

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 238 OF 2021

Sow. Surekha Hanumant Bankar,
Age : 50 years, Occ: Household and
Member of Grampanchayat Karajkheda,
R/o: Kharajkheda,
Tq. and Dist. Osmanabad.

.... Petitioner

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
- 2) The Collector / Additional Collector,
Osmanabad, Dist. Osmanabad.
- 3) The Tahsildar,
Tahsil Office, Osmanabad,
Tq. & Dist. Osmanabad.

(Copy to be served on Resp. No.1 to 3
Government Pleader High Court o
Judicature of Bombay, Bench at
Aurangabad).
- 4) Subhash S/o Mahadev Kalsule,
Age : 52 years, Occ : Agril.,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
- 5) Dadasaheb S/o Mahadev Waghmode,
Age : 47 years, Occ : Agril.,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
- 6) Amol S/o Ashok Chavan,
Age : 30 years, Occ: Agril.,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
- 7) Shahuraj S/o Namdev Chavan,
Age : 50 years, Occ : Agril.,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
- 8) Sow. Kalpana Gopalrao Adatrao,

Age : 35 years, Occ: Household,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.

- 9) Sow. Sindhu Pandurang Garad,
Age : 40 years, Occ: Household,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
 - 10) Sow. Devkanya Hanumant Hulgunde,
Age: 38 years, Occ: Household,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
 - 11) Sow. Sindhu Rajendra Choure,
Age : 37 years, Occ: Household,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
 - 12) Sow. Sunita Bali Bhosale,
Age : 41 years, Occ: Household,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
 - 13) Sow. Dropadi Balu Kamble,
Age: 36 years, Occ: Household,
R/o: Kharajkheda,
Tq. & Dist Osmanabad.
- Respondents

.....

Mr. D. S. Mali, Advocate for the Petitioner.
Mr. R. D. Sanap, AGP for the Respondent Nos. 1 to 3
Mr. V. S. Undre, Advocate for Respondent Nos. 4 to 13

.....

CORAM : V. K. JADHAV, J.
DATED : 20th JANUARY, 2021

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. By this writ petition, the petitioner is challenging the no confidence motion passed against him. The petitioner is directly

elected Sarpanch in terms of the provisions of Section 30A-1A of the Maharashtra Village Panchayat Act 1958 (hereinafter for the sake of brevity referred to as the "Village Panchayat Act") in the general elections of the Gram Panchayat held on 17.10.2017. The respondent Nos. 4 to 13 herein have moved the motion of no confidence against the petitioner after giving requisite notice dated 13.10.2020 thereof to the Tahsildar. Consequently, the respondent Tahsildar has convened a special meeting of the Panchayat for considering the motion of no confidence. On 19.10.2020 no confidence motion was passed in the special meeting against the petitioner and the said motion was carried out by the majority of the members as prescribed under Section 35 of the Village Panchayat Act.

3. In terms of the provisions of Section 35 sub-section 3(B) of the Village Panchayat Act the petitioner has challenged the validity of the said no confidence motion before the respondent No.2 Collector. By order dated 31.12.2020 the Collector, Osmanabad upheld the no confidence motion carried out against the petitioner by giving direction to hold the special meeting of the Gram Sabha to ratify the said no confidence motion.

4. Learned counsel for the petitioner submits that in terms of the amended provisions of Section 30A-1A of the Village Panchayat Act, every panchayat shall have a Sarpanch who shall be elected by the

persons whose names are included in the list of voters for village under Section 12 of the Village Panchayat Act. The said amended provision is about directly elected Sarpanch and in sub-sections 2 to 6 of Section 30A-1A the procedure is also prescribed. Learned counsel submits that Section 35 of the Village Panchayat Act is also amended by inserting sub-section (1A) wherein it is prescribed that if the motion of no confidence is carried out by three-fourth of the total number of members, who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the purpose by the Collector, shall forthwith stop, exercising all the powers and, performing all the functions and duties of the office. Learned counsel submits that in the instant case, no confidence motion was not ratified before the Gram Sabha by the secret ballot as per the amended provisions of Section 1-A of Section 35 of the Village Panchayat Act. Learned counsel submits that even though when the dispute was referred to the Collector, after noticing the same, the respondent Collector has simply given directions to arrange the special meeting of the Gram Sabha. The said no confidence motion was passed on 19.10.2020 and by the impugned order dated 31.12.2020 the Collector has given direction for calling upon the special meeting of the Gram Sabha by appointing the Block Development Officer of Panchayat Samiti, Osmanabad as a

Presiding Officer of the said Sabha. Learned counsel submits that till this date no special meeting of Gram Sabha was called upon and there is no ratification of the no confidence motion. Learned counsel submits that the no confidence motion passed against the petitioner thus deserves to be quashed and set aside.

