

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

WRIT PETITION NO. 8288 OF 2020

1. Sumanbai W/o Parbatrao Karhale,
Age : 62 Years, Occu. : Household,
2. Anjanabai W/o Uttamrao Asale,
Age : 58 Years, Occu. : H.H.,
3. Dwarkabai W/o Ramchandra Karhale,
Age : 52 Years, Occu. : H.H.,
4. Renuka W/o Maroti Bhange,
Age : 29 Years, Occu. : H.H.,
5. Sambhaji S/o Narayan Karhale,
Age : 49 Years, Occu. : Agril.,
6. Vishwambhar S/o Sambhaji Narwade,
Age : 33 Years, Occu. : Agril.,
7. Samadhan S/o Shankar Asale,
Age : 27 Years, Occu. : Agril.,

All R/o. Kharab Dhanora, Tq. Palam
Dist. Parbhani.

... PETITIONERS

VERSUS

1. The District Collector, Parbhani,
Tq. & Dist. Parbhani.
2. The Tahsildar,
Palam, Tq. Palam,
Dist. Parbhani.

3. The Gram Sevak,
Gram Panchayat Office,
Kharab Dhanora, Tq. Palam,
District Parbhani.
4. Ratnamala W/o Shankar Bhange,
Age : 37 Years, Occu.: Agril. & H.H.,
R/o Kharab Dhanora, Tq. Palam,
Dist. Parbhani.

... RESPONDENTS

Shri. Hanmant V. Patil, Advocate for the petitioners
Shri. S. P. Sonpawale, AGP for respondent Nos. 1 and 2/State
Shri. Mahesh P. Kale, Advocate for respondent No. 4.

CORAM : M. G. SEWLIKAR, J.

RESERVED ON : 27th July, 2021

PRONOUNCED ON : 12th August, 2021

JUDGMENT :-

1. Rule. Rule made returnable forthwith. At the stage of admission, heard finally with the consent of the parties.

2. By this writ petition under Article 227 of the Constitution of India petitioners are challenging the decision of the learned District Collector, Parbhani in Appeal No. 2020/GAD/VPE/02/CR-07 whereby resolution dated 27th August, 2020 passed in special meeting for no confidence motion is set aside.

. Factual aspects can be stated succinctly as under:-

3. Petitioners are elected members of the village panchayat Gram Kharab Dhanora, Taluaka Palam, District Parbhani. Respondent No. 4 is the Sarpanch of village Panchayat directly elected from the voters of the village. Gram Kharab Dhanora, Tq. Palam consists of 7 members. General elections of Gram Panchayat were held in December, 2017. In that election petitioners were elected as members. Respondent No. 4 was elected as Sarpanch directly through the voters of the village.

4. It is further stated in the petition that functioning of respondent No. 4 being Sarpanch was not proper. She never took other members in confidence and did not carry out any development work in the village. She did not hold monthly meetings and Gram Sabha meetings regularly. Husband of respondent No. 4 had collected amount illegally from villagers for sanctioning of schemes. Therefore, petitioners decided to move motion of no confidence against respondent No. 4.

Pursuant to that, petitioners submitted requisition under Section 35 of the Maharashtra Village Panchayat Act (for short 'Panchayat Act') to learned Tahsildar-respondent No. 2 herein on 21st August, 2020. This requisition was signed by all the 7 members i.e. all the petitioners.

5. It is further alleged that pursuant to the requisition, respondent No. 2 convened a special meeting on 27th August, 2020. Respondent No. 2 issued notices to all the members i.e. petitioners including respondent No. 4. Notices were served on all the members of Gram Panchayat i.e. petitioners. Respondent No. 4 got the knowledge of moving of no confidence motion and to frustrate that, she got herself admitted in the quarantine centre feigning that she had suffered Covid-19. Since no one was available in the house, notice was affixed on the house of respondent No. 4. Therefore, notice was duly served on respondent No. 4. In the meeting dated 27th August, 2020, all the petitioners were present and the motion of no confidence was passed with

absolute majority. All the 7 members cast vote in favour of the resolution. This resolution has to be ratified by the Gram Sabha. By notification dated 12th May, 2020 the State Government had prohibited holding of Gram Sabha meetings due to pandemic situation created by Covid-19. However, said prohibition was lifted by letter dated 28th October, 2020.

