

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.213 OF 2021**

- 1 Dharmesh Prabhudas Saglani
Aged 45 years, s/o. late
Prabhudas Saglani, Indian
National, r/o. H.No.850,
Gokhulwadi, Sanquelim, Goa.
- 2 Kunda Laxmikant Madkar
Aged 47 years, w/o Laxmikant
Madkar, Indian National,
r/o. House No.519, Dabel
wada, Harvalem, Sanquelim,
Goa.
- 3 Jyoti Praveen Blaggan
Aged 55 years, w/o. Praveen
Blaggan, Indian National,
r/o. House No.12/4,
Gokul wadi, Sanquelim, Goa.
- 4 Raya Vinayak Parsekar
Aged 31 years, s/o. Vinayak
Parsekar, Indian National,
r/o. House No.5, New wada,
Gokul wadi, Sanquelim, Goa.
- 5 Ansira Riyas Khan
Aged 32 years, w/o Riyas
Khan, Indian National, r/o.
House No.100/1, Dattawadi,
Sanquelim, Goa.

6 Rajesh Vishram Sawal
Aged 43 yers, s/o. Vishram
Sawal,
Indian National, r/o. House
No.1312,
Virdi, Sanquelim, Goa.

.... Petitioners

Versus

- 1 State of Goa,
Through the Chief Secretary,
Government of Goa,
with office at Secretariat,
Porvorim, Goa.
- 2 The Director of Municipal
Administration,
With office at 6th floor,
Shramashakti Bhavan,
Patto-Plaza, Panaji, Goa
403001.
- 3 The Chief Officer
Sanquelim Municipal Council
Municipal Building,
Sanquelim, Goa.
- 4 Yeshwant Shrikant Madkar
Chairperson,
Sankhali Municipal Council,
Major in age, Indian National,
R./o. House No.519,
Debelwada, Harvalem,
Sankhaili, Goa.

.... Respondents

Mr. John A. Lobo, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. D. Shirodkar, Additional
Government Advocate for the Respondents no.1 and 2.

Mr. Shirin Naik, Advocate for Respondents No.3 and 4.

Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 9th April 2021

ORAL JUDGMENT (Per M. S. Sonak, J.):

Heard Mr. John A. Lobo for the Petitioner, Mr. D. Pangam learned Advocate General who appears with Mr. D. Shirodkar, learned Additional Government Advocate for the Respondents no.1 and 2, and Mr. Shirin Naik for Respondents No.3 and 4.

2. Rule. With the consent of and at the request of the learned counsel for the parties, we make Rule returnable forthwith. Even otherwise, this is a matter, which can brook no delay and is required to be disposed of forthwith, particularly now that the affidavits have been filed by respondents no.2 and 4.

3. The Sankhali Municipal Council (SMC) comprises in all 13 councilors. This petition has been instituted by 6 out of the 13 councilors seeking directions to the Director of Municipal Administration (respondent no.2) to fix an early date for considering the Motion of No Confidence which the petitioners have moved against respondent no.4, the Chairperson of SMC.

4. There is no dispute that 1 out of the 13 councilors Damodar Ghadi expired on 21.11.2020. Soon thereafter, some of the petitioners moved this Court seeking directions to the respondents to hold bye-elections to fill in the vacancy. The bye-elections were ultimately held on 20.03.2021 and even the results were declared on 22.03.2021.

5. Even before such elections i.e. on 18.03.2021, the petitioners had made a requisition to respondent no.2 for holding a special meeting to consider No-Confidence Motion against respondent no.4. Based thereon the respondent no.2 issued notice dated 26.03.2021 for holding a meeting to consider the Motion of No Confidence against respondent no.4, only on 30.04.2021. By further order dated 31.03.2021, the Deputy Collector has been nominated to preside over the special meeting wherein the Motion of No Confidence is to be considered.

