

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5769 OF 2018

Sau. Famidabai Shaikh Munaf

..VS..

Additional Collector, Buldhana Division, Buldhana and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Ved R. Deshpande, Advocate for the petitioner.
Shri V.A. Thakre, AGP for the respondent Nos. 1 & 9.
Shri P.S. Kshirsagar, Advocate for respondent No. 2 & 4 to 7.
Ms. F.C. Badani, Advocate for respondent No. 8.

CORAM : A.S. CHANDURKAR,J.

DATED : 7th JUNE, 2019.

. The petitioner against whom the motion of no-confidence has been passed as Sarpanch of the Gram Panchayat is aggrieved by the order passed by the Additional Collector dated 13.07.2018 dismissing the appeal as filed under Section 35 (3-B) of the Maharashtra Village Panchayats Act, 1959. In the Gram Panchayat as constituted, seven members were present in the special meeting that was convened on 03.03.2018 to consider the motion of no-confidence proposed against the petitioner. As per the minutes of the said meeting recorded by the Tahsildar, it has been stated that seven

members were present. The motion was put for discussion, and after due discussion five members voted in favour of motion and two members voted against them. The motion was held to be carried by 2/3rd majority. The petitioner then filed an appeal and by the impugned order, the said appeal has been dismissed.

2. Shri V.R. Deshpande, learned counsel for the petitioner urged that due opportunity to the petitioner to put forth her say while considering the motion of no-confidence was not given by the Presiding Officer. Placing reliance on the decision in Writ Petition No. 1425/2017 (*Manoj Ghanshyam Banode vs. Presiding Officer/Tahsildar and others*) decided on 21.01.2019, it was submitted that as the aspect with regard to grant of due opportunity to the petitioner had not been stated in the minutes, it was clear that the petitioner did not have due opportunity to oppose the motion of no-confidence. Referring to the memorandum of appeal filed before the Additional Collector, it was submitted that the ground in that regard that the motion was not passed in accordance with law had been raised. It was thus submitted that, if due opportunity would have been given to the petitioner,

it was likely that the motion would not have been carried.

3. Shri P.S. Khirsagar, learned counsel for the respondent Nos. 2, 4 to 7 and Shri V.A. Thakre learned Additional Government Pleader for respondent No. 1 supported the impugned order. It was submitted that no specific ground regarding absence of proper opportunity was raised before the Additional Collector in the appeal. If said ground would have been raised, an appropriate reply to the same could have been given. The fact that it was recorded in the minutes that the motion was put for discussion indicated grant of opportunity to all the members. It was thus submitted that the impugned order did not call for any interference.

4. Heard the learned counsel and perused the minutes of the special meeting dated 03.03.2018. It has been recorded by the Presiding Officer that the proposal was put before the members of the village panchayat and after due discussion the motion was passed with five members in favour of the motion and two members opposing the same. Perusal of the grounds of appeal

raised by the petitioner indicates that the motion of no-confidence has not been specifically challenged on the ground that there was absence of proper opportunity to the petitioner to put forth her say and oppose the motion. The aspect whether due opportunity was given to the Sarpanch to put forth her say in the special meeting is a factual aspect and the same ought to have been appropriately raised in the appeal preferred by the petitioner at the first instance. Same has however not been raised. The minutes as recorded indicate the motion being discussed after which it was put to vote.

5. In the case of *Manoj Ghanshyam Banode (supra)* relied upon by the learned counsel for the petitioner it has been recorded in para 4 that in the dispute filed by the Sarpanch a specific ground had been raised with regard to lack of opportunity to address the members of the Gram Panchayat. It is in that context that the challenge as raised had been considered therein. In the present case no such specific challenge was raised in the dispute and the minutes of the meeting indicate time being granted for the necessary discussion. Hence, ratio

of the said decision would not apply to the case in hand in absence of an appropriate challenge being raised.

6. The petitioner having lost confidence of the members of the Gram Panchayat, I do not find any case is made out to interfere with the adjudication by the Additional Collector. The order as passed does not call for any interference. The writ petition is accordingly dismissed. No costs.

7. Civil application No. 1458/2019 also stands disposed of accordingly.

JUDGE

Prity G.