

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11203 OF 2018

1. Digambar Virbhadra Yesge
Age: Major, Occ: Agrilculture & Sarpanch,
R/o: Kawalgaon, Tq. Degloor,
Dist. Nanded.
2. Sushma Vijay Biradar
Age: Major, Occ: Household & Up-Sarpanch,
R/o: Kawalgaon, Tq. Degloor,
Dist. Nanded.
...Petitioners

Versus

1. The Collector
Nanded, Dist. Nanded.
2. The Tahasildar, Degloor,
Dist. Nanded.
3. Talathi, Sajja Kawalgaon,
Tq. Degloor, Dist. Nanded.
4. Gramsevak, Gram Panchayat,
Kawalgaon, Tq. Degloor, Dist. Nanded.
5. Shakuntala Madhav Wadekar,
6. Padminbai Piraji Sonkamble,
7. Bhujangrao Hulla Wadekar,
8. Tipanna Suryakant Yesge,
9. Janabai Shesherao Chinchole,
10. Madhavrao Narsing Yelbugade,
11. Laxmibai Shankar Jangewad,

All Age: Major, Occ: Agriculture and
members of village panchayat,
R/o: Kawalgaon, Tq. Degloor,

Dist. Nanded.

...Respondents

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Mr. U.B. Deshmukh, Advocate for Petitioners.

Mr. S.K. Tambe, AGP for Respondents/State.

Mr. R.R. Karpe, Advocate for Respondent Nos.5 to 10.

...

CORAM : P.R. BORA, J.
DATED : 26th JUNE, 2019.

ORAL JUDGMENT:-

. By filing the present petition, the petitioners have challenged i) the resolution dated 13.08.2018 passed in the Special Meeting conducted by Tahsildar, Degloor under Section 35 of the Maharashtra Village Panchayat Act whereby, no confidence motion moved against the petitioners is held to have been majority passed and ii) the judgment and order dated 11.09.2018 passed by the Collector, Nanded, whereby he has dismissed the appeal preferred by the petitioners challenging the validity of the said resolution.

2. The petitioners were elected as the members of Kawalgaon grampanchayat in the general elections held of said Grampanchayat in the year 2015 for the term of 5 years. Subsequently, petitioner no.1 was elected as the Sarpanch whereas, petitioner no.2 got elected as the Deputy

Sarpanch of the said village.

3. On 06.08.2018, a requisition was moved by 6 members of the said grampanchayat, who all are the respondents in the present matter, to Tahsildar for convening a special meeting to discuss the no confidence motion against the present petitioners. The Tahsildar, Deglur accordingly issued a notice dated 07.08.2018 thereby convening a special meeting on 10.08.2018 to discuss the no confidence motion against the petitioners i.e. Sarpanch and Upsarpanch of village Kawalgaon. The meeting dated 10.08.2018 was required to be postponed by Tahsildar, Deglur. The record shows that since, some controversy had arisen concerning to the disqualification of one of the grampanchayat member namely Shakuntala Madhav Wadekar, the Tahsildar postponed the said meeting to 13.08.2018 by recording the events which had occurred on the said day. On 13.08.2018, 6 members who were present in the said meeting voted in favour of the no confidence motion and Tahsildar, Deglur, therefore recorded the said fact in the minutes of the meeting and declared the no confidence motion to have been successfully carried against the Sarpanch and the Deputy Sarpanch.

4. On 10.08.2018, at the time of commencement of the said meeting, petitioner no.1 Digambar had submitted an application to Tahsildar, Degloor who was presiding the said meeting. Petitioner no.1 has annexed with the said application the order passed by the Chief Executive Officer of Zilla Parishad dated 08.08.2018 whereby, respondent no.5 namely Shakuntala Madhav Wadekar was disqualified from holding the post of member of grampanchayat. The request was therefore made by the petitioners to restrain said Shakuntala Wadekar from participating and voting in the said meeting. The record shows that members of grampanchayat, who had brought the said no confidence motion opposed the request made by the petitioners and submitted to Tahsildar that unless all of them including Shakuntala Wadekar are allowed to participate and vote in the said meeting, they will not participate in the meeting and thereafter, left the place of the meeting.

5. In the aforesaid circumstances, the meeting was postponed by Tahsildar, Degloor to 13.08.2018. Accordingly on 13.08.2018, all 6 members who had moved the no confidence motion remained present for the said meeting and voted in favour of the no confidence motion. According to the Tahasildar, since the no confidence motion was passed

by not less than $2/3^{\text{rd}}$ of the total number of members eligible to sit and vote, he declared the no confidence motion to have been successfully passed against the petitioners.

6. Aggrieved by the aforesaid resolution, the present petitioners preferred an appeal before the Collector, Nanded. The Collector, Nanded vide order passed on 11.09.2018 has dismissed the said appeal. The petitioners have, therefore, preferred the present writ petition challenging the resolution passed in the meeting held on 13.08.2018 as well as the order passed by the Collector on 11.09.2018.

