

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11116 OF 2018

Kalpana Dhanaji Parit ... Petitioner
Vs.
The District Collector, Kolhapur and others ... Respondents

Mr. Prashant Bhavake for Petitioner.
Mr. S. H. Kankal, AGP for Respondents No.1 and 2-State.
Mr. D. H. Pawar for Respondents No.4 to 9.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 12, 2018

P.C. :

Heard Mr. Bhavake, learned Counsel for the petitioner, Mr.Kankal, learned AGP for respondents No.1 and 2-State and Mr.Pawar, learned Counsel for respondents No.4 to 9 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 22.06.2018 passed by the respondent No.1 - Collector, Kolhapur in Dispute Application No.00021 of 2018. By that order, respondent No.1 dismissed the dispute application filed by the petitioner under Section 35(3-B) of the Maharashtra Village Panchayats Act (for short 'Act').

3. In support of this Petition, Mr. Bhavake strenuously contended that respondent No.1 committed serious error in applying third proviso to sub-section (3) of Section 35 of the Act in the present case. Third proviso to sub-section (3) of Section 35 lays down that where the office of the Sarpanch is held by a woman Sarpanch, such motion of no-confidence has to be carried only by a majority of not less than 3/4th of the total number of the members, who are for the time being entitled to sit and vote at any meeting of the Panchayat. He submitted that in all 9

persons are elected as members of respondent No.3 - Group Grampanchayat, Gavase, Taluka - Ajara, District - Kolhapur (for short 'Grampanchayat'). Respondents No.4 to 9 herein gave notice dated 26.04.2018 to Tahsildar Ajara proposing to pass no-confidence motion against the petitioner. On the same day i.e. on 26.04.2018, Tahsildar, Ajara convened a meeting on 02.05.2018 at 11.00 a.m. for considering no-confidence motion against the petitioner in the office of Grampanchayat. He invited my attention to the extract of the attendance roster of the meeting convened on 02.05.2018, which shows that all the members attended the said meeting. He also invited my attention to the minutes of the special meeting dated 02.05.2018 and submitted that out of 9 members, who were present, respondents No.4 to 9 (6 in number) voted in favour of no-confidence motion and Tahsildar, Ajara declared that as the motion is carried by a majority of not less than $2/3^{\text{rd}}$ (6/9) of the total number of the members who were for the time being entitled to sit and vote, the proceedings of the meeting are vitiated. In short, he submitted that as the office of the Sarpanch is held by the petitioner, who is a woman Sarpanch, such motion of no-confidence has to be carried only by a majority of not less than $3/4^{\text{th}}$ and not $2/3^{\text{rd}}$ of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat. In support of this submission, he relied upon the Full Bench decision of this Court in ***Tatyasaheb R. Kale Vs. Navnath T. Kakde*, 2014 (6) Bom.C.R.737**, and in particular following portion of paragraph 12 thereof:

“12. ... The second safeguard is that the resolution has to be passed by $2/3^{\text{rd}}$ of the members who are entitled to sit and vote, which in respect of a woman Sarpanch is $3/4^{\text{th}}$ of the members who are entitled to sit and vote. ...”

4. Mr. Bhavake further submitted that no opportunity was given to the petitioner to speak at the meeting and lastly, he submitted that no grounds are made out for passing no-confidence motion. He, therefore,

submitted that the impugned order deserves to be set aside.

5. On the other hand, Mr. Pawar supported the impugned order. He submitted that the third proviso will be applicable only when the office of Sarpanch is reserved for a woman. In the present case, the office of the Sarpanch is reserved for General - O.B.C., and therefore, the third proviso is not applicable. He further submitted that a perusal of the minutes of the meeting dated 02.05.2018 shows that petitioner participated in the meeting and also expressed her views. It, therefore, cannot be said that no opportunity was given to the petitioner. He submitted that a perusal of the notice dated 26.04.2018 as also minutes of the meeting shows that no-confidence motion was carried out for specific grounds mentioned therein. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the notice dated 26.04.2018 issued by respondents No.4 to 9 shows that they have given as many as five grounds proposing no-confidence motion against the petitioner. The said subjects were discussed in the meeting convened on 02.05.2018. The petitioner was present in the meeting. She had expressed her views during the course of that meeting. In view thereof, I do not find any merit in the submission of Mr. Bhavake that petitioner was not given opportunity to express her views in the meeting as also no grounds were made out for passing no-confidence motion.

7. In so far as the contention based on the third proviso to sub-section (3) of Section 35 is concerned, I do not find any merit. The third proviso to sub-section (3) of Section 35 reads thus,

“ Provided also that, **where the office of the Sarpanch**

being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat:

(emphasis supplied)”

8. A perusal of the above extracted proviso shows that where the office of the Sarpanch is reserved for a woman and is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than $3/4^{\text{th}}$ of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat. In the present case, it is not in dispute that the office of the Sarpanch is reserved for General - O.B.C. In view thereof, the third proviso is not applicable in the facts of the present case. Sub-section (3) of Section 35 lays down that if the motion is carried by a majority of not less than $2/3^{\text{rd}}$ of the total number of the members, who are for the time being entitled to sit and vote at any meeting of the Panchayat, the Sarpanch shall forthwith stop exercising all the powers and perform all the functions and duties of the office. In the present case, there are 9 members in the Grampanchayat. Out of these 9 members, 6 members have voted in favour of no-confidence motion. Thus, the motion is carried out by majority of not less than $2/3^{\text{rd}}$ of the total number of the members, who were entitled to sit and vote at any meeting of the Panchayat.

9. Mr. Bhavake relied upon decision in **Tatyasaheb R. Kale** (*supra*). In my opinion, in that case, the Full Bench has not laid down that where the office of the Sarpanch is not reserved for a woman and is held by a woman Sarpanch, such motion of no-confidence has to be carried only by a majority of not less than $3/4^{\text{th}}$ of the total number of the members who are entitled to sit and vote at any meeting of the Panchayat. In view thereof, the said decision is not applicable to the

facts of the present case.

10. In the light of the aforesaid discussion, I do not find that the respondent No.1 - Collector, Kolhapur has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

11. At this stage, Mr. Bhavake orally applies for continuation of the ad-interim order dated 28.06.2018. Mr. Pawar opposes the application.

12. Sub-section (3) of Section 35 specifically lays down the consequences of passing of no-confidence motion by the requisite members, who are entitled to sit and vote at any meeting of the Panchayat. It lays down that upon passing of the motion, Sarpanch or Upsarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch. In view thereof, oral application made by Mr. Bhavake is rejected. Order accordingly.

(R. G. KETKAR, J.)

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