

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

45 WRIT PETITION NO.1971 OF 2020

ASHRUBA NAMDEO KHARMATE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr S.S. Thombre
Incharge G.P. for Respondent Nos. 1 to 4 : Mr D.R. Kale

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, J.J.**

**Close for Order on : : 17th JANUARY, 2022
Order pronounced on : 11th March, 2022**

ORAL JUDGMENT (Per S.V. GANGAPURWALA, J.)

1. The petitioner is a directly elected Sarpanch of the Gram Panchayat, Bavi, Tal. Shirur Kasar, Dist. Beed. No confidence motion is passed against him by the members of the Gram Panchayat.

2. The petitioner by filing the present writ petition has assailed the vires of Section 35 (1A) of the Maharashtra Village Gram Panchayat Act, 1959 (in short 'Village Panchayat Act') to the extent of giving authority to the members of the Gram Panchayat to move no confidence motion against directly elected Sarpanch.

3. Mr Thombre, the learned counsel for the petitioner submits that pursuant to Section 30A (1A) of the Village Gram Panchayat Act, the petitioner is elected as a Sarpanch by persons whose names are included

in the list of voters for the Gram Panchayat, Bavi. The petitioner is not elected by the members of the Gram Panchayat, but by the villagers. As the petitioner is elected by the villagers and not by the members of the Gram Panchayat, the members of the Gram Panchayat cannot exercise powers to move a motion of no confidence against him. According to the learned counsel, it is only people, who elect would have power to move motion of no confidence. The same would be necessary so that the Sarpanch is allowed to function without the interference of the persons, who enjoy political patronage of the various political parties.

4. The learned counsel submits that under Section 35 (1A) of the Village Gram Panchayat Act, the powers are given to the members of the Gram Panchayat to pass a motion of no confidence. The same is against the very purpose and the object for which the provision of Section 30-A (1A) of the Maharashtra Village Panchayat Act is introduced. The learned counsel submits that if these members of the Gram Panchayat are allowed to exercise powers to move no confidence motion against the directly elected Sarpanch, then, the handful members of the Gram Panchayat would be sitting over the mandate of the entire village. The same would be unreasonable, irrational and not in consonance with the object of directly electing Sarpanch by the majority of the villagers. The learned counsel submits that the proviso to Section 35-1A of the Village Gram Panchayat Act to that extent, is arbitrary and violative of Article 14 of the Constitution.

5. Mr D.R. Kale, the Incharge Additional Government Pleader submits that the members of the Gram Panchayat are aware of the

functioning of the Gram Panchayat and the manner of working of the Sarpanch. In view of that, the members of the Gram Panchayat would exercise their right. Even otherwise, the motion of no confidence moved by the members of the Panchayat has to be ratified by the Gram Sabha and unless the same is ratified by the Gram Sabha, the motion of no confidence does not come into effect. So eventually, power vests with the villagers, who have elected Sarpanch to express their no confidence. The provision is perfectly legal and the same is not arbitrary.

6. We have considered the submissions canvassed by the learned counsel for the parties.

7. Before we proceed to deal with the submissions canvassed by the learned counsel for the parties, it would be appropriate to reproduce the provisions under section 30A-1A and Section 35(1A) of the Village Panchayat Act.

30A-1A – Direct election of Sarpanch –

(1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017 (Mah. LIV of 2018) 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 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. Motion of no confidence. - [(1)] A motion of no confidence may 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 any meeting of the *panchayat* against the *Sarpanch* or the *Upa-Sarpanch* after giving such notice thereof to the Tahsildar as may be prescribed. [Such notice once given shall not be withdrawn.]

["(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 ."]

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahasildar, shall convene a special meeting of the *panchayat* for considering the motion of no confidence at the office of the Panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the *Sarpanch* or the *Upa-Sarpanch* against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(3) If the motion 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, [shall forthwith stop exercising all the powers and perform 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*; and in case the motion is carried out against both the *Sarpanch* and *Upa-Sarpanch*, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the *Sarpanch* or, as the case may be, *Upa-Sarpanch*, thereby setting aside such motion, the powers, functions and duties of the *Sarpanch* or *Upa-Sarpanch* shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the *Sarpanch* or, as the case may be, *Upa-Sarpanch* shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the *Sarpanch* and *Upa-Sarpanch* become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the *Sarpanch*, exercise all the powers and perform all the functions and duties of the *Sarpanch* but shall not have the right to vote in any meetings of the *panchayat*:]

[[Provided also that], where the office of the *Sarpanch* being

reserved for a woman, is held by a woman *Sarpanch*, such motion of no-confidence shall be carried only 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*:.]]

