

mujahed

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2685 OF 2018

Shri Raviraj Sambhajirao Nimbalkar
Age: 45 Years Occ: Agriculturist
and Business,
Resident of Kalnakwadi,
Taluka Bhudargad,
District Kolhapur.

...Petitioner

V/s.

1. The Tahsildar, Bhudargad
Chief Executive Officer,
Taluka Bhudargad,
District Kolhapur
2. Grampanchayat Mouje Kalnakwadi,
Taluka Bhudargad, District Kolhapur,
Through Gramsevak.
3. Sau. Padma Jayasingh Mhasvekar
Age: Adult, Occ: Household,
4. Chandrakant Dinkar Gadekar
Age: Adult, Occ: Agriculturist
5. Eknath Govind Morbale
Age: Adult, Occ: Agriculturist
6. Bhimrao Shamrao Gurav
Age: Adult, Occ: Agriculturist
7. Sau. Rajani Ramesh Kolasakar
Age: Adult, Occ: Agriculturist
8. Sau. Sunita Dattatraya Warke
Age: Adult, Occ: Agriculturist

9. Sau. Sarika Digvijay Kumbhar
Age: Adult, Occ: Agriculturist

10. Sau. Archana Pratap Warke
Age: Adult, Occ: Agriculturist
(respondent no.3 to 9 resident of:
Mouje Kalnakwadi,
Taluka Bhudargad, District Kolhapur)

11. The State of Maharashtra ...Respondents

Mr. Pandit Kasar for Petitioner.

Mr. S.H. Kankal, AGP for Respondent Nos. 1 & 11.

Mr. Tanaji Mhatugade for Respondent Nos. 3 to 9.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 20TH MARCH, 2018.
PRONOUNCED ON: 28TH MARCH, 2018.

JUDGMENT :-

1. Rule. The learned AGP waives service for respondent nos. 1 and 11. The learned counsel appearing for respondent nos. 3 to 9 waives service. Other respondents are absent though served.

2. The matter is heard finally by consent of the parties who are present. Some of the relevant facts for the purpose of deciding this petition are as under.

3. Sometime in the year 2015, election for the grampanchayat of Maoje, Kalnakwadi, Taluka Bhudargad, District Kolhapur was conducted. The petitioner was elected as a member of the said grampanchayat and was subsequently elected as the Sarpanch of

the said grampanchayat.

4. On 21st November, the requisite number of members of the said grampanchayat issued a notice to the learned Tahsildar of Bhudargad, District Kolhapur under Section 35(1) to call a meeting for tabling a no confidence motion against the petitioner, on the ground that the petitioner was arbitrarily conducting administration of the said grampanchayat and on other grounds. On 23rd November, 2017, the learned Tahsildar issued a notice under the provisions of the Maharashtra Village Panchayats Act, 1959 for calling a meeting. A notice of the said meeting was served upon the petitioner. The meeting was accordingly held on 27th November, 2017 to consider a no confidence motion against the petitioner.

5. The petitioner filed a Regular Civil Suit No. 943/2017 thereby impugning the said notice dated 23rd November, 2017 issued by the learned Tahsildar before the learned Civil Judge Senior Division of Kolhapur seeking permanent injunction against the learned Tahsildar, Bhudargad from conducting meeting on 27th November, 2017 and inter alia praying for declaration that the said notice dated 23rd November, 2017 issued by the learned Tahsildar was null and void. The learned Civil Judge Senior Division issued a notice to the defendants to the said suit and granted ad-interim stay which was in force till 28th November, 2017. The learned Tahsildar was informed

about the said ad-interim order by the learned Government pleader. In view of the said communication received by the learned Tahsildar, no decision in the said meeting of passing a no confidence motion could be taken against the petitioner. On 28th November, 2017, the ad-interim injunction granted by the learned Civil Judge Senior Division came to an end. In the said suit, the learned Tahsildar and the learned Collector had filed an affidavit placing various facts on record and for opposing the said relief claimed by the petitioner.

