

(Reportable)

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

WRIT PETITION NO.13239 OF 2019

Indraraj s/o Babulal Jaiswal,
Age : 48 years, Occupation : Agriculture,
R/o Tembhurni, Tq.Jafrabad,
District Jalna.

...PETITIONER

-VERSUS-

- 1 The Collector,
Jalna, District Jalna.
- 2 The Tahasildar/ Presiding Officer,
Jafrabad, Tq.Jafrabad, Dist.Jalna.
- 3 Ganesh s/o Mahadu Dhanwai,
Age : Major, Occu : Agriculture.
- 4 Mukhtar Khan s/o Jumme Khan Pathan,
Age : Major, Occu : Agriculture.
- 5 Shaikh Taher s/o Shaikh Pashu,
Age : Major, Occu : Agriculture.
- 6 Gajanan s/o Sahebrao Mule,
Age : Major, Occu : Agriculture.
- 7 Ganpat s/o Shankar Paithane,
Age : Major, Occu : Agriculture.
- 8 Vidya w/o Sunil Deshmukh,
Age : Major, Occu : Agriculture.
- 9 Jyoti w/o Ravindra Ukharde,
Age : Major, Occu : Agriculture.
- 10 Akhila Begam Sayyad Mohoyoddin,

Age : Major, Occu : Agriculture.

11 Sandhya w/o Pradeep Kamble,
Age : Major, Occu : Agriculture.

12 Yamunabai w/o Jagan Jagdale,
Age : Major, Occu : Agriculture.

13 Swati w/o Pandurang Borse,
Age : Major, Occu : Agriculture.

14 Usha w/o Ganesh Gadekar,
Age : Major, Occu : Agriculture.

15 Sangitabai w/o Laxman Shinde,
Age : Major, Occu : Agriculture.

16 Ramrao s/o Kishan Mule,
Age : Major, Occu : Agriculture.

17 Faisal s/o Ahmed Chaus,
Age : Major, Occu : Agriculture.

18 Shivkanya w/o Baburao Jadhav,
Age : Major, Occu : Agriculture.

Respondent nos.3 to 18
R/o Tembhurni, Tq.Jafrabad,
Dist. Jalna.

19 Grampanchayat, Tembhurni.
Through it's Authorized Officer,
Tq.Jafrabad, Dist.Jalna.

...RESPONDENTS

WITH
WRIT PETITION NO.13249 OF 2019

Sangitabai w/o Laxman Shinde,
Age : 48 years, Occupation : Household,
R/o Tembhurni, Tq.Jafrabad,
District Jalna.

...PETITIONER

-VERSUS-

- 1 The Collector,
Jalna, District Jalna.
- 2 The Tahasildar/ Presiding Officer,
Jafrabad, Tq.Jafrabad, Dist.Jalna.
- 3 Ganesh s/o Mahadu Dhanwai,
Age : Major, Occu : Agriculture.
- 4 Mukhtar Khan s/o Jumme Khan Pathan,
Age : Major, Occu : Agriculture.
- 5 Shaikh Taher s/o Shaikh Pashu,
Age : Major, Occu : Agriculture.
- 6 Gajanan s/o Sahebrao Mule,
Age : Major, Occu : Agriculture.
- 7 Ganpat s/o Shankar Paithane,
Age : Major, Occu : Agriculture.
- 8 Vidya w/o Sunil Deshmukh,
Age : Major, Occu : Agriculture.
- 9 Jyoti w/o Ravindra Ukharde,
Age : Major, Occu : Agriculture.
- 10 Akhila Begam Sayyad Mohoyoddin,
Age : Major, Occu : Agriculture.
- 11 Sandhya w/o Pradeep Kamble,
Age : Major, Occu : Agriculture.
- 12 Yamunabai w/o Jagan Jagdale,
Age : Major, Occu : Agriculture.
- 13 Swati w/o Pandurang Borse,
Age : Major, Occu : Agriculture.

