

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 11969 OF 2017

Ramesh Suryakant Indurkar ...Petitioner

versus

The State of Maharashtra and others ...Respondents

.....

Mr. A.S. Kale i/b M/s. Talekar and Associates, advocate for the petitioner  
Mr. S.N. Morampalle, A.G.P. for respondent Nos. 1 to 3  
Shri R.N. Dhorde, senior counsel i/b Mr. V.R. Dhorde, advocate for  
respondent Nos. 5 to 9 and 13 to 15

.....

WITH  
WRIT PETITION NO. 12075 OF 2017

Dropadabai s/o Bandu Kanse ...Petitioner

versus

The District Collector, Parbhani and others ...Respondents

.....

Mr. S.S. Gangakhedkar, advocate for the petitioner  
Mr. S.N. Morampalle, A.G.P. for respondent Nos. 1 and 2  
Shri R.N. Dhorde, senior counsel i/b Mr. V.R. Dhorde, advocate for  
respondent Nos. 4 to 9 and 12 to 14

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**CORAM : V. K. JADHAV, J.**  
**DATED : 24<sup>th</sup> JANUARY, 2018**

**PER COURT :-**

1. By consent of the parties, heard finally at admission stage.
2. Since the issue involved in both these writ petitions is similar  
i.e. passing of no confidence motion against the petitioners as

Sarpanch and Up-Sarpanch, respectively, of Gram Panchayat, Dighol, Tq. Sonpeth, District Parbhani and the same is confirmed by the Collector, Parbhani, by passing the separate impugned orders on 16.09.2017, both these petitions are being disposed of by this common order.

3. Brief facts giving rise to both the petitions are as follows:-

a) The petitioner in writ petition No.11969 of 2017 is a Sarpanch of the village Gram Panchayat, Dighol, Tq. Sonpeth, District Parbhani whereas the petitioner in writ petition No. 12075 of 2017 is the Up-sarpanch of the said Gram Panchayat. The said Gram Panchayat is consisting of 14 members including the Sarpanch and Up-sarpanch.

b) The respondent Nos. 5 to 15 in writ petition No. 11969 of 2017 have submitted a requisition to the Tahsildar, Sonpeth requesting him to convey a special meeting of all the members of the Gram Panchayat, Dighol in order to initiate the proceedings of no confidence motion against the petitioners in both these petitions. The special meeting was held regarding the resolution of no-confidence motion against the petitioners when the notice of said meeting was never served upon the petitioner in writ petition No. 11969 of 2017, whereas though the notice of no confidence motion

was served on the petitioner in writ petition No. 12075 of 2017, the said notice did not contain the grounds upon which the requisition of no confidence motion was initiated. On 31.07.2017, the motion of no confidence was passed against the petitioners by requisite majority in the special meeting. The petitioners in both the petitions have filed proceeding bearing No. e-Disnic No.101 of 2017 and e-Disnic No. 103 of 2017, respectively, before the Collector, Parbhani challenging the resolution dated 31.07.2017 passed by the members of the Gram Panchayat.

c) In the said disputes filed before the Collector, the petitioners have contended that the said no confidence motion was passed without following due procedure of law. None of the member proposed no confidence motion against the petitioners and none of the members have given confirmation. It was contended that the petitioners have every right to reply the no confidence motion against them. The respondents appeared in the disputes and filed their say/written arguments by justifying the validity and legality of the resolution of no confidence motion. The Collector, Parbhani by order dated 16.09.2017, after hearing the parties and on scrutinizing the material placed before him, in both the cases, has rejected both the disputes and confirmed the resolution dated 31.07.2017 of no confidence motion passed against the petitioners. Hence, these writ

petitions.

4. Learned counsel for the petitioner in writ petition No. 11969 of 2017 submits that due procedure as contemplated under Section 35 of Maharashtra Village Panchayat Act 1958 for passing no confidence motion is not followed, as in view of the said provision, for initiating any motion of no confidence against the Sarpanch and Up-sarpanch, there has to be a proposer and a seconder and the motion of no confidence has to be moved by at least 1/5<sup>th</sup> members of the Panchayat. The petitioner in the said writ petition has never received the notice regarding holding of the special meeting of the Panchayat on 31.7.2017, as the signature of elder brother of the petitioner on the service report is forged and fabricated. Learned counsel submits that the petitioner did not get the opportunity of being heard. In the meeting of no confidence motion only 12 out of 14 members were present and the petitioner against whom the motion of no confidence was passed, himself was not present in the said meeting. Learned counsel for the petitioners submits that the learned Collector in not considering all these aspects of the matter has committed error which is apparent on the face of record.

