

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.26 OF 2020

DADASAHEB MARUTI DHAGE
VERSUS
CHANDRASHEKHAR RAMAKANT SALVI AND OTHERS

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondents 1 to 4 & 6 : Smt. Jagtap Manjusha
Advocate for Respondent 5 : Shri Gawali A.S.
Advocate for Respondent 7 : Shri Shelke Shivaji T.
AGP for Respondents 8 & 9 : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 16, 2020

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PER COURT :-

1. By an order dated 26.12.2019, passed by the learned Vacation Court, it was observed, as under, in paragraph No.3:-

“ 3. Prima facie the notice given by the respondent Nos. 1 to 5 for convening a special meeting for moving a no confidence motion dated 07.11.2019, the minutes of that meeting with the reasons assigned by the Tahsildar in his report to the Collector and the impugned order passed by the Collector in the proceeding under Section 35 (2) of the Maharashtra Gram Panchayat Act, 1958, do not contain precise allegations against the petitioner – Surpanch. Therefore, there shall be ad-interim relief in terms of prayer clause ‘C’ in operation till the next date.”

2. The learned Advocate for the petitioner has vehemently

criticized the impugned order dated 17.12.2018, by which, the 'No confidence motion' passed against the petitioner by a vote count of 6 in favour and 1 against, was sustained. He relies upon Rule 2(1) of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules 1975 and the form of notice of motion of 'No confidence', appended thereto. Contention is that the charges levelled upon the Sarpanch are vague and ambiguous. Merely because the majority members are not pleased with the functioning of the Sarpanch, cannot be a ground for passing the 'No confidence' motion or for sustaining such a motion. Reliance is placed upon the judgment delivered by the learned Single Judge of this Court in the matter of Ashabai Ashok Shinde Vs. Additional Commissioner, Amaravati Division and others - 2009 (2) BCR 888.

3. The learned Advocates for the respondents and the learned AGP, submit that though the form appended to Rule 2 mentions that the reasons have to be cited, it is the Rule of democracy, which has to be sustained. If 6 out of the 7 members, do not desire that the Sarpanch should continue and have lost confidence in him, merely because the reasons may not appear to be very strong, would not empower the Collector or even this Court to interfere with the passing of the 'No confidence' motion.

4. I find that the learned Division Bench of this Court has dealt with a similar case in the matter of Nimba Rajaram Mali Vs. Collector, Jalgaon and others - 1998 (4) All M.R. 479. It was held that the notice should not be in violation of the Rules and ultimately the Rule of democracy has to be sustained. If the 'No confidence' motion is validly passed by the requisite majority, no interference has to be caused unless there is a flagrant violation of any mandatory procedure laid down by law. It was held in paragraph Nos.12 and 13 as under:-

"12. In the case of Smt. Annapurnabai Ajabrao v. Annapurnabai Anandrao, reported in 1967 M. L.J.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 imploded 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."

5. In view of the above, this petition being devoid of merits is, therefore, dismissed.

6. The learned Advocate for the petitioner submits that he desires

to approach the Honourable Apex Court as he was under protection till today.

7. The learned Advocates for the respondents opposed on the ground that the motion was passed by an overwhelming majority of 6 votes in favour and 1 against, that the petitioner cannot continue in office against the principles of democracy.

8. Considering above and the law laid down by the learned Division Bench of this Court in the case of Nimba (supra), the request is rejected.

(RAVINDRA V. GHUGE, J.)

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