.e.f. 2.1.1997).

9 The brackets and words "(other than associate members)" were deleted by Mah. Act 21 of 1994, Sec. 19(3)

10 These words were subs. for the words "six months" by Mah. Act 16 of 2001, Sec. 2 (w.e.f. 10.2.2001).

11 These words subs. by Mah. Act 16 of 2001, Sec.2 (w.e.f. 10.2.2001).

desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, ¹[within thirty days from the date on which it was received by him and his decision shall be final].”

Rule 2 of the No Confidence Rules reads as under:

2. (1) The members of a panchayat who desire to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch shall give notice thereof in the form appended hereto to the tahsildar of the taluka in which such panchayat is functioning. Where the members desire to move the motion of no-confidence against the Sarpanch as well as the Upa-Sarpanch, they shall give two separate notices.

(2) The notice under sub-rule (1) shall be accompanied by ¹[nine additional copies] thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary.

²[(2-A) The Tahsildar shall also publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar Office.

(2-B) & (3).....”

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¹ Resolution of no confidence.

² Sub-rules (2-A) and (2-B) inserted by MGG 2009, Part IV-B, Extraordinary P-3, dated 28.8.2009.

6. It is an undisputed position that on receipt of the notice on 17th April, 2017 from the Tahsildar, the Petitioner did not raise any objection to non-receipt of a copy of the requisitioning notice in the prescribed form moved by the members of the Panchayat calling for a special meeting to express their no confidence in the Petitioner. Nor was such objection taken during the special meeting of the Panchayat held on 24th April, 2017 leading to the passing of motion of no confidence. In fact in the dispute raised by the Petitioner before the District Collector under Section 35 (3B) of the Act no such plea of not being in the form has been specifically raised. Further there is no complaint that Rule 2 (2A) of the No Confidence Rules has not been complied. Therefore, the Petitioner had notice of the requisitioning notice in the prescribed form in terms of the above Rule 2 (2A) of the No Confidence Rules. Thus no prejudice could have been caused to the Petitioner.

7. In any event, the issue as raised in the petition even de-hors Rule 2 (2A) of the No Confidence Rules is no longer *res-integra*. This Court has in *Smt. Yamunabai Laxman Chavan & Ors. vs. Smt. Sarubai Tukaram Jadhava & Ors.. [2004 (2) MhLj 1004]* has inter alia, rejected an identical grievance as made by the Petitioner. It, inter alia, observed as follows:

“7. The essence of a motion of no confidence is the expression by the elected members of a legislative body of a want of confidence or faith in the person or persons against whom the motion is moved. A motion of no confidence is not a removal for misconduct and it is not in the nature of disciplinary action adopted on account of charges of misbehaviour. A motion of non-confidence is what it states it is: an expression of a lack of confidence in the person. ON the other hand, an in contradistinction to a motion of no confidence, the Act makes provisions for the removal of a member of the Gram Panchayat in Section 39. Section 39 contemplates the removal of any member of the panchayat, the Sarpanch or Upa-Sarpanch where he is guilty of (I) misconduct in the discharge of his duties; or (ii) of a disgraceful conduct; or (iii) neglect or incapacity to perform his duty; or (iv) where such person is persistently remiss in the discharge thereof. The provision for removal has to be distinguished from an expression of no confidence. A removal is a disciplinary measure and in view of the well settled position in law, a removal has to be on states grounds after holding an inquiry. An inquiry is in fact, provided by Sub-section (1) of Section 39. On the other hand, a motion of no confidence is the ultimate expression by the members of a collective body, of the expression of a lack of faith in the person against whom that motion is moved.

8. The distinction between a motion of no confidence and a motion of censure was emphasised in the judgment of three

Learned Judges of the Supreme Court in Babubhai Muljibhai Patel v. Nandlal Khodidas Barot. Mr. Justice H.R. Khanna speaking for the Bench observed thus:

“It is no doubt true that according to the form prescribed the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow therefrom that the ground must also be specified when the motion of no confidence is actually passed against a President. It is pertinent in this context observe that there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censured. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of the authority. The essential connotation of a no-confidence

motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members. Hence even if the form which is prescribed by the statute requires that the ground for misconduct be mentioned in the notice of intention to move the motion, it does not follow therefrom that the actual ground must be specified when the motion is passed.