14 Usha w/o Ganesh Gadekar,
Age : Major, Occu : Agriculture.

15 Indraraj Babulal Jaiswal,
Age : Major, Occu : Agriculture.

16 Ramrao s/o Kishan Mule,
Age : Major, Occu : Agriculture.

17 Faisal s/o Ahmed Chaus,
Age : Major, Occu : Agriculture.

18 Shivkanya w/o Baburao Jadhav,
Age : Major, Occu : Agriculture.

Respondent nos.3 to 18
R/o Tembhurni, Tq.Jafrabad,
Dist. Jalna.

19 Grampanchayat, Tembhurni.
Through it's Authorized Officer,
Tq.Jafrabad, Dist.Jalna.

...RESPONDENTS

...
Advocate for the Petitioner in WP/13239/2019 and for Respondent 15 in
WP/13249/2019 : Shri Avinash A. Khande

Advocate for the Petitioner in WP/13249/2019 and for Respondent 15 in
WP/13239/2019 : Shri Abhishek M. Hajare

AGP for Respondents 1 and 2 : Shri N.T.Bhagat

Advocate for Respondents 3 to 14 : Shri S.S.Tope a/w Shri Y.G.Somani

Advocate for Respondents 16 to 18 : Shri L.H.Kawale

Advocate for Respondent 19 : Shri S.J.Rahate

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th November, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and by the consent of the parties, heard finally.

2 The petitioner in the first Writ Petition is the Up-Sarpanch and the petitioner in the second Writ Petition is the Sarpanch, who are aggrieved by the passing of the no-confidence motion on 04.06.2019. They are also aggrieved by the orders passed by the District Collector, Jalna dated 23.09.2019 thereby, rejecting their challenge to the said no-confidence motion passed.

3 The contentions of the petitioners can be summarized as under :-

- (a) The petitioners were elected as members of the Village Panchayat, Tembhurni in the elections held in 2015 and subsequently, in the meeting held on 13.11.2015, both were elected as the Sarpanch and the Up-Sarpanch.
- (b) Both the petitioners have been working diligently and responsibly as the Sarpanch and the Up-Sarpanch of the Village Panchayat, Tembhurni, Taluka Jafrabad, District Jalna.
- (c) The twelve members out of the seventeen elected to the

Village Panchayat, moved the motion of no confidence before the Tahasildar on 27.05.2019.

- (d) The Tahasildar issued the notice on 30.05.2019 and convened a special meeting on 04.06.2019.
- (e) The special meeting was held beyond the prescribed seven days as required under Section 35(2) of the Maharashtra Village Panchayats Act.
- (f) A false record that the requisition motion dated 27.05.2019 was received by the Tahasildar on 30.05.2019, was created with the connivance of the Tahasildar.
- (g) The Tahasildar was due to superannuate on 31.05.2019 and should not have involved himself in the said proceedings.
- (h) The matter was taken before the District Collector for challenging the passing of the no confidence motion by 12:05 vote count.
- (i) The petitioners had orally sought an adjournment before the District Collector on 11.09.2019 as their advocate was unable to remain present.
- (j) However, the District Collector reserved the matter for passing orders without affording an opportunity of hearing to the petitioners.
- (k) On 23.09.2019, the District Collector delivered the impugned

orders and as such, the petitioners did not get an opportunity of canvassing their pleadings and averments.

- (l) As the Tahasildar superannuated on 31.05.2019, the special meeting was convened on 04.06.2019 by the Nayab Tahasildar.
- (m) Though the office of the Tahasildar has taken a stand that the Tahasildar received the requisition motion signed by 12 members, who were personally present on 30.05.2019, the inward register does not contain the entry of the said requisition.
- (n) A serious suspicion is created about the manner in which the Nayab Tahasildar has conducted the said proceedings and the benefit of doubt ought to be held in favour of the petitioners.

4 The learned advocate appearing on behalf of the twelve members, who have signed the requisition motion, submits as under :-

- (a) The requisition was prepared in a typed form on 27.05.2019.
- (b) The twelve members intended to remain present before the Tahasildar and move the said requisition.
- (c) As some of the members were not available on 27.05.2019, it was decided to tender the requisition motion subsequently in the presence of all 12 signatories.