6. Respondent No. 4 filed Writ Petition No. 6341 of 2020 in this Court challenging the resolution of no confidence motion. This writ petition came to be disposed of by order dated 21st September, 2020 on the ground that petitioners had alternate efficacious remedy.

7. It is further alleged that respondent No. 4 filed appeal under Section 35 (3-B) of the Panchayat Act with application for condonation of delay.

8. It is further alleged that the learned District Collector, Parbhani by the judgment and order dated 1st

December, 2020 allowed the appeal and set aside the resolution of no confidence dated 27th August, 2020. This decision is impugned in this writ petition.

9. Respondent Nos. 1 and 2 filed affidavit-in-reply. They contended that on receipt of no confidence motion, Tahsildar Palam (Respondent No. 2 herein) called a special meeting of Gram Panchayat Kharab, Dhanora vide letter dated 21st August, 2020 and issued notices to all the members of Gram Panchayat including respondent No. 4. Meeting was scheduled on 27th August, 2020. Notice of the said meeting was affixed on the house of respondent No. 4 on 25th August, 2020 as it was found that respondent No. 4 was not present in the house at the time of service of the said notice. Accordingly, panchanama was drawn. It is further contended that special meeting was held in the office of Gram Panchayat on 27th August, 2020. Respondent No. 4 was absent in the said meeting. All the 7 members of the Gram Panchayat were present in the said meeting. All 7 members cast their vote in

favour of no confidence motion and accordingly no confidence motion was passed by absolute majority against respondent No. 4. Respondent No. 4, it was learnt, was quarantined in quarantine centre of Tribal Ashram School at Palam on 24th August, 2020 and was discharged on 27th August, 2020. Medical Superintendent Class-I Rural Hospital, Palam had issued a certificate to that effect on 1st September, 2020. According to respondent No. 4, notice of the meeting was not properly served on her and as she was quarantined she could not attend the meeting. It is further contended that brother-in-law of respondent No. 4 had tendered in application to the Tahsildar on 25th August, 2020 mentioning therein that the respondent No. 4 was quarantined and was unable to attend the special meeting. The said notice could have been served on the brother-in-law of respondent No. 4 if he staying with respondent No. 4. Therefore, proper procedure for service of notice on respondent No. 4 was not valid. It is further contended that as required by the rules, special Gram Sabha was not convened to ratify no confidence motion. Therefore, it

cannot be said that resolution was validly passed.

10. It is further contended that after passing of no confidence motion in the special meeting dated 27th August, 2020, Gram Sevak informed the Block Development Officer, Palam vide letter dated 18th September, 2020 that no confidence motion was passed and the post of Sarpanch had fallen vacant since 27th August, 2020. It is further contended that the State Government in Rural Development Department by circular dated 12th May, 2020 had temporarily stayed the holding of Gram Sabha elections on account of pandemic situation created by Covid-19. Vide letter dated 28th October, 2020, Government clarified that holding of Gram Sabha in addition to no confidence motion is mandatory in view of Section 35 of the Bombay Village Panchayat Act. Therefore, Gram Sabha was not held. For these reasons respondent Nos. 1 and 4 sought to dismiss the petition.

11. Heard Shri. Patil, learned counsel for the

petitioners, Shri. Mahesh Kale, learned counsel for respondent No. 4 and learned AGP Shri. Sonpawale for respondents/State.