6. Mr. Lobo, the learned counsel for the petitioners had earlier submitted that in terms of Section 56(3) of the Goa Municipalities Act, 1968 (said Act) the Director had to both convene and hold a meeting to consider a motion of no confidence within 10 days from the date of receipt of the requisition. However, this point was not pressed any further after the learned Advocate General relied on the decision in the case of *Almeida Carlos v. State of Goa – Writ Petition no.355/2008 decided on 30.06.2008*. Mr. Lobo also placed on record decision of the Full Bench of this Court in *Chaitram*

Dagdu Sonavane v. Malegaon Panchayat Samiti by its Secretary and Others – AIR 1966 Bom 1 which also taken the view that convene means give notice and not actually hold the meeting within 10 days.

7. Mr. Lobo, however, contends that there is no justification whatsoever for deferring such meeting by over four weeks, when, in such matters, the position as to whether the Chairperson enjoys the confidence or not must be determined at the earliest. He submits that for a long time, the petitioners, have been made to wait or even institute proceedings, only to establish that respondent no.4 has lost the confidence of the majority. He submits that fixing such a long date by the Director is an unreasonable exercise of powers and even malafide. He relies on the decision of the Hon'ble Supreme Court in *Shivraj Singh Chouhan and Others v. Speaker, Madhya Pradesh Legislative Assembly and Others – 2020 SCC OnLine SC 363*.

8. Mr. D. Pangam, the learned Advocate General submits that there is absolutely nothing unreasonable in the exercise of powers by respondent no.2. He submits that the elections to several municipal councils were required to be held by 30.04.2021 in terms of orders made by the Hon'ble Supreme Court. Accordingly, the Director, fixed the meeting on 30.04.2021, so that, there would be sufficient time for the officials to oversee or preside over the meeting. The learned

Advocate General also referred to the reasoning set out by the Director in his affidavit filed in this petition.

9. The learned Advocate General submitted that without prejudice, the Director will be prepared to hold the meeting on 24.04.2021 since now the elections are due to conclude on 23.04.2021. He submitted that there is a code of conduct in place and even the holding of a meeting might have its political repercussions. He pointed out that even passing of budget had to be deferred on account of the prevailing code of conduct.

10. Finally, the learned Advocate General submitted that the fixing of the date is basically a matter of discretion. He submitted that the discretion, in this case, is certainly not exercised unreasonably and there will be no much difference if the meeting is held on 24.04.2021 or some date before. He submitted that in such matters the Courts should defer to the date that has been bonafide fixed by the Director. He submitted that the allegations of malafide are totally vague and the same deserves no consideration whatsoever.

11. Mr. S. Naik, the learned counsel for respondents no.3 and 4 pointed out that the petitioners have since moved two No Confidence Motions and are bent upon dislodging respondent no.4 repeatedly. He submits that there is some Bill for amending the Municipalities Act so

that such repeated No Confidence Motions are not permitted. He points out that such provisions are there in the Daman and Diu Municipalities Act. He submits that the proper functioning of the Council is not possible on account of the attitude of the opposition i.e. the petitioners by demanding repeated No Confidence Motions. He submits that there is nothing wrong with the date prescribed by the Director and therefore this petition should be dismissed.

12. We have considered the rival contentions and we now proceed to decide the same.

13. In the case of *Vipulbhai M. Chaudhary V/s. Gujarat Cooperative Milk Marketing Federation Limited & Ors. - (2015) 8 SCC 1* the Hon'ble Supreme Court has held that the removal of an elected officer bearer on the loss of confidence is an essential feature of representative democracy. In a democratic institution, confidence is the foundation on which the superstructure of democracy is built. The bedrock of democratic accountability rests on the confidence of the electorate. If the representative body does not have confidence in the office-bearer whom they selected, democracy demands such an officer to be removed democratically. A cooperative society is registered on cooperative principles of democracy, equity, equality, and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity of agreement of feeling among the delegates, cooperativeness, etc. are

some of the cardinal dimensions of the cooperative principles. A body built on such principles cannot be led by a captain in whom the co-sailors have no confidence. If a person has been selected to an office through a democratic process, and when that person loses the confidence of the representatives who selected him, those representatives should necessarily have a democratic right to remove such an office-bearer in whom they do not have confidence, in case those institutions are viewed under the Constitution/statutes as democratic institutions.

