

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

WRIT PETITION NO. 3327 OF 2017

Madhukar Kanu Gaikar and others ... Petitioners
Versus
The Additional District Collector and others ... Respondents

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Mr. C. G. Gavnekar a/w Suhan S. Deokar for Petitioners.
Mrs. Geeta Golatkar, AGP for Respondent Nos. 1, 2 and 3.
None for Respondent No.5.

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CORAM : M. S. SONAK, J.

DATE : 27th APRIL, 2018

P. C.:

1. Heard Mr. Gavnekar, learned Counsel for the Petitioners and
Mrs. Geeta Golatkar, learned AGP for Respondent Nos. 1, 2 and 3.

2. On 17th April, 2017 this Court made the following order:-

*“Not on board. At the request of Mr. Gavnekar, taken
up in the production board.*

*2. Heard Mr. Gavnekar, learned Counsel for the
petitioner, and Mr. Rayrikar, learned A.G.P. for
respondents No. 1 to 3.*

*3. Mr. Gavnekar states that respondent No.5, Upa-
Sarpanch is the only contesting respondent.*

4. *In view thereof, issue notice to the 5th respondent, returnable on 4th May, 2017. Notice to indicate that subject to the time constraint and convenience of the Court, petition will be disposed of finally at the stage of admission. Notice shall further indicate that despite service if respondent No.5 does not appear, the Court will proceed to decide the petition on its own merits.”*

3. On 15th June, 2017, this Court recorded that Respondent No.5 has been duly served. In fact, Mrs. Ranjana Todankar even appeared on behalf of Respondent No.5.

4. On 26th July, 2017 this Court recorded the Petitioners' statement that no relief is claimed against Respondent Nos. 4, 6 and 7.

5. Since, in the order dated 17th April, 2017, it was made clear that this petition will be disposed of finally at the stage of admission and further that despite service Respondent No.5 does not appear, this Court will proceed to decide the petition on its own merits, it is only appropriate that this petition is disposed of on merits.

6. Challenge in this petition is to the order dated 8th February, 2017 (Exhibit- “H”) made by Additional Collector, Raigad, allowing the appeal instituted by Respondent No.5 against the motion of no confidence passed on 26th October, 2016 expressing no confidence against Respondent No.5, who was Up-Sarpanch of the village Panchayat of Respondent No.4 Kon, Adivali, Taluka Panvel.

7. Record indicates that on 26th October, 2016 a motion of no confidence was passed against both the Sarpanch as well as Up-Sarpanch. Out of 11 members of the Panchayat, 9 members expressed no confidence against the Sarpanch as well as Up-Sarpanch.

8. The Sarpanch respecting democratic traditions, has chosen not to question the motion of no confidence. However, the Up-Sarpanch – Respondent No.5 instituted an appeal under Section 35 (3B) of the Maharashtra Village Panchayat Act, 1958 (the said Act) before the Additional Collector, Raigad who by the impugned order dated 8th February, 2017 has set aside the motion insofar as the Up-Sarpanch – Respondent No.5 is concerned.

9. The Additional Collector, in the impugned order has reasoned that since, the Sarpanch had never proceeded on any leave, the Up-Sarpanch-Respondent No.5 had no occasion to function as the Sarpanch. In this view of the matter, there was no question of expressing any want of confidence in the Up-Sarpanch – Respondent No.5, since, none of the members had any occasion to see or experience the functioning of the Up-Sarpanch – Respondent No.5 as the Sarpanch of the Panchayat.

10. From the perusal of the impugned order, it is seen that the Additional Collector has not found fault with any of the procedural requirements with regard to the motion of no confidence. Only ground on which the motion has been interfered is the aforesaid ground. Such a ground is totally untenable and unsustainable. Such a ground betrays the understanding of the democratic functioning of the Panchayat which are basic units of local self government.

11. The position of Up-Sarpanch is an elected post. An incumbent to this post can continue in such a post as long as he/she enjoys the confidence of the members of the Panchayat. In

this case, 9 out of 11 members have overwhelmingly expressed no confidence with the Up-Sarpanch – Respondent No.5. On the spacious plea or on the basis of the untenable reasoning of the Additional Collector, the Respondent No.5 cannot cling to the post of Up-Sarpanch when 9 out of 11 members have lost their confidence in her. The motion of no confidence was overwhelmingly supported by 9 out of the 11 members of Panchayat. The Additional Collector has completely misconstrued the interim order made by this Court in Writ Petition No. 6083 of 2015. The interim order does not even remotely endorse the reasoning of the Additional Collector.

12. For the aforesaid reasons the impugned order dated 8th February, 2017 is set aside. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(M. S. SONAK, J.)