12. Shri. Patil, learned counsel for the petitioners submitted that no confidence motion was validly moved. He submitted that it was passed in the meeting dated 27th August, 2020 with full majority. All the 7 members voted in favour of the motion. Accordingly, no confidence motion was passed. He submitted that respondent No. 4 feigned of Covid-19 and got herself admitted in quarantine centre. Medical Officer gave the certificate that she was admitted in quarantine centre on 24th August, 2020 and she had no symptoms of Covid-19 and she was discharged on 27th August, 2020. He submitted that brother-in-law of respondent No. 4 had filed application on 25th August, 2020 for postponing the meeting as respondent No. 4 was quarantined on account of Covid-19. This letter itself clearly shows that she had the knowledge of the meeting. He submitted that the irregularity in service of notice cannot be of any significance. He further submitted that learned Collector

allowed the appeal on the ground that Gram Sabha meeting was not held after passing of no confidence motion. Shri. Patil, learned counsel submitted that it was the duty of the Tahsildar to hold Gram Sabha meeting. It is not permissible for the Deputy Collector to say that Gram Sabha meeting was not held. He further submitted that appeal was hopelessly barred by limitation. Deputy Collector is not a court within the meaning of Limitation Act. Therefore, learned Deputy Collector committed gross error in allowing the appeal and setting aside no confidence motion.

13. Shri. Kale, learned counsel for respondent No. 4 submitted that respondent No. 4 was admitted in quarantine centre on account of Covid-19. It is not that she got herself admitted to defeat the resolution. She got herself admitted on 25th August, 2020 as she was suffering from Covid-19. He submitted that mere passing of the resolution is not enough but it has to be ratified by the villagers in Gram Sabha. Gram Sabha meeting is not held till today. Therefore, it cannot be

said that no confidence motion was legally passed. He further argued that delay was caused because of choosing of wrong forum. This itself is sufficient ground for condonation of delay. Respondent No. 4 did not get herself quarantined feigning illness. Her husband also was admitted in the same centre. He argued that Supreme Court had extended the period of limitation under the Limitation Act and other Acts on account of Covid-19 situation. Therefore, there is no question of the appeal being barred by limitation. Since Gram Sabha was not held it cannot be said that no confidence motion was legally passed. He, therefore, prayed for the dismissal of the petition.

14. In terms of Rule 35 of the Maharashtra Village Panchayat Act a motion of no confidence can be moved by not less than 1/3 of the total number of the members entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving notice to the Tahsildar. Section 35 (1A) requires that motion of no

confidence has to be accepted by 3/4 majority of the members present at the meeting. Section 35 (1B) states that once motion of no confidence is carried by majority of not less than 3/4 of the total number of members who are entitled to sit and vote at any meeting of the Panchayat and ratified before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed by the Collector.

15. Therefore, the twin requirement of Section 35 is that no confidence motion should be moved by 1/3 of the total number of members, it has to be accepted by not less than 3/4 of the total number of members and it should be ratified by the special Gram Sabha. Rule 2(2-B) of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 reads thus:

"2.(2-B)- Every notice under sub-rule(1), wherever it may be practicable, be served by delivering or tendering it to the *Sarpanch* or *Upa-Sarpanch* to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family

residing with him; and if no such adult member can be found or, where the *Sarpanch*, *Upa-Sarpanch* or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such *Sarpanch* or *Upa-Sarpanch* ordinarily dwells. The notice served in this manner shall be deemed to be served or tendered or delivered to the concerned *Sarpanch* or *Upa-Sarpanch*."

16. Thus, this rule requires that service for notice of meeting for no confidence motion shall be effected as far as possible personally on the Sarpanch. If it is not possible then, the requirement is that it should be served on any adult member of the family. If no other member of the family is present notice be served by substituted service by affixing notice on conspicuous part of the house of the member of Gram Panchayat.