5. Learned counsel for respondent Nos. 4 to 13 submits that by the majority of votes the no confidence motion was passed against the petitioner. The petitioner has lost the confidence of the members of the Gram Panchayat and after due compliance of the procedure prescribed, the no confidence motion was passed against the petitioner. Learned counsel submits that even though the opportunity was given to the petitioner to speak in the special meeting to consider the no confidence motion, however, the petitioner has not stated anything in the meeting. Learned counsel submits that in terms of the Government letter dated 16.9.2020 the ratification in the Gram Sabha was excluded. However, after passing of no confidence motion, in the instant case, the State government has issued another letter dated 28.10.2020 cancelling thereby the letter dated 16.9.2020. However, there is no reference as to the retrospective effect of the said letter dated 28.10.2020. In view of the same, the letter dated 28.10.2020 cannot be made applicable to the no confidence motion passed against the present petitioner. There is no substance in this writ petition the writ petition is liable to be dismissed.

6. Learned counsel for respondent Nos. 4 to 13 in order to substantiate his submissions, placed reliance on the judgment of the Division Bench of this Court in the case of Mrs. Samidha Janardan Kudalkar vs. State of Maharashtra and others, writ petition (St.) No. 98737 of 2020 decided on 22.12.2020.

7. I have also heard the learned A.G.P. for the respondent Nos. 1 to 3.

8. The petitioner is directly elected Sarpanch in terms of the amended provisions of Section 30A-1A of the Village Panchayat Act. In terms of the amended provisions of sub-Section 1A of Section 35 of the Village Panchayat Act if the motion of no confidence is carried out by majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot shall forthwith stop, exercising all the powers and, performing all the functions and duties of the office.

9. The provisions of Section 30A-1A and Section 35-1A are reproduced herein-below:-

“30A-1A.(1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017

in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchayat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for village under section 12.

(2) Election of the Sarpanch shall be held simultaneously with the general elections of the panchayat and the procedure regarding holding of elections to the panchayat shall, mutatis mutandis, apply to such election.

(3) If secret at an election, no Sarpanch is elected, a fresh election shall be held to elect a Sarpanch, and if there is a failure to elect a Sarpanch at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected members from amongst themselves and the term of Sarpanch elected under this sub-section shall be co-terminus with the term of members of the panchayat.

(4) Any person elected under sub-section (3) shall be deemed to be duly elected at an election under this section.

(5) If, in the election of the Sarpanch, there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election Commissioner or the officer appointed by him for the purpose.

(6) In case of a dispute regarding election of the Sarpanch, the provisions of section 15 shall, mutatis mutandis, apply.

35-1A. *In respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A, the provisions of this section shall apply with the following modifications:-*

(a) in sub-section (1), for the words "one-third" the words "two-third" shall be substituted;

(b) in sub-section (3), for the portion beginning with the words "If the motion" and ending with the words "against the Sarpanch;" the following portion shall be substituted, namely:-

"If the motion of no-confidence is carried by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the purpose by the Collector, shall forthwith stop, exercising all the powers and, performing all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch, in case the motion is carried out against the Sarpanch."

(c) for the fourth proviso, the following provisos shall be substituted, namely:-

"Provided also that, no such motion of no-confidence shall be brought within a period of two years

from the date of election of Sarpanch or Upa-Sarpanch and before the six months preceding the date on which the term of panchayat expires:

Provided also that, if the no-confidence motion fails, then no motion shall be brought before the passage of time of next two years”

10. The Statement of Object and Reasons of the said amendment is as follows:-

“STATEMENT OF OBJECTS AND REASONS

1. As per the then existing provisions of the Maharashtra Village Panchayats Act (III of 1959), the Sarpanch was being elected from amongst the elected members of the Panchayat for which the candidate contesting the election for the post of Sarpanch would require the majority votes amongst them. The then existing provisions of the said Act provided that the motion of no confidence may be moved by not less than one-third of the total number of members. Consequently, the members were moving such no confidence motion frequently, which was affecting the efficiency of the Sarpanch and causing the disturbances in smooth functioning of Panchayat.