6. The learned Tahsildar issued a notice on 29th November, 2017 for conducting a meeting for tabling the said no confidence motion against the petitioner on 30th November, 2017 at 10.30 a.m. at Grampanchayat office of Mauje, Kalnakwadi, Taluka Bhudargad, District Kolhapur. It is the case of the petitioner that the said notice dated 29th November, 2017 was not served upon the petitioner, though he was available in the grampanchayat office whole day on 29th November, 2017.

7. On 30th November, 2017, the petitioner did not attend the said meeting held by the learned Tahsildar on 30th November, 2017. In the said meeting, seven members were present out of nine and voted against the petitioner and passed a motion of no confidence on various grounds against the petitioner.

8. Being aggrieved by the said resolution of no confidence motion

passed against the petitioner on 30th November, 2017, the petitioner preferred an appeal i.e. Gram Panchayat Appeal No. 60/2017 before the learned Collector of Kolhapur under the provisions of Maharashtra Village Panchayats Act, 1959. By an order dated 2nd February, 2018, the learned Collector of Kolhapur dismissed the said appeal filed by the petitioner and held that the said meeting dated 30th November, 2017 conducted by the learned Tahsildar, Bhudargad, District Kolhapur was conducted after following the due procedure of law and further held that the said motion of no confidence passed against the petitioner was valid and legal. Being aggrieved by the order dated 2nd February, 2018 passed by the learned Collector dismissing the appeal filed by the petitioner, the petitioner filed this writ petition under Article 226 and 227 of the Constitution of India.

9. On 1st March, 2018, the petitioner applied for ad-interim relief before this Court. The respondent nos. 2 to 10 were not served by the petitioner on that date. This Court passed an ad-interim order directing the respondents not to hold election for the post of Sarpanch of Maoje, Kalnakwadi, Taluka Bhudargad, District Kolhapur till 20th March, 2018.

10. The respondent nos. 1 and 11 have filed an affidavit in reply to the petition. The respondent nos. 3 to 9 proceeded with the matter on the basis of denial.

11. Mr. Pandit Kasar, learned counsel for the petitioner invited my attention to the annexures to the writ petition including the minutes of the meeting held on 27th November, 2017 by the learned Tahsildar Bhudargad. Notice dated 29th November, 2017 and the minutes of the meeting dated 30th November, 2017 held by the learned Tahsildar, in which the no confidence motion came to be passed against the petitioner on various grounds. The learned counsel for the petitioner also invited my attention to the grounds raised in the appeal filed under Section 35(3-B) of the Maharashtra Village Panchayats Act, 1959 and also the findings rendered by the learned Collector in the impugned order.

12. It is submitted by the learned counsel that the learned Tahsildar had not served any notice dated 29th November, 2017 proposing to hold a meeting on 30th November, 2017 upon the petitioner, though the petitioner was available in the office of the grampanchayat on 29th November, 2017 throughout the day. It is submitted that under Section 35(2) of the Maharashtra Village Panchayats Act, 1959, the learned Tahsildar was bound to issue a notice upon the petitioner and was bound to provide a right to speak or otherwise to take part in the proceedings at the said meeting including a right to vote.

13. It is submitted that since no notice of the meeting proposed to

be held on 30th November, 2017 was issued upon the petitioner, the petitioner could neither exercise his right to speak nor to participate in the said proceeding at the meeting or his right to vote. He submits that the entire resolution passed in the said meeting held on 30th November, 2017 was thus illegal and in violation of Section 35(2) of the Maharashtra Village Panchayats Act.

14. The next submission of the learned counsel for the petitioner is that admittedly, the first notice issued by the learned Tahsildar was on 23rd November, 2017 for holding a meeting on 27th November, 2017. The learned counsel placed reliance on Section 35(2) of the Maharashtra Village Panchayats Act for considering a motion of no confidence in the office of the panchayat. It is submitted that admittedly, no resolution was passed in the said meeting held on 27th November, 2017 for carrying out the motion of no confidence against the petitioner.

