IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.74 OF 2017

Shri. Javaharlal Laxman Sonawane ..Petitioner
Versus
The Additional Collector,
Pune, Collector Office, Pune and others ..Respondents

Mr. Dilip Bodake for the Petitioner.
Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 to 3.

CORAM : R. M. SAVANT, J.
DATE : 5th JANUARY, 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 03.12.2016 passed by the Additional Collector, Pune, by which order, the dispute application filed by the Petitioner came to be dismissed.

2 The Petitioner herein was elected as a member of the Gram Panchayat, Shirsuphal, Taluka Baramati, District Pune. The Petitioner thereafter was elected as a Sarpanch of the said village. The Gram Panchayat of the said village consists of 13 members. A requisition was moved before the Tahsildar by 10 members of the Gram Panchayat on 10.10.2016 requesting the Tahsildar to convene a meeting to pass a "No Confidence Motion" against the Petitioner. The grounds mentioned were

that the Petitioner was behaving in an arbitrary manner and was not taking other members of the Gram Panchayat whilst conducting the affairs of the Gram Panchayat. The Tahsildar in terms of the provisions of the rules convened the meeting to pass the "No Confidence Motion" against the Petitioner on 17.10.2016. It seems that in the said meeting 12 members of the Gram Panchayat were present. The Petitioner significantly did not remain present in the said meeting. It seems that the Tahsildar had asked members who were present in the meeting, if anyone of them wanted to speak on the agenda of the said meeting. It appears that nobody spoke, though requested by the Tahsildar. The "No Confidence Motion" was carried against the Petitioner by a majority of 10:2 (wrongly referred as 12:2 in the impugned order). The outcome of the said voting was informed to all the members who were present in the meeting. Since the "No Confidence Motion" was passed by the 2/3rd majority, the Petitioner stood removed as a Sarpanch of the said Gram Panchayat.

3 The Petitioner thereafter in terms of the remedy available under Section 35(3-b) of the Maharashtra Village Panchayat Act, 1958, filed a dispute application before the Additional Collector. The said dispute application was numbered as Dispute Application No.200 of 2016. In the said dispute application various grounds were raised whilst

assailing the “No Confidence Motion” passed against the Petitioner. The said dispute application as indicated above has been rejected by the Additional Collector, Pune, by the impugned order dated 03.12.2016.

4 The gist of the reasoning of the Additional Collector as can be seen from the impugned order was that the procedure that was required to be followed has been followed by the Tahsildar whilst conducting the meeting on 17.10.2016 in which the “No Confidence Motion” was passed. The Additional Collector did not find any merit in the case of the Petitioner that the motion was not proposed or seconded as also the case of the Petitioner that the notice of the meeting was not served on the Petitioner. The Additional Collector was of the view that having regard to the democratic principles and having regard to the fact that the motion was passed by 2/3rd majority, no interference was called for with the “No Confidence Motion” passed in the said meeting dated 17.10.2016. The Additional Collector as indicated above has accordingly dismissed the said dispute application filed by the Petitioner.

5 The Learned Counsel appearing on behalf of the Petitioner sought to contend that the “No Confidence Motion” has been passed both against the Sarpanch and the Upa Sarpanch in one meeting i.e. on 17.10.2016 and therefore the said motion is vitiated on the said ground.

Reliance is sought to be placed on the judgment of a Learned Single Judge of this Court reported in ***2009(5) ALL MR 197*** in the matter of ***Sau. Budhiya Dayaram Jamunkar Vs. Additional Commissioner, Amravati and others***. It was also the submission of the Learned Counsel that the motion was not proposed and seconded which is mandatory. In support of the said contention reliance was sought to be placed on the judgment of a Division Bench of this Court reported in ***2013(3) ALL MR 16*** in the matter of ***Vishnu Ramchandra Patil Vs. Group Gram Panchayat and others***. In so far the contention as regards service of notice on the Petitioner i.e. Sarpanch is concerned, the Learned Counsel fairly stated he is not pressing the said contention.

6 Per contra, the Learned AGP Mr. S. D. Rayrikar would support the impugned order. It was the submission of Mr. S. D. Rayrikar that the fact that the motion was passed by 2/3 majority indicates that the Petitioner has lost the confidence of the house and therefore on mere technicalities the Petitioner cannot be permitted to continue as Sarpanch.

7 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. In so far as the ground that in one meeting motion has been passed both against the Sarpanch and Upa Sarpanch is concerned, though the said ground appears to have been

taken in the dispute application filed by the Petitioner before the Additional Collector as also in the written submissions, the said ground does not seem to have been urged before the Additional Collector as otherwise the Additional Collector has dealt with the contentions which were raised on behalf of the Petitioner before him. As indicated above, the said ground is amongst other grounds which have been taken by the Petitioner in the said dispute application. It is required to be noted that the Additional Collector in his order has observed that the procedure prior to the passing of the "No Confidence Motion" has been followed by the Tahsildar. The motion has been passed by 2/3rd majority i.e. 10 persons have voted in favour of the motion and two against it. In so far as the requirement of the motion to be proposed and seconded is concerned, as recorded by the Additional Collector in the impugned order, he had called upon the members who were present in the meeting if they had anything to say, but none spoke. However thereafter the motion was put to vote and as indicated above has been passed by a majority of 10:2. The Rule in question i.e. Rule 17 of the Bombay Village Panchayat Meeting Rules, 1959, postulates the motion to be proposed and seconded, the said Rule is held to be directory in nature by the Full Bench of this Court in Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde reported in 2014(6) Mh.L.J. 804 and it has been held that the motion would not be

vitiated, which has otherwise been passed by fulfilling the requirements of Rule 35(3). It has been held by the Full Bench of this Court that weightage is required to be given to the democratic principle that an elected person is entitled to continue in office till such time as he enjoys the confidence of the persons who comprise such bodies. In view of the judgment of the Full Bench, the judgment of the Division Bench in *Vishnu Ramchandra Patil*'s case (*supra*) would have no application. In so far as the issue of motion being passed against the Sarpanch and Upa Sarpanch in the same meeting is concerned, the said ground would also not aid the Petitioner for the reasons stated hereinabove, namely that the Petitioner has lost the confidence of the house and reinstating the Petitioner on a technical ground would only result in stalling the smooth functioning of the Gram Panchayat which symbolizes a local self government. In that view of the matter, the judgment of the Learned Single Judge in *Sau. Budhiya Dayaram Jamunkar*'s case (supra) would be of no assistance to the Petitioner. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]