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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6478 OF 2018

Smt.Sundarbai Dattu Dagale

..Petitioner

Versus

The Collector, District-Nashik and others

..Respondents

Mr.Raj Jaysing Khude, for the Petitioner.

Mr.C.D. Mali, AGP for the Respondent Nos.1 to 3.

Mr.Pratik i/b Mr. P.N. Joshi for the Respondent Nos. 4 to 13.

CORAM : REVATI MOHITE DERE, J.

DATED : 29th OCTOBER 2018

P.C.:

. Heard learned counsel for the parties.

1. By this Petition, the Petitioner has impugned the 'No Confidence Motion' passed against her; the order dated 24th November, 2017 passed by the Respondent No.2 i.e. the Tahsildar; as well as order dated 19th January, 2018, passed by the Respondent No.1 i.e., the District Collector, Nashik.

2. Mr.Khude, learned counsel for the Petitioner submits that, there was no reason/ justification for the Respondent Nos.4 to 13 to pass a 'No Confidence Motion' as against the Petitioner, which

consequently led to the Petitioner's dismissal as a Sarpanch of the Gram Panchayat, Khed. He submits that the Petitioner was acting as a Sarpanch for the last four and half years and that during the said period, none of the Respondent Nos. 4 to 13, had made any grievance/complaint as against the Petitioner, alleging incapability/in-activeness etc. before any Authority. He submits that the Respondent Nos.4 to 13, with a malafide intention and with an ulterior motive to deprive the Petitioner from performing her constitutional duties, had passed the 'No Confidence Motion', against her on 24th November, 2017. He, further, submitted that no documentary proof was produced by any of the members nor is there any mention of the same, in the motion expressing no confidence. He further submitted that the District Collector had failed to consider that the Respondent Nos.4 to 13 had also not made any complaint against the Petitioner's husband before any Competent Authority. According to Mr.Khude, learned counsel for the Petitioner, the passing of the 'No Confidence Motion' has the effect of Petitioner's removal from Office, under Section 39 of the Maharashtra Village Panchayats Act, 1959.

3. Learned counsel for the Respondent Nos.4 to 13 opposes

the Petition. He submits that no interference is warranted in the impugned orders as well as the 'No Confidence Motion' passed as against the Petitioner. He submits that by the act i.e. of passing the no confidence motion, the Petitioner is not sought to be removed under Section 39 of the said Act. He submits that the act of passing the no confidence motion falls under Section 35 of the Maharashtra Village Panchayats Act and is an expression of lack of faith and that the consequences under Section 35 and under Section 39 of the Maharashtra Village Panchayats Act, are distinct.

4. Perused the papers. The Petitioner was elected as a member of the Gram Panchayat, Khed in the year 2014 and thereafter as a Sarpanch, as the said post was reserved for Scheduled Tribe. The Respondent Nos. 4 to 13 were also elected as members of the Gram Panchayat in the year 2014 i.e. for the period from 2014 to 2018. The Respondent Nos.4 to 13 vide letter dated 18th November, 2017 expressed their desire to move a no confidence motion against the Petitioner (Sarpanch) before the Respondent No.2. The said motion was passed with 3/4th majority. On 24th November 2017, the 'No Confidence

Motion' was approved by the Tahsildar and the Petitioner was removed from the post of Sarpanch vide order dated 24th November 2017.

5. Being aggrieved by the order dated 24th November 2017, passed by the Tahsildar, Nashik, the Petitioner challenged the said order before the Respondent No.1 i.e. the District Collector, Nashik, by filing Gram Panchayat Dispute No.88 of 2017.

6. The Respondent No.1- the District Collector, Nashik, after hearing the parties was pleased to dismiss the Gram Panchayat Dispute filed by the Petitioner and held that the special meeting was valid and in consonance with the provisions of the Maharashtra Village Panchayats Act and as such the District Collector- i.e. the Respondent No.1, upheld the order passed by the Respondent No.2. Hence, this Petition.

7. The question is whether the Petitioner was removed under Section 39 of the Maharashtra Village Panchayats Act, as contended by the learned counsel for the Petitioner or has ceased to be the Sarpanch, pursuant to the 'No Confidence Motion'

passed by the members of the Gram Panchayat, under Section 35 of the said Act..

8. This Court in the case of **Yamunabai Laxman Chavan and others vs. Sarubai Tukaram Jadhav and others**¹, observed in Para 7 as under;

“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 removal for misconduct and it is not in the nature of disciplinary action adopted on account of charges of misbehaviour. A motion of no-confidence is what it states it is : an expression of a lack of confidence in the person. On the other hand, and 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 stated grounds after holding an enquiry. An enquiry 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.”.

1 2004(3)ALL MR 93

9. Admittedly, there is no breach of the provisions of Section 35 of the Maharashtra Village Panchayats Act, nor is it alleged by the learned counsel for the Petitioner. What is alleged or argued is, that the effect of passing the no confidence motion amounts to removal of the Petitioner. The said argument is completely misplaced, having regard to the judgment in Yamunabai's case (*supra*). Passing of a motion of no confidence is expression of lack of faith or confidence in the person, and as such, by no stretch of imagination can it be said that the person has been removed from the office as contemplated under Section 39 of the said Act. A motion of no confidence is not required to be based on a specific ground or charge. In the present case, the Petitioner ceased to be Sarpanch on the basis of the no confidence motion passed against her, under Section 35 of the Maharashtra Village Panchayats Act.

10. The case of **Smt. Annapurnabai Ajabrao vs. Smt. Annapurnabai Anandrao**² expounds the essence of a motion of no confidence, which reads thus :

“Even (a) Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have

² 1967 M.L.J. 36

clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, the proper attitude of the petitioner as a person working for democracy would have been to tender her resignation straightway. At any rate, it does not behave of a democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as also the sense of self-respect should have impelled the petitioner and persons situated in similar circumstances to gracefully submit to the decision of the majority and to walk out of the Gram Panchayat instead of raising frivolous contentions and forcing herself on the democratic institution which does not want her to hold that position.

Even if the petition were to be allowed on such technical grounds, the majority who do not desire the petitioner to lead them would take immediate steps to pass a resolution of no-confidence which could not be challenged in any manner and to throw her out. We do not think that petitions of this kind should be used as instruments for forcing unwanted persons as heads of democratic institutions.”

11. Similarly, in **Nimba Rajaram Mali v. Collector, Jalgaon**³

it is held thus,

“ In a democratic society what is important is the Will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected representatives responsible for the governance of such democratic institutions. As observed by the Apex Court in the case of Babubhai (supra), resolution cannot be faulted on the ground that there were no reasons or reasons were vague and lacked detailed specifications. Once the resolution of No Confidence motion is passed by a clear majority and in keeping with the requirements of the concerned statutory

³ 1999(1)BomCR546

provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedures laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes.”

12. In the present case, the resolution of no confidence was passed in accordance with Section 35 of the Maharashtra Village Panchayats Act and as such Section 39 has no application. Learned counsel for the Petitioner does not allege any breach of the provisions of Section 35. Having regard to the legal position, the impugned orders cannot be faulted. Accordingly, the Petition being devoid of merits is dismissed.

(REVATI MOHITE DERE, J.)