15. The learned counsel placed reliance on Section 35(3-A) of the Maharashtra Village Panchayats Act and would submit that since in the meeting held on 27th November, 2017, no motion of no confidence was carried out against the petitioner, no motion of no confidence could have been moved for a period of one year from the date of the said meeting dated 27th November, 2017. In support of this submission, the learned counsel for the petitioner placed reliance on

a judgment delivered by full bench of this Court in case of **Viswas Pandurang Mokai Vs. Group Gram Panchayat, SHIHU & Ors., [2011(3) Mh.L.J. 500** and in particular paragraph 21. He also placed reliance on the judgment delivered by a division bench of this Court in case of **Ganesh Raghunath Samel Vs. State of Maharashtra & Ors., 2002(4) Bom.C.R. 425** and in particular paragraph 11. It is submitted by the learned counsel for the petitioner that since the motion for no confidence was though moved in the meeting held on 27th November, 2017 was admittedly not carried out in the said meeting, the learned Tahsildar suo-moto could not have called a meeting on 30th November, 2017 which was without a requisition from 2/3rd members of the grampanchayat.

16. The learned counsel for the respondent nos. 3 to 9 invited my attention to the averments made by the petitioner in the Regular Civil Suit No. 983 of 2017 filed by the petitioner before the learned Civil Judge Senior Division Kolhapur and would submit that on 24th November, 2017, the learned Civil Judge Senior Division issued a show cause notice to the learned Tahsildar as to why the temporary injunction as prayed by the petitioner could not be granted against him. The matter was adjourned to 27th November, 2017. He also invited my attention to the order dated 29th November, 2017 passed by the Civil Judge Senior Division dismissing the application (Exhibit-

5) filed by the petitioner inter alia praying for interim relief in the said suit. He submits that till 28th November, 2017, there was an ad-interim injunction in favour of the petitioner.

17. It is submitted by the learned counsel that in view of the ad-interim injunction granted by the learned Civil Judge Senior Division in favour of the petitioner which was in force till 28th November, 2017, the motion of no confidence which was moved against the petitioner by the requisite majority could not be passed. He submits that no sooner the said ad-interim injunction was vacated and the application (Exhibit-5) filed by the petitioner came to be rejected on 29th November, 2017, the learned Tahsildar rightly issued a notice for convening meeting on 30th November, 2017. He submits that the petitioner avoided to accept the service of the said meeting deliberately and did not remain present in the meeting held on 30th November, 2017 though he was fully aware about such meeting.

18. In so far as the submission of the learned counsel for the petitioner that since the motion of no confidence was not carried out in the meeting held on 27th November, 2017, the same could not have been moved for a period of one year from the date of such rejection is concerned, it is submitted by the learned counsel for the respondent nos. 3 to 9 that the motion of no confidence could not be passed against the petitioner, in view of the ad-interim injunction granted by

the learned Civil Judge Senior Division and the same was not rejected. The bar of one year thus provided under Section 35(3-A) of the Maharashtra Village Panchayats Act will not apply in this situation. In support of this submission, the learned counsel for respondent no.3 to 9 placed reliance on a judgment of this Court in case of ***Khandu s/o Bhivaji Jogdand Vs. State of Maharashtra & Ors, 2010(4) Mh.L.J 402*** and in particular paragraph 14 thereof. He submits that the said judgment squarely applies to the facts of this case and fully supports the case of respondent nos. 2 to 9. It is submitted that admittedly, the petitioner was present in the meeting held on 27th November, 2017 and had participated in the said meeting. He submits that the findings recorded by the learned Collector in the impugned order are not perverse and are in accordance with law and thus cannot be interfered with by this Court in this writ petition filed by the petitioner. He distinguished the judgments relied upon by the learned counsel for the petitioner.

19. Mr. Kankal, learned AGP for respondent nos. 1 and 11 adopted the submissions made by the learned counsel for respondent nos. 2 to 9. He also invited my attention to various paragraph from the affidavit in reply filed by respondent nos. 1 and 11 and would submit that the notice dated 23rd November, 2017 was admittedly served upon the petitioner. The petitioner however had filed regular civil suit

inter alia challenging the said notice before the learned Civil Judge Senior Division Kolhapur. The learned Civil Judge Senior Division had passed an ad-interim injunction which was in force till 28th November, 2017. He submits that the learned Civil Judge Senior Division ultimately rejected the said application (Exhibit-5) filed by the petitioner.

