

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

77 WRIT PETITION NO.737 OF 2022

PRIYANKA PRAVIN SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Patil Jitendra V.
AGP for Respondents/State : Mr. S.B. Pulkundwar
Advocate for Respondents : Mr. M.S. Sonwane for R/4
Advocate for Respondents : Mr. G.V. Wani for R/5
Advocate for Respondents : Mr. Fayaz K. Patel for R/11
Advocate for Respondents : Mr. Dhawale Bhushan S. for R/12

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CORAM : M.G. SEWLIKAR, J.
DATE : 17th August, 2022

PC.:-

Heard.

2. Petitioner is the Sarpanch of Gram Panchayat Kinod. The strength of Gram Panchayat is eight.

3. Respondent nos.5 to 10 moved the motion of no confidence against petitioner. This motion was tendered before the Tahsildar. The Tahsildar issued notice for voting on no confidence motion. At the time of voting six members were present. The petitioner was disqualified. The decision of disqualification was ratified by the Gramsabha in a special meeting.

4. Notice of no confidence motion was accepted which was ratified by the special Gramsabha. This decision was challenged by the petitioner before the Collector vide dispute application no.57/2021. This dispute came to be rejected by the District Collector/respondent no.2.

5. Learned counsel for the petitioner submits that in terms of Section 35 (1) of the Maharashtra Village Panchayat Act, a motion of no confidence needs to be moved by not less than two third of the total number of the members who are for the time being entitled to sit and vote at the meeting. He submits that the total number of members of Gram Panchayat is eight. The $\frac{2}{3}$ rd of 8 members of the Gram Panchayat comes to 5.03. Learned counsel for the petitioner submits that 5.03 cannot be rounded off as five. For this purpose he placed reliance on the case of **Ganesh Sukhdeo Gurule V/s. Tahsildar, Sinnar and Others** reported in (2019) 3 SCC 211 in which it has been held thus:

“12. The next submission pressed by the respondent is that for applying the principle of rounding off 5.33 votes have to be rounded as to five. Thus, five votes are sufficient to accept majority for the purpose of passing no-confidence motion. Whether 5.33 votes can be rounded up into 5 votes or requirement is at least six votes is the real issue. When there are clear words in the statute i.e. “not less than two-third of the total number of members” applying the principle of rounding off, 5.33 vote cannot

be treated as 5. Vote of a person cannot be expressed in fraction. When computation of a majority comes with fraction of a vote that fraction has to be treated as one vote, because votes cannot be expressed in fraction. The principle that figure less than .5 is to be ignored and figure more than .5 shall be treated as one, is not applicable in the statutory scheme as delineated by Section 35. Provision of Section 35(1) which provides for requirement for moving motion of no-confidence by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat, is the same expression as used in sub-section (3). Obviously, requirement of not less than one-third number for moving motion has to be computed from total number of the members who are entitled to sit and vote. Thus, the same expression having been used in sub-section (3) of Section 35, both the expressions have to be given the same meaning. Thus, one-third of total number of members who are entitled to sit and vote have to be determined on the strength of members entitled to vote at a particular time. The same meaning has also to be applied while computing two-third majority.”

6. Admittedly, strength of Gram Panchat is eight members. Out of those eight members five members moved no confidence motion. $\frac{2}{3}$ rd of eight comes to 5.33. In terms of the judgment of the Supreme Court in the case of **Ganesh Sukhdeo Gurule cited** (supra), it is apparent that 5.33 cannot be rounded off as five. Therefore, it cannot be said that motion of no confidence was validly moved by Gram Panchayat members. Learned counsel for the respondents Shri Wani cannot dispute this position. In view of this,

petition needs to be allowed. The order passed by the District Collector dated 6th January, 2022 by which the dispute application no.57/2021 came to be rejected is set aside. Dispute Application No.57/2021 is allowed.

7. Writ Petition is disposed of. No costs.

[M.G. SEWLIKAR, J.]