14. In this case, there can be no doubt that a municipal council is a democratic institution established not only under the Goa Municipalities Act, 1968 but now, even under the provisions of the Constitution of India. Therefore, the observations made by the Hon'ble Supreme Court in *Vipulbhai M. Chaudhary (supra)* will clearly apply. The contention of Mr. Naik, the learned counsel for respondents no.3 and 4 that the No Confidence Motions are a hurdle to the functioning of the Chairperson or for that matter to the Council, is quite misconceived and goes against the basic tenet of representative democracy.

15. In the case of *Shiv Sena & Ors. V/s. Union of India & Ors. - (2019) 10 SCC 809* the Hon'ble Supreme Court made an interim order directing the holding of a floor test without any delay whatsoever so that, the position of whether or not the Chief Minister

enjoys the confidence of the house is determined at the earliest. The Hon'ble Supreme Court referred to its earlier decision in *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly – 2019 SCC OnLine SC 1454* in which it had been emphasized that the requirement of imbibing constitutional morality by the constitutional functionaries is paramount. Undemocratic and illegal practices within the political arena should be curtailed. Similarly, the Hon'ble Supreme Court also referred to its earlier decision in *Union of India v. Harish Chandra Singh Rawat – (2016) 16 SCC 744*, where it was held that the Hon'ble Supreme Court being the sentinel on the *qui vive* of the Constitution is under the obligation to see that the democracy prevails and does not get hollowed by individuals. The directions were singularly to strengthen the democratic values and the constitutional norms. The collective trust in the legislature is founded on the bedrock of the constitutional trust.

16. The Hon'ble Supreme Court, in the precise context of delays in holding floor test to determine whether the elected leader enjoys the confidence of the house held that in a situation wherein if the floor test is delayed, there is a possibility of horse-trading, it becomes incumbent upon the Court to act to protect democratic values. The Hon'ble Supreme Court emphasized and we quote “*an immediate floor test, in such a case, might be the most effective mechanism to do so*”.

17. The Hon'ble Supreme Court also referred to the view expressed

in the celebrated nine-judge Bench decision in *S. R. Bommai v. Union of India – (1994) 3 SCC 1*, wherein it was held that if one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people and not the Governor, the position would be clear beyond any doubt. There could be no question of the Governor assessing his own. The loss of confidence of the House was an objective fact, which could have been demonstrated, one way or the other, on the floor of the House. The Hon'ble Supreme Court held that wherever a doubt arises whether the Council of Ministers has lost the confidence of the House, the only way of testing it is on the floor of the House except in an extraordinary situation where because of all-pervasive violence, the Governor comes to the conclusion and records the same in his report that for the reasons mentioned by him, a free vote is not possible in the House.

18. In *Shivraj Singh Chouhan (supra)*, the Hon'ble Supreme Court has again emphasized that holding a trust vote is necessary to ascertain whether the council of ministers headed by the Chief Minister has the confidence of the house. The continuous existence of that confidence is crucial to the legitimacy and hence the survival of the Government. *It is a matter which can brook no delay since the authority of the Government presided over by the Chief Minister depends on the council of Ministers continuing to having faith of the*

legislative body as a collective entity.

19. The aforesaid principles, according to us, equally apply when there is a requisition by not less than 6 out of the 13 councilors seeking a meeting for consideration of a Motion of No Confidence against their Chairperson. Mr. Lobo has contended that the newly elected councilor has assured them support and that is why the meeting for considering the Motion of No Confidence is not being held immediately. Mr. Lobo also offered to file the affidavit of this newly elected councilor. The result of the Motion is neither the concern of the Director nor for that matter this Court. However, applying the principles laid down by the Hon'ble Supreme Court, we agree with Mr. Lobo that there cannot be any undue delay in holding meetings to consider a Motion of No Confidence.

20. According to us, therefore, the Director, was required to display utmost urgency upon the receipt of the requisition of no less than 6 councilors out of 13 for holding a Motion of No Confidence against respondent no.4. The Director was also required to take into consideration the circumstance that a vacancy had arisen on 21.11.2020 and the petitioners, had even petitioned this Court for holding the bye-elections at the earliest. No doubt, Section 56(3) of the said Act gives the Director 10 days to convene a meeting for considering a Motion of No Confidence. However, that is the

maximum period. Further, there is indeed no time limit prescribed for holding the meeting for considering a Motion of No Confidence. That does not mean that such holding can be delayed unreasonably or without any valid reasons. In fact, if the aforesaid observations of the Hon'ble Supreme Court are to be considered, as they obviously are, the Director, should have proceeded to convene the meeting for considering the Motion of No Confidence at the earliest. Fixing a date after almost four weeks or rather, six weeks from the date of receipt of the requisition can certainly not be regarded as some reasonable exercise or for that matter an exercise within reasonable bounds.