20. In so far as the notice dated 29th November, 2017 is concerned, it is submitted by the learned counsel that the said notice was served upon by the learned Talathi, Kalnakwadi upon the petitioner through whatsapp and was also pasted on the house of the petitioner by making panchnama, since the petitioner was not present at home at the time of effecting service upon the petitioner. He invited my attention to the said panchnama annexed to the affidavit in reply.

21. It is submitted by the learned AGP that the learned Tahsildar had received notice for requisition of meeting from the requisite majority of members for tabling a no confidence motion against the petitioner on 23rd November, 2017. He submits that the first as well second meeting were held within a period of 7 days from the date of the notice received from the members of the grampanchayat. He submits that in any event, since the no confidence motion could not be carried out in the meeting held on 27th November, 2017 in view of the ad-interim injunction granted by the learned Civil Judge Senior

Division, a fresh meeting was required to be called by the learned Tahsildar upon the said ad-interim order having been vacated by the learned Civil Judge Senior Division. The requirement of holding a meeting in this situation within a period of 7 days from the date of receipt of a notice under Section 35(1) of the Maharashtra Village Panchayats Act would not apply in this situation.

22. In so far as the reliance placed by the learned counsel for the petitioner on Section 35(3-A) of the Maharashtra Village Panchayats Act is concerned, the learned AGP vehemently submitted that the no confidence motion could not be considered in the meeting held on 27th November, 2017, in view of the ad-interim order passed by the learned Civil Judge Senior Division and was not rejected. No sooner the said ad-interim order passed by the learned Civil Judge Senior Division was vacated, the learned Tahsildar called for a meeting on 30th November, 2017 and carried out the said resolution of no confidence motion against the petitioner in accordance with law after following the due procedure under the provisions of Maharashtra Village Panchayats Act. He also placed reliance on the judgment of this Court in case of Khandu s/o Bhivaji Jogdand (Supra).

23. It is submitted by the learned AGP that the said meeting held on 27th November, 2017 was required to be adjourned at the instance of the petitioner, in view of the petitioner having filed a civil suit, inter

alia praying for injunction and declaration and in view of the petitioner having obtained ad-interim order. The petitioner thus cannot be allowed to take such plea that the second meeting was not held by the learned Tahsildar within 7 days from the date of receipt of notice under Section 35(1) of the Maharashtra Village Panchayats Act. He submits that the bar of not moving a fresh resolution for a period of one year under Section 35(3-A) of the Maharashtra Village Panchayats Act would not apply to the facts of this case, in view of the ad-interim injunction granted by the learned Civil Judge Senior Division in favour of the petitioner and against the learned Tahsildar and in view of the fact that the said no confidence motion could not be carried out in view of such ad-interim injunction.

24. The learned counsel for the petitioner in rejoinder reiterated his submission and strongly placed reliance on the judgments already referred to aforesaid. He submits that the learned Tahsildar has not proved that the petitioner was served with a copy of the notice dated 29th November, 2017 for proposing a meeting to be held on 30th November, 2017. The entire resolution passed in the meeting held on 30th November, 2017 is thus illegal being in violation of the provisions of Maharashtra Village Panchayats Act.

REASONS AND CONCLUSIONS

25. It is not in dispute that the members of grampanchayat had issued a notice under Section 35(1) for moving a motion of no confidence with requisite majority against the petitioner to the Tahsildar. On 23rd November, 2017, the learned Tahsildar had issued a notice convening a special meeting of panchayat for considering motion of no confidence within 7 days from the date of receipt of notice under Section 35(1) of the said Act. The meeting was accordingly held on 27th November, 2017 to consider a no confidence motion against the petitioner.