9. Under the Bombay Village Panchayat Act, 1958, what is made mandatory is (I) The moving of a motion of no confidence by a stipulated number of members of the Gram Panchayat (one third); (ii) Those who move the motion must be entitled to sit and vote at a meeting of the panchayat; (iii) the furnishing of a notice requisition to the Tahsildar as prescribed; (iv) The convening by the Tahsildar of a special meeting of the Panchayat within a period of seven days of the receipt of the notice at the time and specified; (v) The entitlement of the Sarpanch and Upa-Sarpanch to speak or to otherwise participate in the proceedings and to vote upon the resolution; and (vi) The passing of the motion by a majority of not less than two-third of the total members of the panchayat entitled to sit and vote. The provisions which the legislature considered as being mandatory in order to constitute a valid motion of no confidence have been specified in Sub-sections (1), (2) and (3) of Section 35. While construing the rules what must be borne in mind is that Ac Act mandates the giving of a notice to the Tahsildar as prescribed. In construing as to which part of the rules is mandatory, regard must be had to the provisions of the

parent legislation because the legislature has indicated in clear terms therein those provisions in respect of which a punctilious compliance is expected. The members of the Gram Panchayat who seek to move a motion of no confidence against the Sarpanch or Upa-Sarpanch or both are required to furnish a notice of their intention to do so to the Tahsildar. Before he convenes the meeting, the Tahsildar has to be satisfied that the motion has been moved by one-third of the total number of members entitled to sit and vote. The Act then provides that the Tahsildar must convene a meeting of the Panchayat for considering the motion within a period of seven days. When he convenes a special meeting of the Panchayat, the Tahsildar furnishes an intimation to the members of the Panchayat including the Sarpanch and Upa-Sarpanch of the convening of the meeting. Sub-section (2) of Section 34 requires the Tahsildar to convene a special meeting of the panchayat for considering the motion and it is implicit therein that an intimation has to be furnished to all members of the Panchayat including the Sarpanch and Upa-Sarpanch who are sought to be proceeded against, in the event that the Sarpanch and the Upa-Sarpanch seek, in addition, copies of the actual requisition that has been issued by the members of the Panchayat, it is open to them to move the Tahsildar by submitting an application. However, it would be impermissible for the Court to hold that resolution which has been duly passed by a two thirds majority, upon a requisition moved by one third of the members of the panchayat eligible to sit and

vote, at a meeting convened by the Tahsildar in accordance with law with stand invalidated merely because the Tahsildar has not sent a copy of the actual requisition to the Sarpanch or the Upa-Sarpanch as the case may be. Such a requirement cannot be read into the provisions of Section 35(2). The provisions contained in Rule 2(2) must be regarded as directory having regard to the true nature and purpose of a motion of no confidence. A motion of no confidence is not akin to disciplinary proceedings or a provision for removal for misconduct. A removal for misconduct is punitive. In such a case, a person who is sought to be proceeded against has to be furnished with a charge sheet and the removal must take place by following an inquiry that is consistent with the principles of natural justice. A motion of no confidence on the other hand, does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. A motion of no confidence is the fundamental expression of the collective will of the members of a legislative body that they lack confidence in one of their own. The contention that the right to speak at the meeting given to a Sarpanch or Upa-Sarpanch requires that the requisition which has been moved be furnished to them cannot be accepted to. Should the Sarpanch or Upa-Sarpanch seek to have copies of the requisition, it is open to them to apply to the Tahsildar. However, where as in the present case the Sarpanch or Upa-Sarpanch chooses to participate in the meeting whereafter a resolution is duly passed by the requisite majority, it would stultify the

democratic process if the Court were to nullify the resolution on the ground that a copy of the requisition was not furnished to the Sarpanch or Upa-Sarpanch.

10 & 11

12. In the circumstances, both the authorities below have erred in setting aside the resolution of no confidence which was duly passed. The meeting was convened by the requisite number of members. The resolution was debated and discussed. Both the Sarpanch and Upa-Sarpanch participated in the meeting. The resolution was duly carried by a majority of two-third of those entitled to sit and vote at the meeting. The orders passed by the Collector and the Commissioner are in the circumstances unsustainable and accordingly shall stand set aside.”

(emphasis supplied).

7. Therefore, for the reasons stated hereinabove, in **Smt. Yamunabai Laxman Chavan** (supra.), there is no merit in the petition. Accordingly, petition is dismissed. No order as to costs.

(M. S. SANKLECHA, J.)