21. Now the only reason stated by the Director in his affidavit is to be found at para 9 and we quote the same verbatim:

“9. As regards the next contention, I say that the meeting was fixed on 30.4.2021 at 11 am. I say that the main factor which was considered for doing so was that the elections to 5 Municipal Councils, which were to be held by 15.4.2021 in terms of the Judgment dated 01.3.2021 of this Hon'ble Court in Writ Petition No.85/2021 and other companion petitions, were then directed to be held on or before 30.4.2021 in terms of the Judgment dated 12.3.2021 passed by the Hon'ble Supreme Court. I say that the concurrence of the Government proposing to conduct elections on 22/04/2021 and counting on 26/04/2021 in respect of 5 Municipal Councils namely Mapusa, Margao, Mormugao, Quepem and Sanguem was received by the Respondent No.2 on 26/03/2021. I say that the said concurrence was conveyed to the Goa State Election Commission on 26/03/2021 itself. I say that since the machinery and officers of the Government would be busy with the election process, it was felt appropriate to fix the date for the

No-Confidence Motion after the said election concluded.”

22. At the outset, it is very clear from the aforesaid para that at least the Director has not referred to any impediments on account of the Code of Conduct or any political repercussions. The political repercussions, in particular, cannot be the concern of the Director who is only expected to act following the law regardless of such repercussions. Even the Code of Conduct is not the reason stated by the Director. In any case, we fail to see as to how the Code of Conduct can even remotely affect the convening of such meeting to consider a Motion of No Confidence against respondent no.4.

23. Upon our query as to whether the Director himself is required to attend such meetings, we were informed that he is not. Besides, in this case, the Director has already nominated one Deputy Collector to preside over the meeting. The fact that there are elections to other municipal councils and that the officers will be busy is certainly no good reason not to spare even a single officer to preside over this meeting. Based upon such reasoning, the Director, could not have fixed the date of convening such a meeting almost 6 weeks after receipt of requisition from 6 out of the 13 councilors.

24. Normally, we would have accepted the submissions made by the learned Advocate general that where more than one legitimate choices are available to an authority, it is not for this Court to interfere.

However, in this case, we are satisfied that the Director, has acted quite unreasonably in fixing the meeting for consideration of Motion of No Confidence almost six weeks after receipt of the requisition. The reasons set out in para 9 of the affidavit do not, in any manner, justify this delay. As noted earlier, the removal of an elected office bearer on the loss of confidence is an essential feature of democracy. Such a feature cannot be defeated by the Director by simply delaying the holding of meeting to even consider such a Motion.

25. Mr. S. Naik pointed out to the difficulties faced by respondent no.4. Perhaps, he may be right. It is in the interest of respondent no.4 as well to establish that he commands the majority of the Council so that not only he can function effectively but he can serve the electorate of the Council effectively. It is not in the interest of respondent no.4 or for that matter the entire electorate in the SMC area to function in a situation where a loss of confidence is expressed by not less than 6 out of the 13 councilors against its Chairman. A decision one way or the other at the earliest would be in the eminent public interest. In terms of rulings of the Hon'ble Supreme Court such matters, cannot brook any delay unless an extraordinary situation is pointed out. No such extraordinary situation has been pointed out by the Director.

26. Accordingly, we direct respondent no.2 to take all steps to see that the meeting for consideration of Motion of No Confidence against respondent no.4 is positively held on 16.04.2021. If for this

purpose the Director, has to issue notices to the councilors, he should ensure that the same are issued at the earliest so that there are no complaints on this issue. The Deputy Collector who has been deputed to preside over this meeting should also ensure that such a meeting is held on 16.04.2021. The notice for holding the meeting on 30.04.2021 is consequently modified to that extent.

27. The Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

28. All concerned to act based on the authenticated copy of this order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.