26. It is not in dispute that the petitioner had himself filed a Regular Civil Suit No. 983 of 2017 before the learned Civil Judge Senior Division, Kolhapur, impugning the validity of the said notice dated 23rd November, 2017 and inter alia praying for temporary injunction against the learned Tahsildar from conducting a meeting on 27th November, 2017. The petitioner had also applied for ad-interim stay before the learned Civil Judge Senior Division against the learned Tahsildar from holding the said meeting on 27th November, 2017. In the said application (Exhibit-5), the learned Civil Judge Senior Division had granted a ad-interim order against the learned Tahsildar for conducting the said meeting. During the course of the said meeting held on 27th November, 2017, the learned government

pleader representing the learned Tahsildar in the said proceedings before the learned Civil Judge Senior Division, conveyed the passing of ad-interim order to the learned Tahsildar by the learned Civil Judge Senior Division. It is not in dispute that in view of the said ad-interim order passed by the learned Civil Judge Senior Division in the application filed by the petitioner, no decision on the said no confidence motion could be taken in the said meeting held on 27th November, 2017. it is not the case of any of the parties that the said no confidence motion was rejected in the said meeting held on 27th November, 2017 on merit or otherwise.

27. A perusal of the record further indicates that the said ad-interim order granted by the learned Civil Judge Senior Division came to be vacated on 28th November, 2017. The learned Tahsildar accordingly issued a notice on 29th November, 2017 for convening a meeting for tabling no confidence motion against the petitioner on 30th November, 2017. I am thus not inclined to accept the submission of learned counsel for the petitioner that there was any violation of Section 35(2) of the said Act by the learned Tahsildar by not calling a meeting within 7 days from the date of receipt of a notice under Section 35(1). The said notice admittedly was received under Section 35(1) on 23rd November, 2017. This Court in case of **Nandkishor Shrimantrao Deshmukh Vs. Presiding Officer/Tahsildar, Jafrabad & Ors,**

2004(4) Bom.C.R. 592 has held that the date of receipt of notice under Section 35(1) has to be excluded while computing the period of 7 days under Section 35(2).

28. Be that as it may, the fact remains that the first meeting was called within 7 days from the date of receipt of the notice under Section 35(1) by the learned Tahsildar and a meeting was accordingly held on 27th November, 2017. It is an admitted position that in the said meeting, the said “no confidence motion” could not be passed in view of the ad-interim injunction granted by the learned Civil Judge Senior Division. The petitioner himself having obtained ad-interim injunction by filing a civil suit before the learned Civil Judge Senior Division thereby impugning notice dated 23rd November, 2017 issued by the petitioner cannot be allowed to raise a plea that the second meeting was not held within 7 days from the date of receipt of the notice under Section 35(1) of the said Act by the learned Tahsildar. In my view, even if the period during which the ad-interim order obtained by the petitioner is not excluded, even the second meeting was held within 7 days from the date of requisition received under Section 35(1) of the said Act. The date of receipt of notice has to be excluded for computation of 7 days under Section 35(2). There is thus no merit in the submission of the learned counsel for the petitioner that the meeting was not held by learned Tahsildar within 7

days from the date of receipt of the notice under Section 35(1) or that there was any violation of Section 35(2) of the said Act by the learned Tahsildar.

29. In so far as the submission of the learned counsel for the petitioner that the petitioner was not issued notice, thus could not participate in the meeting held on 30th November, 2017 is concerned, a perusal of the affidavit in reply filed by the learned Naib Tahsildar, Bhudargad dated 19th March, 2018 and the annexures there to clearly indicates that the learned Tahsildar had issued a notice on 29th November, 2017, informing the petitioner that on 30th November, 2017, a no confidence meeting would be held at 10.30 a.m. in grampanchayat office, Kalnakwadi. The said notice was served upon the petitioner through whatsapp and the said notice was also pasted on the house of the petitioner by making a panchnama, since the petitioner was not present in his house at the time of effecting service upon the petitioner. I am inclined to accept the submission made by the learned AGP that the petitioner was avoiding the service of notice. The petitioner thus cannot be allowed to raise a plea that he was not served with the notice dated 29th November, 2017 or that he was not allowed to participate in the meeting. The petitioner did not attend the said meeting held on 30th November, 2017 and thus in my view there is no violation of Section 35(1) of the said Act by the

learned Tahsildar.