2. Therefore, after due deliberation, it was considered necessary to adopt a system of direct election for the post of Sarpanch of panchayat from the public which will give stability in the functioning of the Panchayat. It was, therefore, considered expedient further to amend the provisions of the Maharashtra Village Panchayats Act (III of 1959) suitably, so as to strengthen the post of Sarpanch for effective functioning and development of the panchayat.

3. The salient features of the then proposed amendments

were as under :-

(i) It was proposed to provide that the Sarpanch shall be elected through the secret ballot by qualified voters of the panchayat.

(ii) It was proposed to provide that the Sarpanch shall be the Chairman of all the Gram Sabhas and Village Development Committees of the panchayat.

(iii) It was proposed to provide that the no-confidence motion against the Sarpanch if passed by the panchayat shall be kept before the Gram Sabha, for ratification.

(iv) The responsibility of preparing the budget was proposed to be given to the Sarpanch.

(v) The Sarpanch so elected would be directly accountable to the public of his village.

4. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Village Panchayats Act (III of 1959), for the purposes aforesaid, the Maharashtra Village Panchayats (Amendment) Ordinance, 2017 (Mah. Ord. XVI of 2017), was promulgated by the Governor of Maharashtra on the 19th July, 2017.

5. The Bill is intended to replace the said Ordinance by an Act of the State Legislature."

11. It thus clear from the statement of objects and reasons so also from the amended provisions that a particular system of direct

election for the post of Sarpanch and Upa-Sarpanch from public was adopted to give stability in the functioning of the panchayat and therefore, it was proposed to provide that no confidence motion against the Sarpanch, if passed by the Panchayat shall be kept before the Gram Sabha for ratification. The same is mainly for the reason that the Sarpanch so elected shall be directly accountable to the public of his village. It further appears that even though there is no ambiguity in the amended provision, the respondent authorities unnecessarily given weightage to the letters issued by the State Government. Even though the Collector has further referred to the letter issued by the Government on 28.10.2020 explaining therein that in terms of the amended provisions of Section 30A-1A and Section 35-1A ratification of no confidence motion before the Gram Sabha is necessary. However, till the order passed by the Collector i.e. on 31.12.2020 no special meeting of the Gram Sabha was called to ratify the said no confidence motion passed against the petitioner.

12. Learned counsel appearing for respondent Nos. 4 to 13 placed his reliance on the case of ***Mrs. Samidha Janardan Kudalkar vs. State of Maharashtra and others, writ petition (St.) No. 98737 of 2020 (supra)***. In the facts of the said case, no confidence motion was passed against the petitioner elected directly and even though the dispute was referred, in terms of the provision of section 35-3B of the Village Panchayat Act, to the Collector, the Collector, however, directed the Tahsildar to convene the special Gram Sabha for the

purpose of validating the said resolution which was subject matter of the said dispute before the Collector. Based on the said directions the Gram Panchayat called the Gram Sabha. The Tahsildar issued notice for convening Gram Sabha and accordingly the said Gram Sabha validated the resolution of no confidence against the petitioner therein. The Division Bench of this Court in para 4 and 5 thus made the following observations:-

“4. In our view since the Collector has not decided the dispute filed by the Petitioner under section 35(3B) of the Maharashtra Village Panchayat Act, the Collector should not have issued any direction to the Tahsildar to convene Gram Sabha for validating the said resolution which was subject matter of the dispute and to make said dispute infructuous.

5. The impugned decision taken by the Gram Sabha on 23/11/2020 validating earlier resolution dated 28/09/2020 is thus quashed and set aside. The learned Collector shall dispose of the said dispute filed by the Petitioner annexed at Exhibit-F (Colly.) to the petition within eight weeks from today after hearing the Petitioner and on its own merits. The Petitioner shall remain present before the learned Collector on 5/01/2021 at 11 a.m.”

13. In the instant case, till the matter was finally heard and disposed of, no special meeting of the Gram Sabha was called to ratify the no confidence motion passed against the petitioner. Thus, the ratio laid down by the Division Bench of this court, as cited

above, is not in favour of respondent Nos. 4 to 13. Even though, if the said observations of the Division Bench are considered to some extent, however, since no resolution was passed so far about ratification in the Gram Sabha, there is no reason to remit the matter back to the Collector for deciding the dispute afresh.

14. In the light of the amended provisions as discussed above and the aims and objects of the said amended provisions, the no confidence motion passed against the petitioner under the special resolution dated 19.10.2020 and the order passed by the respondent Collector dated 31.12.2020 require to be quashed and set aside. Hence the following order:-

O R D E R

- A) Writ petition is allowed in terms of prayer clause "B".
- B) Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/