Learned counsel for the petitioner in writ petition No. 11969 of 2017 in order to substantiate his submissions placed reliance on the

following judgments:-

- i) Indubai Vedu Khairnar vs. State of Maharashtra and others, reported in (2003) 2 Bom. C.R. 239,
- ii) Budhiya Dayaram Jamunkar vs. Additional Commissioner, Amravati and others, reported in 2009 (5) Mh.L.J. 835

5. Learned counsel for the petitioner in writ petition No. 12075 of 2017 submits that in the proceeding of no confidence motion though there was no detail discussions of the grounds on which no confidence motion is moved, but under the pressure of local political leaders, respondent No.2 has directed respondent No.3 to mention that the special meeting is conveyed and no confidence motion was discussed and the same should be reflected in the minutes of the meeting. Though the petitioner has submitted her written explanation to the grounds of no confidence motion specifying her stand, however, the record shows that there is no discussion in the meeting on the explanation given by the petitioner. Learned counsel submits that though all these facts put-forth before the Collector, the said authority without considering the fact that the petitioner, a member being elected as Up-sarpanch is a lady, as such for moving the no confidence motion 3/4<sup>th</sup> majority of the total member is a pre-requisite and in absence of which any motion or requisition moved or carried does not hold the field. Learned counsel submits that on the day of

no confidence motion four members were not eligible to cast the votes on account of incurring disqualification and the no confidence motion is contrary to the provisions of Section 35(1) of the Village Panchayat Act.

6. Learned senior counsel for the contesting respondents in both the writ petitions submits that though the petitioners herein have elected as Sarpanch and Up-sarpanch, respectively, of the village Panchayat, however, while discharging their duties of the said posts, they have not taken the other members of the Panchayat in confidence. The petitioners have not given the details of payment received by the Gram Panchayat towards Taxes so also other expenses. They have not maintained the cleanliness in the village so also they have failed to get repaired the street lights in time. The petitioners have created hurdles in conducting the meeting of no confidence. Learned counsel submits that there was proper service on the petitioners. The petitioner in writ petition No. 11969 of 2017 has filed a false affidavit before the Collector, in the name of his brother to indicate that notice of no confidence motion is not served on his brother. The said affidavit does not bear signature nor the same is verified and sworn in before the competent authority.

7. Learned senior counsel for the respondents in order to

substantiate his contentions placed reliance on the following judgments:-

- i) Hanuman Rangnath Giram and others vs. The Divisional Commissioner, and others, reported in 2013 (3) ALL MR 143
- ii) Sanjay Pandurang Chavan and others vs. State of Maharashtra and others, reported in 2003 (4) ALL MR 242;
- iii) Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde and others, reported in 2015(1) ALL MR 497 (F.B.).

8. I have also heard the learned A.G.P. for the respondents State authorities.

9. Learned counsel for the petitioner in writ petition No. 11969 of 2017 vehemently submitted in terms of provisions of Rule 2(1) of the Bombay Village Panchayats Sarpanch and Up-sarpanch (No Confidence Motion) Rules 1975 (hereinafter for short referred as the "Rules of 1975") that in the event of a member of a Panchayat who desires to move a motion of no confidence against the Sarpanch or the Up-sarpanch there shall be two separate notices. In the instant case, a joint notice has been given to the Sarpanch and Up-sarpanch and as such, there is clear contravention of the provisions of Sub-Rule (1) of Rule 2 of the Rules of 1975. I do not find any substance in this submission for the reason that during the course of arguments,

the learned A.G.P. has pointed out from the record and proceedings that two separate notices have been issued to the Sarpanch and Up-sarpanch i.e. the petitioners in these two writ petitions.

10. Learned counsel for the petitioner writ petition No. 11969 of 2017 further submitted that in terms of sub-Rule (2-A) of Rule 2 of the Rules of 1975, the service of notices on the person against whom no confidence motion is moved is mandatory. Learned counsel submits that the petitioner was not present in his house and he was out of station on the relevant date and notice of the said no confidence motion shown to have been served on the elder brother of the petitioner viz. Sanjay Indurkar. The elder brother of the petitioner viz. Sanjay Indurkar has filed his affidavit before the Collector, contending therein that he was not served with the notice of no confidence motion issued against the petitioner and also denied that he had signed the copy of extract of service with regard to the no confidence motion meeting dated 31.07.2017.

11. On perusal of record and proceedings, it appears that the Talathi of Sajja Dighol, Tq. Sonpeth had submitted a report on 8.8.2017 to the Tahsildar with regard to the service of notice of no confidence motion dated 31.07.2017 and alongwith the said report, he submitted the abstract copies of notices. Since the petitioner has