30. In so far as the submission of learned counsel for the petitioner that no confidence motion could not have been moved before the expiry of one year from the date of special meeting held on 27th November, 2017 in view of Section 35(3-A) is concerned, in view of the fact that no such confidence motion could be carried out in the said meeting, in my view this submission of learned counsel is totally without merit. It is also not in dispute that the petitioner himself had filed a civil suit before the learned Civil Judge Senior Division inter alia impugning the notice dated 27th November, 2017 issued by the learned Tahsildar and had also applied for injunction against the learned Tahsildar from holding the said meeting.

31. Admittedly, the ad-interim injunction was granted by the learned Civil Judge Senior Division in favour of the petitioner and against the learned Tahsildar on 27th November, 2017. In the meeting held on 27th November, 2017, the petitioner was present. The learned government pleader was representing the learned Tahsildar in the said proceedings before the learned Civil Judge Senior Division filed by the petitioner informed the learned Tahsildar about the said ad-interim order. The said ad-interim order was in force till 28th November, 2017. In view of the said ad-interim order passed at the instance of the petitioner by the learned Civil Judge

Senior Division, though the said no confidence motion was moved by the members of grampanchayat against the petitioner in the meeting held on 27th November, 2017, the same admittedly could not be carried out. The said no confidence motion moved by the members of the grampanchayat was admittedly not rejected in the said meeting but was postponed.

32. In my view, the provisions of Section 35(3-A) of the said Act would not be thus attracted to the facts of this case. No bar of moving a no confidence motion within a period of one year from the date of earlier special meeting held in which the motion was not carried out will apply in this situation. The petitioner having obtained a stay against the learned Tahsildar from carrying out the resolution under Section 35(2) cannot be allowed to raise a plea that the resolution of no confidence motion could not have been carried out in the meeting held on 30th November, 2017, in view of bar under Section 35(3A), Section 35(3-A) would have applied if no confidence motion would have been rejected on merit in the said special meeting held on 27th November, 2017.

33. This Court in case of *Khandu s/o Bhivaji Jogdand Vs. State of Maharashtra & Ors* (Supra) after adverting to the judgment of this Court in case of ***Prakash s/o Barku Patil Vs. State of Maharashtra, 1997(4) ALL MR 267*** and also the judgment of Supreme Court in

case of **Ramesh Vs. Sheshrao, 1998 AIR SCW 4141**, has considered similar facts and has held that the provisions of Section 35(3-A) of the said Act would not be attracted in view of the fact that the first meeting was stayed by order passed by the learned Civil Judge Senior Division below Exhibit-5. In my view, the said judgment of this Court would squarely apply to the facts of this case. I am respectfully bound by the said judgment.

34. A perusal of the record further indicates that there were several allegations made against the petitioner in the notice for moving a motion of no confidence under Section 35(1) of the said Act before the learned Tahsildar. Out of 9 grampanchayat members, 7 members were present in the said meeting held on 30th November, 2017 and passed the said no confidence motion against the petitioner and recorded various reasons in the said resolution of no confidence motion passed against the petitioner. In my view, the said resolution was passed in accordance with law and in compliance with all the mandatory conditions prescribed under Section 35 of the said Act. The said resolution was admittedly passed by requisite majority prescribed under Section 35(1) of the said Act. This Court in catena of decisions has held that the wish of the majority has to be considered while considering a challenge to the no confidence motion against a member including the Sarpanch of the grampanchayat.

35. In so far as the submission of the learned counsel for the petitioner that no service was effected upon the petitioner of the notice dated 29th November, 2017 is concerned, in my view there is no merit in this submission. This submission is factually incorrect. There is no rejoinder filed by the petitioner to the averments made by the State Government in the affidavit in reply filed before this Court. In my view, the petition is devoid of merits. I therefore pass the following order:

(I) Writ Petition No. 2685 of 2018 is dismissed. The ad-interim order passed by this Court on 1st March, 2018 is vacated. Rule is discharged. There shall be no order as to costs.

(R.D. DHANUKA, J.)