

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12185 OF 2018

Shri. Ganesh Sukhdeo Gurule

...Petitioner

Versus

Tahsildar, Sinnar, Nashik
and others

...Respondents

....

Mr. R.V. Govilkar i/b. D.S. Matwankar, Advocate for the petitioner.

Mr. S.H. Kankal, AGP, for Respondent No.1.

Mr. A.S. Pandire, Advocate for Respondents No.2 to 5 and 7.

Mr. Sachin Gite, Advocate for Respondent No.6.

Ms. Kavita Shinde, Advocate for Respondents No.8 and 9.

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CORAM : R. G. KETKAR, J.

DATE : 22nd NOVEMBER, 2018

P.C.

1. Heard Mr. R.V. Govilkar, learned counsel for the petitioner, Mr. S.H. Kankal, learned AGP for respondent No.1-State, Mr. A.S. Pandire, learned counsel for respondents No.2 to 5 & 7, Mr. Sachin Gite, learned counsel for respondent No.6 and Ms. Kavita Shinde, learned counsel for respondents No.8 and 9, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 16.10.2018 passed by the Additional Collector, Nashik in Grampanchayat Dispute Application No.88/2018. By that order, the Additional Collector

dismissed the Dispute Application filed by the petitioner challenging the resolution of 'no-confidence' passed against him in the meeting convened on 14.9.2018.

3. The petitioner was elected as Surpanch of Grampanchayat Khopadi (Bk), Taluka - Sinnar, District – Nashik (for short, 'Grampanchayat'). The total members of the Grampanchayat are nine. Respondents No.3, 4, 5, 6 and 7 served notice of 'no-confidence' to Tahsildar, Sinnar on 7.9.2018. On the same day, the Tahsildar, Sinnar issued notice convening Special Meeting on 14.9.2018 at 11:00 a.m. in the office of the Grampanchayat. On 14.9.2018, Special Meeting as scheduled was held. It was attended by eight members out of nine members. One member did not remain present in that meeting. Respondent No.7 also attended that meeting. In the meeting, so convened, six members voted in favour of the motion of 'no-confidence' and two members opposed the 'no-confidence' motion. The Presiding Officer declared that the motion is carried in terms of Section 35 of the Maharashtra Village Panchayats Act (for short, 'Act') by a majority of 2/3rd members and accordingly declared that motion is carried out against the petitioner.

4. Aggrieved by that decision, the petitioner instituted dispute before the Collector. By the impugned order, the Additional Collector

has dismissed the dispute. It is against this order, the petitioner has instituted the present petition.

5. In support of this Petition, Mr. Govilkar strenuously contended that respondent No.7 did not submit her caste validity certificate within the prescribed period of six months and, therefore, she had incurred disqualification. One member remained absent and if her vote is excluded, only six members out of nine members have voted in favour of the motion of 'no-confidence'. He relied upon Rules 3, 7, 9 and 11 of the Bombay Village Panchayats (Meetings) Rules, 1959 (for short, "Meetings Rules") as also Rule 2(2-B) of the of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 (for short, 'No-Confidence Motion Rules'). He submitted that if respondent No.7 is excluded from consideration, then in that event only five members out of nine members have voted in favour of the motion of 'no-confidence'. In view of Section 35(3) of the Act, it cannot be said that the motion is carried out by $2/3^{\text{rd}}$ of the total number of the members who are for the time being entitled to sit and vote at the meeting for considering the 'no-confidence' motion. He, therefore, submitted that the impugned order deserves to be set aside.