“Provided also that, no such motion of no-confidence shall be moved within a period of two years from the date of election of *Sarpanch* or *Upa-Sarpanch* and before 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 moved within next two years from the date of failure of no-confidence motion.”

(3-A) If the motion [is not moved or is not carried] by [a majority of not less than two-third of [or, as the case may be, 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*, no such fresh motion shall be moved against the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* within a period of [[one year] from the date of such special meeting.]

(3-B) If the *Sarpanch* or, as the case may be, the *Upa-Sarpanch* desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it as far as possible, [within thirty days from the date on which it was received by him and his decision shall be final].

8. The statutory provisions can be challenged on two counts : (1)

The Legislature lacks the authority and power to frame the provision and (2) the provision is arbitrary, irrational and does not have rational nexus with the object in view and thereby violative of the Article 14 of the Constitution.

9. In the present case, the legislative powers of the State are not in question. The State possesses the legislative powers to enact the provisions.

10. The only challenge now is on the ground that the said provision is arbitrary and violative of Article 14 of the Constitution.

11. Section 10 of the Village Panchayat Act, provides for the constitution of Panchayats. Panchayats consist of members and Sarpanch. The term of the Sarpanch irrespective of the mode of election is co-terminus with the term of the members of Panchayat in view of Section 30A – 1A (3) of the Village Panchayat Act. The provision of disqualification applicable to members of Grampanchayat also apply to the Sarpanch whether directly elected or elected from amongst the members. The Village Panchayat Act casts additional duty/responsibilities upon the Sarpanch. If the Sarpanch fails to convene without sufficient cause the meetings of the Panchayat in any financial year according to rules prescribed in that behalf, he shall be disqualified from continuing as a Sarpanch for remainder period of the term as provided under Section 36 of the Village Panchayat Act. Under Section 39 of the Village Panchayat Act, the Commissioner has powers to remove from office Sarpanch who is guilty of misconduct in discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty or is persistently remiss, in the discharge thereof.

12. The panchayat would include the elected members so also Sarpanch and Up-Sarpanch though directly elected. The decisions have to be arrived at by the Panchayat for the betterment of the villagers. If Sarpanch fails to perform his function and/or acts in a manner detrimental to the interest of the Panchayat and villagers or is guilty of such acts of

omission or commission, so as to affect the functioning of panchayat, then the members certainly would be justified in bringing about no-confidence motion against him. The Village Panchayat Act does not make distinction in the nature of duties, powers, functions and responsibility of Sarpanch on the basis of he being elected by the villagers or by the members of the Panchayat.

13. In the democratic set up, the will of majority is the rule. If the directly elected Sarpanch fails to call the meetings of the Panchayat or acts in a manner rendering the functioning of the Panchayat at a standstill, the member of the Panchayat would certainly get a right to move a motion of no confidence. After all, the members of the Gram Panchayats are the Representatives of the villagers. They are also elected by the villagers.

14. For a directly elected Sarpanch further protection is provided that motion of No-Confidence is to be passed by 2/3rd members and further the said no confidence motion is to be ratified before the Gram Sabha by the secret ballot. The ultimate power vests with the Gram Sabha i.e. the villagers to ratify the no confidence motion. If the villagers in the Gram Sabha do not ratify the no confidence motion passed by the members of the Panchayat the no confidence motion would fail. The executive power vests with the Gram Sabha viz villagers.

15. The Village Panchayat Act has provided proper check and balance for passing no-confidence motion against directly elected

Sarpanch. The provision is rational, reasonable and does not suffer from vice of arbitrariness ergo is not violative of the article 14 of the Constitution of India.

16. In the light of the above, writ petition is dismissed. No costs.

[SHRIKANT D. KULKARNI, J.]

[S.V. GANGAPURWALA, J.]

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