- (d) The Tahasildar was busy in his official work on 28.05.2019 and 29.05.2019.
- (e) The twelve members appeared before the Tahasildar on 30.05.2019. They signed the requisition motion and tendered it to the Tahasildar, who signed on the said motion as having been received by him on 30.05.2019.
- (f) The Tahasildar then issued the notice on the same day for convening a special meeting on 04.06.2019.
- (g) It is settled law that in the absence of the Tahasildar, the Nayab Tahasildar can conduct a special meeting.
- (h) The twelve members have voted in favour of the motion, which was passed by more than two third majority.
- (i) The signatories to the motion have specifically filed their reply to the proceeding before the Collector, Jalna setting out the above details.
- (j) All the above factors were considered by the District Collector and as the motion was passed by more than two third majority, the District Collector has rightly rejected the dispute raised by the petitioners.

5 The learned AGP appearing on behalf of respondent nos.1 and 2/ statutory authorities submits that if the register does not contain

an entry of the requisition tendered by the twelve members, the District Collector will have to consider the said irregularity and initiate appropriate steps against the concerned clerk, who maintains the inward and outward register so as to ensure that such incidents would not occur in future. He further submits that considering the contentions of the petitioners, the District Collector had called for a report from the office of the Tahasildar. The report dated 21.08.2019 was submitted before the District Collector. The Tahasildar has mentioned in his report that the twelve signatories were present before the Tahasildar on 30.05.2019. They signed the motion and tendered it to the Tahasildar, who immediately issued the notice for convening a special meeting in view of Section 35(2) of the Maharashtra Village Panchayats Act. He, therefore, adds that merely because there appears to be an irregularity, committed by the clerk working in the Tahasildar's office, of not entering the motion in the inward register, would not mean that the entire proceedings are vitiated.

6 Having considered the submissions and the factors emerging from the record as have been noted herein above, it is obvious that though the requisition carries a typed date, the Tahasildar has acknowledged receiving the requisition on 30.05.2019. The report of the Tahasildar indicates that the twelve signatories were present before him and had signed the requisition on 30.05.2019. If the inward register does not

indicate the entry of the requisition in this back drop, the District Collector is expected to initiate appropriate steps against the concerned clerk and ensure that in future, such an incident would not occur. This would, however, not vitiate the entire proceeding keeping in view that though the Tahasildar was slated to demit office on his superannuation on 31.05.2019, this would not be a ground for him to abdicate his powers and decline to perform his duties in his capacity of being the Tahasildar. Every such officer is expected to work till his last day in office.

7 The learned Full Bench of this Court has dealt with the case of an irregularity in conducting the proceedings pertaining to the no confidence motion in the matter of ***Raosaheb Mallapa Magdum and others vs. Vandana Shivajirao Mane and others, 2019 (5) Mh.L.J. 844.*** In the said case, the Tahasildar was unable to convene a special meeting within seven days after he received and acknowledged the requisition motion signed by the signatories. The learned Full Bench has concluded in paragraphs 2, 4, 17 and 18 as under :-

- "2. *The facts which led to the reference being made are that on 12 th May 2017 one-third members of the Panchayat served in the Tahsildar's office a requisition in the prescribed format for a motion of no-confidence against the Sarpanch. The Tahsildar was on leave and resumed duties on 23 rd May 2017. On the same day, the Tahsildar issued notices to all the members of the Panchayat convening a meeting on 30 th May 2017 to consider the Motion of no-confidence. On 30 th May 2017 the motion was put to vote with thirteen members*

voting in favour of the motion and three against. The Sarpanch preferred an appeal to the Collector who vide order dated 1st July 2017 quashed the resolution dated 30 th May 2017 inasmuch as the meeting was convened beyond seven days from the date of the receipt of the motion."

"4. It is obvious that sub-section (2) of Section 35 is at the fulcrum of the debate for it requires the Tahsildar to, within seven days from the date of receipt by him of the notice under sub-section (1) to convene a special meeting of the Panchayat to consider the motion of no-confidence."

