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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8506 OF 2018

Rajendra Babaso Zone and anr. : Petitioners
versus
Shankar Dnyandev Pawar and ors. : Respondents.

Mr. Sandeep S Salunkhe I/by Mr. Nanaso V Gaikwad for the Petitioners.

Ms. Manjiri Parasnis I/by Mr. Rupesh Zade for Respondent Nos.1 to 7.

Mr. S H Kankal, AGP for Respondent/State.

CORAM : S. S. SHINDE, J.

DATE : 16th APRIL, 2019

P. C. :

1 Heard the learned Counsel for petitioners and the learned Counsel for the respective respondents. The Learned Counsel for respective petitioner submits that no separate notice was given to Petitioner no.2 in respect of meeting which was scheduled to be held to discuss 'No Confidence Motion'. He further submits that there was no discussion in the meeting and petitioner no.2 was not given an opportunity to speak in the said meeting.

2 Learned Counsel for respective respondents submits that the impugned order is passed keeping in view the material on record and also in view of the fact that out of 9 members of Panchayat, 7 voted in favour

of 'No Confidence' and therefore once such Motion is passed, contention of learned counsel for the petitioner that Petitioner no. 2 was not allowed to speak or there was no discussion, is not material in view of Sub-section 2 of Section 35 of Maharashtra Village Panchayat Act.

3 At this stage, learned Counsel for the petitioner submits that Petitioner no.1 has already resigned from the post of Sarpanch. Therefore, he has instructions not to press reliefs claimed in the petition on behalf of petitioner no.1.

4 In the light of submissions made across the Bar, so far as Petitioner no.1 is concerned, this Writ Petition stands dismissed as not pressed.

5 In so far as Petitioner no.2 is concerned, the contention of learned counsel for petitioner that there was no separate notice and there is reference of Sarpanch and Upsarpanch in the same notice, and therefore, no confidence motion may be set aside, needs no consideration in view of Judgment of this Court (Aurangabad Bench) in the matter of **Kathalu Maroti Hatagale Vs. State of Maharashtra & Ors. reported in 2008(5) Bom.C.R.657**, in which it has been held that, “merely having reference to Sarpanch and Upa-Sarpanch in one and the same notice should not provide a ground to get the no confidence motion set aside

which was passed with sufficient majority. The will of majority in the democratic set up is required to be given its due weightage. Obviously, there is no doubt that the Sarpanch and Upa-Sarpanch had lost majority. Secondly, since out of 9 members who participated in such meeting, 7 have voted in favour of "No Confidence", and therefore, in view of Mandate of sub-section 2 of Section 35 of the Act, point raised by learned counsel for petitioner that petitioner no. 2 was not allowed to speak or there was no discussion in meeting, can not be treated as relevant keeping in view the mandate of sub-section 2 of Section 35 of the Act. Once 'No Confidence' Motion is passed by 2/3 rd majority of members who participated in such meeting, there is no question of diluting the outcome of such meeting by accepting the contention of petitioner no.2 that no separate notice was given or she was not allowed to participate or speak in the meeting.

6 For the reasons afore-stated, this Writ Petition stands rejected.

(S. S. SHINDE, J.)