7. Shri U.B. Deshmukh, the learned counsel appearing for the petitioners raised serious objections about the validity of the 'no confidence motion' passed in the meeting of the grampanchayat held on 13.08.2018. The first objection raised by Shri Deshmukh is that the petitioners were not at all aware of the fact that the meeting dated 10.08.2018 was postponed to 13.08.2018. The learned counsel submitted that in the minutes which were recorded in presence of the petitioners, nowhere it was recorded that the meeting was postponed to 13.08.2018.

The learned counsel further submitted that Tahsildar, Degloor should not have adjourned the meeting once commenced on the ground that respondent nos.5 to 11 left the place of meeting declaring that they are boycotting the said meeting. In the circumstances, according to the learned counsel, the learned Tahsildar must have held the no confidence motion moved against the petitioners to have been failed and accordingly must have recorded the minutes of the said meeting.

8. The learned counsel further submitted that no notice was served upon the petitioners of the postponed meeting to be held on 13.08.2018 and as such, they could not remain present in the said meeting and obviously, therefore, could not avail the opportunity to address the members of the grampanchayat in the said meeting on the no confidence motion moved against them. The learned counsel submitted that in such circumstances, the resolution passed in the meeting dated 13.08.2018 is liable to be quashed and set aside on this ground alone.

9. The learned counsel submitted that the minutes, recorded of the meeting held on 10.08.2018 apparently demonstrate that certain contents are subsequently intruded

therein and more particularly the contents to the effect that the members were informed that 'the next special meeting will be held on 13.08.2018 at about 02.00 p.m'.

10. The learned counsel further submitted that respondent no.5 Shakuntala Madhav Wadekar, since was disqualified by the President of Zilla Parishad, Nanded vide order passed on 02.08.2018, she had ceased to be the member of grampanchayat with effect from 02.08.2018. The learned counsel submitted that respondent no.5 was thus not eligible either to move the no confidence motion against the petitioners or to sit and vote in the meeting convened for considering the no confidence motion against the petitioners. The learned counsel further submitted that though the order passed by the Zilla Parishad, Nanded against respondent no.5 was stayed by the Collector, Nanded, on 13.08.2018, the status of respondent no.5 on 10.08.2018 was that of disqualified member not eligible to sit and vote in the meeting of grampanchayat.

11. Relying on the judgment of this Court in the case of **"Viay Ramchandra Katkar Vs. Group Gram Panchayat Pali and Ors, 2010 4 ALLMR 707"**, the learned counsel submitted that the meeting held on 13.08.2018 since, was a

postponed meeting, in other words continuation of the earlier meeting held on 10.08.2018, the members who were eligible to sit and vote as on 10.08.2018 only were eligible to sit and vote in the said postponed meeting. The learned counsel submitted that the change in complexion of the electoral college as on 10.08.2018 was impermissible. The learned counsel further submitted that in the meeting held on 13.08.2018, respondent no.5 was illegally allowed to participate and vote by the Tahasildar. The learned counsel further submitted that the vote of respondent no.5, if is kept out of consideration, number of votes in favour of the no confidence motion comes down to 5. The learned counsel submitted that the no confidence motion held to have been passed in the meeting held on 13.08.2018, thus, cannot be held to have been passed by not less than $2/3^{\text{rd}}$ of the total number of members eligible to sit and vote as on 10.08.2018. The learned counsel submitted that in the circumstances, the no confidence resolution alleged to be passed against the petitioners deserves to be set aside and the petitioners deserve to be restored to their respective positions.

12. Shri Tambe, the learned AGP appearing for respondent nos.1 to 3 as well as the counsel appearing for

respondent no.4 supported the judgment passed by the learned Collector and prayed for dismissal of the writ petition.

13. Shri Karpe, the learned counsel appearing for respondent nos.5 to 10 opposed the submissions advanced on behalf of the petitioners. The learned counsel submitted that there was due notice to the petitioners of the postponed meeting to be held on 13.08.2018. The learned counsel submitted that the gramsevak has affixed the copy of the said notice on the notice board of the grampanchayat and had also given an understanding to the petitioners as about the date of postponed meeting. The learned counsel submitted that the allegation made by the petitioners that there was no valid notice to them of the postponed meeting held on 13.08.2018, is devoid of any substance.