17. In the case at hand Gram Panchayat Kharab Dhanora consists of 7 members and Sarpanch is an elected member. Motion of no confidence was moved by all the 7 members. Notice dated 21st August, 2020 was tried to be

served on the respondent No. 4. However, according respondent No. 4 she was quarantined on 24th August, 2020 and therefore, respondent No. 4 was not available in the house and therefore, notice was affixed on the conspicuous part of the house of respondent No. 4. According to respondent No. 4, she was quarantined as suspected patient of Covid-19. This defence of respondent No. 4 has not been substantiated by her. She has not produced any cogent evidence indicating that she was suffering from Covid-19 and was hospitalized on that count. A certificate by Medical Officer Rural Hospital Palam indicates that respondent No. 4 did not have any symptoms of Covid-19 nor did she come in contact with any Covid positive patient. Therefore, she was discharged on 27th August, 2020. From this certificate, it is clear that she did not have any symptoms indicating that she was Covid-19 patient. The certificate recites that she did not come in contact with any Covid-19 positive patient. Respondent No. 4 has not produced RTPCR report to show that she was suffering from Covid-19. Therefore, on the basis of this certificate it cannot be said that

she was quarantined for having contracted Covid-19. Therefore, her contention that since she was Corona positive patient she was required to be admitted and quarantined cannot be accepted.

18. Subsequent developments indicate that respondent No. 4 had knowledge of the meeting to be convened on 27th August, 2020. According to respondent Nos. 1 and 2, application was filed by her brother-in-law on 25th August, 2020 mentioning therein that respondent No. 4 was quarantined on account of Covid-19. This clearly indicates that she had knowledge of the meeting. Therefore, once it is proved that she had knowledge of the meeting, the objection regarding improper service of notice pales into insignificance. Therefore, her contention that the service was improper cannot be countenanced.

19. Even if it is assumed for the sake of argument that service was improper, respondent No. 4 has to show what

prejudice was caused to her because of non compliance of procedural requirement. In the case of ***Prabhawati Vijaykumar Khivsara Vs. State of Maharashtra and others, 2008(2)Mh.L.J. 274*** it is held thus

“18. It could clearly be seen from the records that it has been proved that the son of the present petitioner in Writ Petition No. 6811/2007 was duly served with the notice and the notice could not be served on her as it was informed that she had gone for pilgrimage to Zarkhand. Since the motion has been carried by 2/3rd majority, which is requirement under the statute, no prejudice could be said to have been caused to the petitioner in Writ Petition No. 6811/2007.”

20. In the case at hand also no prejudice can be said to have been caused to respondent No. 4 because of procedural deficiencies as no confidence motion was passed by majority of 7 against 0 which means it was passed with absolute majority.

21. Learned counsel Shri. Kale placed reliance on the case of ***Bhika Narayan Gangurde and others Vs. State of Maharashtra and others, 2002(1) Bom. C.R. 186*** it is held thus:

"11. Undisputedly, the other modes are first by delivering or tendering the notice to the member to whom the notice is addressed and in case, he is not found, by delivering or tendering the notice to the adult male member of his family residing with him in the house. It is only when the person on whom the notice is given or tendered and where the member or adult male member of his family refused to accept the notice, the question of affixation of the notice on the door can arise. Undisputedly, there is no finding arrived at either by the Additional Collector or the Additional Commissioner regarding any attempt being made by the Talathi to tender the notice to the respondent No. 6 or any male adult member of the family of the respondent No. 6 before affixation of the said notice on the door of the house of the respondent No. 6."

22. The aforesaid decision of this Court has no application to the facts of the case at hand as there was no evidence to show that the Sarpanch had the knowledge. In the case at hand, there is evidence to show that respondent No. 4 had knowledge of the scheduled date of the meeting. Her brother-in-law had filed application for postponement of the meeting.

23. He also placed reliance on the case of *Indubai Vedu*

Khairnar Vs. State of Maharashtra and others, 2003(2) Bom.C.R.239. In this case notice was not received by the petitioner nor she had knowledge of the meeting. Therefore, this authority has no application to the facts of the case at hand.