"17. Profusion of authorities, as adverted to by us herein above leads to the inescapable conclusion that the fact that the Legislature shackles the public authority by imposing a time frame to discharge its statutory functions which are in the nature of a public duty unequivocally evinces the legislative intent to hasten the performance of such functions. The fact that such functions could not be performed within the stipulated time frame owing to myriad reasons such as supervening impossibility or otherwise owing to negligent inertia, would not ipso facto invalidate the actions of such authority as the same would be in teeth with the salutary intendment of the Legislature. It is inconceivable that the Legislature which on one hand requires a public authority to discharge its functions promptly within a stipulated time frame; thus signifying its underlying importance, would itself envisage an embargo on the performance of the said functions beyond the said period of time. Needless to state, if the Legislature intends such drastic consequences, the same would be palpable from its express words or by overwhelming evidence of necessary implication. "

"18. Thus, we answer the reference by holding that notwithstanding sub-section (2) of Section 35 of the Maharashtra Village Panchayats Act, 1959 mandating the Tahsildar to convene a meeting of the Panchayat within seven days from the receipt of the notice under

sub-section (1), if for some reasons the Tahsildar is unable to do so or deliberately refrains from doing so, he may be personally liable for the wrong committed but that would not mean that a meeting convened beyond seven days would be coram non-judice. The decisions taken at the meeting would be legal and valid."

8 It is thus, concluded that if there is an irregularity in convening a special meeting within seven days from the date of the receipt of the requisition motion, it would not vitiate the entire proceedings keeping in view the rule of democracy. The learned Full Bench concluded that the words employed by the legislature afford valuable insights into the intention of the legislature while formulating a statutory provision. The literal rule of interpretation requires the courts to interpret and enforce a provision of law by attaching the natural meaning to the connotations comprised therein. It was, therefore, held that when the legislature, in its wisdom, employs the expression "shall", the same shall ordinarily signify the mandatory import whereas, per contra, the use of the expression "may" evidences the directory nature of the provision. If for some reason, the Tahasildar is unable to conduct a meeting within seven days and the motion of no confidence is passed with requisite majority, the Tahasildar would be personally liable for the wrong committed and action could be initiated against him. That would, however, not vitiate the proceedings.

9 In the present case, I find that the 12 signatories, who have moved the motion, stand on a better footing. As the motion was got typed out, the date 27.05.2019 was mentioned in anticipation of all members presenting themselves before the Tahasildar while delivering the said motion. An explanation has come forward, which makes it very evident that all the members could not remain present together on 27.05.2019. The Tahasildar was not available due to his scheduled meetings on 28.05.2019 and 29.05.2019. On 30.05.2019, these 12 signatories had presented themselves and had signed while tendering the requisition to the Tahasildar, who has acknowledged receiving the same on 30.05.2019. On this count, I do not find that the proceedings could be said to have been vitiated. Even if it is assumed that the twelve signatories would have to suffer the consequences for having not corrected the date mentioned on the requisition while tendering it to the Tahasildar on 30.05.2019, the proceedings in the special meeting would not be vitiated in view of the judgment of the learned Full Bench in *Raosaheb Mallapa Magdum and others* (supra).

10 The petitioners have raised a grievance that the District Collector did not adjourn the proceedings so as to enable the advocate for the petitioners to canvass the grounds raised and counter the report of the Tahasildar. It is conceded that an oral request was made and there was no written application tendered.

11 I would have appreciated the submissions of the petitioners on the ground of an opportunity of hearing before the District Collector for the reason that ends of justice would not be met if an opportunity of hearing is not granted. However, the petitioners did not enter a written application setting out that their advocate was not able to remain present before the District Collector. It is stated that the petitioners have orally made a request and such request does not appear to form a part of the record and proceeding of the District Collector. The petitioners were not restrained from making an application in writing and had that been so done, the dispute as to whether, such a request was actually made or not, would not have come to the fore.

12 Notwithstanding the above, I have patiently heard the learned advocate for the petitioners on all the grounds raised as well as on the report of the Tahasildar dated 21.08.2019 tendered to the office of the District Collector. The acknowledgment and signature of the Tahasildar on the requisition motion indicates that he received it on 30.05.2019. There is no allegation of animosity or antipathy in the mind of the Tahasildar as against these petitioners. As such, there is no ground to infer that the Tahasildar was prejudiced against these petitioners. It appears to be a mechanical act of the Tahasildar of having received the requisition motion on 30.05.2019 in the presence of the twelve signatories and he having issued the notice for convening a special meeting on 04.06.2019.