14. The learned counsel further submitted that in the meeting held on 10.08.2018, respondent no.5 Shakuntala was present, since the notice was served upon her. The learned counsel further submitted that on 10.08.2018 respondent no.5 for the first time came to know that she was disqualified by President, Zilla Parishad, Nanded vide his order dated 02.08.2018. The learned counsel submitted

that on 10.08.2018 respondent no.5 immediately preferred a dispute before the Collector and obtained the stay to the order dated 02.08.2018 passed by the President, Zilla Parishad, Nanded. The learned counsel submitted that at the time of meeting held on 13.08.2018, by virtue of the stay granted by Collector to the order of her disqualification passed by President, Zilla Parishad, Nanded, she had become eligible to sit and vote in the grampanchayat meeting. The learned counsel further submitted that even on 10.08.2018, respondent no.5 was eligible to sit and vote in the grampanchayat meeting since, till the said date, the order dated 02.08.2018 was not communicated to her. The learned counsel submitted that even otherwise, the effect of the order passed by the Collector staying the order of disqualification passed by the President Zilla Parishad, Nanded would relate back to the date of passing of the order i.e. 02.08.2018. As such, according to Shri Karpe, respondent no.5 was quite competent and eligible to sit and vote as the member of grampanchayat. The learned counsel submitted that the no confidence motion against the petitioners was thus carried out by not less than 2/3rd of the total number of members of grampanchayat. The learned counsel, in the circumstances, prayed for dismissal of the

writ petition.

15. I have given due consideration to the submissions made on behalf of the learned counsel appearing for the respective parties. I have perused the impugned judgment and the other material placed on record. It is not in dispute that the Grampanchayat, Kawalgaon comprises of 9 members. In the meeting held on 13.08.2018, 6 members who had moved the no confidence motion against the present petitioners were present and all of them are stated to have voted in favour of the no confidence motion. Since, 6 members of the grampanchayat voted in favour of the no confidence motion, Tahsildar Degloor declared the no confidence motion to have been successfully carried out against the petitioners.

16. The first objection raised by the petitioners is that they were not given due notice of the postponed meeting. My attention was invited to the minutes recorded of the meeting held on 10.08.2018. It is apparent that some portion appears to have been intruded subsequently. The portion so intruded is about the postponement of the said meeting to 13.08.2018. However, in view of the other evidence which has come on record more particularly, the affidavit of the

Gramsevak that he himself informed the petitioners about the date of the postponed meeting and the notice in that regard was also affixed in the office of the grampanchayat, I see no much force in the objection so raised.

17. The next question which falls for consideration is whether respondent no.5 namely Shakuntala Wadekar was eligible to sit and vote in the meeting convened for discussing the no confidence motion against the petitioners. According to the petitioners, since respondent no.5 had been disqualified vide order dated 02.08.2018 by President, Zilla Parishad, Nanded, she had ceased to be the member of the grampanchayat from the said date and was thus not eligible and/or competent to move the no confidence motion against the petitioners and to sit and vote in the meeting held on 13.08.2018. Respondent no.5 was admittedly disqualified vide order dated 02.08.2018 passed by President, Zilla Parishad, Nanded. It is the contention of the respondents that in the disqualification proceedings against respondent no.5, the date was fraudulently preponed by the present petitioners and without giving due opportunity to her and in her absence, the President Zilla Parishad, Nanded passed the order thereby disqualifying respondent no.5 from holding the post of member of Grampanchayat, Kawalgaon. It has

also been argued on behalf of the respondents that till 10.08.2018, respondent no.5 was not even aware of passing of any order dated 02.08.2018 by President, Zilla Parishad and she came to know about the said order only when in the meeting of the grampanchayat held on 10.08.2018, petitioner no.1 produced the copy of the said order before the Tahasildar. According to the respondents, respondent no.5 was thus quite eligible to sit and vote in the meeting of grampanchayat held on 13.08.2018 to discuss the no confidence motion against the petitioners. It has also been argued on behalf of the respondents that since, the order passed by President, Zilla Parishad, Nanded was stayed by the learned Commissioner, Nanded in an appeal preferred by respondent no.5 against the said decision, respondent no.5 was restored to her position as on 02.08.2018 and was thus eligible to sit and vote in the meeting convened for considering the no confidence motion against the petitioners.

18. In the present matter, the no confidence motion is stated to have been carried out by majority of not less than $2/3^{\text{rd}}$ of the total number of members of Grampanchayat, Kawalgaon. The Grampanchayat, Kawalgaon comprises of 9 members. 6 out of 9 are stated

to have voted in favour of the no confidence motion. The controversy is restricted to the vote of respondent no.5 Shakuntala Wadekar. If vote of respondent no.5 is counted in favour of the no confidence motion, the inevitable conclusion would be that the no confidence motion is successfully carried out against the petitioners. As against it, if the vote of respondent no.5 is excluded or kept out of consideration, the number of votes cast in favour of the no confidence motion goes down to 5 i.e. less than $2/3^{\text{rd}}$ of the total number of members to sit and vote and in the circumstances, the result will be that the no confidence motion has failed.

