

PVR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5274 OF 2021

Sau.Rupali Mahesh Ardalkar ... Petitioner

V/s.

The Collector, Kolhapur & Ors. ... Respondents

Mr.Prajakt M.Arjunwadkar, for the Petitioner.

Mr.S.H.Kankal, AGP for the State.

Mr.Chetan Patil, for Respondent Nos.4 to 13.

CORAM : G.S.KULKARNI, J.

DATE : 7 September 2021

PC.:

1. Heard learned Counsel for the petitioner, learned AGP for respondent nos.1 and 2 and learned counsel for respondent nos.4 to 13.
2. The challenge in this petition is to an order dated 26 March 2021 passed by the Collector, District Kolhapur, whereby an application as made by the petitioner under Section 35(3-B) and Section 16 of the Maharashtra Village Panchayats Act 1958 (for short '**the Act**'), praying that the no confidence motion passed against the petitioner on 15 February 2021 be declared invalid, was rejected.
3. Learned Counsel for the petitioner in assailing the impugned

order has two fold submissions. Firstly, he submits that the petitioner was not served with the notice of the no confidence motion being moved, before such meeting was convened. Her grievance is also that she was not heard in the said meeting before a resolution of no confidence was passed against her. On this count, according to the learned counsel for the petitioner, proceedings of the meeting are squarely hit by the provisions of sub-section (2) of Section 35 and Section 35(3-B) of the Maharashtra Village Panchayats Act, so as to render them illegal.

4. The second contention as urged on behalf of the petitioner is to the effect that the procedural requirements as ordained by the provisions of Rule 17 to 27 of the provisions of the Maharashtra Village Panchayat (Meeting) Rules, 1959, were followed in breach in passing of the no confidence motion against the petitioner. It is submitted that these contentions were raised before the learned Collector at the first instance, however, he did not find any favour on such contentions of the petitioner.

5. In regard to the first submission, it is clear that there is no material whatsoever which would show that the petitioner had raised objections at the meeting held on 15 February 2021 in which the no confidence motion was passed or immediately thereafter, asserting her

rights to be heard. Perusal of the record indicates that the petitioner who was Sarpanch at the relevant time had in fact signed the minutes of the special meeting recording the discussion leading to the no confidence motion passed against her, without demur. It may not be possible to accept the first contention as urged by the learned Counsel for the petitioner, in the absence of any material to show that at the meeting or when the no confidence motion was being passed, the petitioner had insisted for incorporating such objections in the minutes of the meeting. In my opinion, no fault can be found in the order passed by the Collector, Kolhapur, in not accepting the plea of the petitioner that she was not given a hearing at the special meeting held on 15 February 2021.

6. In so far as the second issue is concerned, the position in law is no more *res integra* in view of the judgment of Full Bench of this Court in **Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde & Ors.** In such decision, the issue which fell for consideration before the Full Bench was as to whether a failure to formally move and second a motion of no confidence as required by Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 would render invalid, a no confidence motion carried by the requisite majority under Section 35 of the Bombay Village Panchayats Act, 1958. The full Bench in answering

this question and interpreting the provisions of the Act and the said Rules held that the Sarpanch who has lost the mandate of the house, if continued, the same would result in acting against the very tenets of democracy. It was observed that in such situation, the very essence of democracy and fundamental to it, that a person who had lost the mandate could not have been allowed to be continued. The Full Bench observed that although Rule 17 was not strictly complied with, but the no confidence resolution having been passed by the majority, which was basic requirement of the Act, the resolution cannot be held to be invalid merely on the ground that there is procedural infirmity in the proceedings. It was held that the requirement of Section 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence, which was otherwise passed by fulfilling the requirement of Section 35(3) of the Act. Considering the mandate of what has been held by the Full Bench of this Court, certainly there is no substance in the second contention as urged by the petitioner. The learned Collector has correctly passed the impugned order on appropriate appreciation of the facts and considering the position in law. The petition thus cannot be entertained. It is rejected. No costs.

(G.S.KULKARNI, J.)