raised objection that he was not served with the notice, the Collector has called report from Talathi, Dighol and the Tahsildar has submitted letter alongwith the report dated 5.8.2017 filed by the Talathi, Sajja Dighol. In the said report, the concerned Talathi has mentioned that he had been to the house of the petitioner but the petitioner was not present in the house and such notice of no confidence motion meeting was served on his elder brother viz. Sanjay Indurkar, who was present in the house at that time. During the course of hearing, the Collector has given direction to the Talathi and said Sanjay Indurkar to remain present on 1.9.2017 at the time of hearing. The said Talathi has identified Sanjay Indurkar before the Collector, and further stated that he had served notice on the said person, who happened to be the elder brother of the petitioner by name Sanjay Indurkar. Furthermore, the respondents also submitted affidavit of the servant of Gram Panchayat, who accompanied the Talathi to serve notice of no confidence motion on the petitioner. According to them, they had visited the house of the petitioner thrice and accordingly notice was served on the elder brother of Sarpanch viz. Sanjay Indurkar. Though the petitioner has filed so called affidavit of Sanjay Indurkar in the proceedings, however, copy of the said affidavit is produced on record before this Court and on perusal of the same, I find that the said affidavit filed before the Collector by the brother of the petitioner is without signature and the same is not

verified and sworn in before the competent authority.

12. Learned counsel for the petitioner submits that if the report of service of the petitioner is perused, it appears that the members who have not accepted the notice of the meeting and if the same has been accepted by other members of the family and it has been specifically mentioned in the report that the notice has been accepted by other members of the family on behalf of the Gram Panchayat member. However, similar endorsement is not there in respect of notice served on elder brother of the petitioner. I do not find any substance in the above submissions. In view of the affidavits of Gram Panchayat servant and the report submitted by the Talathi and the said Talathi has also identified said Sanjay Indurkar during the course of hearing before the Collector as the person on whom he served the notice issued against the petitioner, being elder member of the family of the petitioner, I find no substance in the submissions made on behalf of the petitioner that notice was not duly served on the petitioner.

13. Learned counsel for the petitioner has placed reliance on the judgment of this court in the case of **Indubai Vedu Khairnar vs. State of Maharashtra and others (supra)**, wherein this court has taken a view that in the event the dispute about service of notice of

the meeting of no confidence motion and if the application is moved to send the thumb impression to the finger print expert, the Collector, ought to have sent the thumb impression to the finger print expert when thumb impression was denied and was not attested. However, the facts of this case is altogether different. In the instant case, no such application was filed before the Collector. In the above cited case, the thumb impression was not attested even by the Tahsildar, who purportedly served notice and as such there was no evidence before the Collector that the thumb impression on acknowledgement receipt of the notice was of the petitioner therein.

14. Learned counsel for the petitioner has also vehemently submitted that during pendency of petition, respondent No.14 came to be appointed and nominated as Sarpanch on the said post which had fallen vacant due to removal of the petitioner. However, one Munja Shejul had preferred an appeal before the Collector, Parbhani seeking disqualification of respondent Nos. 8 and 14 under section 14 of the Maharashtra Village Panchayat Act 1958 and the learned Collector, held that respondent Nos. 8 and 14 were disqualified under Section 14 of the said Act. Learned counsel submits that respondent No.14, who came to be appointed/nominated as Sarpanch pursuant to the said post becoming vacant due to passing of no confidence motion against the petitioner by 2/3<sup>rd</sup> majority the said ineligible

member could not cast valid vote in the no confidence motion proceeding against the petitioner. The post of Sarpanch held by the petitioner was vacated by passing no confidence motion by 9 members, including respondent No.14 and since the appointment of respondent No.14 is *void ab initio*, owing to her ineligibility by submission of the false information, there is no 2/3<sup>rd</sup> majority as required for passing of no confidence motion. The no confidence motion passed against the petitioner lacks 2/3<sup>rd</sup> majority and thus liable to be set aside on this ground alone. I do not find any substance in this submission, as at the time of passing of no confidence motion, respondent No.14 was the member and accordingly she has validly casted her vote in the meeting held for passing of no confidence motion.

15. In writ petition No. 12075 of 2017, learned counsel for the petitioner has raised a ground that the no confidence motion was not carried out as per the provisions of Maharashtra Village Panchayats (Meetings) Rules, 1959 and thus non compliance of the said provisions would render the decision taken on the motion of no confidence, passed in exercise of Section 35 of the Act of 1958, is invalid and unlawful.

16. In the case of ***Tatyasaheb Ramchandra Kale vs. Navnath***

***Tukaram Kakde and others (supra)*** relied upon by learned counsel for the respondents, the Full Bench has taken a view that the requirement of Section 35(1) and (3) of the Maharashtra Village Panchayat Act, 1958, therefore, can be said to dent the requirement of the strict compliance of Rule 17 in the matter of motion of no confidence being proposed or seconded. The Full Bench has also observed that no confidence motion Rules do not provide for any such requirement of the motion being proposed or seconded and further observed that when the special rules do not provide for the same, a strict compliance of the general rules, for meetings is not expected. The Full Bench in para 21 of the judgment while concluding the issue has made the following observations:-

*"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.”*

17. In view of the above discussion and in view of the ratio laid down by the Full Bench in the aforesaid case, I find no substance in both the writ petitions. The writ petitions are accordingly dismissed. No costs.

**( V. K. JADHAV, J.)**

rlj/