24. Thus, the conspectus of the discussion made above makes it abundantly clear that notice was affixed on the house of respondent No. 4 as she was not available when notice was tried to be served on her. Learned Additional Commissioner has held that since application was filed by brother-in-law of respondent No. 4, he being an adult member, notice could have been served on him. This conclusion of the learned Additional Commissioner has no basis. There is no evidence to show that respondent No. 4, her brother-in-law, was present in the house when notice was to be served on her. Therefore, this conclusion of a Additional Commissioner is without any evidence.

25. Thus, the evidence on record clearly shows that respondent No. 4 had knowledge of the meeting. There is no evidence to show that she was suffering from Covid-19. Therefore, it has to be said that motion was validly passed.

26. It is pertinent to note that motion of no confidence was passed with absolute majority. In a democratic society what is seminal is the will of the majority and the elected representatives must honor the will of the majority. When resolution is passed with thumping majority it is not permissible to set aside the resolution on some technical flaws. A Gram Panchyat is essentially a democratic institution which must be run on democratic principles. When not only the majority of the members but also all the members expressed their desire that respondent No. 4 should not be their leader, it is expected of a Sarpanch to step down voluntarily. In the case of *Prabhawati Vijaykumar Khivsara Vs. State of Maharashtra and others* cited supra it has been held as under:

“20. The Division Bench of this Court, in the case of Nimba Rajaram Mali Vs. Collector,

Jalgaon and others, reported in 1998(3) Mh.L.J. 204=1999(1) Bom.C.R. 546, followed the aforesaid Judgment in the case of Smt. Annapurnabai Ajabrao Vs. Annapurnabai Anandrao (referred supra) and observed thus:

"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.”

27. In the light of this, passing of no confidence motion cannot be faulted with on an unsubstantiated ground of being quarantined on account of Covid-19. Will of majority cannot be neglected so lightly. Therefore, it has to be held that resolution of no confidence was validly passed.

28. So far as second requirement in terms of Section 35 (1-B) of Maharashtra Village Panchayat Act is concerned, admittedly, Gram Sabha for ratification of resolution by secret ballot was not held. It is not in dispute that by circular dated 12th May, 2020 the Government of Maharashtra had temporarily stayed the holding of Gram Sabha on account of spread of Covid-19. Vide letter dated 28th October, 2020, Government clarified that holding of Gram Sabha in addition to no confidence motion is mandatory under Section 35 of the Maharashtra Village Panchayat Act. This clearly shows that restrictions on holding Gram Sabha were in force during the period from 12th May, 2020 to 28th October, 2020. During this

period Gram Sabha could not have been held. No confidence motion was passed on 27th August, 2020. Respondent No. 4 preferred writ petition No. 6341 of 2020 before this Court and this Court on 21st September, 2020 allowed respondent No. 4 to withdraw the writ petition with liberty to apply to the Collector in terms of Section 35 (3-B) of Maharashtra Village Panchayat Act 1959. On 24th September, 2020 respondent No. 4 preferred appeal. This clearly shows that these developments occurred during the period the restrictions imposed by letter dated 12th May, 2020 were in force. Therefore, Gram Sabha for ratification of no confidence resolution could not be held. Respondent Nos. 1 and 2 can now hold Gram Sabha for ratification in view of the communication of the Government dated 28th October 2020. In view of this, I deem it appropriate to pass the following order.

ORDER

- (i) Writ petition is partly allowed.
- (ii) No confidence motion is declared to have been validly passed.

- (iii) The said resolution of no confidence motion will be subject to ratification by Gram Sabha.
- (iv) There shall be no order as to costs.
- (v) Rule is made absolute in above terms.

[M. G. SEWLIKAR, J.]

Later on :-

. Learned counsel Shri. Kale for respondent No. 4 submits that this order be stayed for a period of 4 weeks as he wants to challenge this order before the Honourable Supreme Court.

. The order shall stand stayed for a period of three weeks from today.

[M. G. SEWLIKAR, J.]

ssp