6. On the other hand, learned Counsel for the respondents supported the impugned order. Mr. Gite submitted that in the first

place, at the time of convening the meeting, no order disqualifying respondent No.7 was passed. In other words, she was entitled to sit and vote in the meeting convened on 14.9.2018. Secondly, he submitted that even if it is considered that she is not entitled to sit and vote on account of incurring disqualification, in that event the total members of the Grampanchayat are eight. Out of eight members, one member did not remain present leaving behind seven members. Out of seven members, five members have voted in favour of the motion of 'no-confidence' (excluding respondent No.7), which constitutes a majority of not less than 2/3rd of the total number of the members who are for the time being entitled to sit and vote in the said meeting. He relied upon the decision of this Court in **Sau Lilabai Manohar Lothe v. Collector, Bhandara & Ors., 2017(2) ALL MR 45** and in particular paragraphs-4 and 7 thereof. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In the case of **Chagan Sadashiv Jadhav and others V. Manisha Ramnath Bhandare and others, 2016(4) Mh.L.J. 479**, it is held that the No Confidence Motion Rules are special Rules applicable to a meeting held for passing of a Motion of No Confidence. Rule 7 of

the Meetings Rules which is part of the general meeting Rules is not applicable and Rule 2(2-B) of the No-Confidence Rules is applicable. In view thereof, the reliance placed by Mr. Govilkar on Rules 3, 7, 9 and 11 of the Meetings Rules does not advance the case of the petitioner. Section 35(3) reads thus:

35. Motion of no confidence.--

(1) xxxxxx

(2) xxxxxx

(3) If the motion is carried by a majority of not less than two-third 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 or the Upa-Sarpanch, 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; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorized by the Block Development Officer, till the dispute, if any, referred to under sub-section (3-B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier :

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorized under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat:

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.

Provided also that no such motion of no confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.”

8. Rule 2(2)(2-B) of the No Confidence Motion Rules reads thus:

“2. (1) xxxxx

(2) xxxxx

(2-B) Every notice under sub-rule (1), wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Upa-Sarpanch to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such adult member can be found or, where the Sarpanch, Upa-Sarpanch or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such Sarpanch or Upa-Sarpanch ordinarily dwells. The notice served in this manner

shall be deemed to the served or tendered or delivered to the concerned Sarpanch or Upa-Sarpanch.”

9. A perusal of Section 35(3), extracted hereinabove, shows that **if the motion is carried out by a majority of not less than two-third 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 powers and perform functions of the office. The moot question in the present case is whether the no confidence motion is carried out by not less than two-third of the total number of the members who are for the time being entitled to sit and vote in the meeting convened on 14.9.2018.

(emphasis supplied)

10. Mr. Govilkar submitted that out of total nine members, only five members voted in favour of the motion which does not constitute a majority of 2/3rd members so as to hold that the motion was carried out against the petitioner. I do not find any merit in this submission. As noted earlier, there are total nine members in the Grampanchayat. Even if it is accepted that respondent No.7 incurred disqualification, then in that event there will be total eight members of the Grampanchayat. As mentioned earlier, one of the Members did not attend the meeting leaving behind seven members. Out of seven members, five members

(excluding respondent No.7) have voted in favour of the motion. It is not in dispute that if out of seven members, five members voted in favour of the motion of no-confidence it constituted a majority of 2/3rd members.

11. In the case of **Lilabai Lothe** (supra), the concerned Grampanchayat had in all nine members. In that case it was contended that respondent No.10 was disqualified and was not entitled to vote in said meeting. The Court thereafter proceeded to consider that after excluding respondent No.10, total members of Grampanchayat would be eight. Out of eight members, six members had voted against the petitioner. As the motion was in respect of a woman Sarpanch it required a majority of 3/4. It is in that context it was observed that the motion of no-confidence was carried out against the petitioner – female Sarpanch by 3/4 majority and the fact of disqualification of 10th respondent will not result in setting aside the no-confidence motion.

12. In the present case, out of eight members who were present in the meeting convened on 14.9.2018. Even if the vote of 7th respondent is excluded from consideration in that event out of seven members who are present on that date, five members voted in favour of the motion of no-confidence and two opposed. Thus the motion was carried out by majority of 2/3 members who were present in the

meeting of 14.9.2018. I, therefore, do not find any merit in this petition. The petition fails and the same is dismissed.

13. At this stage, Mr. Govilkar orally prays for stay of this order. In view of the express language employed in Section 35(3) of the Act on passing of the motion the Sarpanch shall forthwith stop all functions and duties of Sarpanch, I do not find that the request made by Mr. Govilkar is reasonable more so when I have upheld the order passed by the Additional Collector. Hence oral application of stay of present order is refused. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)