

Anand

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

WRIT PETITION NO. 11783 OF 2018

Tukaram Dattatray Kale

.Petitioner

Vs.

- | | | |
|----|--------------------------|--------------|
| 1. | Chandrakala Sudam Gavade | .Respondents |
| 2. | Ganesh Baban Bhase | |
| 3. | Puja Anil Bhase | |
| 4. | Ujjwala Vijay Chavan | |
| 5. | Savita Anil Bhase | |
| 6. | Dinkar Dnyanoba Bhase | |
| 7. | Gramsevak | |
| 8. | Hon'ble Tahsildar, Khed | |
| 9. | Hon'ble Collector | |

Mr. S. S. Shah a/w Mr. K. Joshi i/b. ERGO JURIS, Advocate, for the Petitioner

Mr. P. J. Pawar, Advocate, for the Respondent Nos. 1 to 6

Mr. S. D. Rayarikar, AGP, for the Respondent Nos. 8 & 9 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 30.10.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 09.04.2018 passed by the learned Collector, Pune in Dispute Application No. SR / 03 / 2018, by which the learned

Collector was pleased to reject the Petitioner's Application filed under Section 35 (3B) of the Maharashtra Village Panchayats Act, for setting aside the no confidence motion, passed against the Petitioner.

3. The Petitioner was elected as the Up-sarpanch of Grampanchayat Sangurdi, Taluka – Maval, District – Pune in 2015. The Respondent Nos. 1 to 6 are the members of the said Grampanchayat, Sangurdi and Respondent No. 1 i. e. Chandrakala Sudam Gavade is the Sarpanch of the said Grampanchayat. It is alleged by the Petitioner that the Respondent Nos. 1 to 6 in collusion with each other, gave a notice to the Tahsildar on 15.12.2017, expressing their no confidence in the Petitioner. The notice sent by the Respondent Nos. 1 to 6 to the Tahsildar is at Exh. A at page 10 of the Petition. Pursuant to the said notice, the Respondent No. 8 i. e. The Tahsildar, Khed called for a meeting of the Grampanchayat, Sangurdi, on 21.12.2017. Accordingly, a special meeting was held on 21.12.2017 in the office of Grampanchayat, Sangurdi. The members of the Grampanchayat, Sangurdi alleged that the

Petitioner was acting as per his own will and that he did not take the members into confidence etc. It was also alleged that the Petitioner did not disclose or provide a copy of the budget of the ongoing work of road and anganwadi etc. The Petitioner was given an opportunity to present his version. Thereafter, the no confidence motion was passed with 6:1 votes on 21.12.2017. Being aggrieved by the said action, the Petitioner filed a Dispute Application No. SR / 03 / 2018 under Section 35(3B) of the Maharashtra Village Panchayats Act before the learned Collector, Pune. The learned Collector after hearing both the sides was pleased to dismiss the Application of the Petitioner vide order dated 09.04.2018.

4. Learned counsel for the Petitioner submits that the allegations in the notice were in the nature of allegations that came within the purview of Section 39 of the Maharashtra Village Panchayats Act and not under Section 35 of the said Act and as such, the passing of the no confidence motion, had the effect of Petitioner's removal from office under Section 39 of the said Act. He submitted that the allegations against the Petitioner

were baseless and that there was no concrete evidence produced in support of the same.

5. Learned counsel for the Respondent Nos. 1 to 6 opposed the Petition and submitted that no interference was warranted in the impugned order. Learned counsel relied on the Judgment of this Court (Nagpur Bench) in the case of *Sau. Renuka Thavru Chavhan Versus Additional Commissioner, Amravati Division & ors.*, reported in **2009(3) ALL MR 503**. Learned counsel for the Respondent Nos. 1 to 6 relying on the said Judgment submitted that this Court had held that the equity relief in writ jurisdiction cannot be utilized for the purpose of continuing in the office, without having the majority support, as that would be contrary to the democratic values.

6. Perused the papers. The action taken against the Petitioner, was pursuant to the no confidence motion passed by the members of the Grampanchayat, Sangurdi. This Court in the case of *Yamunabai Laxman Chavan and others vs. Sarubai*

Tukaram Jadhav and others¹, 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

¹ 2004(3)ALL MR 93

expression of a lack of faith in the person against whom that motion is moved.”.

7. 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 from office, under Section 39 of the Maharashtra Village Panchayats Act. 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 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 the Up-sarpanch on the basis of the no confidence motion passed against him, under Section 35 of the Maharashtra Village Panchayats Act.

8. The case of *Smt. Annapurnabai Ajabrao vs. Smt. Annapurnabai Anandrao*² expounds the essence of a motion of no confidence. The relevant para 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 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

² 1967 M.L.J. 36

that petitions of this kind should be used as instruments for forcing unwanted persons as heads of democratic institutions.”

9. 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 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

³ 1999(1)BomCR546

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.”

10. 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 order cannot be faulted. Accordingly, the Petition being devoid of merits is dismissed.

11. At this stage, learned counsel for the Petitioner seeks continuation of the ad-interim relief granted on 20.04.2018, for a period of six weeks. Accordingly, the ad-interim relief to continue for a period of six weeks from today.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)