13 The learned Division Bench of this Court has observed in paragraphs 12 and 13 in the matter of ***Nimba Rajaram Mali vs. Collector, Jalgaon and others, 1998(3) Mh.L.J. 204 : 1999 AIR (Bombay) 335***, as under :-

- "12. In the case of *Smt. Annapurnabai Ajabrao v. Annapurnabai Anandrao*, reported in 1967 Mh. L.J. NOC 36, validity of the No Confidence Motion passed against the Sarpanch was challenged on the ground that:
- (a) allegations with regards to the alleged mismanagement were too vague and did not furnish any particulars;
 - (b) no evidence was placed before the meeting to support the resolution;
 - (c) resolution was passed without sufficient discussion and in spite of explanation given by the petitioner and
 - (d) names of the persons voting in favour of the resolution and their signatures were not appended to the proceedings.

The Division Bench of this Court, while rejecting the petitioner's claim, observed as under :-

"Even if it were to be assumed that there was some technical flaw in the proceedings of the meeting or in transmission of the results of the meeting to the Panchayat Samiti, we do not see how that could entitle the petitioner to claim to continue as Sarpanch of the Gram Panchayat. 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, appropriate attitude of the petitioner as a person working for democracy whatever have been to tender her resignation straightaway. At any rate, it does not behave of democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as has also a sense of self respect should have been impleaded the petitioner and persons

situated in similar circumstances to graciously submit to the decision of the majority and to walk out of the Gram Panchayat. Notice raising frivolous contention and forcing herself on the democratic institution it does not want her to hold that position."

13. *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 of No Confidence Motion is different from Censure Motion and such a 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 Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes. In the case at hand, both the authorities below, on perusal of record before them, have recorded clear findings that the resolution was passed in keeping with the requirements of the No Confidence Motion Rules and there was no breach of any statutory provisions. These findings do not suffer from any error, leave alone error apparent, on the face of the record."*

14 The learned Single Judge of this Court, in the matter of
Mandabai Balnath Rohom and others vs. Ashok Fakira Chandar and

others, 2002(1) Mh.L.J. 916, has held as under :-

"12. The intention of Legislature under section 35 of the said Act is clear that when the notice regarding No-Confidence Motion is served upon the Tahsildar, the Tahsildar has to act swiftly and immediately and has to get himself satisfied that such notice has been served by one-third of the total number of members of the panchayat, and thereafter, to hold necessary meeting to deal with such motion."

15 The petitioners contend that both of them have suffered identical allegations set out in the requisition motion. It is contended that the allegations against the Sarpanch cannot be identical as against the Up-Sarpanch and therefore, all allegations are baseless. The business transacted during the leadership of the Sarpanch/ Up-Sarpanch is accorded approval by all the members of the Village Panchayat.

16 The learned advocate for the twelve signatories submits that whenever the Sarpanch was not available, the Up-Sarpanch used to officiate. These twelve signatories were unhappy with the manner of conducting the Gram Panchayat by the Sarpanch and also by the Up-Sarpanch in the absence of the Sarpanch.

17 This issue is not required to be considered for the reason that the no confidence motion is not a gateway for initiating a fact finding enquiry. If twelve out of the seventeen members of the Village Panchayat express no confidence and seek the ouster of the Sarpanch and the Up-

Sarpanch, after the no confidence motion is passed by the requisite majority, the Sarpanch and the Up-Sarpanch do not have a legal right to continue on the said posts on the ground that the allegations leveled against them are false and baseless.

18 In view of the above and since the no confidence motion has been passed against these petitioners by more than two third majority, I do not find that the District Collector has committed any error in rejecting the dispute applications filed by these petitioners.

19 Both this Writ Petitions being devoid of merit are, therefore, dismissed. Rule is discharged.

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(RAVINDRA V. GHUGE, J.)