

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

WRIT PETITION NO.10097 OF 2021

**SOPAN RAMCHANDRA RAUT
VERSUS
TAHASILDAR, SANGAMNER AND OTHERS**

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Advocate for Petitioners : Mr. Sushant V. Dixit
AGP for Respondents – State : Mr. S. N. Kendre
Advocate for Respondent Nos. 3 & 4 : Mr. A. S. Bajaj

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th AUGUST, 2022

PER COURT :

1. Challenge in this petition is to the resolution of 'no confidence' motion passed against the petitioner on 05/07/2021 and decision of the Collector, Ahmednagar, rendered against the petitioner, on 26/08/2021, in Panchayat Dispute Application No.120/2021.
2. On 07/10/2017, petitioner was directly elected as Sarpanch of village Ghulewadi. On 28/06/2021, respondent Nos. 2 to 18 gave notice of 'no confidence' to Tahsildar, Sangamner/ respondent No.1. On the same day, respondent No.1 issued notice convening meeting on 05/07/2021 for consideration of 'no confidence' motion. Accordingly, the meeting was held and motion for 'no confidence' was passed by the majority of 16 against two.
3. The petitioner questioned the validity of motion of 'no

confidence', by filing Village Panchayat Dispute No.120/2021, before Collector, Ahmednagar. The Collector rejected the dispute upholding 'no confidence' motion passed against the petitioner. Hence, the present petition.

4. Heard learned advocate for petitioner, learned advocate for respondent Nos. 3 and 4 and learned Assistant Government Pleader for respondent No.1 – State.

5. Learned advocate for petitioner assailed the 'no confidence' motion on the ground that, in terms of Section 35(2) of the Bombay Village Panchayats Act, 1958, meeting has to be convened within seven days. Notice for 'no confidence' motion was given by respondent Nos. 2 to 18 to Tahsildar on 28/06/2021 and the meeting was convened on 05/07/2021 i.e. on 8th day. Therefore, 'no confidence' motion passed in the said meeting is required to be held without following procedure prescribed in law. In support of the said submission, he relied on ***Mandabai Balnath Rohom and Others Vs. Ashok Fakira Chandar and Others [2002(1) Mh.L.J. 916]*** and ***Ganesh Raghunath Samel Vs. State of Maharashtra and Others [2002(4) All.M.R. 213]***. He further submits that, though secret ballot was sought in the said meeting, without assigning any reason the said request was rejected by respondent No.1. On this ground also, the 'no confidence' motion is vitiated. He

further submits that the Collector has failed to appreciate contentions raised by petitioner in the dispute and without considering the same, has erroneously proceeded to reject the dispute filed by petitioner. The impugned order of Collector, since depicts non application of mind, cannot be sustained. Hence, according to him, the 'no confidence' motion as well as the impugned order passed by the Collector in dispute, are liable to be quashed and set aside.

6. Learned advocate for respondent Nos. 3 and 4, on the other hand, supports the 'no confidence' motion as well as the order passed by Collector, Ahmednagar, by placing reliance on *Yamunabai Laxman Chavan and Others Vs. Sarubai Tukaram Jadhav and Others* [2004(2) Mh.L.J. 1004], *Shrikrushna s/o Digambar Jadhav Vs. Additional Commissioner, Amravati and Others* [2009(4) Mh.L.J. 943], *Hanuman s/o Rangnath Giram and Others Vs. Divisional Commissioner, Aurangabad* [2013(3) Mh.L.J. 712], *Pandhari s/o Shripat Patil Vs. The State of Maharashtra and Others* [2002(1) ALL.M.R. 848] and *Bhaskar s/o Laxmanrao Kadam Vs. Additional Collector, Nanded and Others* [2013(6) Mh.L.J. 613].

7. Learned Assistant Government Pleader supports the motion of 'no confidence' contending that procedure prescribed in the Rules is followed by the Tahsildar while conducting the meeting and at the time of passing of 'no confidence' motion, the petitioner

has lost confidence of majority, therefore, the Collector was justified in rejecting the dispute.

8. It is a matter of record that notice of 'no confidence' motion was given by respondent Nos. 2 to 18 to respondent No.1 on 28/06/2021. It's period expires on Sunday and therefore, the meeting was convened on 05/07/2021 i.e. on 8th day from the date of notice of 'no confidence' motion. Learned advocate for respondents has rightly relied on decision in *Pandhari s/o Shripat Patil* (supra), where the learned Single Judge of this Court has held that the day of receipt of notice under Section 35(1) of the Act, has to be excluded while computing the period of seven days and if the seventh day happens to be holiday, then convening the meeting on next following working day is legal. In this view of the matter, no fault can be found with the procedure adopted by respondent No.1 in convening the meeting on eighth day i.e. on 05/07/2021.

9. The next argument of petitioner that though secret ballot was sought, the same is rejected by the unreasoned order by respondent No.1, is also unacceptable in view of the provisions of Rule 28(2) of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No-Confidence Motion) Rules, 1975. Sub-rule (2) of Rule 28 contemplates demand by the majority to hold secret ballot. Admittedly, in the present case, only two members sought secret

ballot, which cannot be said to be a demand by majority.

10. Rule 28(1) provides that voting shall ordinarily be taken by word of mouth or by a show of hands, but may, if the majority of members present so decide, be taken by ballot. Thus, ordinarily voting has to be taken by word of mouth or by showing of hands. In this view of the matter, there is no substance in the argument of the petitioner that secret ballot voting demanded by the petitioner, was wrongly rejected.

11. The petitioner has further assailed the impugned order of Collector on the ground that contentions raised by the petitioner are not considered. This argument is also devoid of merit. The contentions raised by petitioner in the dispute are reproduced by the Collector in the impugned order. While recording findings in respect of contentions of the parties, the Collector has specifically observed the contentions raised by petitioner in the application and written say filed by respondent Nos. 2 to 17 therein. The arguments of all the parties and original record of the 'no confidence' motion produced by Tahsildar, Sangamner, is considered by Collector, while passing the impugned order. After considering all these aspects, Collector has recorded a categorical finding that out of 18 members, 16 members have voted in favour of 'no confidence' motion against petitioner and it is clear from record that procedure prescribed by Rules is properly followed by the Tahsildar while conducting meeting

of 'no confidence' motion. The Collector, therefore, has rightly dismissed the dispute filed by petitioner, since there is no substance in the same.

12. In the light of the above, and taking into consideration the fact that petitioner has lost confidence of more than 3/4th majority of members of the Village Panchayat, this Court is of the view that there is no merit in the challenge raised by the petitioner in present petition.

13. Apart from the above, after filing of present petition, the *Gramsabha* in the meeting dated 13/09/2021 has confirmed the motion of 'no confidence' passed against petitioner. On 20/10/2021, new Sarpanch is elected, who is presently holding the charge.

14. For the aforestated reasons, there is no merit in the petition. Writ petition is, therefore, dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)