19. It is the contention of the respondents that by preponing the date, in the dispute raised against respondent no.5, she was falsely declared to be disqualified from holding the post of member of grampanchayat by President, Zilla Parishad, Nanded. The fact, however, remains that respondent no.5 had ceased to be the member of Grampanchayat, Kawalgaon with effect from 02.08.2018. It is thus evident that respondent no.5 was not eligible to sign the requisition of no confidence motion moved against the petitioners on 06.08.2018, nor she was eligible to sit and vote in the meeting of grampanchayat held on 10.08.2018

and postponed to 13.08.2018.

20. The order dated 02.08.2018, though was stayed by the learned Additional Divisional Commissioner vide order passed on 13.08.2018, the fact remains that on 10.08.2018, the date on which the meeting was convened for discussing the no confidence motion against the petitioners, status of respondent no.5 was that of a disqualified member, not eligible to sit and vote. In fact, the Tahasildar ought not have postponed the meeting convened on 10.08.2018 to 13.08.2018 or to any other date on the ground that some of the grampanchayat members created a chaotic situation and threatened to boycott. Nevertheless, in any case respondent no.5 was not eligible to sit and vote in the postponed meeting held on 13.08.2018.

21. An argument was made that on 13.08.2018 before commencement of the meeting of grampanchayat, the stay was obtained by respondent no.5 to the order of her disqualification and hence, she was eligible to sit and vote in the said meeting. The contention so raised is liable to be rejected in view of the settled legal position that the complexion of electoral college as on 10.08.2018 was not liable to be changed and respondent no.5 who was not

eligible on 10.08.2018 could not have been held eligible to cast her vote in the meeting held on 13.08.2018, on the ground that the stay was granted to the order of her disqualification.

22. The similar issue was raised in the case of "**Vijay Ramchandra Katkar Vs. Group Gram Panchayat, Pali and Ors, 2010(4) Mh.L.J. 497**". In the said matter also the meeting convened for discussing the no confidence motion was required to be postponed and in the intervening period, 17th member was got elected. An argument was made in the said matter that no court can set the clock back or freeze a moment in time and cannot be oblivious to a subsequent development. It was therefore the contention in the said matter that the Tahasildar must have allowed the said 17th member who got elected in the period between the date of the meeting originally scheduled and the date to which the said meeting was postponed. This Court, however, rejected the said contention observing that only those members who were entitled to sit and vote on the date of meeting convened to discuss the motion were eligible to participate in the adjourned meeting and the complexion of electoral college as on the said date was not liable to be changed.

23. In the present matter also, only those members who were entitled to sit and vote on 10.08.2018 were entitled to decide the fate of the petitioners. On 10.08.2018, the status of respondent no.5 was that of a disqualified member, not entitled to sit and vote. In the circumstances, Tahasildar, Degloor could not have allowed respondent no.5 to sit and vote in the adjourned meeting held on 13.08.2018.

24. It is not in dispute that the no confidence motion was stated to be successfully carried out against the petitioners by majority of 6 out of 9 members of the grampanchayat i.e. by majority of not less than $2/3^{\text{rd}}$ of the total number of members of the grampanchayat. It is also not in dispute that respondent no.5 Shakuntala Wadekar was one of the said 6 members who voted in favour of the no confidence motion. In fact, having regard to the fact that respondent no.5 Shankuntala Wadekar had ceased to be the member of grampanchayat with effect from 02.08.2018, the number of the grampanchayat members eligible to sit and vote had been reduced to 8. If the vote cast by respondent no.5 is excluded or kept out of consideration, the number of votes cast in favour of the no confidence motion goes down to 5. Thus 5 out of 8

members eligible to sit and vote in the meeting held on 10.08.2018 voted in favour of the no confidence motion. The motion was thus not carried out by the majority of not less than 2/3rd of the total number of members who were entitled to sit and vote in the meeting held on 13.08.2018. The Tahasildar, in the circumstances must have declared the no confidence motion brought against the petitioners to have been failed. The Tahasildar, Degloor thus, committed an error in declaring the no confidence motion to have been carried out against the petitioners. The learned Collector also did not appreciate the aforesaid aspect and has erroneously rejected the dispute raised by the petitioners. In the circumstances, the resolution passed in the meeting held on 13.08.2018 as well as the order passed by the Collector, both are liable to be set aside. For the reasons in the above circumstances and for the reasons recorded herein-above, the following order is passed:

ORDER

i) The order dated 11.09.2018 passed by the Collector, Nanded in File No. 2018/GB/Desk/1/GPN/appeal-306 as well as the no confidence motion carried against the petitioners and the resolution passed in that regard in the meeting of Grampanchayat, Kawalgaon held on 13.08.2018 stand

quashed and set aside.

ii) The writ petition thus stands allowed.

iii) Pending civil applications, if any, stand disposed of.

(P.R. BORA, J.)

Mujaheed//