

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3703 OF 2017

(UMESH SHALIGRAM NAGE & OTH.....VS..ADDITIONAL COLLECTOR, AKOLA & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.D.Chopde, Advocate for Petitioners.
Shri S.P.Deshpande, Addl.G.P. for Respondent Nos.1 & 2.
Shri K.S.Narwade, Advocate for Respondent No.4.

CORAM : S.C.GUPTE, J.
DATED : AUGUST 11, 2017.

Heard.

This petition challenges an order passed by the Collector of Akola on the challenge to disqualification of Sarpanch through No Confidence Motion passed by the members of Gram Panchayat. The Gram Panchayat consists of 11 members, 8 of whom voted in favour of the resolution and 1 voted against it out of 9 members who attended the meeting.

The appeal of respondent No.4-Sarpanch was allowed by the Additional Collector, Akola on the ground that the number of members of the Gram Panchayat being 11, $\frac{3}{4}$ th majority consists of 9 members ($\frac{3}{4}$ being a fraction of 9 i.e. 8.25). The appellate order of the Collector is sought to be challenged in the present writ petition by proponents of the resolution of no confidence on the ground that the fraction being 8.25, that is to say, within 0.5 of 8, the number should be rounded off to '8' and not '9'. Learned counsel relies on the judgment of the Supreme Court in the case of *State of U.P. Vs.*

Pawan Kumar Tiwari, reported in **(2005) 2 SCC 10** and a decision of the Division Bench of our Court in the case of *Anup Prakash Vyas vs. University of Pune*, reported in **2013(2) Mh.L.J. 630** in support of his submission that fraction below 0.5 should be rounded off to the previous number and not to the later. The two judgments referred by learned counsel for the petitioners were (i) under service law in connection with the treatment of fraction vis-a-vis a vacancy and (ii) in connection with passing marks as a percentage. In *Pawan Kumar Tiwari* (supra), the Court held that the fraction of one-half or more should be treated as '1' and if less than one-half it should be ignored for considering vacancies in service. So also, in the case of *Anup Prakash Vyas* (supra), the fraction with which the Court was concerned was pertaining to marks obtained at the examination of B. Arch. Even here, the Court held that there was no reason why ordinary concept of rounding off should not be applied in the case of marks obtained at the examination. The points involved in these cases are materially different from the point with which we are concerned in the present petition.

In the present case, we are concerned with the number of votes that are necessary for passing of a particular resolution. Here, if we round off the incomplete fraction to the earlier number, the obvious result is that the requisite majority is not met. In fact, there is a direct decision of a Full Bench of our Court in the case of *Ashok Maniklal Harkut Vs. Collector, Amravati and others*, reported in **1998 Mh.L.J. 378**, where a motion of no confidence was passed by the councilors. The Court held that the requirement of 2/3rd majority for a motion of no confidence to succeed is a mandatory provision; the number of votes must not be less

than 2/3, though it may be more. The Court held that the fraction cannot be ignored inasmuch as if it is ignored the majority will be less than 2/3 of the councillors. This decision has since been followed by a learned single Judge of this Court in the case of *Tanaji vs. Ushatai*, reported in **2013(5) Mh.L.J. 467**. In the premises, the question urged by learned counsel for the petitioners in the present case is no more *res integra*.

The writ petition is, accordingly, **dismissed**. No order as to costs.

Learned counsel for the petitioners prays for continuation of the *ad-interim* relief for a further limited period. Since, as observed above, the matter is no longer *res integra* and already covered by a decision of the Full Bench of our Court, there is no question of continuing the *ad-interim* relief. The request is accordingly **rejected**.

JUDGE